

Bail Slip

The Petitioner/Accused Veera @ Veerappan was directed to be released on bail as per order of this Court dated 03/04/2013 and made in MP 1 of 2013 in Crl.A.NO.246 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :04.07.2018]

[Pronounced on :22.10.2018]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.246 of 2013

Veera @ Veerapan ... Appellant/Accused No.1

..Versus..

State rep.by

Deputy Superintendent of Police,
Jayamkondan, Udayarpalayam Police Station,
Ariyalur District

Crime No.251 of 2010

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment dated 28.02.2013 passed in S.C.No.26 of 2011 on the file of the learned Additional District and Sessions Judge, Ariyalaur, convicting and sentencing the appellant/accused to undergo Rigorous Imprisonment for period of 3 years and to pay a fine of Rs.10000/- under Section 498 (A) IPC and also convicted him under Section 304B of I.P.C and sentenced to undergo Imprisonment for period of seven years.

For Appellants : Mr.G.Bala
for M/s.G.Bala & Daisy

For Respondent : Mr.R.Surya Prakash,
Government Advocate (crl.side)

JUDGMENT

The convicted first accused is the appellant herein.

2. This Criminal Appeal has been preferred by the first accused against the judgment dated 28.02.2013 passed in S.C.No.26 of 2011 on the file of the learned Additional District and Sessions Judge, Ariyalur, convicting and sentencing the appellant/accused to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.10000/- under Section 498(A) IPC and also convicted him under Section 304(B) of IPC and sentenced to undergo Imprisonment for a period of seven years.

3. The case of the prosecution in brief is as follows:-

i) The complainant Ramalingam is residing at Iyyasamy Theru, Udayarpalayam. The marriage between the first accused and deceased Sumathi had taken place 1½ years ago. At the time of marriage, the complainant has given 13 sovereign of jewels, Rs.45,000/- in cash along with all articles. The first accused, the daughter of the complainant viz., Sumathi and the second accused were living at Virudhachalam as a joint family at the time of occurrence. The first accused was having illicit intimacy with another girl and with the help of second accused, he had driven out the daughter of the complainant from the house with a direction to get Rs.20,000/-. The first accused has again driven out the daughter of the complainant with an instruction to get money to purchase a car. The second accused has borrowed a sum of Rs.10,000/- from the complainant. Then the first accused has again assaulted Sumathi and demanded a sum of Rs.1,00,000/- to purchase lorry. As the second accused did not repay the debt amount, the complainant came to the house of this accused on 2.8.2010. There he saw his daughter had sustained injuries on her leg, hip and when he asked about the injuries caused to his daughter, the second accused scolded the complainant with filthy language and stated that they have beaten his daughter.

ii) When the daughter of the complainant was taking treatment, she disclosed that these accused gave all sorts of torture and they had also brutally assaulted her. She also stated that the first accused was having illicit intimacy with another girl and it was not possible for her to live with the first accused in future. Hence, a complaint was given to All Women Police Station, Jayankondam on 6.8.2009.

iii) In the meanwhile, on 7.8.2010, at about 5'0 clock, the complainant went to the lake to wash his cloth along with his wife and when the complainant returned to the house, he found that his daughter had committed suicide because of the torture

given by these accused. The first accused was having illicit intimacy with another girl and tortured the deceased Sumathi by demanding dowry from the family of the complainant, because of which the deceased Sumathi has committed suicide. Hence, the Deputy Superintendent of Police, Jayankondam has filed a final report as against these accused under Sections 498(A), 304(B) and 406 I.P.C.

4. Before the learned Additional and District Sessions Judge, Ariyalaur, A1-appellant was charged under Sections 498(A) and 304(B) I.P.C and A2 - mother was also charged under Sections 498(A), 304(B) and 406 I.P.C.

5. To prove the charges, the prosecution examined P.Ws.1 to 18 and marked Exs.P1 to P13 and M.Os.1 to 3.

6. After trial, A2-the Mother of the appellant was found not guilty and she was acquitted. However, A1 was convicted and sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.10,000/- under Section 498(A) and also convicted under Section 304(B) I.P.C and sentenced to undergo Rigorous Imprisonment for a period of 7 years and hence, this appeal has been preferred by the first accused.

7. The learned counsel for the appellant would submit that the lower Court ought to have considered and taken into consideration the fact that the deceased committed suicide at her parent's house on 07.08.2010. The theory of prosecution that the appellant and his mother had abetted the deceased to commit suicide is not at all proved as required under the law. The lower Court wrongly applied presumption as to death of the deceased and erroneously convicted the appellant. The Court below had not properly appreciated the fact that there is no evidence to prove the offence of dowry harassment or cruelty on the part of the appellant which made the deceased to commit suicide. The requirement to hold a person guilty under Section 304 (B) IPC has not been made out by the prosecution. Therefore, the learned Trial Court ought not to have convicted the appellant under Section 498(A) and 304(B) IPC.

