

BAIL SLIP

The Accused namely Maheswari (A2) and Chinnathambi (A3) were directed to be released on bail made in M.P.No.1 of 2013 in CrI.A.No.773 of 2013, dated 28.11.2013 of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.773 of 2013

1.Arokia Swamy @ Mahendiran [A1]
2.Maheswari [A2]
3.Chinnathambi [A3] ... Appellants/Accused

-Versus-

State Rep. by
The Deputy Superintendent of Police,
Gudiyatham Sub Division,
Vellore District.
[Crime No.426 of 2010]

... Respondent/Complainant

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned I Additional Sessions Judge, Vellore, Vellore District, in S.C.No.76 of 2012 dated 04.09.2013.

For Appellants : Mr.R.Sankara Subbu
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellants are Accused Nos.1 to 3 in S.C.No.76 of 2012 on the file of the learned I Additional Sessions Judge, Vellore, Vellore District. The trial court framed as many as four charges against the accused. The first charge was under Section

498-A of IPC against A1 to A3; the second charge was under Section 302 of IPC against A1; the third charges was under Section 201 of IPC against A1; and the fourth charges was under Section 203 of IPC against A1. The trial court, by judgement dated 04.09.2013, convicted A1 under Sections 498-A, 302 and 201 of IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- [no default sentence was imposed] for offence under section 498-A of IPC; to undergo imprisonment for life and to pay a fine of Rs.30,000/- [no default sentence was imposed] for offence under Section 302 of IPC; and to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- [no default sentence was imposed] for offence under Section 201 of IPC. The trial court, however, acquitted A1 from the charge under Section 203 of IPC. The trial court, by the very same judgement, convicted A2 and A3 under Section 498-A of IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- each in default to suffer simple imprisonment for a further period of one year. Challenging the convictions and sentences imposed on them by the trial court they have come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- A1 is the son of A2 and A3. The deceased in this case was one Mrs.Menaka. She was the wife of A1. The marriage between A1 and Mrs.Menaka, the deceased, took place on 29.04.2007. After the marriage, A1 and the deceased were living together along with A2 and A3 under a common roof. It is alleged, that, during the matrimonial life, all these accused demanded further dowry from the parents of the deceased and since the same was not brought by the deceased, more particularly, a motor cycle, the accused were enraged and on account of the same, they harassed the deceased. It is further alleged that on 18.05.2000 at 11.00 p.m. there was a wordy quarrel between A1 and the deceased in respect of the above demand. At the end of the quarrel, it is alleged that A1 attacked the deceased on her lower jaw with a bowl and dashed her head against the wall. The deceased fell down and fainted. Then, A1 took out a knife and stabbed her on her neck. The deceased died on the spot. Thereafter, it is alleged that A1 cleaned the body of the deceased with the use of a towel and hanged the body to make it appear as though she died due to hanging. It is also alleged that thereafter, A1 informed the general public , more particularly, the relatives of the deceased that the deceased died by hanging. Thus, A1 suppressed the fact that the deceased was killed by him. The occurrence was not witnessed by anybody. Around 08.00 a.m. on the same day, P.W.1, the father of the deceased was informed by someone that his daughter-Mrs.Menaka was no more. P.W.1 and the other relatives immediately rushed to the house of the accused. Since

P.W.1 noticed injuries on the body of the deceased, he suspected some foul play and, therefore, he rushed to Pernambut Police Station and made a complaint at 01.30 p.m. on 19.05.2010.

3. P.W.11, the then Sub Inspector of Police, on receipt of the complaint under Ex.P.1 from P.W.1, registered a case in Crime No.426 of 2010 under Section 174 of Cr.P.C. Ex.P.10 is the FIR. Then, he forwarded both the complaint-Ex.P.1 and the FIR-Ex.P.10 to the court which were received by the learned jurisdictional Magistrate at 06.45 p.m. on 19.05.2010. In the mean time, he handed over the case diary to the Inspector of Police for investigation.

