

Bail Blip

The Appellants 1 & 2 herein/Accused Nos.1&2, Viz, (1) Veerabathiran @ Yuvaraj @ Suresh, @ Veeraraghavan, S/o. Ramachandra Udayar and 2) Kannammal, W/o. Ramachandra Udayar were directed to be released on bail vide order dated 24.10.2007 made in MP.NO.1 of 2007 in Crl.A.892 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.892 of 2007

1.Veerabathiran @ Yuvaraj @ Suresh

2.Kannamaal ... Appellants/Accused 1&2

Vs.

State,

Represented by

Deputy Superintendent of Police,

Mamallapuram Police Station,

Kanchipuram District.

(Crime No.240 of 2005) ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 11.09.2007 made in S.C.No.669 of 2005 on the file of the Additional District and Sessions cum Fast Track Court No.I, Chengelpet and prays that this Court may set aside the same.

For Appellants :Mr.R.Vijayakumar

For Respondent :Mrs.T.P.Savitha

Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is directed against a Judgment of Conviction and Sentence dated 11.09.2007 made in S.C.No.669 of 2005 by the learned 1st Additional District and Sessions cum Fast Track Court, Chengalpet.

2.The appellants herein are son and mother respectively and they faced charges of sections 498(A), 304(B) and 406 of IPC r/w 6(2) of Dowry Prohibition Act, in the above Sessions case.

3.The case of the prosecution is that the marriage between the 1st appellant and the deceased Sivasakthi took place on 03.03.2004. At their marriage 15 sovereigns of gold and household Articles worth of Rs.80,000/- remained gifted by Sivasakthi's parents. Whereas in meantime the deceased Sivasakthi faced monetary demand of Rs.50,000/- made by the appellants for business purpose. As deceased Sivasakthi and her parents were unable to fulfill appellant's demand, the deceased Sivasakthi was subjected to physical and mental cruelty by appellants. Deceased Sivasakthi was harassed and driven to commit suicide on 13.04.2005.

4.Even thereafter the appellants failed to return the gold jewel and household article received from Sivasakthi's family and they retained the same. Thus apart from subjecting Sivasakthi to cruelty and causing her to commit suicide appellants also committed the offence of criminal breach of trust in their failure to repay the jewels and articles, thereby the appellants were charged as stated above.

5.The prosecution to establish their case examined 14 witnesses and marked 15 exhibits and produced a material object MO-1 Plastic Chair. The Learned Trial Judge on appraisal of the oral and documentary evidence held the charges against the appellant / accused as proved and accordingly convicted and sentenced the appellants to undergo 2 years Rigorous Imprisonment and fine of Rs.2,000/- in default 4 months Rigorous Imprisonment for the offence under Section 498(A) of IPC and 7 years Rigorous Imprisonment for the offence under section 304(B) of IPC and 6 months of Rigorous Imprisonment and fine of Rs.1000/- each and in default 6 months of rigorous imprisonment for the offence under section 406 of IPC r/w 6(2) D.P. Act.

6.I heard Mr.R.Vijayakumar, learned counsel for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) appearing for the respondents and perused the entire records.

7.On perusal of the impugned Judgment it is seen that the conviction on the appellants is made basing upon the evidence of PW1, PW2 and PW3. PW1 namely Nirmala is the mother of the deceased Sivasakthi, PW2 Abirami is the own sister of the deceased, PW3 Duraivelu is one who assembled the marriage as intermediary between the appellants and the deceased family.

8.PW1, Nirmala deposed that on demand by appellants, the deceased was gifted with 15 sovereign of gold and cash of Rs.15,000/- besides household articles at the marriage of her daughter. She further deposed that her daughter Sivasakthi faced

perpetual harassment at the hands of the appellants. The evidence further runs that when she represented to her uncle in Kunnavakkam about the appellant's lawless act, it was informed by him that he will take care of the issue and thereby PW1 left the issue without creating any problem. She added that in the Tamil month of Aavani when she visited her daughter, she witnessed her daughter got assaulted by the appellants with broomstick. Though for Diwali Seervarisai, the 1st appellant and the deceased were gifted with half gram of gold, the deceased was disallowed to go for Diwali festival to PW1's house. When the cruelty faced by the deceased at the hands of the appellants was questioned by PW1, the 1st appellant made clear that he will not allow the deceased to go to her maternal house (PW1's) and he further made clear that if at all she wants to go to her parental house she will be finished off.

9. In the said circumstance deceased Sivasakthi came out of her matrimonial house and stayed with PW1 accusing the appellants. For more than a month the deceased stayed with her mother PW1 and subsequently the 1st appellant visited the deceased Sivasakthi and assuring that there will be no further problem took the deceased along with him and they started to live in rented house.

