

Bail Slip

The Appellant 2 & 3 /Accused 2 & 3 viz, Subbe Gounder S/O.Tange Gounder, and Nanchammal @ Kaikoosu W/O. Subbaiya Gounder were directed to be released on bail as per order of this Court, dated:20/10/2018 made in MP.No.1/2008 in CRL.A.No.705/2008.

The 1<sup>st</sup> Appellant/Accused No.1 Viz, Murugesan @ Ravi S/O.Subbaiya Gounder was directed to be released on bail as per order of this Court, dated,09/01/2009, made in MP.No.1/2009 in Crl.A.No.705/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Judgment Reserved on :27.09.2018]

[Judgment Delivered on : 26.10.2018]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.705 of 2008

1.Murugesan@Ravi

2.Subbe Gounder (died)

3.Nanchammal@Kaikoosu

... Appellants

..Versus..

The State represented by  
The Inspector of Police,  
All Women Police Station,  
Perur, Coimbatore District  
(Crime No.2 of 2007)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the judgment passed against the appellants on 9<sup>th</sup> day of September 2008 in S.C.No.173 of 2007 on the file of the Sessions Judge, Magalir Neethimandram, Coimbatore, acquit them from all the charges.

For Appellants : Mr.G.Ponnambala Thiyagarajan

For Respondent : Mrs.V.Saratha Devi  
Government Advocate (crl.side)

## JUDGMENT

The convicted accused A1 to A3 are the appellants herein.

2. It is represented by the learned Government Advocate (Crl.Side) appearing for the respondent that the second accused/A2 Subbe Gounder died on 02.01.2012, pending appeal and hence, proceedings against the deceased second appellant/A2 stands abated.

3. This Criminal Appeal has been filed against the conviction and sentence passed on the appellants by the learned Session Judge, Magalir Neethimandram in S.C.No.173 of 2007 dated 09<sup>th</sup> September 2008, wherein the appellants were found guilty, and convicted and sentenced to undergo Simple Imprisonment for 1 year under Section 4(1) of Dowry Prohibition Act, and also to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for six months under Section 498-A of IPC, and also to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.10,000/- each, in default to undergo simple imprisonment for 1 year, for the offence under Section 304-B of I.P.C. The sentence of imprisonment was directed by the trial Court to run concurrently.

4. The respondent-police has filed a final report against these appellants alleging that on 02.02.2007, the deceased Maheswari being a married women, within seven years prior to 2.2.2007, unable to bear the cruelties caused by the accused persons, committed suicide by jumping into a dry Well situated nearby the house of the accused and died instantaneously. Hence, the accused appears to have committed the offences punishable under Sections 498-A and 304-B IPC and Section 4 of Dowry Prohibition Act.

5. The case was taken on file as P.R.C.No.14 of 21 on the file of the Judicial Magistrate-VI, Coimbatore, and the case was committed to Sessions as S.C.No.173 of 2007. All the accused stand charged for the offences under Section 4 of Dowry Prohibition Act and Sections 498-A and 304-B of I.P.C and thus, the charges were framed against the accused, which were read over and explained to them in Tamil with regard to the substance of charges. The accused pleaded not guilty and the trial was held.

6. The prosecution, to prove the case, examined P.W.s 1 to 12 and marked Exhibits P1 to P5. To rebut the presumption, A1 was examined as D.W.1 and another witness D.W.2 was examined and Exhibits D1 to Exhibit D10 were marked on the side of the defence.

7. On a consideration of both oral and documentary evidence, the learned Sessions Judge, Mahila Court, Coimbatore has convicted all the accused as stated supra and hence, this Criminal Appeal.

8. The learned counsel for the appellants would submit that:

i) The lower Court failed to disregard the evidence of P.W.1, P.W.6, P.W.7, P.W.10 and P.W.11 on the ground that they are irrelevant to be considered.

ii) The Court failed to consider the fact that P.W.10 who is Revenue Divisional Officer who conducted the enquiry after the death of the deceased, has categorically stated in the evidence that no one residing nearby the house of the deceased Maheswari has stated that the deceased was subjected to cruelty. On the contrary, they came forward to state that Maheswari was living with the appellants happily in a joint family.

iii) The lower Court also failed to consider the fact that PW6 who is the Doctor, categorically admitted that the injuries, which resulted on the deceased person, would happen only when a person slips down accidentally in the Well and such injury is capable of causing death.

iv) The lower Court failed to take into evidence of defence side or the documents marked to show that the accused has deposited thousands and thousands of Rupees in the name of the deceased and there was no scarcity of money so as to demand dowry from the parents of the deceased.

