

Bail Slip

The Appellant/Accused namely VellaisamiS/o.Pillaiyar (Sole Accused in S.C.No.277/2004 on the file of the Additional Sessions Judge, ponneri, Thirvallur District) was directed to be released on bail as per the order of this Court dated in CrI.M.P.No.1/2008 in CrI.A.No.403/2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

CrI.A.No.403 of 2008

Vellaisami .. Appellant/Sole Accused

Vs

State Represented by :

Assistant Commissioner of Police-Tiruvottiyur Range,
E-8 Tiruvottiyur Police Station,
Crime No.1634 of 2002,
Tiruvallur District.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under section 374(2) of the Criminal Procedure Code, against the judgment dated 21.04.2008 convicting the appellant under Sections 498-A, 306 and 304-B of the Indian Penal Code and sentenced to undergo (i) 1 year rigorous imprisonment in respect of Section 498-A of the Indian Penal Code and also imposed a fine of Rs.1,000/- each with a default sentence of 2 months rigorous imprisonment (ii) 9 years rigorous imprisonment in respect of Section 306 of the Indian Penal Code and also imposed a fine of Rs.2,000/- each with a default sentence of 1 year rigorous imprisonment and (iii) also convicted for offence under section 304(B) of the IPC and imposed a fine of Rs2,000/- each with a default sentence of 1 year rigorous imprisonment by the learned Assistant Sessions Judge - Ponneri - Tiruvallur District in S.C.No.277 of 2004.

For Appellant : Mr.R.John Sathyan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.side)

J U D G M E N T

This criminal appeal has been filed by the appellant/sole accused against the judgment of conviction and sentence passed by the learned Assistant Sessions Judge, Ponneri, Tiruvallur District dated 21.04.2008 made in S.C.No.277 of 2004.

2.The brief facts of the prosecution case are as follows:-

P.W.1 is the sister of the deceased. P.W.2 is the brother-in-law of the deceased. P.W.3 is the mother of the deceased. The marriage between the accused and deceased (Sarasvathi) was performed on 21.06.2002. At the time of marriage, P.W.3 gave seedhana of 7 sovereigns gold. When, P.W.1 visited the deceased house on 07.09.2002, the deceased informed P.W.1 that the appellant/accused is demanding Rs.50,000/- for purchase of a van and everyday consuming alcohol and harassing the deceased. Thereafter, P.W.1 pacified the deceased and warned the accused and left her house. On 08.09.2002, the deceased committed suicide by hanging herself, in respect of which P.W.1 lodged the complaint Ex.P1.

3.P.W.10 Sub Inspector of Police received the complaint Ex.P1 from P.W.1 and registered a case in Crime No.1634/2002 under Section 174 of Cr.P.C. Ex.P6 is the printed FIR. The investigation officer took up the case for investigation and went to the place of occurrence, prepared observation mahazar under Ex.P7 and drew a rough sketch under Ex.P8 and recovered material object MO.1 (Rope) and he has also conducted inquest over the dead body in the presence of witnesses and issued inquest report as Ex.P3. After examining the medical officer and other witnesses, the offence was altered into one under Section 304B IPC. The alteration report is marked as Ex.P10.

4.P.W.11 took up the case for further investigation and arrested the accused on 10.09.2002. Thereafter, he laid a final report as against the accused for the offence under Section 304B IPC.

5.Based on the materials, the trial Court framed the charges for the offences under Sections 498A, 306 and 304B IPC

against the accused and the accused denied the same. In order to prove the charges, on the side of prosecution P.W.1 to P.W.12 were examined, Exhibits P1 to P10 were marked and MO1 (Rope) were marked.

6. When the trial Court examined the accused under Section 313 Cr.P.C., in respect of incriminating evidence available against him, he denied his complicity in the crime and pleaded innocence. However, the accused either chose to examine any witnesses nor marked any documents.

7. The trial Court after considering the oral and documentary evidence, has found the accused guilty of the offences under Sections 498A, 306 and 304B IPC. Accordingly, convicted the accused for the offences under Sections 498A, 306 and 304B IPC and sentenced him to undergo rigorous imprisonment for one year and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for two months of the offence under Section 498A IPC and for the offences under Sections 306 and 304B IPC, sentenced to undergo rigorous imprisonment for nine years and pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence the appellant/sole accused has preferred this appeal.

8. Heard learned counsel for the appellant and the learned Government Advocate (Crl.side) for the respondent.

9. The learned counsel for the appellant would contend that there is no material whatsoever available on record to prove the charges under Sections 498A, 306 and 304B IPC against the accused. Ex.P1 complaint is totally contrary to the evidence of P.W.1 to P.W.3. Admittedly, the deceased committed suicide at her husband's house on 08.09.2002. Except P1, no other witnesses has spoken about the alleged cruelty or harassment by the accused and the ingredients required, implicated the offence under Sections 306, 304B IPC has not established before the Court. However, the trial Court without considering the material, convicted the accused, which is unsustainable. Hence, the learned counsel prays for acquittal the appeal.

