

Bail Slip

CRL.A.No.441/2003

The Appellant/accused viz.Karunanidhi, was released on bail as per the order of this Court dated 27.07.2003 in CrI.Mp.No.5030/2003 in CRL.A.No.441/2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.441 of 2003

Karunanidhi ... Appellant/Accused

vs.

State by
Assistant Commissioner of Police
(Law and Order)
Sembium Range

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment of learned Special Judge, Magalir Neethimandram dated 18.2.2003 in S.C.No.210 of 2000.

For appellant : Mr.S.Gopinath,
Sr.counsel for
Mr.G.Mohanakrishnan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

This Criminal Appeal has been directed against the convictions and sentences passed by Magalir Neethimandram, Chennai in Sessions Case No.210 of 2000.

2. The case of the prosecution is that the first accused is the son of the second accused. On 3.5.1999, the first accused married the deceased by name Sharmila. At the time of marriage, the said Sharmila has been given sufficient properties and after

marriage, both the accused have demanded dowry from her. Since she has not been able to meet out the demands made by the accused, on 23.7.1999 at about 6 p.m., the first accused has attacked on her person indiscriminately and thereby caused fatal injuries. The second accused has lent her support to the first accused. Due to injuries sustained by her, she passed away on 28.7.1999. After occurrence, the mother of the deceased by name Suguna has given a complaint and the same has been registered by the concerned Sub Inspector of Police (P.W.10) in Crime No.769 of 1999. The complaint given by the said Suguna has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.13 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly Dr. Mathikaran (P.W.9) has conducted autopsy and he found the following external and internal injuries.

"Injuries:

- 1) Abrasions covered with reddish black scab:
 - a) over inner aspect of back of right wrist joint 1x0.5cm;
 - b) on left side nose 1x1 cm;
 - c) on right side nose 2 x 1 cm;
 - d) on front of left side neck 1 x 1 cm
 - e) on left ear lobule 1 x 1 cm.
- 2) Two oblique linear parallel abrasions 3 cms long over outer aspect of middle of left forearm
- 3) On dissection of head bruising of scalp tissues reddish brown in colour 3 x1x0.5 cm over right side frontal region; 2 x1x0.5 cm on left side frontal region and 3x1x0.5cm on left side occipital region

Brain was oedematous and its surface vessels are full and congested with diffused sub arachnoid haemorrhage over both cerebral hemisphere. cut section multiple haemorrhagic spots seen

Heart: chambers contains fluid blood. coronaries patent

Lungs: congested and massively oedematous

Stomach : Contained 100 ml of greenish yellow fluid.

Mucosa congested

Bladder: Empty

All other internal organs were found congested."

The postmortem report has been marked as Ex.P.7. Further investigation has been done by P.W.14 and after completing the same, laid a final report on the file of II Metropolitan Magistrate, Egmore, Chennai and the same has been taken on file

in Calender Case No.1313 of 2000.

4. The Metropolitan Magistrate No.2, Egmore, Chennai, after considering the facts that the offences alleged to have been committed by both the accused are triable by Sessions Court, has committed the case to the trial court and the same has been taken on file in Sessions Case No.210 of 2000.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant documents has framed first charge under section 498-A of Indian Penal Code and also under section 4 of Dowry Prohibition Act against both accused, second charge against the first accused under section 302 and third charge against the second accused under section 302 r/w 109 of IPC and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 14 have been examined and Exhibits P.1 to P.12 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the prosecution, D.W.1 has been examined.

8. The trial court, after hearing arguments of both sides, and upon appraising the available evidence on record, has found the first accused guilty under section 498-A of IPC and sentenced to undergo 2 years rigorous imprisonment. He has also been found guilty under section 304-B of IPC and also under section 4 of Dowry Prohibition Act and sentenced to undergo 10 years rigorous imprisonment and imposed a fine of Rs.20,000/- with usual default clause under section 304-B of IPC. No separate punishment has been awarded under section 4 of Dowry Prohibition Act. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been preferred at the instance of the first accused as appellant.

9. The learned counsel appearing for the appellant/first accused has contended that in the instant case, the specific contention put forth on the side of the prosecution is that on 23.7.1999, the first accused has indiscriminately attacked the deceased by name Sharmila and thereby caused fatal injuries on her person and due to that, she passed away. Under the said circumstances, the trial court has framed a charge against the first accused under section 302 of IPC. The trial court, after considering the evidence available on record, has found that the offence punishable under section 302 IPC is not made out, but the trial court, without framing a charge under section 304-B of IPC, has erroneously sentenced the first accused under the said

section and therefore, the conviction and sentence passed by the trial court under section 304-B of IPC are not legally sustainable.

10. The learned Additional Public Prosecutor has also fairly conceded that in the instant case, even though materials are available so as to frame a charge under section 304-B of IPC, the trial court has not framed the same, but the trial court has erroneously framed a charge under section 302 of IPC and therefore, the approach made by the trial court cannot be accepted.

11. As adverted to earlier, the second charge framed against the first accused is under section 302 of IPC and third charge framed against the second accused is under section 302 r/w 109 of IPC.

12. The sum and substance of the case of the prosecution is that the first accused has married the deceased Sharmila and both the accused have consistently demanded dowry from her and since she has not been able to meet out the demands made by the accused, the first accused on 23.7.1999 has indiscriminately attacked the deceased and thereby caused fatal injuries and subsequently she passed away.

