

BAIL SLIP

The Petitioners/Accused 2 to 3 namely Ayyasamy(A2) S/o.Muthusamy Aasaari, and Nachammal(A3) W/o.Ayyasamy Aasaari are to be released on bail as per order dated 31.03.2008 in MP.1.of 2008 in CRL A No.187 of 2008 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2018

PRONOUNCED ON : 30.08.2018

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.187 of 2008

1. Selvaraj
2. Ayyasamy
3. Nachammal

...Appellants/ Accused 1 to 3

Vs

The State
Rep. by Inspector of Police
Pollachi West Police Station,
Coimbatore District.
(Crime No.378 of 2005)

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside the conviction Judgment dated 21.02.2008 made in S.C.No.178 of 2006 passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore.

For Appellants : Mr.N.Ponraj

For Respondent : Mrs.Prabhavathi Ganeshram
Additional Public Prosecutor

J U D G M E N T

This appeal is directed against the Judgment dated 21.02.2008 made in S.C.No.178 of 2006 on the file of the learned Sessions Judge, Magalir Neethi Mandram, Coimbatore, thereby convicting and sentencing the appellants to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.500/- each, and in default to undergo Simple Imprisonment for six months for

the offence under Section 498-A read with 34 of IPC and to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/- each, in default to undergo Simple Imprisonment for one year for the offence under Section 304-B read with 34 of IPC.

2. (i) The case of the prosecution is that the first accused Selvaraj is the husband of the deceased. The second and third accused are parents of the first accused. The marriage between the first accused and the deceased was solemnized on 22.11.2004 and during the time of marriage, gold and silver ornaments worth about Rs.60,000/- were presented by the parents of the deceased. The accused persons were torturing the deceased by demanding dowry and constantly harassed, humiliated and tortured her for bringing insufficient dowry articles and also demanded more dowry. Therefore, the deceased was forced to commit suicide, because of the cruelty committed by the accused persons.

(ii) One month prior to the occurrence, the deceased visited her parents house and informed to P.W.1, the father of the deceased that the accused persons harassed, humiliated and ill-treated her to bring dowry and she has been sent out by her in-laws from the matrimonial home. P.W.1, consoled her and sent back to her matrimonial home and assured that the demand made by the accused will be fulfilled soon. On 15.06.2005, P.W.1 went to the house of the accused and met his daughter and she told that the accused persons persistently harassed and illtreated her for demanding dowry and again on the assurance given by P.W.1 she was consoled. Meanwhile, on 19.06.2005, P.W.1 received information through one Kannan that his daughter was dead. Immediately, he went to the accused house and the accused persons informed that she committed suicide due to the unbearable stomach pain. P.W.1 went to the police station and lodged a complaint to P.W.8, the Inspector of Police, on 19.06.2005 at about 7.30 p.m. It was registered in Crime No.378 of 2005, for the offences under Sections 304-B and 498-A of IPC.

(iii) P.W.10, the Deputy Superintendent of Police, on receipt of the F.I.R-Ex.P4, took up the investigation, proceeded to the scene of occurrence and prepared the observation Mahazar (Ex.P5) and Rough Sketch (Ex.P6) in the presence of witnesses. He examined the witnesses and recorded their statement. He conducted inquest on the dead body of the deceased before the panchayadars and prepared the Inquest Report (Ex.P7) and found that the death of the deceased was due to dowry harassment and she was subjected to cruelty at the hands of the accused persons which had driven her to commit suicide.

(iv) P.W.2 - Dr.Malliga, conducted the postmortem on the body of the deceased and found the following injuries.

"Finger and toe nails bluish. Tongue bitten and bluish. Incomplete ligature abrasion of 24cm x 6-2cm over the anterior and lateral aspects of neck with a gap of 11 cm. Anatomical landmarks on the abrasion is 9 cm from right ear, 5 cm from chin, 5 cm from left ear. On bloodless dissection of neck, there is no evidence of extravasation of blood in the superficial or deep planes of the neck. The area underlying the abrasion is hard and parchment like. Trachea, larynx & hyoid bone is intact. Pleural and peritoneal cavities empty. Heart : Right side chambers contain a few drops of fluid blood. Left side chambers coronaries patent. Lungs : Cut section congested. Stomach : Contains 45 ml of brown coloured fluid. No specific smell, Mucosa normal, Small Intestine : Contains 20 ml of brown coloured fluid, No specific smell, Mucosa normal. Liver, spleen and kidneys - cut section congested. Urinary bladder : Empty. Larynx shows blood stain. Uterus normal size, cut section cavity empty. On dissection skull, skull intact, brain cut section congested. Viscera preserved for chemical analysis."

