

BAIL SLIP

That the Appellant/Accused namely 1.Kumar S/o.Motcha Guru
2.Motcha Guru S/o.Dharmarajan 3.Chandra W/o.Motcha Guru was
directed to release on bail as per order of the Court dated
26.02.2010 and made in MP.No.182 of 2010 in Cr1.A.No.123 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.123 of 2010

1.Kumar

2.Motcha Guru

3.Chandra

... Appellants/Accused 1 to 3

-Vs-

The State represented by
The Assistant Superintendent of Police,
Town Police Station,
Chidambaram,
Cuddalore District.
Crime No.24 of 2009

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of
Criminal Procedure against the judgment of learned District &
Sessions Judge, Mahila Court, Cuddalore, passed in S.C.No.289 of
2009 on 19.02.2010.

For Appellants : Mr.N.R.Elango
Senior Counsel
for M/s.Conscious Ilango

For Respondent : Mr.V.Arul
Additional Public Prosecutor

J U D G M E N T

This appeal arises against judgement of learned District &
Sessions Judge, Mahila Court, Cuddalore, passed in S.C.No.289 of

2009 on 19.02.2010, convicting appellants/accused 1 to 2 for offences u/s.498-A, 304(b) IPC and Section 6(2) of Dowry Prohibition Act and sentencing each of them to 2 years R.I. and fine of Rs.1,50,000/- i/d 1 year R.I. for offence u/s.498-A IPC, 10 years R.I. for offence u/s.304(b) IPC and 6 months R.I. and fine of Rs.5,000/- i/d 1 month R.I. for offence u/s.6(2) of Dowry Prohibition Act. Trial Court directed sentences to run concurrently.

2. The case of prosecution is that first appellant and deceased were married on 03.09.2008. Owing to acts of cruelty on the part of the accused stemming from demands for dowry, deceased/wife of the first appellant, committed suicide by hanging on 08.01.2009. Appellants/accused were thus charged for offences under Section 498-A and 304(b) IPC. Alleging that accused had failed to repay a sum of Rs.1,00,000/- and also effect delivery of jewellery belonging to deceased, appellants/accused were also charged for offence under Section 6 (2) of the Dowry Prohibition Act.

3. PW-1, father of the deceased, preferred Ex.P1, complaint, on 08.01.2009 at 08.00 p.m. PW-7, Sub Inspector of Police, registered a case in Crime No.24 of 2009 on the file of respondent u/s.174 Cr.P.C. Printed First Information Report is Ex.P9. PW-8, Divisional Officer, upon receiving information on 08.01.2009 at about 11.35.p.m., went to Government Kamarajar Hospital, Chidambaram on 09.01.2009 and at about 7.00.a.m., conducted inquest over the body of deceased in the presence of panchayatars and relatives. The inquest report is Ex.P10. At about 7.30.a.m., he forwarded the body of deceased through Head Constable Muthukrishnan for post-mortem. The post-mortem report Ex.P3 informed that the deceased died due to hanging. PW-8 examined PWs.1, 3 and others and recorded their statements. PW-8 found that the death had occurred owing to demands of dowry and he filed a report to such effect and forwarded the same to the Inspector of Police. The report is Ex.P11. PW-9, Inspector of Police, took up investigation on 08.01.2009, visited the place of occurrence, prepared Ex.P8 - Observation Mahazar and Ex.P12- Rough Sketch. He examined PWs.1, 3 and others and recorded their statements. PW-10, Deputy Superintendent of Police, took up further investigation. On 11.01.2009, he examined PWs.1, 3 and another and recorded their statements. Upon perusal of enquiry report of RDO and also on his own findings, PW-10, Deputy Superintendent of Police, altered the First Information Report to one u/s.498-A and 304(b) IPC r/w Section 4 and 6(2) of Dowry Prohibition Act. The Alteration Report is Ex.P13. On 11.01.2009 at about 5.30.p.m., he arrested the accused in front of their house and sent them to judicial custody. On 13.02.2009, he examined PW-1 and others and recorded their statements. On 14.02.2009, he examined PW-2 and another and recorded their

statements. On 15.02.2009, he examined the official of the Forensic Department, Chengalpet and recorded her statement. On 16.02.2009, he examined PW-7 and another and recorded their statements. On 18.02.2009, he examined PW-2 and another and recorded their statements. On 19.02.2009, he examined the doctor, Chidambaram Government Hospital and recorded his statement. Upon completion of investigation on 11.03.2009, he filed a charge sheet before learned Judicial Magistrate-II, Chidambaram, informing commission of offences u/s.498-A, 304-B IPC and 6(2) of Dowry Prohibition Act. On Committal, the case was tried in S.C.No.289 of 2009 on the file of learned District & Sessions Judge, Mahila Court, Cuddalore.

4. Before trial Court, prosecution examined PWs.1 to 10 and marked Exs.P1 to P13. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., accused denied charges. Trial Judge, on appreciation of the evidence, under judgement dated 19.02.2010, convicted appellants/ accused 1 to 3 for offences u/s.498-A, 304(b) IPC and Section 6(2) of Dowry Prohibition Act and sentenced each of them to 2 years R.I. and fine of Rs.1,50,000/- i/d 1 year R.I. for offence u/s.498-A IPC, 10 years R.I. for offence u/s.304(b) IPC and 6 months R.I. and fine of Rs.5,000/- i/d 1 month R.I. for offence u/s.6(2) of Dowry Prohibition Act. Trial Court directed sentences to run concurrently. There against, the present appeal.