4. P.W.13 took up the case for investigation on 19.05.2010 itself. He proceeded to the place of occurrence at 03.30 p.m., prepared an observation mahazar (Ex.P.2) and a rough sketch (Ex.P.13) in the presence of P.W.5 and another witnesses. Then, he gave an intimation to the Executive Magistrate/Revenue Divisional Officer to hold inquest on the body of the deceased. P.W.12, the then Revenue Divisional Officer came to the place of occurrence and held inquiry on 20.05.2010. He examined few witnesses including P.Ws.1, 2 and 3 and others and recorded their statements. Then, he forwarded the body for postmortem. Ex.P.11 is the inquest report and Ex.P.12 is the entire file relating to the inquest proceedings.

5. P.W.9 Dr.J.Prathap Kumar, conducted autopsy on the body of the deceased at 11.45 a.m. on 20.05.2010 and he noticed the following injuries on the body of the deceased:-

"External Injuries:

Ante-mortem wound over the right mandible starting from the midline of symphysis menti about 7 x 3 cm eclipse shape with clear defined edge, exposing underlying bone and muscle, blood stained fluid coming from the mouth and both nostrils. Contusion injury with dark reddish colour seen in front of neck, extending horizontally from the middle of neck to the right side of neck about 7 x 3 cm diagonally. On neck dissection: underlie the skin - bluish discolouration seen (ecchymosis), extravasation of blood seen in the supra sternal region, left lateral side of neck - ecchymosis about 3 x 1 cm with extravasation of blood, no ligature mark seen. ON opening of thorax: Lungs congested, heart congested, trachea contains blood stained fluid. Throat contains jelly (sic) like materials present in the larynx mixed with rice. Opening of Abdomen: stomach contains

partially digested food materials. Abdomen bloated. Kidneys congested. Uterus - Empty - size 6 x 6 cm. Opening of Skull: Brain materials putrefied. Contusion over the left occipital region about 10 x 8 cm. Fracture over left occipital region."

Ex.P.9 is the postmortem certificate. He forwarded the visceral organs of the deceased. He also forwarded the hyoid bone for expert opinion. The expert opinion revealed that the hyoid bone was intact. She gave opinion that the death of the deceased was due to shock and haemorrhage due to injuries to the vital organs.

6. During the course of investigation, P.W.13 arrested A1 at 07.00 p.m. on 20.05.2010 near Gangaammal Temple at Pernambut in the presence of P.W.6 and another witnesses. On such arrest, A1 gave a voluntary confession in which he disclosed the place where he had hidden a knife, bowl and cloth. In pursuance of the same, he took the police and the witnesses to his house and produced the knife (M.O.1), bowl (M.O.2) and towel (M.O.3). P.W.13 recovered the same under a mahazar (Ex.P4) in the presence of the same witnesses. On returning to the police station, he forwarded the accused to the court for judicial remand. He also forwarded the material objects to the court along with a request to send them for chemical analysis. In the course of investigation, P.W.13 examined the official witnesses including the doctor and recorded their statements and collected the medical records and also the chemical analysis report. The chemical analysis report revealed that there was no poison detected during analysis in any of the visceral organs. On completing the investigation, P.W.13 laid charge sheet against the accused.

7. Based on the above materials, the trial court framed as many as three charges as detailed in the first paragraph of this judgment. A1 to A3 denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 15 documents and 5 material objects were marked.

8. Out of the said witness, P.W.1 is the father of the deceased. He has spoken about the marriage between A1 and the deceased, the presentations made at the time of marriage and the fact that after the marriage, the accused demanded a gold ring from the deceased. He further stated that on an earlier occasion a complaint was made by the deceased to the police in respect of the demand of dowry. During inquiry, a compromise was reached amicably between them and, thereafter, A1 and the deceased had set up a separate family for them to live as husband and wife. He has further stated that after setting up a

separate family, he received an information that the deceased was dead. He has further stated that he went to the place of occurrence along with his relatives and found that there were injuries on the body of the deceased and, therefore, he had made a complaint to the police.

