

BAIL SLIP

Mr.Ellappan S/o.Santhan Accused in S.C.No. 58/2008 on the file of the Additional Sessions and Fast Track Court, Dharmapuri District was enlarged on bail vide this court order dated 25/02/2010 in M.P.No. 1/2010 in Crl.Appeal. 119/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :09.08.2018]

[Pronounced on : 23.10.2018]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.119 of 2010

Ellappan ... Appellant/Accused

..Versus..

The State by
Inspector of Police,
Mathikonpalayam P.S.
Dharmapuri District
Crime No.2 of 2007 ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against judgment dated 17.02.2010 passed in S.C.No.58 of 2008 on the file of the Additional Sessions and Fast Track Court, Dharmapuri District convicting the appellant and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo 2 months Simple Imprisonment under Section 498(A) I.P.C, sentenced to undergo 7 years R.I and to pay fine of Rs.2,000/- in default 6 months Simple Imprisonment under Section 304(B) I.P.C and sentenced to undergo 6 months Rigorous Imprisonment and to pay fine of Rs.1000/- in default to undergo one month Simple Imprisonment under Section 4 of Dowry Prohibition Act.

For Appellants : Mr.I.C.Vasudevan

For Respondent : Ms.Kritika Kamal,P
Government Advocate (crl.side)

JUDGMENT

The convicted sole accused is the appellant herein.

2. The appellant-husband, challenging the correctness of the judgment dated 17.02.2010 passed in S.C.No.58 of 2008 on the file of the Additional Sessions and Fast Track Court, Dharmapuri District convicting the appellant and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo 2 months Simple Imprisonment under Section 498(A) I.P.C., sentenced to undergo 7 years Rigorous Imprisonment and to pay fine of Rs.2,000/- each in default 6 months Simple Imprisonment under Section 304(B) I.P.C and sentenced to undergo 6 months Rigorous Imprisonment and to pay fine of Rs.1,000/- in default to undergo one month Simple Imprisonment under Section 4 of Dowry Prohibition Act, has filed this appeal.

3. The respondent-police filed a charge sheet against the accused alleging that the deceased/Tmt.Neela got married the appellant/accused on 09.12.2002 at Dharmapuri Kottai Kovil. At the time of marriage, the parents of the deceased gave 8 sovereigns of gold and other household articles as dowry to the appellant/accused. After that, the appellant/accused harassed the deceased for want of remaining 2 sovereigns of gold as agreed by her parents at the time of marriage. Hence, the deceased committed suicide by way of hanging in the neem tree in front of her house on 02.01.2007.

4. The case was initially registered under Section 174 of Cr.P.C for death due to hanging in Crime No.2 of 2007 and after investigation, final report has been filed. Thereafter, it appears that having not satisfied with the investigation carried on by the respondent-police, the father of the victim girl-P.W.1 has moved the Court and on direction from the Court, further investigation has been ordered and based upon such direction, it appears from the records that the Investigation Officer has filed a memo for further investigation under Section 173 (2) of Cr.P.C and based upon the order passed thereon by the learned Judicial Magistrate, Dharmapuri, further investigation has been carried on and final report as stated supra has been filed as could be seen from Exhibit P15.

5. To prove the charges, prosecution has examined P.Ws.1 to 13 and marked Exhibits P1 to P15 and M.O.1.

6. The learned Additional Sessions and Fast Track Court, Dharmapuri, after taking into consideration both oral and documentary evidence adduced before the Court and after hearing the rival submissions, came to the conclusion that the

prosecution has proved the alleged offence and accordingly, convicted the accused under Sections 498(A), 304(B) of IPC and Section 4 of the Dowry Prohibition Act and S.323 of I.P.C and sentenced as stated supra in respect of offence under Section 498(A) and 304(B) and no separate sentence has been passed for offence under Section 4 of the Dowry Prohibition Act and S.323 of I.P.C. Hence the appeal.

7. The learned counsel for the appellant would submit that the prosecution has miserably failed that soon before death, there was a demand of dowry in order to raise a presumption under Section 113(B) of the Indian Evidence Act and there is a material contradiction with regard to the evidence of P.W.1, P.W.5 and P.W.6 regarding the alleged demand of dowry and the trial Court has erroneously given over-weightage to the evidence of P.W.4-R.D.O and further contended that suicidal tendency was the habit in the family of the deceased, while the elder sister and her husband have committed suicide in the house of P.W.1 and the deceased now victim girl, in the instant case, has also made two earlier attempts as admitted by the prosecution witness and hence, the conviction may be set aside.

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

9. Points for determination are that:-

- i) Whether the prosecution has proved the charge under Section 498(A) I.P.C beyond reasonable doubt?
- ii) Whether the conviction passed under Section 498(A) and 304(B) are sustainable in law?
- iii) Whether the sentence passed under Section 498(A) and 304(B) is excessive?