10. The learned Government Advocate (Crl.side) appearing for the respondent would submit that P.W.1 is the sister of the deceased and P.W.3 is the mother of the deceased. The accused demanded Rs.50,000/- for purchase of van and the said demand was corroborated between P.W.1 and P.W.3 who is none other than the sister and mother of the deceased and RDO report also confirmed the demand of additional dowry from P.W.1 and further P.W.1 in her evidence indicated that the accused everyday consuming

alcohol and harassed the deceased, for unbearable torture the deceased committed suicide on 08.09.2002 that the prosecution has proved the guilt beyond reasonable doubt. Hence, the learned counsel prays for dismissal of the appeal.

11. In the light of the above submissions, now it has to be analysed as to whether the prosecution has proved the guilt of the accused beyond all reasonable doubt. Admittedly, it is not disputed that P.W.1 is residing at Manali and the deceased residing at Thiruvettriur and the marriage was performed in the year 2002. At the time of marriage, seven sovereigns of gold were given as seedana to the accused.

12. On perusal of the evidence of P.W.1, after the marriage they lived happily for one month. Thereafter, during the month of aadi, P.W.1 brought her deceased sister and after a month the deceased sister sent back to the matrimonial home in the month of avani. Thereafter, one Saturday, the deceased called P.W.1 over phone and cried, on verification of P.W.1 the deceased sister switched off the phone. Immediately, thereafter, P.W.1 went to the deceased house, at the time the accused also present in the house and after entering the house, the accused demanded Rs.50,000/- for purchase of vehicle. P.W.1 the sister of the deceased refused to borrow money from her father. Thereafter, P.W.1 pacified the couple, warned the accused and left the deceased house. However, on 08.09.2002 she received information that her sister committed suicide. The said statement was corroborated by P.W.3 with regard to the demand of Rs.50,000/-. However, on close perusal of P.W.1 and P.W.3, there is no ingredients with regard to the cruelty or instigation to force the deceased to commit suicide soon before the death.

13. The other witnesses P.W.3, mother of the deceased and P.W.2, who is the husband of P.W.1, did not disclose any of the ingredients of the offence and other prosecution witnesses namely P.W.4 and P.W.5 turned hostile and P.W.6 a medical officer issued post-mortem certificate Ex.P2, certified that the death was due to hanging and P.W.7 is RDO who conducted inquest over the dead body of the deceased. P.W.3, confirmed that there was a demand of Rs.50,000/- and the accused harassed the deceased by demanding Rs.50,000/-.

14. Considering the above materials would disclose that though P.W.1 and P.W.3 corroborated in respect of demand of Rs.50,000/- for the purchase of vehicle, there is no evidence or material available in respect of abetment to commit suicide.

15. In the present case, except P.W.1 and P.W.3, no evidence is available. Even on perusal of P.W.1 and P.W.3, it is seen that they deposed only the demand of Rs.50,000/- for purchase of vehicle. However, the other ingredients are required to implicate the accused in respect of the offences under Sections 306 and 304B IPC, which are not found in the evidence of P.W.1 and P.W.3.

16. Considering all these aspects, I am of the view that the prosecution has not proved the guilt of the accused beyond all reasonable doubt in respect of implicating the accused for the offence under Sections 306 and 304B IPC. The appellant is entitled to benefit of doubt and the criminal appeal stands partly allowed. The conviction and sentence imposed on the appellant is set aside.

17. However, on perusal of the evidence of P.W.1 and P.W.3, the materials available are that the appellant demanded Rs.50,000/- and harassed the deceased for demanding Rs.50,000/- for purchase of vehicle. Hence, this Court convict the accused under Section 498A IPC to undergo six months rigorous imprisonment with a fine of Rs.2,000/- in default to undergo one month simple imprisonment.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

AT

To

1. The District Munsif cum Judicial Magistrate, Tiruvottiyur.
2. -do- The Chief Judicial Magistrate, Chengalpattu.
3. The Assistant Sessions Judge, Ponneri, Tiruvallur District.
4. -do-through 'The Principal Sessions Judge, Tiruvallur District.
5. The Assistant Commissioner of Police-Tiruvottiyur Range, E-8 Tiruvottiyur Police Station, Crime No.1634 of 2002, Tiruvallur District.

6. The Superintendent of Central Prison, Puzhal, Chennai.
7. The District Collector/District Magistrate,
Tiruvallur District.
8. The District General of Police, Mylapore, Chennai-4
9. The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer,
Criminal Section Records,
High Court of Madras.

+1cc to Mr.R.John Sathyan, Advocate SR.No.1286

Crl.A.No.403 of 2008

BR(CO)
GMY(01/03/2019)



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