

Bail Slip

The Petitioner/Appellant/Accused namely Kulandhaivel, 2. Rajakutty, 3. Rajammal were directed to be released on bail as per order of this Hon'ble Court order dated 03.08.2007 made in CrI.M.P. No 1/2007 in CrI.A No 672/2007 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.672 of 2007

1.Kulandhaivel
2.Rajakutty
3.Rajammal

.... Appellants/Accused 1,2 & 3

vs.

State,by

Deputy Superintendent of Police,
Pennagaram,
Dharmapuri District.

.... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 20.07.2007 made in S.C.No.200 of 2006 on the file of the learned Additional Sessions Judge, Dharmapuri.

For Appellants : Mr.R.Selvakumar

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

JUDGMENT

The appellants in this appeal are the A1 to A3 in Sessions Case No.200 of 2006, on the file of the learned Additional Sessions Judge, Dharmapuri. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1 to A3	U/s.3 and 4 of Dowry Prohibition Act and under Section 304-B IPC.

2. The trial Court, after trial, by Judgment dated 20.07.2007, convicted all the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1 to A3	Under Section 3 of Dowry Prohibition Act. Under Section 4 of Dowry Prohibition Act.	Sentenced to undergo three years rigorous imprisonment and imposed a fine of Rs.1000/- each, in default to undergo six months rigorous imprisonment. Sentenced to undergo one year rigorous imprisonment and imposed a fine of Rs.500/- each, in default to undergo three months rigorous imprisonment.
A-1	U/s.304-B IPC	Sentenced to undergo five years rigorous imprisonment and imposed a fine of Rs.1000/- in default to undergo six months rigorous imprisonment.
A-2 and A-3	U/s.304-B IPC	Sentenced to undergo three years rigorous imprisonment and imposed a fine of Rs.1000/- in default to undergo six months rigorous imprisonment.

All the sentences are ordered to be 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 Rajeswari is the wife of first accused. The second accused is father, and third accused is mother of the first accused. The marriage between the first accused and deceased took place two years prior to the occurrence. At the time of marriage, the deceased parents gave

Rs.50,000/- as dowry and also given gold jewels. Out of the wedlock, they blessed with one female child. Thereafter, the accused demanded 10 sovereigns of gold chain as dowry and harassed the deceased frequently. Three days prior to the occurrence, for a festival, the first accused and deceased came to the house of P.W.1, the father of the deceased and the first accused left the deceased in P.W.1's house and told her that unless she bring a gold chain, she should not retain to his house. Thereafter, P.W.1 sent the deceased along with P.W.2(son of P.W.1 and brother of the deceased) to the house of first accused. On that day also, the first accused beaten the deceased. Hence, P.W.1 along with P.Ws.5 and 6 and other mediators went to the house of first accused and after a mediation they left the deceased in the matrimonial house. On the same day, at about 5.30 p.m., all the accused have beaten the deceased, and caused her death. Thereafter, on receipt of the death news P.W.1 gave complaint[Ex.P1] before the respondent police station.

(ii) P.W.11, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.301 of 2003 for the offence under Section 174 Cr.P.C., prepared first information report [Ex.P10] and sent the same to the Revenue Divisional Officer and copies of the same to the higher officials.

(iii) P.W.14, the Deputy Superintendent 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 an observation mahazar [Ex.P2], a rough sketch [Ex.P11] and recovered a rope [M.O.1]. He examined the witnesses and recorded their statements. Based on the investigation, P.W.14 came to a conclusion that the deceased died due to dowry harassment. Hence, he altered the case under Section 304-B IPC and prepared alteration report [Ex.P12] and sent the same to the Judicial Magistrate Court. On 10.08.2003, P.W.14 arrested the accused and remanded them to the Judicial custody. Then, he handed over the investigation to P.W.16, his successor.

(iv) P.W.15, the Revenue Divisional Officer, Krishnagiri, conducted inquest over the dead body and prepared inquest report [Ex.P14] and he has filed a enquiry report [Ex.P13]. Subsequently, he sent the dead body to the Government Hospital, Palacode, for Postmortem autopsy.

(v) P.Ws.8 and 9, the Civil Surgeons, working in the Government Hospital, Palacode, conducted postmortem autopsy on the dead body of the deceased and they opined that the deceased would appear to have died of asphyxia. They issued Postmortem Certificate,[Ex.P6].

(vi) P.W.16, the another Deputy Superintendent of Police, continued the investigation, recorded the statement of Doctors, who conducted postmortem autopsy and other witnesses and

recorded their statements. After completion of investigation, he laid charge sheet.

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 16 witnesses were examined and 16 documents were exhibited and marked one material object.