10. Heard both sides and perused the records.

11. It is seen that P.W.1 and P.W.5 are the parents of the victim girl. While, P.W.6 is the brother of the deceased and P.W.2 is a medical evidence, who has conducted the Post-Mortem on the body of the victim girl-Neela and issued Exhibit P.W.6-Post-Mortem Report and P.W.4 is a revenue witness who has conducted the Inquest and filed the Inquest Report under Exhibit P10. P.W.7 and P.W.8 are the neighbours who had lifted the dead body from the neem tree and P.W.9 is the Central Nazir, who received the seized articles from the Revenue Inspector P.W.13 from the scene of the crime under Exhibit P7 Observation Mahazar and Exhibit P8 Seizure Mahazar. P.W.10, P.W.11, P.W.12, P.W.13 are the Police witnesses who had deposed regarding the registration of the F.I.R and preparation of the Observation Mahazar, Seizure Mahazar and arrest of the accused and filing of the F.I.R. After investigation and after obtaining necessary permission for

further investigation under Exhibit P15, did further investigation and filed the final report thereon.

12. From the evidence of P.W.2-Doctor, the cause of death is found to be due to hanging. It remains to be stated that in the Exhibit P6-Post Mortem report, injuries have been noted as detailed hereunder:-

External injuries:

i) Dark colour depressed skin marking present in front of neck obliquely placed 25cmx1cm almost encircling neck leaving a small area about 2cm in mid post neck.

ii) contusion (L) cheek 3cmx2cm

iii) contusion chin low a lip 3cmx2cm

iv) contusion (L) tempo parietal region 3cmx4cm

v) contusion (R) parietal occipital region 3cmx4cm

vi) Abrasion (R) elbow 3cmx4cm

vii) Abrasion (L) occipital region 5cmx3cm

viii) Abrasion both knee 3cmx2cm

Opinion:

The deceased would appear to have died at about 12 to 24 hrs prior to autopsy.

13. Further, P.W.2-Doctor has categorically stated that the injury found on the rear portion of the head and the front forehead are capable of causing unconsciousness, assumes significance and lend support to the evidence of the private prosecution witnesses P.W.1, P.W.5 and P.W.6, which are discussed in detailed hereunder.

14. It is the specific case of the private prosecution witnesses P.W.1, P.W.5 and P.W.6 that the marriage has been solemnized in the year 2002 between the deceased Neela and the accused on 09.12.2002 and she was found to be hanging in the neem tree near her house on 2.1.2007 and as per Exhibit P6, Post-Mortem certificate, she died due to hanging are all not disputed. It is the definite case of the prosecution that at the time of entering into the marriage, both the parties have agreed for certain amount of jewels and also a two wheeler. Apart from the said arranged quantum of jewels, a bureau and cot for living was arranged by P.W.1, the father of the victim girl and while the T.V.S. 50 vehicle was purchased under hire purchase scheme, the same was seized by the hire financier for non-payment of E.M.I by P.W.1 and according to prosecution, on 09.12.2002, in connection therewith for non-performance of the balance dowry amount, the accused is alleged to have assaulted the victim girl and due to continuous harassment of dowry demand, she was put to physical injury and mental cruelty and thereby, the said Neela has committed suicide on 2.1.2007.

15. From the evidence of the P.W.1-father, P.W.5-mother and P.W.6-brother who would clearly depose regarding the demand of dowry in respect of non-performance of the remaining portion of the dowry as agreed between the parties at the time of the marriage and also seizure of the two wheeler, T.V.S.-50 for non-payment of E.M.I amount and also on the earlier two occasions, where she was subjected to cruelty, which forced the Neela (victim) to come back to the matrimonial home and their evidence in respect of this harassment is clear, cogent and duly corroborated with each other and in the absence of anything worthwhile in the cross examination to discard their evidence, the trial Court has categorically held that the evidence of the parents of the victim P.W.1, P.W.5, P.W.6 is reliable and trust worthy and found to be appropriate, which does not call for any interference by this Court at this appellate stage.

16. It remains to be stated that in the instant case, as the investigation was not properly conducted as projected by P.W.1, the High Court had ordered for further investigation and based upon the said judicial order, the Investigation Officer has filed a petition under Section 173(2) of Cr.P.C for further investigation and the same was ordered as could be seen from the Exhibit P.15. My attention was drawn to the evidence of the P.W.4-R.D.O and his report under Exhibit P10 by the Public Prosecutor to show that at the time of lifting the body from the neem tree, certain neighbours were present and they have been examined by the R.D.O., whose names have been duly found in the said Ex.P.10 and based upon the said statement, the R.D.O has come to the conclusion that for the non-payment of dowry, the said Neela has subjected cruelty and thereby forced her to commit suicide. She also stated that certain injuries as found by the Doctor P.W.2 in the Exhibit P7-Post-Mortem report are also noticed by the villagers assumes importance and lends credence to the evidence of P.W.1, P.W.5 and P.W.6.