She is of the opinion that the deceased died due to Asphyxia due to hanging.

(v) P.W.11, had completed the investigation of the case and filed the final report against the accused persons under Sections 498-A and 304-B of IPC.

3. Based on the above materials, the Trial Court framed charges and claimed trial as detailed above and the accused denied the same as false.

4. In order to prove the case of the prosecution, as many as eleven witnesses were examined as P.Ws.1 to 11 and eight documents were marked as Exs.P1 to P8 and produced M.Os.1 to 3. The appellants were examined under Section 313 Cr.P.C of all the material particulars appealed against them and they denied all the allegations and they examined three witnesses as D.Ws.1 to 3. on the defence side. No documents were marked on their side.

5. The Trial Court after hearing the charges and appreciation of the evidence, convicted the appellants as stated above, as against which the present appeal.

6. The learned counsel for the appellants submitted that the respondent raised the case straight away against the accused. The marriage was held between the first accused and the deceased on 22.11.2004 and without completing seven years from the date of marriage, the wife committed suicide on 19.06.2005, therefore, the F.I.R should have been registered under Section 174 of Code of Criminal Procedure. It was registered for the above said offences and it is against the procedures for unnatural death. He would further contend that there is a contradiction between the evidence of P.W.1 and Ex.P4. P.W.1 stated that the accused persons had informed him that her daughter consumed poison and she was admitted in the hospital and when P.W.1 along with others were proceeded to hospital, the accused informed him that his daughter died. In the complaint, he stated that the accused had informed him that his daughter died in the accused house. The prosecution did not examine any independent witness to prove the charges against the accused. Further, he would contend that to prove the charge under Section 304-B of IPC, there must be harassment and cruelty soon before the death. There is no link for the last one week, with regard to cruelty or harassment for demand of dowry by the accused. Therefore, the prosecution had failed to prove the charges under Section 304-B of IPC. Further, he would submit that the third accused died during the pendency of this appeal and the second accused's age is about 80 years and therefore, prayed for acquittal of the appellants.

7. In reply to the above submission, the learned Additional Public Prosecutor would refer to several portions of the oral and documentary evidence adduced by the witnesses and contended that the conviction imposed upon the appellants for the offences referred above, is legal and prayed for confirming the same. Further, she would contend that P.Ws.1, 3, 4 and 5 have categorically deposed that the deceased was harassed by the accused by demanding dowry. There are specific allegations in the complaint and as such the case was registered for the above said offences and there is no straight jacket formula to order for the Revenue Divisional Officer enquiry. P.W.1 conducted the inquest on the body of the deceased and filed her report. Therefore, the prosecution proved the charges beyond any doubt and prayed for dismissal of this appeal.

8. Heard the arguments advanced by Mr.N.Ponraj, learned counsel appearing for the appellant and Mrs.Prabhavathi Ganeshram, learned Additional Public Prosecutor for the State and perused the materials available on record.

9. P.W.1, the father of the deceased in his evidence, stated that at the time of marriage five sovereign of gold ornaments and one pair of silver anklet were presented

to his daughter. On the eve of Pongal festival, he presented gift articles and cash to the first accused to meet out the family expenses. Even then, the deceased informed him that the accused persons were harassing and humiliating her by demanding dowry. The first accused assaulted the deceased on account of demanding dowry and she was driven out to the P.W.1's house. On assurance of P.W.1, she was sent back to the matrimonial home. Even thereafter, when he visited his daughter, the deceased expressed her desire to come with him. He pacified the deceased and assured that the dowry would be fulfilled as per their demand. She also requested him to stay there, but the accused persons did not allowed P.W.1 to stay there. Thereafter, he received the information that the deceased consumed poison and was admitted in the hospital.

10. P.W.3, the mother of the deceased deposed that the deceased told her that the accused persons were not happy with the dowry given to them and as such they were harassing and assaulting. She further told that she was insulted, humiliated and tortured by the accused by demanding dowry.

