

Bail Slip

The Appellant herein/Accused viz 1. Solomon Rajesh, S/o.Devadoss, 2.Devadoss,s/o.Krishnan and 3. Pelaicy W/o.Devadoss were directed to be released as per the order of this court dated 17/02/2011 made in MP.1/2011 in Cr1.A.107/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.A.No.107 of 2011

1. Solomon Rajesh M/A 23 years
S/o Devadoss.
2. Devadoss M/A 47 years
S/o Krishnan.
3. Pelaicy F/A 41 years
W/o Devadoss.

All of them residing at
Mettu Street,
Manavoor Village,
Tiruttani Taluk,
Tiruvallur
District.

.. Appellants

Vs.

State represented by
The Inspector of Police,
Tiruvallankadu Police Station,
Tiruvallur District.

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed in S.C.No.99 of 2009 dated 14.02.2011 on the file of the Additional District Judge, FTC.No.3 Tiruvallur.

For Appellants : Mr.T.Muruganantham

For Respondent : Mr.G.Ramar
Government Advocate (Cr1.Side)

JUDGMENT

This criminal appeal has been filed seeking to set aside the judgment dated 14.02.2011, passed in S.C.No.99 of 2009, on the file of the Additional District Court (FTC.No.3), Tiruvallur.

2 The brief facts leading to the filing of this criminal appeal are as under.

2.1 It is the case of the prosecution that Solomon Rajesh (A1) got married to the deceased Sumithra on 09.02.2004 and that, she committed suicide by hanging on 06.09.2005 in her matrimonial home, within seven years of marriage. On the complaint (Ex-P5), dated 06.09.2005, given by Yagob (PW8), Jayavel (PW10), Sub-Inspector of Police, T2-Tiruvalangadu Police Station, registered a case in Crime No.148 of 2008, under Section 174(3) Cr.P.C.

2.2 The investigation was taken over by K. Veerapandian (PW13), Deputy Superintendent of Police, who went to the place of occurrence and prepared observation mahazar (Ex-P9) and rough sketch (Ex-P10). Since the suicide was within seven years of marriage, the Investigating Officer requested the Revenue Divisional Officer, Tiruttani, to conduct the inquest. Latha (DW1), Revenue Divisional Officer, conducted the inquest over the body of the deceased Sumithra and submitted a report to the Investigating Officer. The Investigating Officer filed an alteration report altering the offence in the FIR (Ex-P7) from under Section 174(3) Cr.P.C. to one under Section 306 IPC. After completing the investigation, the Investigating Officer filed final report before the Judicial Magistrate, Tiruttani in PRC.No.31 of 2005, for the offences under Section 498-A, 306 and 304-B IPC, against Solomon Rajesh (A1), Devadoss (A2) and Pelaicy (A3).

2.3 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.99 of 2009 and made over to the Additional District Court (Fast Track Court No.III), Tiruvallur, for trial.

2.4 The Trial Court framed charges under Section 498-A, 306 and 304-B IPC, against the three accused and when questioned, they pleaded, "not guilty".

2.5 To prove the case, the prosecution examined thirteen witnesses and marked eleven exhibits and two material objects.

2.6 When the accused were questioned about the incriminating circumstances appearing against them under Section 313 Cr.P.C., they denied the same. On behalf of the accused, Latha, Revenue Divisional Officer, was examined as DW1 and her inquest report was marked as Ex-D1.

2.7 After considering the evidence on record and hearing either side, the trial Court, by judgment, dated 14.02.2011 in

S.C.No.99 of 2009, convicted all the three accused only for the offence under Section 498-A IPC and 304-B IPC as follows:

Provisions under which convicted	Sentence
(a) 498-A	Three years rigorous imprisonment and fine of Rs.5,000/- each and in default six months simple imprisonment
(b) 304-B	Ten years rigorous imprisonment and fine of Rs.10,000/- each and in default one year simple imprisonment

2.8 Challenging the aforesaid conviction and sentence, the accused/appellants are before this Court.

3 Heard Mr.T.Muruganantham, learned counsel for the appellants/accused and Mr.G.Ramar, learned Government Advocate (Crl. Side) for the respondent/State.

4 The facts that have been established beyond doubt are:

(a) the relationship between the parties, viz, Solomon Rajesh (A1) is the son of Devadoss (A2) and Pelaicy (A3) and the deceased Sumithra is the wife of Solomon Rajesh (A1);

(b) Solomon Rajesh (A1) and the deceased Sumithra got married on 09.02.2004;

(c) the deceased Sumithra committed suicide by hanging on 06.09.2005.