5. Out of the said witnesses examined, P.W.1 is the father of the deceased. According to him, at the time of marriage between the first accused and deceased, they have given Rs.50,000/- as cash and gold jewels to the first accused. Thereafter, the first accused demanded 10 sovereigns of gold jewels. Then, for a festival in the Tamil month of Audi, the first accused and the deceased came to his house and the first accused left deceased in P.W.1's house and at that time he told her that unless she bring the gold chain, she will not be permitted enter in to his house. Thereafter, P.W.1 sent the deceased to her matrimonial house with P.W.2.. On that date also, the first accused beaten the deceased. Hence, P.W.1 along with some mediators went to the house of the first accused and there was a mediation, and they left the deceased with A-1, and on the very same day, he received a information that his daughter has died.

6. P.W.2 is the son of P.W.1, and brother of the deceased. He spoke about the dowry demand and harassment made by the first accused. According to him, on the date of occurrence, he was present in the accused house and all the accused beaten the deceased. Thereafter, she died. P.W.3 turned hostile. P.W.4 is a neighbour of A-1. He knows about the accused and P.Ws.1 to 3. He saw the deceased hanging inside the house. P.W.5 is a person known to both the P.W.1's family and accused family and he is an independent witness. According to him, three days prior to the occurrence, the first accused took the deceased to P.W.1's house and left her in their house, at that time the first accused told that unless she bring 10 sovereign of gold chain, she should not come to his house, then there was a mediation between them, on the next day, he came to know the deceased died. P.W.6 is neighbour of P.W.1, he also known the accused. According to him, three days prior to the occurrence, on a Audi month Festival function, the first accused took the deceased to P.W.1's house, and P.W.6 and others conducted mediation between them, thereafter, on the next day, he came to know that the deceased has died. P.W.7 an another independent witness, according to him, there was a dowry demand and the first accused beaten the deceased, he along with others conduct a mediation, at that time the first accused told them that he will not harass his wife, hence they left the deceased in the accused house and before they reached their houses, they got information that the

deceased has committed suicide. He has also witness to the observation mahazar.

7 P.Ws.8 and 9, the Civil Surgeon, working in the Government Hospital, Palacode. According to them, they conducted Postmortem autopsy on the dead body of the deceased and found the following injuries:-

"Body decomposed. Rope mark present in the neck. below chin above thyroid cartilage running oblique behind 1 - 1/2 x 25 cms. Knot mark behind right ear 3 x 3 cms. Thyroid bone intact Lungs congested. Heart channel full congested. Stomach empty intestine. Liver spleen. Bladder empty. No fracture of skull bone.

They are of the opinion that the deceased would appear to have died of asphyxia and result of hanging and they gave postmortem certificate.

8. P.W.10, the Head Clerk, working in the Judicial Magistrate Court, Palacode, received the material objects. P.W.11, the Inspector of Police working in the respondent police station, on receipt of the complaint from P.W.1, registered a case and sent the first information report to the Revenue Divisional Officer and higher officials. P.W.12, a Head Constable, working in the respondent police station. According to him, he submitted the first information report to the Revenue Divisional Officer. P.W.13, Head Constable, working in the respondent police station. According to him, he identified the dead body for postmortem and after postmortem, handed over the dead body to her relatives. P.W.14, the Inspector of Police, working in the respondent police station. He deposed that on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, arrested the accused and remanded them to judicial custody, examined the witnesses and recorded their statements and handed over the investigation to P.W.16, the Deputy Superintendent of Police, Palacode. P.W.15, the Revenue Divisional Officer, conducted inquest on the dead body of the deceased in the presence of panchayators and prepared inquest report Ex.P14. P.W.16, the Deputy superintendent of police working in Pennagaram Circle. He continued the investigation, examined the Doctors, who conducted postmortem autopsy, Revenue Divisional Officer and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

9. 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 did not examined any witness and no document was marked on their side.

10. Having considered all the above, the Trial Court convicted all 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.

11. I have Heard Mr.R.Selvakumar, the learned counsel appearing for the appellants and Mrs.M.F.Shabana, the learned Government Advocate(Crl Side) appearing for the State and perused the materials available on record.

