

BAIL SLIP

The Appellants/Accused namely 1.Saravanan S/o.Devendran, 2.Parvathi, W/o.Devendran, were directed to be released on bail as per the order of this court dated 06.11.2007 in Crl.MP.No.1 of 2007 in Crl.A.No.973/2007 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.973 of 2007

1.Saravanan
2.Tmt.Parvathi ...Appellants/Accused

Vs.

State rep. by
Deputy Superintendent of Police,
Authur,
Thalaivasal Police Station,
(Crime No.414 of 2005) ...respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 23.10.2007 passed by the learned Sessions Judge, Magalir Court, Salem in S.C.No.325 of 2006.

For Appellants : Ms.B.Sumana
Legal Aid Counsel

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

JUDGMENT

After several adjournments, on 01.02.2017, the learned counsel appearing for the appellants filed a memo stating that he withdraw his appearance. Hence, Ms.B.Sumana, Advocate was appointed as Legal Aid Counsel for the appellants.

2. The accused 1 and 2, in Sessions Case No.325 of 2006, on the file of the learned Sessions Judge, Magalir Court, Salem, are the appellants herein. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1 and A2	U/s. 498-A and 304-B IPC

The trial Court, after trial, by Judgment dated 29.10.2007, convicted the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1 & A2	U/s. 498-A IPC U/s.304-B IPC	Sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- each in default to undergo three months rigorous imprisonment. Sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default, to undergo three months rigorous imprisonment.

All the sentences are ordered to 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 Lavanya, is the wife of the first accused. A-2 is the mother-in-law of the deceased. The marriage between the first accused and deceased took place two years prior to the occurrence. It was a love marriage. After the marriage, they were living together 6 months happily. Thereafter, the accused demanded dowry from the deceased and harassed her frequently. Then, the deceased came to the house of P.W.1 and informed her about the harassment made by the accused. P.W.1 consoled her and told her that she will give jewels and money after harvest. Ten days prior to the occurrence, the deceased gone to the matrimonial house. Subsequently, on 06.07.2005, she consumed poison and she was taken to the private hospital, where she died. P.W.1, the mother of the deceased after receiving the information, went to the Hospital and saw the dead body of the deceased. Then, she lodged a complaint 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.414 of 2005 for the offence

under Section 174(3) Cr.P.C., prepared first information report Ex.P6 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 Athur Circle, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar [Ex.P3], a rough sketch[Ex.P11] in the presence of witnesses. He examined the witnesses and recorded their statements.

(iv) In the meantime, P.W.10, the Revenue Divisional Officer, Athur, conducted inquest over the dead body in the presence of panchayators and prepared inquest report[Ex.P4] and also submitted enquiry report [Ex.P5], where, he was of the opinion that the death was not due to harassment and dowry demand since the first accused/husband had illicit intimacy with another women, being upset over the same, she committed suicide.

(v) P.W.13, the Doctor, working in the Government Mohan Kumaramangalam Medical College Hospital, Salem, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

Injuries:

No antemortem injuries seen anywhere in the body. Finger nail beds found bluish. Heart; Chambers and valves normal. Cavities contained fluid blood. Coronary vessels patent. Great vessels Normal. Lungs both on c/s congested. Hyoid bone intact. Stomach contained 30 ml of greyish brown coloured fluid with smell seeds present with vegetable odour. Mucosa Small Intestine greyish brown. Bladder empty.

He is of the opinion that the deceased died of effects of the poisoning the nature of which could not be made out, and he issued postmortem certificate Ex.P9.

(vi) Then, P.W.14, examined the RDO and Doctor who conducted postmortem autopsy and other witnesses and recorded their statements and based on the investigation, altered the charge under Section 304-B IPC, prepared alteration report, sent the same to the Judicial Magistrate Court. Then, on 09.07.2005 at about 6.30 a.m., he arrested the accused and remanded them to the Judicial custody and after recording the statement of other witnesses, 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 14 witnesses were examined and exhibited 12 documents and no material object was marked.

