

BAIL SLIP

The Appellants/Accused, viz Mr.Palaisamy, aged about 34 years, S/o.Late Thangavel (accused no.1 in S.C.No.230 of 2005 on the file of Sessions Judge, Mahila Court, Salem) and M/s.Dhanam @ Dhanammal, aged about 54 years W/o.Late Thangavel(accused no.2 in S.C.No.230 of 2005 on the file of the Sessions Judge, Mahila Court, Salem) were released on bail by the order of the court made in M.P.No.2/08 and 1/08 in CrI.A.No.445/08 dated 12.08.2008 and 28.07.2008, respectively, pending disposal of this appeal on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.445 of 2008

1. Palanisamy

2. Dhanam

... Appellants

Vs

State rep. By
Deputy Superintendent of Police,
Sankagiri Division,
Salem District.
(Crime No.141/04)

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to allow the appeal and set aside the conviction and sentence passed by the Sessions Judge, Mahalir Court, Salem, in S.C.No.230 of 2005 by judgment dated 03.06.2008.

For Appellants : Mr. B.Vasudevan

For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (CrI. Side)

JUDGEMENT

A1 and A2 in S.C.No.230 of 2005 on the file of the Mahila Court, Salem, are the appellants herein. Totally, there are 3 accused. They stood charged for the offences under

Sections 498-A and 304-B IPC. By judgment, dated 03.06.2008, the trial court convicted A1 and A2 on both the charges and sentenced them to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.2000/-, in default, to undergo rigorous imprisonment for 3 months for the offence under Section 498-A IPC and sentenced them to undergo rigorous imprisonment for 7 years for the offence under Section 304-B IPC and acquitted A3 from all the charges. The trial court ordered the above sentences to run concurrently. Challenging the above said conviction and sentence, the appellant/A1 and A2 are before this Court with this Criminal Appeal.

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

The deceased, in this case, one Kavitha, is the wife of A1 and A2 is her mother-in-law. The marriage between the deceased and A1 took place on 24.05.2002. At the time of marriage, the accused demanded 5 sovereigns of gold jewels, but the deceased family has given only 1 ½ sovereign gold jewels. There was a persistent demand of dowry and A1 also demanded a cot and bureau from the deceased family, all the accused harassed her demanding dowry. In the above circumstances, on 28.03.2004, at about 3.00 a.m., the deceased committed suicide by hanging. The same was informed to P.W.1, mother of the deceased and she went to the house of the deceased and found her daughter hanging. Immediately, she has lodged a complaint before the respondent police.

3. P.W.11, Sub-Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.141 of 2004 under Section 174 Cr.P.C and sent First Information Report, Ex.P.7 to the RDO and also to the higher officials.

4. P.W.12, Deputy Superintendent of Police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and found the deceased hanging. Then, he prepared an Observation Mahazar, Ex.P.2 and drew a rough sketch, Ex.P.8 in the presence of the witnesses.

5. P.W.10, RDO, Sangagiri, after receipt of the First Information Report, proceeded to the scene of occurrence, where he conducted inquest on the dead body of the deceased in the presence of the panchayathars and prepared Inquest Report, Ex.P.5 and also gave a report, Ex.P.6, stating that the death was not due to dowry demand, but due to quarrel between A1 and the deceased. Thereafter, P.W.12, sent the dead body of the deceased for postmortem to the Government Kumaramangalam Medical College Hospital, Salem.

6. P.W.9, Doctor, working in the Government Kumaramangalam Medical College Hospital, Salem, on 29.03.2004, at about 1.00 p.m., conducted postmortem on the dead body of the deceased and found the following injuries:-

" An incomplete and oblique ligature in the form of .. of a rope one below the other both having linear mark slanting to last in them. Consistent with the cotton cloth lines show 1.5 cms in width, dry, dark brown in colour, over the front and side of upper part of the neck above th level of thyroid cartilage .

On the right side of neck the upper border of the ligature mark was found to be 6 cms vertically below the right mastoid, process and on the left sides of neck, the same was found to be 3 cms vertically below the left mastoid process. Over the front of neck on the midline the lower border of the ligature mark was found to be 9 cms above the supra-sternal notch.

Multiple, marginal abrasions and echymoses sees scattered over the whole length of both the upper and lower borders of the ligature mark.

O/d. Tissues beneath, the ligature mark were found to be white and glisterings, Hyoid bone was found intact."

