

Bail Slip

Cr1.A.590/12: The Appellant/Accuse Viz. S.Thangaraj, S/o. late Srinivasan was directed to be released on bail by the order of this court dated 04.10.2012 and made in MP 1 of 2012 in Cr1.A.590/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.590/2012

S.Thangaraj ... Appellant/Accused

Vs

State by
The Assistant Commissioner of Police,
Washermenpet Range, Chennai-21. ... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Magalir Neethimandram, Chennai in S.C.No.402 of 2010 dated 05.09.2012.

For Appellant : Mr.T.P.Sekar

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

JUDGMENT

[Judgment of the court was delivered by M.JAIACHANDREN, J.]

The appellant stands convicted for the offences under Sections 498-A and 304-B of I.P.C, by the Sessions Judge, Magalir Neethimandram, Chennai, in S.C.No.402 of 2010, by the judgment, dated 05.09.2012, and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for 6 months for the offence under Section 498-A of I.P.C and sentenced him to undergo imprisonment for life and to pay a fine of Rs.20,000/-, in default, to undergo simple imprisonment for 6

months for the offence under Section 304-B of I.P.C. The appellant has challenged the same in this appeal.

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

(a) The appellant is the husband of the deceased Muthuselvi. The marriage between them was celebrated on 03.07.2003. At the time of the marriage, it is alleged that the parents of the deceased had presented 50 sovereigns of gold jewels and Rs.50,000/- in cash and other household articles. After the marriage, the accused and the deceased were living together as husband and wife. In course of time, it is alleged that the accused demanded a sum of Rs.1,00,000/-, as dowry, from the parents of the deceased. Since the deceased did not give Rs.1,00,000/-, as demanded, it is alleged that the accused started harassing the deceased, by quarreling with her. Being depressed over the same, it is alleged, that, on 20.12.2007, at 6.30 a.m., the deceased had consumed poison and had committed suicide in the kitchen of her house.

(b) P.W.1 is the land lord of the house where the accused and the deceased were residing. It is, on his complaint, the present case was registered, by P.W.15, in Crime No.942 of 2007, under Section 174 of Cr.P.C. P.W.15 took up the case for investigation. At the place of occurrence, he had prepared an Observation Mahazar and a Rough Sketch and had also recovered the material objects in the presence of P.W.1. He made a request to P.W.13, the Executive Magistrate to hold an inquest. Accordingly, P.W.13 held the inquest on the dead body of the deceased and had forwarded the body for postmortem.

(c) P.W.14 had conducted the autopsy on the body of the deceased and had given an opinion stating that the deceased had died due to Cypermethrin Poisoning. During the course of investigation P.W.15, had arrested the accused and had sent him for judicial remand. On interrogating P.Ws.1 to 5, the Investigating Officer, had come to the conclusion that the deceased had been harassed by the accused by demanding dowry and as a result of which, she had died. Therefore, he laid the charge sheet against the accused.

(3) Based on the above materials, the Trial Court had framed charges under Sections 498-A and 304-B of I.P.C, in the alternative, under Section 306 of I.P.C. The accused had denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 15 documents and one material object were marked.

4. Out of the said witnesses, P.Ws.2 to 5 are the family members of the deceased, namely, father, mother, co-brother and

sister, respectively. They have stated that, at the time of marriage, 50 sovereigns of gold jewels and Rs.50,000/-, in cash, were presented, However, the accused had demanded Rs.1,00,000/-, as dowry, from the deceased and has been harassing her. Accepting the evidences of all these witnesses, the trial court has convicted the accused under Sections 498-A and 304(B) of I.P.C and had sentenced him accordingly. Challenging the same the accused is before this Court with this Appeal.

5. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records meticulously.

6. Admittedly, the marriage between the accused and the deceased had been arranged by the family members of both the families. It is in the evidence of P.W.1 and P.W.2 that, at the time of marriage, 50 sovereigns of gold jewels and Rs.50,000/- in cash and other household articles had been presented. In the evidence, these witnesses have stated that the said presentations had been made, as dowry, as demanded by the family members of the accused. However when they were examined by the Executive Magistrate, during inquest, they have stated that the presentations had been made, at the time of the marriage, out of love and affection towards the deceased, on their own volition. These witnesses have been duly contradicted by means of their former statements made to the Executive Magistrate and they have not offered any explanation for the said contradictions. Thus, it is clear that the properties given at the time of marriage were not given as dowry, but only as presentations.

7. It is further admitted that, after the marriage, the deceased and the accused were living together, for a long time, but they did not have any child. The accused and the deceased desired to go for treatment. Therefore, the deceased had been taken to the house of her parents. The accused had also consented to the said arrangement. During examination by a Doctor, it had been found that the defect was only with the accused. Therefore, as advised by the Doctor, he had undergone a surgery. It was only thereafter, a child was born to them. After the birth of the child, it is in evidence that they were living together happily.

8. At this stage, it is alleged that the accused had demanded Rs.1,00,000/-, as dowry. It is the admitted case that such demand was not directly made to P.Ws.2 to 5 or to any other family members of the deceased. It is the evidence of P.W.1 and P.W.2 that one day before the occurrence, when P.W.1 had contacted the accused, over phone, he had handed over the Cell Phone to the deceased and at that time, the deceased had told

him that the accused wanted her to ask for Rs.1,00,000/-. So far as this evidence of P.W.1 is concerned, as rightly contended by the learned Counsel for the appellant, it is difficult to be believed, for more than one reason. Had it been true that P.W.1 had called the accused over cell phone, as claimed by him, certainly, the same could have been ascertained by collecting the call details of the cell phone of both the accused, as well as P.W.1. The same has not been done, so as to have a scientific proof of the allegation. Further, the Panchayatdars have also stated in their evidence that they were living happily and there was no demand of any amount, as dowry, by the accused, at any point of time.

9. Going by the natural human conduct, when the accused and the deceased were living happily, for such a long time, without there being any allegation of any demand of dowry and when it is in evidence that the presentations made at the time of marriage are only out of love and affection, it is difficult to believe that all of a sudden, the accused had demanded Rs.1,00,000/-, as dowry. Further, P.W.6 and P.W.9, who are independent witnesses, have turned hostile. Thus, we find that, it is difficult to hold that the prosecution has proved the case beyond reasonable doubt.

10. In the result, the appeal is allowed and the conviction and the sentence made by the trial court on the appellant are set aside and he is acquitted of all the charges levelled against him. The bail bond, if any, executed, shall stand discharged. The fine amount, if any, paid, shall be refunded to the accused.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner of Police,
Washermenpet Range, Chennai-21.
2. The Sessions Judge,
Mahalir Neethimandram, Chennai.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Chennai.

1 cc to M/s.T.P.Sekar, Advocate, sr.9759

Cr1.A.No.590/2012

ala co, kra 11.05.2016