

Bail Slip The

The Appellant herein/Accused/c2 Vis Ramesh S/o.Nagaraj, (A1) Nagaraj, S/o.Govindan Ac were directing to be released on bail as per order dt:8.5.2008 in MP.1/08 in Cr1.A.325/08 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.A.No.325 of 2008

1.Ramesh
2.Nagaraj

.... Appellants/Accused

Vs.

State rep. by
The Inspector of police,
South Zone Salem City,
Annathanapatti Police Station,
Salem.(Crime No.1570 of 2004) respondent /Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 30.10.2007 passed by the learned Sessions Judge, Mahalir Neethimandram, Salem in S.C.No.148 of 2006.

For Appellants : Mr.R.C.Paul Kanagaraj

For Respondent : Mrs.M.F.Shabana
Government Advocate(Cr1. Side)

JUDGMENT

The accused 1 and 2, in Sessions Case No.148 of 2006, on the file of the learned Sessions Judge, Mahalir Neethimandram, Salem, are appellants herein. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1 and A2	U/s. 498-A, 306 and 304-B

2. The trial Court, after trial, by Judgment dated 30.10.2007, convicted the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1 & A2	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.
	U/s.304-B IPC	Sentenced them to undergo seven years Rigorous Imprisonment.
	U/s.306 IPC	Sentenced them to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1000/- each in default to under go 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 Rani, the wife of the first accused. A-2 is the father of A1. Four years prior to the occurrence, the first accused married the deceased. At the time of marriage, the deceased parents given 6 sovereigns of gold jewels. Three months prior to the occurrence, the deceased came to the house of P.W.1, the mother of the deceased, and informed her that the accused demanding a sum of Rs.30,000/- and 5 sovereigns of gold jewels as dowry. P.W.1 told her that she would come to her matrimonial home and settle the issue. Thereafter, the deceased committed suicide by hanging. Hence, P.W.1 filed a complaint[Ex.P1] before the respondent police.

(ii) P.W.9, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint,

registered a case in Crime No.1570 of 2004, under Section 174 Cr.P.C., prepared First Information Report[Ex.P6] and sent the same to the higher officials.

(iii) P.W.11, the Assistant Commissioner of Police, working in the respondent police station, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P9], rough sketch [Ex.P10] and he recovered a Nylon saree of the deceased [M.O.1] in the presence of witnesses. Then he examined the witnesses and recorded their statements. Subsequently, based on the investigation, he altered the offence under Section 304-B IPC and prepared alteration report [Ex.P12]. On the same day, P.W.11 arrested the accused. In the meantime, P.W.10, the Revenue Divisional Officer, Salem, conducted inquest over the dead body in the presence of panchayators and he prepared inquest report[Ex.P7] and also submitted a report [Ex.P8]. He is of the opinion that the death was occurred only due to dowry harassment. Thereafter, P.W.11 sent the dead body to the Hospital for conducting postmortem autopsy. P.W.6, the Doctor, working in the Mohan Kumaramangalam Medical College Hospital, Salem, conducted postmortem autopsy and given Postmortem Certificate[Ex.P7]. He is of the opinion that the deceased would appear to have died of asphyxia due to hanging. P.W.11 continued the investigation, he examined the Doctor, who conducted postmortem autopsy and other witnesses, recorded their statements and after completion of investigation, he laid charge sheet. Since a re-investigation was ordered under Section 173(8) Cr.P.C., P.W.12, the Assistant Commissioner of Police, Salem, conducted further investigation, he again examined the witnesses, recorded their statements. Since all the witnesses reiterated their earlier statement, he filed statements before Judicial Magistrate Court.

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 12 witnesses were examined and 12 documents were exhibited and 1 material object was marked.

5. Out of the said witnesses examined, P.W.1 is the mother of the deceased. According to her, at the time of marriage, they given 6-1/2 sovereigns of gold jewels to the deceased. Three months prior to the occurrence, the deceased came to her house and informed her that the accused demanding a sum of Rs.30,000/- and also 5 sovereigns of gold jewels as dowry. P.W.1 informed her that she would come to the matrimonial home and settle the issue. Thereafter, the deceased committed suicide by hanging. Hence, she filed a

complaint, she had stated that she does not gave any suspicion on the death of her daughter. P.W.2 is the father of the deceased. According to him, his daughter told him that the accused demanding dowry frequently, and he was working in Chennai. But, in his cross examination, he stated that 2 or 3 weeks prior to the occurrence, he came to his daughter's house, both the deceased and first accused living happily and all of them have a dinner together in a hotel. P.W.3 is the sister of the deceased. According to her, the deceased informed her that the first accused demanding dowry from the deceased. P.Ws.4 and 5 turned hostile. P.W.6 is the Doctor working in the Mohan Kumaramangalam Medical College and Hospital, Salem. According to him, he conducted Postmortem autopsy on the dead body of the deceased and given Postmortem Certificate. P.W.7 turned hostile. P.W.8 is the Head Constable working in the respondent police station, he identified the dead body for postmortem and after postmortem he recovered the gold chain and ear stud from the dead body. P.W.9 is the Sub Inspector of Police working in the respondent police station. According to him, on receipt of the complaint from P.W.1, registered the case, prepared the first information report and sent the same to the higher officials. P.W.10 is the Revenue Divisional Officer, conducted inquest over the dead body and submit his report. P.W.11 is the Assistant Commissioner of Police working in the respondent police station. According to him, on receipt of the first information report, he commenced the investigation, examined the witnesses and recorded their statements, arrested the accused, remanded them to judicial custody and after completion of investigation, he laid charge sheet. P.W.12 is the Assistant Commissioner of Police, Salem, conducted further investigation. He examined the witnesses and recorded their statements and after completion of investigation, he filed his report before the Judicial Magistrate Court.

