

BAIL SLIP

The Appellant herein namely Kumar, S/o.Anandan/Accused in SC. No. 14/09 on the file of the Additional District and sessions Judge, (Fast Track Court), Tirupattur, Vellore District was directed to be released on bail as per the Order of this Court dated 01/07/2010 made in Crl.Mp.1 of 2010 in Crl.A.No. 382/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2018

Pronounced on : 30.10.2018

Coram

THE HONOURABLE MR. JUSTICE RMT. TEEKA RAMAN

CRL.A.No.382 of 2010

Kumar ... Appellant /1st Accused

Vs.

State rep.by
Inspector of Police,
Kandili Police Station, Vellore District
Crime No.204 of 2008

...Respondent

Prayer: The Criminal Appeal has been filed under Section 374 Cr.P.C, against the judgment of the learned Additional District and Sessions Judge, (Fast Track Court), Tirupathur, Velllore District dated 09.06.2010 and made in S.C.No.14 of 2009 on its file convicting the appellant for the offence under Section 498-A IPC and sentencing him to undergo 2 years RI and imposing a fine of Rs.3000/- in default to undergo three months S.I.

For Petitioner : Mr.K.S.Rajagopalan

For Respondent : Ms.V.Sarathadevi,
Govt.Advocate (Crl.side)

The convicted first accused is the appellant herein.

2. The case of the prosecution is that the marriage between the appellant/accused and the deceased Bhuvaneswari was solemnized and at the time of marriage, they have given 10 sovereigns of jewels and also 2 sovereigns for the son-in-law and they have also given 25% of the amount for purchase, along with other articles. Thereafter, all the three accused have

caused cruelty and due to demand of dowry, she has committed suicide by jumping herself into the Well and drowning in the water and hence, charges were framed under Sections 304-B, 498-A I.P.C and Section 4 of Dowry Prohibition Act. Before the trial Court, the prosecution examined P.W.1 to P.W.10 and marked as Exhibits P1 to P15 and no material object has been found.

3. On a consideration of both oral and documentary evidence, the learned Sessions Judge, Tirupathur has held that charged under Sections 498-A, 304-B and Section 4 of Dowry Prohibition Act have not been made out and acquitted all the three accused. However, for the charge under Section 498-A I.P.C, A1-husband was convicted and sentenced him to undergo 2 years Rigorous Imprisonment with fine of Rs.3,000/- in default, to undergo 3 months Simple Imprisonment. Hence, this Criminal Appeal is filed by A1.

4. The learned counsel for the appellant would submit that there were many averments made by the private prosecution witnesses in the witness box and they having neither found nor spoken to during the course of the investigation to the P.W.10-Deputy Superintendent of Police and drawn my attention to cross examination P.W.8-Inspector of Police, who registered Ex.P12-F.I.R and also stated that the various statements by the private prosecution witnesses as P.W.1, P.W.2 and P.W.3 have not whispered anything during the recording of statement of witnesses under Section 161 Cr.P.C.

5. The learned Government Advocate (Crl.side) in reply to arguments of the appellant counsel has submitted that the evidence of P.W.1, P.W.2 namely the parents of the deceased clearly spoken about the harassment done by the first accused with the victim girl and for the demand of dowry and the harassment therefor. She came to the matrimonial home and P.W.3 and P.W.4 who have conducted the panchayat have clearly spoken about the cruelty committed by the accused on the victim girl and also drawn my attention to Exhibit P1-complaint given at the earliest point of time wherein, the nature of cruelty committed by the A1 on the victim girl and the panchayat conducted by the P.W.3 and P.W.4 have been spoken to by the P.W.1 and she also made submissions that during the course of investigation by the Police as well as during the R.D.O inquiry, both P.W.1 and P.W.2 have categorically stated about the cruelty committed by the accused in the demand of dowry which caused victim to commit suicide. She also drawn my attention to the Ex.P13, the report of the R.D.O inquiry to substantiate the fact that the version of the P.W.1 and P.W.2, the witness box has been duly reflected in the report and also drawn my attention to the cross examination of the P.W.9 and P.W.10 are only to the limited extent, there was a contradiction however in respect of the

ingredients touching upon the charge under Section 498 (a) of Dowry Prohibition Act.