5. Out of the said witnesses examined, P.W.1 is the mother of the deceased. According to her, the marriage between the first accused and deceased took place two years prior to the occurrence, it was a love marriage. After the marriage, they were happily living together for 6 months. Thereafter, the accused demanded dowry from the deceased and harassed her frequently. Then, the deceased came to the house of P.W.1 and informed her about the harassment made by the accused. P.W.1 compromised her and told her that she will give jewels and money after harvesting tobacco. At that time, the deceased told her that the first accused had illicit intimacy with another lady and staying in her house. 5 days prior to the occurrence, they took her to the matrimonial house and thereafter she committed suicide. P.W.2 is the sister of the deceased. According to her, the accused demanded dowry from the deceased, her mother P.W.1 informed her that she will give jewels and money after harvest. Thereafter, the accused sent the deceased to the house of P.W.1, and 10 days prior to the occurrence, after compromise P.W.1 sent her to the matrimonial house. But in her cross examination she stated that she did not know anything about the demand of dowry directly. P.W.3 is the brother of the deceased. According to him, the first accused demanded dowry from her sister and 10 days prior to the occurrence, the deceased was taken to her matrimonial house and he has also not aware about the dowry demand. P.W.4 is a neighbouring land owner of P.W.1. He is an independent witness and he also said that the deceased told him that the accused demanded dowry. P.Ws.5 and 6 are the witness to the observation mahazar. P.W.7 is the neighbour of the accused. His evidence has no substance. P.W.8 is the sister-in-law of the first accused. She spoke about the death of the deceased by consuming poison and in her cross examination she has stated that at the time of marriage between the first accused and deceased, the deceased did not bring any dowry and no demand was made by the first accused. P.W.9, the Doctor running a private clinic. He has given treatment to the deceased. According to him, on 07.07.2005 at about 5.30 a.m., the deceased came to his Hospital and within 15 minutes she died. P.W.10 is the Revenue Divisional Officer, Athur. On receipt of the first information report, conducted inquest over the dead body, prepared inquest report, submitted the enquiry report and he is of the opinion that the death was not due to dowry demand. P.W.11, the Sub Inspector of Police attached to the respondent police station. On receipt of the complaint from P.W.1, registered a case, prepared a first information report, sent the same to the Revenue Divisional Officer and copies of the same to the higher officials. P.W.12 is the Head Clerk working in the Judicial Magistrate Court No.II, Athur. He received the forensic lab report [Ex.P7]. P.W.13, the Doctor working in the Government Mohan Kumaramangalam Medical College Hospital, Salem. According to him, he conducted Postmortem autopsy on the dead body of the deceased and issued Postmortem Certificate. P.W.14 is the Deputy

Superintendent of Police working in Athur Circle. According to him, on receipt of the first information report, commenced investigation, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements, arrested the accused, remanded them to judicial custody and after completion of investigation, he laid charge sheet.

6. 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 examine any witness nor marked any documents.

7. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the second paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court with this appeal.

8. I have heard Ms.B.Sumana, the learned counsel appearing for the appellants and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

9. The learned counsel appearing for the appellants would contend that absolutely there is no evidence to show that soon before the death of the deceased, the accused demanded dowry and harassed the deceased, and there is no evidence that the appellants had abetted the deceased to commit suicide. Even P.Ws.1 to 3 did not said any thing about the harassment and dowry demand soon before the death of the deceased. P.W.4 is only neighbouring land owner and he is also an interested witnesses. Only the interested witnesses alone spoke about the demand of dowry and there is no independent evidence to corroborate the evidence of interested witnesses. Apart from that there is a delay in filing the first information report and the delay is not properly explained by the prosecution. P.W.10, Revenue Divisional Officer, conducted inquest over the dead body and submitted his report, wherein he was of the opinion that the death is not due to dowry demand, since the first accused is having illicit intimacy with another lady and feeling insecure, she committed suicide. Therefore, the learned counsel appearing for the appellants contended that the prosecution has failed to prove the charges levelled against the appellants. Hence, she sought for allowing this appeal.

10. Per contra, the learned Government Advocate(Crl. Side) appearing for the state would contend that it is the consistent evidence of P.Ws.1 to 3 that the first accused demanded dowry frequently and harassed her, due to the same, the deceased committed suicide. P.W.4 is the neighbouring land owner of P.W.1. He is an independent witness spoke about the demand of dowry made by the accused. Hence, from the evidence of P.Ws.1 to 3, the prosecution has proved the guilt of the accused and

there is no reason to disbelieve the evidence of P.Ws.1 to 3. Hence, she prays for dismissal of this appeal.

11. I have carefully considered the rival submissions.

12. P.W.1 is the mother of the deceased. In her evidence, she stated that after the marriage, both the first accused and deceased living together happily for 6 months, thereafter A-1 along with deceased came to her house and A-1 demanded 15 sovereigns of gold jewels. P.W.1 promised him that she will give jewels and money after the harvest. Then, five days prior to the occurrence, the deceased went to her matrimonial house, thereafter, she has committed suicide. P.W.2 is the sister of the deceased. In her evidence, has stated that after six months of the marriage, the first accused started harassing the deceased demanding dowry and the deceased informed the same to her mother P.W.1. 10 days prior to the occurrence, the deceased came to the house of P.W.1 and stayed there and then she was sent her to the matrimonial home. But, in her cross examination she has stated that she does not know about the dowry demand directly. P.W.3 is the brother of the deceased. He has also stated that after six months of the marriage, the first accused demanded dowry from the deceased and 10 days prior to the occurrence, deceased came to his house and stayed there. Then, she was taken to the matrimonial house. Thereafter, she committed suicide. P.W.4 is the neighbouring land owner of P.W.1. He has also stated that the deceased informed him that the first accused demanding dowry from her. From the evidence of P.Ws.1 to 4, it has been established by the prosecution that after six months of the marriage, the accused demanded dowry.