10. In the said circumstance there was a call on 13.03.2004 at about 1.30 p.m. from PW9 Rajamanikam informing that Sivasakthi suffered illness and while was taken to hospital had died. Thereupon PW1 along with PW2 and her other children rushed to the 1st appellant's home at about 7.30 p.m. and found her daughter dead and remained laid in 1st appellant's house.

11. PW2 Abirami, the sister of deceased Sivasakthi reiterated PW1's version. PW3 Duraivelu, the marriage intermediary deposed that he heard that there was some difference of opinion prevailing between the 1st appellant and the deceased. He further deposed that through PW1 he came to know that the deceased Sivasakthi faced ill treatment by the appellants.

12. PW5, Balu a nearby resident deposed that while he was engaged in job work in his work place situated near to the 1st appellant's house on 13.03.2004 at 12.00 p.m. when he went to 1st appellant's house to have water he saw the deceased lying and the 1st appellant feeding water to the deceased and he further deposed that however as deceased was unable to drink water, she was immediately taken to hospital.

13. PW6, Banu who is also a nearby resident deposed that she came to spot i.e appellant's house on hearing upon a sound on 13.03.2004 at about 12.00 p.m. from the appellant's house and she deposed that she heard the demise of Sivasakthi.

14.PW7 Kannappan a distant relative of PW1 and he deposed that when he enquired deceased Sivasakthi while she was staying in her parental home as to the reason behind her quarrel with 1st appellant, the deceased Sivasakthi has not replied stating the reason but made it clear that she is also not willing to live in her parental house therein.

15.PW8 Thandapani deposed that he disposed of the cloth used by the deceased to hang which was given by PW9. PW9 Rajamanikkam is the house owner of 1st appellant's house and he deposed that he gave the cloth for disposal to PW8.

16.PW10 Mr.Sudhakar who was employed in a job work in the workplace situated near to the appellant's house deposed that on 13.03.2004 at 12.00 p.m. hearing 1st appellant's alarming sound he rushed into the 1st appellant's house and found Sivasakthi lying in floor. He further deposed that the 1st appellant has taken Sivasakthi to hospital and latter he was informed that Sivashakti has died.

17.PW-11 Dr.Mrs.Parasakthi is the Government Doctor conducted the postmortem and furnished postmortem report in Ex-P6 opining death of Shivasakthi ought to have been caused by hanging.

18.PW12 Mrs.Kavitha Ramu is the Revenue Divisional Officer conducted inquiry and submitted the inquest report in Ex-P9 and forwarded Ex-P10 requesting the Deputy Superintendent of Police, Mahabalipuram to take up the case for investigation.

19.PW13 Selvaraj, the Sub Inspector of Police who registered the case on receipt of the complaint in Ex-P1 on 14.04.2005 at about 8.30 a.m. and he registered the case under Section 174 of Cr.P.C. The printed copy of FIR is Exhibit-P11. The investigation was taken up and in the presence of PW4 namely Maasi and one Kuppan. The Parvai Mahazar in Exs-P3 and P4 was made ready and recovery of M.O.1 the plastic chair used by deceased to hang was recovered.

20.In pursuance to the report submitted by PW12, PW14 the Deputy Superintendent of Police, Karpagavinayagam on 16.04.2005 taken up the investigation and on investigation having found that the previous records made by his subordinate, the Sub Inspector of Police did not suffer any infirmity, PW13 adopted the exhibits made ready by the Sub Inspector of Police and proceeded to record the statements of the witnesses. In the meantime the appellants were arrested and remanded to judicial custody on 21.05.2005 by him. The appellants are said to have confessed before the learned Judicial Magistrate and the corresponding requisition seeking the learned Chief Judicial Magistrate to record confession is in Ex-P15. Thereafter

completing the investigation PW14 laid charges against appellants as mentioned above.

21.The Learned Trial Judge on appraisal of oral and documentary evidences convicted the appellants as indicated above.

22.As stated above the conviction is found to be made basing upon the evidence of PW1, PW2 and PW3.

23.Firstly in as much as PW3 Duraivelu's evidence is concerned, it is strange to note that though he deposed that he was informed as to the quarrel existed between the appellants and deceased, he is unable to say as to what was the demand and as to the nature of quarrel existed. Absolutely his evidence is scarce and suffers want of overt act or material particulars against the appellants. Therefore I am of the considered opinion that PW3's evidence is only hearsay evidence which cannot be relied to convict the appellants.

24.Therefore, it would be appropriate for this Court to scrutinize the conviction made over the appellants on the basis of evidence of PW1 and PW2. In this aspect it is relevant to note that except PW1, PW2 and PW3 none of the villagers or nearby residents spoke about the alleged harassment caused to the deceased by the appellants. It is further very odd to note that the statement said to have made by the PW1 and PW2 before the learned Judicial Magistrate is not brought on record and in actual there is no evidence let in that regard.

