

BAIL SLIP

The petitioners/Accused viz., (1)Obuli,M/32, S/o.Chandran, (2) Kalavathi,F/50, W/o.Chandran, (Accused 1&3 in S.C.No.71 of 2007 dated 01.02.2010 on the file fo the Sessions Judge & Mahila Court, Salem) were directed to be released on bail as per order of this Court dated 08.02.2010 made in MP No.1/2010 in CRL A No.86 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.11.2018

CORAM :

THE HON'BLE MR. JUSTICE M.DHANDAPANI

Crl.A.No. 86 of 2010

1. Obuli (A1)
2. Kalavathi (A3) ... Appellants/Accused 1 & 3

Vs.

The State by
Deputy Superintendent of Police,
Salem Rural,
Kondalampatti Police Station,
Salem District
Crime No. 53 of 2005 ... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the Judgment dated 01.02.2010 passed in S.C.No.71/2007 on the file of Sessions Judge & Mahila Court, Salem.

For Appellants : Mr.K.Selvaraj

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

The appellants were arrayed as A1 and A3 in S.C.No.71 of 2007 on the file of the learned Sessions Judge, Mahila Court,

Salem. They stood charged for the offence under Sections 498-A and 304-B IPC. The accused denied the charges and opted for the trial. Therefore, they were put for trial for the charges. After full-fledged trial, the learned Sessions Judge found them guilty for the offence under Sections 498-A and 304-B IPC and sentenced them to undergo Rigorous Imprisonment for three years each, and to pay a fine of Rs.1000/- each in default, to undergo Rigorous Imprisonment for three months each for offence under Section 498-A IPC and to undergo Rigorous Imprisonment for seven years each, and to pay a fine of Rs.1000 each, in default, to undergo Rigorous Imprisonment for three months each for the offence under Section 304-B IPC. Challenging the conviction and sentence, the accused are before this Court with the present criminal appeal.

2. The brief facts of the prosecution case is as follows:

(i) On 07.09.2003, the deceased Maheshwari was married to the first appellant. At the time of marriage, the complainant/father of the deceased gave 15-1/2 sovereigns of gold jewels to the deceased as dowry and after marriage, the deceased was living with A1 at her matrimonial home at Vembadithalam, Soundamman Koil Street along with her father-in-law and mother-in-law as a joint family. The deceased had a defect in her right eye and it was known by A1 to A3 before the marriage itself. Even though, her mother-in-law (A3) abused the deceased that they had married a handicapped/visually challenged girl and also complained that the deceased was not good at cooking and she was not able to do any household works and within three months of the marriage, A1 asked Rs.20,000/- as dowry from the deceased person and her father for the purpose of setting up a weaving unit, thereafter, PW1 gave Rs.20,000/- for the purpose of setting up a weaving unit. Again, A1 demanded Rs.10,000/- as additional dowry from PW1 and PW1 was not able to fulfill his demand. Hence, A1 to A3 tortured the deceased. On 14.02.2005 at about 8.30 a.m., on demanding additional dowry, the accused were harassing the deceased, upon which, the deceased committed suicide. Accordingly, the appellants along with the other accused were implicated in the present case for offence under Sections 498-A and 304-B IPC.

(ii) On 14.02.2005 at about 15.00 hours, on receipt of the complaint from P.W.1, P.W.7, the then Sub-Inspector of Police, Kondalampatti Police Station registered a case in Crime.No.53/05 under Section 174(3)(4) of Cr.P.C. Ex.P.4 is the First Information Report. After registration of the case, copy of the F.I.R. was forwarded to the Deputy Superintendent of Police and Revenue Divisional Officer (R.D.O) enquiry was ordered. After receipt of the copy of the F.I.R., P.W.11 (Mr.Karunakaran), the then Deputy Superintendent of Police took up the case for

investigation. He proceeded to the scene of occurrence and in the presence of PW5 (Veeraragavan) and PW6 (Selvaraj), he prepared the Observation Mahazar under Ex.P10. Further, he drawn a rough sketch under Ex.P.1. Subsequent to the preparation of those documents, he examined the other witnesses and recorded their statements.

