

BAIL SLIP

The accused , Viz Ramesh (A1), Krishnaveni (A2) and Raju (A3) were released on bail as per order of this Court dated 01.04.2013 and made in MP.No.1/2013 in CrI.A.No.191/2013.

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

Criminal Appeal No.191 of 2013

1. Ramesh

2. Krishnaveni

3. Raju

.. Appellants/Accused 1 to 3

- Vs -

State represented by

Assistant Commissioner of Police,
Ashok Nagar, Chennai.

(Cr.No.615 of 2009)

(On the file of R6 Kumaran Nagar P.S.).. Respondent/Complainant

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Mahila Judge, Chennai, in S.C.No.34 of 2011 dated 22.02.2013.

For Appellants : Mr.R.Karthikeyan

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.34 of 2011 on the file of the learned Sessions Judge, Mahila Court, Chennai. They stood charged for offences under Sections 498(A) and 304(B) IPC and Sections 3 and 4 of the Dowry Prohibition Act. By judgment dated 22.02.2013, the Trial Court convicted all the three accused under all the charges and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each in default to undergo three months simple imprisonment for offence under Section 498A IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.10,000/- each in default to undergo six months simple imprisonment for offence under Section 304B IPC. So far as the proved charges under Sections 3 and 4 of the Dowry Prohibition Act are concerned, the trial Court did not impose any sentence. 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:

2.1. The second appellant is the mother of the first appellant and the third appellant is the brother of the first appellant. The deceased Kavitha was the wife of the first appellant. The marriage between them was celebrated on 01.06.2006. At the time of marriage, it is alleged that all the three accused demanded 30 sovereigns of gold as dowry, but the family members of the deceased presented 20 sovereigns of gold and Rs.25,000/- to the bride and bridegroom as dowry besides the household articles and utensils.

2.2. After the marriage, the first accused and the deceased were living together as husband and wife at Jafferkhanpet. After the marriage, it is alleged that all the three accused demanded Rs.1,00,000/- from the deceased as dowry. The first accused who was a painter by profession used to return home fully drunk and beat the deceased. Two days prior to her death, the first accused made a complaint against her at the All Women Police Station, Ashok Nagar, Chennai alleging that the deceased unnecessarily quarreled with him and left his house. In connection with the said complaint, one day prior to the death, the deceased was summoned to the police station along with her mother and other relatives. In the police station, the misunderstanding between the first accused and the deceased was settled amicably by means of compromise and the deceased happily returned with the first accused to his house. They also agreed to the Sub Inspector of Police to go for family counselling to avoid any future misunderstanding between them.

2.3. But on the same night, it is alleged that the deceased died committing suicide at the house of the first accused. On the complaint made by P.W.1 under Ex.P1, a case was registered by the Sub Inspector of Police, Kumaran Nagar Police Station under Section 174 Cr.P.C. Ex.P14 is the F.I.R. He forwarded both the documents to the Court and handed over the case diary to the Inspector of Police for investigation.

2.4. P.W.15, the then Inspector of Police took up the case for investigation and proceeded to the place of occurrence on 14.07.2009 and prepared an observation mahazar and a rough sketch in the presence of witnesses.

2.5. P.W.12, the then Personal Assistant to the District Collector, Madras conducted inquest on the body of the deceased at the Royapetta Government Hospital, during which, he examined P.Ws.1 to 5 and few more witnesses. He also examined all the accused and then he submitted the inquest report under Ex.P11, in which he concluded that the deceased would have committed suicide on account of dowry demand and harassment.

2.6. P.W.15, continued the investigation and based on the report of the Executive Magistrate, altered the case into one under Section 306 IPC. On 16.07.2009, he arrested the first accused and forwarded him to the Court for judicial remand. The investigation was thereafter taken over by the Assistant Commissioner of Police (P.16) and on completing the investigation, he laid the charge sheet.

2.7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 16 documents and 1 material object were marked.

2.8. Out of the said witnesses, P.W.1, the mother of the deceased and P.W.2 the father of the deceased have spoken about the marriage, the presentations made at the time of marriage, the demand for further dowry made by all the three accused and the death of the deceased. P.W.3 a relative of the deceased has spoken about the observation mahazar and the rough sketch prepared by the police. P.Ws.4 and 5 turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 has stated that he took photographs at the place of occurrence at the request of the Inspector of Police. P.W.7 is a close relative of the deceased and he has stated that he heard that the first accused demanded Rs.1,00,000/- from the deceased. P.W.8 the then Head Constable attached to the All Women Police Station, Vadapalani has spoken about the complaint given by the deceased on 24.11.2008 and P.W.9 has stated about the compromise reached between the parties at the police station. P.W.10 has

spoken about the registration of the case. P.W.11 has also spoken about the compromise reached between the parties. P.W.12 has spoken about the inquest made by him and his report. P.W.13 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.14 has spoken about the registration of the case. P.Ws.15 and 16 have spoken about the investigation done and final report submitted.

2.9. 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. They marked Ex.D1 the receipt showing that P.W.1 had got back the presentations made at the time of marriage. Having considered all the above, the trial Court convicted all the three accused as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

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

4. Before this Court, there is no controversy that the marriage between the deceased and the first accused was celebrated on 01.06.2006. Though it is alleged by P.Ws.1 and 2 that at the time of marriage, 25 sovereigns gold jewels and Rs.25,000/- besides other articles were presented as dowry, during the cross examination, they have admitted that they made these presentations only out of their own volition. When they were enquired by the Executive Magistrate at the first instance, they did not say that any such demand for dowry was made by the accused. Though they were duly contradicted by their respective statements they have not offered any explanation as to why they did not say about the said dowry demand made by the accused. Thus, in our considered view, the allegation that the accused demanded dowry even before the marriage has not been proved.

