



Bail Slip

The Appellant/Accused, namely Dhanasekar, S/o. Aruva Pandian @ Pandiyan (First Accused in S.C.No.139/2007 dated 22/12/2009 on the file of the I Additional Sessions Court, Erode) was directed to release on bail vide order dated 12.2.10 made in CrI.MP.No.1/10 in CrI.A.No.30/10

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2016

Pronounced on : 30.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.30 of 2010

Dhanasekar .. Appellant/A1

Vs

State by Inspector of Police,
Karungalpalayam Police Station,
Crime No.558/2007,
Erode District.

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records and set aside the conviction and sentence imposed in the judgment dated 22.12.2009 made in S.C.No.139 of 2007 on the file of the First Additional Sessions Court, Erode by allowing this Criminal Appeal.

For Appellant : Mr. N.Manokaran

For Respondent : Mr.P.Govindarajan,
Govt. Advocate (CrI.side)

JUDGMENT

The accused/A1 in S.C.No.139 of 2009 on the file of the learned First Additional Sessions Court, Erode is the appellant herein. He stood charged for the offences under Sections 498-A, 506(ii) and 306 IPC along with A.2. When the appellant was questioned as to the charge, he pleaded not guilty and therefore, he was put on trial. The learned I Additional Sessions Judge, Erode, after full-fledged trial, found guilty of



the offence and convicted and sentenced A.1 under Section 498-A to undergo Rigorous imprisonment for 2 years and to pay a fine of Rs.1,000/- in default, to undergo Rigorous Imprisonment for 3 months and he was also convicted under section 506(ii) IPC and sentenced to undergo Rigorous Imprisonment for one year and he was also convicted under Section 306 IPC and sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.3,000/- in default, to undergo Rigorous Imprisonment for three months. The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(i) The deceased is the wife of the appellant. The appellant married one Annakodi (deceased) 9 years prior to the occurrence. P.W.1. Subramaniam is the father of the deceased Annakodi. At the time of marriage, P.W.1, gave 12 sovereigns of gold jewels and stridhanas to the appellant. During the wedlock, they begot two children viz., Lokesh @ Nandakumar aged about 7 years and Saveetha @ Nandini aged about 3 years. The appellant is a drunken person. After the marriage, the appellant demanded dowry and insisted her to bring money from her father. The second accused is the mother of the first accused. After the birth of the first son, the appellant demanded a sum of Rs.10,000/- as dowry. After the birth of the second child also, he demanded Rs.5,000/- for starting bottle business. On receiving the said amount, the appellant demanded further amount. At one point of time, P.W.1 could not meet out the demand of the appellant and the deceased left her matrimonial home and went to her parents' house and stayed there for 5 years. Later on, the appellant assured that he would not torture his wife. Therefore, the parents of the deceased sent the deceased Annakodi along with her husband/appellant to the matrimonial home. On 13.09.2007, P.W.1, the father of the deceased, in ear-boring ceremony, presented gold ornaments worth 1/4 sovereign to his grand-son and one sovereign to his grand-daughter. He further gave a sum of Rs.10,000/- to her daughter for expenses. At the time of marriage, P.W.1, presented 12 sovereigns. After completion of ear-boring ceremony, the appellant came in inebriated and in drunken mood and created problems. On the next day, i.e. on 14.09.2007, the father of the deceased received a phone message at about 10.00 p.m from her in-laws house that his daughter died due to burn injuries. Immediately, he rushed to the Government Hospital, Erode along with his relatives, where he found the dead body of her daughter, who died with burn injuries all over the body. When a Head constable, Karungalpalayam, Police Station came to the Hospital he gave the complaint, the Head Constable registered the case against the appellant and his mother in Cr.No.588 of 2007 and placed file to his higher official for



investigation. After investigation, the Inspector of Police filed a charge sheet before the learned Judicial Magistrate No.I, Erode. The learned Judicial Magistrate No.I, Erode taken the charge sheet on file in PRC.No.13 of 2008 and committed the case before the learned Principal Sessions Judge, Erode, after taking the case on file in SC.No.139 of 2009, who in turn, made over the case to the learned I Additional Sessions Judge, Erode.

