

BAIL SLIP

CRL.A.No.493 of 2010

The Appellant/Accused-1, was namely Saravanan, S/o.Marimuthu, Aged 32 Years, in CRL.A.No.493 of 2010 was directed to be released on Bail as per the Order of this Court Dt. 20/08/2010 and made in CRL.MP.NO.1/2010 in CRL.A.No.493 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.No.493 of 2010

Saravanan

..Appellant/Accused-1

Vs.

State: Rep by
Assistant Commissioner of Police,
Poonamallee Police Station,
T-12, Poonamallee Police Station.
(Crime No.775/2007)

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C, against the conviction and sentence dated 11.08.2010 passed in S.C.No.29 of 2010 on the file of Additional Sessions Judge, Fast Track Court No.I, Poonamallee, praying to set aside the same.

For Appellant :Mr.C.P.Palanichamy
for M/s.C.Selvaraj

For Respondent :M/s.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

The appellant/accused is the first Accused in S.C.No.29 of 2010 on the file of Additional Sessions Judge, Fast Track Court No.I, Poonamallee, along with two other accused he stood charged under sections 498(A), 306 and 304(B) IPC. By a judgment dated 11.08.2010, the trial Court convicted him under Section 304(b) of IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo one year simple imprisonment. For the remaining charges

he was acquitted along with other two accused, challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution is as follows:

The deceased Padmavathi, is the daughter of PW.1-Kalawathi and PW.2-Ravikumar is the second husband to the PW.1; PW.3, Udayakumar and PW.4, Sudhalakshmi are the brother and sister to the deceased respectively. The marriage between the appellant and the deceased was held on 01.06.2006. At the time of marriage, 15 Sovereigns of gold and Rs.50,000/-was given to the accused, as Sreethana property. There after Appellant/Accused frequently consumed the liquor and made quarrel with the deceased. However, she got pregnant and returned to her parents house and after five months from the date of giving birth to child, she was return back to her matrimonial home. Thereafter, all the accused demanded the deceased to bring Rs.1 lakh and one bike as additional dowry from her parents house. Specifically on 09.09.2007, through telephone the present appellant directly demanded the PW.1 for giving the said amount. Thereafter, on 11.09.2007 PW.1 received a message that her daughter committed suicide. So, immediately, after receiving the message, PW.1 went to the house of Accused and after seeing her daughter as a dead body, she lodged a complaint before the Poonamallee Police Station under Ex.P1. Thereafter, a case has been registered against the appellant and his parents for the offences under Sections 498-A, 306 IPC r/w 174 (iii) of Cr.P.C., Ex.P13-First Information Report.

3. After registration of the case, the copy of the FIR is forwarded to the Revenue Divisional Officer, for initiating enquiry and for the preparation of inquest report. After receiving the copy of FIR, PW.8-R.Palanisamy, who is the Sub Collector, Thiruvallur Division, went to the scene of occurrence and examined the witnesses, Panjayators and recorded their statements. At the end of the enquiry, he came to the conclusion that the demand of dowry is one of the reasons for committing suicide by the deceased. Ex.P11 is the inquest report. After preparation of the inquest report, he entrusted the dead body to the Government Kilpauk Medical College Hospital, Chennai, with requisition to conduct the autopsy. After receiving the requisition from PW.8-R.Palanisamy, PW.5-Dr.Kuppusamy, when he was working as a doctor in Kilpauk Medical College Hosptial, conducted the autopsy and found the following external and internal injuries:

External Injuries:

* A case of hanging autopsy and hanging ligature aberration scar seen on the side of the

front of neck just above the thyroid cartilage measure 28cmx2cmx5cm below the chin 6 cm above the 3cm from the Rt mastoid process and 6cm from the progress. No other wound or injury seen.

Internal injuries:

*Hyoid bone intact Trachea and Larynx and empty stomach 100ml of brown colour fluid;

*Heart contains blood clot in all 4 chamber.