5. At this juncture, it needs to be mentioned that in the enquiry held by the Sub Inspector of Police in respect of the complaint given earlier to the All Women Police Station, the deceased made a statement which has been marked as Ex.P9, which is a signed statement. A perusal of the same would go to show that there was no allegation of any dowry demand and harassment. This statement under Ex.P9 squarely falls within the ambit of Section 32 of the Evidence Act as dying declaration. This statement was made just one day before her death. In that statement, she has stated that there were frequent quarrels between her and the first accused on account of petty matters due to mutual misunderstanding. She has further stated that she would return to the matrimonial home happily and she along with

the first accused would go for family counseling. Had it been true that was demand for dowry and consequential dowry harassment, the deceased would have certainly stated so in Ex.P9.

6. It is the further case of the prosecution that on 12.07.2009, all the three accused demanded dowry of Rs.1,00,000/-, harassed her and sent her out of the house. But this is not the version of the deceased in Ex.P9. In Ex.P9, she has only stated that the first accused used to come drunk and there were some domestic quarrels with her mother-in-law. Her husband used to give only Rs.20/- for the family expenses and on account of the same quarrel between her and the first accused would arise. As we have already pointed out, had there been any such demand for dowry to the tune of Rs.1,00,000/- and consequent harassment, the deceased would have told so in the last statement made to the police, which has been admitted in evidence as dying declaration.

7. Thus, in our considered view, the evidences of P.Ws.1 and 2 that the accused together demanded Rs.1,00,000/- from the deceased as dowry and harassed her cannot be true. From these circumstances, we hold that the prosecution has failed to prove that these accused demanded dowry, harassed her and caused dowry death. Therefore, the appellants are entitled for acquittal.

8. In the result,

(i) The appeal is allowed; the conviction and sentence imposed on the appellants by the learned Sessions Judge, Mahila Court, Chennai in S.C.No.34 of 2011 dated 22.02.2013 is set aside and the appellants are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bond, if any executed, by the appellants / accused, shall stand discharged.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

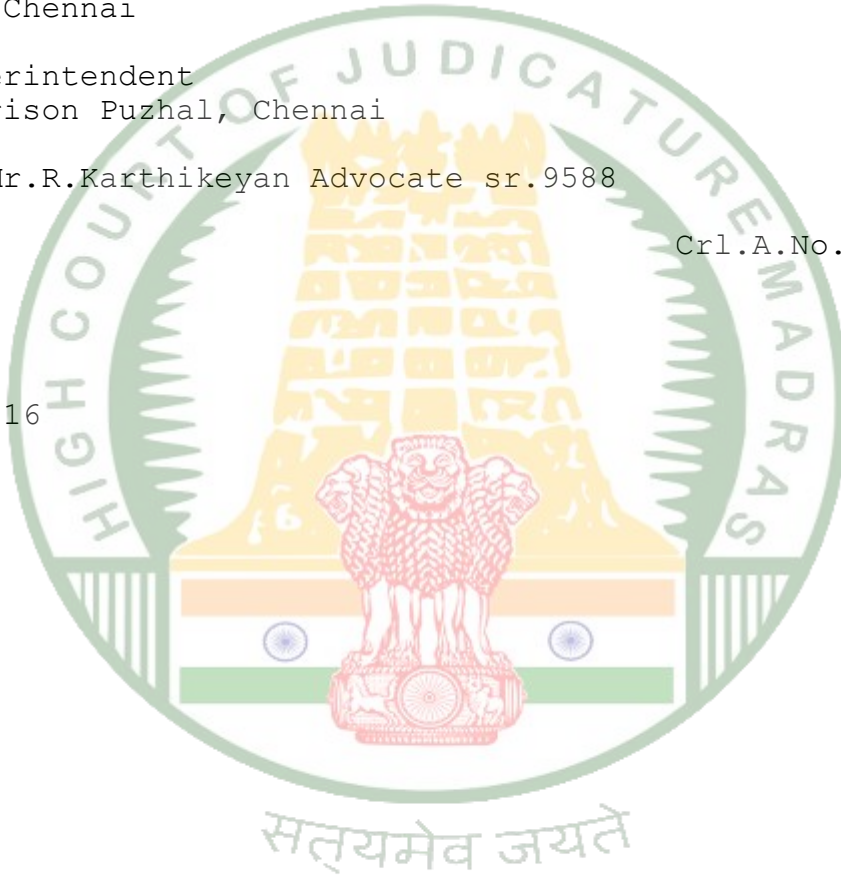
kk

To

1. The Mahila Judge,
Chennai.
 2. The Assistant Commissioner of Police,
Ashok Nagar, Chennai.
 3. The Public Prosecutor,
Madras High Court.
 - 4.The XXIII Metropolitan Magistrate
Saidapet, Chennai
 - 5.The Superintendent
Central Prison Puzhal, Chennai
- +1 cc to Mr.R.Karthikeyan Advocate sr.9588

Crl.A.No.191 of 2013

jsv(co)
aa09/03/2016



WEB COPY