

Bail Slip

The Appellant/Accused, namely Ravi S/o.Kannan in SC.NO.135/2008 on the file of the sessions Judge, Mahila court, Cuddalore dated 22.07.2008 was directed to be released on bail in CRL MP.NO.2/08 DATED 03.11.2008 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI
Crl.A.No.569 of 2008

Ravi

... Appellant/Accused

Vs

State Represented by the
Deputy Superintendent of Police,
Neyveli Thermal Police Station,
Cuddalore District.
Crime No: 256/20017

... Respondent/Complainant

PRAYER: Criminal Appeal filed under section 374(2) of the Criminal Procedure Code, to set aside the findings, judgement of conviction and sentence passed by the learned Sessions Judge (Mahila Court) Cuddalore dated 22.07.2008 in S.C.No.135/2008 holding him guilty of offences U/s 304(B) IPC and sentenced him to undergo 7 years RI and U/s 498A IPC and sentenced him to undergo 3 years RI and also to pay fine of Rs.5,000/- and in default to undergo 3 months RI.

For Appellant : Mr.M.C.Swamy

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.side)

J U D G M E N T

This criminal appeal has been filed by the appellant/sole accused against the Judgment of conviction and sentence passed by the learned Sessions Judge (Mahila Court), Cuddalore dated 22.07.2008 made in S.C.No.135/2008.

2.The brief facts of the prosecution case are as follows:-

P.W.1 is the adoptive father of the deceased. P.W.2 is the mother of the deceased. P.W.3 is the brother of the deceased. The marriage between the appellant and deceased was arranged by their parents. Before marriage, there was

betrothal on 13.08.2007. At that time, the appellant demanded 20 sovereigns of gold jewels. However, P.W.1 agreed to give 10 sovereigns of jewels and instead of motorcycle P.W.1 was willing to give Rs.30,000/- as cash. After one month of betrothal, the marriage was solemnised at Thiruvanthipuram Devanathaswami Temple. At the time of marriage, P.W.1 gave 8 sovereigns of jewels to his daughter and two sovereigns of jewels to the accused and gave a sum of Rs.20,000/- for purchasing motor cycle and agreed to give Rs.10,000/- within a month. After the marriage, the deceased and appellant lived at Neyveli. Thereafter, they came to P.W.1's house thrice. When the deceased came for third time, the deceased told that the appellant demanded Rs.10,000/-. Since the agreed amount of Rs.10,000 was not given, the appellant abused and harassed the deceased continuously, thereby, the deceased had taken the extreme step of committing suicide by hanging herself in the matrimonial house, in respect of which, P.W.1 lodged the complaint Ex.P1.

3.P.W.12 Head Constable received the complaint Ex.P1 from P.W.1 and registered a case in Crime No.256 of 2007 under section 174(3) of Cr.P.C. Ex.P.11 is the printed F.I.R. Thereafter, on 16.10.2007, the matter was handed over to P.W.13-Inspector of Police, Investigating Officer. The Investigating Officer took up the case for investigation and went to the place of occurrence, prepared observation mahazar Ex.P12 and drew a rough sketch Ex.P13 and recovered material objects MO1 and MO2 two pieces of polyester shawl and he has also conducted inquest over the dead body of the deceased in the presence of witness and issued inquest report as Ex.P9. After examining the material objects and other witnesses, the offence was altered into under Sections 498A and 304B IPC. The Alteration report is marked as Ex.P15.

4.P.W.13 took up the case for further investigation and arrested the accused on 08.01.2008. Thereafter, he laid a final report as against the accused for the said offences. On appearance of the accused before the lower Court, the copies of the relevant documents were furnished to the accused under Section 207 of Cr.P.C., and on a perusal of the records, as it is revealed that the offence involved in this case is exclusively triable by the Court of Sessions, the lower Court has committed the case records to the Principal District and Sessions Court, Cuddalore under Section 209 Cr.P.C., and thereafter this case has been made over to Sessions Court for further proceedings as per law.

5. Based on the above materials, the trial Court framed the charges for the offences under Sections 498A and 304B of IPC against the accused and the accused denied the same. In order to prove the charges, on the side of prosecution P.W.1 to P.W.13 were examined, Exhibits P.1 to P.15 were marked and MO1 series were marked.

6. When the trial Court examined the accused under section 313(1)(b) of Cr.P.C., in respect of incriminating materials available against him, he denied the complicity in the crime and pleaded innocence. However, he did not examine any witnesses and not marked any documents.