*Lungs, Kidneys and spleen: Normal c/s congestion. Intestinal and uterus-empty;

*Spinal cord and pelvis-Intact scalp skull-Membrance Intact;

*Brain:Normal c/s congestion

4. Thereafter, on chemical examination of viscera, collected from the dead body it was found that there is no poisonous substance present in the dead body. EX.P6- Toxicology report. Finally, he gave opinion that the death of the deceased would appear to have died of Asphyxia due to hanging. Ex.P7 is the Postmortem certificate.

5. In continuance of investigation, PW.10-Chinnasamy, the then Deputy Superintendent of Police, Poonamallee Division took up the case for investigation and visited the scene of occurrence, he prepared the observation mahazar and rough sketch under Exs.P8 and P14 respectively. Further, he examined the witnesses and recorded their statements. Subsequently, he recovered the M.O.1[Rope] and M.O.2[Rope] under the cover Recovery Mahazar. After receiving the report from the Revenue Divisional Officer, he altered the Sections of law as 498-A, 306 and 304-B of IPC and sent the report to the Magistrate. Ex.P15 is the alteration report. Finally, he examined the Doctor who conducted the post mortem and recorded his statement. Thereafter, on 12.09.2007 he arrested the all accused and after completion of the investigation he filed a final report under Section 498 A, 306, 304-B of IPC.

6. Based on the above materials, the trial Court framed the charges against the accused as detailed in the first paragraph of the judgment, all the accused denied the same. In order to prove the case of the prosecution as many as 10 witnesses were examined and 15 documents were exhibited, besides two material objects.

7. Out of the said witnesses, P.W.1 is the mother of the deceased Padmavathy. The present accused is her son-in-law. The deceased Padmavathy given in marriage with the accused on 01.06.2006. She has stated during the time of marriage 15 sovereigns of jewels and Rs.50,000/- was given to the accused. The marriage expenses has also been born by herself. She has

further stated, after the marriage, the accused regularly consumed the liquor and assaulted the deceased. In the meantime, on 08.03.2007, the deceased gave birth to one male child and after 5 months from the date of birth, the deceased returned to the accused house along with her child. Thereafter, the deceased again complained against the accused and against the parents-in-law by saying that they are demanding to bring Rs.1 lakh and one motorcycle. Particularly on 09.09.2007 the present Accused, through the telephone demanded PW.1 to give Rs.1 Lakh and one Bike as additional dowry. In the meantime, on 11.09.2007 she received a phone call as her daughter was died. She has further stated immediately after hearing the news, he lodged a complaint before the police officer.

8. P.W.2 Ravikumar is driver by profession, he is the father of deceased Padmavathy. He gave evidence about the marriage of the deceased and about the demand made by the accused as stated by the P.W.1.

9. PW.3 Udaykumar is the brother to the deceased, he has stated in his evidence as, after the marriage with the first accused, the deceased is residing in matrimonial home situated in Kattupakkam. He has further stated in the matrimonial home the first accused regularly consumed the liquor and assaulted the deceased. According to him, during the time of marriage the first accused gave 15 sovereigns of jewels and Rs.50,000/- as a dowry. Further, he has stated, after gave birth to one male child all the accused demanded the PW1 to bring Rs.1 lakh and one motorcycle.

10. PW.4 is the sister of the deceased has stated before the trial court at the time of marriage the appellant was received the 15 sovereigns of jewels and Rs.50,000/- as a dowry. Further she has stated about the demand made on the deceased by the accused as stated by PW1 to PW3.

11. PW.5 Dr.Kuppusamy has stated about the injuries sustained by the deceased and about the details of postmortem. According to him, the deceased would appear to have died of asphyxia due to hanging. He issued a postmortem report and opinion.

12. PW.6 Mahalingam is working as a head constable in Poonamallee police station he has stated on 11.09.2007 at about 3.00p.m. the Revenue Divisional Officer entrusted the deadbody of the deceased Padmavathy for handing over in the Hospital along with the requisition letter for conducting autopsy.