9. The learned Government Advocate (Crl.Side) has made submissions in favour of the judgment of the trial Court.

10. Points for determination are:-

i) Whether the conviction as laid under Sections 498-A and 304-B- I.P.C and Section 4 of the Dowry Prohibition Act against the appellant, is sustainable in law?

ii) Whether the sentences awarded for the above offences are excessive?

11. Heard both sides and perused the records.

12. The case of the prosecution is that the marriage between the deceased Maheswari and A1 Murugesan @ Ravi was performed according to the caste convention and according to the Hindu rites and rituals. At the time of the marriage, the

accused demanded and accepted 15 sovereigns of gold jewels and customary gifts as dowry. Soon after the marriage, the first accused along with the deceased Maheswari started to live in a joint family consisting of A2 and A3 and A1-husband used to cause ill-treatment to the deceased by demanding her to bring amount from her parents. P.W.5 also paid Rs.2,000/- and Rs.3,000/- on several occasions. A2 and A3 instigated A1 to demand more dowry from the deceased Maheswari. The accused persons joined together and caused harassment and ill-treatment and went to the extent of driving the deceased Maheswari from their house by forcing her to bring Rs.50,000/- in order to purchase a taxi for A1. The accused persons also mounted pressure on the deceased Maheswari to bring amount from her parents, failing which, she was instructed not to enter into the house. P.W.5 Rangaraj being the father of the deceased told the deceased that he would arrange the money within 10 days and sent her to the in-laws' house. Thus, the accused persons caused cruelty and ill-treatment to the deceased Maheswari on several occasions. During the course of the same transaction, on 2.2.2007 around 8.00 p.m., due to the harassment caused by the accused persons who led the deceased Maheswari to commit suicide by jumping into a Well situated nearby their house and she succumbed to injuries. As such, the death of the deceased Maheswari was otherwise than in a normal a circumstance, that too, within 7 years of her marriage and it is shown that soon before her death, the deceased Maheswari was subjected to cruelty and harassment at the hands of the accused persons in connection with the demand for dowry.

13. A1 is the husband of Maheswari, who died and A2 is the father of A1 and A3 is the mother of A1.

14. As stated supra, to prove the charges, the prosecution examined witnesses P.W.1 to P.W.12. P.W.1 Rani is the neighbour residing in the place of the deceased and accused and P.W.2 is the person who informed over phone to the fire service to call for the assistance of the Fire Service and rescue and to lift the body from the Well. While P.W.3 is the person working in the Fire Service who could depose regarding lifting the body from the 130 feet dry Well which is full of rocks and P.W.4 is the Attestor of the Observation Mahazar. P.W.5, P.W.8 and P.W.9 are the father, brother and aunt of the deceased respectively.

15. P.W.6 and P.W.7 are Doctors. While P.W.6 Dr.Mallika deposed regarding the conduct of the Post-Mortem and issuance of Exhibit P3-Post-Mortem report and based upon the report of the Forensic evidence, P.W.7 had issued the Exhibit P4-final opinion.

16. P.W.10 is the Revenue Divisional Officer (R.D.O) who conducted the inquest and also filed the inquest report along with the statement of Panchayathars, which are marked as Exhibit P12 and Exhibit P11 respectively.

17. P.W.11 and P.W.12 are police witnesses who could depose regarding the discharge of their official duty and receipt of Exhibit P2-complaint and registration of Exhibit P13-F.I.R and preparation of Ex.P-14 rough sketch and alteration report Ex.P-15 and filing of the charge sheet.

18. It is seen from the evidence of P.W.1 Rani that Maheshwari (deceased), on that night, went to the garden in order to bring forage for cattle, since no feeding was available in their house. Further, in the cross-examination, she has stated that the deceased never complained about them, much less her husband and there was no demand of dowry to her on that day or any day before. It is also pertinent to note that she also conveyed the same thing to P.W.10-R.D.O during the enquiry. P.W.2, P.W.3 and P.W.4 do not advance the case of the prosecution, since they have only deposed regarding the conduct of the investigation. P.W.6 Doctor could depose regarding the conduct of the investigation. P.W.6 Doctor also could depose that she has conducted the post-mortem and issued Exhibit P3-Post Mortem report in her evidence. During cross examination, she has categorically stated that the following ante-mortem injuries are seen in the body of the deceased:

External:

1. Abrasions seen in the following regions: outer to left eye 3x1 cm, center of forehead more to the left 5x2cm, inner aspect of left elbow 7x5cm, lateral aspect of left upper abdomen 6x5 cm, back of middle of left side trunk 7x4 cm, back of right elbow 2x1 cm.