(ii) P.W.10, Dr.Rajasekaran, on receipt of Ex.P.5/requisition letter, conducted the post-mortem on the body of the deceased and after completing the Post-mortem, he issued Ex.P.6, Post-mortem certificate and Ex.P.7, Final opinion as to cause of death of the deceased. On receipt of Ex.P.9/requisition letter, P.W.11, Dr.Jayasingh, after the analysis of the bone of the deceased gave Ex.P.10, opinion about hyoid bone Ex.P.10. P.W.12, Thangavel, Scientific Assistant, Coimbatore and P.W.13, Baskar, on receipt of Exs.P.12 and P.14/requisition letters, issued Chemical Analysis reports Exs.P.13 and P.16 respectively.

(iii) P.W.15, Ravichandran, Head Constable received information from the Hospital proceeded there and recorded statement from the father of the deceased, he registered the F.I.R in Cr.No.588 of 2007 for the offences under Sections 498-A, 306 and 506(ii) of IPC and sent F.I.R, Ex.P.19 and Death Intimation Ex.P.18 to the higher officials.

(iv) P.W.16, R.Sivakumar, Inspector of Police, Karungalpalayam, on receipt of F.I.R, Ex.P.19 and Death Intimation Ex.P.18, went to the spot and prepared Observation Mahazar Ex.P.2 and Rough Sketch Ex.P.20 and collected the material objects and arrested the accused and recorded statements of witnesses. After completing the investigation, P.W.9/Inspector of Police laid the charge sheet against the appellant for the offences under Sections 498-A, 306 and 506(ii) of IPC.

(v) Based on the above materials, the learned I Additional Sessions Judge, Erode, after following the procedures, framed the charges. The appellant pleaded not guilty and denied the charges framed against him. Before the learned I Additional Sessions Judge, Erode, in order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 22 documents were exhibited, besides 4 Material Objects were exhibited. On the side of the accused, one Sumathi was examined as witness. (D.W.1) and no document was marked.

(vi) Out of the witnesses examined, P.W.1/Subramaniam is the father of the deceased Annakodi. According to him, his son-



in-law, who is the first accused, used to ill-treat his wife by demanding money from his daughter Annakodi (deceased). P.W.1 gave Rs.5,000/- through his daughter for A-1's bottle business and on receiving the same, A.1 demanded further money. Since P.W.1 could not give the money, A.1, tortured his wife. On the day of ear-boring ceremony of his grand children, P.W.1 presented one sovereign gold chain and 1/4 sovereign of gold ornament to his grand-daughter and grand-son respectively and also gave Rs.10,000/- to his daughter for expenses. But, on 14.09.2007, he received a phone message that his daughter died with burn injuries. Hence, he lodged a complaint Ex.P.1.

(vii) P.W.2, is the son and grand-son of A.1 and P.W.1 respectively, aged about 9 years. According to him, his father used to often beat his mother and demand dowry. On the day of ear-boring ceremony, his grand-father gave Rs.10,000/- to his mother and in the night, while his father tortured his mother (deceased) and demanded money, his mother (deceased) gave the said amount to his father and thereafter, his father beat her and set fire on her.

(viii) P.W.3 is the brother of the accused. He has spoken about the demand of dowry and the death of the deceased. P.W.4 is the relative of the deceased. He has spoken about the recent information regarding the incident. He has also stated that P.W.1 gave Rs.10,000/- to his daughter Annakodi. P.W.5 is the cook. He has stated that on the day of ear-boring ceremony, he prepared food. P.W.6 is one of the witnesses of observation mahazar Ex.P.2. and Ex.P.3. P.W.7 is also one of the witnesses of observation mahazar Ex.P.2 and he is a hearsay evidence.

(ix) P.W.10, the Doctor, who is working in Erode Government Hospital, conducted post-mortem of the deceased and gave Accident Register Ex.P.4 and Post-mortem certificate Ex.P.6 and he opined that the deceased died due to burn injuries. P.W.11, the Doctor, who is working as Assistant Professor issued a report Ex.P.10. P.W.12, Scientific Assistant in Forensic Science Department issued a Chemical Analysis report Ex.P.13. P.W.13, staff of the Forensic Science Department issued a Chemical Analysis Report Ex.P.16.