13. PW.7 Jayaraman is the resident of Kattupakkam, he has stated on 11.09.2007 at about 12.30p.m. PW.10 Investigation

Officer visited the scene of occurrence and prepared an observation mahazar. He has further stated from the scene of occurrence, the said Investigating Officer had recovered the two pieces of rope through the recovery mahazar.

14. PW.8- Dr.R.Palanisamy, who is the Revenue Divisional Officer has stated about the preparation of inquest report. According to him, the demand of dowry is one of the reason for committing suicide by the deceased.

15. PW.9 and PW.10 are the police officers has stated about the receiving of complaint, registration of the case, details of investigation and filing of final report.

16. When the above incriminating materials were put it to the accused under section 313cr.p.c. all the accused denied the same as false. However, they did not choose to examine any of the witnesses on their side. The marriage invitations dated 18.06.2007 and 01.06.2006 alone have been marked as Ex.D1 and Ex.D2 on the side of the accused.

17. Having considered all the above, the trial court convicted the accused as stated in the first paragraph of this judgment. Challenging the same, the first accused / appellant is before this court with this criminal appeal.

18. Today, I have heard the arguments advanced by Mr.C.P.Palanichamy, learned counsel appearing for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Crl.side) appearing for the respondent and perused the materials available on record.

19. As per the evidence given by PW1 to PW4 during the time of marriage 15 sovereigns of jewels and Rs.50,000/- cash were given to the appellant as a dowry by the parents of the deceased. Thereafter, the deceased gave birth to one male child and afterwards he committed suicide on 11.09.2007 by using the rope. Accordingly, the alleged offence had happened within 3 months from the date of marriage.

20. Further, as per the evidence of PW.1 to PW.4, it is clear, after the marriage, the appellant regularly consumed liquors and assaulted the deceased, due to which misunderstanding have been arised between them. In the said circumstances, as per the evidence of PWs.1 and 2, before two days from the date of occurrence, a phone call was received by PW.1 from the deceased, through which the deceased requested the PW.1, for taking her back from the matrimonial home. But the said request made by the deceased was not responded by PWs.1 and 2 and the same was admitted by PW.1 in the complaint as well as

in the chief examination of PW.1. Moreover, after receiving the phone call from the deceased, PW.1 contacted the appellant and asked as "what had happened", for which, the accused demanded the PW.1 to give Rs.1 lakh and one bike as additional dowry. The said fact was clearly mentioned in the complaint and subsequently, it was deposed in the chief examination given by PW.1. However, the said evidence was not supported through the evidence of PWs.2 to 4. The evidence given by PWs.2 to 4 clearly discloses that prior to the occurrence, the deceased and the appellant were having misunderstanding due to consumption of liquor by the appellant, further it appears, on account of which, the appellant assaulted the deceased frequently.

21. In this regard, the learned counsel appearing for the appellant would content prior to one week from the date of occurrence, PW.2-Ravikumar, who is the second husband of PW.1 and one Vinoth, went to the house of deceased and making some mental disturbance to the deceased. On considering the said submission, it was admitted by PW.2 that he had went to the house of the deceased along with one Vinoth. But at the same time, he did not say anything about mental disturbance of the deceased. In the said circumstances, the suggestion put forth by the appellant as above was denied by PW.2. Hence, this Court cannot come to the conclusion that the reason stated by the appellant, is not the cause for committing suicide by the deceased.

22. Now, on going through the judgment of our Hon'ble Apex Court in CrI.A.No.1097 of 2016, dated 18.11.2016 (arising out of S.L.P.(CrI) No.9718 of 2014) reported in Baijnath and others Vs.State of Madhya Pradesh, at paragraph No.28 it is held as follows:

"28. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances and

(ii) is within seven years of her marriage and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry."

23. Now, applying the dictum of our Hon'ble Supreme with the case in our hand and taking note of the facts and circumstances of the case, it is proved that the death of the deceased had not happened in normal circumstances. Further, the death had happened within a period of seven years from the date of marriage.

