

BAIL SLIP

The Appellant/Accused viz G.Venkatesan, S/o.Govindan, aged 27 years was directed to be released on bail by the order of this court dated 11.01.2008 in Crl.M.P.1 of 2008 in Crl.A.No.3 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2018

Pronounced on : 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.3 of 2008

G.Venkatesan

... Appellant/Accused

Vs.

The State represented by the
Deputy Superintendent of Police, Railways,
Coimbatore Sub-Division, Salem.
(Railway Police Station)
Crime No.177 of 2005)

.. Respondent/Complainant

PRAYER:

Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgment in S.C.No.277 of 2006 dated 25.10.2007 on the file of the learned Sessions Judge, Mahila Court, Salem.

For Appellant : Mr.S.K.Chandrakumar

For Respondent : Mrs.T.P.Savitha

Government Advocate (Criminal Side)

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JUDGMENT

The Accused in S.C.No. 277 of 2006 on the file of the District Sessions Judge Mahila Court, Salem is the appellant herein.

2. In the Judgment dated 25.10.2007, the Learned Mahila Judge convicted the Appellant/Accused under section 304-B of

I.P.C. for causing death of his wife and sentenced him to undergo 7 years of imprisonment and imposed fine of Rs.1000/-, in default to undergo 3 months rigorous imprisonment and further convicted him under section 498-A of I.P.C. and sentenced him to undergo 3 years imprisonment and imposed fine amount of Rs.1000/-, in default to undergo 3 years rigorous imprisonment and ordered both sentences to run concurrently.

3. Brief facts which led to this appeal are stated thus:

The case of the prosecution is that PW1 Raju and PW2 Aburvam were residing in Kattamaduvu Village, Krishnagiri District. They had two sons and two daughters. PW3 is their younger son. The deceased Chennammal is the younger daughter and she was married to the Accused on 06.02.2003. At the time of the marriage, the deceased was given 10 Sovereign jewels and cash of Rs.15,000/- as dowry for purchasing motor cycle to the accused. After one year of the marriage the couple had one boy aged about 1 year. The parents of the deceased also spent Rs.10,000/- for their grandson and gifted him one sovereign of gold chain and Silver ornaments. The accused used to make frequent quarrels with the deceased and demanded money and jewels from her Parents. PW2 Aburvam, the mother of the deceased and PW4 elder sister of PW2, used to advise the accused to lead peaceful family life and made conciliations between the couples for resolving their differences. The accused took away the jewels of the deceased and pledge them for supporting his sister marriage. This resulted in serious quarrel. Hence PW1 took the deceased to his house and the deceased stayed in the house of her parents for about 9 months. After that, the parents of the deceased again sent their daughter to her matrimonial home and she was again tortured by the accused in demanding dowry of Rs.20,000/-. The accused used to attack the deceased for no reason and call their parents to advise the deceased with regard to the dispute between them. As usual, again the accused came to the house of PW4 and requested her to advise the deceased in leading matrimonial life and not to go to her sister's house, who is leading illicit intimacy with one Venkatachalam. At about 5.00 p.m. when the Accused and PW4 came near the Erugapalli Railway Gate, the nearby residents inform the news of suicide committed by the deceased by throwing herself before a running Train.

4. On 08.03.2005 at about 8.45 a.m. PW8 Ponnusamy who is the Assistant Officer of the Samalpatti Railway Station informed to the Railway Master PW7 Abdul Wahab about the dead body of female, aged about 27 years, lying near the Thasampatti, Samalpatti Railway Track with multiple injuries. PW7 preferred the complaint to the Sub -Inspector of Railway Police Station. At about 9.00 a.m. PW12 Palaniappan, Sub-Inspector of Police, received the complaint from the Railway authorities (Ex.P4) and registered the same in Cr.No.177 of 2005 on the file of the

