

Bail Slip

The Appellants/Accused namely Velan @ Thonnaiyan, Lakshmi & Ramesh @ Krishnan were directed to be released on bail as per the order of this Court dt.10.7.2008 and made in Crl.Mp.No.1/2008 in Crl.Appeal No.486/2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.486 of 2008

1. Velan @ Thonnaiyan
 2. Lakshmi
 3. Ramesh @ Krishnan
- ... Appellants/Accused 1 to 3

-Vs-

Deputy Superintendent of Police,
Omalur.

Crime No.210 of 2004. ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment dated 12.06.2008 in S.C.No.395 of 2006 on the file of learned Sessions Judge, (Mahila Court), Salem.

For Appellants : Mr.V.Parthiban for Mr.P.Jagadeesan

For Respondent : Mr.V.Arul
Additional Public Prosecutor

J U D G M E N T

This appeal arises against judgement of learned Sessions Judge, (Mahila Court), Salem, passed in S.C.No.395 of 2006 on 12.06.2008, for offences u/s.498-A, 304(B) IPC and Section 4 of Dowry Prohibition Act. The trial Court acquitted A4 and A5 and convicted the appellants/A1 to A3 for the offences u/s 498-A, 304(B) IPC and Section 4 of the Dowry Prohibition Act and sentenced each of them to 3 years R.I. and fine of Rs.1,000/- each i/d 3 months R.I. for offence u/s 498-A IPC, 7 years R.I. for offence u/s 304(B) and 1 year R.I. and fine of Rs.1,000/- each i/d 3 months R.I., for offence u/s 4 of Dowry Prohibition Act. Trial Court directed the sentences imposed on A1 to A3 to run concurrently.

2. The case of the prosecution is that the third appellant and his wife, the deceased were married in the year 2002. They had one child. The third appellant's wife committed suicide by hanging on 20.06.2004 at about 2.30.p.m.

3. PW-1-father of the deceased preferred complaint-Ex.P1 before the Inspector of Police, Theevattipatti, and a case was registered in Crime No.210 of 2004 u/s 174(3) Cr.P.C. The printed First Information Report is Ex.P4. PW-10, Assistant Commissioner of Police, took up investigation on 21.06.2004, visited the place of occurrence, prepared Ex.P2 - Observation Mahazar and Ex.P10 - Rough Sketch in the presence of witnesses PW-6 and others. Since the deceased died within 2½ years of marriage, he sent a requisition to the RDO, Mettur, for conducting inquest. On 21.06.2004 at about 12.30.a.m., he seized one blue colour half saree, which was marked as M.O-3 under Seizure Mahazar Ex.P3. He examined PWs-1 to 6 and others and recorded their statements. On inquest suggesting a case of demand for dowry, offences were altered to as u/s.498-A and 304B IPC. The alteration report is Ex.P11. On 03.08.2004 at about 13.00.hrs, PW-10 arrested A4 under the Railway Bridge at Kongupatti and sent him to judicial custody. On 09.11.2004, he obtained post-mortem report from PW-9, Doctor and recorded his statement. Upon completion of investigation, on 29.11.2004 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.395 of 2006 on the file of learned Sessions Judge, Mahila Court, Chengalpet.

4. Before trial Court, prosecution examined PWs.1 to 10 and marked Exs.P1 to P11. DWS.1 to 4 were examined on behalf of the defence and Exs.D1 and 2 were marked. M.O.1 was marked. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of evidence before it, convicted A1 to A3 under judgement dated 12.06.2008 as afore stated. There against, the present appeal.

