

Bail Slip

The Appellant/Accused 2 & 3 namely Meiyappan S/o.Bamban, and Pappathi, W/o.Meiyappan were directed to be released on bail as per the order of this court dated 23/04/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.321 of 2013

1.Meiyappan
2.Pappathi

... Appellant/Accused 2 and 3

Vs

State, rep. by Deputy Superintendent of Police,
Kai Kalathur Police Station,
Perambalur District.
(Crime No.77 of 2004)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 05.04.2013 made in S.C.No.120 of 2010 passed by the learned Sessions Judge, Mahila Court, Perambalur.

For Appellants : M/s.P.Palaninathan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

The appellants herein are the second and third accused in S.C.No.120 of 2010 on the file of the learned Sessions Judge, Mahila Court, Perambalur. Initially, this case has been taken on file against three accused in which the deceased Maharaja is A1. During pendency of trial, the said Maharaja was died, thereby, the case against the said Maharaja was closed as abated.

2. In the trial Court, after concluding trial, the learned Sessions Judge, Mahila Court, Perambalur, came to the conclusion that the present appellants are found guilty for the offences punishable under Sections 498(A) and 304(B) of IPC, and

sentenced to undergo seven years rigorous imprisonment under Section 304(B) of IPC, further sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- each i/d to undergo three months simple imprisonment, for the offence under Section 498(A) of IPC, against which, this appeal has been preferred praying to set aside the conviction and sentence awarded against them.

3. The case of the prosecution is as follows:

The deceased Malarvizhi is the wife of the first accused. The appellants are her in-laws. On 28.07.2004 at about 04.00 p.m., after receiving the information, PW.1, who is the Village Administrative Officer, lodged the complaint before Kai-Kalathur Police Station under Ex.P14. In the complaint, he alleged that the said Malarvizhi fell into the Well at about 11.00 a.m. and subsequently, died on the same day.

4. After receipt of the complaint, a case has been registered in Crime No.77 of 2004 under Section 174 of Cr.P.C. Ex.P6 is the First Information Report. Since the deceased committed suicide within seven years from the date of marriage, a copy of the First Information Report was forwarded to the Revenue Divisional Officer and to the Deputy Superintendent of Police for investigation.

5. After receiving the copy of the FIR, PW.19-Revenue Divisional Officer, Perambalur on 29.07.2004, visited the place of occurrence and in the presence of witnesses and the Panchayators conducted enquiry and prepared inquest report under Ex.P.13. According to him, dowry harassment made by the appellants is one of the reason for committing suicide by the deceased.

6. In the meantime, PW.18-Chinnarasu, Deputy Superintendent of Police, took up the case for investigation. He visited the place of occurrence, prepared the rough sketch (Ex.P10) and observation mahazar (Ex.P9). Further, he examined the witnesses and recorded their statements.

7. While so, after preparation of Inquest Report, PW.19 sent a requisition to the Doctor attached with Perambalur Government Hospital for conducting autopsy over the dead body of Malarvizhi. After receiving the requisition from the Revenue Divisional Officer, Dr.Indira conducted autopsy and she found the following injuries:

External Injuries:

1. Blackish abrasion over right side back 5x3 cm;
2. Contusion over the left thigh posteriorly 10x5 cm;
3. Swelling of Left forearm near wrist fracture radius and ulna lower 1/3rd;

Internal Injuries:

1. Hyoid - Intact;
 2. Thorax - Tubes intact. Lungs congested. On cut section frothy waters discharge. Lungs floated in water;
 3. Heart - Congested. Chambers - Empty;
 4. Abdomen. Liver congested intact. Spleen congested intact. Stomach contains 120 ml of watery fluid. Intestines - congested intact. Kidneys-congested intact. Bladder- empty. Uterus - gestational sac seen. Embryo 2 c.m within the sac.
 5. Cranium - skull bones intact. Brain - congested. Viscera. Hyoid bone and sternum preserved.
- Opinion: The deceased would have died of asphyxia due to drowning.

Further, in Ex.P3 final opinion, the Doctor observed as follows:

1. The viscera of Malarvizhi 23/Female were examined but poison was not detected.
 2. Hyoid bone - post mortem subluxation on the right side. No ante mortem fracture detected;
 3. Diatom not detected in sternum and pool water.
- Ex.P.4 is the Viscera Report, Ex.P.5 is the Bone case Report, Ex.P.2 is the Post Mortem Report and Ex.P.3 is the Final Opinion.

8. After receiving the Inquest Report and the opinion given by Doctor, PW.18 altered the section of law from Section 174 IPC to 304 IPC under Ex.P11. Thereafter, he examined other witnesses and recorded their statements, finally, after completing the investigation, he laid a charge sheet under Section 498(A) and 304(B) of IPC.