Salem Railway Police Station, under section 174 of Cr.P.C. The FIR registered by PW12 is Ex.P9. Since the death of deceased within 7 years of marriage, the Investigation Officer PW 12 requested the RDO PW10 through Ex.P6 to hold inquest and take up initial investigation. PW10-RDO taken the investigation and conducted the inquest enquiry at about 3.00 p.m. and examined PW1 and PW2 and other witnesses and recorded their statements. Inquest was held on the body of the deceased in the presence of Panchayatars. Ex.P7 is the report made by the RDO and he concluded in his Report that the death might be homicidal or suicidal due to dowry harassment and domestic quarrel. PW10 directed further enquiry and after the inquest, the dead body of the deceased was sent for Autopsy. PW13 Nagarajan, DSP, conducted further investigation and prepared observation Mahazar Ex.P1 in the place of occurrence and examined the witnesses including PW5 Thillaiappan (VAO) and drawn Ex.P10 rough sketch. After that PW 13 examined the witnesses namely Raju -PW1, Aboorvam - PW2, Raja - PW11, Vajravel - PW3, Senthamarai, Muniammal - PW4, Murugan, Thillaiappan - PW5, Sennan, Sennakrishnan, Govindan, and also examined the Panchayatars namely Jeyapaul, Krishnan, Selvam and recorded their statements. PW10 - Doctor Narayanasamy conducted autopsy on the body of the deceased with his colleague PW9 and pointed the injuries all over the body in the postmortem certificate Ex.P5 opining that the death was due to multiple injuries and all the injuries were ante-mortem in nature and could be sustained in a railway accident.

5. The Investigation Officer enquired the de-facto complainant Abdul Wahab, witnesses Ajithkumar, Ponnusamy-PW8, Srinivasan, Annammal and recorded their statements on 09.03.2005 and altered the FIR by amending section 498(A), 306 of I.P.C. by way of amended report Ex.P11. On 11.03.2005 on the information, investigation officer arrested the accused in front of the witnesses PW5 and PW6 and recorded his confession statement Ex.P3. On 11.03.2005, he examined Thillaiappan (VAO) PW5, Janakiraman (VAO) PW6 and seized M.O.1 (receipt) in Mahazar Ex.P2, M.O.2 (Indian Bank Saving passbook). On the very same day, the accused was produced before the Judicial Magistrate at about 9.30 p.m. and remanded to judicial custody. On 11.07.2005 the investigation officer received the postmortem report and recorded the statements from Doctor and RDO. On completion of the investigation, charge sheet was filed against the accused under section 498(A) and 304-B of I.P.C.

6. To substantiate the charge against the accused in the trial Court, the prosecution has examined PW1 to PW13 and Ex.P1 to Ex.P12 were marked. MO1 and MO2 were produced. The accused was questioned under section 313 of Cr.P.C. about the incriminating circumstances and evidence. The accused denied the

same. Upon consideration of the evidence, the trial Court found that there was demand of dowry and deceased Chennammal was subjected to harassment. Evidence of Parents of the deceased PW1 and PW2 was accepted as reliable and from other evidences; the trial Court convicted the accused under section 498(A), 304 -B of I.P.C.

7. The reasoning and conviction assailed by the trial Court was strenuously contested on behalf of the accused before this Hon'ble Court. The learned counsel for appellant/accused inter alia raised the following contentions:

i). The evidence of PW1 to PW4 does not bring out the demand of dowry or establish the cruelty.

ii). The learned Trial Court failed to appreciate the contradictions in the deposition of PW1, PW2, PW3 and PW11 who are relatives of the deceased.

iii). There was no complaint or allegations against the accused from the parents of the deceased soon before her death.

iv). The Court below failed to appreciate the deposition of PW4 who clearly stated that there was no dowry harassment and no quarrel between the husband and wife soon before the death.

vi). The Court below failed to consider the evidence of PW10, RDO regarding non examination of independent witnesses and adjacent neighbours regarding the dowry harassment alleged against the accused.

8. Countering the arguments of the appellant/accused the learned Government Advocate (criminal side) contended that the demand of dowry is well established from the evidence of PWs 1 to 3 and the deceased was subjected to dowry harassment and cruelty and supported the reasoning of the trial Court for convicting the accused.

9. Upon careful reassessment of the evidence and materials and record, the judgment of trial Court and submission of the both sides, the following points raised for consideration in this appeal.

1. Whether the prosecution is proved that, the deceased Chennammal was subjected to cruelty and dowry harassment "soon before death" under section 498(A) of I.P.C?

2. Whether the conviction of accused under section 304-B of I.P.C is correct?

10. The case of the prosecution proceeds on the common grounds:

Admittedly, in order to attract Section-304(B) of the Indian Penal Code, the prosecution must establish all the ingredients of Section 304-B of the Indian Penal Code and if prosecution fails to prove, even one of the ingredients of Section-304(B) of the Indian Penal Code, the conviction under Section 304(B) of

the Indian Penal Code, cannot be recorded. Therefore, prosecution is duty bound to prove the following ingredients of Section-304(B) of the Indian Penal Code to seek conviction under the aforesaid Section:-

(i) The death of a woman should be caused by burn or bodily injury or otherwise other than under normal circumstances;

(ii) Such death should have been occurred within 7 years of her marriage;

(iii) The deceased must have been subjected to cruelty or harassment by her husband or any relation of her husband and;

(iv) Such cruelty or harassment should be for or in connection with demand for dowry.

