

Bail Slip

Gowrishankar, Appellant herein/Accused No.1 in SC.NO.57/12 on the file of the Additional Sessions Judge, Namakkal was released on bail by the order of this Court dated 7.10.2013 and made in MP.No.1/2013 in Crl.A.No.611 of 2013 pending on the file of this court;

(1) Allimuthu, (ii) Shyamala Gowri and (iii) Ramanathilaga, appellants 2 to 4 herein/accused Nos.2 to 4 in SC.NO.57 of 2012 on the file of the Additional Sessions Judge, Namakkal were released on bail by the order of this court dt. 16.09.2013 and made in MP.No.1 of 2013 in Crl.A.No.611 of 2013 pending on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.611/2013

1.Gowrishankar
2.Alli muthu
3.Shyamala Gowri
4.Ramanathilaga

..Appellants/A1 to A4

Versus

The State by
The Inspector of Police
Mallasamudram Police Station
Namakkal District.

..Respondent

Appeal filed under section 374 Cr.P.C., against the order of conviction passed by the learned Additional Sessions Judge, Namakkal, in SC.No.57/2012 dated 23.08.2013.

For Appellants : Mr.M.Devaraj

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S.NAGAMUTHU, J.,]

The appellants are A1 to A4 in SC.No.57/2012 on the file of the learned Additional Sessions Judge, Namakkal. The Trial Court framed as many as five charges against the accused as detailed below:-

Rank of the Accused	Charges
A1 to A4	498[A] IPC
A1 to A4	120[B] IPC
A1	302 IPC
A2	302 read with 34 IPC
A4	201 IPC

By judgment dated 23.08.2013, the Trial Court convicted all the four accused for the offence u/s.498-A IPC and convicted A1 for the offence u/s.302 IPC. The Trial Court acquitted all the accused from the rest of the charges. For the offence u/s.498-A IPC, the Trial Court sentenced each of the accused to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months. The Trial Court sentenced A1 to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentences, the appellants are before this Court with this appeal.

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

[A] The deceased in this case, was one Mrs.Radhika. A1 is the husband of the deceased. A2, A3 and A4 are the father and sisters respectively of A1. When the deceased was doing her 12th standard, A1 had fallen in love with her and both of them eloped and on their own, married. P.Ws.1 to 3 are the father, mother and sister respectively of the deceased. P.W.4 is the husband of P.W.3 and P.W.5 is the uncle. P.Ws.1 to 5 and other family members did not give consent for the said marriage. Thus, much against the wishes of P.Ws.1 to 5 and the other family members, the deceased, on her own, eloped with A1 and married.

[B] After the marriage, the villagers intervened and effected a compromise between the two families. Thereafter, a compromise was reached and accordingly, A1 and the deceased used to visit the house of P.Ws.1 and 2 in normal course. In the said panchayat, P.Ws.1 and 2 had agreed to deposit a sum of Rs.40,000/- in the name of the deceased in a Bank, for the benefit of the deceased and A1. But, it was not so deposited. It is further alleged that to celebrate "Aadi Festival", A1 and the deceased had come to the house of P.W.1. At that time, it

is alleged that A1 asked P.W.3 to get Rs.50,000/- from P.W.1. After celebrating "Aadi Festival", A1 and the deceased had returned to their home.

[C] While so, it is alleged that on 30.09.2011, at about 01.00 a.m. A1, since the deceased had not brought dowry, strangled her with a nylon rope around the neck of the deceased. A2 facilitated A1 to strangle the deceased. Then, after ensuring that the deceased was no more, all the four accused gave intimation to P.W.1 that the deceased had died due to snake bite.

[D] P.W.1, on getting the said information, immediately rushed to the house of the deceased where he found the dead body of the deceased lying. All the accused were also present in the house. Equally, the relatives of P.W.1 from his village also had rushed to the house of the accused in a lorry. Thereafter, at 10.30 a.m. on 30.09.2011, P.W.1 went to Mallasamudram Police Station and made a complaint under Ex.P.1 against all the four accused.

[E] P.W.12, the then Inspector of Police received the said complaint and registered a case in Cr.No.332/2011 u/s.302 IPC. Ex.P.1 is the complaint and Ex.P.10 is the FIR. He forwarded both the documents to the Court concerned at 16.00 hrs on the same day.