9. From the above available materials, the trial court framed the charges against the accused under sections 498(A) and 304(B) IPC for which all the accused denied the same as false. In order to prove the charge on the side of prosecution, as many as 19 witnesses were examined as PW1 to PW19. Further, 14 documents were exhibited as P1 to P14.

10. Out of the said witnesses, PW1-Venkatesan, is the Village Administrative Officer in Pasumbalur village. On 28.07.2004 when he was in the office, his Assistant Rajendran came and told to him that one Malarvizhi was found dead in a well situated in Ayyanar palayam, immediately, after hearing the news, he went over to the said occurrence place, but before reaching the occurrence place, the people, who are assembled near to Well took the dead body of Malarvizhi from the well and put on the cot. After seeing the same, on the same day, at about 4.00p.m. he lodged a complaint before the Police under Ex.P1.

(ii) PW2 is the Village Assistant working under the PW1 has stated as on the date of occurrence, he heard the news that the

dead body of Malarvizhi found in the well and thereafter, he immediately informed the same to the PW1.

(iii) PW3-Periasamy, PW4-Thangadurai, PW5-Singaram, are the residents of same village in which the occurrence had happened. In the trial Court, they did not gave any evidence in support of the prosecution in any manner.

(iv) PW.6-Selvaraj is the father of the deceased Malarvizhi, he has stated that the deceased was given in marriage with the accused Nagarajan in the year of 2003, during the time of marriage, Rs.50,000/- and the domestic articles were given to his son-in-law. He has further stated that after four months from the date of marriage all the accused started to made a quarrel with her daughter and demanded to bring additional dowry. One day the deceased Malarvizhi came to her parents house and informed about the demand of dowry made by the accused and stayed in her parents house, but after four days all the accused came there and consoled the deceased, and thereafter, she returned to her matrimonial home. In the same way, the deceased frequently came to her parents house and complained about the demand of accused and returned to the matrimonial home. In the said circumstances, one fine day, the accused no.1 lodged a complaint against the deceased before the police station and in the enquiry, the dispute was compromised between them, after some time from the said incident, the mother of the deceased went to the house of the deceased and after seeing the pathetic situation of her daughter informed the same to her husband particularly about the sufferings of the deceased. After knowing the sufferings of deceased through his wife (PW7), PW6 sent her son-in-law Kolanji and Thangavel for seeing his daughter. But on the same day, he received the information that the dead body of his daughter was found in the well.

(v) PW.7-Malarkodi is the mother of the deceased Malarvizhi, she gave evidence in support of the evidence given by PW6 in respect to the demand of dowry made by the accused.

(vi) PW8 Kolanji, is the son-in-law of PW6, he married the sister of deceased Malarvizhi. He has stated after the marriage, all the accused frequently demanded the deceased to bring additional dowry. He has specifically stated on the day of occurrence as per the instructions given by PW6, he went over to the house of the accused for seeing Malarvizhi, but at the time when he was about to reach the accused house, he heard the news that the dead body of Malarvizhi is found in the well.

(vii) PW9 is the resident of Ayanperaiyur, he know the deceased as well as the first accused, he has stated, after the marriage the deceased Malarvizhi has told to him that the

accused are frequently demanded to bring the additional dowry.

(viii) PW10 is the resident of Ayyanar Palayam, he has stated in his evidence as on the date of occurrence the dead body of Malarvizhi was found in the well. PW11 Indira is the Doctor attached with the Perambalur Government Medical College Hospital, has stated on 29.07.2004 as per the request made by the Revenue Divisional Officers, she conducted autopsy over the dead body of the Malarvizhi. She has further stated during the time of postmortem, she collected the viscera from the dead body and sent it for chemical examination. Further, she sent the sample of water taken from the Well, and the samples of bone collected from the dead body to the chemical examination. After completing the above process, she gave a final opinion that the deceased would have died of asphyxia due to drowning.

(ix) PW12 Velusamy and PW13 Rajiv Gandhi alleged to be the occurrence witnesses have not supported the case of prosecution in any manner.

(x) PW14 to PW19 are the police officers have stated about the receipt of complaint, registration of the case, details of investigation and about the filing of final report.

11. The Trial Court with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C., for which, all the accused denied as false. However, they did not choose to examine any witnesses on their side, but the list (document) containing the particulars of personal properties owned by the deceased was marked as Ex.D1.

12. The learned Trial Judge on perusal of the materials placed on record and on considering the arguments advanced by either side, convicted and sentenced the appellants/accused as stated supra. Challenging the same, the present appeal has been filed by the appellants.