(iii) In the meanwhile, P.W.10 (Mr.Dhatchinamoorthy), the then R.D.O after receiving a copy of the F.I.R, went to the Government Mohan Kumaramangalam Medical College Hospital, Salem and in the presence of witnesses, he conducted enquiry and prepared an inquest report under Ex.P.8. Ex.P.7 is the opinion given by the RDO. After preparation of the inquest report, he entrusted the dead body to P.W.4 (Govindhan), who is the then Head Constable attached to the Kondalampatti Police Station. In turn, he handover the dead body to the Doctor for conducting autopsy.

(iv) On receipt of the request given by PW10, P.W.9, Dr.Vallinayagam, Director attached to the Madras Medical College and Hospital, conducted autopsy over the dead body of the deceased. During the time of post mortem, he found the following injuries:

"Superficial burn injuries present over the head, face, front and sides of neck, chest, abdomen, back of trunk and both upper and lower limbs. Singeing of scalp hair, eyebrows, eyelashes, burns absent over scapular region of back, gluteal region, reddening over the left side of chest."

The post mortem report given by P.W.9 is exhibited as Ex.P6. During the course of post mortem, he collected the viscera of the deceased and sent it to the chemical examination. In a report given by the chemical examiner, it was mentioned that there is no poisonous materials found in the viscera of the deceased. Accordingly, P.W.9 opined that the deceased was died of shock due to burns.

(v) In continuation of the investigation, on 24.02.2005, P.W.12 examined the Doctor and recorded his statement. On the same day, he altered the Section of law as 304(B) IPC. Thereafter, he sent the alteration report to the concerned Judicial Magistrate. Further, on the same day, near Vembadithalam bus stand, he arrested all the three accused and sent them for Judicial custody. On completion of investigation, he came to the positive conclusion that both A1 and A3

committed the offence under section 304(B) IPC and filed a final report.

(vi) After receiving the final report, the learned Judicial Magistrate No.V, Salem issued summon in P.R.C.No.1 of 2006 for appearance of the accused and production of documents, which are relied on by the prosecution were furnished to the accused. Thereafter, the case has been committed to the Court of Sessions Judge, Mahila Court, Salem for trial. In the Court of Sessions, Salem, the case was assigned as S.C.No.71 of 2007.

(vii). At the time of questioning the allegations, the accused denied and pleaded as not guilty. Therefore, charge has been framed for the offence under Sections 498-A and 304-B IPC.

3. Based on the materials available on record, the Trial Court framed charges against the accused as stated supra and the accused denied the same. In order to prove the case on the side of the prosecution, as many as 12 witnesses were examined as P.W.1 to P.W.12 and 12 documents were marked as Ex.P.1 to Ex.P.12. On the side of the defence, 5 witnesses were examined as D.W.1 to D.W.5 and no documents were marked as exhibits.

4. Learned Trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 of Cr.P.C. and for which, they were pleaded as not guilty.

5. The learned Trial Judge on perusal of the materials placed and on considering the arguments advanced by both sides, convicted and sentenced the appellants as stated above and acquitted the second accused under Section 235(1) of Cr.P.C. Challenging the same, the present criminal appeal has been filed by the first and third accused.

6. Today, when the appeal is taken up for consideration, I have heard Mr.K.Selvaraj, learned counsel for the appellants and Mr.R.Ravichandran, learned Government Advocate (Crl.Side) for the respondent and also perused the records carefully.

7. Mr.K.Selvaraj, learned counsel appearing for the appellants would submit that PW1, PW2 and PW3 who are non other than father, mother and uncle of the deceased person and the remaining witnesses are the persons who had conducted the post mortem and Revenue authorities who conducted investigation under Section 174 of Cr.P.C. Except P.W.1 to P.W.3, no other witnesses spoke against the accused persons. Even on perusal of PW1 complaint given by him, there is no allegations with regard to the demand of additional dowry of Rs.10,000/- and there is no alleged guilty committed by the accused persons against the

deceased person. On perusal of PW2 and P.W.3, there was a hearsay evidence and there is no documentary evidence to the additional demand of dowry. There is also no documentary evidence on the Doctor's evidence who conducted the post mortem on the injuries.