(x) P.W.14 is the Head Constable of Erode North Police Station. After conducting Post-mortem, he handed over the dead body to the father of the deceased. P.W.15 is the Head Constable of Karungalpalayam Police Station and he recorded the statement of P.W.1 and registered a case in Cr.No.588 of 2007 for the offences under Sections 498-A, 306 and 506(ii) IPC and sent F.I.R Ex.P.19 and death intimation Ex.P.18 to the concerned higher officials. P.W.16 is the Inspector of Police and in the presence of witnesses, he prepared Seizure Mahazar and Rough



sketch Exs.P.21 and P.20 respectively. After completion of investigation, he filed charge sheet against the accused.

(xi)When, the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. In order to prove his case, one Sumathi was examined as D.W.1. However, they did not chose to mark any document.

(xii)After considering the oral and documentary evidence, the trial Court found that the appellant/A1 was guilty and convicted him for the offences under Sections 498-A, 306 and 506 (ii) of IPC and sentenced him as stated above and found A2 not guilty. Aggrieved by the order of conviction and sentence passed by the trial Court, the appellant has preferred the present Criminal Appeal.

3.Heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the State and perused the records carefully.

4.The learned counsel for the appellant submitted that P.Ws.1 to 5 are closely related to the deceased and they are the interested witnesses and therefore, their evidence cannot be accepted and no importance can be given to them. The evidence of P.Ws.6 to 9 are only the hearsay evidence and they are not the eye witnesses. Though they are neighbours and they have not seen the occurrence, their evidence also need not be considered.

5.The learned counsel for the appellant further submitted that P.Ws.2 and 3 had suppressed the material facts. Therefore, there is no reliable and direct evidence to substantiate that the appellant demanded money for running bottle shop and there is a material contradiction between the statement recorded under Section 161 Cr.P.C. and the evidence given before the trial Court. Therefore, there is no material proof that the appellant demanded dowry to attract Section 498-A IPC and there is also no evidence to show that due to demand of dowry, the deceased committed suicide. Therefore, the offence under Section 306 IPC is also not attracted and there is no evidence to attract the offence under Section 506(ii) IPC to show that he threatened the witnesses. Therefore, the trial Court failed to consider all these facts and wrongly came to the conclusion that the prosecution proved the case against the appellant and convicted him as stated supra. Hence, the judgment is liable to be set aside. In support of his contentions he has placed reliance on the following judgments :-

1. CDJ 2004 SC 1141 - Randhir Singh & another v. State of Punjab.
2. 2007 (4) CTC 158 - Kishori Lal v. State of MP.



3. CDJ 2015 SC 656 - State of Kerala & others v. Unnikrishnan Nair & others.

6. The learned Additional Public Prosecutor has submitted that based on the complaint received from P.W.1, the father of the deceased and from the evidence of P.W.1 and P.W.2, who is the own son of the appellant and from the material objects and the evidence of Doctors, who gave treatment and gave Post-mortem certificate and from the Chemical Analysis report, the trial Court rightly came to the conclusion that the appellant ill treated the deceased and induced her to set fire on her.

7. The learned Additional Public Prosecutor has further submitted that the evidence of P.Ws.1 and 2 clearly proved that the appellant demanded dowry and also ill treated his wife (deceased) and the prosecution has proved the case beyond reasonable doubt. Therefore, the Criminal Appeal has to be dismissed confirming the judgment passed by the trial Court.

8. Now, the only question that has to be decided is as to whether the death of the deceased is caused by the appellant, as culled from the evidence of the prosecution.

9. In order to prove the case of the prosecution, the father of the deceased was examined as P.W.1. and the son of the appellant was examined as P.W.2 and from their evidence, it has been proved that the appellant demanded dowry from the deceased and also caused cruelty.

10. P.W.1 has clearly spoken about the demand of dowry after marriage and also the torture made by the appellant. Hence, the deceased left matrimonial home for five years. Thereafter, the appellant came and convinced his wife and told that he would not torture her hereafter and he took her with him to the matrimonial home. Immediately thereafter, for ear-boring ceremony of their children, the appellant demanded dowry. Since P.W.1 is in poor condition, he gifted 1½ sovereign gold to his grand children and gave a sum of Rs.10,000/- for ear boring ceremony expenses. Not satisfied with that, the appellant again ill-treated and insulted his wife Annakkodi. Therefore, she committed suicide by setting fire on herself.