8. The learned Government Advocate (CrI.Side) has made submissions in support of the order of the Sessions Judge.

9. Points for determination in this appeal are that,

i) Whether the prosecution has proved the charge under Section 498(A) I.P.C against the appellant-A1 beyond reasonable doubt?

ii) Whether the prosecution has proved the charge under Section 304(B) I.P.C against the appellant-A1 beyond reasonable doubt?

iii) Whether the sentence passed under Section 498(A) is excessive?

iv) Whether the sentence passed under Section 304(B) is excessive?

10. Heard both sides and perused the records.

11. After hearing both the respective counsel for the appellant and the prosecution and after perusing the evidence of P.W.s 1 to 16 and Exhibits P1 to 13, it could be seen that the marriage between the appellant and the deceased Sumathi was arranged by the elders of the family and was solemnized on 30.04.2009 and according to the evidence of P.W.1, he visited his daughter to get back a sum of Rs.10,000/- given to A2-the mother of the appellant. He also found his daughter Sumathi (now deceased) having suffered injuries on her left knee and hip and hence, in an auto-rickshaw, he brought her home for treatment and it is also the further evidence of P.Ws.1 and 2, the parents of the deceased, that they took her for treatment to a Doctor on 3.8.2010 and P.W.11-M.Sumathi, Physiotherapist, who is working in private hospital, took x-ray and found that Sumathi (now deceased) had sustained membrane damage and advised her to wear cap and also asked them to bring her on the following weekend for consultation with ortho doctor.

12. From the evidence of P.W.1 and P.W.2 coupled with the evidence of P.W.10-Sub-Inspector of Police who had deposed that on 6.8.2010, while she was working as a Sub-Inspector of Police attached to All Woman Police Station, Jayamkondan, Sumathi (now deceased) came and lodged a complaint which was taken on file as a Petition No.219 of 2010 and registered the F.I.R in Crime No.8 of 2010 for the alleged offence under Sections 498(A), 323 and 506 (i) and Section 4 of Dowry Prohibition Act and also forwarded the copy of the F.I.R to the learned Judicial Magistrate, Jayamkondan who happened to be the Jurisdictional Magistrate. Before proceeding further, it is appropriate to note that though P.W.10-Sub-Inspector of Police had given the details of the complaint given by Sumathi a day before her suicide, the Sessions Judge appears to have remained a mute-spectator in not marking those documents, especially when the copy of the F.I.R has been forwarded to the Jurisdictional Magistrate, which will be available as Court document in the Jurisdictional Magistrate Court, which is situated very nearby to the learned Principal District Judge Court.

13. In the cross examination, it is projected as if these documents have been produced by the prosecution which are all manufactured admittedly in order to suit prosecution case. The fact remains that the above details were spoken to by P.W.10 already. However, those documents were not marked nor copies were furnished to the accused. But the evidence of the police witnesses makes the prosecution case for the charge under Section 304(B) I.P.C, since on 08.08.2010 at about 8.00 a.m she committed suicide and the same has been reduced into writing in the F.I.R in Crime No.8 of 2010 that she committed suicide. Since those documents were not marked by the Sessions Judge, this Court is constrained to say that the Court cannot remain a mute-spectator in respect of a crime against woman and children.

14. On 08.08.2010 at about 8.00 a.m., Sumathi had committed suicide by hanging, as could be seen from the evidence of P.W.8 Doctor who had conducted the Post-Mortem.

15. It is seen from the evidence of the private prosecution witnesses that the marriage between the parties was solemnized on 3.4.2009 and P.W.1-father of the victim girl has taken her daughter-victim to his home, since she complained of severe bone pain in the left knee and unable to walk and was limping and on 6.8.2010 a complaint was preferred against A1 and A2 for dowry harassment and for cruelty and on 7.8.2010 the victim Sumathi committed suicide and died.

16. The evidence of the private prosecution witnesses P.W.1, P.W.2 (parents), P.W.4 and P.W.5 (elder sister and her husband) are clear and cogent to the effect that there was a money demand on the part of the first accused and though there are certain minor contradictions with regard to who had paid the amount, however, taking note of the fact that the parties are coming from a very rural background and are also illiterates, the trial Court appears to have ignored these minor contradictions. However, it is to be stated that all the above said 4 private prosecution witnesses P.W.1, P.W.2, P.W.4 and P.W.5 have categorically stated that on 2.8.2010 when P.W.1-father visited the house of the matrimonial home of the deceased Sumathi, he found that his daughter had injuries on her left knee and hip and hence, he brought her home for giving treatment and his evidence with regard to her condition on that day has been clearly corroborated by the evidence of P.W.2, P.W.4 and P.W.5 and merely because they happen to be the relatives, the same cannot be brushed aside, for the simple reason that only the

family members can speak about the nature of injury said to have been caused to Sumathi (the victim) and the treatment and the medical advice given to Sumathi have been clearly spoken to by P.W.11-Physiotherapist, who had found membrane damage in the left knee and advised her to use a cap and also asked her to come for the expert opinion of an ortho doctor on the following weekend. Absolutely, there is nothing in the cross examination before the Court to discard the evidences on this issue and hence, this Court is of the considered view that Sumathi (now deceased) was subjected to cruelty by the first accused, which has resulted in her physical immobility in the knee and also damage to the cartilage.

