

BAIL SLIP

CRL A. 598/2008

The Appellant/Accused namely M.Ganesan, S/o. Muthusamy was directed to be released on bail as per order of this Court dated 14/08/2008 made in CRL.MP.No. 1/2008 in Crl.A.598/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 05.07.2018
PRONOUNCED ON : 12.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.598 of 2008

M.Ganesan
S/o. Muthusamy

... Appellant/Single Accused

Vs

The State rep by
The Deputy Superintendent of Police,
Sankari Sub Division,
Sankari Police Station,
Salem District.
(Crime No.1 of 2006)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction imposed in the judgment dated 29.07.2008 made in S.C.No. 103 of 2007 on the file of the learned Sessions Judge/Mahila Court Salem sentencing the appellant to undergo three years R.I. with fine of Rs.1000/- in default to undergo three months R.I. for the offence under Section 498-A IPC and to undergo seven years R.I. for the offence under Section 304 B IPC.

For Appellant : Mr.N.Manoharan

For Respondent : Ms.Prabavathi Ganeshram

Additional Public Prosecutor

J U D G M E N T

This appeal is directed against the judgment dated 29.07.2008 made in S.C.No.103 of 2007 on the file of the learned Sessions Judge/Mahila Court, Salem. The appellant was convicted and sentenced to undergo three years Rigorous Imprisonment with fine of Rs.1,000/- in default to undergo three months Rigorous

Imprisonment for the offence under Section 498A of Indian Penal Code and to undergo 7 years Rigorous Imprisonment for the offence under Section 304B of Indian Penal Code.

2. The case of the prosecution is that Latha (deceased) was married to the appellant/accused about five years prior to her death which took place on 27.05.2001. She was subjected to harassment for dowry and cruelty. Due to their wedlock a male child was born and the appellant/accused subjected her fidelity. Further, the deceased was also attempted to commit suicide on earlier occasion for the reason that the appellant harassed her. Thereafter, on 01.01.2006 at about 10 p.m., the appellant demanded Rs.10,000/- from the deceased to start cycle shop, for which, he harassed her to bring money from her father. Further, the appellant also threatened her, if the money not given by her parents, he would commit suicide. Further, he also mortgaged the jewels belongs to the deceased. Thereafter, on 02.01.2016, the deceased committed suicide by hanging herself. On receipt of the complaint dated 03.01.2006, from the father of the deceased, the First Information Report was registered in Crime No.1 of 2006 for the offence under Section 174 Cr.P.C., by the Sub Inspector of Police, P.W.10. The Deputy Superintendent of Police, P.W.14, investigated the case and recorded the statement from the list of witnesses. P.W.15, after examining the witnesses filed alteration report Ex.P.13, dated 13.03.2004, thereby altered the offence into Section 304B and 498A IPC. P.W.16, after examining some more list of witnesses and filed charge sheet containing 2 charges for the offence under Section 304B and 498A IPC against the appellant.

3. The trial Court had taken cognizance in S.C.No.103 of 2007 for the offence under Section 304B and 498A IPC against the accused and framed charges for the said offences. The appellant denied the charges and pleaded not guilty and claimed trial.

4. The prosecution examined altogether P.W.1 to P.W.16 witnesses and placed on records of the documentary evidence from Ex.P.1 to Ex.P.13 and also marked M.O.1 to M.O.3. The defence side did not produce any witnesses or documents. After closing the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. of all the material particulars appeared against him. He denied the allegations against him however, he did not examine any witnesses.

5. The trial Court after hearing the parties and on appreciation of evidence by the judgment dated 29.07.2008 convicted the appellant for the offence punishable under Section 304B IPC and sentenced him to undergo Rigorous Imprisonment of seven years and convicted for the offence punishable under

Section 498A IPC and sentenced him to undergo three years Rigorous Imprisonment with fine of Rs.1,000/-. As against which, the present appeal preferred.