11. PW1 is the father of the deceased and he deposed about the solemnization of marriage with the accused and at the time of marriage the deceased was given 6 sovereign jewels, and cash of Rs.15000/-. Further on the birth of their grandson again Rs.10,000/- was spent by him. The accused is in the habit of demanding dowry amount again and again and used to torture the deceased due to the continuous demand made by the accused again PW1 gave Rs.2,000/- and purchased house hold things for supporting the accused. The accused demanded the jewels for his sister marriage for which the deceased refused to give her jewels. Due to this quarrel, the accused pull her daughter in the railway track and caused the death. They received the information at about 8.00 p.m. and saw the dead body of the deceased in the railway track and found that the deceased left leg and hand were broken. At the time of enquiry conducted by the RDO, PW-1 told that the accused might have attacked his daughter and pushed before the running train. In the cross examination PW1 specifically admitted that, soon before her death no complaint was given by the deceased against the accused. Further PW1 admitted that he has not disclosed the demand of dowry and torture made by the accused during the statement given to the police. Further the date of the marriage, details of the jewels and cash given to the deceased and accused were not stated to the police in the course of the investigation. So far as the evidence of P.W.1 is concerned, apart from the witness being an interested witness, there is yet another strong reason to approach his testimony with a greater caution.

12. PW2 is the mother of the deceased and she deposed in her evidence that 10 sovereign of jewels and Rs.15,000/- cash given to the accused at the time of marriage. Often accused used to demand more money as dowry and torture her daughter and they used to give Rs.5,000/- and Rs.6,000/- to the deceased for leading matrimonial life. At about 8.00 p.m. PW-1 & PW-2

received the phone call and saw the dead body of the deceased. In the cross examination PW2 specifically admitted that soon before the death the accused came to their house and call for the celebration of function. After the marriage the accused and the deceased were leading the separate life. The demand of dowry was not stated to the investigation officer during the time of enquiry.

13.PW3 is the brother of the deceased and he deposed in his evidence that 10 sovereign of jewels and Rs.15,000/- cash given to the accused at the time of marriage. PW1 and PW2 told him that, the accused used to demand more money as dowry and tortured the deceased. In the cross examination PW3 specifically admitted that the accused was working as coolie in Bangalore with him. The accused used to visit his matrimonial house with the interval of 1 month. PW3 further deposed that he is not aware of the money demanded by the accused.

14.PW4 in her evidence categorically admitted that both the deceased and accused were living separately and leading peaceful matrimonial life and denied the harassment and torture allegation made against the accused by PWs.1 to 3.

15.It seems the parents of the deceased, namely P.W.1 and 2 gave a statement to the Deputy Superintendent of Police expressing their suspicion that their daughter could have been killed by the appellant by pulling her before the Train. Excepting the said expression of suspicion, there is no other direct or even circumstantial evidence to substantiate the accusation made by them.

16.On the other hand, there is evidence pointing to the singular fact that the death of Chennammal is nothing but a suicide. In fact the appellant was prosecuted for the offence of abetment of suicide under Section 304-B IPC along with an offence under Section 498-A IPC. Though there are some kinds of evidence in the form of testimonies of P.W.1 to P.W.3 that there was cruelty and harassment on earlier occasions, there is want of evidence to show that there was any kind of abetment of suicide either by inducement or by aiding.

17.Even according to the evidence of P.Ws.1 to 3, soon after the marriage the appellant and his wife Chennammal lived with the parents of the appellant for about three months and only at the instance of P.W.1 and P.W.2 they set up their separate residence. The evidence of P.Ws.1 to 3 to the effect that within a couple of months from the date of marriage, the deceased was not provided with proper food and was treated with cruelty had weighed the trial judge to accept their further evidence that

there was cruelty and harassment as defined under Section 498-A IPC. In this regard, the contention of the learned counsel for the appellant that the testimonies of P.Ws.1 to 3 should be approached with a considerable degree of caution as they are interested witnesses is well founded. Of course, it is true that the evidence of near relations in such cases cannot be discarded outright. But, if the evidence of such interested persons contradicts with the evidence of other witnesses, then the principle of putting their evidence to the test of careful scrutiny before acceptance applies with greater vigor.

