

BAIL SLIP

That the Appellant/Accused namely S.Arumugam was directed to be released on bail as per the order of this Court dated 10.12.2007 CrI.M.P.No. 2 of 2007 in CrI.A.No.847 of 2007.

That the Appellant/Accused namely S.Vanasundari was directed to be released on bail as per the order of this Court, dated 01.10.2007 in CrI.M.P.No. 1 of 2007 in CrI.A.No.847 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.847 of 2007

1. S.Arumugam
2. S.Vanasundari

... Appellants/Accused

Vs.

State rep. by
The Deputy Superintendent of Police,
Madurantagam Sub-Division,
Cr.No.270 of 2006 of Salavakkam Police Station.

... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment dated 31.07.2007 in S.C.No.37 of 2007 on the file of the Additional Sessions Court, Fast Track Court No.II, Kancheepuram.

For Appellants : Mr.V.Parthiban

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

JUDGMENT

This Criminal Appeal is filed against the judgment dated 31.07.2007 in S.C.No.37 of 2007 on the file of the Additional Sessions Court, Fast Track Court No.II, Kancheepuram, convicting the appellants/A1 and A2 for the offence under Section 304-B IPC

and sentencing each of them to undergo rigorous imprisonment for seven years and to pay fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for three months and they were also convicted for the offence under Section 306 IPC and each sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for three months. The trial Court ordered the sentences imposed on the appellant/accused to run concurrently.

2. The gist of the prosecution case leading to conviction, is that the first appellant/A1 is the son and the second appellant/A2 is his mother. The marriage between A1 and the deceased Renuka took place on 10.02.2006. At the time of marriage, 15 sovereigns of jewels and other "Sreedhana" (seervarisai) articles were given to her by the parents of the deceased Renuka, namely P.Ws.1 and 2. After marriage, the deceased was living in her matrimonial home in Mangalam Village, but right from the day one, A1 and A2 were continuously harassing the deceased by demanding dowry. She was asked to do the house-hold chores, like grazing the cattle, clearing the cow-dung, etc. The deceased has complained about the same over telephone 2/3 times to her parents. While so, on 21.10.2006, the first appellant/A1 told the deceased to bring 1 sovereign of jewels from her parents and he took her to her parents' house and left her there and he came back. On 29.10.2006, the mother of the deceased, i.e. P.W.2, gave 1/2 sovereign of jewels and left the deceased in her matrimonial home. In spite of the same, the first appellant/A1 abused the deceased and harassed her. Hence, on 30.10.2006 at about 7 p.m., by consuming insecticide containing "Demachron", she committed suicide. The first appellant/A1 called the brother of the deceased, i.e. P.W.4 Suresh and informed him that his sister Renuka consumed poison and hence, she was going to be admitted in hospital. Immediately, the parents of the deceased, namely P.Ws.1 and 2 rushed to the hospital, where they found only the dead body of her daughter. Next day, i.e. on 31.10.2006 at about 7 a.m, P.W.1, the father of the deceased, lodged Ex.P-1 complaint before the Police Station. P.W.8 Sub-Inspector of Police, Guduvancherry Police Station received the said complaint and registered a case in Cr.No.270 of 2006 for the offence under Section 304-B IPC and Ex.P-9 FIR was prepared. Since the death of the deceased occurred within seven years of her marriage, P.W.8 forwarded the complaint to the jurisdictional Revenue Divisional Officer for further action. P.W.3 RDO conducted preliminary enquiry in the hospital in respect of the death of the deceased at about 12.30 a.m (on the mid-night of 30.10.2006) and subsequently, based on Ex.P-2 requisition letter, dated 31.10.2006, along with the FIR and the complaint, which were sent by the then Sub-Inspector of Police of G-3 Saalavakkam