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

6. Learned counsel for appellants submitted that the first appellant, who is no more, was the father-in-law of the deceased, while the second appellant was her mother-in-law and the third appellant, her husband. PWs-1 and 2 are father and mother of the deceased and PWs-3 and 5 are her sisters. Neither in depositions nor in the original complaint, had any allegation been made as regards second appellant/mother-in-law. In the major part, the witnesses have spoken to wrong doing by the first appellant/father-in-law of the deceased, who is now no more. Contending that even against the first appellant, the prosecution case is most weak, learned counsel submits that while PW-1 had deposed that the deceased approached him seeking Rs.1,00,000/- stating that the first appellant/father-in-law of the deceased had asked her to ask him and that he had initially given Rs.50,000/- and thereafter an another sum of Rs.50,000/-. PW-1 also had spoken to a demand of Rs.10,000/- towards electricity service connection

for a Well and that he has met the same. In cross, he had informed that initial payment of Rs.50,000/- was made availing a chit but was unable to inform through whom he had availed the same or provide any details there regards. He had also spoken to borrowing a sum of Rs.50,000/- from his brother-in-law/PW-6. PW-1 has further spoken to A3/husband of deceased having made a demand at PW-1's house and of payment to him in person. It was the specific evidence of PW-2/mother of the deceased that A3 never visited their home. PW-10, Investigation Officer had admitted that PW-1 had not informed him of the chit transaction or of borrowing any sum from PW-6. On subsequent demand of Rs.10,000/- for electrification, he admitted that the witnesses had not informed him thereof. He admitted to the witnesses having informed the Revenue Divisional Officer of the deceased having been beat to death by the accused but of having informed him that she had committed suicide by hanging. PW-6-brother-in-law of PW-1 and brother of PW-2 had not spoken to his having lent any monies to PW-1.

7. Learned counsel for appellants further submitted that PW-1, 2, 4 and 5 had spoken to having seen an injury below the left eye of the deceased. Investigation Officer-PW-10 had admitted to not noticing any injury near the eye and PW-9-post-mortem Doctor had specifically deposed that there was no such injury on the body of the deceased. PW-3-Sister of the deceased had spoken to informing Revenue Divisional Officer of the deceased having been beaten to death since she noticed such injury on the body of the deceased. PW-1 informs of the conduct of inquest by the Revenue Divisional Officer between 11.30 a.m. and 03.00 p.m. and of having informed the Revenue Divisional Officer of the accused having beaten the deceased to death. He has also spoken to the absence of the accused at the scene. PW-3 has spoken to her being enquired by Revenue Divisional Officer between 09.30 and 11.30 a.m., of her seeing the deceased body at 2.30 p.m. and of the accused then being present. She has spoken to the absence of the accused when PWs.1 and 2 came along, allegedly pursuant to her phone call. PWs.1 to 3 had denied the defence suggestion that third accused/husband of deceased suffered a beating at the hands of the prosecution party which resulted in a fracture of his arm.

8. Learned counsel for the appellants submitted that appellants stand wrongly convicted and in the circumstances of the case, the benefit of doubt may be afforded to appellants.

9. Heard learned Additional Public Prosecutor on the above submissions. While submitting that a proper decision had been arrived at by trial Court, he would state that Ex.P9-RDO enquiry report informed a case of dowry death.

10. The prosecution case of demands for dowry and the same having been met by PW-1, stands falsified by the admission of the Investigating Officer-PW-10 that he had not

been informed of availment of loan from brother-in-law of PW-1. He had also admitted to not having been informed of any demand for Rs.10,000/- towards electricity service connection. PW-6 has not spoken to his having paid any sum to PW-1 as claimed. While, PW-1 would have it that A3 approached him at his residence with a demand on one occasion, it is the evidence of his wife-PW-2, that A3 never visited their home. That the prosecution witnesses were given to depose falsely is apparent from the fact that PWs.1, 2, 4 and 5 uniformly speak to an injury below the left eye of the deceased. PW-10-Investigating Officer has informed of not noticing any such injury. PW-9-Post-mortem Doctor has confirmed that there was no such injury. As rightly submitted by learned counsel for appellants, there was absolutely no material against the second accused. The evidence of PW-1 of first accused (now deceased)/father-in-law of his daughter, the deceased, having required her to make demands of money from PW-1 does not withstand scrutiny as PW-10, investigation officer, has deposed that he was not informed thereof. Even the demand for Rs.10,000/- towards an electricity connection has not been informed to PW-10. The prosecution has not even chosen to examine the Revenue Divisional Officer. The prosecution case bristles with infirmities and the benefit of doubt ought to have been afforded to appellants.

