

BAIL SLIP

The Petitioner/Accused namely, Narayanan, aged 33 years, S/o.Mannangatty was directed to be released on bail as per order of this Honourable Court dated 10.08.2018 in Crl.Mp.No. 10651 of 2018 in Crl.A.238/2005 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.238 of 2005

Narayanan

.... Appellant/Accused

Vs.

State rep. by Deputy Superintendent of Police,
Kallakurichi

(Crime No.18/2003 on the file of

Ulundurpet Police Station)

.... Respondent/Complainant

Prayer: Appeal filed under Section 374 of Cr.P.C. seeking to set aside the judgment of conviction and sentence of the appellant in S.C.No.278 of 2003 dated 02.12.2004 on the file of the II Additional Assistant Sessions Judge, Villupuram, Villupuram District.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.A.L.Gandhimathi

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

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 02.12.2004 made in S.C.No.278 of 2003 by the learned II Additional Assistant Sessions Judge, Villupuram, Villupuram District.

2.The brief case of the prosecution is as follows: The first accused and the deceased are husband and wife. The second accused is the elder sister of the first accused. After their

marriage, the first accused and the deceased were residing at Vijayamanagaram. The second accused was staying along with her parents after her husband's death. On 11.01.2003, at about 2.30 a.m., the deceased caused death to her younger daughter namely Abinaya and committed suicide by hanging herself.

3.A1 used to torture the deceased by demanding dowry and every month, the deceased used to go to her parental house for collecting money. Even two days prior to the date of occurrence, the deceased and her husband/ first accused came to the house of P.W.3/ mother of the deceased and demanded a sum of Rs.5,000/-. P.W.3 pacified the deceased and her husband/ first accused saying that she will give money within a couple of days and believing her words, the deceased and the first accused went to their house.

4.The first accused in his confession statement has stated that when he returned to his house from his paddy field at 4 a.m. on the date of occurrence, he found his wife and his second daughter hanging separately. On seeing them he shouted. On hearing the same, the villagers came.

5.P.W.2/ Village Assistant came to know about the incident and he informed about the same to P.W.1/ Village Administrative Officer. Thereafter, P.W.1 and P.W.2 went to the scene of occurrence. Thereafter, P.W.1 informed about the said incident to the respondent Police. Thereafter, investigation was conducted by the respondent Police. On the information received from a local resident, P.W.3/ mother of the deceased rushed to the spot and found her daughter and second grand-daughter dead.

6.Initially, the case was registered under Section 174 of Cr.P.C. Since the deceased committed suicide before 7 years of marriage, the respondent Police sent a copy of the FIR to the Revenue Divisional Officer and the Revenue Divisional Officer conducted enquiry under Section 174 of Cr.P.C. and his report was marked as Ex.P.11. After due investigation, the case was altered to under Section 304-B of IPC on 08.02.2003. The bodies of the deceased were taken to the hospital for post mortem. P.W.11 and P.W.12 are Doctors who conducted post mortem. Inquest report was marked as Ex.P.11 and post mortem reports were marked as Ex.P.12 and Ex.P.13.

7.After following due procedure and after framing of charges, the same was read over and explained to the accused in Tamil. The accused pleaded not guilty. Thereafter, trial was proceeded against the accused.

8.On the side of the prosecution, 13 witnesses were examined as P.W.1 to P.W.13 and 15 documents were marked as

exhibits Ex.P.1 to Ex.P.15. No material object was marked since the rope was burnt by the accused and local villagers by following customary practice. On the side of the accused two witnesses were examined as D.W.1 and D.W.2 and no document was marked as exhibit.

9.P.W.3 is the mother of the deceased, P.W.4 is the brother of the deceased, P.W.5 and P.W.6 are local residents. All the other witnesses are witnesses who performed their official duty and assisted the prosecution case.

10.After trial, the Trial Court convicted the appellant/ first accused for the offence under Section 304-B of IPC and sentenced him

to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment. The Trial Court acquitted the second accused. Aggrieved by the said conviction and sentence, the appellant / first accused has filed this appeal before this Court.

11.The learned Senior Counsel appearing for the appellant would submit that the evidence let in by P.W.3, P.W.4 and P.W.6 are inconsistent. He would further submit that P.W.3/ mother of the deceased has deposed that the second accused is A1's elder sister and one Kala is A1's younger sister and they both were married to P.W.3's sons namely, Krishnamoorthy and Saravanan. After their marriage only, the marriage between the deceased and A1 was conducted. Both the said Krishnamoorthy and Saravanan had passed away. Saravanan had passed away during a road accident.

12.The learned Senior Counsel appearing for the appellant would further submit that P.W.3 has further deposed that A1 used to torture the deceased by demanding dowry and every month, the deceased used to go to her parental house for collecting money. Even two days prior to the date of occurrence, the deceased and her husband/ first accused came to the house of P.W.3 and demanded a sum of Rs.5,000/-. P.W.3 pacified the deceased and her husband/ first accused saying that she will give money within a couple of days and believing her words, the deceased and the first accused went to their house.

13.The learned Senior Counsel appearing for the appellant would further submit that though P.W.4 has endorsed the deposition of P.W.3, in his deposition P.W.4 has deposed that two days prior to the date of occurrence, the deceased alone came to the house of P.W.3 and demanded a sum of Rs.5,000/- as if it was demanded by the first accused. P.W.3 pacified the deceased saying that she will give money within a couple of days

and sent her to her matrimonial house.

