

BAIL SLIP

The Accused namely A1.Basheer Ahamed, S/o.Syed Khadar, A2.Syed Khadar, S/o.Syed Khadar and A3.Samshad Begum, W/o.Syed Khadar respectively were released on bail as per order of this Court dated 21.02.2013(A1) and 07.02.2013 (A2 & A3) and made herein in M.P.No.1 of 2013 in CrI.A.No.107 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.107 of 2013

1.Basheer Ahamed
2.Syed Khadar
3.Samshad Begum

... Appellants/Accused
Nos.1, 2 & 3

Vs

State Rep. By its
Assistant Commissioner of Police,
Sembium Range,
Chennai - 600 011.
(Crime No.1270/2006)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 29.01.2013 passed by the learned Sessions Judge, Mahila Court, Chennai S.C.No.232 of 2008.

For Appellants : Mr.A.Abdul Rahman

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

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

The appellants are accused 1 to 3 in S.C.No.232 of 2008, on the file of the learned Sessions Judge, Mahila Court, Chennai. They stood charged for offences under Sections 498 (A), 304(b) & 406 I.P.C. By judgment dated 29.01.2013, the trial Court convicted all the three accused under all the

three charges and sentenced A.1 to A.3 to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months for the offence under Section 498(A) I.P.C; A.1 to A.3 to undergo rigorous imprisonment for one year for the offence under Section 406 I.P.C; A.1 to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months and A.2 & A.3 to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- each in default to undergo simple imprisonment for six months for the offence under Section 304(b) I.P.C. The trial Court ordered to run the said sentences concurrently. Challenging the said conviction and sentence, the appellants/A.1 to A.3 are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Shabana. A.1 is her husband and A.2 & A.3 are her father-in-law and mother-in-law respectively. The marriage between A.1 and the deceased was celebrated on 24.04.2005. It is alleged that at the time of marriage, 10 sovereigns of gold jewels and cash of Rs.50,000/- were given by the parents of the deceased to A.1 as dowry. After the marriage, for some time, the deceased lived with A.1 under a common roof, where A.2 & A.3 were also living. After some time, A.1 set up a separate family where, he started living with the deceased at No.69/25, 32nd Jeevanandam Street, G.K.M.Colony, Chennai - 600 082. A.2 & A.3 were residing in their ancestral house. While they were so living, it is alleged that A.1 demanded a sum of Rs.45,000/- from the deceased as dowry at the instigation of A.2 & A.3. Since, the deceased could not bring dowry of Rs.45,000/-, as demanded by all the three accused, she set fire to herself on 27.11.2006 at 11.30 a.m at the house of A.1. A.1 extinguished the fire and in the said process, he also sustained burn injuries. The deceased was taken to K.M.C hospital for treatment. On 28.11.2006, at 11.15 am, the deceased died due to the burn injuries in the hospital. 10 sovereigns of gold jewels which were given by the parents of the deceased to A.1 were retained by A.1 to A.3 and they did not return the same. Thus, according to the prosecution, all the three accused have committed offences punishable under Sections 498(A), 406 & 307 I.P.C. On the complaint of P.W.1, the father of the deceased, P.W.13, the then Inspector of Police, K.5 Peravalur Police Station, registered a case in Crime No.1270/2006 for offence under Sections 498(A), 406 & 307 I.P.C., against all the three accused, on 27.11.2006, at 2.30 pm. Ex.P.1 is the complaint and Ex.P.11 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate on 28.11.2006 at 12.10.pm.

3.The case was taken up for investigation by P.W.13. He proceeded to the place of occurrence and prepared an

observation mahazar and a rough sketch at the place of occurrence in the presence of P.W.7 and another witness. From the place of occurrence, he recovered a kerosene can (M.O.1); a half burnt full hand shirt (M.O.2); a half burnt Dupatta (M.O.3) match box with match sticks (M.O.4) and half burnt screen (M.O.5), under a mahazar, in the presence of same witnesses. Then, he forwarded all these material objects to Court. On 28.11.2006, P.W.13 received intimation that the deceased died due to the extensive burnt injuries at 11.15 pm, in the hospital and therefore, he altered the case into one under Sections 498(A), 406 & 304(B) I.P.C., and handed over the case diary to P.W.14 for further investigation.

