

Bail Slip

C.A.133 of 2009

The Appellants/Accused Nos.1 and 2 viz namely Raja (A1) S/o Muniappa Gounder and Muniappa Gounder (A2) S/o Manner Gounder were directed to be released on bail vide Order of Court dated 08.04.2009 made in Crl.M.P. 1/09 in Crl.a.133 of 2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.133 of 2009

1. Raja (A1)

2. Muniappa Gounder (A2)) ... Appellants/Accused 1 & 2

Vs

Deputy Superintendent of Police,
Krishnagiri District. ... Respondent

Prayer in all Crl.As:- Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment dated 13.02.2009 made in S.C.No.97 of 2008 on the file of the Assistant Sessions (Chief Judicial Magistrate) Court, Krishnagiri.

For Appellants : Mr. Ramesh,
Senior Counsel,
for V.Vijayakumar
For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (Crl. Side)

JUDGEMENT

The accused in S.C.No.97 of 2008 on the file of the Assistant Sessions (Chief Judicial Magistrate) Court, Krishnagiri are the appellants herein. They stood charged for the offences

under Sections 498(A) and 304(B) IPC and Section 4 of Dowry Prohibition Act. By judgment, dated 13.02.2009, trial court, convicted both the accused under Sections 498-A, 304(B) IPC and 4 of Dowry Prohibition Act and sentenced them to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for 3 months for the offence under Section 498-A IPC and sentenced them to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for 6 months for the offence under Section 304-B IPC and sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for 3 months for the offence under Section 4 of Dowry Prohibition Act. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

2. Today, the learned Government Advocate(Crl. side) appearing for the respondent would submit that pending appeal, the second Appellant Muniappa Gounder died on 29.06.2016, and she has also filed a memo along with the death certificate. Recording the same, the appeal against A2 is dismissed as abated.

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

The deceased, in this case, one Chitra, is the wife of A1 and daughter-in-law of A2. The marriage between A1 and the deceased took place in the year 2000 and they have two children out of the wedlock. After marriage, for 3 years they were living happily. Thereafter, the deceased complained to P.W.1 that A1 had illicit intimacy with another lady and A1 also demanded Rs.20,000/- from the deceased, which was also given by P.W.1. After some time, A2 misbehaved with the deceased and hence, the deceased came to her parental house. Thereafter, there was a mediation in the village and on the advice of the mediators, the deceased once again went to her matrimonial house. But the accused once again demanded Rs.20,000/-. Since P.W.1 have no money, he gave some dead woods for the brickkiln run by the accused. Four days prior to the occurrence, P.W.1 invited both A1 and the deceased to his house and P.W.1 has given Rs.20,000/- to them. Thereafter, on 06.07.2006, the appellant informed P.W.1 that the deceased had committed suicide by hanging. Immediately, he went to A1's house and found her daughter dead. Then P.W.1 went to the Village Administrative Officer, P.W.9 and gave a statement, which was recorded by P.W.9. Based on the same, P.W.9 filed a complaint before the Sub Inspector of Police, P.W.14.

4. P.W.14, Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime No.350 of 2006 for the offences under Sections 498-A and 306 IPC. Then, he sent the First Information Report(Ex.P.16) to the higher officials.

5. P.W.15, Inspector of Police, attached to the respondent police, on receipt of the First Information Report commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2) and drew a Rough Sketch(Ex.P.17) in the presence of the witnesses and he has also recorded the statements of the witnesses and based on the investigation, he altered the case into Section 498-A and 304-B IPC and the alteration report is Ex.P.19.

6. In the mean time, on receipt of the First Information Report, since the death has occurred within a period of 7 years, P.W.13, RDO, conducted inquest on the dead body in the presence of the panchayathars and he prepared an inquest report (Ex.P.15) and also an enquiry report (Ex.P.8) and he was of opinion that the death was not due to dowry demand. Then, he sent the dead body of the deceased for postmortem to the Government Hospital, Kaveripattinam.

7. P.W.11, Doctor, working in the government Hospital, Kaveripattinam, on 07.07.206, at about 10.00 a.m., conducted postmortem/autopsy on the dead body of the deceased and he found the following injuries:-

- " 1. lacerated wound on the right leg 3 x 2 x 1 cm.
2. multiple linear abrasion over back side.
3. Small ante mortem abrasion over front of 1 cm.
4. Small abrasion at 1/2 x 1/2 cm over the cheek.
5. Small abrasion over front of neck below hyoid bone 1/2 x 1/2 cm."

Ex.P.4 is the Postmortem Certificate and the doctor was of the opinion that the death was due to hanging.