9. P.W.2 is the mother of the deceased. She has also stated in the line of P.W.1. P.W.3 is the brother of P.W.1. He has also stated about the marriage, the presentations made and the subsequent events as spoken by P.Ws.1 and 2. P.W.4 is one of the Panchayatars in the village. He has stated about the marriage. He has further stated that on few occasions, he intervened in the dispute between the deceased and A1 in order to sort out the same. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.6 has spoken about the arrest of A1, his disclosure statement and the consequential recovery of a knife, bowl and cloth piece. P.W.7 has spoken about the photographs taken at the place of occurrence. P.W.8, the then Sub Inspector of Police, All Women Police Station, Gudiyatham, has stated that on 17.03.2010, the deceased gave a complaint against A1 alleging that A1 was not taking care of her. She has further stated that on 19.03.2010, A1 had appeared before the police for inquiry. The deceased also appeared along with her family members. During inquiry, A1 assured to keep the deceased in a good state. Statements were given by the deceased as well as A1 in this regard and thereafter, the matter was amicably settled. Ex.P.5 is the entire file relating to the said inquiry. P.W.9 has spoken about the post mortem conducted on the body of the deceased and his final opinion regarding the cause of death.

10. P.W.10 the constable has stated that he took the dead body of the deceased to the hospital and identified the same to the Doctor for postmortem. P.W.11 has spoken about the registration of the case on the complaint made by P.W.1. P.W.12, the Revenue Divisional Officer, has spoken about the inquest proceedings held by him under Section 174 of Cr.P.C. P.W.13 has spoken about the entire investigation done by him and the filing of charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor they did mark any document on their side. Their defence was a total denial.

12. Having considered all the above, the trial court convicted the appellants/A1 to A3 as detailed in the first paragraph of this judgement. Challenging the above said

convictions and sentences, the A1 to A3 are now before this Court with the present criminal appeal.

13. We have heard the learned counsel appearing for the appellants/A1 to A3 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

14. This is a case based on circumstantial evidences. There is no denial of the fact that the deceased was married to A1 on 29.04.2007 and the deceased was living with her husband and her parent-in-laws under a common roof. According to the case of the prosecution, the death of the deceased on 18.05.2010 around 11.00 p.m. was a homicide. In order to prove this fact, the prosecution has examined P.W.9 Doctor, who conducted autopsy on the body of the deceased. During autopsy, he had found injuries, more particularly, an injury on the back of head measuring 10 x 8 cm externally which was a contusion and internally he found a corresponding fracture of the skull. It is the case of the prosecution that A1 dashed the head of the deceased against the wall and that is how the injury was caused to the deceased. But, absolutely, there is no evidence to prove the fact that A1 dashed the head of the deceased against the wall. Going by the nature of the injury which was found on the back of the head of the deceased, according to the learned counsel for the appellants, chances of an accidental fall resulting in the said injury cannot be ruled out. We find force in the said argument. In a case based on circumstantial evidences, it is absolutely necessary for the prosecution to prove that there was no alternative hypothesis which would be inconsistent with the guilt of the accused. Here in the instant case, the alternative hypothesis that the fatal injury found on the occipital region on the head of the deceased would have been caused by accidental fall cannot at all be ruled out. Thus, the prosecution has failed to prove that the death of the deceased was on account of homicide. To repeat, we have to say that neither there is any direct evidence or circumstantial evidence to prove that it was A1 who dashed the head of the deceased against the wall which resulted in her death.

15. Next, assuming that the injuries found on the deceased would have been caused by violence and death was not due to accidental fall, even then, absolutely there is no evidence that to show that it was this accused who violently behaved with deceased. The prosecution has failed to trace for circumstantial evidence to prove the said fact. There is absolutely, no evidence, as of now, on record to prove that it was A1 who caused the injuries on the deceased. Thus, the prosecution has failed to prove that the death of the deceased

was caused by A1 and so there is no scope to convict A1 under Section 302 of IPC.

