

Bail Slip

The Appellants/Accused 1 & 2 namely Jaishankar S/o Ramachandran and Mrs Saradambal W/o Ramachandran were directed to be released on bail as per order of this court dt.16.09.2009 and made in MP.1/2009 in CrI.A.530/2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.530 of 2009

1.Jaishankar

2.Mrs.Saradambal

... Appellants/Accused 1 & 2

-Vs-

The State represented by

Deputy Superintendent of Police,

Keelapaluvor Police Circle,

Vengalur Police Station,

Ariyalur District.

[Crime No.41 of 2008]

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of learned Additional Sessions Judge, (Fast Track Court) Ariyalur District, passed in S.C.No.38 of 2009 on 27.08.2009.

For Appellants

: Mr.Shahjahan

for Mr.Ganesh Rajan

For Respondent

: Mr.C.Iyyapparaj

Additional Public Prosecutor

J U D G M E N T

This appeal arises against judgement of learned Additional Sessions Judge, Fast Track Court, Ariyalur District, passed in S.C.No.38 of 2009 on 27.08.2009, convicting appellants/accused 1 and 2 for offences u/s.498-A, 304(B) IPC and sentencing each of them to 2 years R.I. and fine of Rs.1,000/- i/d 3 months S.I. for offence u/s.498-A IPC, A1-10 years S.I., A2-7 years for offence u/s.304(B) IPC. Trial Court directed that sentences run

concurrently.

2. The case of the prosecution is that the first appellant and the deceased were married 9 months prior to the date of occurrence. The appellants demanded a two wheeler as dowry from deceased/wife of the first appellant. Due to harassment, the deceased committed self-immolation and died on 09.05.2008. Appellants/accused were thus charged for offences under Section 498-A and 304(B) IPC.

3. PW-1, father of the deceased, preferred Ex.P1, complaint, on 09.05.2008 at 23.30.p.m. Sub Inspector of Police, Vengalur, registered a case in Crime No.41 of 2008 on the file of respondent u/s.174 Cr.P.C. The Printed First Information Report is Ex.P9. PW-13, Revenue Divisional Officer, upon receiving information from Inspector of Police, Vengalur, on 10.05.2008 at about 8.30.p.m. went to the scene of occurrence, conducted inquest over the body of the deceased in the presence of panchayatdars, relatives and the Village Administrative Officer. He examined PWs.1 and 2 and others and recorded their statements. Thereafter, the body was sent for post-mortem. Ex.P5 post-mortem report informed death as due to burns. PW-14, Deputy Superintendent of Police, Ariyalur took up investigation on 10.05.2008, visited the place of occurrence and prepared Ex.P2-Observation Mahazar and Ex.P7-Rough Sketch in the presence of witnesses. He examined the witnesses at the place of occurrence and recorded their statements. Being of the view that death had been occasioned owing to demands for dowry, he effected alteration to reflect offences u/s.498-A and 304(B) IPC. The alteration report is Ex.P8. On 10.05.2008 at about 4.00.p.m., PW-14 arrested the accused in front of the Kallagam Railway gate. He took the accused to the place of occurrence and seized empty plastic Kerosene can (5 litres), M.O.1, one Nokia cell phone without battery-M.O.-2 and sim card-M.O.3 and sent the accused to judicial custody. On 28.06.2008, he examined RDO-PW-13 and recorded his statement. He obtained Ex.P12 mobile phone details from 02.04.2008 to 18.08.2008. On 28.06.2008, he examined Doctor-PW-12, who conducted the post-mortem, and recorded his statement. He also examined Mr.Jayapaul (since deceased), Inspector of Police, who registered the case and recorded his statement. Upon completion of investigation on 22.07.2008, he filed a charge sheet informing commission of offences u/s.498-A, 304-B IPC. Upon committal, the case was tried in S.C.No.38 of 2009 on the file of learned Additional District & Sessions Judge, Fast Track Court, Ariyalur.

4. Before the trial Court, prosecution examined PWs.1 to 14, marked Exs.P1 to P12 and produced Material Objects 1 to 3. None were examined on behalf of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused

denied charges. Learned trial Judge, on appreciation of the evidence, under judgement dated 27.08.2009, while convicting appellants/accused 1 and 2 for offences u/s.498-A, 304(B) IPC, sentenced them as stated above. There against, the present appeal.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor appearing for respondent. Perused the records.