6. The learned counsel for the appellant submitted that the deceased was missing on 01.01.2006 and thereafter on 03.01.2006 her body was found and on 02.01.2006 the complaint was lodged by P.W.1. Ex.P.1, complaint itself unbelievable one for the reason that there were corrections, thereby strike out the words before mentioning the dates namely 01.01.2006 and 02.01.2016. Further, the appellant, he himself went to the Police station on 02.01.2006 and if at all he committed the crime, he would not have gone to the Police station. Further contended that the corrections made in the complaint shows that after fixing the appellant, it was corrected and as such, Ex.P.1 itself has no legs to stand.

7. The learned counsel for the appellant vehemently contended that the deceased had the habit of attempting to commit suicide on so many occasions in which, the appellant only saved her by spending more money from his pocket. There was no harassment by the appellant soon before the death of the deceased and no one had spoken about the quarrel between the appellant and the deceased. The corrections made in the complaint also carried out in the First Information Report, Ex.P.6. Therefore, something fishy in the registration of First Information Report and only to foist the case against the appellant, the said corrections were carried out in the First Information Report.

8. The learned counsel for the appellant further contended that there was no findings to prove the harassment for demand of dowry caused by the appellant in the report of the Revenue Divisional Officer. In the said report, there was a categorical findings in respect of her death, categorical directions to the Investigating Officer to investigate further, in respect of death, for the reason that the deceased was missing from 01.01.2006. Her body was found on 03.01.2006. It so the fucus, birds, flies and other animals would have been eaten her body. Even thereafter, there was absolutely no investigation in respect of the findings of the Revenue Divisional Officer. Further, the prosecution did not examined any independent witnesses to prove the allegation of demand of dowry and harassment. There is no evidence to show that the alleged demand was made and harassment made by the appellant soon before her death and as such, the offence under Section 304(B) would not at all attract against the accused. To support the above submission, the learned counsel for the appellant would also cite the following authorities.

1. AIR 1973 Supreme Court 2773 - Kali

Ram Vs. State of Himachal Pradesh.

2. 2014(2) MWN (Cr.) 410 - Mani Vs. State, rep by the Inspector of Police.

9. In reply to the above submission, Ms. Prabavathi Ganeshram, learned Additional Public Prosecutor would referred several portions of the oral and documentary evidence adduced by the witnesses and contented that the conviction imposed upon the appellant for the offences referred above perfectly legal and prayed for confirming the same.

10. Heard the argument of Mr.N.Manoharan, learned counsel appearing for the appellant and Ms.Prabavathi Ganeshram, learned Additional Public Prosecutor appearing for the State.

11. It is seen from the records, P.W.1 - the father of the deceased deposed that the appellant married his daughter about five to six years back and during the marriage 15 sovereign of gold was presented. The appellant used to harass his daughter on account of dowry and used to make demands for cash and jewels. On one occasion, his daughter attempted to commit suicide, due to the harassment made by the appellant and thereafter, on assurance, the appellant had taken her to the matrimonial home. In the cross-examination, he deposed that in the enquiry conducted by the Revenue Divisional Officer, P.W.13, he stated that there was harassment and dowry demand made by the appellant.

12. P.W.2, the mother of the deceased, reiterate the same as deposed by P.W.1 and corroborated that the demand of dowry made by the appellant. P.W.3 neighbour of the deceased, turned hostile. Even though, P.W.3 turned hostile, she was being the house owner of the appellant, deposed that there was a quarrel between the appellant and the deceased. P.W.4 elder brother of P.W.1 deposed that there was dowry demand and as such, the deceased was driven back and after negotiation, she was again sent to the appellant house. P.W.5, the brother of the deceased deposed that he also signed as witness to the complaint Ex.P.1 and confirmed the lodgement of complaint on 03.01.2006. Further, he also corroborated the evidence of P.Ws.1 and 2, with regard to the demand of dowry and harassment made by the appellant.

13. P.W.12, the Doctor, who conducted the post-mortem of the deceased, deposed that the death caused due to hanging and the post-mortem report and viscera report marked as Ex.P.8 and Ex.P.9. P.W.13, the Revenue Divisional Officer conducted inquest on the deceased and conducted enquiry under Section 174 Cr.P.C. and concluded that the reason for committed suicide, she was harassed mentally and physically by demanding dowry by the

appellant and also committed cruelty.