6. After hearing the rival submissions made by both the parties, it is seen that the respondent-police have filed charge sheet alleging offences under Sections 498-A and 304-B IPC, and Section 4 of Dowry Prohibition Act, against A1-husband of the deceased Bhuvaneshwari and A2 and A3 who are the parents of A1.

7. On a consideration of both oral and documentary evidence, the learned Sessions Judge had held that charge under Section 4 of the Dowry Prohibition Act and 304-B I.P.C against all the three accused viz., A1 to A3 are not made out and it has not been proved in the manner known to law. Accordingly, all the three accused were acquitted of the above said charges. However, with regard to A2 and A3, they are also acquitted of the charge under Section 498-A IPC. It appears that the trial Court has laid the conviction under Section 498-A IPC against first accused Kumar-husband of the deceased Bhuvaneshwari and sentenced him to undergo two years Rigorous Imprisonment with a fine of Rs.3,000/-, in default to undergo three months Simple Imprisonment.

8. The scope of the appeal is only in regard to charge under Section 498-A I.P.C against the first accused who is the appellant herein. P.W.1 and P.W.2 are the parents of the deceased Bhuvaneshwari. While, P.W.3 and P.W.4 are the Panchayatdar. The dead body of the deceased Bhuvaneshwari was found in the Well of P.W.5. P.W.6 is the attester of Exhibit P6 Observation Mahazar, while, P.W.7 is a Doctor, who has conducted Post-Mortem and issued Exhibit P11 Post-Mortem certificate. P.W.9 is the R.D.O who has conducted the inquest and filed Exhibits P2 to P6. P.W.8 and P.W.10 are the police witnesses who could depose regarding receipt of Exhibit P1-complaint and registration of Exhibit P12-F.I.R and filing of the charge sheet.

9. It is seen from the evidence of P.W.1 and P.W.2 that the marriage between A1 and deceased Bhuvaneshwari took place in the year 2004, in the house of the accused. Deceased Bhuvaneshwari was the eldest daughter of P.W.1 and P.W.2 and A1 and deceased Bhuvaneshwari had a three month old child at the time of the accident.

10. On 22.03.2008, she was found to be missing and subsequently she was found to be dead in the Well of P.W.5. The relationship between the prosecution witnesses, with that of the deceased and accused, solemnization of marriage and death of the deceased, are all not in dispute. The deceased was found to be in the floating position in the Well of P.W.5 and in Post-Mortem

report, Doctor-P.W.7 has categorically given an opinion that the deceased Bhuvaneshwari died due to drowning and thus, the deceased Bhuvaneshwari died within seven years of marriage and it is an unnatural death.

11. For the reasons recorded therein, the Sessions Court has rendered a finding that prosecution has miserably failed to prove the charges in respect of Section 4 of the Dowry Prohibition Act and Section 304-B I.P.C. P.W.1 and P.W.2 have stated that now and then, he used to pay Rs.5,000/- to the deceased Bhuvaneshwari, since the accused pledged 3 sovereigns of jewels and P.W.1-father has redeemed the jewels on payment of Rs.13,000/- from Pugazhendi and one week before the alleged incident, the deceased Bhuvaneshwari was made to sit outside the house after her dresses are torn by in-laws.