7. The trial Court, after considering the oral and documentary evidence, found the accused guilty of the offences under Sections 498A and 304B IPC and accordingly convicted the accused under Section 498(A) and 304(B) IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo three months rigorous imprisonment and to undergo rigorous imprisonment for seven years, respectively. The sentences imposed on the accused were ordered to run concurrently. Challenging the said conviction and sentence, the appellant has preferred this appeal.

8. Heard learned counsel for the appellant and the learned Government Advocate (Crl.side) for the respondent.

9. The learned counsel for the appellant/accused would submit that there is no material whatsoever available on record to prove the charges either under Section 498A or under Section 304B IPC against the accused. Ex.P.1 complaint is totally contradictory to the evidence of P.W.1 to P.W.4. Admittedly, the deceased committed suicide at matrimonial house and no evidence is available as if, the accused instigated or harassed the deceased to commit suicide. In the present case, the appellant's father was also examined as prosecution witness as P.W.7 and he clearly deposed there is no quarrel in the family with regard to the dowry demand and the appellant's family members never demanded for any dowry from the deceased family. Hence, the prosecution has not proved the case beyond reasonable doubt. However, the trial Court convicted the accused, which is unsustainable.

10. In support of his contentions, the learned counsel for the appellant relied upon the following decisions of the Hon'ble Supreme Court:

i) (2017) 1 Supreme Court Cases 101 (Bajnath and others Vs. State of Madhya Pradesh),

ii) (2011) 11 Supreme Court Cases 517 (Shindo Alias Sawinder Kaur and Another Vs. State of Punjab) and

iii) (2013) 4 Supreme Court Cases 131 (Bakshish Ram and Another Vs. State of Punjab)

11. Per contra, the learned Government Advocate appearing for the respondent submitted that though P.W.1 is not a direct evidence available to prove the guilt, however, P.W.2 and P.W.3 are crucial witnesses to establish the

prosecution case. The evidence of P.W.2 clearly indicates that the accused harassed her daughter for demanding Rs.10,000/- continuously and the same was corroborated by the evidence of P.W.3 who is the brother of the deceased. On the date of occurrence, P.W.3 received a call from the deceased and the deceased asked P.W.3 for arranging Rs.10,000/- and further conveyed to her brother that accused was harassing the deceased demanding a sum of Rs.10,000/-. The evidence of P.W.4 is corroborated by the evidence of P.W.2 and P.W.3. RDO report also clearly revealed that there was a dowry harassment and the presumption under Section 113B of the Indian Evidence Act is in favour of the deceased and this Court may presume that there was a cruelty by demanding a sum of Rs.10,000/-. Therefore, the judgment of the trial Court need not be interfered with.

12. In the light of the above submissions, now it has to be analysed as to whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

13. The evidence of P.W.1/the adoptive father of the deceased, indicates that at the time of marriage, 10 sovereigns of gold were given as "Seedhana" and he agreed to pay Rs.10,000/-. After the marriage, both the deceased and accused lived together at Neyveli and the accused and deceased has come to P.W.1's house two or three times, which clearly indicates that P.W.2 conveyed that the accused was demanding Rs.10,000/- and likewise, the deceased also conveyed the same to P.W.3-brother. Thereafter, P.W.1 heard the news that his daughter committed suicide by hanging and thereafter, P.W.1 gave Ex.P1 complaint to the police. On a perusal of the evidence of P.W.1, he did not indicate that there was cruelty or harassment by the appellant.

14. On a perusal of the evidence of P.W.2 and P.W.3, it is seen that P.W.2 is the mother of the deceased and her evidence is also corroborated by the evidence of P.W.1 with regard to money and other "Seedana" articles and also endorsed that the accused and her daughter visited her house for two to three times and when her daughter came to her house for third time, she informed that Rs.10,000/- was demanded by the accused and the accused left her daughter in her house for getting valid amount and therefore, she and her daughter came to Chithiraichavadi and demanded Rs.10,000/- from her brother Ezhumalai(P.W.4) and he also agreed to give the money after two days. Thereafter, the deceased daughter went along with the accused and assured to pay the amount within two days.

15. P.W.3 is the brother of the deceased. His evidence indicates that the accused abused the deceased for Rs.10,000, however, in his cross-examination, he denied the same, which clearly indicates that the accused had not harassed the deceased.