8. Then P.W.15, recorded the statement of the Doctor, who conducted postmortem/autopsy on the dead body of the deceased and statements of the other witnesses and handed over the investigation to P.W.16. P.W.16 conducted further investigation and recorded the statements of the witnesses and after completion of investigation, he laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 16 witnesses were examined and 19 documents were exhibited.

10. Out of the witnesses examined, P.W.1 is the father, P.W.2 is the mother, P.W.3 is the brother, P.W.4 is the sister and P.W.5 is the brother of the deceased. P.W.6 is a witness, who saw the deceased hanging. P.W.7 is a witness to the observation mahazar. P.W.8, is the Village Administrative Officer, before whom P.W.1 had given a complaint, and he had in turn filed complaint (Ex.P.3) before the respondent police. P.W.10, Grade-I Police, in the respondent police, after postmortem handed over the dead body to the relatives of the deceased. P.W.11, Doctor, working in the Government Hospital, Kaveripattinam, conducted postmortem on the dead body of the deceased and issued postmortem certificate(Ex.P.4). P.W.12, Village Administrative Officer, is a witness to the observation mahazar. P.W.13, RDO, conducted inquest on the dead body of the deceased in the presence of the panchayathars and prepared inquest report and sent the dead body for postmortem. P.W.14 Sub-Inspector of Police, registered the case and sent the First Information Report(Ex.P.16) to the jurisdictional Magistrate and higher officials. P.W.15, investigated the case recorded the statement of the Doctor, who conducted postmortem on the dead body of the deceased and statements of the other witnesses and handed over the investigation to P.W.16. P.W.16 continued the investigation, recorded the statements of the witnesses and after completion of investigation, he laid charge sheet against the accused.

11. 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 examine any witness or marked any documents.

12. Having considered all the above materials, the trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with these Criminal Appeals.

13. I have heard Mr.Ramesh, Senior Counsel, appearing for the petitioner and Mrs.M.F.Shabana, Government Advocate (Crl. side) appearing for the respondent and perused the materials available on record carefully.

14. The marriage between A1 and the deceased took place in the year 2000 and the deceased had committed suicide on 06.07.2006, i.e., within a period of 7 years of her marriage. P.W.1 is the father of the deceased and his evidence is that after marriage, for 3 years, both the deceased and A1 were living happily and after that the accused demanded Rs.20,000/-, and, he has also given Rs.20,000/- to A1. Since A1 was running a brickkiln, P.W.1 sent 4 loads of dead woods to A1. Then four days prior to the occurrence, he invited both A1 and the deceased and he has given Rs.20,000/- for their expenses. P.W.2 is the mother of the deceased. She has deposed that 6 months after the marriage, they have given Rs.20,000/- and then they also send four loads of dead woods for the brickkiln of the accused, for cutting and loading expenses A1 has given Rs.7000/- to P.Ws.1 and 2. After some time, there was some problem in their house and both A1 and A2 has beaten the deceased and hence, the deceased came to their house and the deceased also complained that A2 has misbehaved with her, there was a mediation in the village and based on the advice of the mediators, the deceased was sent back to her matrimonial house, all the above incidence happened 3 years prior to the occurrence.

15. P.W.3 is the brother of the deceased. According to him, the deceased has complained to him that A1 had an illicit intimacy with a lady working in the brickkiln and also complained that A2 has misbehaved with her. Then, a mediation was conducted, where the accused has admitted the guilt and on the advice of the panchayathars, she went back to her matrimonial house. After 6 months, the accused demanded one lakh for the purchase of a tractor. Then, both the deceased and A1 came to his house for a temple festival. After two months, the deceased also complained to P.W.3, that A1 had illicit intimacy with a lady working in a STD booth, and A1 also harassed her.

16. P.W.4 is the sister of the deceased. She has deposed that A2 harassed the deceased and they have also demanded Rs.20,000/-, and A2 has misbehaved with the deceased and he has also beaten the deceased. Subsequently, there was a mediation and the deceased complained before the mediators that A2 misbehaved with her, and some time, before the occurrence, both A1 and the deceased came to their house for a festival and stayed there for two days and then they went back to their house. In her cross-examination she had stated that Rs.20,000/- was demanded 3 years prior to the occurrence. P.W.5 is the another brother of the deceased. He has also deposed that for 3 years after the marriage, they were living happily, thereafter,

some dispute arose between them and after 6 months of their marriage Rs.20,000/- was given to them. Thereafter, the accused harassed the deceased and there was a mediation. In the mediation, the accused tendered apology and the deceased was sent back to their house. Before the occurrence, for temple festival A1 and the deceased came his house and stayed there.

