

Bail Slip

The Appellant/Accused No.2 namely Bakiyam, W/o. Shanmugam, was directed to be released on bail as per the order of this court dated 04.01.2013 in Crl.M.P.NO.1 of 2012 in Crl.A.No.873/2012 on the side of this court.

The Appellant/Accused No.1 namely Thirunavukkarasu, S/o. Shanmugam was directed to be released on bail as per the order of this court dated 21.02.2013 in Crl.M.P.NO.1/2013 in Crl.A.No.873/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 873 of 2012

1. Thirunavukkarasu

2. Bakiyam

... Appellant/Accused 1&2

Vs.

State Rep by

The Deputy Superintendent of Police,
Gobichettipalayam,

(Crime No:405/2011)

...Respondent

Prayer: Appeal filed under Section 374 Cr.P.C., to set aside the order of conviction and sentence dated 05.12.2012 made in S.C.No.121 of 2012 on the file of the learned First Additional District and Sessions Judge, Erode.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Mr.G.Ramar

Government Advocate(Crl.Side)

JUDGMENT

The appellants are arrayed as A1 and A2 in S.C.No.121 of 2012 on the file of the learned First Additional District and Sessions Judge, Erode. They stood charged for the offence under Section 498 (A) and 306 IPC. By judgment dated 05.12.2012, they were convicted under Section 498 (A) IPC and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo 3 months Simple Imprisonment each. Further, the first appellant herein convicted under Section 306 IPC and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo for a period of further 6 months Rigorous Imprisonment. Aggrieved by the said conviction and

sentences, A1 and A2 are before this Court with this Criminal Appeal.

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

(i). PW1 (Deivanai) is the mother of the deceased. PW2 is the grandfather, and PW3 is the brother of the deceased. The marriage between the first appellant and the deceased had happened on 15.05.2011. During the time of marriage, PW1 gave 10 sovereigns of gold and Rs.50,000/- as a dowry to the first appellant. Within 4 days from the date of marriage, the first appellant and the deceased came to the house of PW1. Since the deceased is unusually quiet, P.W.1 made enquiry with the deceased. For that, the deceased complained against both the appellants by saying that they are demanding to bring Rs.4,00,000/- as a dowry. For which, PW1 replied to the deceased that she is not in a position to give the said amount. Subsequent to that the deceased returned to the matrimonial house. Thereafter, within 2 days, PW1 went to the house of appellant for seeing her daughter. She had tea and when at the time of leaving the appellants house, the deceased came and cried by saying that both the appellants are demanded to bring Rs.4,00,000/-. When P.W.1 questioned about the complaint, both the appellants denied as false.

(ii). Subsequently, one day when P.W.1 attending the marriage function in Nambiyur, both the deceased and first appellant has also come and attended the function. On seeing the PW1, the first appellant scolded her as she is incapable in giving Rs.4,00,000/-. Thereafter, he had not permitted his wife to talk with PW1. On the same day, in the presence of PW3, the first appellant in inebriated mood assaulted the deceased, when the same was questioned by PW3, he replied that it was their family problem.

(iii). Further, prior to the occurrence, the first appellant called the PW1 and asked about the bank account details stands in the name of the deceased. For that, PW1 replied that the passbook is in her hands. So the first accused requested the PW1 to come to his house immediately with the passbook. In obeying the request, PW1 went to the house of accused, when she reaches the appellants house, it was found that the door is locked. The neighbours of the appellant told to PW1 that the deceased Vijaya is in Hospital. Further, they have stated that she ate the poison. On hearing the same, PW1 rushed to the hospital and on seeing the deceased, she finds that the blood was oozed from the hand. Thereafter, P.W.1 lodged a complaint before the Police under Ex.P1. Subsequently, she was examined by RDO.