17. Thus, this Court finds that the evidence of the private prosecution witnesses P.W.1, P.W.5, P.W.6 regarding demand of dowry and also physical cruelty in connection therewith and further, it is the specific evidence both in Exhibit P1-complaint as well as by the private prosecution witnesses that the accused was having an illicit relationship with his brother's wife, which was often questioned by the deceased and thereby she was subjected to cruelty in the name of dowry and with regard to nature of the injuries spoken to by the P.W.1 in the witness box and the said plea has also been supported by the medical evidence of P.W.2-Doctor and the post-Mortem report under Exhibit P6. Furthermore, the same is also duly corroborated by the evidence of P.W.4-R.D.O as could be seen from his report - Exhibit P10 which are injuries 1 to 8 as extracted above.

18. At this juncture, it is relevant to refer to the suggestive case of the defense. During the time of trial, it is projected by the accused that on the previous night of the fateful day, the accused called the deceased for a sexual intercourse. At that time, the victim girl has kicked on his sexual part and he fainted. Assuming that he died, in fear, she committed suicide and the trial Court has duly considered the said plea and has clearly given a categorical finding that it is only an after-thought for the reason that in view of the overwhelming evidence of P.W.1, P.W.5, P.W.6 coupled with the evidence of P.W.4 who had recorded the statement of the panchayathars who have noticed certain external injuries, and the same was considered by the P.W.4-R.D.O, as could be seen from the inquest report and further duly corroborated with the medical evidence of the Doctor, P.W.2 as he found that the injuries under Exhibit P6 are the external injuries especially, the injury No.4 and the injury No.5 which happened on the forehead and back head of her found to be in a reasonable size and also capable of causing unconsciousness to the person injured after proper scrutiny, the trial Court has rightly rejected the suggestive case as after thought story projected by the accused and for the reason stated supra, this Court is of the considered view that the suggestive case is totally improbable in the absence of any evidence to probabalize the suggestive case. Hence, the trial Court has rightly held so and the same does not warrant any interference at the appellate stage.

19. The learned counsel for the appellant has made a faint attempt in convincing this Court on the plea that it is the habit in the family of the victim to commit suicide and also drawn my attention to the evidence elicited from the cross examination of P.W.6, the brother of the victim girl that the elder sister of the victim and her husband have committed suicide in the house of P.W.1 and further, a suggestion has been made to the Investigation Officer who had answered that on an earlier occasion, the victim has made an attempt to jump into well for committing suicide and she was advised to settle with the family. The said contention does not merit consideration in view of the overwhelming and reliable evidence of the private prosecution witnesses, which is duly corroborated with the revenue witness and the medical witness and further, the trial Court has also expressed its anguish view over the way in which the police has investigated the matter and in the absence of any acceptable and reliable documents both oral and documentary to support the case that the victim has made two earlier attempts, as spoken to by the Investigation Officer, I do not accept the

said contention developed by the appellant's counsel that there is a habitual suicidal tendency in the family of the deceased and that the trial Court has properly analyzed the evidence on record in the proper perspective and rightly held that the evidence of the private prosecution witnesses are reliable and trust worthy which was duly corroborated by the revenue witness and medical evidence and the prosecution has proved that "soon before the death", the victim Neela was subjected to cruelty on the score of demand of dowry and in view of that, she has committed suicide within 7 years of marriage and the death was unnatural in nature and accordingly, the trial Court has rightly drawn the presumption under Section 113(B) of the Indian Evidence Act and the said finding of the trial Court with regard to the statutory presumption under Section 113(B) cannot be found fault with. Accordingly, the trial Court has rightly convicted the accused under Section 304(B) and 498(A) I.P.C and Section 4 of the Dowry Prohibition Act and also under Section 323 of I.P.C, the findings of the trial Court are hereby confirmed and the conviction and the sentence passed thereon are also confirmed and this Court finds that the sentence awarded by the trial Court is commensurate with the act of the accused on the body of the accused.

20. Accordingly, the sentence awarded by the trial Court cannot be termed as excessive and the same is hereby confirmed and this Criminal Appeal is dismissed. The conviction and sentence imposed by the learned Additional Sessions and Fast Track Court, Dharmapuri District in S.C.No.58 of 2008 are confirmed. The fine amount imposed on the accused by the trial Court is also confirmed. The trial Court is directed to take steps to secure the accused/appellant and send him to prison in order to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Sessions and Fast Track Court,
Dharmapuri District.

2. The Principal district Judge,
Dharmapuri at Krishnagiri.

3.The Public Prosecutor (Crl.Side),
High Court, Madras.

4. The Chief Judicial Magistrate,
Dharmapuri.

5. The Judicial Magistrate No.I,
Dharmapuri.

6. The Superintendent of Police,
Dharmapuri.

7. The Inspector of Police,
Mathikonpalayam Police Station,
Dharmapuri District.

8. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No. 72088

Crl.A.No.119 of 2010

SS(CO)
GN(13/11/2018)



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