24. So, the next point, we have to find out, is whether the deceased was subjected to cruelty or harassment by her husband/appellant or relative of her husband/apellant. In this aspect, "cruelty is mentioned" in Section 498-A of IPC as follows:

"498-A. Husband or relative of husband to 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 term which may extend to three years and shall also be liable to fine.

(a) any wilful conduct which is of such a 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 woman; or

(b) harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful 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."

25. Applying the above, this Court is of the view that, after the marriage, the appellant regularly consumed liquor and assaulted the deceased. Moreover, in the initial stage, at the time of lodging the complaint before Police and in the evidence given before the trial Court, PW.1 categorically mentioned that before two days from the date of occurrence, the appellant demanded a sum of Rs.1 lakh and 1 bike. So, the said act of Accused/Appellant has nothing but cruelty.

26. Accordingly, the third ingredient, which is necessary for proving the offence under Section 304-B of IPC, is available in this case. The trial Court also took the same view and found that the appellant is guilty of the said offence.

27. In the said circumstances, the learned counsel for the appellant would contend that during the time of trial the witnesses PW1 to PW4 made several improvements with regard to the occurrence alleged by the prosecution. Further, he would contend that portion of the evidence given by them has not been stated before the investigating officer during the time of investigation. Accordingly he prayed to allow the appeal. In this regard, in order to settle the said submission it is

necessary to go through the cross examination of investigating officer. In the cross examination, the investigating officer did not say anything against the evidence given by PW1 to PW4. All the suggestions put forth by the accused was denied by the investigating officer, particularly there is no denial from the Accused about the demand of dowry made by the accused before PW.1 through the telephone which is the crucial evidence to prove the 3rd ingredient observed by our Hon'ble Apex Court in the Judgment already referred. So, I am of the considered view nothing has been elicited on the side of the accused for proving that the evidence given by PW1 to PW4 is having the contradictions.

28. The next submission made by the learned counsel for the appellant is in order to support of the case of prosecution in the trial court, PW1 to PW4 are examined, they are family members of the deceased. In the said situation believing their evidence alone is not sufficient to hold that the accused committed the offence.

29. On considering the said aspect, it is true the witnesses examined on the side of the trial court are all related to the deceased. In this regard, on going through the circumstances, the offence alleged to have been committed by the accused is within the four corners of his house. Further the offence has been completed within 3 months from the date of marriage. It is common, all the pitiable ladies ordinarily has informed the incidents happened in the matrimonial home only to their parents particularly to her mother and not before the others. So in these type of occurrences only the parents of the deceased are the natural witnesses and their evidence cannot be discarded only based on the relationship with the deceased.

30. In this regard, reliance is placed in the judgment of our Hon'ble Apex Court in Ganapathi v. State of T.N., (2018) 5 SCC 549 in which our Hon'ble Apex Court has held as follows:

"Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person."

Accordingly as per the observation of our Hon'ble Apex Court only because of the reason that the witnesses are related to the deceased, we cannot discard the evidence given by them entirely.

31. The learned counsel for the appellant would further contend that the demand of dowry is not established by the prosecution. In this regard, on going through the evidence of PW1 she categorically mentioned before two days from the date of occurrence, the deceased through telephone conveyed the message with regard to the demanding of dowry to her family members. So, I am of the opinion that the evidence for the demanding of dowry is clearly available in the evidence of PW1 to PW4.

32. Finally, the learned counsel for the appellant would contend that as per the case of prosecution, after the marriage the appellant/accused beaten the deceased regularly after consuming the liquor. So, the neighbours of the accused definitely having the chance to see the quarrel happened between the deceased and the appellant, for proving the same, no evidence is let in on the side of the prosecution. Further he submits the said aspects discloses that the evidence given by PW1 to PW4 are insufficient to hold that the accused committed the offence under section 304B IPC.