11. P.W.2 has spoken before the Court below about the demand of dowry and the torture given by his father to his mother. P.W.2, who is an eye witness is none other than the son of the deceased, has stated that his father used to torture his mother and also demanded dowry and he also stated that his father ill-treated his mother and on the date of occurrence, he beat his mother and set fire on her. The police has recorded statements under Section 161 Cr.P.C.. P.W.3, who is the brother



of the deceased also spoke about the demand of dowry.

12.P.W.4 is the relative of the deceased. P.W.5 is the cook, who prepared the food for the ear-boring ceremony and he has spoken about the recent information regarding the incident. P.Ws.6 to 8 are the neighbours, who spoke about the recent information about the incident. P.W.9 is the house owner of the appellant.

13.P.Ws.10 and 11 are the Medical Officers, who spoke about the admission of the deceased in the hospital and also conducted Post-mortem and received information of death. P.W.10, the Doctor, admitted the deceased in the hospital and conducted Post-mortem. He has also spoken about the fire injury and the death was caused due to heart attack under the influence of fire injury. But, he has not stated anything about the other external injury.

P.Ws.12 and 13 are the Scientific Officers.

P.W.14, the then Head Constable in Karungalpalayam Police Station and also spoke about the handing over of the body to conduct Post-mortem with the requisition Ex.P.5 given by the Inspector of Police, Karungalpalayam Police Station. He also spoke about the fact that the deceased was admitted in the hospital and he gave a complaint before P.W.16, the Inspector of Police.

P.W.16, who is the Inspector of Police, Karungalpalayam Police Station took investigation.

Ex.P.1, complaint and Ex.P.19, F.I.R. reveal the allegations levelled against the appellant. P.W.16, after completing the investigation, filed charge sheet and based on the charge sheet, the trial Court, confirmed the charges against the accused under Sections 498-A, 306 and 506(ii) of IPC.

14.It is clear from the evidence of P.W.1 that the appellant demanded money. P.W.2, who is none other than the son of the appellant and the deceased also has clearly spoken about the attitude of his father, the appellant by stating that he used to torture his wife and demanded dowry on several occasions. On the date of occurrence also, the appellant hit and tortured his wife and set fire on her. From the evidence of P.W.2, it is clear that the death of the deceased was caused by the appellant. The evidence of P.Ws.1 and 2 itself is enough to come to the conclusion that the appellant demanded dowry and tortured his wife and also due to his ill-treatment and inducement only, she set fire on herself.

15.Though P.W.2 says that his father only set fire on his mother(deceased), there is no investigation on that aspect and the trial Court also failed to direct the prosecution to investigate the matter on those aspects. Since P.W.2 is a child



witness, the trial Court has not given much importance on it. One thing is clear that the attitude of the appellant spoken by P.W.2 cannot be ignored. Therefore, from the evidence of P.Ws.1 and 2, the prosecution proved that the appellant demanded dowry and he also tortured and caused death of the deceased. Considering the facts and circumstances of the case on hand, the citations referred to by the learned counsel for the appellant are not applicable to the present case on hand.

16. Since marriage took place before nine years of the occurrence, Section 498-A of IPC will attract from the evidence of Chemical Analysis report that the death is due to the burn injuries. Therefore, it has to be presumed that she committed suicide by burning herself. Therefore, Section 306 IPC is also attracted. Further from the evidence of the prosecution witnesses, the offence under Section 506(ii) IPC is also attracted.

17. The trial Court rightly come to the conclusion that the appellant has committed offence and convicted and sentenced him.

18. There is no reason to interfere with judgment passed by the trial Court. The Appeal stands dismissed by confirming the conviction and Sentence imposed by the Court below made in S.C.No.139 of 2007 dated 22.12.2009 on the file of the First Additional Sessions Court, Erode. Since the appellant is on bail, the trial Court is directed to take steps to secure the custody of the appellant to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

cla/tsh

To

1. The Judicial Magistrate, Erode.
2. The Chief Judicial Magistrate, Erode
3. The First Additional Sessions Judge, Erode.
4. The Principal Sessions Judge, Erode.
5. The Superintendent, Central Jail, Coimbatore.
6. The Inspector of police, Karungalpalayam Police Station, Erode.
7. The Public Prosecutor, High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.59908

Crl.A.No.30 of 2010

GMV(25/09/2018)