5 Dr.Mohanam (PW8), who conducted autopsy on the body of the deceased Sumithra, has, in his evidence as well in the post-mortem certificate (Ex-P8), has opined as follows:

“Cause of death: Asphyxia due to hanging”

The cause for Sumithra's death is not in dispute and therefore, it is unnecessary to dilate further on this aspect.

6 Egavalli (PW1), step mother of the deceased Sumithra, has stated in her evidence, that Sumithra got married to Solomon Rajesh (A1) and during marriage, they gave her ten sovereigns of gold jewels and one motor-cycle for their son-in-law apart from household articles; for a year, they were living happily; Solomon Rajesh (A1) had pledged the jewels given to Sumithra for his business, on account of which, quarrels arose; after quarrels Sumithra would come home and complain about her husband and they would pacify her and send her back to her matrimonial

home; they quarreled with her daughter for money and murdered her.

7 It has been established in the cross-examination of Egavalli (PW1) and Veerapandian (PW13), Investigating Officer, that, Egavalli (PW1) did not tell the Investigating Officer in her statement under Section 161(3) Cr.P.C., that Solomon Rajesh (A1) had pledged Sumithra's jewels for his business. It is necessary to state here that Egavalli (PW1) has not implicated Devadoss (A2) and Pelaicy (A3) in her evidence.

8 Yagob (PW8), father of the deceased Sumithra, has stated in his evidence that during the marriage of the deceased Sumithra with Solomon Rajesh (A1), he gave ten and a half sovereigns of gold jewels to his daughter, one and a half sovereigns of jewels to his son-in-law, one motor cycle and other household articles; after marriage, for about three to four months, they were living happily; thereafter, the accused demanded money from her and quarreled with her; on 06.09.2005, around 5.00 p.m., a school student informed him that his daughter Sumithra had died by committing suicide; he went to the house of the accused and found the body of his daughter on the sofa; he gave complaint (Ex-P5) to the police on the same day.

9 In the cross-examination of Yagob (PW8), he has admitted that Sumithra and Solomon Rajesh (A1) were in love with each other and when Solomon Rajesh (A1) asked for her hand, Yagob (PW8) agreed to give Sumithra in marriage. In the complaint given by Yagob (PW8), he has implicated all the family members of his son-in-law including his sisters Priya and Usha. In the examination-in-chief, he has stated that when his daughter came home for the Maru ceremony, Pelaicy (A3) had taken away her jewels. In the cross-examination, it was elicited from him that he had not stated this fact in the statement to the police under Section 161(3) Cr.P.C.

10 The prosecution examined Sheela (PW6) and Babyammal (PW7), two neighbours who have stated that Sumithra got married to Solomon Rajesh (A1) and whenever she came to her parents' house, they would meet her and she would tell them that she was being harassed by her husband's family for jewels and money.

11 In the cross-examination, Sheela (PW6) admitted that the marriage of Sumithra with Solomon Rajesh (A1) was a love marriage and that Solomon Rajesh (A1) was running a cycle parking stand. In the examination-in-chief, Sheela (PW6) has stated that Sumithra came to her natal home and on the next day, she committed suicide in her matrimonial home. However, the defence have established from the cross-examination of Sheela (PW6) and the Investigating Officer that, she had not stated

these facts in her statement under Section 161(3) Cr.P.C. given to the police. Similarly, Babyammal (PW7) in her examination-in-chief, has stated that the accused had taken away the jewels of Sumithra for starting a shop. But, in the cross-examination, it has been shown that this was an improvement by her.

12 Thus, on reading of the evidence of Egavalli (PW1), Sheela (PW6), Babyammal (PW7) and Yagob (PW8), it is seen that Sumithra and Solomon Rajesh (A1) were in love with each other and their marriage was arranged with the consent of both families. In fact, Yagob (PW8), father of the deceased Sumithra, has clearly admitted in the cross-examination that whatever jewels he had given during marriage were on his own volition and was not demanded by the accused at all. Solomon Rajesh (A1) was already having a cycle parking stand and a petty shop near Manavur Railway Station and therefore, there was no occasion for him to demand money from his wife for starting any new business.

13 At this juncture, it may be relevant to state here that the Investigating Officer had not submitted the inquest report (Ex-D1) of Latha, Revenue Divisional Officer, along with the final report. Therefore, the defence summoned Latha, Revenue Divisional Officer, and examined her as DW1 and marked the inquest report as Ex-D1. Latha (DW1), Revenue Divisional Officer, in her examination-in-chief, has clearly stated that during inquest, she examined the parents of the deceased, the family members of the accused and neighbours and came to the conclusion that there was no cruelty and dowry harassment inflicted on her and that Sumithra had committed suicide because Solomon Rajesh (A1) suffered impotency after he had undergone a surgery for hernia in the Railway hospital.

