

CRL A 597 OF 2008
BAIL SLIP

The appellant/Accused namely Saravanan s/o. Durairaj, aged 24 years was directed to be released on bail vide order of court dated 14.08.2008 made in MP No.1 of 2008 in CRL A No.597 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.597 of 2008

Saravanan
S/o.Durairaj

... Appellant/Accused

Vs.

State by
Assistant Commissioner of Police,
Puzhal Police Station,
Chennai.

Crime No.199 of 2007

... Respondent/Complainant

Criminal Appeal preferred under Section 374 (2) of Cr.P.C against the judgment of learned Additional District and Sessions Judge, Fast Track Court III, Thiruvallur, passed in S.C.No.209 of 2007 on 31.07.2008.

For Appellant : Mr.S.Xavier Felix

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

J U D G M E N T
This appeal arises against the judgment of learned Additional District and Sessions Judge, Fast Track Court III, Thiruvallur, passed in S.C.No.209 of 2007 on 31.07.2008.

2. Prosecution case is that the marriage between appellant/accused and deceased took place on 08.03.2007. The accusation against appellant/accused is that he assaulted the deceased demanding an autorickshaw by way of dowry owing to which the deceased committed suicide by hanging on 16.04.2007.

PW-1, father of deceased, preferred Ex.P1, complaint, to PW-8, Sub-Inspector of Police, Puzhal Police Station. PW-8 registered a case in Crime No.199 of 2007 on the file of respondent u/s.174 Cr.P.C. and forwarded the same to Assistant Commissioner of Police. Printed First Information Report is Ex.P4. PW-9, Revenue Divisional Officer, on receipt of complaint, visited the place of occurrence on 16.04.2007 and examined Pws.1, 3, 4, 5, 6 and others and recorded their statements. PW-9, on 18.06.2007, filed Ex.P5, inquest report, informing that there was demand of dowry by appellant/accused. PW-10, Head Constable, took the body of the deceased to Stanley Government Hospital towards conduct of postmortem and on completion thereof, he handed over the body of deceased to PW-1, her father. Ex.P2 is the Postmortem Certificate. PW-11, Sub-Inspector of Police, Puzhal Police Station, took up further investigation in the case. PW-11 prepared Ex.P3, Observation Mahazar and Ex.P6, Rough Sketch in the presence of PW-6 and another. PW-11 examined Pws.1, 3, 4, 5, 6 and another and recorded their statements. PW-11, on receipt of report from the Revenue Divisional Officer on 29.06.2007 informing that the deceased had committed suicide owing to demand of dowry by appellant/accused, altered the First Information Report to reflect offences u/s.498-A and 304-B IPC. The Alteration Report is Ex.P7. PW-11 arrested the accused on 02.07.2007 and sent him to judicial custody. PW-11 examined PW-2, Doctor, who conducted postmortem and recorded his statement. PW-11 examined PW-10, Head Constable and recorded his statement. Ex.P8 is the Viscera Report. Ex.P5 is the inquest report. On completion of investigation and filing of charge sheet informing commission of offences u/s.498-A, 306 and 304 IPC, the case, upon committal, was tried in S.C.No.209 of 2007 on the file of learned Additional District and Sessions Judge, Fast Track Court III, Thiruvallur.

3. Before trial Court, prosecution examined 11 witnesses and marked 8 exhibits. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 31.07.2008, convicted accused for offences u/s.498-A, 304-B and 306 IPC and sentenced him to 2 years R.I. and fine of Rs.3,000/- i/d 3 months S.I. for offence u/s.498-A IPC, 8 years R.I. and fine of Rs.10,000/- i/d 2 years S.I. for offence u/s.304-B IPC and 7 years R.I. and fine of Rs.5,000/- i/d 1½ years S.I. for offence u/s.306 IPC.

4. Heard learned counsel for appellant and learned Additional Public Prosecutor for State. Perused the materials on record.

5. Learned counsel for appellant submitted that it was the evidence of PW-1, father of deceased, that accused had not made any demand of dowry earlier. He has admitted to not informing anybody of any demand for dowry made by appellant/accused or calling for reconciliation through the good officers of others owing thereto. PW-1 has also deposed that the police had examined him. He had admitted to an amicable relationship with the accused and of frequently visiting deceased and appellant/accused. Learned counsel further submitted that the evidence of PW-3, mother of deceased and PW-4, brother of deceased, revealed that the complaint tendered by PW-4 was recorded by police and such would be the first complaint. Learned counsel submitted that in this context the evidence of PW-1 that it was PW-4, who had first been informed of the death of the deceased became relevant. PW-3, mother of deceased, like PW-1, had deposed to a congenial relationship between appellant/accused and deceased and their frequent visits to her house. Learned counsel submitted that PW-5, sister of deceased sought to implicate the appellant/accused and through cross-examination it had been established that she had made several improvements while being examined in Court and contended that such evidence did not merit consideration since PW-3 had admitted to a strained relationship between the parental home and PW-5 since she had married on her own accord and converted to Islam. All that Ex.P5, inquest report of PW-9, Revenue Divisional Officer, revealed was that appellant/accused had angrily expressed unhappiness over a shirt gifted to him by the aunt of deceased when the deceased and appellant/accused had gone over to such aunt's house. Learned counsel contended that in the circumstances, neither was there any evidence in support of the charge of commission of cruelty, abatement of suicide or dowry death, particularly, when there was no evidence of the deceased having been subjected to any harassment soon before death.