8. Prior to the date of occurrence, A2 and A3 left home to attend the marriage function of their house owner and the deceased and her husband (A1) also attended the function. They reached their matrimonial home at 7 p.m. Thereafter, A1 went to relative marriage. After the marriage, A1 along with his sister's son came to the house and found the deceased person committed suicide by pouring the kerosene and set fire on her body. Immediately, the same was conveyed to the Police Officials/ Law Enforcing Agency. Initially, the case was registered under Section 174(3)(4) Cr.P.C, thereafter, it was altered under Sections 498-A and 304-B IPC. Except the three witnesses, viz., P.W.1 to P.W.3, no other incriminating documents were available.

9. Per contra, the learned Government Advocate (Crl.Side) would submit that P.Ws 1 and 3 have categorically narrated the guilt against the A1 and A3. Initially, they had parted Rs.20,000/- as dowry from the father(P.W.1) of the deceased. Thereafter, A1 demanded Rs.10,000/- as additional dowry. However, learned Government Advocate (Crl.Side) fairly stated that there is no proof for the demand of additional dowry is available in the evidence of P.W.1, even in chief examination as well as in cross-examination. Even on perusal of RDO enquiry, P.W.10 has clearly deposed that there is no demand of dowry. They have categorically deposed that there was no dowry demand against the deceased person and the RDO report has also been filed. No documentary evidence is available to show that there is dowry demand even on perusal of inquest report and post mortem under Ex.P.8 and Ex.P.9.

10. I have considered the rival submission made by the parties. Admittedly, the case has been registered and the appellants are before this Court.

11. I have gone through the documentary evidence produced on record and this Court also read oral evidence of the Prosecution Witnesses and perused the charge framed against the accused person that the Lower Court framed two charges against the accused persons.

12. On perusal of the records discloses the marriage of the first appellant and the deceased was sodomized on 07.09.2003. On perusal of evidence of PW1 and PW2, the deceased and A1 were happily lived in the matrimonial home as husband and wife and

initially A1 demanded Rs.20,000/- for set up weaving unit in his house. Accordingly, PW1 by pledging the jewels of 5 sovereigns of gold belonging to the deceased and 4-½ sovereigns of gold belongs to A1 which is totally 9-½ sovereigns of gold were pledged and got Rs.20,000/- for giving to son-in-law(A1) for setting up a weaving unit. However, on perusal of evidence, the demand of Rs.20,000/- is not available. Further, there is no demand of additional dowry of Rs.10,000/- which is also not available in evidence of P.W.1 and it is stated in the chief examination and cross examination, he received a phone call from the neighbour of A1 as his daughter had committed suicide. Immediately, they rushed to the spot and made a complaint on the same day to the respondent Police. Police initially registered the case in Crime.No.53/05 under Section 174(3)(4) of Cr.P.C and after inquest, they implicated the accused persons A1 and A3 under Sections 498-A and 304-B IPC. Even on perusal of the entire chief and cross examination of PW.2 and P.W.3 were not mentioned and even a single word about demand of dowry and they are not pleaded about the compatibility of A1 and deceased. There is no allegation with regard to the demand of dowry which drove the deceased to the parental home till her death. The compatibility of the mother-in-law and the deceased person would not lead to prosecution. On perusal of Doctor's evidence, who conducted post mortem and the Doctor disclosed only external burn injuries and he deposed only burn injuries sustained by the deceased person.

13. Even on perusal of Ex.P6, it did not reveal any cruelty or harassment before death of the deceased. There is no corroboration between the evidence of PW1 and PW3. PW3 is none other than the cousin of the deceased who deposed that he along with A1 available in the marriage hall at 5.30 p.m.. They joined together and reached A1's home. They found the deceased with burn injuries.

14. It is also relevant to extract hereunder the relevant portions of the decision of the Hon'ble Supreme Court reported in (2017) 1 SCC 101 (Bajinath and others Vs. State of Madhya Pradesh):

'24.The evidence on record and the competing arguments have received our required attention. As the prosecution is on the charge of the offences envisaged in Sections 304B and 498A of the Code, the provisions for reference are extracted hereunder:

"304B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her

marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. - For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The explanation to this Section expositis "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

28. Section 113B of the Act enjoins a statutory presumption as to dowry death in the following terms:

"113-B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)"

29. 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. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. 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 convincing evidence so as to avail the presumption engrafted in Section 113B of the 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.'

