

BAIL SLIP
CRL A.5564 OF 2008

The appellant/Accused namely Natarajan male S/o. Kandaswamy @ Nagesh war directed to be released on bail by the order of this court dated 28.10.2009 and made in MP.1/09 in CRL A 564/2008 and also be order dated 24.02.2015 in MP.No.1 of 2015 in Crl A.564 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.564 of 2008

K.Natarajan ... Appellant/Accused

Vs

State rep. By
Deputy Superintendent of police,
Omalar,
Taramangalam Police Station,
Crime No.378/2003 ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and the order passed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.254 of 2006 dated 05.11.2007 and acquit the appellant.

For Appellant : Mr. Samuel Raja Pandian

For Respondent : Mr.C.Iyapparaj,
Additional Public Prosecutor.

JUDGEMENT

The appellant is A1 in S.C.No.254 of 2006 on the file of the learned Sessions Judge, Mahila Court, Salem. Totally, there are five accused. All the accused stood charged for an offence under Section 498-A IPC , A1 also stood charged for the offences under sections 306 and 304-B IPC, and A2 to A5 charged for the offences under Sections 306 r/w.109 IPC. The trial Court, by judgment, dated 05.11.2007, convicted the appellant/A1 under Section 498-A IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1000/-, in

default, to undergo rigorous imprisonment for 3 months and convicted him under Section 304-B IPC and sentenced him to undergo rigorous imprisonment for 10 years and convicted him under Section 306 IPC and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 3 months and the trial Court ordered the sentences to run concurrently. The trial Court acquitted the other accused from all the charges. Challenging the said conviction and sentence, the appellant/A1, is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Poongodi, is the daughter of P.Ws.1 ad 2. The appellant is her husband. The marriage between the deceased and the appellant took place on 27.06.2002. At the time of marriage, P.Ws.1 and 2 had given sufficient dowry. After marriage, the appellant harassed the deceased demanding dowry. In the meantime, the deceased had given birth to a child, and the appellant and his family members continued to harass the deceased demanding dowry. On 22.08.2003, sister of P.W.1 informed him that the deceased was found missing from her matrimonial house, immediately, they went to the appellant's house and questioned the appellant, and he informed them that the deceased went out from the house in the morning and not returned, so P.W.1 and others searched for her. On the next day morning, the body of the deceased was found floating in a nearby well. Thereafter, they have given a complaint before the respondent police.

3. P.W.10, Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime No.378 of 2003 under Section 174(3) Cr.P.C, and he has sent the First Information Report (Ex.P.7) to his higher officials and the Revenue Divisional Officer. P.W.15, Deputy Superintendent of Police, on receipt of the First Information Report, commenced investigation, proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2), and drew a rough sketch (Ex.P.11), in the presence of P.W.7 and another witness. In the meantime, P.W.9, Revenue Divisional Officer, Mettur, conducted inquest on the dead body of the deceased and prepared an inquest report (Ex.P.5) and he also conducted enquiry and filed a report (Ex.P.6). P.W.15, based on the investigation, altered the First Information Report into Section 304-B IPC and sent the alteration report (Ex.P.12) to the concerned Judicial Magistrate Court and arrested the accused.

4. P.W.12, Doctor, working in the Mohan Kumara Mangalam Medical college Government Hospital, Salem, conducted postmortem/autopsy on the dead body of the deceased and found the following injuries :

" There was no evidence of any external or internal injuries seen anywhere in the body.
Signs & Decomposition : Scalp hair easily pluckable. Face bloated and greenish black in colour. Eye balls soft and bulging. Maggots found crawling all over the body. Breasts and abdomen distended and abdomen found greenish black skin found peeling in large patches all over the body. Tongue found protruded and bitten and protruded part black and dry. Teeth and Nails intact. "

Ex.P.12 is the Postmortem certificate, and he was of the opinion that she appears to have died of asphyxia due to drowning. Thereafter, P.W.15 examined the Doctor and other witnesses and after completion of investigation, he filed the final report.

5. 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, as many as 15 witnesses were examined and 13 documents were exhibited, besides 3 Material Objects.

6. Out of the witnesses examined, P.W.1 is the father of the deceased. According to him, the marriage between the appellant and the deceased took place on 27.06.2002. At the time of marriage, he has given sufficient dowry and after marriage, the appellant and his family members demanded dowry and harassed the deceased, after child birth also they have demanded dowry. Then on 22.08.2003, they got information that the deceased was found missing and immediately they rushed to the appellant's house and enquired him and accused told them that she was missing from the morning. On the next day morning, they have found the body of the deceased floating in a well, then, they lodged a complaint.