25.Further it is peculiar to note that though it is alleged by PW1 that there were earlier instances of harassment but there were no complaints made to the police. More so, there is also no averment denoting that to sort out the issue steps were taken. The above two aspects creates doubts in the mind of the Court that as to whether there was harassment. More particularly it is very odd to note that PW1 and PW2 either before the police investigation or during their cross examination has stated that there was dowry demand made by the appellants.

26.It further appears that PW12, the R.D.O. who conducted the enquiry has specifically stated that dowry demand is not the reason behind deceased suicide.

27. In as much as the factual allegations are concerned absolutely there are inconsistencies with regard to the alleged gifts and its value made at the time of marriage.

28. It is pertinent to note that PW2, the sister of the deceased Sivasakthi appears to be living with PW1 along with her children as she being a widow. Therefore it is quite natural that PW2 would reiterate PW1's version.

29. The most disturbing issue with regard to the investigation is that PW1 and PW2 have deposed that there is a chance for strangulation by the 1st appellant to cause her to die. The said version is absolutely baseless and found to be exaggerated.

30. Again in the case on hand there is unexplained delay in lodging the complaint. The complaint is found to be lodged at about 21 hours after the alleged time and knowledge of occurrence. It is further seen that the Trial Court has barely by relying upon the statement of PW1 that his daughter was assaulted with broom stick without any evidence or material on record has concluded that the above act drew cruelty and thus the appellants are liable to be punished.

31. More so, it is seen that the deceased while staying with her mother has stated to PW3 that she is not willing to live along with PW1. In this context it would be useful to highlight the defense of the appellants that the suicide ought to have happened due to mental stress and strain on the victim since her jewels were taken back by PW1 in the guise of sudden financial hardship to pledge it.

32. It is further seen that though PW1 neither in her complaint before the police nor in her statement before the Revenue Divisional Officer has stated that Rs.15,000/- was paid in cash towards dowry at the demand of appellants, but had chosen to state in her statement made under section 163 of Cr.P.C. that an amount of Rs.15,000/- was paid as dowry. The said material contradiction would demonstrate that the statement and averments are intended to accuse the appellants for an offence of dowry demand and cruelty. There is apparent failure on the part of the prosecution to examine any independent witness and the prosecution utterly failed to produce the statement of the PW1 and PW2 said to have furnished before the learned Judicial Magistrate too.

33.It is needless to say that to attract 304(B) of IPC there must be some evidence to show that the deceased was harassed soon before her death in connection with dowry. In this regard it is to be emphasized that the deceased should have met harassment soon before her death.

34.However as stated above there is no convincing and reliable evidence adduced by the prosecution to convince this Court to hold the appellants guilty of the offence charged. Unlike civil cases strict proof is required to hold an accused guilty of the charge thus having found material discrepancies with regard to evidence of PW1 as against her complaint and the statement. Thus I am of the considered opinion that the appellants are entitled to get the benefit of doubt. Though evidence of interested witnesses cannot be brushed away as unreliable but at the same time such evidence of interested witness should be convincing precise and not discrepant to the prosecution case and the material available on record. More particularly it should not be an exaggerated one. Whereas in the case on hand, I find that the evidence of PW1 and PW2 suffer out the above infirmities and accordingly they are unsafe to rely to hold guilty and convict the accused. In fine, the appellants/accused are entitled to be acquitted by giving them benefit of doubt as the prosecution failed to prove the case beyond reasonable doubt.

35.Accordingly both appellants are acquitted from charges under Sections 498(A) and 304(B) of IPC and Section 406 of I.P.C. r/w 6(2) of D.P. Act.

36.In the result:

(a) this Criminal Appeal is allowed by setting aside the conviction and sentence imposed in S.C.No.669 of 2005 dated 11.09.2007, on the file of the learned Additional District Sessions cum Fast Track Court No.1, Chengalpet.

(b) the appellants/accused Nos.1 and 2 are acquitted from all the charges;

(c) the bail bond, if any, executed by the appellants shall stand cancelled;

(d) the Trial Court is directed to refund the fine amount, if any paid by the appellants/accused Nos.1 and 2.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Additional District and Sessions cum
Fast Track Court No.1, Chengelpet.
2. The Deputy Superintendent of Police,
Mamallapuram Police Station, Kanchipuram District.
3. The Public Prosecutor, High Court, Madras.
4. The Principal District & Sessions Judge, Chengalpat.
5. The Principal Assistant Sessions Judge, Chengalpet
6. The District Munsif - Cum - Chief Judicial Magistrate
Thirukazhukundram.
7. The Superintendent, Central Prison, Puzhal.

Crl.A.No.892 of 2007

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