15. In the decision cited supra, the Hon'ble Supreme Court has clearly held that the presumption as to dowry death would get attracted only upon the proof of the fact that the deceased woman 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. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

16. Further, as per Section 304-B of IPC, if death of a woman was caused other than normal circumstances within seven years from the date of marriage and if it is proved that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband, then such death shall be called 'dowry death'.

17. The learned Sessions Judge arrived at a conclusion that within 7 years of marriage, if death is occurred, there is a chance for dowry death. However, in the present case, there is no evidence either by P.W.1 or P.W.2 and simply stated that A1 and A3 demanded Rs.10,000/- as additional dowry, for which, there is no proof available. Further no material evidence available, before her death she was subjected to cruelty by A1 or other accused drove the deceased commit suicide.

18. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No. 71/2007 dated 01.02.2010 by the learned Sessions Judge, Mahila Court, Salem are set aside. The appellants/accused are acquitted from the charge under Sections 498-A and 304-B of IPC. The fine amount, if any, paid by him is ordered to be refunded to him. The bail bonds executed by him, shall stand terminated/discharged.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

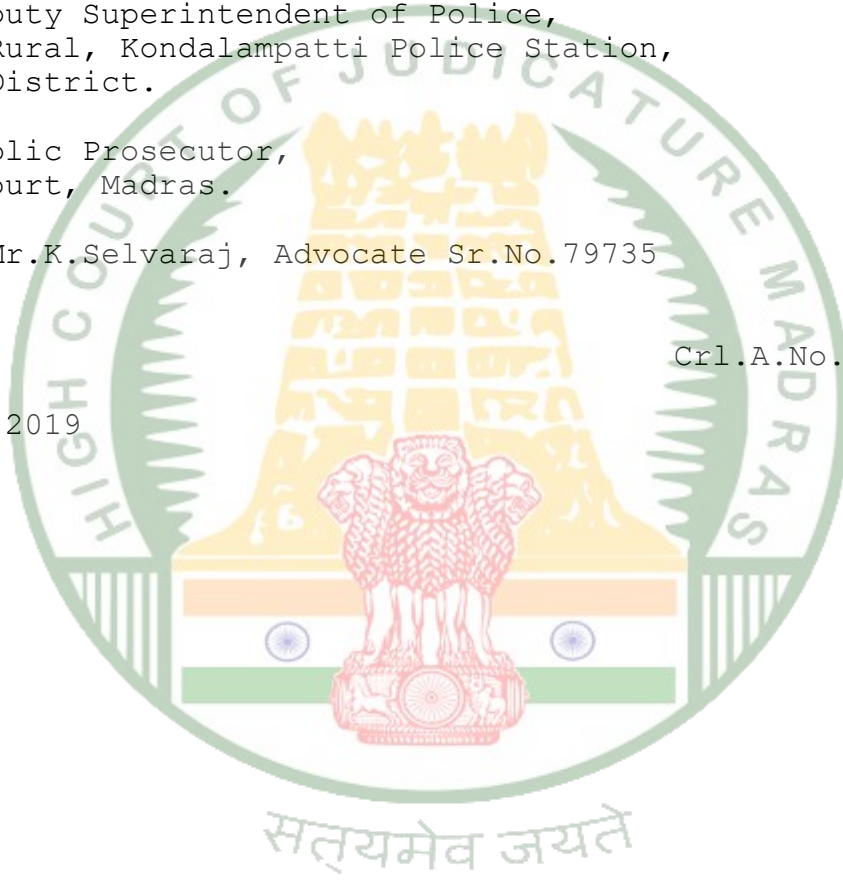
msv

To

- 1.The Judicial Magistrate No.5,
Salem.
 2. The Chief Judicial Magistrate,
Salem.
 3. The Sessions Judge,
Mahila Court, Salem.
 4. The Deputy Superintendent of Police,
Salem Rural, Kondalampatti Police Station,
Salem District.
 5. The Public Prosecutor,
High Court, Madras.
- +2 cc to Mr.K.Selvaraj, Advocate Sr.No.79735

SPD(CO)
CSL/22.01.2019

Cr1.A.No. 86 of 2010



WEB COPY