

BAIL SLIP

The appellants herein namely Periyasamy and Padmavathi/accused 1 and 4 in SC.No.99/11 on the file of the Sessions Judge, FTC Mahila Court, Krishnagiri were directed to be released on bail as per the order of this court dated 07.08.2015 and made in MP.No.1/15 in CrI.A.No.501/2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.501 of 2015

1.Periyasami
2.Padmavathi ... Appellants

vs.

State, represented by
The Inspector of Police,
Shoolagiri Police Station,
Krishnagiri District ... Respondent
(Crime No.410 of 2006)

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 29.07.2015, passed by the Sessions Judge, Fast Track Mahila Court, Krishnagiri, in S.C.No.99 of 2011.

For appellants : Mr.V.Rajamohan

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

JUDGMENT

Challenge in this criminal appeal is to the convictions and sentences dated 29.7.2015, passed in Sessions Case No.99 of 2011, by the District and Sessions Court, Fast Track Mahila Court, Krishnagiri.

2. The case of the prosecution is that the first accused is the son of accused 2 and 3 and fourth accused is

their daughter. On 8.6.2006, the first accused has married the deceased Sudha and after some time, all the accused have joined together and demanded huge amounts in the form of dowry from the deceased and since the deceased has not been able to meet out the unreasonable demands of dowry made by all the accused, on 25.11.2006, at about 4.00 p.m., in the house of the accused, she committed suicide by way of hanging. After occurrence, the father of the deceased, by name, Narayanappa, as defacto complainant, has given a complaint and the same has been registered in Crime No.410 of 2006.

3. On receipt of the complaint, the Investigating Officer viz., P.W.12, has taken up investigation, examined connected witnesses and also made arrangements to conduct inquest and accordingly, the concerned Revenue Divisional Officer, viz., Natarajan (P.W.10) has conducted inquest, examined connected witnesses and subsequently filed his inquest report. The investigating officer has continued investigation, examined some more witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly Dr.Anusya Malathi (P.W.7) has conducted autopsy and she found the following external and internal injuries:

"Ext.Injuries: Ligature mark encircling the neck from Rt to Lt. 2 cm in width 27 cm in length with knot mark just below the left ear. On c/s-ligature mark, day and (n.c) like appearance present. Hyoid bone-preserved. Ribs-intact. Heart? all chambers full of blood. C/s congested. Lungs Rt-400 gms Lt.375 gms C/s congested. Liver 1500 gms C/s congested. Stomach-partially digested rice about 200 gms. Kidneys Rt-120 gms, Lt-120 gms C/s congested. Spleen 150 gms C/s congested Bladder-Empty let size and shape normal C/s-empty. Skull intact? Memb intact-Brain 1500 gms C/s congested base of skull? The following viscera preserved 1) one kidney 2) A portion of liver 3) Stomach and its contents 4) A loop of small intestine with content 5) Preservative used. Hyoid bone in formalin, Nexk tissue in Formalin. PM concluded at 1.15 p.m. on 26.11.06."

The Postmortem certificate has been marked as Ex.P6. After transfer of P.W.12, investigating officer, his successor in office viz., P.W.11 has conducted further investigation and after his transfer, his successor in office viz., P.W.13 has

continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate, No.I, Hosur and the same has been taken on file in P.R.C.No.13 of 2011.

4. The Judicial Magistrate No.I, Hosur, after considering the facts that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions Krishnagiri Division and the same has been taken on file in Sessions Case No.99 of 2011 and subsequently transferred to the Assistant Sessions Court, Hosur.

5. The Assistant Sessions Court, Hosur, after hearing arguments of both sides and upon perusing the relevant documents, has framed first charge against all the accused under Section 498-A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act; second charge against them under Section 304-B of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. After framing charges, Sessions Case No.99 of 2011 has been withdrawn and made over to the trial Court.

7. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exhibits P.1 to P.13 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused D.W.1 has been examined.

9. The trial court, after hearing arguments of both sides, has acquitted accused 2 and 3 and found accused 1 and 4 guilty under Sections 498-A of the Indian Penal Code and sentenced them to undergo one year Rigorous Imprisonment and also imposed a fine of Rs.10,000/- upon each of them. Likewise, they have also been found guilty under Section 4 of the Dowry Prohibition Act and sentenced to undergo one year Rigorous Imprisonment and also imposed a fine of Rs.1000/- upon each of them with usual default clause. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been preferred, at the instance of accused 1 and 4, as appellants.