14.The learned Senior Counsel appearing for the appellant would further submit that since both their deposition not corroborated with each other, the Trial Court passed conviction and sentence as against the appellant. He would further submit that contrary to their depositions, P.W.6 in his deposition has deposed that on 08.01.2003 there was a panchayat in which the first accused and the deceased participated. One Saravanan/ brother in law of the first accused and brother of the deceased had passed away in an accident. The claim amount for the same was to be given to his wife/ younger sister of the first accused namely, Kala. However, P.W.4/ another brother in law of the first accused had collected the amount and kept it for himself. Hence, panchayat was held. In the said panchayat, P.W.4 had agreed to pay a sum of Rs.30,000/- to the said Kala.

15.The learned Senior Counsel appearing for the appellant would further submit that P.W.3 and P.W.4 in their depositions have also admitted that there was panchayat two days prior to the date of occurrence. He would further submit that on one hand they admit that there was panchayat and on the other hand they say that there was demand of dowry. There is no proper explanation on the side of the prosecution that there was harassment soon before the date of occurrence by demanding dowry and there is also no direct evidence implicating the appellant as first accused. Hence, the prosecution has not proved the case beyond reasonable doubt. Further, P.W.3 pacified the appellant and the deceased. Accordingly, he prayed for acquittal of the appellant/ first accused.

16.The learned Government Advocate (Crl. Side) would submit that P.W.3 is the mother of the deceased. P.W.4 is the brother of the deceased. Very often, the deceased visited the house of P.W.3 and demanded money as if instigated by the appellant. Even two days prior to the date of occurrence, the deceased and her husband/ first accused went to the house of P.W.3 and demanded a sum of Rs.5,000/-. P.W.3 pacified the deceased and her husband/ first accused saying that she will give money within a couple of days and sent them to their house. Since the amount was not paid, the appellant/ first accused tortured the deceased and forced her to commit suicide.

17.The learned Government Advocate (Crl. Side) would further submit that after examining the entire evidence and documents, the Trial Court has rightly passed the conviction and sentence as against the first accused/ appellant. Hence, the well considered judgment of the Trial Court need not be interfered with. Accordingly, he prayed for dismissal of the appeal.

18. Heard the arguments advanced on either side and perused the materials placed on record.

19. Perusal of the deposition of P.W.3/ mother of the deceased shows the close relationship of P.W.3 with the appellant family. It is also known that the appellant's two sisters were married to P.W.3's two sons and those two sons have also passed away and both the sisters of the appellant are widows. Further P.W.3 has deposed that the appellant used to torture the deceased by demanding dowry and every month, the deceased used to go to her house for collecting money. Even two days prior to the date of occurrence i.e., on 08.01.2003, the deceased and the appellant went to the house of P.W.3 and demanded a sum of Rs.5,000/-. P.W.3 pacified them saying that she will give money within a couple of days and believing her words, they returned to their house.

20. The above said facts were endorsed by P.W.4/ brother of the deceased whose residence is in Vijayamanagaram. Whereas, P.W.3 is residing in Vasanakuppam. Vasanakuppam is far away from Vijayamanagaram. Further in their cross-examination, both of them admitted that there was a panchayat on 08.01.2003, in which, the appellant and the deceased participated. One Saravanan/ brother in law of the appellant had passed away in an accident. The claim amount for the same was to be given to his wife/ younger sister of the appellant namely, Kala. However, P.W.4/ another brother in law of the appellant had collected the amount and kept it for himself. Hence, panchayat was held. In the said panchayat, P.W.4 had agreed to pay a sum of Rs.30,000/- to the said Kala.

21. The depositions of P.W.6, D.W.1 and D.W.2 prove that there was panchayat at Vijayamanagaram prior to two days of the incident and there was quarrel inbetween the deceased and her brother P.W.4. Though P.W.3 and P.W.4 categorically stated that the deceased visited her parental home two days prior to the incident, in their own evidence they have also stated that there was a panchayat two days prior to the incident and the deceased participated in the panchayat. Further the evidence of P.W.3, P.W.4 and P.W.6 does not corroborate with each other.

22. There is also no plausible explanation from the prosecution to show that soon before her death the deceased was subjected to cruelty or harassment by her husband forcing her to take the extreme step of committing suicide by hanging herself.

23. 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 (Baijnath 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 enjoin 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 inspirit 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.'

24. 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.

25. 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'.

26. In the absence of any material to substantiate that soon before the death of the deceased, she was subjected to cruelty or harassment by her husband/ appellant forcing her to take the extreme step of committing suicide, this Court is not able to accept the view taken by the Trial Court. Since the prosecution has not proved the case beyond reasonable doubt, this Court is inclined to set aside the judgment dated 02.12.2004 made in S.C.No.278 of 2003 by the learned II Additional Assistant Sessions Judge, Villupuram, Villupuram District.

27. In the result, the criminal appeal is allowed. The conviction and sentence as against the appellant/ first accused in the judgment dated 02.12.2004 in S.C.No.278 of 2003 passed by the learned II Additional Assistant Sessions Judge, Villupuram, Villupuram District, are set aside. The appellant/ first accused is acquitted from the charge under Section 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

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional Assistant Sessions Judge,
Villupuram, Villupuram District.
- 2.The I Additional District Munsif,
cum Judicial Magistrate I,
Ulundurpet.
- 3.The Chief Judicial Magistrate,
Villupuram.
- 4.The Principal Sessions Judge,
Villupuram.
- 5.The Superintendent,
Central Prison,
Cuddalore.
- 6.The Deputy Superintendent of Police,
Kallakurichi.
- 7.The Public Prosecutor,
High Court, Madras.

Copy To

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

+1cc to Mr.A.L.Gandhimathi, Advocate, S.R.No.83377

Cr1.A.No.238 of 2005

SMI (CO)
GN(09/01/2019)