14. The judgement cited by the learned counsel for the appellant reported in "2014(2) MWN (Cr.) 410 - Mani Vs. State, rep by the Inspector of Police", held that in respect of mens rea/guilty mind on the part of the appellant/accused. It arose out of the bail petition for the offence under Section 306 of Indian Penal Code, as such, it has no binding over the present case on hand. The other decision cited by the learned counsel for the appellant reported in "AIR 1973 Supreme Court 2773 - Kali Ram Vs. State of Himachal Pradesh" held that the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the Courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of the facts which have to be present before the presumption can be drawn.

15. This Court shall decide whether the deceased death is dowry related death or not?

The Section 304(B) of Indian Penal Code relates to Dowry death is read as follows :-

"304-B Dowry death (1) Where the death of a woman 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 harassment by her husband or any relatives of her husband for, or 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."

For the purpose of this section, presumption can be raised only on proving of the following essence:-

- (a) the death of a woman was caused by any burns or bodily injury or occurs otherwise than under normal circumstances
- (b) the said death took place within seven years of her marriage
- (c) the woman was subjected to the cruelty or harassment by her husband or his relatives.
- (d) such cruelty or harassment was for, or in connection with, any demand for dowry
- (e) such cruelty or harassment was soon before her death.

16. Section 113(B) of Indian Evidence Act is also relates to Section 304(B) IPC. Section 113(B) of Indian

Evidence Act reads as follows :-

"113-B 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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death"

Explanation for the purpose of this Section, "Dowry Death" shall have the same meaning as in Section 304(B) of IPC.

17. In the present case from the deposition of P.W.1, it appears that the death took place within seven years of marriage. Admittedly, the death of the deceased was due to hanging namely not in normal circumstances. Further it has to see whether remaining two ingredients satisfied by the evidence on record. The depositions of P.Ws.1, 2, 4 and 5 are general and not specific. No specific incident has been noted the suggested cruelty or harassment made by the appellant soon before her death. Though, the allegations of demand of dowry were made by the witnesses P.Ws.1, 2, 4 and 5, no one was stated that deceased was harassed soon before the death or in connection with the demand of dowry. The appellant was charge sheeted under Section 498(A) and 304(B) of Indian Penal Code and convicted for the both offences.

18. In this background, this Court is of the view that the prosecution is miserably failed to prove that the appellant harassed the deceased soon before her death in connection with the demand of dowry. More over, P.W.13, specifically directed the Investigating Officer to investigate further with regard to the death of the deceased, in which, there was no enquiry conducted by the respondent and as such, the prosecution miserably failed to prove the suicide. In view of the same, the conviction under Section 304(B) of Indian Penal Code is liable to be set aside and accordingly, the conviction under Section 304(B) is set aside.

19. This Court shall decide whether the prosecution proved the offence under Section 498A of IPC against the appellant or not?

Insofar as the conviction under Section 498(A) is concerned for the reasons stated above, there is a categorical evidence to prove the charge that the deceased subjected to cruelty and harassment by demand of dowry. The Section 498(A) of Indian Penal Code 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 term which may extend to three years and shall also be liable to fine.

Explanation - For the purpose of this section, "cruelty " means -

(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 woman 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."

Section 498-A was added with a view to punish a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. It must be establish that the cruelty or harassment to wife was to force her to cause bodily injury to herself or to commit suicide or the harassment was to compel her to full-fill the illegal demand for dowry.

20. To prove the cruelty, the prosecution relied upon testimonies of the P.Ws.1, 2, 4, 5 and 13. P.W.1 is the father of the deceased deposed that at the time of deceased marriage, 15 sovereign of gold was presented. Even thereafter, the appellant harassed the deceased very often by demanding cash and jewels. As such, on one occasion, the deceased consumed poison to commit suicide and thereafter, she was given treatment for seven days for which he spend Rs. 70,000/- for her treatment and saved her. Further he deposed that the appellant used to suspected her fidelity and also used to beat her. P.Ws.2, 4 and 5 are also reiterated the evidence of P.W.1. P.W.13, the Revenue Divisional Officer, conducted enquiry and concluded that there was a cruelty by the appellant in respect of demanding dowry. Further the reason for committing suicide is that the appellant suspected her fidelity and harassed her physically and mentally. Further, the jewels, which were presented by P.Ws. 1 and 2, during the deceased marriage, were mortgaged by the appellant and it could not be redeemed by the appellant. As such, the prosecution categorically proved that the appellant has committed the offence under Section 498(A) of IPC.