9. The first and foremost charge framed against all the accused is that on 8.6.2006, the first accused has married the deceased Sudha. After marriage, all the accused

have joined together and demanded huge amounts from the deceased by way of dowry. The second charge framed against all the accused is that since the deceased has not been able to meet out the demand of dowry, alleged to have been made by all the accused, on 25.11.2006 at about 4.00 p.m., in the house of the accused, she committed suicide by way of hanging.

10. The learned counsel appearing for the appellants/accused 1 and 4 has sparingly contended that the prosecution has set the law in motion only on the basis of Ex.P1, complaint, alleged to have been given by the father of the deceased, wherein no mention has been made about the demand of dowry alleged to have been made by the accused and only for the first time, in the inquest report, the alleged demand of dowry as well as illicit intimacy of first accused with a lady have been mentioned and the trial Court, even without mentioning the alleged illicit contact of the first accused in the charge, has erroneously come to a conclusion that only due to dowry torture, the deceased has committed suicide and therefore, the convictions and sentences passed by the trial Court are liable to be set aside.

11. The learned Additional Public Prosecutor has contended that in the instant case, the brother of the deceased has been examined as P.W.1 and her father viz., defacto complainant, has been examined as P.W.5 and both of them have stated in their evidence about the demand of dowry made by all the accused and apart from their evidence, in the inquest report, viz., Ex.P9, it has been clearly stated to the effect that the first accused is having illicit intimacy with a lady and further, all the accused have made demand of dowry from the deceased. The trial Court, after considering the evidence given by P.Ws.1 and 5, coupled with Ex.P9, has rightly found the accused 1 and 4 guilty under Sections 498-A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act and therefore, the convictions and sentences passed by the trial Court are not liable to be interfered with.

12. As rightly pointed out on the side of the appellants/accused 1 and 4, the entire case of the prosecution is based upon Ex.P1, complaint, alleged to have been given by the father of the deceased, viz., P.W.5. In fact, this Court has closely perused Ex.P1, wherein not even a word has been mentioned with regard to demand of dowry alleged to have been made by the accused. In Ex.P1, it has been simply stated that after marriage, for a short span, both the accused and deceased have lived happily and thereafter, some miff has arisen between them and the same

has been solved.

13. As stated earlier, the specific charge framed against all the accused is that after marriage, all the accused have joined together and demanded huge amounts from the deceased in the form of dowry and since she has not been able to meet out their demand, she committed suicide. If really such occurrence has taken place or the accused have jointly demanded dowry from the deceased, definitely, she would have conveyed to her parents and the same should have found place in Ex.P1. But in Ex.P1, nothing has been stated with regard to demand of dowry alleged to have been made by all the accused.

14. It is true that in Ex.P9, some materials are available with regard to demand of dowry and also the alleged illicit intimacy of the first accused with a lady. Since in Ex.P1, no mention has been made with regard to the said aspects, the Court cannot come to a conclusion that Ex.P9 can be a sole basis for inviting convictions and sentences against accused 1 and 4 under Section 498-A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act.

15. The trial Court has observed in its judgment to the effect that death might have occurred either due to demand of dowry or due to illicit intimacy of the first accused with a lady. Therefore, it goes without saying that the trial Court has invited convictions and sentences only on the basis of assumption and also on the basis of presumption and such thing is not allowed in Criminal Law. Since the trial Court has invited convictions and sentences merely on the basis of surmises and conjectures, the convictions and sentences passed by the trial Court are not factually and legally sustainable and altogether, the present criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The convictions and sentences passed by the trial Court in Sessions Case No.99 of 2011 are set aside. The appellants/accused 1 and 4 are acquitted. Bail bonds, if any, executed by them shall stand cancelled. Fine amounts, if any, paid by them are ordered to be refunded forth with.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To :

1.The Sessions Judge,
Fast Track Mahila Court, Krishnagiri

2.The Judicial Magistrate No.I
Hosur

3.The Chief Judicial Magistrate
Krishnagiri (for Information)

4.The Inspector of Police,
Shoolagiri Police Station,
Krishnagiri District

5.The Section Officer,
Criminal Section,
High Court Madras-104

6.The Public Prosecutor
High Court Madras

+1 cc to Mr.V.RajMohan Advocate sr.288/16

Crl.A.No.501 of 2015

aa07/01/2016



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