11. P.W.4, the brother of P.W.1 also deposed and reiterated the evidence of P.W.1 to P.W.3. Further he endorsed the evidence of P.W.1 and confirmed the demand of dowry and illtreatment and subjecting the deceased to cruelty on so many ways at the hands of the accused.

12. P.W.5, the cousin brother of the deceased deposed that he was informed by the deceased about the demand of dowry by the accused persons. From the evidence of P.W.1, 3, 4 and 5, it has been established by the prosecution that immediately after marriage the first accused demanded dowry and there is no specific evidence to show that the second and third accused demanded dowry. The next point to be decided as to whether there is any material to shown that prior to the death of the deceased, she was subjected to cruelty or harassmt by the accused and that they have abated the deceased to commit suicide.

Section 304-B of IPC relates to dowry deaths is read as follows :

"304-B Dowry Death - (1) Whether the death of a women 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 harassmt by her husband or any relative of her husband for 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 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".

Section 113(B) of Indian Evidence Act is also relates to Section 304-B of IPC, read as follows :

"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, in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation : For the purposes of this Section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)"

The deceased must have been, soon before her death, subjected to cruelty or harassment in connection with the demand of dowry. There must be proximate and live link between effects on cruelty based on the dowry demand and concerned death.

13. In the present case, from the evidence, it appears that the death took place within seven years of marriage and it was due to consuming poison namely not in normal circumstances. The evidence of P.Ws.1, 3, 4 and 5 are general and no specific incident has been noted to prove the cruelty or harassment made by the accused soon before their daughter's death. Though there are allegations of demand of dowry made by P.Ws.1, 3, 4 and 5, no one had stated that the deceased was harassed soon before her death or in connection with the demand of dowry.

14. The Hon'ble Supreme Court of India Judgment in MAJOR SINGH AND ANOTHER Vs. STATE OF PUNJAB reported in 2015 5 SCC 201, has held as follows :-

"15. To attract conviction under Section 304-B IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of Hira Lal & Ors. vs. State(Govt. of NCT) Delhi, (2003) 8 SCC 80, in paragraph (9) it was observed as under:- "9. A conjoint reading of Section 113-B of the Evidence Act and Section 304- B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The

prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

From the available evidence there is no material available to show that the deceased was subjected to cruelty soon before the death and there is no proximate and live link between the effects of cruelty based on dowry demand and the death of the deceased. Hence, the prosecution has failed to prove the offence under Section 304-B IPC.

15. This Court shall decide as to whether, the prosecution proved the offence under Section 498-A of IPC against the appellants ?

16. P.Ws.1, 3, 4 and 5 had categorically deposed that the first accused demanded money and committed cruelty on the deceased. P.W.1 promised the first accused and told him that his demand would be fulfilled very soon. It is also corroborated by P.Ws.3, 4 and 5. But there was no evidence to show that the second and third accused demanded dowry from the deceased or P.Ws.1 and 3. In the above circumstances, from the evidence of P.Ws.1, 3, 4 and 5, the prosecution has proved that the first accused demanded dowry from the deceased. However, there was no evidence available to establish that the second and third accused demanded dowry from the deceased or P.Ws.1 and 3.

17. Insofar as the enquiry under Section 174 of Cr.P.C that the deceased was subjected to cruelty for dowry and such cruelty has been caused by the accused and such cruelty was in connection with the demand of the dowry is concerned in cases where there is suspicion about the death of woman caused within a period of seven years of her marriage, the case has to be registered under Section 174 of Cr.P.C and investigation by the Special Divisional Magistrate-cum-Revenue Divisional Officer is a mandatory one. Whereas, in the case on hand there is no allegation of suspected death and there is a specific allegation against the accused persons and as such the investigating officer had directly registered the case under Section 498-A and 304-B of IPC. Therefore, the procedure contemplated for the dowry death has been followed by the investigating officer.

18. Insofar as the conviction and sentence under Section 498-A is concerned, for the reasons stated above, there is a categorical evidence to prove the charge that the deceased was subjected to cruelty and harassment by demand of dowry. Section 498-A of IPC reads as follows :

"498-A : Husband or relative of husband of a woman subjecting her to cruelty - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a terms which may extend to three years and shall also liable to fine.

Explanation : For the purpose of this Section 'cruelty' means -

a) any willful conducted which is of such 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) of the women or

b) harassment of the women where such harassment is with a view to coercing her or any person related by her or any person related to her

to meet such 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."

