

BAIL SLIP

The Appellants/Accused namely 1.Sevi Gounder S/o.Periyapaiyan,
2.Chinnapillai W/o.Sevi Gounder (in MP.1/09 in CA.339/09)
3.Thangaraj, S/o.Sevi Gounder (MP.2/09 in CA.339/09) were
directed to be released on bail as per order of this Court date
01.07.2009 and made in MP.1 and 2/09 in CRL.A.No.339/09 on the
file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.339 of 2009

1.Thangaraj
2.Sevi Gounder
3.Chinnapillai ... Appellants/Accused 1 to 3

Vs.

State rep. by
The Inspector of Police,
Mettur Police Station,
Salem District.
(Crime No.393 of 2005) ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 08.06.2009 passed by the learned
Sessions Judge, Mahila Court, Salem in S.C.No.74 of 2007.

For Appellants : Mr.S.S.Ramesh
Legal Aid Counsel
For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

Earlier, when the matter was posted on 27.01.2017, there was
no representation for the appellants and hence the matter was
posted on 31.01.2017 under the caption for dismissal. On
31.01.2017, when the matter was called, there was no
representation for the appellants. Hence, Mr.S.S.Ramesh,
Advocate was appointed as Legal Aid Counsel for the
appellants.

2. The accused 1 to 3, in Sessions Case No.74 of 2007, on the file of the learned Sessions Judge, Magalir Court, Salem, are the appellants herein. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1 to A3	U/s. 498-A and 306 IPC

The trial Court, after trial, by Judgment dated 08.06.2009, convicted the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1 to A3	U/s. 498-A IPC	Sentenced them to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- each in default to undergo three months rigorous imprisonment.
A-1	U/s.306 IPC	Sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default, to undergo three months rigorous imprisonment.
A2 & A3	U/s.306 IPC	Sentenced them to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- each in default to undergo three months rigorous imprisonment.

All the sentences are ordered to run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

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

The deceased, in this case one Mariammal, is the wife of the first accused. A-2 and A-3 are father-in-law and mother-in-law of the deceased. The marriage between the first accused and the deceased took place on 12.01.2005. The accused family and deceased family are close relative. At the time of marriage, the deceased parents gave three sovereigns of gold jewel. After 4 or 5 months of the marriage, the accused demanded dowry from the deceased and sent her to the parental house. Then, P.Ws.1 and 2 arranged a sum of Rs.25,000/- and send her to the matrimonial home. Thereafter, P.W.3, the brother of deceased, on 31.10.2005, went to the house of the accused to invite the deceased and the first accused for the Dheepavali festival. At the time, there was a quarrel between the accused and deceased,

the accused attacked the deceased, and sent the deceased with P.W.3 to her parental home, after keeping the child with them. Thereafter, on the next day, i.e. on 01.11.2005, she consuming poison and committed suicide. Immediately, P.W.1 went to the police station and lodged a complaint.

(ii) P.W.10, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.393 of 2005 for the offence under Section 174 Cr.P.C., prepared first information report [Ex.P7], and sent the same to the Revenue Divisional Officer, Mettur and copies of the same to the higher officials.

(iii) P.W.11, the Revenue Divisional Officer, working in the Revenue Divisional Office at Mettur, on receipt of the first information report, conducted inquest over the dead body of the deceased in the presence of panchayatots, prepared inquest report [Ex.P8] and enquired the witnesses and submitted his report [Ex.P9] stating that the death was not due to dowry demand.

(iv) P.W.15, the Deputy Superintendent of Police, Mettur, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared first information report [Ex.P2], a rough sketch [Ex.P13], examined the witnesses and recorded their statements, based on the investigation, altered the charge into Section 306 IPC, alteration report [Ex.P14] and handed over the investigation to P.W.16 his successor.

(v) In the meantime, P.W.8, the Doctor, working in the Government Hospital, Mettur, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

Eye closed. Tongue kept in. No external injuries.

Internal Examination: Hyoid bone preserved. Heart weight 260 grams. chamber filled with 20 ml of liquid blood. Lungs weight 360 right grams. Left 340 grams. c/s congested. Liver 1000 grams c/s congested. Stomach contains 200 grams of digested food particle presence. Intestine empty. Kidney each 90 grams c/s congested. Spleen 90 grams c/s congested. Uterus cavity empty. Bladder empty. Skull no fracture. Membrane intact.