Internal:

1. Soft tissue contusion seen in the right side neck 8x5cm  
2. Left pleural cavity contains 300ml blood with clots. Fracture left ribs 3 to 10 posteriorly with surrounding inter costal contusion.

19. Thus, it could be seen from the medical evidence of P.W.6-Doctor who had categorically admitted in the cross examination that injuries inflicted on the deceased person could happen only when a person slips down accidentally to a Well and such a injury is a capable of causing death, which assumes significance.

20. The family members of the deceased Maheswari, P.W.5-father, P.W.8-brother, P.W.9-aunt have deposed that the marriage between A1 and Maheswari was celebrated 3.3.2004 at Coimbatore. At the time of marriage, the accused persons demanded and accepted 15 sovereigns of gold jewels and customary gifts as dowry from the parents of the deceased Maheshwari. The accused persons demanded Rs.50,000/- as dowry in order to purchase a taxi for A1. As the demanded amount was not turned out, the accused persons ill-treated and caused cruelty to Maheswari by sending her out of their house. The accused persons compelled her to bring Rs.50,000/- for purchase of taxi and failing which, she was instructed not to enter into the house of the accused. During the course of the same transaction, on 2.2.2007 around 8.00 p.m., due to the demand of dowry by the accused persons with the married women namely Maheswari, the abetment was caused by the accused persons to Maheswari who committed suicide by falling into a dry Well situate near the house of the accused and she died due to the injuries suffered by her over the chest.

21. It remains to be stated that versions of all the the above three witnesses are parrot-like in narrating the incident regarding alleged demand of rupees for purchase of a taxi. A1 demanded Rs.50,000/- and thereafter, it was convinced by the father-P.W.5 that he could make arrangement after sometime. Thereafter, when the deceased Maheswari came to the village in connection with a celebration in one of the family members, she had again conveyed that if she failed to honour the demand, she will be subjected to cruelty and she was facing some cruelty at the hands of the in-laws and 3 days before the incident, she was also reminded of the same and failing compliance of the demand, she has left with no other choice but to commit suicide. In this regard, the defence has successfully elicited from the cross-examination of private prosecution witnesses, P.W.5, P.W.8 and P.W.9 that all of them are daily coolies and do not have any financial soundness to meet the demand to Rs.50,000/- as projected by them. Furthermore, from the answer elicited from the cross-examination of the Investigation Officer-P.W.12, it shows that the version of these private prosecution witnesses suffers from material contradiction with regard to the alleged demand of Rs.50,000/- for the purpose of purchasing a private taxi, as could be seen from the answer elicited in the cross-examination of the police witnesses P.W.11 and P.W.12.

22. In the above context, it is relevant to note that P.W.10 Revenue Divisional Officer has categorically stated in the cross-examination that none of the neighbours residing in the vicinity of the place of occurrence, have never complained about the demand of dowry as projected by the private prosecution witnesses, coupled with the fact that the very same neighbour P.W.1 Rani and independent witness who is the alleged

to have lastly seen the deceased as alive and first one to see Maheswari as dead, assumes significance. It is the specific evidence of P.W.10-R.D.O that in view of his enquiry, he could state that Maheswari (deceased) was living with the appellants happily as a joint family, so is the evidence of P.W.1.

23. At this juncture, it remains to be stated that in the evidence of P.W.5-father with regard to the alleged incident, he had categorically stated that there was no previous complaint regarding any demand of dowry either to his family members or to any village panchayat and there was no police case or complaint earlier to the said occasion. He also admitted in the cross-examination that no village panchayat has been conducted in respect of the alleged demand of dowry as spoken to by the private prosecution witnesses P.W.5, P.W.8 and P.W.9. He also stated that in the Well, his daughter was found dead and the Well is about 130 feet and there is no drop of water and the Well is totally rocky. P.W.1, the neighbour Rani who has lastly seen the deceased Maheswari has alive and first to see Maheswari as dead, has categorically stated both before the R.D.O P.W.10 as well as the P.W.11-Investigation Officer that there was no demand of dowry and none of the neighbours have stated regarding any alleged demand of dowry, which also assumes significance.

24. P.W.10 has categorically stated that neither P.W.1 nor the person residing in the neighbourhood of the deceased house, have never complained and have not whispered any complaint or allegation of demand of dowry. Furthermore, the Investigation Officer-P.W.12 has stated that accused A2 and A3 are unnamed in the complaint and P.W.5 Rangarajan, the father of the deceased, has not whispered regarding the person in whose festival time his daughter Maheswari (deceased) came and conveyed regarding the alleged harassment and furthermore, he has also stated that P.W.5 has not whispered anything during his enquiry and in the absence of failure to comply with the demand of dowry, her daughter is left with no other option but to commit suicide, which was not whispered before the Investigation Officer.