33. It is true if the accused beaten the accused as stated by PW1 to PW4 regularly, there may be a chance for the neighbours to see the said occurrence. However since the accused is charged for the offence under section 304B IPC it is necessary to see the statutory presumption raised under section 113 B of Indian Evidence Act. In this case, the evidence given by the family members of the deceased categorically proved that the Accused/Appellant demanded the deceased to bring the additional dowry. Further the evidence putforth by them is squarely established the cruelty committed by the appellant and for the demanding of the dowry.

34. In the said circumstances, in order to disprove the evidence given by PW.1 to PW.4 on the side of the accused none have been examined, marking of two invitations is not sufficient to show the innocence of appellant. So, I am of the considered view that the findings arrived at by the trial court in respect to the offence committed by the accused is found correct. Accordingly, the appellant / accused committed the offence under section 304B IPC.

35. In the light of the above discussion and taking note of the submissions made by the respective learned counsel, the order passed by the Trial Court does not warrant interference. Accordingly, this appeal is dismissed. The conviction and

sentence awarded by the trial Court is confirmed. The trial Court is directed to secure the accused and send him to jail for serving the remaining period of sentence if any. The sentence already undergone, if any, by the accused shall be set off under Section 428 of Cr.P.C.

ub

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

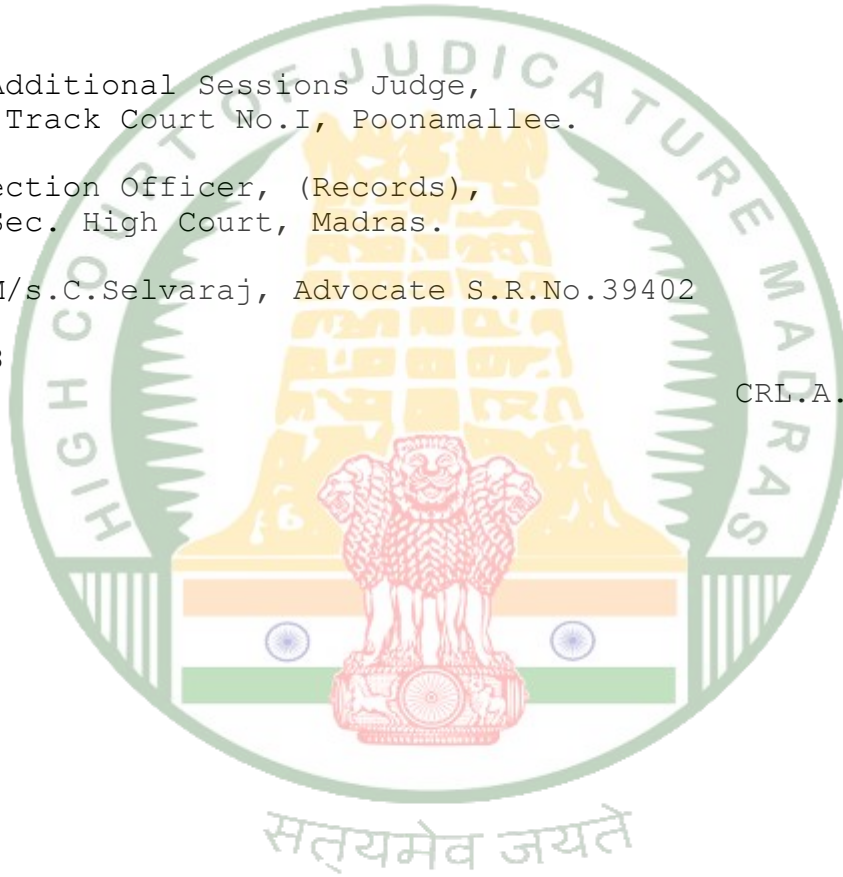
1. The Additional Sessions Judge,
Fast Track Court No.I, Poonamallee.

2. The Section Officer, (Records),
Crl. Sec. High Court, Madras.

+2ccs to M/s.C.Selvaraj, Advocate S.R.No.39402

KR/2/11/18

CRL.A.493 of 2010



WEB COPY