4.P.W.14, the then Assistant Commissioner of Police, Kancheepuram Division, took up the case for investigation and made a request to the jurisdictional Tahsildar/Executive Magistrate to conduct inquest. P.W.9, the then Tahsildar, accordingly conducted inquest on the body of the deceased and submitted Ex.P.7 report. During inquest, he examined P.Ws.1 to 3 and few more witnesses.

5.During the course of investigation on 29.11.2006, P.W.14, arrested A.2 and A.3. A.1 was undergoing treatment for the burnt injuries at K.M.C hospital. P.W.14 arrested him in the hospital itself. Then, all the three accused were sent for judicial remand. On completing investigation, P.W.14 laid charge sheet, as against all the three accused.

6.Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 17 documents were exhibited, besides 5 material objects.

7.Out of the prosecution witnesses, P.Ws.1 to 3 are the father, mother and sister respectively of the deceased. They have spoken about the alleged demand of dowry made by the accused and they have also stated about the death of the deceased. P.W.4, a neighbour of A.1 and the deceased has stated that, on the day of occurrence, at 11.30 am., A.1 came to his house with burn injuries and requested him to arrange for a vehicle to shift his wife who had set fire to herself. Immediately, P.W.4 helped to take the deceased as well as A.1 to hospital and admitted them there. P.W.5 is yet another neighbour and he has also spoken about the same. P.W.6 the Landlord of the house where A.1 and the deceased were living has spoken only on hearsay information and he has not stated anything incriminating against A.1. P.W.7 has spoken about the preparation of observation mahazar and the rough sketch in the place of occurrence. P.W.8 - Dr.C.Manokaran, has spoken about the post mortem conducted by him on the body of the deceased

and his final opinion regarding the cause of death. P.W.10 - Dr.Thamarai Selvan, has stated that he treated the deceased as well as A.1 at K.M.C Hospital, Chennai and according to him, the deceased was brought to the hospital at 12.10 pm on 27.11.2006 by her husband. The deceased was un-conscious. He admitted her as inpatient and she died on the next day. He has further stated that at 12.15 pm, on the same day, he examined A.1 and found that there were extensive burn injuries on both the hands and legs of A.1. Ex.P.8 is the accident register relating to the deceased and Ex.P.9 is the accident register relating to A.1. A.1 told P.W.10 that while trying to extinguish the fire on his wife, he also sustained burn injuries. P.W.11 has stated that when the Police came to the hospital for recording statement, he certified that the deceased was un-conscious. P.W.12 has stated that he requested the Tahsildar to conduct inquest on the body of the deceased. P.W.13 has spoken about the registration of the case and P.W.15 has spoken about the investigation done and final report filed in this case.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side one Mr.Mohamed was examined as D.W.1 however, no document was marked on their side.

9. D.W.1 is the family friend of A.1. He has stated that he used to visit the house of A.1 frequently in a friendly manner. On those occasions, he found the deceased and A.1 living happily. He has further stated that there were no quarrels between them.

10. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with this appeal.

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

12. Admittedly, after some time of the marriage, A.1 and the deceased were living together as husband and wife at No.69/25, 32nd Jeevanandam Street, G.K.M.Colony, Chennai - 600 082 whereas, A.2 and A.3 were living in a different place, in their ancestral house. P.W.1 has stated that, on the instigation made by A.2 and A.3, A.1 wanted the deceased to get Rs.45,000/- from P.W.1 and other family members as dowry. According to P.W.1, such demand of Rs.45,000/- was made only by A.2 from P.W.1 stating that for the celebration of marriage between A.1 and the deceased, the family of the

accused had incurred loan to the tune of Rs.45,000/-. P.W.1 has further stated that on getting information that the deceased had been taken to the hospital, when she went to the hospital, the deceased was conscious and she told P.W.1 that her husband only set fire to her. Thus, according to the crux of evidence of P.W.1, the demand of dowry was made by A.2 and the death of the deceased was caused by A.1 by setting fire.

13.P.W.2, the mother of the deceased has a different story to say. According to her, the demand for Rs.45,000/- was made by A.2 and A.3 to P.W.4 who is the husband of P.W.3. P.W.2 has not stated that demand was made by A.1. According to her further evidence, when she went to the hospital, the deceased was still conscious and she told her that her husband, father-in-law and mother-in-law were responsible for her injuries. Thus, according to the evidence of P.W.2, the death of the deceased was caused by all the three accused by setting fire.

