

BAIL SLIP

The Appellants/Accused Nos.A1 and A3 viz. Purushothaman and Kasthuri (A3) was directed to be released on bail as per order of this Court in MP.No.1 of 2014 in CrI.A.No.440/2014 and MP.5/2014 in CrI.A.No.440/2014, dt.16.9.2014 and 9.3.2015 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.440 of 2014

1.Purushothaman
2.Manigandan
3.Kasthuri

... Appellants/A1 to A3

-vs-

State Rep. by
Deputy Superintendent of Police
Maduranthakam Division,
Acharapakkam Police Station.... Respondent
(Cr.No.43/2010)

This Criminal Appeal has been preferred under Section 374(2) of Criminal Procedure Code to set aside the conviction and sentence imposed vide judgment dated 12.08.2014 made in S.C.No.181 of 2010 on the file of the Sessions Judge (Mahila Court), Chengalpattu, by allowing this appeal.

For Appellants : Mr.R.Sankarasubbu for
Mr.K.Shanmugam

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellants are the accused 1 to 3 in S.C.No.181 of 2010 on the file of the learned Sessions Judge (Mahila Court), Chengalpattu. The trial Court framed charges against all the accused as detailed below:-

Charge Nos.	Accused	Section of law
First charge	A.1 to A.3	498-A I.P.C.,
Second Charge	A.1 and A.2	302 I.P.C.,
Third Charge	A.3	302 r/w 34 I.P.C.,

By judgment, dated 12.08.2014, the Trial Court convicted all the three accused under Sections 498-A and 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for one year and to undergo rigorous imprisonment for one year for the offence under Section 498-A IPC. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

The first appellant/first accused is the husband of one Vijayalakshmi @ Neelaveni, who is the deceased in this case. The Accused 2 and 3 are the brother and mother respectively of the first accused. The marriage between the first accused and the deceased was celebrated on 02.09.2009. After the marriage, the deceased was living with all the three accused as a joint family at Thozhupedu Village. It is alleged that after the marriage, all the three accused used to demand the deceased to go and get money from her parents. Accordingly, the deceased used to get money to the tune of Rs.100, 200, 500, 1000 or 2000/-. It is further alleged that after some time, all the three accused, on one occasion, shouted at the deceased that the jewels presented at the time of marriage by her parents were not sufficient. It is alleged that the second accused on one occasion, even had beaten the deceased. It is further alleged that on 30.01.2010, when the deceased was at the house of the accused, the first accused dashed the head of the deceased against the wall. The second accused followed him and dashed the head of the deceased against the Wall. The deceased died out of the injuries sustained. The third accused had shared the common intention with Accused 1 and 2 in causing the death of the deceased. Thus, according to the respondent, the accused had committed offences as charged.

3. It is alleged that on 30.01.2010 at about 4.30 p.m., the deceased spoke to P.W.1, her brother and informed him that she had only Rs.100/- in her hands and all the three accused were harassing her. Therefore, according to P.W.1, he went to the house of the deceased and when he was nearing the house at Thozhupedu Village, he found a Tata Sumo Car coming from the opposite direction in a high speed. Even after noticing P.W.1,

the car did not stop. P.W.1 went to the house of the accused, where, he found the father-in-law of the deceased. He told P.W.1 that the deceased was not alright and the second respondent had taken her to Acharapakkam Hospital. When P.W.1 contacted the deceased through cell phone, the second accused told him that he admitted the deceased in the Maruvathur Hospital. When he rushed to the hospital, the Doctor declared her dead. P.W.1 noticed some injuries on the neck of the deceased. Therefore, he went to Acharapakkam Police Station and made a complaint at 10.30 a.m. on 31.01.2010. P.W.14, the then Sub-Inspector of Police, registered a case in Crime No.43 of 2010 under Section 174 (3) Cr.P.C. Ex.P8 is the FIR. He forwarded both the documents viz., Complaint [Ex.P1] and FIR [Ex.P8] to the Court.

