

BAIL SLIP

The appellant herein/Accused namely, Idayathulla S/o Mohammed Ayad Basha, aged about 34 years , was directed to be released on bail as per order of this court dated 19.08.2009, in CrI.M.P. No 1 of 2009 in CrI.A. No 483 of 2009 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.483 of 2009
and
M.P.No.1 of 2009

Idayathulla ... Appellant/Accused

Vs

State rep. By
The Assistant Commissioner of Police,
Washermenpet Range,
Chennai.
(Crime No.1141/2005) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed in S.C.No.551 of 2006 dated 11.08.2009 by the Magalir Neethimandram, Chennai.

For Appellant : Mr.K.Kannan

For Respondent : Mrs.M.F.Shabana,
Government Advocate (CrI. Side)

JUDGEMENT

The sole accused in S.C.No.551 of 2006 is the appellant herein. He stood charged for an offence under Section 498(A) and 304(B) IPC r/w. Section 4 of Dowry Prohibition Act 1961. By judgment dated 11.08.2009, the trial court convicted the accused under Section 498(A) and sentenced him to undergo

rigorous imprisonment for 3 years and also to pay a fine of Rs.1000/- in default to undergo simple imprisonment for two months and convicted him under Section 306 IPC and sentenced him to undergo rigorous imprisonment for five years and also to pay a fine of Rs.5000/- in default to undergo simple imprisonment for six months and acquitted the accused from the offence under Section 304(B) IPC r/w. Section 4 of Dowry Prohibition Act 1961. The trial Court ordered the above sentences to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

The deceased, in this case, Rahmadul Subaida, is the wife of the accused. She is the daughter of P.W.1. It is a love marriage between the accused and the deceased and after marriage, both of them were living separately. After some time, the deceased got conceived. Thereafter, the accused started harassing the deceased by demanding dowry. Some time before the occurrence, the mother of the deceased, who was in Saudi Arabia, came back to India. At that time, the accused harassed the deceased to get money from her mother. In the meantime, she also given a complaint before the Jamath against the accused and there was a mediation by the jamathars.

3. On 03.06.2005, at about 12.45 p.m., P.W.1 was informed that the deceased was admitted in the hospital with burn injuries, immediately, he rushed to the hospital, where he found the deceased in an unconscious condition. Hence, he has given a complaint before the respondent police.

4. P.W.12, Sub-Inspector of Police, attached to the respondent police station, on receipt of the information, went to the hospital, where he found the deceased in an unconscious condition, then he returned to the station. Based on the complaint given by PW1, he registered a case in Crime No.1141 of 2005, for an offence under Section 309 IPC and prepared First Information Report, Ex.P.12. Thereafter, he proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.4 and drew Rough Sketch, Ex.P.13, in presence of the witnesses. Then, at about 9.15 p.m., he received the information that the deceased succumbed to injuries, hence, he submitted case records to the Inspector of Police for further investigation.

5. P.W.13, Assistant Commissioner of the Vannarpettai area, on receipt of the First Information Report, sent a request to the District Collector for conducting inquest, since the deceased died within seven years from the date of her marriage. Based on that, P.W.10, Tahsildar, conducted inquest on the dead

body of the deceased in the presence of panchayathars, thereafter, sent the dead body of the deceased for postmortem.

6. P.W.9, Doctor, working in the Kilpauk Medical College Hospital, conducted postmortem on the dead body of the deceased and given a postmortem certificate Ex.P.6, and he also gave opinion that the deceased appears to have died of burn injuries. P.W.13 recorded the statement of the doctor, who admitted the deceased in the hospital and also the doctor, who conducted postmortem on the dead body of the deceased. Based on the investigation, he altered the charge into 304(B) IPC. Then, he arrested the accused and remanded him into judicial custody, recorded the statement of other witnesses and on completion of investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 14 documents were exhibited.

8. Out of the witness examined, P.W.1 is the father of the deceased. According to him, after marriage, both the accused and the deceased were living together happily for 3 months. Thereafter, the accused demanded Rs.50000/- from the deceased, but P.W.1 expressed his inability and also told the accused that since the wife of P.W.1 was in Sauthi Arabia, after her return to India, he will give some amount to him. Thereafter, the deceased informed him that the accused was harassing her by demanding money. Hence, a complaint was given by her before the Vyasarpadi police station and after compromise, they were sent back. On the date of occurrence, he was informed that the deceased was admitted in the hospital, then, he has given a complaint, Ex.P.1.

9. P.W.2 is a brother of the deceased. He has also spoken about the harassment meted out by the deceased and also demand of money by the accused. On 30.05.2005, his mother came back from Sauthi Arabia. On that day, the deceased called him over phone and asked him to get money from her mother. Thereafter, on 03.06.2005, at about 12.45 p.m., 3 persons informed him that the deceased was taken in a auto with burn injuries, and he admitted the deceased in the Kilpauk Medical College Hospital, where she succumbed to injuries.

10. P.W.3 is the sister of the deceased. She has also spoken about the mediation conducted by the jamaththars between the accused and the deceased. On 02.06.2005, at about 3.00 p.m., she went to the house of the deceased, where the deceased told her that the husband of the deceased was harassing her by

demanding Rs.25000/- from her parents.