25. Furthermore, P.W.9 has not stated anything regarding the alleged bringing up of Maheswari and also has not given the details about the source of her income to meet the demand of Rs.50,000/- also assumes significance.

26. Thus, on a combined reading of the answer elicited in the cross examination of private prosecution witnesses P.W.5, P.W.8, P.W.9 with that of the cross examination of P.W.10 revenue witness and P.W.11 and P.W.12 police witnesses, this Court finds that there is a material contradiction with regard to the material touching upon the alleged demand of dowry of Rs.50,000/- and also to the fact that as if P.W.9 arranged for

the said amount and the evidence of P.W.5, P.W.8 and P.W.9 does not inspire confidence of this Court. Thus, there is material contradiction elicited in the cross examination between the private prosecution witnesses and the revenue and police witnesses as discussed supra.

27. At this juncture, it is relevant to refer to the suggestive case of the defence, the first accused-husband of the deceased Maheswari who entered into the witness box as D.W.1 and marked Exhibits D1 to D9 and Exs.D1 to D4 are the receipts in respect of the fixed deposits dated 24.08.2006 and Ex.D-5 is the Bank pass-book of A2 and bank ledger extract of A1 to A3 are marked through the bank officer D.W.2, as Exs.D6 to D9 marked through the D.W.2 Bank Manager.

28. The sum and substance of the evidence of D.W.1 and D.W.2 and Exs.D1 to D6, shows that the marriage between A1 and Maheswari was performed on 3.3.2004 in the presence of elders. After marriage A1 and Maheswari were living happily in a joint family. Out of the lawful wedlock, Maheswari gave birth to a son on 16.12.2004 by name Abilesh. Maheswari was living in the joint family happily. They sold some joint family properties and out of sale proceeds, a sum of Rs.2,00,000/- was deposited in the name of the deceased Maheswari and A1 in the joint account in Indian Overseas Bank, Thondamuthur Branch. On the same day, a sum of Rs.1,00,000/- also invested in the name of Abilesh. As such, the accused persons are not in need and necessity to demand the dowry amount from P.W.5 through the deceased Maheswari. In fact, the deceased Maheswari, while went to take forage for the cattle, fell into the Well accidentally and sustained injuries and due to the injuries, she died instantaneously. Hence, the death of Maheswari was accidental. Therefore, the complaint lodged by P.W.5 is false. P.W.1 Rani is the witness who saw the deceased Maheswari soon before her death. The accused persons never harassed and ill-treated the deceased Maheswari as such they have not created a difficult and hostile environment for the deceased which pushed her to commit suicide.

29. On a consideration of the evidence of D.W.1 and independent witnesses of D.W.2, the Bank Manager, it is seen that the marriage between A1 and Maheswari was performed on 3.3.2004 and the said Maheswari died on 02.02.2007 and a son was born to them and Rs.2,00,000/- was deposited in the name of the deceased Maheswari and A1 in the joint account in the Investigation Officer Bank and on the same day, another Rs.1,00,000/- has been invested in the name of minor boy Abilesh. It is also seen from Exhibits D5 to D6 that in the account of A2 and A3 thousands and thousands of amount has been deposited as deposed by the Manager of the Bank D.W.2 assumes

significance and relevant in view of the suggestive case.

30. As stated supra, P.W.1 Rani who is the person last seen the deceased Maheswari as alive and the first person to see the said Maheswari as dead, has categorically stated that on that day, Maheswari was leaving around her house and on questioning, she has stated that she is going to the garden in order to bring forage to the cattle and as such, there was no feeding available in the house. It also remains relevant to state that she also cautioned Maheswari not to venture further as there is a Well which is unfenced without drop of water with some rocky and also cautioned her to take care. Furthermore, the evidence of P.W.1 Rani is consistent that even before P.W.10 revenue witness and also during the police enquiry by P.W.11 and P.W.12, it is seen that none of the person residing near the house of the deceased Maheswari have stated that she was subjected to cruelty. Furthermore, it is seen from the evidence of P.W.10 that the neighbours have come forward with specific case that Maheswari was living happily with the appellant's family.

31. It is further strengthened by the fact that thousands of thousands of amounts have been deposited in the name of the deceased Maheswari and her minor child. It is seen from Exhibits D1, D2, D3 and D4, which are copies of the fixed deposits, and they are dated much before the date of the accident which goes to show that the first accused has deposited Rs.1,00,000/- in the name of his wife Maheswari (now deceased) and in the joint account of his minor son also for Rs.1,00,000/- and also point to the fact that they are living happily and there is no whisper regarding the demand of dowry as contended by the learned counsel for the appellants.