7. P.W.2 is the mother of the deceased. She has also spoken about the dowry demand. P.W.3 is closely related to P.Ws.1 and 2. According to her, the deceased informed her that the appellant asked her Rs.10,000/-, and the appellant also came to her house and demanded dowry. P.W.4 is running a Tea shop in the village and he has spoken about the body floating in the well. P.Ws.4, 5 and 6 also spoken of floating the deceased body in a nearby well. P.W.7 is a witness to the Observation Mahazar. P.W.8, Judicial Magistrate No.I, Mettur, recorded the statement of the witnesses under Section 164 Cr.P.C. P.W.9, Revenue Divisional Officer, conducted inquest on the dead body

of the deceased and also conducted an enquiry after the death of the deceased. P.W.10 is the Sub-Inspector of Police, who registered the complaint. P.W.11, Head Clerk, sent the material objects for examination to the Forensic Lab. P.W.12, Doctor, conducted autopsy on the dead body of the deceased and had given a postmortem report. P.W.13, Head constable, identified the dead body of the deceased for postmortem. P.W.15, Head Constable, submitted the alteration report to the Judicial Magistrate Court. P.W.15, Deputy Superintendent of Police, the Investigation Officer, has spoken about the investigation done by him and filing of final report in this case.

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

9. Having considered all the above materials, the trial Court convicted the appellant/A1 as stated in the first paragraph of this judgment. Challenging the same, the appellant/A1 is before this Court with this Criminal Appeal.

10. I have heard Mr.S.Samuel Raja Pandian, learned counsel appearing for the appellant and Mr. C.Iyyapparaj, learned Additional Public Prosecutor, appearing for the State and I have perused the records carefully.

11. The learned counsel appearing for the appellant contended that P.Ws.1,2, and 3, are the parents and close relatives of the deceased. Even according to their evidence, there is no material to show that soon before the death of the deceased, she was subjected to dowry harassment. Even though, P.W.1 had stated in her evidence that the dowry demand was prior to the child birth and after the birth of the child, the relationship between them was cordial, and in the cross examination, he has admitted that the appellant and his family did not demand any dowry. As per P.W.2 evidence, the dowry demand has been made only in the year 2002, and P.W.3's evidence also only says that immediately after marriage, the appellant and other accused have demanded dowry from the deceased, from their evidence absolutely there is no material to establish that soon before the death of the deceased, there was a dowry demand. Apart from that absolutely there is no evidence to show that the appellant has abetted the deceased to commit suicide. The Court below erroneously convicted the appellant under sections 304-B as well as under Section 306 IPC, which is not permissible under law. The learned counsel further submitted that even as per the evidence of P.W.1, immediately after the missing of the deceased, they have given a complaint before the police, but the

complaint has been suppressed by the prosecution. The learned counsel further submitted that at any rate, the petitioner cannot be convicted under Section 304-B as well 306 IPC. The conviction of the appellant cannot be sustained based on the interested testimony of P.Ws.1, 2 in absence of any independent witness to corroborate their evidence.

12. Per contra the learned Additional Public Prosecutor would contend that P.W.1 is the father of the deceased and he has categorically stated that there was a consistent demand of dowry from the deceased. Even after the child birth, they have harassed the deceased. Apart from that, the conduct of the appellant is also suspectable even from the morning the deceased was found missing, but they have not taken any steps to search for her and they have kept quite, on the next day morning the body was found in the well, which also creates a strong suspicion against the appellant and the prosecution also clearly proved from the evidence of P.Ws.1,2 and 3 that soon before the death the deceased was subjected to harassment and due to the same she committed suicide, hence the appellant is liable to be convicted under Section 304-B IPC and the learned Additional Public Prosecutor contended that in view of Section 113-A of Evidence Act, it shall be presumed that it is only the appellant had abetted the deceased to commit suicide, hence, he is liable to be punished under Section 306 IPC alone.

13. I have considered the above submissions and perused the materials available on record carefully.

14. The appellant has been convicted for an offence under Section 304-B and 306 IPC. Firstly we have to see whether the prosecution has proved the offence under Section 304-B IPC.

15. To bring home 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.

16. 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 and demand of dowry soon before her death.

17. 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. 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.

18. 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"

19. Keeping the above principles laid down by the Hon'ble Supreme Court in mind, I have to consider the evidence of P.Ws.1, 2 and 3 and find out whether the ingredients of Section 304-B IPC have been proved by the prosecution. Even though the first two ingredients has been established by the prosecution, so far as the third and fourth ingredients are concerned, P.W.1, the father of the deceased only stated that at the time of marriage, they have given 3 sovereign of gold, admittedly, after marriage, during the first Deepawali festival, they did not give any gold to them instead they demanded some money for their personal expenses. Thereafter, they have demanded Rs.10,000/- and also 3 sovereigns of gold. Then, the deceased gave birth to a child and she was in the parental house for 5 months. Then, the accused took her to the matrimonial house for a festival, and thereafter they had sent the deceased with the child to her parental house, and at that time, they did not demand any dowry

and they simply told them that whatever they want to give for the child they can do, nearly for 10 days, there is no information from the deceased and only on 22.08.2003, he was informed that the deceased was found missing and on the next day, the body of the deceased was floating in the well.