11. P.W.4 is a landlady in which house, both the accused and the deceased were residing. According to her, there were frequent quarrels between the accused and the deceased and the deceased informed her that the accused was harassing her to get money from her parental house and she also warned the accused not to quarrel with the deceased. On the date of occurrence, when he was standing in front of the house, she saw smoke coming out of the house of the accused. At that time accused was also there. Then, they found the deceased with burn injuries and immediately, the deceased was taken to the hospital.

12. P.W.5 is a neighbour of the accused and the deceased. He has also spoken about the frequent quarrels between the accused and the deceased and also the demand of money from the deceased. P.W.6 is a witness to the confession given by the accused. P.W.7 is a witness to the Observation Mahazar and also rough sketch. P.W.8 is a doctor working in the Kilpauk Medical College Hospital, admitted the deceased in the hospital and according to her, at the time of admission, the deceased informed her that only to protect her from her husband, she poured kerosene and set fire on her.

13. P.W.9, conducted postmortem on the dead body of the deceased and given postmortem certificate. P.W.10 is the Tahsildar, who conducted inquest in the presence of panchayathars and filed inquest report. P.W.11, District Collector has given the order to the Tahsildar to conduct inquest. P.W.12, Sub Inspector of Police, registered the complaint and conducted investigation and handed over the investigation to P.W.13. P.W.13, Assistant Commissioner of Police of Washermenpet area, continued the investigation, recorded the statement of witnesses and arrested the accused. After completion of investigation, he filed charge sheet.

14. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any documents.

15. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

16. We have heard Mr.K.Kannan, learned counsel appearing for the appellant and Mrs.M.F.Shabona, learned Gov.Adv. (Crl.Side) appearing for the State and we have also perused the records carefully.

17. P.Ws,1,2 and P.W.3 are all father, brother and sister of the deceased. It is their consistent evidence that after marriage for nearly 3 months the accused and the deceased were living happily and it was a love marriage, as their families did not accept their marriage, both of them were living separately. Thereafter, there was continuous harassment by the accused demanding money from the deceased. Sometime prior to the occurrence, the mother of the deceased came from Saudi Arabia and the accused harassed the deceased to bring money from her mother and even a day prior to the occurrence, P.W.3, sister of the deceased went to the house of the accused, where the deceased informed her that the accused is demanding money from her for buying an auto.

18. Apart from that P.W.4, land lady, where the accused and the deceased were residing, deposed that there were frequent quarrels between the accused and the deceased and she also warned the accused. The deceased also told her that the accused was harassing her to get money from her parents. P.W.5, who was a neighbour and also the friend of the deceased has also spoken about the quarrel between the accused and the deceased and also harassment of the accused. All the above witnesses have consistently stated that there were quarrel between the accused and the deceased and the accused was demanding money from the deceased. P.Ws. 4 and 5 are all independent witnesses. They have also clearly stated that the accused demanded money from the deceased and harassed her and there were frequent quarrel between them due to demand of money.

19. From the above evidence, the prosecution has clearly established that the accused had harassed the deceased demanding money. The act of the accused squarely fall within the purview of Section 498(A) IPC.

20. So far as the conviction under Section 306 IPC is concerned, absolutely, there is no evidence on record to show that the accused abetted the deceased to commit suicide. All the witnesses only says that the accused harassed the deceased to bring money from her parental house. Even, the evidence of P.W.8, Doctor, who admitted the deceased in the hospital stated that at the time of admitting the deceased in the hospital, she has informed that she has only committed self-immolation, in order to protect her from the accused. Hence, I am of the considered view that since there is no evidence for abetment to commit suicide, the conviction under Section 306 IPC is liable to be set aside.

21. So far as the quantum of punishment is concerned, the appellant/accused is a poor man and he has no bad antecedent and now, he is taking care of the child. In the above

circumstances, the sentence imposed on the appellant is modified to Rigorous Imprisonment for one year.

22. In the result, the Criminal Appeal is partly allowed and the conviction under Section 498(A) IPC is confirmed, and the sentence imposed on him is modified to rigorous imprisonment for one year, and to pay a fine of Rs.1000/- in default, to undergo Rigorous Imprisonment for 4 weeks and the conviction under Section 306 IPC is set aside, and the appellant/accused is acquitted for the offence under Section 306 IPC. Fine amount, if any paid by the appellant for the offence under Section 306 IPC, shall be refunded to him. The period of sentence already undergone by appellant/accused shall be given set off under Section 428 Cr.P.C.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Sessions Judge,
Magalir Neethimandram,
Chennai.
2. The Collector, Chennai
3. The Metropolitan Magistrate No XV
George Town, Chennai
4. The Chief Metropolitan Magistrate
Egmore, Chennai (for Information)
5. The Superintendent, Central Prison, Puzhal, Chennai
6. The Assistant Commissioner of Police
Washermenpet Range, Chennai.
7. The Public Prosecutor
High Court, Madras
- +1 CC to Mr. K. Kannan, Advocate sr 350

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SAI (CO)
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