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Bail Slip

The Appellant/Accused viz., Mani S/o.Chinnappan and Maheswari W/o.Periyannan were directed to be released on bail as per order dated 04/04/2010 in MP.NO.1/2010 in Crl.A.225/2010 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 26.07.2018]

[Pronounced on : 23.10.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.225 of 2010

1. Mani
2. Maheswari ... Appellants/Accused 1 & 3

.. Vs ..

State represented by
Deputy Superintendent of Police
(Valapady Sub-Division)
Karipatty Police Station
(Crime No.300 of 2007)
Salem District.

... Respondent/Complainant

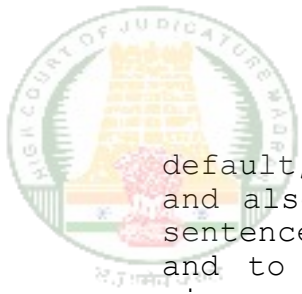
PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 18.03.2010 passed by the learned Sessions Judge (Mahila Court), Salem, in S.C.No.187 of 2008.

For Appellants : Mr.R.John Sathyan
For Respondent : Mrs.V.Sarathadevi
Government Advocate

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ORDER

The appellants herein are accused Nos.1 and 3 in S.C.No.187 of 2008 on the file of the learned Sessions Judge, Mahila Court, Salem, and they stand convicted for the offence under Section 498(A) IPC and sentenced to undergo rigorous imprisonment for three years each and to pay a fine of Rs.1,000/- each, in



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default, to undergo rigorous imprisonment for three months each and also convicted for the offence under Section 304(B) IPC and sentenced to undergo rigorous imprisonment for seven years each and to pay a fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for three months each. Challenging the said conviction and sentence, the appellants 1 and 3 have preferred this Criminal Appeal before this Court. Pending trial, A.2, who is the mother of A.1, had died and hence, charges levelled against her are abated.

2. The respondent police has filed final report against A.1 and A.3/appellants herein and A.2, who is the mother of A.1 alleging that A.1-Mani married the deceased Periyammal @ Kavitha five years prior to 23.06.2007 and at the time of marriage, A.1/husband of the deceased and A.2/mother-in-law of the deceased and A.3/sister-in-law of the deceased have demanded and accepted dowry of half sovereign of gold Stud and Nose ring and anklet from the parents of the deceased Kavitha and accused Nos.1 to 3 have also demanded furthermore dowry from the deceased and the first accused caused hurt to the deceased by demanding to bring dowry from her parents' house and 15 days prior to 22.06.2007, when the deceased Kavitha was in her mother's house, the first accused, after a small fight with his wife/the deceased, snatched the Thali thread of the deceased and in view of the demand of dowry and cruelty committed by all the three accused, Kavitha has committed suicide by hanging herself in the house of the first accused and hence, final report has been filed for the offence under Section 4 of Dowry Prohibition Act and Sections 498 (A) and 304 (B) IPC.

3. To buttress the charges, the prosecution examined P.Ws.1 to 16, marked Exs.P.1 to P.13 and produced M.O.1. On behalf of the defence, no witness was examined and no document was marked.

4. On consideration of both oral and documentary evidence and also taking note of the fact that A.2, who is the mother of A.1, died pending trial, the trial Court has declared the proceedings against A.2/mother-in-law of the deceased as abated and held that the charge against A.1 and A.3 under Section 4 of Dowry Prohibition Act are not proved in the manner known to law and hence, acquitted them from the said charge. However, convicted A.1 and A.3 under Sections 498(A) and 304(B) IPC and hence, the appeal.

5. Learned counsel appearing for the appellants/A.1 and A.3 would submit that except the unqualified allegation of P.W.3 as against A.2/mother-in-law of the deceased, there is no evidence available in support of the charge under Section 4 of Dowry Prohibition Act and consequent Section 304(B) IPC. Further, the evidence of P.Ws.2 and 3 does not substantiate the charge under



Section 498(A) IPC and hence, the learned counsel seeks for acquittal of the appellants/A.1 and A.3 from the said charges.

6. Learned Government Advocate (Crl.Side) made submissions in support of the judgment of the trial Court.

7. The points for consideration are:

(i) Whether the conviction passed by the trial Court for the offences under Sections 498(A) and 304 (B) IPC is sustainable in law? and

(ii) Whether the sentence awarded by the trial Court for the offences under Sections 498(A) and 304 (B) IPC is excessive?