Police Station, P.W.3 RDO conducted inquest in respect of the death of the deceased and issued Ex.P-3 inquest report and P.W.8 examined P.Ws.1 and 2 and also recorded the statements of other witnesses. Exs.P-5 and P-6 are the statements of A1 and A2 respectively recorded by P.W.3 RDO. Ex.P-7 is the letter submitted by P.W.3 RDO to the learned Judicial Magistrate, Uthiramerur, forwarding the inquest report and post-mortem certificate as requested by the Sub-Inspector of Police. P.W.9 Dr.Parasakthi conducted autopsy/post-mortem on the body of the deceased on 31.10.2006 and issued Ex.P-10 post-mortem certificate. P.W.10 DSP conducted investigation in the case, went to the scene of occurrence on 31.10.2006 at about 12 noon and followed all formalities. P.W.10 DSP arrested both A1 and A2 on 01.11.2006 and brought them to the Police Station and sent them for remand and he went to the scene of occurrence and prepared Ex.P-8 observation mahazar and drew Ex.P-13 rough sketch, in the presence of P.Ws.6 and 7. He examined P.Ws.1, 2 and 4 and other witnesses and recorded their statements. Subsequently, P.W.11 DSP continued the investigation and took the CD file and recorded the statements of witnesses and also recorded the statement of P.W.9 Doctor who conducted autopsy. After completing all formalities, P.W.11 DSP completed the investigation and filed charge-sheet against the appellants/A1 and A2 for the offences punishable under Sections 304-B and 306 IPC. The case was taken on file by the trial Court in S.C.No.37 of 2007. During the course of trial, on the side of prosecution, P.Ws.1 to 11 were examined and Exs.P-1 to P-13 were marked. When the appellants/A1 and A2 were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. On the side of defence, the first appellant/A1 was examined as D.W.4, apart from D.Ws.1 to 3 and they have marked Exs.D-1 and D-2. The trial Court, upon hearing both sides and on an analysis of the oral and documentary evidence, convicted and sentenced the appellants/A1 and A2 as stated supra. Challenging the same, the appellants have preferred this appeal.

3. Learned counsel for the appellants/A1 and A2 submitted that absolutely, there is no evidence to attract the offences under Sections 304-B and 306 IPC. In order to attract the offence under Section 304-B IPC, there should be an evidence to the effect that soon before her (deceased) death, she should have been subjected to cruelty or harassment by her husband or any relative of her husband, or in connection with, any demand for dowry and then only such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death. Hence, learned counsel submitted that absolutely, there is no evidence to show that soon before her death, she was subjected to cruelty or harassment by either A1/husband or A2/mother-in-law. He further stated that in fact, the defence

has placed their case of rebutting presumption under Section 113-B of the Indian Evidence Act by examining four witnesses, namely D.Ws.1 to 3, who are independent witnesses, apart from D.W.4 (first appellant/A1). Learned counsel further contended that the evidence of D.Ws.1 to 4 shows that the deceased did not like her marriage with the first appellant/A1 and she was having affair with another person in her place, but the parents of the deceased had given her in marriage with the first appellant/A1 against her wishes. Thus, by examining D.Ws.1 to 4, the appellants have rebutted the presumption under Section 113-B of the Indian Evidence Act.

4. Learned counsel for the appellants/A1 and A2 further submitted that though it is the case of the prosecution that the appellants/A1 and A2 have demanded jewels and picked up quarrel with the deceased, the prosecution failed to prove the same. It is the version of P.Ws.1 to 4 that the first appellant/A1 alone demanded gold ring. This alleged demand of gold ring cannot be considered as a reason for committing suicide by the deceased, because, admittedly, even according to the case of the prosecution, only 1/2 sovereign of jewels were given to the first appellant/A1 on 29.10.2006 and it is not the case of the prosecution through the evidence of P.Ws.1 to 4 that the appellants have refused to receive the said 1/2 sovereign of gold jewels instead of one sovereign of gold jewels. As it is the further case of the prosecution that the appellants have received 1/2 sovereign of gold jewels and when that being so, the demand of gold jewels of one sovereign cannot be the reason for committing suicide by the deceased. Learned counsel therefore submitted that the Court below, without considering the evidence adduced on the side of defence, by erroneous findings, convicted the appellants and hence, learned counsel prayed for acquitting the appellants by allowing this appeal.

5. On the other hand, learned Additional Public Prosecutor appearing for the respondent-Police submitted that the prosecution has proved its case beyond reasonable doubt by convincing and cogent evidence. P.Ws.1, 2 and 4 have categorically stated in their evidence that the deceased was subjected to cruelty by the appellants/A1 and A2 by demanding dowry. P.W.3 RDO conducted enquiry and submitted report stating that actually there was dowry harassment and his inquest report is marked as Ex.P-3 and his report is marked as Ex.P-4. Learned Additional Public Prosecutor further submitted that the trial Court by well-considered and valid reasons, convicted the appellants, and no interference is called for.

6. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

7. It is the case of the prosecution that the marriage between the first appellant/A1 and P.W.1 took place on 10.02.2006 and right from day one of the marriage, there was continuous harassment by the appellants demanding dowry. On 21.10.2006, the first appellant/A1 took the deceased to her parents' house and left her there by telling that she has to bring one sovereign of gold jewels and only then she should come back. Thereafter, according to P.W.2/mother of the deceased, she gave 1/2 sovereign of gold jewels and left her deceased daughter/victim in her matrimonial home and on the next day, i.e. on 30.10.2006, she has committed suicide due to continuous harassment.