32. At this juncture, it is relevant to note that in view of the material contradiction as elicited in the cross examination of the private prosecution witnesses with that of the revenue and police witnesses, this Court has recorded a finding in the preceding paragraphs that the evidence of private prosecution witnesses suffers from material contradiction on the material particulars regarding alleged demand of dowry and furthermore in the absence of any positive evidence to show that the Maheswari (deceased) has subjected to cruelty on the ground of dowry soon before the death in this case. The medical evidence is also to the point that Maheswari died due to the injuries sustained and it never stated that it is a suicide committed by her or unnatural death.

33. On the contrary, on a close perusal and scrutiny of the medical evidence of the Doctor P.W.6, coupled with Exhibit P-3 and the answer elicited in the cross examination, it goes to

show that it is an accidental fall, which has caused death, appears to be more probable. As stated supra, it is a specific case of defence that it is an accidental fall and the accused family along with the deceased, were living happily and it seems to be that the suggestive case of the defence is more probable than the prosecution case and in view of the material contradiction as noted above with the private prosecution witnesses, it does not inspire the confidence of this Court. Regarding the particulars of the alleged demand of dowry and the answer given by the Investigation Officer regarding the previous statement spoken to by these prosecution witnesses, I am of the considered view that the oral evidence of P.W.5, P.W.8 and P.W.9 suffers from material contradiction, casting a serious doubt as to the truth and veracity of the statement. On the contrary, based upon the evidence of D.W.2 coupled with the documentary evidence of Exhibits D1 to D10, which are all things from the bank, it goes to show that the accused family were never in need of money and they are possessed of more money for treating them as a wealth of family and the demand of dowry as projected by the prosecution for the purpose of purchasing a private taxi, they demanded Rs.50,000/- which appears to be improbable and bristles with infirmity and does not appear to have been proved in the manner known to law and as such, the demand of dowry was not established in the manner known to law as required under Section 4 of the Dowry Prohibition Act. The prosecution has not let in any positive evidence to show that the Maheswari (deceased) was subjected to cruelty on the ground of dowry soon before the death so as to warrant presumption under Section 113-B of the Indian Evidence Act. Merely because she had died within 7 years of marriage, it does not satisfy the ingredients under Section 304-B of IPC. It must be a suicide or un-natural death and in the instant case, the death of Maheswari was not proved to be a suicide. On the contrary, from the medical evidence, it appears to be an accidental fall into an unfenced dry Well which is rocky to the death of 130 feet.

34. Hence, this Court is of the considered view that the prosecution has miserably failed to satisfy the basic ingredients required under Section 113-B of the Indian Evidence Act so as to warrant a statutory presumption in their favour. The trial Court has totally misconstrued the evidence of the Doctor and also not dealt with the evidence of D.W.2. The Bank Manager and the documentary evidence had been produced on the defence side under Exhibits D1 to D10. Accordingly, the findings rendered by the trial Court with regard to the statutory presumption under Section 113-B of the Indian Evidence Act and Section 304-B of IPC, are erroneous warranting interference by this Court at this appellate stage. Accordingly, the findings of the trial Court are answered and the same are hereby vacated in the absence of any positive evidence to show that there was a

demand of dowry soon before the death and harassment to the said Maheswari. Merely because she died within a period of 7 years of the marriage, that will not attract the provisions of 304-B IPC. Consequently, all the charges are held to be not proved in the manner known to law.

35. In the result, this Criminal Appeal is allowed and the conviction and sentence passed under Section 498-A and 304-B IPC and also under Section 4(1) of the Dowry Prohibition Act, are hereby set aside. The accused A1 and A3 are acquitted of the charges with which they stand charged. Since A2 had died pending appeal, proceedings against him stood abated. The bail bond, if any executed by A1 and A3 shall stand cancelled. The fine amount, if paid by A1 and A3 shall be refunded.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge, Magalir Neethimandram, Coimbatore
- 2.The Public Prosecutor (Crl.side), High Court, Madras.
3. The Inspector of Police,  
All Women Police Station,  
Perur, Coimbatore District (Crime No.2 of 2007)
- 4.The Section Officer, Criminal Section, High Court, Madras.
- 5.The Judicial Magistrate No.VI,  
Coimbatore.
- 6.The Chief Judicial Magistrate,  
Coimbatore.
- 7.The Superintendent, Central Prison,  
Coimbatore.

+1cc to Mr.G.Ponnambala Thiyagarajan, Advocate, S.R.No.73386

Crl.A.No.705 of 2008

GP(CO)  
GSP(14/11/2018)