(iv). On receipt of the complaint given by PW1; PW10, the then Inspector of Police, Gobichettipalayam Police Station registered a case in Crime No.405 of 2011 under Section 174 Cr.P.C. Ex.P13 is the printed F.I.R. After registering the

case, he handed over the copy of F.I.R to Revenue Divisional Officer and to Deputy Superintendent of Police for investigation.

(v). Before that on 09.06.2011, PW11 (Dr.Kalyani) attached with the Government Hospital, Gobichettipalayam examined the deceased Vijaya and declared as she was brought dead. On examination, she found that the deceased sustained lacerated injury on the inner side of the left hand wrist. She prepared a AR copy under Ex.P14 and she issued a death intimation under Ex.P15. Further, she informed the same to the Police under intimation memo (Ex.P16).

(vi). After receiving the copy of the F.I.R, PW12, Mr.Sugumar, RDO Gobichettipalayam Division, on 10.06.2011 went to the Government Hospital, Gobichettipalayam and prepared a inquest report under Ex.P18. He gave opinion that dowry demand is not a reason for the death of the deceased. After completing the enquiry, he sent a request to hospital authority for conducting autopsy. The requisition given by RDO is marked as Ex.P5.

(vii). PW6, Dr.Ramesh Babu after receiving the request given by P.W.12, he conducted the post mortem and found the multiple abrasions measuring 5 cms length near to the left hand wrist. He preserved the vicera for chemical examination. Thereafter, as per the request given by the Investigation Officer, vicera was sent to chemical examination and found that the liver and other parts of the dead body having poisonous substances. After receiving the chemical examination report, he gave final opinion as the deceased would appear to have died of asphneo posphous. Post mortem report is marked as Ex.P6 and the chemical examination report was exhibited as P7 and P8. The final opinion given by the Doctor is exhibited as P9.

(viii). In the meanwhile, after receiving the copy of the F.I.R., PW13, the then Deputy Superintendent of Police, Gobichettipalayam took up the case for investigation. On 09.06.2011, at about 20.30 hours, he visited the scene of occurrence and in the presence of PW7 (Dhandapani) and one Rajendran, he prepared an Observation Mahazar under Ex.P19. Further, he examined the witnesses and recorded the statements. On the same day, in the presence of same witness, he recovered a empty bottle, under the cover of mahazar. After receiving the inquest report, he altered the Section of law as 498(A) and 306 IPC. The alteration report is marked as Ex.P20. Further, on 04.07.2011, he arrested the accused and made arrangements for sending them to Judicial custody. He gave a request letter before the Magistrate for sending the preserved articles for chemical examination. After receiving the opinion from the Doctor who conducted a autopsy, he came to the positive conclusion that both the appellants committed the offence under Section 498(A) and 306 IPC. Finally, he

laid a final report against the appellants for the offence stated above.

(ix). After receiving final report, the learned Judicial Magistrate No.I, Gobichettipalayam took the case on file as P.R.C.No.405 of 2011. Subsequently, after the appearance of the appellants, and after furnishing the copy of the documents, relied by the prosecution, the case has been committed to the Court of Sessions for trial proceedings. In Sessions Division, Erode, the case was assigned with Case No. as S.C.No.121 of 2012 and thereafter, made it over to the First Additional District and Sessions Judge for disposal. In the said Court, after giving sufficient time, charges have been framed for the offence under Section 498(A) and 306 IPC. Both appellants denies and pleaded not guilty. Thereafter, in the Trial Court, as many as 13 witnesses were examined as PW1 to PW13 and 22 documents are marked as P1 to P22, besides, 6 material objects.

3. Out of the above witnesses, P.W.1 is the mother of the deceased has stated about the dowry given to the appellants at the time of her daughter's marriage. She further stated within 4 days from the date of marriage, the first appellant and the deceased came to her house and the deceased had informed about the demand of dowry made by the appellants. Subsequently, within 2 days, she went to the appellants house for seeing her daughter. From there, she had tea and when at the time of leaving the appellants house, the deceased came and cried by saying that the appellants demanded to bring Rs.4,00,000/-. When the same was questioned by the PW1 with the appellants, they denied as false.

