

BAIL SLIP

The Petitioners/Accused 1 & 2 namely Vijayakumar, S/o.Venkatesan (A1) and Mallika, W/o.Venkatesan(A2), were directed to be released on bail as per order of this court dated 03.01.2011 in M.P.1 of 2011 in CrI.A.No.5 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.5 of 2011

1.Vijayakumar

2.Mallika .. Appellants/Accused 1 and 2

Vs

State

represented by

The Inspector of Police,

Thirumullaivoyal Police Station,

Chennai Suburban Police

Crime No.18/2008

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellants by a judgment dated 30.12.2010 in S.C.No.84 of 2010 on the file of the Additional District and Sessions Judge - Fast Track Court - I, Poonamallee and acquit the appellants.

For Appellants : Mr. A.M.Rahmath Ali

For Respondent : Ms.T.P.Savitha,
Govt. Advocate (CrI.side)

JUDGMENT

The Criminal appeal has been filed to set aside the conviction and sentence imposed on the appellants by a judgment dated 30.12.2010 in S.C.No.84 of 2010 on the file of the Additional District and Sessions Court - Fast Track Court - I, Poonamallee.

2.The appellants herein are arrayed as accused 1 and 2 in S.C.No.84 of 2010 on the file of the Additional District and Sessions Judge - Fast Track Court - I, Poonamallee.

3.In the said case, the appellants are convicted for the offence under Sections 498-A, 306 and 304(b) IPC and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5,000/- each, in default, to undergo Rigorous Imprisonment for six months; to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/- each, in default, to undergo Rigorous Imprisonment for one year and to undergo Rigorous Imprisonment for seven years respectively and the sentences are ordered to run concurrently.

4.Now, the appellants preferred this appeal against the said conviction and sentence and praying to set aside the same.

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

P.W.1 - Selvam and P.W.2 - Renuka are the parents of the deceased Suseela. P.W.3- Vijaya is the niece to the deceased. P.W.4 and P.W.5 are the neighbours of P.W.1 and P.W.2.

6.The marriage between the first appellant and the deceased had happened on 14.09.2005 and the deceased gave birth to female child. After the marriage, the deceased was living peacefully in the matrimonial home. After sometime, the deceased quarrelled with the appellants and left the matrimonial home. P.W.1 and P.W.2 compromised the issue and thereafter, the first appellant took back the deceased to the matrimonial home. In the said circumstances, one day, in the year 2008, P.W.1 received a phone call from the first appellant, through which, he intimated that the father of the first appellant died. When P.W.1 and P.W.2 reached the house of the appellants, the father of the first appellant was alive. But, at the same time, the appellants quarrelled with the deceased Suseela. During the enquiry, the deceased admitted that the fault is with her. However, she returned to her parents home. Thereafter, the first appellant came to P.W.1's house and requested to send back the deceased to the matrimonial home. Before the occurrence, the deceased demanded to set up a separate house, for which, the first appellant demanded to bring Rs.10,000/- and one motorcycle. In the said circumstances, P.W.1 received a phone call that the deceased committed suicide.

7.Immediately, he lodged a complaint before P.W.10 Thiru Murugan, who is the then Inspector of Police, Maduravayal Police Station. After receiving the complaint, P.W.10 registered the case in Cr.No.19 of 2008 under Section 174(3) Cr.P.C. and forwarded copy of First Information Report to the Revenue

Divisional Officer and the Deputy Superintendent of Police. P.W.11 - Tmt Sangeetha, when she was working as Revenue Divisional Officer, Ponneri, received a copy of the First Information Report and thereafter, she went to the Kilpauk Government Medical College Hospital, in which, the deceased was placed. After reaching the hospital, she examined the witnesses and recorded the statement under Ex.P.8. During the time of examination, P.W.1 and P.W.2 gave statements that the first appellant demanded the deceased to bring Rs.10,000/- and motorcycle. Since P.W.11 was transferred to Thoothukudi, P.W.12 Shanmugasundaram continued the enquiry and submitted inquest report under Ex.P.9. Thereafter, P.W.11, sent the requisition to the hospital authorities for conducting autopsy.

8. After receiving the requisition, P.W.7 conducted autopsy over the dead body of the deceased Suseela and found the following injuries:

"A moderately female body aged 24 years lies on back.

External Injuries: Deep burns over the face including the lips, neck, both sides of the chest, abdomen, both hands, both legs in front and back.

Posteriorly:

Neck, Back, trunk and gluteal regions (100% burn shock)

Heart: All the chambers contain closed blood

Lungs: Both lungs oedemaous and adherent to the thoracic cavity

Lungs Trachea: Black foot particles adherent.

Liver, Spleen, Kidneys: Normal c/s - congested.

Hyoid Bone: Intact

Stomach: empty. सत्यमेव जयते

Bladder, Uterus : Normal and empty.

Pelvis, Skull, Brain and spinal column: Normal and intact."

9. Finally, she gave opinion that the death had occurred due to the consequences of burn injuries sustained by the deceased. Ex.P.4 is the post-mortem report.

10. Meanwhile, P.W.13, the then Deputy Superintendent of Police, Villupuram went to the scene of occurrence and prepared observation mahazar Ex.P.10 and rough sketch Ex.P.11. in the presence of Jayakumar and Murugan. Thereafter, he recorded the

statements of witnesses. Subsequent to the receipt of post-mortem report from the Revenue Divisional Officer, he altered the Section of law from 174 Cr.P.C to 498-A and 306 IPC. Ex.P.12 is the alteration report. Subsequent to the alteration of Section of law, he arrested the accused and recorded the confession given by the accused. Thereafter, he handed over the case records to P.W.14.