4. P.W.17 took up the case for investigation. At 1.00 p.m., on 31.01.2010, he went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. Then he examined P.Ws.1 to 4 and few more witnesses. Then he altered the case into one under Sections 498-A and 302 IPC. Ex.P13 is the Alteration Report. Then at his request, P.W.13, the Revenue Divisional Officer-cum-Executive Magistrate came to the hospital and conducted inquest on the body of the deceased and then forwarded the same for post-mortem.

5. P.W.15 - Dr.Parasakthi, conducted autopsy on the body of the deceased on 01.02.2010 at 9.45 a.m. She found the following injuries:-

"Well built body of a female with extremities-- NAD

Following ante-mortem injuries seen on the body (1) Diffuse swelling seen over the right and left cheek O/d. Fracture de location seen over over right and left temporo mandibular joint and right angle of mandible with surrounding areas of contusions.

(2) Contusion 5 cm x 3 cm seen over chin

(3) Fracture seen over right side of hyoid bone with surrounding areas of contusions (inward compression)

4. Diffuse swelling seen over forehead and frontal regions of Scalp. O/d. Two fissure fracture seen along the right temporal bone. Subdural laceration weighing 50gm seen over occipital region. Multiple haemorrhages seen over both cerebral hemispheres. Thorax - NAD Lungs - NAD Heart chambers contained few cc of fluid blood. Great vessels intact. Coronaries - patent.

Stomach empty. Spleen - Absent. Uterus -
Normal in size, Cavity - empty. Both tubes
and ovaries - NAD

Ex.P10 is the Post-mortem Certificate. She gave opinion that the death of the deceased was due to cumulative effects of compression force and the death would have been occurred 38 - 40 hours prior to post-mortem.

6. P.W.17 during the course of investigation, on 22.02.2010, arrested all the three accused near Thozhupedu bus stand. On such arrest, Accused 1 and 2 gave independent voluntary confessions, one after the other. But no discovery of any fact, whatsoever, was made out on the same. He forwarded the accused to the Court for judicial remand. At the request of P.W.17, the learned Magistrate recorded the statements of P.Ws.1 to 4 and few more witnesses under Section 164 Cr.P.C. P.W.19 continued the investigation and finally, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first para of this judgment against all the accused. They denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined; 16 documents were exhibited, but no Material Objects were marked.

8. Out of the said witnesses, P.Ws.1 and 2 are the brother and mother respectively of the deceased. P.W.3 is the brother of P.W.2 and P.W.4 is the sister of the deceased. All these witnesses have spoken about the earlier strained relationship between the accused and the deceased. They have further stated that on 30.01.2010 at about 4.30 p.m., the deceased spoke to P.W.1 and informed that she was being harassed by the accused and further stated that thereafter, the deceased was taken to the hospital, where she was declared dead. P.Ws.5, 6 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 is a villager. He has stated that two months before the occurrence, there was a domestic quarrel between the deceased and the accused. The second accused invited him and other villagers to pacify. Accordingly, the villagers pacified the deceased. He has further stated that after the death of the deceased, when the body of the deceased was intended to send for post-mortem, the first accused expressed his unwillingness for the same. P.W.9 is another villager, who has stated that the accused and the deceased were in good terms and there was no matrimonial dispute at all between them. P.W.10 is yet another villager has also stated that he went to Melmaruvathur Hospital, where he accompanied the deceased to Government Hospital at Madhuranthagam. P.W.11 is a taxi driver. He took the deceased to the Maruvathur Hospital and he has spoken about the same. P.W.12 - Dr. Selvam has stated