Ex.P.4 is the Postmortem Certificate. He was of the opinion that the deceased died of asphyxia due to hanging.

7. Based on the investigation, P.W.12 altered the First Information Report into Sections 304-B and 498-A IPC and the alteration report is Ex.P.9. Thereafter, he has recorded the statements of the witnesses and after completion of investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case , on the side of the prosecution, as many as 12 witnesses were examined and 9 documents were exhibited, besides 2 material objects.

9. Out of the witness examined, P.W.1 is the mother of the deceased. According to her, after the marriage, all the

accused demanded dowry and A2 and A3 also harassed the deceased. After some time, A1 and the deceased were living separately. The deceased has conceived and there was a miscarriage, then she was residing in her house for some time, then, she was taken to the matrimonial house by A1 and there A1 harassed her. For the second time, the deceased got conceived, again there was miscarriage, and she was residing in her parental house. Thereafter, for the second time, A1 took her to his house and at that time, the deceased made a complaint that the accused frequently quarreling with her and had beaten her. Subsequently, on 28.03.2004, somebody came to her house and informed her that the deceased was admitted in the hospital and P.W.1 went to the house of the deceased, where she found the deceased hanging. Immediately, she lodged a complaint before the respondent police.

10. P.W.2, a friend of P.W.7, the deceased brother. According to him, A1's family has demanded 5 sovereigns of gold jewels at the time of marriage. Thereafter, P.W.7 told him that A1 was harassing the deceased. P.W.3 is a relative of P.W.1 and she is also residing in the same village, where the deceased was living. According to her, 3 years prior to the occurrence, the deceased told her that A1 was demanding dowry and cot from her and A1 also quarreled with her and had beaten her frequently. She has also spoken about the harassment of A1 to the deceased. P.W.4 is the neighbour, who saw the deceased hanging inside the house of A1. P.W.5 has turned hostile. P.W.6, who is a witness to the Observation Mahazar, turned hostile. P.W.7, is the brother of the deceased. He has also spoken about the harassment meted out by the deceased by A1 and also the quarrel between A2 and P.W.1.

11. P.W.8, Village Administrative Officer, is the witness to the Observation Mahazar and also recovery of material objects. P.W.9 is the Doctor, conducted postmortem on the dead body of the deceased and has given the postmortem certificate, Ex.P.4. P.W.10, RDO, conducted inquest on the dead body of the deceased and gave a report, Ex.P.5. P.W.11, Sub-Inspector of Police, has spoken about the registration of the case. P.W.12, Inspector of Police, has spoken about the investigation done, alteration of the case and filing of final report.

12. 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 chose to examine any witness or mark any documents.

13. 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.

14. We have heard Mr.B.Vasudevan, learned counsel appearing for the appellants and Mrs.M.F.Shabona, learned Gov.Adv. (Crl.Side) appearing for the State and also perused the records carefully.

15. Mr.B.Vasudevan, learned counsel appearing for the appellants would contend that the prosecution failed to prove the charges under Sections 304-B and 498-A IPC. From the evidence of P.Ws.1 and 7, the prosecution failed to establish the harassment made by the appellants and also the demand of dowry. Even as per the evidence of P.Ws.1, 3, A1 only demanded a cot and bureau from the deceased family and at any stretch of imagination, it cannot be construed as a dowry demand. Apart from that, to bring home the offence under Section 304-B IPC, there is no evidence soon before the death of the deceased there was harassment demanding dowry. The trial court, disbelieving the evidence of prosecution witnesses, acquitted A3 from all the charges, whereas believing the same, convicted A1 and A2. Hence, he sought for acquittal.

16. Per contra, Mrs. F.Sabhana, learned Government Advocate(Crl.Side), appearing for the respondent submits that from the evidence of P.Ws.1,3 and 7, the prosecution has clearly established the harassment of the appellants by demanding dowry, which ultimately lead to her death and the trial court, considering all the evidences, convicted the appellants/A1 and A2 and there is no infirmity in the judgment of the court below and sought for dismissal of the appeal.