He is of the opinion that the deceased died due to organophosphorus poisoning and he issued postmortem certificate Ex.P6.

(vi) P.W.16, the Inspector of Police, working in the respondent police station, continued the investigation, arrested the accused and remanded them to judicial custody, examined the RDO and Doctor who conducted postmortem autopsy and other

witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

4. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 16 witnesses were examined and exhibited 14 documents and one material object was marked.

5. Out of the said witnesses examined, P.W.1, is the father of the deceased. According to him, four years prior to the occurrence, the marriage between the first accused and the deceased took place and at the time of marriage they have given three sovereigns of gold jewel. After six months of marriage, the accused demanded dowry from the deceased and sent her to his house. Then, they arranged a sum of Rs.25,000/- and gave it to the deceased. Subsequently, after child birth they have given household articles worth about Rs.3,000/- and cash of Rs.5,000/- to the deceased. Thereafter, he sent his son to invite his daughter and first accused for the Dheepavali festival. At the time, there was a quarrel between the first accused and deceased, in which, the accused attacked the deceased, and sent the deceased along with P.W.3. Thereafter, on the next day, i.e. on 01.11.2005, she consumed poison and committed suicide. Immediately, he went to the police station and lodged a complaint.

6. P.W.2 is the mother of the deceased. According to her, after 6 months of marriage, the accused asked the deceased to arrange for a loan and they have arranged for a sum of Rs.25,000/- and gave it to the deceased. She also spoke about the family dispute before the occurrence. P.W.3 is the son of P.Ws.1 and 2. He is a child witness. According to him, he went to the deceased house for inviting the first accused and deceased for Deepavali. At that time, there was a quarrel between the accused and the deceased, the accused attacked him and the deceased, and he along with the deceased went his house. P.W.4 is neighbour of P.W.1. According to him, the deceased consumed poison, immediately he along with other persons took her to the Hospital, where she died. P.W.5 is also neighbour of P.W.1. According to him, he arranged a sum of Rs.25,000/- as loan and gave the same to P.W.1. P.W.6 is the witness to the observation mahazar and recovery of material object. P.W.7 is witness to the arrest of the accused. P.W.8, the Doctor working in the Government Hospital, Mettur. According to him, he conducted Postmortem autopsy on the dead body of the deceased and issued Postmortem Certificate. P.W.9 is the Scientific Officer working in the Forensic Lab Department, Coimbatore. According to him, he examined visceral parts of the deceased and submitted a report [Ex.P5]. P.W.10 is the Sub Inspector of

Police attached to the respondent police station. On receipt of the complaint from P.W.1, registered a case, prepared a first information report, sent the same to the Revenue Divisional Officer and copies of the same to the higher officials. P.W.11 is the Revenue Divisional Officer, Mettur, conducted inquest over the dead body, prepared inquest report, submitted the enquiry report and he is of the opinion that the death was not due to dowry demand. P.W.12 is the Head Constable attached to the respondent Police Station. He identified dead body for postmortem. P.W.13 is the Doctor working in the Government Hospital, Mettur. He admitted the deceased in the hospital and he has given Accident Register [Ex.P10]. P.W.14 is the Doctor working in the Government Hospital, Coimbatore. He examined the hyoid bone of the deceased and submitted his report [Ex.P12]. P.W.15 is the Deputy Superintendent of Police working in Mettur Circle. According to him, on receipt of the first information report, commenced investigation, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements, altered the first information report and hand over the investigation to P.W.16. P.W.16 is the Inspector of Police attached to the respondent police station. He continued the investigation, arrested the accused and remanded them to judicial custody, examined the RDO and Doctor who conducted postmortem autopsy and other witnesses, recorded their statements and after completion of investigation, he laid charge sheet.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused examined two witnesses as D.Ws.1 and 2 and not marked any documents.

8. Having considered all the above, the Trial Court convicted the accused as stated in the second paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court with this appeal.

9. I have heard Mr.S.S.Ramesh, the learned counsel appearing for the appellants and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side), appearing for the respondent and perused the materials available on record.