14 In the cross-examination by the Public Prosecutor, Latha (DW1), Revenue Divisional Officer, has stated that she examined the medical reports, however, she had not stated the name of the doctor who performed the surgery, in her inquest report (Ex-D1). She has further stated that, though the parents of the deceased were saying that her daughter was murdered for money, yet, the other independent witnesses examined by her stated that due to childlessness, Sumithra suffered depression and committed suicide. The Investigating Officer had burked the inquest report of Latha (DW1), Revenue Divisional Officer, since it was favourable to the accused. To the specific question put to Investigating Officer in the cross-examination, he has stated that, if the Court wants, he is ready to submit the inquest report. This answer by the Investigating Officer smacks of rank ignorance, because, he has a bounden duty to place all the relevant materials, be it favourable to the accused or not, along with the final report.

15 As required by law, the Investigating Officer has requisitioned the services of the Executive Magistrate to conduct inquest, since, the death of the deceased Sumithra was within seven years of marriage. Latha (DW1), Revenue Divisional Officer, has conducted the inquest thoroughly by examining the concerned parties and also neutral people and has given a finding that there was no dowry harassment and that the suicide of Sumithra would have been on account of the inability of Solomon Rajesh (A1), to beget a child through her. Of course, the inquest report is merely the opinion of the Executive Magistrate and it is open to the Investigating Officer to differ from that opinion and come to an independent opinion on the culpability of the accused by collecting credible materials to impeach the opinion of the Executive Magistrate. After doing so, the Investigating Officer is required to submit the inquest report also along with the final report, by including the name of the Executive Magistrate in the memorandum of evidence. Had that been done, the accused would have been in a position to confront the prosecution witnesses with the previous statements given by them to the Executive Magistrate during inquest, because, those statements do not suffer the disadvantage of a Police statement recorded under Section 161(3) of Cr.P.C.

16 The inquest report and all the accompanying documents were brought for the first time to the trial Court by Latha (DW1), the Executive Magistrate when she was summoned by the accused as defence witness. Even if this Court keeps aside the evidence of Latha (DW1) and the inquest report (Ex-D1), the evidence of Egavalli (PW1), Sheela (PW6), Babyammal (PW7) and Yagob (PW8) with contradictions galore do not inspire the confidence of this Court to convict the accused/appellants under Section 498-A, 306 and 304-B IPC. For attracting the provisions of Section 304-B IPC, it should be established that the death of the girl had occurred on account of cruelty inflicted soon before her death in connection with demand for dowry.

17 In this case, the evidence of Yagob (PW8), clearly shows that there was no demand of dowry at the time of marriage by the accused and that whatever he had given for his daughter were on his own accord. He has also stated that for a year, after marriage, they were living happily. However, he has stated that the accused demanded money for starting a shop. It is true that in a prosecution under Section 304-B IPC, when once the primary ingredients are established, the burden shifts on the accused under Section 113-B of the Evidence Act. The accused can discharge the burden under Section 113-B of the Evidence Act by preponderance of probability and not by proof beyond reasonable doubt.

18 Similarly, for attracting the offence under Section 306 IPC, the prosecution is required to prove the ingredients of the provisions of 107 IPC. In this case, the evidence adduced by the prosecution, miserably falls short of the proof of the minimum of facts that are required to be established to fasten criminal liability under Section 304-B and 306 IPC. There is also no credible evidence to the effect that the accused had inflicted cruelty on the deceased Sumithra under Section 498-A IPC.

19 In the result, this criminal appeal succeeds and is accordingly allowed. The conviction and sentence imposed on the accused by the Trial Court in S.C.No.99 of 2009 are set aside and the accused are acquitted of all the charges and bail bonds executed by them stand cancelled.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Tiruvallankadu Police Station,
Tiruvallur District.
2. The Additional District Judge,
FTC.No.3,
Tiruvallur.
3. The Public Prosecutor,
Madras High Court,
Chennai - 104.
4. The Judicial Magistrate,
Tiruthani.
5. The Chief Judicial Magistrate,
Tiruvallur.
6. The Additional District Judge,
Fast Track Court No.3.
Tiruvallur.

7.The Superintendent,
Central Prison,
Puzhal, Chennai.

Copy to:

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

+lcc to Mr.T.Muruganantham, Advocate sr.no.83239

Crl.A.No.107 of 2011

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