

Bail Slip

The Appellants in CRL A.642/08, namely Mariyappan and Kanthammal Accused 1 and 2 in SC.NO.411 OF 2005 on the file of sessions Judge, Mahila Court, Salem dated 31.07.2018 were released on bail vide order dated 05.12.2008 and made in MP.NO.1/08 IN CRL A.NO.642/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.No.642 of 2008

1.Mariappan

2.Kanthammal

... Appellants/Accused

Vs

The Sate rep.by,
Deputy Superintendent of Police,
Mettur Dam,
Mecheri Police Station,
Salem District.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under section 374(2) of the Criminal Procedure Code, to set aside the judgment in S.C.No.411/2005 on the file of the Sessions Judge, Mahila Court, Salem dated 31.07.2008 and acquit the appellants.

For Appellants : Mr.C.Kanakaraj

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 appellants/accused as against the conviction and sentence dated 31.07.2008 made in S.C.No.411 of 2005 on the file of learned Sessions Judge, Mahila Court, Salem.

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

The first accused and the deceased Chandra are the husband and wife. P.W.1 and P.W.2 are the father and mother of the deceased. The marriage of A1 and deceased was performed on 16.09.1999, with the consent of both sides parents. At the time of marriage, no Seedhana articles were given to A1. However, P.W.1 agreed to give ½ sovereign gold after the marriage. Thereafter, they lived happily for six months. Again A1 demanded Rs.2,000/- for the purpose of agricultural operations. However, they managed to pay

Rs.1,000/-. Thereafter, there was frequent quarrel between A1 and deceased and after 1 ½ years of marriage, A1 had attacked the deceased and driven her away from the matrimonial home. With great pain, she reached P.W.1's house and informed the harassment made by A1 and his family. Thereafter, A1 came to P.W.1 house and requested P.W.1/parents of the deceased to send back his daughter to matrimonial home. Though the deceased refused to go along with A1, the panchayatar pacified the deceased and convinced. Thereafter, she agreed to go along with A1 to the matrimonial home. However, on 03.04.2001 at about 9.00 pm, P.W.1 and P.W.2 received the information from neighbour of A1, as if their daughter was not well, she was taken to hospital and died mid way. Immediately, they rushed to the deceased house and found her body laid on the floor. Thereafter, P.W.1 lodged the complaint Ex.P1.

3.P.W.13, Sub Inspector of Police, received the complaint Ex.P1 from P.W.1 and registered a case in Crime No.321/2001 under Section 174 Cr.P.C. Ex.P10 is the printed FIR. P.W.12, after receipt of the report from P.W.13, took up the case for further investigation and went to the place of occurrence, prepared observation mahazar-Ex.P2 and rough sketch-Ex.P11 and recovered material objects MO1 to MO6 (series) and he has also conducted inquest over the dead body and issued inquest report-Ex.P8. After examining the medical officer and other witnesses, the offence was altered into under Sections 498A and 304b IPC. The alteration report is marked as Ex.P12.

4.P.W.14 took up the case for further investigation and arrested the accused on 06.04.2001. Thereafter, he laid a final report as against the accused for the offences under Sections 498A, 304B and 306 IPC.

5.Based of the above materials, the trial Court framed the charges for the offences under Sections 498A, 304B and 306 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.14 were examined, exhibits P1 to P12 were marked and material objects marked as MO1 to MO6.

6.When the trial Court examined the accused under Section 313 Cr.P.C., in respect of incriminating materials available against them, they denied the same and pleaded innocence. However, they neither chose to examine any witnesses nor marked any documents.

7.The trial Court, after considering the oral and documentary evidence, found the accused guilty of the offences under Section 498A, 304B and 306 IPC. Accordingly, the trial Court convicted the accused and sentenced them to undergo seven years rigorous imprisonment of the offences under Sections 498A, 304B and 306 IPC and for the offence under Section

498A IPC sentenced them to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default three months rigorous imprisonment. Challenging the said conviction and sentence, the appellants 1 and 2 have preferred this appeal.

8. Heard the learned counsel for the appellants and the learned the learned Government Advocate (Crl.side) for the respondents.

9. The learned counsel appearing for the appellants would contend that there is no material whatsoever available on record to prove the charges alleged against the accused. Ex.P1-complaint is totally contrary to the evidence of P.W.1, P.W.2 and P.W.6. P.W.1 is father and P.W.2 is mother and P.W.3 is sister of the deceased. Admittedly, the deceased committed suicide at her husband's house. Whereas, P.W.1, P.W.2 and P.W.6 are residing in a different area and after hearing the news, they rushed to the spot. The resident of the said village was examined as P.W.4. The evidence of P.W.7 clearly indicates that there was no quarrel between the husband and wife and the accused never demanded any dowry from the deceased and the evidence of P.W.4 indicates that there is no compatibility in between the deceased and A1. The independent witness deposed that the deceased did not like A1. Therefore, the statement to the effect that the accused abused the deceased is an improved version and cannot be believed. Hence, the learned counsel prays for acquittal of the appeal.

10. The learned Government Advocate (Crl.side) would submit that P.W.1, P.W.2 and P.W.6 have clearly spoken about the quarrel between the deceased and accused and frequently the accused had beaten the deceased and driven her away from the matrimonial home. Thereafter, panchayat was conducted in order to pacify the deceased and P.W.1 requested the deceased to go along with the accused to the matrimonial home and the cruelty led the deceased to commit suicide. Therefore, the judgment of the trial Court need not be interfered with.