4. P.W.2 is the resident of Vinoba village, he has stated in a marriage function happened in Nambiyur, the First appellant herein restrained the deceased from speaking with the P.W.1. Further, he stated in the marriage function the first appellant scolded the P.W.1 by saying that she is incapable in giving Rs.4,00,000/-.

5. P.W.3 is the brother of the deceased. He has stated in his evidence as prior to the occurrence, one day, he visited the appellant's house and found that the first appellant has assaulted the deceased in inebriated mood and made a demand to bring the additional dowry.

6. P.W.4 is the relative of the deceased. He depose that before the occurrence, the deceased called her through Sumathi's mobile phone and informed about the assault made by the first appellant. Further, she has stated while she was reaching the appellant's house, it was found that the door was locked. Thereafter, she went to the hospital and see the deceased.

7. P.W.5 is the neighbour to the deceased. She has stated in his evidence that on 09.06.2011, after seeing her marriage photo, the deceased cried like anything. Then only, he came to know that the deceased has consumed the poison. Further, he specifically stated that till her death, she is happy in her matrimonial house.

8. P.W.6 and P.W.11 are the Doctors who examined the deceased and spoken about the injuries sustained by her.

9. P.W.7 has turned hostile and did not support the case of the prosecution in any manner.

10. P.W.12 is the R.D.O. has stated about the receiving of First Information Report on 10.06.2011 at about 8.45 hours. Further, he stated about the examination of the witnesses and about the preparation of inquest report under Ex.P.18. According to him, the deceased committed suicide not due to demand of dowry by the appellants.

11. P.W.8, P.W.9, P.W.10 and P.W.13 are the Police Officials stated in their evidence about the receipt of information from the hospital, recording the statement of P.W.1, registration of the case in Crime No. 405 of 2011 under Section 174 Cr.P.C., the manner of investigation and about the filing of charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, on the side of the defence, one Pachaiyammal was examined as DW1. Further, 3 documents were marked on the side of the appellants as Ex.D1 to Ex.D3. After concluding the trial, the learned First Additional District and Sessions Judge found the appellants guilty and awarded the sentence and conviction as stated above.

13. Today, when the appeal is taken up for consideration, I have heard Mr.I.C.Vasudevan, learned counsel for the appellants and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent and also perused the records carefully.

14. In this case, it is an admitted fact that the alleged offence had happened within 2 months from the date of marriage. Further, it was admitted by either side that the death of the deceased Vijaya is due to consumption of poison.

15. In the said circumstances, it is necessary to find out whether the appellants are instigated the deceased for consumption of poison. Further, it is necessary whether the appellants demanded the deceased for bringing Rs.4,00,000/- as additional dowry. In fact, in respect of the demand of dowry made by the appellant, the evidence given by the PW1, PW2 and PW3 are cogent and convincing one. On the other hand, on going

through the findings arrived by RDO, the demand of dowry is not a reason for consumption of poison by the deceased.

16. It is seen that along with the inquest report, the statement given by the PW1 to PW3 before the RDO was enclosed and in the Trial Court, the same was marked as Ex.P2 to Ex.P4 on the side of the prosecution. Since, the statement given by PW1 to PW3 is the part of the documents to the inquest report, marking the same as a separate exhibit is not necessary. However, on going through the above statements, PW1 and PW3 has stated the occurrence as stated before the Trial Court. In the said circumstances, this Court not in a position to understand that under what circumstances, the RDO given such report as the demand of dowry is not a reason for consumption of poison. However, since PW1, PW3 are the close relatives of the deceased. It is necessary to scrutinise their evidence with utmost care.