11.P.W.14, the then Inspector of Police, received the case records and laid a charge sheet after completing the investigation.

12.In the trial Court, after assigning the case Number as S.C.No.84 of 2010 and after hearing both sides, charges have been framed for the offence under Sections 498-A, 304 and 306 IPC. Thereafter, 14 witnesses were examined on the side of the prosecution. Besides, 12 documents were marked as Exs.P.1 to P.12. Further, 2 material objects were marked as M.O.Nos.1 and 2. After concluding the trial, the learned Additional District and Sessions Judge came to the conclusion that the appellants are found guilty of the offence under Sections 304(b), 498-A and 306 IPC and convicted them as stated above. Now, challenging the said conviction and sentence, the appellants approached this Court by way of filing this appeal.

13.Today, when the appeal is taken up for hearing, Mr.A.M.Rahmath Ali, learned counsel appearing for the appellants and Ms.T.P.Savitha, learned Government Advocate (Crl. Side) appearing for the respondent have advanced their arguments.

14.The first and foremost contention raised by the learned counsel appearing for the appellants is that the evidence put forth by the prosecution did not disclose the factum of demanding dowry. Further, he added, without proving the demand of dowry, the offence under Sections 498-A and 304(b) is not made out. Thereby he prayed for allowing the appeal.

15.In this regard, on going through the evidence of P.W.1, P.W.2, P.W.3 and P.W.4, it appears, before the death, the first appellant demanded the deceased to bring Rs.10,000/- and one motorcycle. Even though, the evidence given in the chief examination of the above witnesses discloses the same, P.W.1 stated in the cross examination that the deceased used to come to his house frequently, after quarrelling with the first appellant. Further, he stated each and every time, the first appellant came to his house and requested the deceased to come to the matrimonial home. Moreover, he admitted that no phone call was received from the deceased. In the same way, P.W.2 stated in the cross examination, the deceased is having a habit of getting angry, for each and every incident. Furthermore, he

admitted that the deceased assaulted the first appellant by using broomstick. In this regard, even though P.W.3 and P.W.4 supported the evidence given by P.W.1 and P.W.2, the investigation officer, stated in his evidence that during the time of examination, P.W.2, P.W.4 and P.W.5 have not stated anything about the demand made by the appellants. Further, P.W.2, the Revenue Divisional Officer, who prepared inquest report under Ex.P.9, had stated in the chief examination itself that the demand of dowry is not a reason for the death of Suseela. Accordingly, the said contradiction elicited the fact that in the initial stage of investigation, the parents and the neighbours of the deceased had not stated anything about the demand made by the first appellant. In such circumstances, the facts given before this Court alone are not sufficient to hold that the appellants have demanded the dowry before the alleged occurrence. Accordingly, the offence under Section 498-A is liable to be set aside.

16. Further more, in order to prove the offence under Section 304-B IPC, the decision of the Hon'ble Supreme Court in Maya Devi and another vs. State of Haryana (2018 (1) SCC CrI. 768) has been placed before this Court, wherein the Supreme Court has held as under:

"In order to convict an accused for the offence punishable under Section 304-B IPC, the following essential must be satisfied:

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband:

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry. When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death."

17. In the said circumstances, with regard to offence under Section 304-B IPC the above said three conditions are fulfilled.

But, in respect of fourth condition to go through the entire case given by the prosecution, witnesses does not disclose that the appellants had committed the willful act for the purpose of demanding dowry. Thereby, the offence under Section 304-B IPC also goes away.

18.Finally, with regard to the offence under Section 306 IPC, reliance is placed before this court on the judgment reported in 2018 5 SCC pg No.1 (Common Cause [A Registered Society] vs. Union of India and Another), in which, the Hon'ble Apex Court held as follows:

"To constitute abetment, there must be course of conduct or action of intentionally aiding or facilitating another person to end life."

19.Now, applying the principles of Hon'ble Apex Court with this Court, it is necessary for the prosecution to prove the conduct of the appellants. In this case nothing have been averred by the prosecution witness about the action had committed by the appellants towards the deceased. As per the evidence, the deceased alone beaten the first appellant and she is having the habit for returning to parents home frequently. So the question of abetment had not elucidated by the prosecution witness. Accordingly, awarding punishment for the offence under Section 306 IPC is also not in accordance with the observation made by the Hon'ble Apex Court. Thereby, the learned Additional District and Sessions Judge without looking into these aspects committed accused and awarded punishment needs interference.

In the light of the above discussions, the appeal is allowed. The conviction and sentence awarded by the learned Additional District and Sessions Judge in S.C.No.84 of 2010 is set aside. Fine amount, if any paid, shall be refunded to the appellants. Bail bond if any, shall stand cancelled.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

cla

To

1.The Additional District and Sessions Judge
Fast Track Court No.I,
Poonamallee.

2.The Public Prosecutor,
High Court, Madras.

3.The Judicial Magistrate No.2,
Poonamallee.

4.The Chief Judicial Magistrate,
Thiruvallur (for Information)

5.The Superintendent,
Central Prison No.1,
Puzhal, Chennai.

6.The Inspector of Police,
Thirumullaivoyal Police Station,
Chennai, Suburban Police.

+1cc to Mr.A.M.Rahamath Ali, Advocate SR.No.40757

Cr1.A.No.5 of 2011

NMI (CO)
GN(17/07/2018)



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