17. From the evidence of P.Ws.1 to 5, it could be seen that all the demand and harassment took place long prior to the occurrence. It is their evidence that the accused had demanded Rs.20,000/-, 3 years after the marriage, i.e., 3 years prior to the occurrence. There were some problem between the accused and the deceased and there was a mediation, and the accused also tendered apology and accepting the apology, the deceased was sent back to the house of the accused. After that there is no evidence that the appellants have demanded dowry. Subsequently, P.W.1 also sent 4 loads of fire woods for his brickkiln. Four days prior to the occurrence, P.W.1 invited A1 and the deceased to his house and he has voluntarily given Rs.20,000/- for their expenses.

18. It is the consistent evidence of all the five witnesses that harassment took place only 3 years prior to the occurrence, thereafter, there is no demand of dowry. There was a serious allegation that A2 father of A1 has misbehaved with the deceased and the deceased complained the same to her family members. Thereafter, there was a mediation and on mediation both the accused tendered their apologies and after accepting their apologies, the deceased went back to her matrimonial home. Yet another allegation regarding illicit intimacy of A1 with some other lady, only P.Ws.1 and 3 have spoken about the same.

19. Now the question is whether the prosecution has proved the offence under Section 498-A and 304-B IPC.

20. To prove the offence under Section 304-B IPC, the prosecution has to prove 4 ingredients.

i) Death of the woman must have been caused by any burn or bodily injury or death must have been occurred otherwise under normal circumstances.

ii) Death must have occurred within 7 years of her marriage.

iii) Soon before the death she must have been subjected to cruelty or harassment by her husband or any relative of her husband.

iv) such cruelty or harassment must have been in connection with demand of dowry.

21. The first two ingredients are satisfied in the instant case. So far as the third ingredient, namely, whether the deceased was subjected to cruelty soon before the death is concerned, the Hon'ble Supreme Court in number of cases considered what exactly "soon before death" means;

21. The Hon'ble Supreme Court of India in 2015 (6) Supreme Court Cases 477 (Rajinder Singh /vs/ State of Punjab) after considering number of judgment, has finally held as follows:

" 22. This Court in Surinder Sing v. State of Haryana had this to say:

"17. Thus, the words 'soon before' appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words 'soon before' is, therefore, important. The question is how 'soon before'?. This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to mindset of people which varies from person to person. Cruelty can be mental orit can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman . It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances

may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer the judgment of this Court in *Kans Raj v. State of Punjab* where this Court considered the term 'soon before'. The relevant observations are as under : (SCC pp.222-23 , para 15).. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other

intervening circumstance showing the non existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough".

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

23. In another recent judgment in *Sher Singh v. State of Haryana*, this Court said (SCC p.739, para16)

" 16..... We are aware that the word 'soon' finds place in Section 304-B, but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence

dislodging his guilt, beyond reasonable doubt.

24. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B"

22. In the light of the above judgment of the Hon'ble Supreme Court of India, now this Court, have to consider the instant case. From the evidence of P.Ws.1 to 5, it could be seen that the demand of Rs.20,000/- was made 3 years prior to the occurrence. Hence, it cannot be construed as a continuous cause, which lead to death of the deceased. Even thereafter, P.W.1 sent dead fire woods to the accused, and he has also voluntarily given Rs.20,000/-, and absolutely, there is no evidence to show that soon before death the accused made any dowry demand or harassed the deceased.

23. So far as the other allegations regarding A1 having illicit intimacy with some other lady also cannot be construed as cruelty committed by the accused to attract the offence under Section 498-A IPC in the instant case. As per the evidence available, the allegation regarding A1's illegitimate intimacy was three year prior to the occurrence, thereafter both the deceased and A1 lived together and soon before the occurrence there is no such allegation against A1.

24. In the above circumstances, I am of the considered opinion that the prosecution has failed to prove the charge under Section 304-B and 408-A IPC and Sec.4 of Dowry Prohibition Act, beyond any reasonable doubt. Hence, the accused are entitled for acquittal.

25. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A1 in S.C.No.97 of 2008 dated 13.02.2009, are set aside and the appellant/A1 is acquitted from all the charges. Bail bond, if any, executed by the appellant/A1, shall stand cancelled. The appeal is dismissed as abated as against the second appellant/A2.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Assistant Sessions Judge,
Chief Judicial Magistrate Court,
Krishnagiri.
2. The Chief Judicial Magistrate,
Krishnagiri.
3. The Judicial Magistrate,
Krishnagiri
4. Deputy Superintendent of Police,
Krishnagiri District.
5. The superintendent,
Central prison, Vellore
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Vijayakumar, Advocate Sr. 11768

CrI.A.No.133 of 2009

KJ(CO)
VR(14/06/2017)