13. The learned counsel appearing for the appellants would make initial submission before this Court that the evidence given by the parents and relatives of the deceased categorically proved that the demand made by the appellants is not comes under the definition of dowry, in fact they requested money for the expenses needed for other purpose, so convicting the accused is against the principles of law.

14. In support of the contention, he relied upon the judgment of our Hon'ble Apex Court in Vipin Jaiswal (A-1) vs. State of A.P. reported in AIR 2013 Supreme Court 1567, wherein it has held as follows:

"In our view, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. This Court has held in Appasaheb and another Vs State of Maharashtra (2007) 9 SCC 721: (AIR 2007 SC 763 : 2007 AIR SCW 456.)"

15. In this regard, in order to prove the offence under Section 498(A) IPC, the following three ingredients are necessary, which read as follows:

- "(1) That there was a married woman;
- (2) That such woman was subjected to cruelty;
- (3) That such cruelty consisted of any wilful conduct which is of such a nature as is likely to drive the woman for committing suicide."

16. In the same way, for constituting the offence under Section 304(B) IPC, the essential ingredients are as follows:

- "304-B. Dowry death- (1) The death of a woman should be caused by burns or bodily injury or otherwise than in normal circumstances;
- (2) Such a death should have occurred within seven years of her marriage;
 - (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
 - (4) Such cruelty or harassment should be for or in connection with demand of dowry;
 - (5) Such cruelty or harassment is shown to have meted out to the woman soon before her death."

17. In the said situation, since the appellants were convicted under Sections 498(A), 304(B) IPC, we have to check whether the trial Court is correct in appreciating the said aspects clearly in favour of the prosecution.

18. In this case, admittedly, the marriage between the deceased and the first accused had happened on 05.02.2003, subsequently, the deceased committed suicide on 28.07.2004 (i.e) within seven years from the date of marriage.

19. In the Inquest Report prepared by PW.19-Revenue Divisional Officer, he categorically mentioned that demand of dowry is one of the reason for committing suicide by the deceased.

20. In the said situation, in the trial Court, the father of the deceased was examined as PW6. Further, the mother of the deceased viz., Malarkodi, in-laws of the deceased Kolanji and Ayyammal were examined as Pws.7 to 9, in the trial Court, they have stated as subsequent to the marriage, the appellants driven the deceased to her parents house directing to bring the medical and marriage expenses met out by them. Further, as per the evidence of PWs.6 and 7, the appellants frequently made quarrel with the deceased. In the meanwhile, one day due to the intolerable pressure given by the accused, the deceased returned to her parents' house and stayed for some time. But after some days, the appellants came to PW6's house and consoled the deceased. Further, on 05.07.2004 the appellants lodged the complaint against the deceased before All Women Police Station, Perambalur, and after receiving the said complaint, PW.17-Inspector of Police, Perambalur conducted enquiry and compromised the dispute between the accused and the deceased.

21. Now, on going through the contents of Ex.P.8, which was the compromise letter executed in the police station reveals that during the time of enquiry, the husband of the deceased made assurance that he and his family members will not raise any problem in future. Only, thereafter, the deceased gave her willingness for leading a matrimonial life with her husband. Now, on go through the said situation, with the evidence now given by the parents of the deceased, it is seen that the evidence given by the parents of the deceased is genuine one.

22. Further, on go through the principle laid in the judgment relied on by the appellants as above, wherein, the husband demanded some amount from the wife for the purpose of purchasing computer. But in the case on hand, the appellants demanded to give the expenses met out by them in the marriage and to the medical expenses met out by the first accused. So, the demand made by the husband in the case cited by the accused is entirely different from the case in our hand.

23. Moreover, in the evidence given by PW6 Selvaraj, he has clearly stated, before two days from the date of occurrence, the deceased complained to him about the life threat made by the accused and about the demand of additional dowry. In this regard, PW6 has stated after receiving the information from the deceased, he sent his son in law via Kolanji (PW8) for seeing her daughter. He has also stated in the chief examination that before the occurrence, the appellants demanded the deceased to bring 1 sovereign of gold and the marriage expenses. Further,

PW8 has stated after getting the instruction from his father in law, he went to the house of the accused, but when at the time he went to the house of the accused, the occurrence was completed and he saw the dead body of Malarvizhi alone. Apart from that, PW9 who is the neighbour of PW6 has also stated in his chief examination as previous to the occurrence, due to the demand made by the appellants, the deceased got angry and returned to his parents house. So on culling out of the entire evidence, it was clearly established on the side of the prosecution that prior to the occurrence, the appellants and the deceased husband (A1) demanded the deceased Malarvizhi to bring some valuable security from the parents of the deceased.