6. Heard learned Additional Public Prosecutor on the above submissions and perused the records.

7. A faint attempt of making out a case of dowry demand through complaint in Ex.P.1 and the evidence of P.W.1- father of the deceased, P.W.3- mother of the deceased and P.Ws.4 and 5 - brother and sister of the deceased has been undone through the admission of P.Ws.1 and 3, father and mother of the deceased that they had a congenial relationship with the accused and had visited them several times and that no demand of dowry had been made by the accused. That there was no such demand is borne out also by the fact that they as also their son P.W.4 have admitted of not having called for any meeting of elders/panchayatdars to sort out issues as apparently there were not any. P.W.5- sister of the deceased admittedly had been estranged owing to her

having entered upon marriage of her own accord and against the wishes of her family members. She has also admitted to the accused and deceased not having visited her at any point of time. The evidence of P.W.5 can hardly be considered credit worthy. Although, P.W.9 - R.D.O has filed Ex.P.5 report informing the case to be one of dowry harassment, the evidence of P.Ws.1, 3 and 4 immediate family members is to the effect that they had not so informed him. Doubt does arise on whether Ex.P.1 qualifies as the First Information Report, since it is the evidence of both P.Ws.3 and 4 that the statement of P.W.4 was recorded by the Police at the Police Station. It is the evidence of P.W.4 that his father/P.W.1's complaint in Ex.P.1 was given thereafter.

8. Prosecution case is that acts of harassment on demands of dowry led to the death of the deceased. Sec.304(B) IPC makes punishable dowry death with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. It is the same acts of harassment on demands of dowry that is informed by the prosecution as abetment of suicide. Abetment of suicide is punishable u/s.306 IPC with imprisonment up to a period of 10 years as also fine. Sec. 71 IPC read as follows:

'71. Limit of punishment of offence made up of several offences:- Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.'

On proper understanding, prosecution both for offences u/s.304-B and 306 IPC on allegations of uniform facts, would not lie. In the present case, the above observations apply also in respect of alleged offence u/s.498-A IPC. In the attendant facts and circumstances, it is to be held that prosecution has failed to prove its case.

The Criminal Appeal shall stand allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court III, Thiruvallur, passed in S.C.No.209 of 2007 on 31.07.2008, shall stand set aside. Appellant shall stand acquitted of the charges against him. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm/kpr

To

1.The Additional District and Sessions Judge,
Fast Track Court III,
Thiruvallur.

2.The Assistant Commissioner of Police,
Puzhal Police Station,
Chennai.

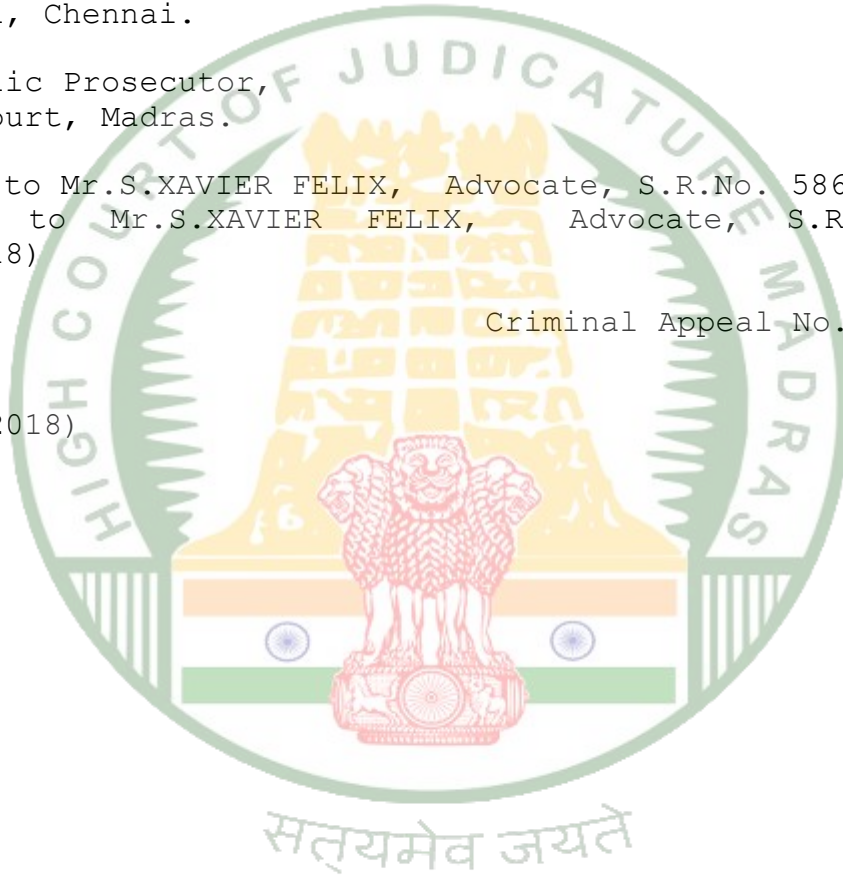
3. The Superintendent,
Central prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.XAVIER FELIX, Advocate, S.R.No. 58612
+1cc to Mr.S.XAVIER FELIX, Advocate, S.R.No. 58612
(08/03/2018)

Criminal Appeal No.597 of 2008

GJ(CO)
TR(27/02/2018)



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