12. The above three incidents have been spoken to by P.W.1 and P.W.2 in a parrot-like manner. It remains to be stated that P.W.8 and P.W.10 are the police witnesses. While, P.W.8 is the Sub-Inspector of Police who received Exhibit P1-complaint and registered Exhibit P-12-F.I.R. P.W.8, in her cross-examination, has categorically stated that the above three incidents were not spoken to by parents of the deceased Bhuvaneshwari. P.W.1 and P.W.2 have never stated so, nor whispered any such allegation in Exhibit P1-complaint, which assumes significance. So also, P.W.10-Investigation Officer who had lodged the final report has stated in the cross examination that P.W.1 never whispered anything about the payment of Rs.2,000/- and Rs.5,000/- as spoken to by P.W.1 in the witness box. So also, redeeming the three sovereigns from the Pugazhendhi nor redemption of mortgage of jewel loan from one Dhandapani. It remains to be stated that even with regard to the physical attack on the body of the deceased Bhuvaneshwari before the alleged incident, he has not stated anything in the previous statement recorded under Section 161 Cr.P.C., which assumes significance. Thus, it is to be stated that both P.W.3 and P.W.4 have also not spoken about the above material facts to the Investigation Officer at the time of the investigation and it caused serious doubt as to the truth and veracity of the version of the said prosecution witnesses.

13. Based upon the answer elicited from P.W.8 and P.W.10 with regard to the alleged incident and payment of Rs.5,000/- and Rs.10,000/- and redemption of jewel loan from Pugazhendi or Dhandapani, as spoken to by P.W.1, who has never stated so in the previous statement during investigation, it causes serious doubt as to veracity of the version of P.W.1 and P.W.2 who alleged act of cruelty by A1 and thus, on a combined reading of the answer elicited from the cross-examination of the police witnesses P.W.8 and P.W.10, this Court is of the considered view that the version of P.W.1 regarding alleged payment and

redemption of jewel, suffers from embellishment amounting to material contradiction on the material particulars of cruelty. Furthermore, with regard to the alleged assault on the body of the deceased a week before the alleged incident, has also not been whispered either in the complaint or during police investigation and it causes serious doubt as to whether the deceased was said to have been subjected to cruelty so as to warrant conviction under Section 498-A I.P.C.

14. At this juncture, it is relevant to state that the suggestive case of the defence that the Well which belonged to P.W.5 is unfenced Well (jiuf; fpzW) which is a floor Well with full of water. According to the defence, it is specifically suggested to all the prosecution witnesses that it is an accidental fall, the medical evidence of P.W.7 does not indicate any external injury except with regard to the fall in the Well and the drowning, which has cause the death. In this regard, in view of the material contradiction as stated supra with the evidence of P.W.1 to P.W.4, as also pointed out by the lower Court in respect of other charges and in view of the embellishment in the version of P.W.1 and P.W.2 regarding alleged cruelty which suffers from embellishment amounting to material contradiction that touching upon material facts alleged into charge under Section 498-A and accordingly, I am of the considered view that it is totally unsafe to rely upon the said evidence which has been spoken to for the first time by the private prosecution witnesses in the Court.

15. Thus, I am of the considered view that the prosecution has miserably failed to prove the charge under Section 498-A I.P.C beyond reasonable doubt and accordingly, this Court hold that the conviction under Section 498-A is unsustainable and accordingly, the conviction and sentence imposed against the appellant/A1, are liable to be set aside.

16. In the result, this Criminal Appeal is allowed and the conviction and sentence passed in S.C.14 of 2009 on the file of learned Additional District and Sessions Judge (Fast Track Court), Tirupatthur are set aside. The appellant/accused is set at liberty and exonerated from the charge and fine amount paid is ordered to be returned. The bail bond, if any executed by the appellant-A1 shall stand cancelled.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.III,
Thirupathur.
2. The Chief Judicial Magistrate,
Vellore.
3. The Additional District and Sessions Judge,
(Fast Track Court), Tirupattur,
Vellore District.
- 4.The Principal Sessions Judge,
Vellore.
5. The Inspector of Police,
Kandili Police Station,
Vellore District.
- 6.The Public Prosecutor,
High Court, Madras.

Copy TO

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

+1cc to Mr.K.S.Rajagopalan, Advocate, S.R.No. 74273

KGK(CO)
GN(30/11/2018)

CRL.A.No.382 of 2010

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