8. After hearing the rival submissions made by the learned counsel appearing for the appellants and the learned Government Advocate appearing for the State and after perusing the evidence of P.Ws.1 to 16 and documentary evidence of Exs.P.1 to 13 and taking note of the grounds of appeal, it appears that the maternal uncle of the deceased was examined as P.W.1, while the parents of the deceased was examined as P.Ws.2 and 3 while the neighbours, who resided near to the place of occurrence, were examined as P.Ws.4, 5 and 6 and Dr.Kesavalingham was examined as P.W.7, who deposed regarding the conducting of post-mortem and issuance of Ex.P.3/Post-mortem Certificate. P.W.8, Village Administrative Officer deposed regarding the attestation of observation mahazar and seizure of Saree-M.O.1 from the scene of occurrence. P.W.10 deposed regarding taking photograph of the dead body of the deceased Kavitha and P.W.15 revenue witness deposed regarding inquest conducted by him and issuance of Ex.P.10-Inquest Report and Ex.P.11-R.D.O., report. P.Ws.11, 12, 13, 14 and 16 are the police witnesses, who deposed regarding receipt of the complaint-Ex.P.1 and registration of First Information Report-Ex.P.9 and sending the dead body for conducting post-mortem along with Ex.P.2-requisition to conduct post-mortem and filing of the final report after investigation.

9. It appears from the evidence of P.W.1, maternal uncle of the deceased and brother of P.W.3-Mariammal that the police only wrote the complaint and he has affixed his signature in the complaint. As stated supra, P.Ws.4, 5 and 6 are all neighbours residing near to the place of occurrence. However, the evidence of P.W.4 and P.W.6 does not advance the case of the prosecution except for seeing the dead body hanging in the Saree while P.W.5 turned hostile. P.W.9, who is also residing near to the house of the accused, has turned hostile.

10. Thus, the scope as to whether the charges under Sections 498(A) and 304(B) IPC against A.1/husband of the deceased and A.3/sister-in-law of the deceased are proved in the manner known



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to law is surrounding around evidence of P.Ws.2 and 3 namely, the parents of the deceased. As stated supra, P.W.1 is only a person who lodged the complaint and in the cross-examination, he has stated that the complaint was written by the police and he has signed the same.

11. Let us consider whether the evidence of P.W.2 and P.W.3/parents of the deceased, inspires the confidence of the Court and lent support to the charges framed against the appellants/A.1 and A.3. Admittedly, P.W.3, mother of the deceased, has made an unqualified allegation against the second accused namely, mother of A.1. Except the evidence of P.W.3 with regard to the demand of dowry of Rs.50,000/-, she has not whispered anything against A.1 and A.3 about treating the deceased Kavitha to sit outside the house and on putting the food prepared by her outside of the house, assumes significance and hence, this Court finds that there is no evidence against the first and third accused/appellants herein, apart from the vague and unqualified allegation made by P.W.3. It is the case of P.W.3/mother of the deceased that the second accused/mother of the first accused alone has demanded dowry and subjected the deceased to harassment. Since the second accused died pending trial, the charges framed against her were abated and the evidence of P.W.2/father of the deceased against the first accused herein appears to be vague and want of any details to fix or to link the first accused with the alleged offence. There is no material to show as to when such a demand was made by the first accused and there is a material contradiction between the evidence of P.W.3 and P.W.2 since as per the evidence of P.W.3/mother of the deceased, it was the second accused mother-in-law of the first accused alone demanded dowry and not the son-in-law namely, A.1 and therefore, with regard to the alleged demand of dowry, this Court is of the considered view that it is unsafe to rely upon the vague allegation of P.W.2 which is bereft of detail much less any allegation as against the charge under Sections 498(A) and 304(B) IPC as well.

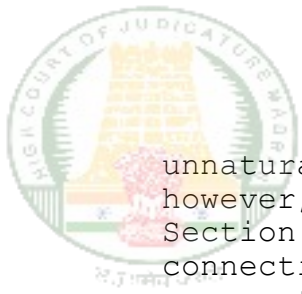
12. The another incident that is said to have been projected by the prosecution to link the first accused as to the charge of Section 498(A) IPC for causing cruelty to the deceased Kavitha is that after a petty quarrel between the husband and wife, the deceased Kavitha went to her mother's place. At that time, the first accused went to the house of P.W.3 and snatched the thali of the deceased which caused injury in the neck of the deceased. In this connection, it is pertinent to note the cross-examination of P.W.15, Revenue Divisional Officer, who deposed that during enquiry, the panchayators have stated that after the death of a child immediately after birth, the deceased Kavitha left to her parental home and it is specifically stated by the Panchayatars to P.W.15-Revenue Divisional Officer that it was the harassment of the second accused (now dead) and that created



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frustration in the mind of the deceased and driven her to commit suicide assumes significance. Though a wild allegation of snatching of Thali was made against the first accused, neither P.W.2 nor P.W.3 has stated anything as to when the said incident has taken place so as to make it to fall within the phrase of "soon before death" as contemplated under Section 304(B) IPC and even the Investigating Officer has categorically admitted that none of the witnesses have stated specifically any dates or details of the demand of dowry and quantum of dowry also lent support to the suggestive case of the defence.