13. The next question to be decided is whether there is any material available to show that soon before the death of the deceased she was subjected to cruelty or harassment by the accused and they have abetted the deceased to commit suicide. To establish the guilt of the accused under Section 304-B, the deceased must have been soon before the death subjected to cruelty or harassment for or in connection with the demand of dowry. There must be a proximate and live link between the effects of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and it has become stale enough not to disturb mental equilibrium of the women concerned, it would be of no consequence. Then, the accused cannot be convicted under Section 304-B IPC. But, from the evidence of P.Ws.1 to 4, absolutely there is no material evidence to show that soon before the death of the deceased she was subjected to cruelty or harassment by the accused.

14. The Hon'ble Supreme Court Judgment in MAJOR SINGH AND ANOTHER Vs. STATE OF PUNJAB reported in 2015(5) SCC 201, has held as follows:-

"15. To attract conviction under [Section 304-B](#) IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of [Hira Lal & Ors. vs. State \(Govt. of NCT\) Delhi](#), (2003) 8 SCC 80, in paragraph (9) it was observed as under:- "9. A conjoint reading of [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [Section 113-B](#) of the Evidence Act. The expression "soon before her death" used in the substantive [Section 304-B](#) IPC and [Section 113-B](#) of the Evidence [pic]Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in [Section 114](#) Illustration (a) of the [Evidence Act](#) is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period

which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

From the available evidence there is no material available to show that the deceased was subjected to cruelty soon before the death and there is no proximate and live link between the effects of cruelty based on dowry demand and the death of the deceased. Hence, the prosecution has failed to prove the offence under Section 304-B IPC.

15. So far as the offence under Section 498-A IPC is concerned, P.Ws.1 to 3 categorically stated that A-1 demanded 15 sovereigns of gold jewels and money from the deceased. P.W.1 promised the first accused, and told him that she will give money and gold jewels after harvest. P.W.4 is the neighbouring land owner. He is an independent witness also spoke about the dowry demand made by the first accused. According to him, the deceased informed him that the first accused demanded gold jewels and money as dowry. But, there was no evidence to show that the second accused demanded dowry from the deceased. In the above circumstances, from the evidence of P.Ws.1 to 4, the prosecution has proved that the first accused demanded dowry from the deceased. However, there was no evidence available to establish that the second accused also demanded dowry from the deceased.

16. So far as the delay in filing first information report is concerned, P.W.1 has clearly stated that after hearing the death of the deceased, immediately she went to the Hospital, saw the dead body of the deceased and the body was taken to the accused house and thereafter she has given complaint. Hence, the prosecution has clearly explained that since P.W.1 is being the mother of the deceased, after recovery from the shock, went to the police station on the next day and gave complaint, and the prosecution has clearly explained the delay. In the above circumstances, I am of the considered view that the prosecution failed to prove the offence under Section 304-B IPC. However,

the prosecution has clearly establish the demand of dowry by A-1.

17. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellants/accused 1 and 2 for the offence under Section 304-B IPC in S.C.No.325 of 2006 dated 23.10.2007 on the file of the learned Sessions Judge, Mahalir Court, Salem is set aside, and they are acquitted from the charges. The conviction imposed on the first appellant/first accused for the offence under Section 498-A IPC, is confirmed, and the sentence is modified to undergo two years rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo three months rigorous imprisonment. The conviction and sentence imposed on the second appellant/second accused under Section 498-A IPC is set aside and the second appellant/second accused is acquitted from all the charges levelled against her and bail bond, if any, executed by her shall stand cancelled and the fine amount paid by her is ordered to be refunded forthwith.

17. While parting with the case, this Court appreciates the services rendered my Ms.B.Sumana, who appeared on behalf of the appellants/accused as Legal Aid Counsel. The Tamil Nadu State Legal Aid Services Authority is directed to pay her necessary remuneration as per rule.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahalir Neethimandram,
Salem.

2.The Deputy Superintendent of Police,
Authur,Thalaivasal Police Station,

3.The Public Prosecutor,
High Court,
Madras.

4. The District Collector/District Magistrate
Salem

5.The Director General of Police
Tamil Nadu, Mylapore Chennai-4

6.The Superintendent of Central Prison,
Coimbatore

7.The Superintendent Special Prison for Women,
Vellore

8.The Judicial Magistrate No.II
Aathur

9.Do Thro The Chief Judicial Magistrate
Salem

10.The Member Secretary
Tamil Nadu State Legal Aid Services
Authority Chennai

11. The Principal Sessions Judge,
Salem

copy to

The Section Officer, Crl.Sec Records
High Court, Madras

+1 cc to M/s.B.Sumana Advocate sr 9232

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