13. From the allegations made on the side of the prosecution, the trial court ought to have framed a charge under section 304 -B of IPC against the first accused, but the trial court has erroneously framed a charge under section 302 of IPC. The trial court has found the first accused guilty under section 304-B of IPC, even without framing a charge under the said section.

14. The learned counsel appearing for the appellant has drawn the attention of the court to the decision reported in 2001 SCC (Cr1.) 358 (Shamnsaheb M.Multtani vs. State of Karnataka), wherein the Hon'ble Supreme Court has dealt with similar case and ultimately held that for giving sufficient opportunity to the accused, the conviction and sentence passed under section 304-B of IPC are liable to be set aside and the matter is liable to be remitted to the file of the trial court. In the instant case, as pointed out earlier, the specific contention put forth on the side of the prosecution is that since the deceased has not been able to meet out the demand of dowry alleged to have been made by both the accused, the first accused has attacked her and thereby caused fatal injuries and subsequently on 28.7.1999 she passed away. As stated earlier, the trial court ought to have framed a charge under section 304-B of IPC, but erroneously framed a charge under section 302 of IPC. Therefore, the approach made by the trial court is totally erroneous.

15. It has already been pointed out that the Hon'ble Supreme Court in the aforesaid decision has dealt with similar situation and ultimately set aside the conviction and sentence passed under section 304-B of IPC and remitted the matter to the file of the trial court for disposing of the same afresh. Under such circumstances, the convictions and sentences passed by the trial court against the appellant/first accused are liable to be set aside and the matter is liable to be remitted to the file of the trial court.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellant/first accused in Sessions Case No.210 of 2000 by Mahalir Neethimandram, Chennai are set aside and Sessions Case No.210 of 2000 is remitted to the file of the trial court. The trial court is strictly directed to frame a charge under section 304-B of IPC and after giving sufficient opportunity to the first accused, dispose of the Sessions case No.210 of 2000 before the end of January 2016 and report the same to the Registry without fail. Fine amount, if any, paid by the appellant/first accused is ordered to be refunded forthwith.

sd/-

ASSISTANT REGISTRAR (J)

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SUB-ASSISTANT REGISTRAR

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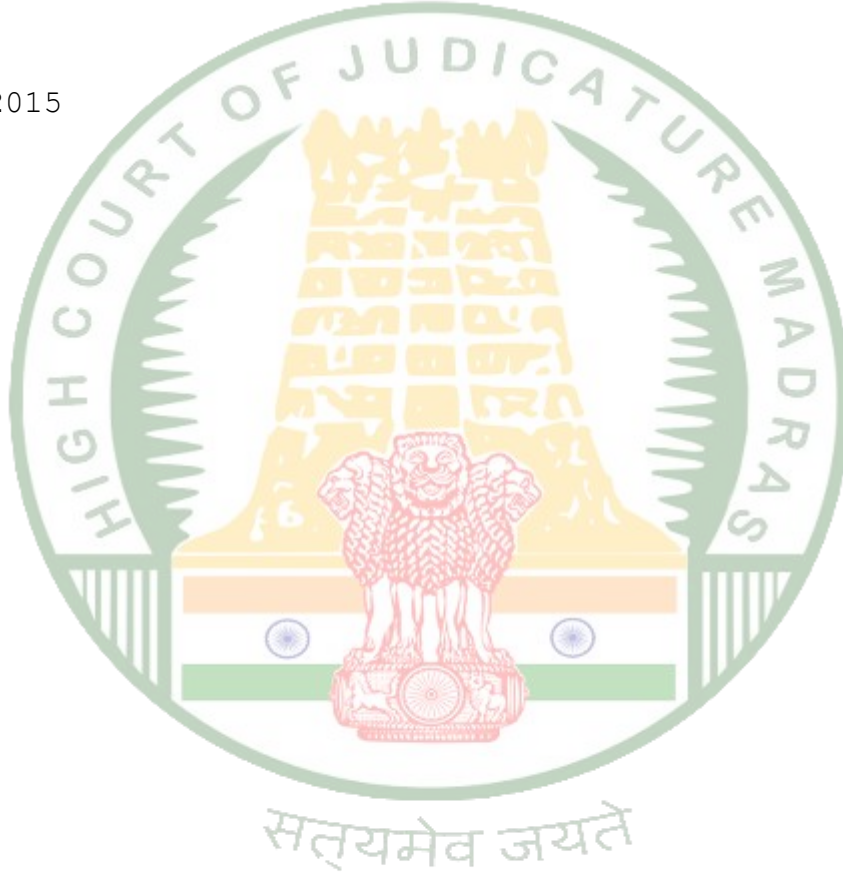
1. The Special Judge, Mahalir Neethimandram, Chennai
2. Assistant Commissioner of Police
(Law and Order), Sembium Range
3. The Public Prosecutor, High Court, Chennai
4. The District Collector, Chennai
5. The District Collector, Vellore.
6. The Director General of Police, Chennai
7. The Superintendent ,
Central prison, Vellore

8. The II Metropolitan Magistrate, Egmore, Chennai.
9. The Chief Metropolitan Magistrate, Egmore, Chennai.
10. The Section Officer,
Criminal Section, High Court Madras

+1 CC to Mr.G.Mohana Krishnan Advocate. SR.NO. 56547

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CO-VGI
JD 15/10/2015



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