21. In view of the above discussions, the trial Court

rightly convicted the appellant for the offence under Section 498(A) of Indian Penal Code and there is no infirmity or illegality attached with the order passed by the learned Session Judge/Mahila Court, Salem and it needs no interference from this Court.

22. In the result, the criminal appeal is partly allowed and the conviction and sentence imposed on the appellant under Section 498(A) IPC is confirmed and the conviction and sentence under Section 304(B) IPC is set aside. The respondent is directed to secure the appellant for the purpose of sentencing him to undergo the remaining period of conviction, if any. It is also directed that the period of sentence already undergone by the appellant, if any, shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

rts

To

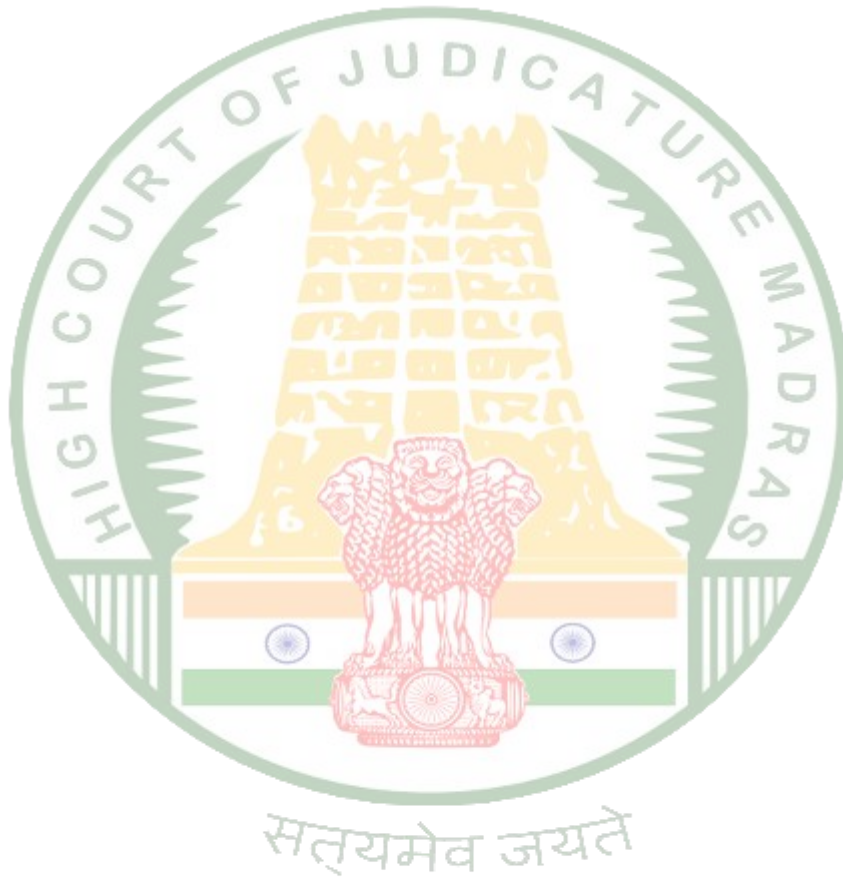
1. The Judicial Magistrate,
No.I, Salem.
2. The Chief Judicial Magistrate,
Salem.
3. The Sessions Judge,
The Sessions Court,
Mahila Court, Salem.
4. The Deputy Superintendent of Police,
Sankari Sub Division,
Sankari Police Station,
Salem District.
5. The Superintendent,
Central Prison,
Salem.
6. The Section Officer,
Criminal Section,
High Court, Madras-104

7. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.N.Manokaran, Advocate SR.No.45960

CRL.A.598 OF 2008

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