10. P.Ws.1 and 2, are the parents of the deceased. According to P.W.1, at the time of marriage between the first accused and deceased, they have given three sovereigns of gold jewels, then after six months of marriage, the deceased came to his house and told that the accused asked for some money as loan and harassed her. Thereafter, at the time of Deepavali, he sent his son P.W.3, to the house of the accused and invited the first accused and the deceased for celebrating Deepavali festival,

where there was a quarrel between the deceased and accused and due to the same the accused attacked the deceased and sent her along with his son. P.W.2 is the mother of the deceased. According to her, after six months of marriage, the accused asked the deceased to arrange a loan from P.Ws.1 and 2, and they have also arranged a sum of Rs.25,000/- and gave it to the deceased. She further stated that before the occurrence, P.W.3 went to the house of the deceased to bring the deceased and first accused for celebrating Deepavali festival, where there was a quarrel between the accused and deceased, the accused attacked the deceased and sent her along with P.W.3. P.W.3 is a minor son of P.Ws.1 and 2. He only spoke about the quarrel in the house of the accused prior to the occurrence. From the evidence of P.Ws.1 to 3 it could be seen that the accused asked the deceased to arrange for a loan from P.Ws.1 and 2. P.W.5, an independent witness also stated that he had arranged the loan for a sum of Rs.25,000/- and give the same to P.W.1. But, None of the evidence spoke about the dowry demand. The accused only asked the deceased to arrange a loan from her parents and in turn P.Ws.1 and 2 arranged the loan from third parties and given a sum of Rs.25,000/- to the deceased. From the evidence of P.Ws.1,2,3 and 5, it could be seen that the accused never demanded any dowry and not harassed the deceased. Apart from that it is the admitted fact that the deceased and the first accused living together separately and A-2 and A-3 living separately and they are close relative to P.Ws.1 and 2 family. From the evidence of P.Ws.1 and 2, it could be seen that P.Ws.1 and 2 and the accused 2 and 3 jointly subscribed a chit and after taking the chit amount they have shared equally, which proves that they are in cordial terms and there is no allegation against them for demand of dowry. Apart from that the accused examined two witnesses and they are neighbouring land owners of the accused. They have stated that both the first accused and deceased were living happily. After the death of the deceased, the complaint filed by P.W.1, stating that they have sent P.W.3 to the house of the accused before the occurrence to bring the first accused and deceased for celebrating Deepavali, while the deceased alone came to his house and the accused keeping the child and subsequently she committed suicide, but subsequently he improved his version and stated about dowry demand. In the above circumstances, I am of the considered view that the prosecution failed to prove the offence under Section 498-A IPC.

11. So far as the offence under Section 306 IPC is concerned, in order to prove the offence under Section 306 IPC, it is essential for the prosecution to prove that the accused have abetted the deceased to committing suicide. Abetment is defined in Section 107 IPC, is as follows:-

"107. Abetment of a thing. A person abets

the doing of a thing, who,

First,- Instigates any person to do that things; or Secondly,- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly- Intentionally aids, by any act or illegal omission, the doing of the thing."

12. But, in the instant case, absolutely there is no material available to satisfy any one of the above ingredients and the prosecution also failed to prove the mens rea on the part of the appellants to drive the deceased to commit suicide, the trial Court has convicted the accused under Section 306 IPC on the ground that since the accused have keeping the child with them and out of the frustration and mental agony she has committed suicide. Apart from that there is no evidence that the accused has abetted the deceased to commit suicide. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charge under Section 306 IPC. Hence, the appellants are entitled for acquittal.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellants in S.C.No.74 of 2007 dated 08.06.2009 on the file of the learned Sessions Judge, Magalir Court, Salem is set aside and the appellants/accused are acquitted from all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them is ordered to be refunded forthwith.

14. While parting with the case, this Court appreciates the services rendered by Mr.S.S.Ramesh, who appeared on behalf of the appellants/accused as Legal Aid Counsel. The Tamil Nadu State Legal Aid Services Authority is directed to pay him necessary remuneration as per rule.

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Sd/-
Assistant Registrar(CCC)
//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court,
Salem.
2. The Inspector of Police,
Mettur Police Station,
Salem District.
3. The Public Prosecutor,
High Court,
Madras.
4. The Judicial Magistrate,
Mettur.
5. The Chief Judicial Magistrate,
Salem.
6. The Superintendent.
Central Prison,
Salem.
7. The District Collector,
Salem District.
8. The Director General of Police,
Mylapore, Chennai.
9. The Secretary,
Tamil Nadu State Legal Aid
Services Authority,
Chennai.

+1cc to Mr.S.S.Ramesh, Advocate, S.R.No.10417

Cr1.A.No.339 of 2009

CS/17/11/17

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