[F] P.W.12, taking up the case for investigation, proceeded to the scene of occurrence on 30.09.2011 at 11.00 hrs. and prepared an Observation Mahazar [Ex.P.2] in the presence of P.W.9 and another witness and also prepared a Rough Sketch [Ex.P.11]. At 13.00 hrs., on the same day, he held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.12 [Inquest Report]. He sent the dead body of the deceased for postmortem.

[G] P.W.11, Dr.Panneerselvam, attached to the Government Mohan Kumaramangalam Medical College and Hospital, Salem, conducted autopsy on the body of the deceased on 30.09.2011 at 16.10 hrs. He found the following injuries:-

"Injuries:-

1.A vertical interrupted dark brown ligature mark seen over front, sides and lower part of neck and on back it merges with hairline measuring a length of 25cms and breadth 0.5 to 1.0 cms and it is situated 5cms below mid chin and 7cms above supra sternal notch and 8cms below right mastoid process and 5 cms below left mastoid process [antemortem]. No other external injuries seen on the body.

Other findings:-

Finger toe nail beds found cyanosed.

1 O/D. Head:-Scalp-normal. Cranial Vault-Intact. Membranes-Intact. Brain-Oedematous and congested. Base of skull-intact.

2 O/D.Thorax no ribs fracture. Heart-normal in size chambers contained right side fluid blood and left side-empty. Myocardium-Normal. Coronaries-Patent. Lungs-Both on c/s. Congested. C/s.Pink frothy fluid oozed out on cut section.

3 O/D Neck:- Contusion over posterior aspect of trachea on right M-1.75X0.75cms and on left 0.75X0.75cms. Hyoid Bone- Intact.

4 O/D Abdomen:Stomach-70gms of partly digested cooked rice particles. No specific smell. Mucosa-congested. Liver, spleen and both kidneys-c/s intensively congested. Capsule-intact. Bladder-empty. Uterus-Normal in size. Vavity contains mesnstruated blood. Genitalia-no injuries made out. Pelvis and spinal column-intact."

Ex.P.7 is the Postmortem Certificate. He opined that the deceased would appear to have died of the effects of asphyxia due to strangulation.

[H] In course of investigation, on 01.10.2011, at 12.00 noon, P.W.12 arrested A1 and A3 in the presence of P.W.10 and another witness. On such arrest, A1 gave a voluntary confession in the presence of the same witnesses. In the said confession, he disclosed the place where he had hidden a nylon rope. In pursuance of the same, he took the police and witnesses to his house and produced the nylon rope [M.O.1]. On returning to the police station, he forwarded the accused to the Court for judicial remand an also handed over the material object to the Court for chemical examination. The other accused surrendered before the learned Judicial Magistrate, Tiruchengode. Upon completion of the investigation, he laid the charge-sheet against the accused.

[I] Based on the above materials, the Trial Court framed appropriate charges against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 12 witnesses were examined, 13 documents and 1 material object were also marked.

[J] Out of the said witnesses, P.Ws.1 to 5 have spoken about the marriage between A1 and the deceased, demand of dowry made by A1 and the death of the deceased. P.Ws.6, 7 and 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has spoken about the

preparation of Observation Mahazar and the Rough Sketch prepared at the place of crime. P.W.10 has spoken about the arrest of A1 and A2 on 01.10.2011 at 12.15 p.m. and the disclosure statement made by A1 and the consequential recovery of M.O.1 [nylon rope]. P.W.11 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.12 has spoken about the investigation done by him and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, on the side of the accused, one Rajavel was examined as DW1. He has stated that on the day of occurrence, at about 06.00 hrs., he heard a scream from the house of the deceased and when he went to the house, he found the body of the deceased lying on a wooden bench. He was informed that the deceased had committed suicide and a rope was found near the dead body. He has further stated that after getting information about the same by about 07.00 hrs., P.Ws.1 to 5 came to the house of the accused and a huge crowd of people from the village of P.W.1 also came and when they attempted to attack the accused, all the accused went into the house of one Palaniyappa Gounder, in order to save their life. It is further stated by DW1 that those persons attacked the house of the accused and caused extensive damage. However, no document was marked on the side of the accused.

4 Having considered all the above, the Trial Court convicted and sentenced the appellants/accused as detailed in the first paragraph of this judgment. That is how the appellants/accused are before this Court.