6. 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 examine one Rajammal as D.W.1 and no document was marked. According to D.W.1, she is relative of the deceased. She further stated that there was a problem arose between P.Ws.1 and 2 and due to the same P.W.2 living separately at Chennai and the deceased also frequently quarrelled with her mother.

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

8. I have heard Mr.R.C.Paul Kanagaraj, 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.

9. The learned counsel appearing for the appellants would contend that there is no evidence to prove that soon before the death, the accused demanded dowry and harassed the deceased and there is also no evidence that the appellants had abetted the deceased to commit suicide. Apart from that even the complaint given by P.W.1 at the earliest point of time, she has stated that she has no suspicion on the death of her daughter and based on her complaint, the respondent police registered a case under Section 174 Cr.P.C. Subsequently, she changed the version and making a false allegation against the accused. Hence, he prays for acquittal and allowing this appeal.

10. Per contra, the learned Government Advocate(Crl. Side) appearing for the state would contend that it is the consistent evidence of P.Ws.1 to 3 that the first accused demanded dowry frequently and harassed her, due to the same, the deceased committed suicide. Hence, on the evidence of P.Ws.1 to 3, the prosecution has proved the guilt of the accused and there is no reason to disbelieve the evidence of P.Ws.1 to 3. Hence, she prays for dismissal of this appeal.

11. I have carefully considered the rival submissions.

12. So far as the offences under Sections 304-B and 306 IPC are concerned, P.W.1, the mother of the accused, has stated that three months prior to the occurrence, the deceased came to her house and informed her that the accused demanded a sum of Rs.30,000/- and also 5 sovereigns of gold jewels, in turn, P.W.1 told her that she will come to her matrimonial house and settle the issue. Thereafter, there is no complaint for demanding dowry from the deceased. P.W.2, the father of the deceased, has stated that there is dowry demand and harassment by the first accused, but, in his cross examination, he stated that 2 or 3 weeks prior to the occurrence, he went to the deceased house, both the deceased and first accused were living happily and all of them have a dinner together in a hotel and P.W.3, the sister of the deceased has stated that there was frequent quarrel between A-1 and the deceased and the first accused demanded dowry from

her. Apart from that absolutely there is no evidence that soon before the death of the deceased there was cruelty or harassment by the accused and they have abetted the deceased to commit suicide. Apart from that as per the complaint given by P.W.1, immediately after the death of the deceased, she has categorically stated that both the first accused and deceased are living happily and she has no suspicion on the death of her daughter. Considering the above materials, I am of the considered view that the prosecution did not prove the offence under Section 304-B and 306 IPC.

13. So far as the demand of dowry is concerned, the evidence of P.Ws.1 to 3 have categorically stated that the first accused demanded money and harassed the deceased, and the deceased came to the house of P.W.1 and informed him that the accused demanded a sum of Rs.30,000/- and 5 sovereigns of gold chain. P.W.2 also says that A-1 demanding dowry. Hence, the prosecution has established that there was a harassment on the part of the accused demanding dowry from the deceased, but there is no evidence against the second accused for demand of dowry or any harassment. Hence, the prosecution has proved the offence against the first accused under Section 498-A IPC. In the above circumstances, this Court is of the considered view that the prosecution has failed to prove the offence under Sections 304-B and 306 IPC against both accused and the offence under Section 498-A has been proved by the prosecution against the first accused.

14. So far as the quantum of sentence is concerned, the first appellant is poor person and he has no bad antecedence and he was already inside the jail for more than 7 months. Taking into consideration the above mitigating as well as aggravating circumstances, the first accused is sentenced to the period already undergone.

15. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the first accused/first appellant for the offence under Sections 304-B and 306 IPC in S.C.No.148 of 2006 dated 30.10.2007 on the file of the learned Sessions Judge, Mahalir Neethimandram, Salem is set aside and the conviction imposed on the first appellant/first accused for the offence under Section 498-A IPC is confirmed, and the sentence is modified to the period already undergone and to pay a fine of Rs.1000/-, in default, to undergo three months rigorous imprisonment. The conviction and sentence imposed on the second appellant/second accused under Sections 304-B, 306 and 498-A IPC is set aside and the second appellant/second accused is acquitted from all the

charges levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amount paid by him is ordered to be refunded forthwith.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Mahalir Neethimandram,
Salem.
- 2.The Inspector of police,
South Zone Salem City,
Annathanapatti Police Station,
Salem.
- 3.The Public Prosecutor,
High Court, Madras.
- 4 The Judicial Magistrate, No.IV, Salem.
- 5 do The Chief Judicial Magistrate, Salem.
- 6 The Superintendent, Central Prison, Salem.
- 7 The District Collector, Salem.
- 8 The Director General of Police, Mylapore, Chennai-4.
- 9 The Section Officer, Co Section, High Court, Chennai-104.

+1cc to Public Prosecutor, SR.No.4007

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SDR 08.03.2017

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