5. Heard Mr.N.R.Elango, learned senior counsel for appellants and learned Additional Public Prosecutor for respondent. Perused the records.

6. In chief-examination, PW-1/de facto complainant and father of the deceased has spoken to ill-treatment of the deceased on demands for dowry but in cross, has admitted that the expenses towards the marriage hall were borne by the accused, that he had not paid a sum of Rs.1,00,000/- to the accused on the understanding that the marriage expenses would be shared equally and that the accused had not asked him to cough up his share. Against his evidence in chief of the accused having demanded a sum of Rs.1,00,000/- instead of 35 sovereigns and a motor cycle prior to fixation of the marriage, he has, in cross, admitted to not having made any mention thereof in Ex.P1, complaint. Again, having asserted in cross that the accused had questioned him on what jewellery he had presented for Deepavali when the accused met 2 to 3 days thereafter, he had admitted to not making any mention thereof in Ex.P1, complaint or before PW-12, Deputy Superintendent of Police. The wife of PW-1/mother of the deceased has not been examined. PW-8, Revenue Divisional Officer, who conducted inquest, has admitted that Kalaiselvi, mother of deceased, had stated that the marriage of the deceased

had been forced upon her against her wishes by PW-1 and hence, the deceased had not been at peace. She had informed that on 01.01.2009, second accused had noticed the deceased speaking to a boy at the temple and hence, he too had requested PW-1 to reprimand her daughter which PW-1 had done. PW-1 had scolded her daughter saying that she would never change and thereafter, left stating that he had reprimanded her and asking the accused to take care of her. While the evidence of demand of dowry sounds hollow that which is admitted to by the Revenue Divisional Officer reveals the probability of deceased having resorted to suicide, over distress in not marrying as per her will. When so viewed, appellant/accused cannot be found liable for offences u/s.498-A and 304-B IPC.

7. PW-1 has admitted to Ex.D1 being the list of articles given at the time of marriage as 'Seervarisai' - customary gifting practice as distinct from dowry. PW-1 has admitted to the list having been prepared post occurrence and at a panchayat conducted in the presence of one Thopu Sundar, who has not been examined. Ex.D1, list of jewels, becomes unreliable. Offence u/s.6(2) of Dowry Prohibition Act only would stand attracted if dowry was involved and this Court has found herein above such is not the case.

The Criminal Appeal is allowed. The judgment of learned District & Sessions Judge, Mahila Court, Cuddalore, passed in S.C.No.289 of 2009 on 19.02.2010, is set aside. Appellants are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any executed, shall stand cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi/gm

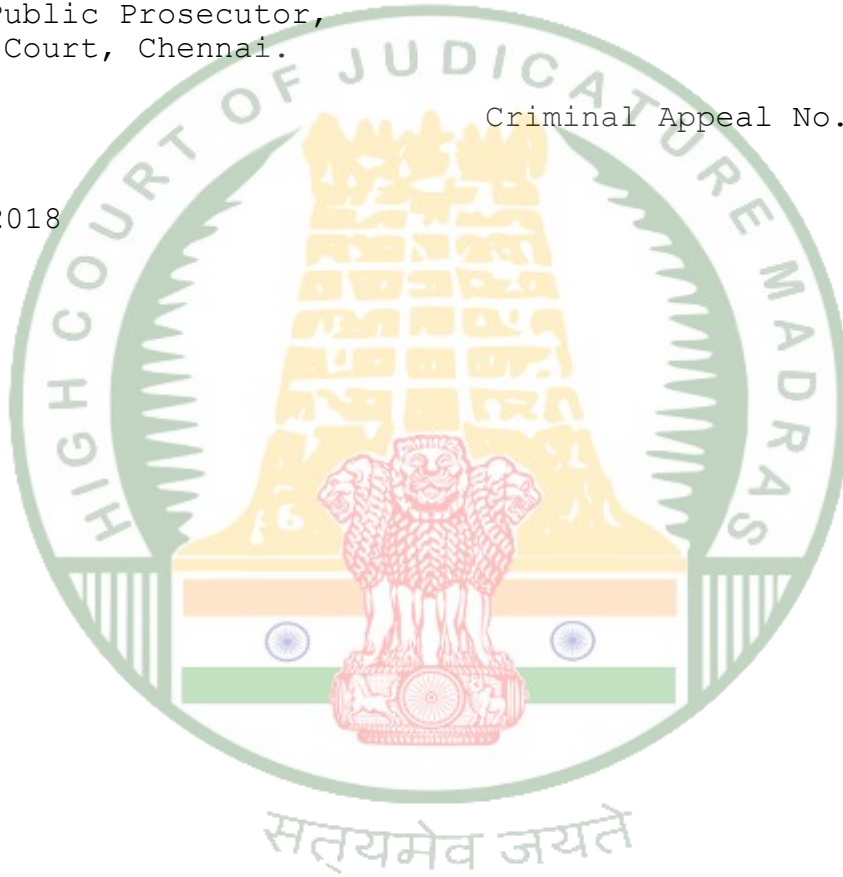
To

1. The Judicial Magistrate,
No.II, Chidambaram.
2. The Chief Judicial Magistrate,
Chidambaram. (for information)
3. The District & Sessions Judge,
Mahila Court,
Cuddalore.

4. The Superintendent,
Central Prison,
Cuddalore.
5. The Assistant Superintendent of Police,
Town Police Station, Chidambaram,
Cuddalore District.
6. The Superintendent,
Special Prison for Women,
Vellore.
7. The Public Prosecutor,
High Court, Chennai.

Criminal Appeal No.123 of 2010

AD(CO)
CS/07/12/2018



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