17. The learned counsel for the appellant would draw my attention to the answer elicited from the medical evidence of P.W.8 Doctor Ravisankar who had conducted the Post-Mortem and deposed in the cross examination that he has not noticed any fracture in the knee of the deceased during the Post-Mortem.

18. It remains to be stated that the physical deformity that was spoken to by P.W.11 Physiotherapist is not of bone fracture as suggested to by P.W.8 in the cross examination and it remains to be stated that the P.W.11 has categorically stated that on a medical examination and also after taking the necessary x-ray she had found that there is a damage to the cartilage in the left knee of Sumathi and there was a drain of membrane and hence, the contention raised by the learned counsel for the appellant that the deceased has not sustained any injury does not stand to any reason and same is hereby negated.

19. No doubt, the unfortunate death of Sumathi was within 7 years of marriage and she died due to hanging in the mother's place. However, as there is no positive evidence due to the non-marking of the necessary documents, this Court is constrained to hold that there is no positive evidence to show that soon before death she was subjected to dowry harassment.

20. This Court is conscious of the fact that "soon before death" is a relative term and not necessarily to be within a few hours prior to committing suicide and the same is dependent upon the facts and circumstances of the case. As stated supra, though the Sub-Inspector of Police P.W.10 has stated about the lodgment of complaint by the victim itself on 6.8.2010, i.e., a day prior to the commission of suicide which has resulted in registration of the F.I.R and copy was also sent to the Judicial Magistrate Court, as could be seen from the cross examination,

those documents were not marked by the Session Judge during the time of recording of the evidence of P.W.10 and a clear suggestion has been put to P.W.10 challenging the correctness of the said version on the ground that it is a story subsequently developed as if a complaint has been lodged on the day prior to the incident and said complaint is an after thought and the handiwork of the police. In view of the non-marking of the related document and non-furnishing of the copies to the accused, the benefit of doubt has to be given to the accused and hence, this Court holds that though the death of the victim girl has occurred within 7 years of marriage which was a suicide by hanging, however, there was no positive evidence to show the deceased Sumathi was subjected to dowry demand soon before death and hence, this Court is of the considered view that the finding rendered by the Sessions Judge, for want of legally acceptable evidence, cannot be sustained. Accordingly, the conviction laid down by the trial Court under Section 304(B) IPC is set aside and consequently, the sentence is also set aside.

21. As stated supra, the evidence of the private prosecution witnesses P.W.1 and P.W.2, the parents of the victim girl and P.W.3 and P.W.4 and P.W.5 brother, sister and husband of the sister are clear to the effect that there was a demand of money and consequently, the victim also suffered a physical assault resulting in her immobility and damage to knee cap in the matrimonial home which was found by the P.W.1 on the day of visit on 2.8.2010. In the absence of any plausible explanation much less any explanation as to the nature of the injury sustained by Sumathi in the matrimonial home and also taking note of the fact that there is a specific evidence by the all the private prosecution witnesses that the first accused was having illicit intimacy with another girl and having that in mind, there were frequent money demand and also assaulted the deceased, in the absence of any worthwhile evidence elicited in the cross examination to the evidence of the private witnesses P.W.1, P.W.2, P.W.4 and P.W.5 regarding the cruelty committed by the A1 upon the deceased Sumathi, the conviction laid by the trial Court is just and proper and cannot be said to be illegal or irregular warranting interference at the appellate stage.

22. Accordingly, the conviction for Section 498(A) is hereby confirmed and sentence of 3 years awarded by the trial Court is modified and reduced to 2 years as the same is commensurate with the action of the accused on the body of the victim girl Sumathi and hence, the same is hereby modified.

23. In the result, this Criminal Appeal is partly allowed and the conviction and sentence passed by the Sessions Judge for an offence under Section 304(B) IPC is set aside and the conviction under Section 498-A stands confirmed. However, the sentence passed by the Sessions Court for the offence under Section 498 (A) alone is modified as that of 2 years Rigorous Imprisonment and fine is confirmed and the period of incarceration during the time of investigation and trial are ordered to be given set off as to the extent indicated above.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Ariyalaur.
2. The Public Prosecutor (Crl.side),
High Court, Madras.
- 3.The Deputy Superintendent of Police,
Jayamkondam,
Udayarpalayam Police station,
Crime No.251/2010, Ariyalur District.
- 4.The Judicial Magistrate,
Jayankondam.
- 5.The Chief Judicial Magistrate,
Perambalur (For Information)
- 6.The Superintendent,
Central Prison, Cuddalore.
- 7.The Section Officer,
B Section, High Court, Madras.
(with regard to calling for explanation from the Additional
District Sessions Judge, Ariyalur)

+1cc to Mr.G.Bala & Daisy, Advocate Sr.71951

Crl.A.No.246 of 2013

spd[col]
srg 13/11/2018