8. On a careful perusal of the evidence available on record, I find that allegations were made by P.Ws.1 and 2, the parents and P.W.4, the brother of the deceased as against the appellants/A1 and A2. Further, P.W.2, the mother of the deceased and P.W.1, the father of the deceased, in their evidence have stated that the first appellant/A1 used to instruct their deceased daughter to graze the cattle, clear the cow-dung, etc. Except the same, there is no other specific allegation against the first appellant/A1. In this regard, learned counsel for the appellants/A1 and A2 submitted that asking the first appellant(A-1)'s wife, i.e. (deceased)/daughter-in-law of the second appellant/A2 to do such household chores, cannot be taken as a cruelty meted out to her for demand of dowry and these are the general menial works normally woman folk will do in any village. I find some force in the submission of the learned counsel for the appellants/A1 and A2. It is seen that none of the witnesses have specifically made any allegation against the first appellant/A1. So far as the second appellant/A2 is concerned, P.Ws.1 and 2 have stated in their evidence that on 21.10.2006, the first appellant/A1 took the deceased Renuka to her parents' house and left her there with instruction to bring one sovereign of gold jewels. P.W.2 (mother) stated in her evidence that she took her deceased daughter to her matrimonial home and left her there by giving 1/2 sovereign of jewels on 29.10.2006. She has further stated that the first appellant/A1, who came to her house on 21.10.2006, was staying in their house till 24.10.2006 and on 24.10.2006, the first appellant/A1 left their house and while staying in their house, he asked for one sovereign of gold jewels, for which, they said that they could give only 1/2 sovereign of gold jewels. Accordingly, 1/2 sovereign of gold jewels were given by the parents of the deceased. On 29.10.2006,

P.W.2 took the deceased daughter and left her in her matrimonial home.

9. It is the case of the prosecution that since P.Ws.1 and 2 failed to give one sovereign of gold jewels to the deceased, she was harassed, and due to mental torture, she has committed suicide. But, I find that from the evidence available on record, except the allegation with regard to the demand of one sovereign of gold jewels, there is no other allegation against the first appellant/A1 (husband of the deceased). In fact, there is no sufficient evidence to come to the conclusion that soon before her death, the deceased was subjected to cruelty so as to attract the offence under Section 304-B IPC. Only if it is established by the prosecution that soon before her death, she was harassed and subjected to cruelty, the question of rebutting the presumption under Section 113-B of the Indian Evidence Act by the prosecution, would arise. Similarly, there is no evidence to the effect that there is a positive act on the part of A1 to induce or intentionally aid by an act to commit suicide by the deceased. Therefore, irrespective of the evidence of the defence witnesses and documents adduced on their side, I am of the opinion that the prosecution has not properly established its case for the offences under Section 304-B IPC and 306 IPC.

10. Further, before holding an accused guilty of the said offences, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out as to whether the cruelty and harassment meted out to the deceased/victim had left her with no other alternative except to commit suicide. In the present case, there is no evidence available on record to show that the cruelty and harassment meted out to the victim/deceased has left the victim with no other alternative except to commit suicide. However, I am of the opinion that the first appellant/A1-husband demanding dowry itself is a cruelty, which will attract the offence under Section 498-A IPC, as the deceased-wife was harassed. Hence, the first appellant/A1-husband is liable to be convicted for the offence under Section 498-A IPC, instead of Sections 304-B and 306 IPC, which have not been proved by the prosecution.

11. Since this Court is modifying the conviction from Sections 304-B and 306 IPC to Section 498-A IPC, it is not necessary to deal with the decisions relied on by the learned counsel for the appellants and those decisions are distinguishable on facts.

12. Hence, for the reasons stated above, the conviction imposed on the first appellant/A1 for the offences under Sections 304-B and 306 IPC are set aside and instead, he is convicted for the offence under Section 498-A IPC and sentenced to undergo rigorous imprisonment for two years. The fine amounts already imposed by the trial Court are sufficient for the offence under Section 498-A IPC, which the first appellant/A1 has to pay, if not yet paid. Since the first appellant/A1 is on bail, the trial Court is directed to secure him and remand him to prison, if he has not yet completed the period of two years rigorous imprisonment.

13. The conviction and sentence imposed on the mother of A1, i.e. A2/second appellant, is set aside and she is acquitted of all the charges. The bail bond, if any executed by the second appellant/A2 shall stand cancelled. The fine amounts, if paid by A2 shall be refunded to her.

14. With the above modification and observations, the appeal is partly allowed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Additional Sessions Judge,
Fast Track Court No.II,
Kancheepuram.
2. The Public Prosecutor,
High Court, Madras.
3. The Deputy Superintendent of Police,
Madurantagam Sub-Division,
Cr.No.270 of 2006 of Salavakkam Police Station.
4. The Record Keeper,
Criminal Section,
High Court, Madras.

Crl.A.No.847 of 2007

MG(CO)
CA(07/09/2016)