6. Learned counsel for appellants submitted that PW-1, father of deceased, is the de facto complainant. PW-1 had spoken to having received information of the death of his daughter over phone and of preferring a complaint in writing at the police station. Ex.P1 is the complaint. Thereupon Ex.P9, First Information Report, has been registered. Ex.P9, FIR, also discloses that the complaint was in writing. PW-1 has, in cross, admitted to not knowing how to read or write and that he did not know the contents of Ex.P1, complaint. Under Ex.P6, inquest report, PW-13, Revenue Divisional Officer, had informed that except for the relatives of the deceased all others including Panchayatdars and Village Administrative Officers had stated that the death was not dowry related. Ex.P6 informed such finding. PW-2, mother of the deceased had spoken to having been informed by PW-6, a relative, that first appellant had sent a message over cell phone that he either have a positive reply i.e., in relation to his demand, or 'ambulance would come'. PW-6 deposed to having received such a message and of first appellant having threatened her against informing anyone there about. PW-6, in cross, had admitted to not knowing English and to not having informed the police about the cell phone from which she received such message. She could not even recollect her own cell phone number. She had stated that the message over cell phone was in English, that her sister read the same and informed her there about. She had admitted to being a close relative of PW-2. Learned counsel submitted that in the said circumstances, the sister of PW-6 would be a material witness but she had not been examined. Learned counsel contended that the prosecution story of a message containing a dowry demand could be given no credence and quite rightly, the trial Court had disbelieved PW-6. PW-3 examined as a witness to the occurrence and PWs.8 and 9 examined to speak to the recovery of MOs.1 to 3, a cell phone without battery, sim card and kerosene can, had turned hostile. PW-10, uncle of the deceased, had admitted to not informing the police of any acts of cruelty on the part of the accused. Learned counsel contended that trial Court had erred in convicting appellants and that they were entitled to a finding of acquittal.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. We find every merit in the submission of learned counsel for appellants that the complaint is a concocted document. According to prosecution, Ex.P1, complaint, has been given in writing by PW-1 at the police station. PW-1 has admitted to not knowing how to read or write and to lack of knowledge of contents of Ex.P1, complaint. Occurrence is of 09.05.2008. Both Exs.P1 and P9, complaint and FIR, had reached the Magistrate only on 16.12.2008. PW-13, Revenue Divisional Officer, has, under Ex.P6, inquest report, informed the death to be one of not related to demand for dowry. Quite rightly, trial Court has seen through the falsity of the prosecution projection of a demand for dowry made through a message over cell phone and rejected the evidence of PW-6, who admittedly was a close relative of PW-2. Where the evidence of PW-6 is unacceptable the evidence of PW-2, whose version is based thereupon, also is not worthy of acceptance. PW-3, an alleged witness to the occurrence as also PWs.8 and 9, witnesses to alleged recoveries, had turned hostile. PW-3, uncle of the deceased, has also not supported the prosecution case. The benefit of doubt ought to have been afforded to appellants.

The Criminal Appeal shall stand allowed. The judgement of learned Additional Sessions Judge, Fast Track Court, Ariyalur District, passed in S.C.No.38 of 2009 on 27.08.2009 shall stand 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 Additional Sessions Judge,
Fast Track Court,
Ariyalur District.

2 -do the Prl. Sessions Judge,
Ariyalur

3 The Judicial Magistrate, Ariyalur

4 -do- The Chief Judicial Magistrate
Ariyalur/Perambalur

5.The Deputy Superintendent of Police,
Keelapaluvoor Police Circle,
Vengalur Police Station,
Ariyalur District.

6 The Superintendent, Central Prison, Trichy

7 The Superintendent Central Prison, for Women, Trichy

8 The District Collector, Trichy

9 The Director General of Police,
Mylapore, Chennai

10.The Public Prosecutor,
High Court, Chennai.

Copy to:

The Section Officer,
Criminal Section, High Court, Madras

+1 CC to Mr. Ganesh Rajan , Advocate Sr.No. 51766

Criminal Appeal No.530 of 2009

MD: 10/11/2017

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