24. Now, the learned counsel appearing for the appellants would contend that the cross examination of the Investigation Officer, as well as the cross examination of the Revenue Divisional Officer, who preferred the inquest report will clearly prove at the time of investigation, the parents of the deceased did not say anything about the demand made by the accused. Further in Ex.P.8 which was the statement given by the deceased before the Sub Inspector of Police in earlier occasion, she has not mentioned about the cruelty committed by the accused for the purpose of getting additional dowry. He would further contend only when at the time the parents of the deceased was examined as a witness in the trial court they are stated as both the appellants along with the first accused made demand before the deceased for bringing the additional dowry, further he added the said contradiction will clearly prove that the appellants has not committed any offence, the trial court without considering the said aspect convicted them under Sections 498(A) and 304(B) IPC which is legally unjustifiable, and accordingly, he prayed to allow the appeal.

25. On the other hand, the learned Government Advocate (Crl. Side) would contend that since the charges have been framed under Sections 498(A) and 304(B) IPC, the court must presume that the death had happened only due to the dowry harassment.

26. Now considering the either side submission, in the trial court Investigation Officer in this case was examined as PW18, he has stated in his cross examination as in the statement (Ex.P.8) given by the deceased on 05.07.2009 before the Sub Inspector of Police, she has not stated anything about the dowry harassment, further, PW6 in his statement recorded under Section 161 Cr.P.C. did not say anything about the demand of additional dowry made by the accused. In the said situation, PW19, who is the Revenue Divisional Officer, who conducted the inquest has stated in his cross examination as during the time of enquiry

the witnesses examined by him did not say anything about the demand made by the accused. So the said evidence given by PW18 and PW19 clearly proved, in the trial Court those witnesses gave evidence in exaggerated manner particularly with regard to the demand of dowry made by the accused.

27. However, PW18 has stated, in the statement given by the PW6, he specifically stated about the complaint made against the accused by the deceased through the telephone. Therefore on go through the entire evidence given by PW6 and PW7, it appears that in the matrimonial home the deceased leads a life with unpleasant situation. In this regard, it is necessary to see the judgment of this Court in NAGESHKUMAR vs. STATE reported in 2010 (2) MLJ CrL. 840, in which this Court has held as follows:

"Plight, unhappy atmosphere, and the helpless state and frustration in the life as desired and her children had to be looked into seriously."

28. In the instant case, what to talk of existence of instances or illustrations of instigation, there are no specific allegations levelled against the appellants. Moreover, on go through the other circumstances, the act of all accused constitutes the offence under Section 306 IPC, however for proving the said offence, the prosecution must show the "abetment of a thing" committed by the accused. In this regard, Section 107 IPC, reads as follows:

"107. Abetment of a thing—A person abets the doing of a thing, who—First—Instigates any person to do that thing; or

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly—Intentionally aids, by any act or illegal omission, the doing of that thing."

29. In the said situation, to satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be

capable of being spelt out. In the present case, the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred.

30. Even though the allegation in respect to the demand of dowry is doubtful, considering the fact that the deceased before committing suicide frequently went to the house of her parents and complained about the attitude of all the accused and the other circumstances created by the accused in their house, is the reason for committing suicide by the deceased.

31. However during the time of framing charges in the trial court, the offence under Section 306 IPC have not been framed against the accused. In the said situation, it is relevant to see the judgment of our Hon'ble Apex Court in DALBIR SINGH vs. STATE OF U.P. reported in (2004) 5 SCC 334 in which it has held as follows:

"In view of Section 464 CrPC, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself."

32. In the above said case also, the charges have been framed under Sections 304B and 498A IPC alone but our Hon'ble Apex Court altered the section of law as above and convicted the accused for the offence under Section 306 IPC. So, following the principle laid down by our Hon'ble Apex Court, this Court also came to the conclusion that the appellants are committed the offence under Section 306 IPC.

33. In the result, this criminal appeal is partly allowed. The conviction and sentence imposed upon the appellants by the learned Sessions Judge, Mahila Court, Perambalur, is set aside and the appellants/accused are convicted under Section 306 IPC and sentenced to undergo three years Rigorous Imprisonment. It is also directed that the period of sentence already undergone

by the appellants shall be given set off, as required under Section 428 Cr.P.C. The Trial Court is directed to take steps to secure the custody of the appellants for undergoing the remaining period of sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ub/vrn

TO:

- 1.The Judicial Magistrate, Perambalur.
- 2.The Chief Judicial Magistrate, Perambalur.
- 3.The Sessions Judge, Mahila Court, Perambalur.
- 4.The Deputy Superintendent of Police, Kai Kalathur Police Station, Perambalur District.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Superintendent, Women(cell central person)Trichy.
- 7.The Public Prosecutor, High Court, Madras.

+1cc to M/s.P.Palaninathan, Advocate sr.no.40062

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