11. In the light of the above submission, now it has to be analysed as to whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

12. The evidence of P.W.1, the father of the deceased, indicates that the deceased was residing at matrimonial home, whereas prior to the occurrence, A1 frequently beaten the deceased and driven away the deceased from the matrimonial home and thereafter, the deceased stayed for ten days in his house for treatment and after treatment, at the instance of panchatyars, pacified the deceased and requested the deceased to go along with A1 to the matrimonial home. However, P.W.1 and P.W.2 also corroborated with the above said incident and further P.W.1 and P.W.2 also corroborated that at the time of marriage, no seedhana was given to A1's family. Admittedly, A2 and A3 are adoptive parents, A3 was acquitted and A2 was convicted along with A1.

13.It is relevant to indicate that two days prior to the death of the deceased, P.W.2 visited the deceased matrimonial home and enquired about her matrimonial life and deceased informed that for small mistake, the husband family got angry over her. However, there is no major allegation, made against the accused family.

14.Further, P.W.6, sister of the deceased, also corroborated with regard to the initial quarrel between the deceased and A1. However, she did not reveal anything with regard to the harassment of demanding money.

15.P.W.4 and P.W.7 are the residents of the deceased village. On perusal of their evidence indicates that there is no compatibility between the deceased and A1 and further, the evidence of P.W.4 indicates the deceased did not like A1 and they do not have sexual relationship. Further, P.W.4 in his cross-examination reveals that A1 is not available in the scene of occurrence for one week and he had gone to Tharapuram and the evidence of P.W.4 and P.W.7 clearly indicates that there is no demand of dowry or harassment by A1 to the deceased.

16.P.W.5 is VAO. He did not reveal anything with regard to the prosecution case. P.W.3 turned hostile. Admittedly, prior to the occurrence, the deceased committed suicide when no one was in the matrimonial home. After hearing the news, P.W.4 and P.W.7 rushed to the spot and P.W.4 cut the rope with knife and laid the body of the deceased on the floor and he gave initial first aid in the matrimonial house itself.

17.It is relevant to note that the deceased committed suicide in the husband's house which is faraway from the house of P.W.1 and P.W.2 and there is no charge of the prosecution that prior to occurrence, there was quarrel between the accused and the deceased. The entire prosecution case is with regard to the demand of dowry and quarrel between A1 and deceased, six months prior to the deceased committed suicide.

18.When that being the position, even assuming that there was a quarrel in which the deceased was abused, at the earlier point of time, in my view, the same would not amount to incitement or abetment to force a person to commit suicide. The abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, charge under Section 306 IPC cannot be inferred. There should be a live link or proximity link between the act of the accused and act of the deceased.

19. In the present case, the prosecution implicated the accused under Section 304B IPC. The ingredients required under Section 304b IPC are as follows:-

14.A perusal of Section 304B clearly shows that if a married woman dies 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 relative of her husband 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 the death. The condition precedent for establishing an offence under this Section are:

(a) that a married women had died otherwise than under normal circumstances;

(b) such death was within seven years of her marriage; and

(c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death. This Section will apply whenever the occurrence of death is preceded by cruelty or harassment by the husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.

20. This Court has already analysed the evidence of P.W.1, P.W.2 and P.W.6, the father, mother and the sister of the deceased. This Court is satisfied that they have not stated anything in their evidence with regard to the harassment or ill-treatment of the deceased by the appellants.

21. As discussed above, a perusal of Section 304b IPC, it is shown that there must be a material to show that soon before her death, the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out as to whether it is a natural or accidental death, so as to bring within the purview of Section 304(b) IPC. It is the duty of the prosecution to show that soon before the occurrence, there was a cruelty or harassment and only in that case presumption would arise. However, in the present case, the prosecution miserably failed to establish that there was a cruelty soon before the death or the accused instigated the deceased to take the extreme step of committing suicide.

22. As discussed above, the prosecution failed to establish the guilt beyond reasonable doubt and the trial Court has committed error in convicting the appellants. Therefore the judgment of conviction and sentence passed by the trial Court is liable to be set aside.

23.In the result, the criminal appeal is allowed. The conviction and sentence as against the appellants/A1 and A2 in the judgment dated 31.07.2008 in S.C.No.411 of 2005 passed by the learned Sessions Judge, Mahila Court, Salem, are set aside. The appellants/A1 and A2 are acquitted from the charges under Sections 498A, 304B and 306 IPC. The fine amount, if any, paid by them is ordered to be refunded to them. The bail bonds executed by them, shall stand terminated/discharged.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Sessions Judge, Mahila Court,
Salem.
2. Then Principal Sessions Judge,
Salem.
- 3.The Deputy Superintendent of Police,
Mettur Dam,
Mecheri Police Station,
Salem District.
- 4.The Superintendent ,Central Prison,
Coimbatore.
- 5.The Superintendent,Special women Prison,Vellore.
- 6.The Public Prosecutor, High Court ,Madras.

Copy to
The section officer,
Criminal Section,
High court Madras .

+1cc to Mr.C.Kanakaraj , Advocate SR.No. 1512

A.SK(27/02/2019)

Cr1.A.No.642 of 2008