16. The learned Additional Public Prosecutor , at this juncture, would submit that in the alternative the accused could be convicted for dowry death punishable under Section 304-B of IPC. In the instant case, there is no dispute that the marriage of the deceased was solemnized within seven years prior to her death. The death of the deceased was also unnatural. But, these two elements by themselves are not sufficient to hold A1 guilty under Section 304-B of IPC. Apart from that , the prosecution should prove that there was dowry demand and the consequential harassment soon before her death. In the instant case, there is absolutely no such evidence that soon before her death , she was harassed demanding dowry. Assuming that there was such harassment demanding dowry, the prosecution should prove some proximity between such harassment and the cause of death. If only such kind of proximity is established, the presumption that the death was dowry death, as provided under Section 304-B of IPC, could be raised. If the cause of death has got nothing to do with dowry demand and the consequential harassment, even if the death was within seven years prior to the death of bride, then, such presumption of dowry death cannot be invoked. For example, in a given case, suppose there is evidence to prove that the husband was harassing the wife, demanding dowry soon before her death, but, when the deceased was at home, accident takes place and she dies. Here though the death was unnatural, this has got nothing to do with the dowry demand and the consequential harassment. As we have already pointed out, the proximity between these two has not been established. Therefore, in the instant case, there can be no presumption of dowry death at all as provided under Section 304-B of IPC. In the instant case, as we have already pointed out, since the proximity between the cause of death and the alleged dowry demand and the consequential harassments have not been established, the presumption under Section 304-B of IPC that it was a dowry death cannot be raised and so there is no scope to convict A1 under Section 304-B of IPC also.

17. Now, turning to the question of dowry demand by A1 to A3, P.Ws.1 to 4 have in a vague manner stated that A1 demanded a gold ring and a motor cycle. But, there is no evidence positively that they harassed the deceased. The learned counsel for the appellants would submit that this part of the evidence of P.Ws.1 to 4 cannot be believed, for, the deceased never made any such complaint. In this regard, we may refer to the complaint made by the deceased on 17.03.2010, i.e., hardly two months prior to the occurrence to the Sub Inspector of Police (P.W.8). A perusal of the complaint would go to show that the

deceased did not make even any whisper about the demand of dowry and the consequential harassment at the hands of any of the accused. In that complaint, the deceased had stated that A1 was not bestowing adequate attention on her and he was ill-treating at the instigation of A2 and A3. She has further requested the police to take action to unite her with her husband so that she could live peacefully. During the enquiry, she has given a written statement on 19.03.2010 in which she had stated that since the matrimonial misunderstandings between herself and her husband were settled, she did not press for any further action and she wanted to live peacefully with her husband. Accordingly, the inquiry was closed by the police. Had it been true that the accused had demanded dowry and harassed her, the deceased would not have omitted to mention the same in Ex.P.5. This would create a doubt in the veracity of P.Ws.1 to 4. As we have already pointed out, their evidences are also so vague. For these reasons, if we reject the evidence of these witnesses so far as the demand for dowry and the consequential harassment are concerned, then, the conviction of the accused under Section 498-A of IPC also cannot be sustained. Similarly, in order to sustain the conviction under the other charge we find no evidence at all on record. The trial court convicted A1 for offence under Section 201 of IPC on mere surmise. Thus, we find that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and the conviction and sentence imposed on the appellants/A1 to A3 are not sustainable.

18. In the result, the criminal appeal is allowed. The conviction and sentences imposed on the appellants/A1 to A3 are set aside and they are acquitted of all the charges. Fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The I Additional Sessions Judge,
Vellore, Vellore District.
2. Do - Through the Principal Sessions Judge,
Vellore.

3. The Judicial Magistrate,
Gudiyatham, Vellore.
4. Do- Through the Chief Judicial Magistrate,
Vellore.
5. The Superintendent of Police,
Vellore.
6. The Superintendent,
Central Prison,
Vellore.
7. The District Collector,
Vellore.
8. The Director General of Police,
Mylapore, Chennai 04.
9. The Deputy Superintendent of Police,
Gudiyatham Sub Division,
Vellore District.
10. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.31147

Crl.A.No.773 of 2013

SCD(CO)
CA(01/09/2016)



सत्यमेव जयते

WEB COPY