17. In this regard, the learned counsel for the appellant would submit that before the marriage, the deceased was having love affair with one Arul. The said affairs of the deceased was opposed by PW1 and PW2 and thereafter, within a reasonable period, after suppressing the said fact, the deceased got married with first appellant. Thereafter, the deceased made a self inflicted injuries in the hand and finally consumed the poison. According to appellants, they were no way connected with the crime committed by the deceased.

18. Now, considering the said aspect with the evidence of PW1, she categorically admitted in her cross examination that in college days, the deceased had love affair with one Arul. Further, she has stated that before the marriage, the deceased eloped with the said Arul. Further, it was stated by the PW1 that the complaint has been lodged before the Bungalow Pudur Police Station for the above said occurrence. So, the contention raised by the appellant is proved through the cross examination of P.W.1. In the said circumstances, it is necessary to see the evidence given by PW5. When at the time of giving evidence in the chief examination, she depose that on 09.06.2011, the deceased after seeing her marriage photo cried like anything. Then only, he came to know that the deceased had consumed poison. Further, in the cross examinations, he specifically stated that till the death of the deceased, she is happy in her matrimonial house. The said evidence is corroborated through the evidence of DW1.

19. In regard to the dowry demand made by the appellants, PW1 has stated in his cross examination that till the death of her daughter, no complaint has been lodged in the Police Station against the appellant for demanding dowry. In the said circumstances, now, on going through the evidence given by the Doctor who treated the deceased earlier to the death, she has stated during the time of examination, it was found 11 injuries in the length of 5 cms near to the wrist of

the deceased. The same was admitted by PW3 and all other witnesses. Regarding the said injuries, Doctor gave evidence that those injuries are self inflicted one. Now applying the said situation with the evidence given by PW5, there is a possibility for self inflict by herself because of the failure of love affair. Furthermore, as already stated that the alleged occurrence had happened within 456 days from the date of marriage. Further, it is a specific evidence that before marriage, both the appellants did not made any dowry demand. Hence, the said circumstances, enlightened that the demand of dowry is not a reason for the offence.

20. Even assuming that the appellants are demanded the dowry, they had not committed any wilful act towards the deceased for getting valuable security by unlawful means. Further, in order to prove the offence under Section 306, the prosecution must prove the direct involvement by the accused in such abatement or instigation to commit suicide is necessary. Now, on going through the evidence of DW1, who saw the deceased lastly before the death, has stated that only because of the failure of earlier love affairs, she consumed poison.

21. So, on culminating the entire evidence put forth by the prosecution, creates a suspicion whether the cruelty committed by the appellant will be the reason for consumption of poison or whether the deceased consumed poison voluntarily due to the failure of love affair. The above two aspects are in equal position.

22. If the reason is second one, convicting the appellant is unjustifiable. Accordingly, in the light of the above discussion, this Court holds that the judgment rendered by the First Additional District and Sessions Judge, Erode needs interference.

23. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed upon the appellant in S.C.No.121 of 2012 dated 05.12.2012 by the learned First Additional District and Sessions Judge, Erode is set aside and the appellants/accused are acquitted of the charges. The bail bond, if any, executed by the appellants/accused shall stand cancelled. The fine amount, if any, paid by appellants/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msv

To

1. The Additional District and Sessions Judge, Erode.
 2. The Judicial Magistrate No.1, Gobichettipalayam.
 3. The Chief Judicial Magistrate, Erode.
 4. The I Additional Sessions Judge, Erode.
 5. The Superintendent, Central Prison, Coimbatore.
 6. The Deputy Superintendent of Police, Gobichettipalayam.
 7. The Public Prosecutor, High Court, Madras.
 8. The District Collector/ District Magistrate, Coimbatore.
 9. The Director General of Police Tamil Nadu, Mylapore, Chennai-4.
 10. The Section Officer, Crl.Section Records, High Court, Madras.
- + 1 cc to Mr. I.C. Vasudevan, Advocate Sr.46264

Crl.A.No.873 of 2012

BR(CO)
EU(03/10/2018)

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