that on 30.01.2010 at 8.10 p.m., when he was at the Government Hospital, Madhuranthagam, the deceased was brought dead. P.W.13 - the Revenue Divisional Officer has spoken about the inquest held by him. P.W.14 - the then Sub-Inspector of Police has spoken about the registration of the case and the complaint of P.W.1. P.W.15 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.16 is the Doctor in a private clinic known as Pikash Hospital at Acharapakkam. According to him, at 5.30 p.m., on 30.01.2010, a woman was brought to his clinic for treatment. He examined the woman and since her condition was bad, he advised them to take her to Government Hospital. He has not stated anything against the accused. He has not even stated that the woman who was examined by him was the deceased. P.W.18 - the Magistrate has stated about the the statements recorded by him under Section 164 Cr.P.C. from the witnesses. P.Ws.17 and 19 have spoken about the investigation done and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false. However, they did not choose to examine any witness on their side nor marked any document in their favour. Their defence was a total denial.

10. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this Judgment. Aggrieved over the same, the appellants are before this Court with this appeal.

11. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. There is no denial of the fact that the marriage between the deceased and the accused was celebrated on 02.09.2009. But it is nowhere in any evidence that any dowry was demanded by any of the accused before marriage. After marriage also, in a very vague and general manner, P.Ws.1 to 4 have stated that the accused used to ask the deceased to get money from her parents. They have further stated that on few occasions, like Rs.100, 200, 500, 1000 and 2000/- were given by them. This is also in a very general manner they have stated. Absolutely, there is no evidence to show that the accused ever demanded any property from the deceased or her parents as dowry or anything in connection with the marriage. Per contra, P.W.9, a neighbour of the deceased has stated in clear terms that the deceased and all the three accused were in a very cordial terms and there was absolute peace in the family. There is no contra evidence to the same. We do not find any reason to reject the evidence of P.W.9. From these evidences, it is crystal clear that there is no proof that these accused had harassed the deceased.

13. Now turning to the occurrence on 30.01.2010, there is no direct eye witness account as to how the deceased sustained injuries. There is no evidence as to whether all these accused were in the house of the deceased on 30.01.2010 lastly in the company of the deceased. P.W.1 has stated that the deceased spoke to him and told that she was harassed by her in-laws. In order to verify the correctness of the said evidence of P.W.1, the prosecution has not collected the call details of the cell phone conversation between the deceased and P.W.1. He has further stated like other witnesses, that when he went to the house of the deceased, he found the Tata Sumo Car going very fast. The second accused had taken the deceased to the hospital when he went to the house. He found only the father-in-law of the deceased. Thus, absolutely, there is no evidence that lastly, these three accused were in the house. The Doctor has stated that the death of the deceased was due to the effects of compression force over the region of neck and head. The prosecution has thus succeeded in establishing that the death was homicidal one. But in connection with the said crime, absolutely, there is no evidence except the fact that the deceased was dying at her house with injuries. There is no other evidence. The fact that the second accused rushed the deceased to the hospital would be consistent with the innocence pleaded by them. At any rate, since there is no evidence to clinchingly prove that these accused were in the house so that it can at least be presumed that they had caused injuries on the deceased, it is not possible to sustain the conviction. Thus, in our considered view, the Trial Court has convicted these accused only on suspicion, which in our, considered view is not sustainable. For all these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubt. Thus, the appellants are entitled to acquittal.

14. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants are hereby set aside. The appellants are acquitted and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

- 1.The Sessions Judge (Mahila Court),
Chengalpattu,
 - 2.The Judicial magistrate,Maduranthagam.
 - 3.do thro'The Chief Judicial Magistrate, Chengalpet.
 - 4.The Superintendent of Central Prison,Puzhal, Chennai.
 - 5.The Deputy Superintendent of Police
Maduranthakam Division,
Acharapakkam Police Station.
 - 6.The Superintendent of Police, Chengalpet.
 - 7.The District collector,
Chengalpet.
 - 8.The District General of Police, Mylapore, Chennai.
 - 9.The Public Prosecutor
High Court, Chennai.
- +1 cc to Mr.K.Shenmugam, advocate,sr.37352.

bvr(co)
krd 29/8

CrI.A.No.440 of 2014

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