14.P.W.3 is the sister of the deceased. According to her, A.2 and A.3 demanded Rs.45,000/- from P.W.1 and warned him that unless he paid the same, they would not allow the deceased to live with A.1. She has further stated that A.2 and A.3 told P.W.1 that he could sell the house belonging to him and to pay the amount demanded. Thus, she has further stated that when she went to the hospital and asked her as to who did harm to her, the deceased nodded her head and did not say anything. From these evidences, it is crystal clear that there is no consistency as to who demanded dowry; as to who harassed the deceased and as to what was the statement of the deceased lastly. With these contradictions in mind, let us now look into the evidence of P.Ws.4 & 5.

15.P.W.4 is a neighbour of A.1. He has stated that on 27.11.2006, at 11.30 am, A.1 rushed to him with burnt injuries on his body and told him that his wife namely, the deceased had set fire to herself. P.W.5 who is the yet another neighbour has stated that on 27.11.2006, at 11.30 am, A.1 rushed out of his house and informed that his wife had set fire to herself. P.Ws.4 & 5 had taken the deceased and A.1 to the hospital. P.Ws.4 & 5 are the independent witnesses who are living by the side of A.1. Had it been true that the deceased was harassed by A.1, or by A.2 and A.3, who are living at a far of place, the scene would have come to the knowledge of P.Ws.4 & 5. The very fact that they have not stated that the deceased was harassed by these accused, the evidences of P.Ws.1 to 3, which are highly contradictory as detailed above, become doubtful.

16.P.W.10, Dr.Thamarai Selvan, who examined the deceased at 12.10 pm on 27.11.2006, when she was brought to the hospital, has stated that at that time, the deceased was

unconscious. But, the person who accompanied her told the Doctor that she herself set fire. P.W.11, Dr.Palanivel has stated that on 27.11.2006, when the Police came to the hospital, to record the statement of the deceased, the deceased continued to be unconscious therefore, he certified that the deceased could not make any statement. Thus, from the medical evidence, it is crystal clear that the deceased was unconscious right from the time when she was taken to the hospital, till her demise. When that be so, the evidences of P.Ws.1 to 3 as though the deceased was conscious and she told P.W.1 that her husband set fire to her and she told P.W.2 that all the three accused set fire to her and she nodded her head to P.W.3 are all false. This shows that P.Ws.1 to 3 are all interested witnesses and they went on to ensure that there was conviction of these accused. If once the evidences of P.Ws.1 to 3 become doubtful, it would not be safe to sustain the conviction of the accused, in the absence of any corroboration from any other independent source.

17.The learned Additional Public Prosecutor would submit that in this case, since, the death of the deceased was unnatural and that it had happened within seven years of the marriage, the presumption available under Section 304(B) I.P.C., that the dowry death has been caused by these accused should be raised.

18.In this regard, we may state that such presumption cannot be raised in vacuum. Presumption of innocence itself is a human right and it is enunciated in Article 21 of the Constitution of India. To raise a presumption of guilt as provided in Section 304B I.P.C., the prosecution is required to prove the fundamental facts beyond reasonable doubts. Section 304B I.P.C., states that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death. In this case, these two essential requirements have not been proved by the prosecution factually. Therefore, we are not in a position to raise the said presumption as emanated in Section 304B I.P.C., that the death of the deceased is a dowry death and the same was caused by these three accused. Similarly, there is no evidence to sustain the conviction for offence under Section 498 A I.P.C. In the same manner, there is no evidence to sustain the conviction for offence under Section 406 I.P.C., also. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants/accused 1 to 3 are entitled for acquittal.

19. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants by the learned Sessions Judge (Mahila Court), Chennai in S.C.No.232 of 2008 by the judgment dated 29.01.2013 are hereby set aside. The appellants are acquitted of the charge levelled against them 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/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Metropolitan Magistrate VII,
George Town, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Sessions Judge,
Mahila Court, Chennai.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.
5. The Assistant Commissioner of Police,
Sembium Range, Chennai 11.
6. The Superintendent,
Central Prison for Women,
Puzhal, Chennai.
7. The Public Prosecutor,
High Court, Madras.

+2cc's to Mr.A.Abdul Rahman, Advocate, S.R.No.20727

Cr1.A.No.107 of 2013

NM(CO)
CA(03/06/2016)