18. Admittedly, P.W.1 to 3 was not an eye witness to the occurrence. However, they would venture to give evidence in support of their case. The testimony of P.W.3 in this regard is hit by the rule against admission of hearsay evidence, as it has been candidly admitted by P.W.3 that the said fact came to his knowledge only from the information furnished by PW 1 and 2. P.W.3 who is none other than the son of P.W.s.1 and 2 has not spoken anything about the said occurrence. If at all it was true that there was an attempt on the life of her daughter, naturally P.Ws.1 and 2 would have chosen to give a complaint. But no complaint had been given complaining harassment. None of the Panchayatdars, who allegedly came to the house of the P.Ws.1 and 2, has been examined to prove that there was such an incident and that any assurance from the appellant was obtained before sending Chennammal along with him.

19. It is not the case of the prosecution that there was any cruelty or harassment caused by the mother-in-law or sister-in-law of the deceased. However, P.W.1 has made an attempt to implicate the appellant by stating that her daughter died due to the cruelty and harassment caused by him. The same will show his determination to see that the accused is prosecuted and punished. For that reason also, relying on the evidence of P.W.1 to 3 shall not be safe and their evidence in this regard has got to be rejected as unreliable. All the imponderables and the contradictions pointed out above will go to show that the evidence of P.Ws.1 to 3 in this regard is not reliable and the evidence of PW 4 destroys the substantive case made by PW.1 to 3.

20. The other part of the allegation against the appellant herein/accused to the effect that the deceased was not provided with proper food may be due to the financial condition of the appellant. There is no evidence to show that there was any discrimination between the husband and wife in the matter of having food. On the other hand, there is also evidence to the effect that the deceased was scolded by the appellant/accused

for not helping his sister's marriage with her jewels. Hence it shall not be safe to rely on the evidences of P.W.1 to 3 to come to the conclusion for the offence of cruelty punishable under Section 498-A.

21.From the above discussion, I am of the view that there is no evidence to show that the deceased has been subjected to dowry demand. The trial Court, in its judgment, came to the conclusion that there is no vital discrepancy between the cross examination and chief examination of P.W.1 to 3 and came to the conclusion that the deceased was subjected to mental cruelty, and the said conclusion is not correct and the findings of the trial Court are not based on proper analysis of the evidence and hence, I am of the view that the prosecution has failed to prove that the deceased was subjected to cruelty and harassment, by way of demand of dowry, which led her to commit suicide. Hence, the accused is liable to be exonerated of the charge under Section 304-B IPC, since there is no evidence to show that she was subjected to demand of dowry and harassment, except the ipse-dixit of P.Ws.1 to 3, even though they have stated that the excess dowry and money had been demanded only for expansion of business of the Accused and as per the decision reported in AIR 2007 SC 763, it does not amount to dowry. The ingredients of Section 498-A IPC and Section 4 of the Dowry Prohibition Act are also not made out. The appellant is entitled to be exonerated of the charges and to be given "the benefit of doubt". It is true that as per Section 113-B of the Indian Evidence Act, the presumption is there and the initial burden is upon the prosecution to prove the same and the prosecution has not proved that on the basis of the demand of dowry, she was forced to commit suicide.

22.For the foregoing reasoning, I am of the view that the trial Court has committed error in convicting the accused for the offences under Sections 304-B and 498-A and the prosecution has failed to prove beyond reasonable doubt that because of the cruelty meted out to her by way of demand of dowry soon before her death, she committed suicide. So, "the benefit of doubt" has to be given in favour of the appellant and he is entitled for acquittal of the charges.

23.In the result:

(a) the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the trial Court is set aside;

(b) the bail bond, if any executed by the appellant, shall

stand cancelled;

(c) the fine amounts, if paid by the appellant is ordered to be refunded.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Deputy Superintendent of Police, Railways,
Coimbatore Sub-Division, Salem.
(Railway Police Station)
2. The Sessions Judge,
Mahila Court, Salem.
3. The Judicial Magistrate III,
Salem.
4. The Chief Judicial Magistrate,
Salem
5. The Public Prosecutor, High Court, Madras

+1cc to Mr.S.K.Chandrakumar, Advocate, S.R.No.9187

Cr1.A.No.3 of 2008

svi(co)
cs/21/03/18

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