The Criminal Appeal shall stand allowed as against Appellants 2 and 3. The conviction and sentence passed by learned Sessions Judge, Mahila Court, Salem, passed in S.C.No.395 of 2006 on 12.06.2008, are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand canceled. The appeal is dismissed as abated as against the first appellant.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi/gm

To

1.The Judicial Magistrate, Omalur

2.do-thro The Chief Judicial Magistrate, Salem

3.The Sessions Judge,
Mahila Court, Salem.

4.The Principal Sessions Judge, Salem

5.The Deputy Superintendent of Police,
Omalur.

6.The Inspector of Police, Theevatti Police Station,
Omalur.

7.The Superintendent, Central Prison, Coimbatore

8.The Superintendent, Central Prison for Women, Vellore

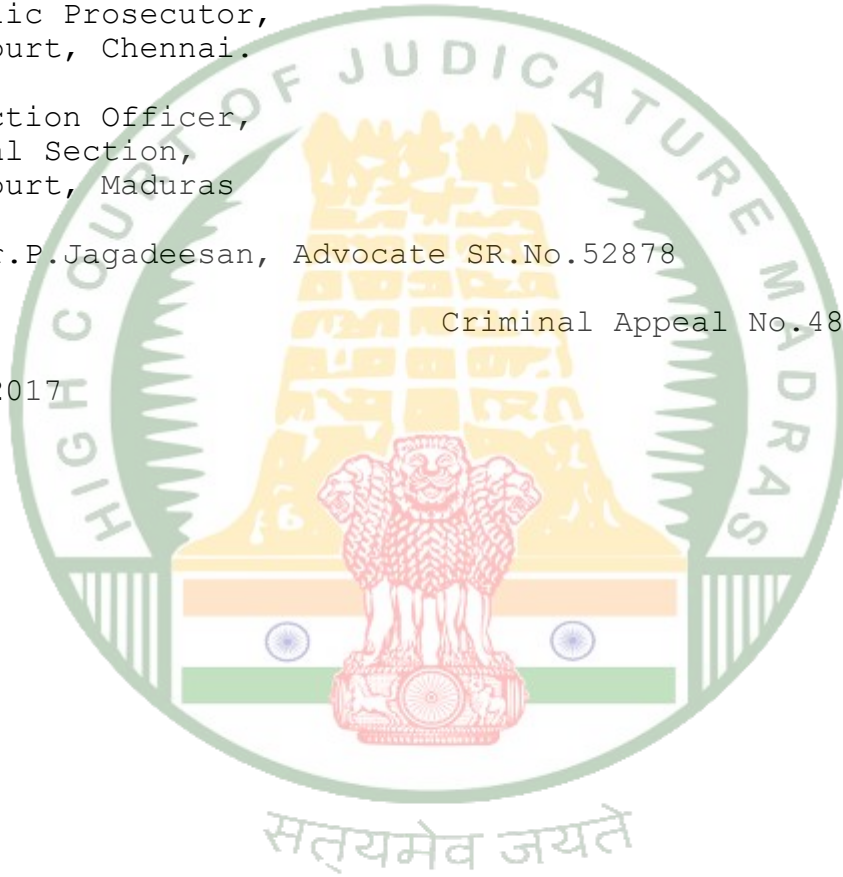
9.The Public Prosecutor,
High Court, Chennai.

10.The Section Officer,
Criminal Section,
High Court, Maduras

+1cc to Mr.P.Jagadeesan, Advocate SR.No.52878

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sm:28.11.2017



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