17. I have considered the rival submissions perused the entire materials available on record carefully.

18. P.W.1 is the mother of the deceased. From her evidence, it could be seen that since A2 and A3 had harassed her, both the deceased and A1 were living separately and only A1 has demanded cot, bureau from the deceased and the deceased also told her about the harassment. When P.W.1 took the deceased to her house, the deceased stayed there for 20 days and then, there was a compromise and A1 took her to the matrimonial home. In the meantime, she conceived and there was a miscarriage. Thereafter, she was living in the house of P.W.1, then, A1 took her to the matrimonial home. At that time A2 quarreled with P.W.1 on the ground that she was the instrument for setting a separate family for deceased and A1 and A1 had beaten the deceased demanding Pongal seer. P.W.7, her son has given Rs.600/- at the time of Pongal. Thereafter, on the date of occurrence, somebody informed her that the deceased was not well and they took her to the house of the deceased. From the

evidence of P.W.1, it is seen that it is only A1 has demanded some dowry and cot from the deceased and he is a drunkard and used to beat the deceased and harassed her. Absolutely there is no evidence that A2 demanded dowry and harassed the deceased. From her evidence, it could only be seen that there was a quarrel between P.W.1 and A2 regarding setting of separate family for the deceased and A1. P.W.3 is also related to the accused family. He has also spoken about A1 demanded bureau and cot from the deceased family and also that A1 is a drunkard and used to beat the deceased.

19. P.W.7 is the brother of the deceased. He has also spoken about the harassment by A1. Apart from that, there is no other evidence, to prove the dowry demand. From the evidence of P.Ws.1, 3 and 7, it could be seen that it is only A1, who demanded a cot, bureau from the deceased family and used to beat her and harassed the deceased. Absolutely, there is no evidence for demand of dowry and the harassment by A2.

20. Now, we have to see whether the prosecution has proved the offence under Section 304-B IPC. To bring home for the offence under Section 304-B IPC, the prosecution has to prove the following 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. In the instant case, the death of the deceased is otherwise under a normal circumstances and she had died within 7 years of her marriage. Now, we have to see whether there is any cruelty or harassment or demand of dowry soon before the death.

22. The Hon'ble Supreme Court of India in number of cases has considered the word "Soon before" find place in Section 304-B IPC. In a case in Kans Raj vs. State of Punjab in 2000 (5) SCC 207 the Hon'ble Supreme Court has held as follows:-

" 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 tet. 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".

Another judgment reported in *Sherin Sing vs. State of Haryana* 2015(3) SCC 724, the Hon'ble Supreme Court has held as follows:

" 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.

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

" 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"

24. Keeping the above principle laid down by the Hon'ble Supreme Court in mind, I proceed to consider the evidence in the instant case. From the evidence of P.Ws.1,3 & 7, it is not seen that there was a persistent demand of dowry and there is no live link between the effect of cruelty based on dowry demand and consequential death of the deceased. There is no nexus between the demand of dowry, cruelty or harassment, and the death of the deceased. Hence, I am of the considered view that the prosecution has failed to prove the charge under Section 304-B IPC.

25. So far as the charge for the offence under Section 498-A IPC is concerned , as discussed earlier, there are evidence to show that A1 has harassed the deceased and demanded some property from the deceased. but , absolutely, there is no evidence against A2, and A2 is entitled to acquittal. In the above circumstances, A1 is liable to be convicted under Section 498-A IPC.

26. So far as the quantum of sentence is concerned, A1 is a poor man and the occurrence took place in the year 2001 and already A1 undergone sentence for a period of four months. Taking into consideration of the fact, the sentence under Section 498-A IPC is modified to that of the period already undergone.

27. In the result, the Criminal Appeal is partly allowed, the conviction and sentence imposed on the appellants/A1 and A2 under Section 304-B IPC is set aside and

the conviction and sentence on the second appellant/A2 under Section 498-A IPC are set aside, the conviction of the first appellant/A1 under Section 498-A IPC is confirmed and the sentence is modified to that of the period already undergone and also to pay a fine of Rs.2000/-, in default to, undergo rigorous imprisonment for 8 weeks. A2 is acquitted from both the charges and bail bond, if any, executed by A2, shall stand cancelled.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Sessions Judge,
Mahila Court,
Coimbatore.
2. The Judicial Magistrate No.I, Sankagiri
3. -do- thro
The Chief Judicial Magistrate, Salem.
4. The Officer-in-Charge,
Sub Jail for women, Vellore.
5. The Deputy Superintendent of Police,
Sankagiri Division,
Salem District.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. B.Vasudevan, Advocate, S.R.No.10811

Cr1.A.No.445 of 2008

PPA(CO)
CS/30/06/17