19. In view of the above discussions, this Court is of the view that the prosecution failed to prove the offence under Section 304-B of IPC. However, the prosecution has clearly proved that the first accused has committed the offence under Section 498-A of IPC.

20. Therefore conviction and sentence imposed on the appellants under Section 304-B of IPC in S.C.No.178 of 2006 on the file of the learned Sessions Judge, Magalir Neethi Mandram, Coimbatore, dated 21.02.2008, are set aside and they are acquitted from the charges.

21. The conviction and sentence imposed on the first appellant/first accused for the offence under Section 498-A IPC stands confirmed. The respondent is directed to secure the first appellant for the purpose of sentencing him to undergo remaining period of sentence if any. It is made clear that the period of sentence already undergone by the first appellant/first accused if any shall be set off as required under Section 428 of Cr.P.C.

22. The conviction and sentence imposed on the second accused under Section 498-A of IPC is set aside and the second appellant/second accused is acquitted of all the charges. The bail bonds if any executed by the second appellant/second accused shall stand cancelled and the fine amount if any paid by him is ordered to be refunded forthwith. Since the third appellant/A3 died during the pendency of the appeal, the Criminal Appeal in so far as the third appellant/A3, stands abated.

23. With the above directions, this Criminal Appeal is partly allowed .

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

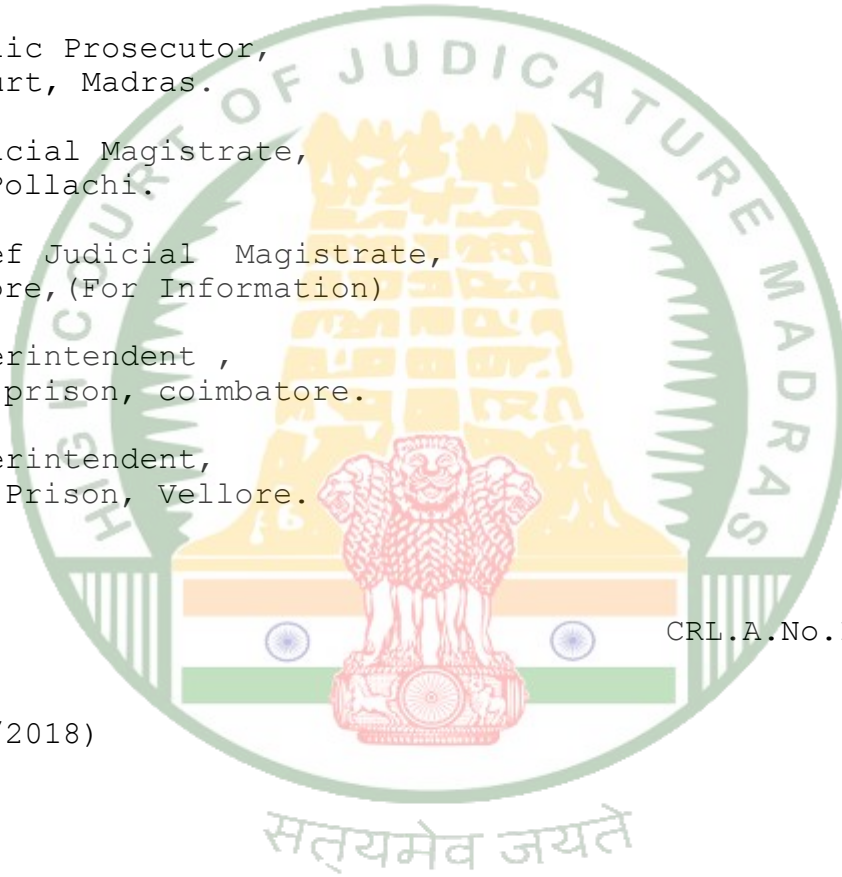
LPP

To

- 1.The Sessions Judge,
Magalir Neethi Mandram,
Coimbatore.
- 2.The Inspector of Police,
Pollachi West Police Station,
Coimbatore District
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Judicial Magistrate,
No.II, Pollachi.
- 5.The Chief Judicial Magistrate,
Coimbatore, (For Information)
- 6.The Superintendent ,
Central prison, coimbatore.
- 7.The Superintendent,
Central Prison, Vellore.

NMI (CO)
RMP (24/09/2018)

CRL.A.No.187 of 2008



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