12. In the instant case, there are five witnesses consistently spoke about the demand of dowry and harassment, made by the first accused soon before the death of the deceased. P.W.1 is the father of the deceased. According to him, at the time of marriage of her daughter, he has given a sum of Rs.50,000/- as dowry and gold jewels. Thereafter, the accused demanded 10 sovereigns of gold chain and sent the deceased to her parents house. Three days prior to the occurrence, for a festival, both the first accused and deceased came to P.W.1's house, and the first accused left her alone in the P.W.1's house, warning her that unless she bring the gold chain, she will not be permitted to enter into his house. After three days, P.W.1 sent the deceased along with P.W.2, to the house of the accused and at about 1.15 p.m., the first accused once again beaten the deceased in his house. In the said circumstances, P.W.1 took P.Ws.6 and 7 and other mediators to the house of the first accused for a mediation. In the mediation, the first accused said to have promised that he will not harass the deceased. Hence, P.W.1 and other left the deceased in A-1 house. But, on the very same day at about 5.30 p.m., she committed suicide. P.W.2 is the brother of the deceased and son of P.W.1. He also deposed that after the marriage, all the accused demanded Rs.10,000/- and they given Rs.10,000/- to the first accused three days prior to the occurrence, the first accused and deceased came to his house for a festival and the first accused left her in house asking her to bring gold jewels. Then, on the date of occurrence, he took the deceased to the house of the accused, at that time there was a quarrel, and A-1 beaten the deceased, thereafter, there was a mediation, subsequently on the same day, the deceased died.

13. P.W.5 is an independent witness. He is known to the accused and deceased family. He spoke about the marriage between the first accused and the deceased, and payment of dowry, and subsequent dowry demand made by the first accused. He further deposed that three days prior to the occurrence both the first accused and the deceased came to the house of P.W.1 and the first accused left the deceased in P.W.1's house, at that time he asked her to bring 10 sovereigns of gold chain. P.W.6 is yet another mediator. According to him, on the date of occurrence,

P.W.2 took the deceased to her matrimonial house and there was a quarrel between the first accused and the deceased, the first accused beaten the deceased. Then, P.Ws.1, 2 and 5 and some other persons went to the accused house for a mediation. At that time, the first accused agreed that he will not harass the deceased. But, on the very same day, the deceased committed suicide. P.W.7 is a another mediator conducted mediation. According to him, the first accused demanded dowry and 10 sovereigns of gold chain. All the independent witnesses, namely, P.Ws.5,6 and 7 consistently stated that the first accused alone demanded dowry, harassed and beaten her. As per the evidence of P.W.6, P.W.2 informed him that on the date of occurrence, the first accused alone beaten the deceased, not other accused. From their evidence, it is clear that three days prior to the occurrence, the first accused came to the house of P.W.1 left the deceased, there at that time, he asked her to bring 10 sovereigns of gold chain. Even though, P.Ws.1 and 2 are interested witnesses, their evidence is corroborated by P.Ws.5,6 and 7, the independent witnesses who were also participated in the mediation, and they have consistently deposed that there was a harassment in connection with demand of dowry by the first accused. Hence, this Court find no reason to disbelieve the evidence of evidence of P.Ws.5, 6 and 7. From their evidence, it is clear that soon before the death of deceased, she was subjected to harassment by the first accused in connection with demanding dowry. From the above materials, the prosecution has established that the deceased died within a period of seven years of her marriage and it is an un natural death and soon before her death, she was subjected to harassment by the first accused in connection with demanding of dowry. Hence, in my considered view the prosecution has clearly proved the guilt of the first accused beyond any reasonable doubt and he is liable to be convicted under Section 304(B) IPC.

14. So far as the accused 2 and 3, the father and mother in law of the deceased are concerned, even though P.Ws.1 and 2 stated that the accused 2 and 3 also demanded dowry and harassed deceased. But there is no evidence available to corroborate their evidence, the independent witnesses, namely, P.Ws.5,6 and 7 only stated that the first accused alone had demanded dowry. In the above circumstances, I find no evidence against the second and third accused to show that they have harassed the deceased by demanding dowry. In the absence of any evidence, the appellants 2 and 3 are entitled for acquittal. The Court below without considering the evidence in proper perspective convicted them.

15. In the result, the appeal is partly allowed. The conviction and sentence imposed on the first appellant/first accused in S.C.No.200 of 2006 dated 20.07.2007 on the file of the learned Additional Sessions Judge, Dharmapuri under Section 304(B) IPC is confirmed. The conviction and sentence imposed on

the appellants 2 and 3 are set aside and the appellants 2 and 3 are acquitted from all the charges levelled against them, and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them are ordered to be refunded forthwith. The period undergone by the first appellant should be given set off under Section 428 Cr.P.C. If the first appellant/first accused is not in custody, the trial Court is directed to take appropriate steps to secure him to undergo the rest of the sentence.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The District Munsif cum Judicial Magistrate, Palacode
2. The Chief Judicial Magistrate, Dharmapuri
Krishnagiri(for information)
3. The Superintendent , Central Prison,Vellore.
- 4.The Additional Sessions Judge,
Dharmapuri.
- 5.Deputy Superintendent of Police,
Pennagaram,
Dharmapuri District.
- 6.The Public Prosecutor, सत्यमेव जयते
High Court, Madras.

+1 CC to Mr.R. Selvakumar, advocate sr 5415

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SR(CO)
SP(17/11/2017)