5 We have heard Mr.M.Devaraj, learned counsel appearing for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 As we have already pointed out, the neighbours of the deceased, who have been examined as P.Ws.6 to 8, have turned hostile and they have not supported the case of the prosecution in any manner. The prosecution relies only on the evidence of P.Ws.1 to 5, who are the family members of the deceased. These witnesses, in one voice, have stated that the deceased had eloped with A1 and married him on her own volition without the consent of P.Ws.1 to 5. Thus, it is crystal clear that P.Ws.1 to 5 would have had some ill-feeling against all the accused. Now turning to the alleged demand for dowry and the consequential harassment, P.W.1 has not stated that any demand was directly made to him by the accused. He has stated that on only one occasion, A1 had demanded Rs.50,000/- from P.W.3. P.W.2, the mother of the deceased has not stated anything about

the demand for dowry made by any of the accused. She has stated that A3 used to castigate the deceased stating that the villagers were telling that A1 had married a girl from a beggar's home. P.W.3 has stated that on one occasion, her husband informed her that A1 wanted Rs.50,000/-. P.W.4, is the husband of P.W.3. He has stated that on one occasion, A1 told him that, he found difficult to take the deceased from his house, to go to the house of P.W.1 or to any other relatives house because he did not possess a vehicle. Therefore, he requested P.W.4 to make arrangement.

7 From these evidences, it is crystal clear that what was requested by A1 was for purchasing a motorcycle for the sake of convenience to take the deceased to various places including the family of P.W.1, absolutely there is no evidence that on account of the same, the deceased was harassed. As a matter of fact, there is evidence that the deceased and A1 were happily living. The deceased, had spoken to P.W.2 two days prior to the occurrence and informed P.W.2 that she was living happily with A1. This would go to show that there was no demand for dowry and consequential harassment.

8 Now turning to the death of the deceased, there is no eyewitness. According to the prosecution, the deceased had been killed by strangulation with a rope by A1. In order to prove this fact, fundamentally the prosecution has to rule out the possibility of death due to suicidal hanging. The evidence of the doctor who conducted the postmortem, would show that the death was due to the effects of asphyxia due to strangulation. He has not ruled out the death due to hanging. From the ligature mark found on the neck of the deceased, it has been opined by P.W.11 that the death was due to strangulation and he has not stated that the death was due to manual strangulation. Going by the rope mark, he has not ruled out the possibility that the said mark was due to hanging. DW1 has stated that when he went to the house of the deceased at 06.00 hrs on 30.09.2011, a rope was found near the dead body. It is the case of the accused that since A1 had taken liquor on few occasions, the deceased was not happy over the same and due to depression, she committed suicide. This defence taken by the accused, has not been ruled out by the prosecution.

9 In a case based on circumstantial evidence, it is the law that the prosecution should prove all the circumstances projected by it beyond reasonable doubts and such proved circumstances should point, unerringly to the guilt of the accused and there should not be any other hypothesis which would be inconsistent with the guilt of the accused. In the instant case, there is one hypothesis, namely, suicidal hanging, which has not been ruled out. The other circumstances relied on by the prosecution also do not unerringly point to the guilt of the

accused. Thus, the prosecution has failed to prove the offences u/s.498[A] and 302 IPC. Therefore, the appellants are entitled for acquittal.

10 In the result, the criminal appeal is allowed. The conviction and sentences imposed by the Trial Court on the appellants for the offences u/s.498[A] and 302 IPC in SC.No.57/2012 vide judgment dated 23.08.2013, are hereby set aside and they are acquitted of all the charges leveled against them. The bail bonds executed by them, shall stand discharged. Fine amounts, if any paid, shall be refunded to them.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Additional District & Sessions Judge
Namakkal.
- 1a. -do- Through The Principal District Judge, Namakkal.
- 2.The Judicial Magistrate,
Tiruchengode.
3. -do- Through The Chief Judicial Magistrate, Namakkal.
- 4.The Inspector of Police
Mallasamudram Police Station,
Namakkal District.
- 5.The Public Prosecutor
High Court, Madras.
6. The Superintendent, Central Prison, Salem.
- + 1 cc to Mr.M. Devaraj, Advocate Sr.24759

Cr1.A.No.611/2013

KSJ(CO)
EU 02.06.16