16. On a perusal of the evidence of P.W.4, it is clear that the deceased and accused came to their house and demanded balance amount of Rs.10,000/-, for the purpose of marriage and one acre of land was sold in favour of P.W.4 and he paid only Rs.90,000/- and balance Rs.10,000/- was not paid, for which the deceased and P.W.2 demanded the balance amount and he agreed to pay within two days. The evidence of P.W.3 and P.W.4 is contrary in nature and not corroborated with each other.

17. Admittedly, P.W.1 is hearsay evidence and there is no corroboration in the evidence of P.W.1, P.W.2, P.W.3 and P.W.4. When that being the position, even assuming that there was a quarrel, in which the deceased was abused, however, there is no material placed before the Court with regard to cruelty or harassment. Hence, this Court is of the view that the action of the appellant may not amount to harassment or instigation forcing the deceased to commit suicide.

18. On a perusal of the decisions relied upon by the learned counsel appearing for the appellant, in the case of dowry death, there is a presumption under Section 113B of the Indian Evidence Act, which arose against the accused. However, the presumption is rebuttable to the effect that the prosecution first dispel out the ingredients of the offence and then presumption can arise. This Court finds that the death was an unnatural one and had taken place within seven years of the marriage. However, the other ingredients with regard to the demand of dowry, harassment, cruelty or instigation the deceased to commit suicide, had not been proved.

19. The very similar issue was dealt with by the Hon'ble Apex Court in the decision reported in (2017) 1 SCC 101 (Baijnath and others Vs. State of Madhya Pradesh), in which, it was held as follows:-

'24. The evidence on record and the competing arguments have received our required attention. As the prosecution is on the charge of the offences envisaged in Sections 304-B and 498-A of the Code, the provisions for reference are extracted hereunder:

"304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-

section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to

her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

28. Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:

"113-B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

20. Further in the decision of the Hon'ble Apex Court reported in (2011) 11 SCC 517 (Shindo Alias Sawinder Kaur and Another Vs. State of Punjab) it is held as follows:-

"9. We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly, in a case of dowry death under Section 304-B, a presumption of Section 113-B, Evidence Act, does not arise against the accused. However, the presumption is relatable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredients that any demand for dowry had been made soon before the death has not been proved. In this view of the matter the presumption under Section 113-B of the Evidence Act cannot be raised."

21.Further in the decision of the Hon'ble Apex Court reported in (2013) 4 SCC 131 (Bakshish Ram and Another Vs. State of Punjab) it is held as follows:-

"20.Another relevant aspect to be noted is that it was Appellant 1, husband of the deceased who took the deceased to the hospital and it was he who informed the police as well as parents of the deceased. It is also brought to our notice that he did not make any attempt to run away from the place of occurrence."

22.On perusal of the above decisions and considering the over all evidence and fact of dowry, there is no cogency in the evidence of the prosecution witnesses and the prosecution has not discharged its burden in proving the case beyond reasonable doubt.

23.However, in the present case, no family member of the accused was implicated in the above said offence. Only the appellant alone is implicated in the offences.

24.On a perusal of the oral and documentary evidence, it is clear that there was no quarrel between the appellant or deceased as alleged by the prosecution. Considering the over all evidence and the facts, this Court has no other option but to come to the conclusion that the prosecution has not proved the case beyond reasonable doubt. Hence, the conviction and sentence imposed by the Court below need interference and the same is liable to be set aside.

25.In the result, the criminal appeal is allowed. The conviction and sentence as against the appellant/accused in the judgment dated 22.07.2008 in S.C.No.135 of 2008 passed by the learned Sessions Judge (Mahila Court), Cuddalore, are set aside. The appellant/accused is acquitted from the charges under Sections 498A and 304B of IPC. The fine amount, if any, paid by him is ordered to be refunded to him. The bail bonds executed by him, shall stand terminated/discharged.

Sd/-

Assistant Registrar (CS viii)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Deputy Superintendent of Police,
Neyveli Thermal Police Station
Cuddalore District.

2.The Sessions Judge (Mahila Court),
Cuddalore

3. The Judicial Magistrate No.1, Cuddalore
- 4.The Chief Judicial Magistrate ,cuddalore.
- 5.The Superintendent,Central Prison, Cuddalore.
- 6.The Government Advocate (Crl.side)
High Court of Madras.

+1cc to Mr.M.C.Swamy, Advocate SR.No. 88839

Crl.A.No.569 of 2008

A.SK(04/02/2019)



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