20. P.W.2, the mother has also stated about the demand immediately after the marriage and absolutely, there is no evidence that soon before the death of the deceased, the appellant has demanded any dowry. P.W.3 is closely related to P.Ws.1 and 2 and she had stated that the accused has demanded some money from her immediately after the marriage. Apart from that absolutely, there is no material available on record to show that there is a demand of dowry and harassment soon before the death of the deceased. All the above witnesses only spoke about the demand of dowry immediately after the marriage and after the child birth, absolutely, there is no evidence to show that the appellant has demanded any dowry, P.W.1 also has categorically admitted the same in the chief examination. In the above circumstance, there is no material available on record to show that soon before the death of the deceased, the appellant had harassed the deceased demanding dowry, and there is a long gap between the death of the deceased and demand of dowry. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charge under Section 304-B IPC.

21. That apart, now this Court has to consider whether the Act of the accused would amount to abetment leading the deceased for committing suicide. Section 306 IPC prescribed the punishment for abetment of suicide and reads as follows:

"If any person commit suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The basic ingredients of this provision are the suicidal death and abetment thereof. Section 107 IPC defines "abetment" and reads as follows:-

" A person abets the doing of a thing, who-
First- Instigates any person to do that thing;
or Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing"

To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. To bring home an offence under Section 306 IPC, the prosecution has to establish that the person has committed suicide and the said suicide has been abetted by the accused, and the prosecution should also prove that the accused has a clear mensrea to commit the offence and that there ought to be an active or direct act leading the deceased to commit suicide.

22. The Hon'ble Supreme Court of India in a case reported in (2017) 1 Supreme Court Cases 433 (Gurcharan Singh /vs/ State of Punjab) has held as follows:-

"21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualise the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide. "

In an another case reported in 2010 (12) SCC 190 (S.S.CHHEENA / VS/ VIJAY KUMAR MAHAJAN AND ANOTHER) , it is held as follows:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or

direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

23. In a case reported in 2002(5) SCC 371 (Sanju vs. State of M.P.) the Hon'ble Supreme Court has held as follows:

"Even if we accept the prosecution story that the appellant did tell the deceased "to go and die", that itself does not constitute the ingredient of "instigation". The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mensrea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or on the spur of the moment cannot be taken to be uttered with mensrea. It is in a fit of anger and emotion."

Keeping the above principle in mind, I have considered the evidence available on record, and I find there is no material to establish that the appellant has abetted the deceased to commit suicide. Hence, the prosecution has failed to prove that the deceased has committed suicide due to the abetment of the accused. Hence, the accused are entitled for acquittal.

24. So far as the charge under Section 498-A IPC is concerned, there is material available on record to show that the appellant demanded dowry immediately after the marriage. P.Ws.1, 2 and 3 consistently stated that the appellant has demanded Rs.10,000/- cash and 3 sovereigns of gold from them. In the above circumstances, I am of the considered view that the prosecution has proved that there is a demand of dowry and the appellant harassed the deceased by demanding dowry and hence, he is liable to be convicted under Section 498-A IPC.

25. So far as the quantum of sentence is concerned, the trial Court convicted the appellant under Section 498-A IPC to undergo rigorous imprisonment for 3 years and also to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 3 months. The learned counsel appearing for the appellant submitted that already the appellant was in jail for nearly 2 years and 3 months.

26. Considering the fact that the appellant is a poor man and he has no bad antecedent and he has been in jail for more than 2 years and 3 months and considering all those mitigating circumstances, the sentence is modified, and the appellant is sentenced to undergo the period already undergone and also to pay a fine of Rs.1000/-., in default to undergo rigorous imprisonment for 4 weeks.

27. In the result, the Criminal Appeal is partly allowed, the conviction imposed on the appellant for the offence under Sections 498-A I.P.C. is confirmed, and the sentence is modified to that of the period already undergone and to pay the fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 4 weeks. The conviction and sentence imposed on the appellant under Sections 304-B and 306 IPC are set aside and he is acquitted from the said charges. Fine amount in respect of offence under Section 306 IPC, if any, paid shall be refunded to the appellant.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Judicial Magistrate, omalur
2. the Chief Judicial Magistrate, salem.
3. the Deputy Superintendent of Police, Omalur,
Taramaugalam police station.
4. The Sessions Judge, सत्यमेव जयते
Mahila Court, salem.
5. The Superintendent, Central Prison, Salem.
- 6.The Public Prosecutor,
High Court, Madras.

Copy to
The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

CrI.A.No.564 of 2008

VG II(CO)
TR(18/04/2018)