13. It is to be stated that neither in Ex.P.1-complaint nor anywhere in the evidence of P.Ws.1, 2, 3 and 4, there is no allegation about the dates on which the first accused beat the deceased as projected by the prosecution which caused serious doubt as to the alleged cruelty said to have been caused by A.1 on the deceased, in the absence of any details or dates to establish the proximity between the alleged cruelty though not proved in the manner known to law and the consequent dowry death unestablished since there are no details provided by none of the private prosecution witnesses as to the alleged date of occurrence with that of the date of suicide. As stated supra, the Investigating Officer, who was examined as P.W.16, in the cross-examination has stated that during the investigation, it is revealed that the deceased was suffering from stomachache and on 22.06.2007, the first accused took the deceased to the nearby hospital and extended her treatment and she said to have been committed suicide and thus, this Court finds that in the absence of any specific evidence, a mere unqualified allegation levelled by P.W.3 against A.2 will not cause any charge against A.1 and A.3, the appellants herein. Furthermore, there are no dates and details available as to the nature of the cruelty said to have been caused by A.1 and A.3 upon the deceased and as observed supra, the alleged incident of Thali snatching from the deceased was bereft of detail so as to interfere whether this can be treated as cruelty soon before death namely the date of suicide and in view of the answer elicited in the cross-examination of P.W.15-R.D.O. and P.W.16, Investigating Officer, as extracted above, goes to show that the independent witnesses as contemplated to the panchayat point to the effect that the harassment of the second accused created frustration in the mind of the deceased after the death of the son immediately after birth and also for want of details regarding the demand of dowry and alleged slapping by A.1, this Court is of the considered view that in the absence of any positive material providing the link between any of the act of A.1 and A.3 on the body or on the mind of the deceased either abetting or forcing her to take extreme step of suicide by hanging especially when there is no element of dowry, this Court is of the considered view that ingredients of the charge under Section 304(B) IPC are not satisfied. Though the prosecution has demonstrated that the deceased Kavitha has committed suicide by hanging and thereby an



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unnatural death has been caused within seven years of marriage, however, the third important ingredients for the charge under Section 304(B) IPC being "soon before death" a cruelty in connection with demand of dowry has to be established by the prosecution in acceptable manner known to law.

14. As seen supra, 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.

15. Section 113-B of the Evidence Act enjoins a statutory presumption as to dowry death. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death, thus, would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convicting evidence so as to avail the presumption engrafted in Section 113-B of the Evidence Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is, thus, the sine qua non to inspire the Statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

16. In the instant case, there is no such evidence available on record to show that the deceased was subjected to cruelty or in connection with dowry demand soon before death and hence, the finding given by the trial Court that the prosecution had proved the charge under Section 304(B) IPC is not sustainable warranting interference by this Court at this appellate stage for want of evidence on this score as discussed supra. As noted earlier, the prosecution has not let in any positive evidence in support of the charge under Section 498(A) IPC and only vague and unqualified allegation was made by P.W.3 against A.2, who is no longer alive and died during the pendency of the trial and hence, this Court is of the considered view that there is no iota of evidence against A.1 and A.3, legally acceptable evidence for the charge under Sections 498(A) and 304 (B) IPC and in this view of the matter, the conviction and sentence passed by the trial Court for the offences under Section 498(A)



and 304(B) IPC against A.1 and A.3 are not sustainable and the same are liable to be set aside.

17. In the result, the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem, in C.C.No.187 of 2008 dated 18.03.2010 are hereby set aside and the Criminal Appeal is allowed and the accused 1 and 3, who stand charged for the offences under Sections 498(A) and 304(B) IPC, are acquitted of the charges. The bail bond executed by the appellants/accused 1 and 3 shall stand cancelled forthwith and the fine amount paid, if any, shall be refunded to them.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court, Salem.
2. The Judicial Magistrate, Salem.
3. The Chief Judicial Magistrate,
Salem.
4. The Superintendent,
Special Prison for Women, Vellore.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Deputy Superintendent of Police
(Valapady Sub-Division)
Karipatty Police Station
Salem District.
7. The Public Prosecutor,
High Court, Madras.



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

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Judgment in
Crl.A.No.225 of 2010

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nr 28/11/2018