

Bail Slip

The Appellants/Accused No.1&2 namely, Jayaraman(A1) S/o.Krishnan and Muthulakshmi(A2) W/o.Krishnan were directed to be released on bail as per order dated 15.09.2009 made in MP.NO.1/2009 IN CRL A.NO.2546/2009 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.01.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.546 of 2009

1.Jayaraman
2.Muthulakshmi ... Appellants/Accused No.1&2
.Vs.

State rep. by its
Deputy Superintendent of Police,
Chengalpattu Taluk Police Station,
Kancheepuram District.
Crime No.503 of 2004 ... Respondent/complainant

Prayer: This Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the conviction and sentence passed by the learned Additional Sessions Judge (Mahila Court) at Chengalpattu, Kancheepuram District made in SC. No.202 of 2006 dated 01.09.2009.

For appellants : Mr.T.R.Ravi
For Respondent : Mr. R.Ravichandran
Government Advocate (Criminal Side)

JUDGMENT

This appeal has been filed by Accused Nos.1 & 2 against the conviction and sentence dated 01.09.2009 on the file of the learned Additional Sessions Judge (Mahila Court) at Chengalpattu, Kancheepuram District in SC. No.202 of 2006.

2. The Case of the prosecution in brief is as follows.

A1/Jayaraman and deceased/Mallika fell in love with each other and their marriage was performed with the blessings of their parents on 01.02.2002 in Ponvilainthakalathur. Thereafter, the deceased Mallika was living in the matrimonial home along with A1 & A2 and sister-in-law. At the time of marriage PW1 viz., Sundaram, who is the brother of the deceased gifted 25 sovereigns of gold jewels and house hold articles

worth about Rs.50,000/- as Sridhana. Initially PW1 was also residing in the same village. However, after developing his political status he switched over to Chengalpattu Town.

3. Thereafter, PW1 went to his sister's house. She told that A1 harassed her and pledged all her jewels. A1 and his mother A2 forced the deceased to demand money from her parents house. PW1 also gave money often to his sister. PW2 has also given a sum of Rs.10,000/- to the deceased for two times. Thereafter, PW1 called his sister to his house. After two months A1 came to PW1s house along with some Panchayatar for mediation. Thereafter, again the deceased Mallika lived along with her husband (A1) separately at Singaperumal Kovil, which is nearby Chengalpattu. After that, because of A1's sister's marriage, again deceased Mallika came to her matrimonial home at Ponvilainthakalathur. At that time, 1st Accused and his mother A2 forced the deceased Mallika and driven her out from the matrimonial home demanding additional dowry.

4. However due to the unbearable and continuous torture made by A1 and A2 the deceased Mallika committed suicide on 09.11.2004 by hanging in the cattle shed situated opposite to her matrimonial home. The information was conveyed by PW3 and PW8 to PW1 and other family members. Thereafter, they rushed to the deceased house and found the dead body was laid in the house. Hence, PW1 brother of the deceased filed a complaint against the accused persons before the Sub Inspector of Police/P.W.11.

5. P.W.11/Sub Inspector of Police received the report from P.W.1 and registered a case in Crime No.503 of 2004 under Section 124 of Cr.P.C. Which is Ex.P4/FIR. The Investigating Officer (P.W.14) took up the case for further investigation, went to the scene of occurrence and prepared Ex.P2/ Observation Mahazar, Ex.P7/ Rough Sketch and no material object was recovered from the deceased house. P.W.14 had forwarded the said information to the Revenue Divisional Officer/P.W.12 for further enquiry. After receipt of the said information, Revenue Divisional Officer /P.W.12 conducted inquest over the dead body in the presence of PW1 and Muthulakshmi and prepared Inquest Report (Ex.P5) and the investigation officer also examined Medical Officer and other witnesses.

6. Thereafter, the case was altered under Sections 498 (A) & 304 (B) of IPC. The Alteration Report has been marked as Ex.P.8. P.W.14 took up the case for further investigation and during investigation he found that the accused tortured the deceased in the matrimonial house at Ponvilainthakalathur. Due to the torture given by the accused, the deceased committed

suicide by hanging on 09.11.2004. Accordingly, he laid a final report against the accused for the offences under Sections 498 (A) and 304 (B) of IPC.

7. The Trial Court framed charges against the accused persons under Sections 498 (A) and 304 (B) of IPC. When the ingredients of the charges were explained to the accused in Tamil and questioned, the accused pleaded not guilty. Hence, trial was proceeded against the accused persons.

8. In order to prove the case of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14 and 8 documents were marked as exhibits Ex.P.1 to Ex.P.8. No material objects were marked. On the side of the appellants/accused no witness was examined and no document was marked as exhibits.

9. When the trial Court examined the accused persons under section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied their complicity in the crime and pleaded innocence. However, they neither choose to examine any witnesses nor to mark any document.

10. After elaborate trial, the Trial Court convicted A1 and A2 for the offence under Sections 498 (A) and 304 (B) of IPC and sentenced A1 and A2 to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo 3 months Simple Imprisonment for the offence under Section 498 (A) of IPC and to undergo 7 years rigorous imprisonment under Section 304 (B) of IPC and ordered the sentences to run concurrently. Aggrieved by the said conviction and sentence, the appellants/accused have filed this appeal before this Court.

11. Heard Mr.T.R.Ravi, learned counsel for the appellants and the learned Government Advocate appearing for the respondents. Perused the materials carefully.

12.The learned counsel for the appellants would contend that there is no material whatsoever available on record to prove the charges under Sections 498 (A) and 304 (B) against A1 and A2. Ex.P.1 is totally contradictory to the evidence of PW1 to PW4. Admittedly the deceased committed suicide at cattle shed situated at just opposite of A1 house/her matrimonial home. P.W.3 who is brother of the deceased, residing at the neighboring house of A1. On perusal of the records PW2's evidence is totally contrary to PW1 and neighboring witness P.Ws.3 to 7. They were clearly indicated that the A1/Jayaram and deceased Mallika were lived happily in the matrimonial home and there is no quarrel between them till 09.01.2004 prior to the deceased committing suicide. There is no cruelty and quarrel between the deceased and A1, A2 which was revealed by PW3's evidence and it was also alleged by the prosecution.

13. The learned counsel for the appellant would contend that with regard to the dowry harassment and cruelty there is no material evidence available on record. Hence, it seems to be an improved version. Therefore, he prays for acquittal of the accused persons.

14. Per contra, learned Government Advocate submitted that P.W.1 to 4 clearly spoken about the demand of dowry and forced the deceased to collect money from P.W.1 and P.W.2. A1 and A2 demanded huge amounts which forced the deceased to commit suicide.

15. 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 reasonable doubt or not?

16. The evidence of PW1 who is the brother of the deceased indicated that the deceased was residing at matrimonial home along with her husband/A1, A2 and sister-in-law. There was a continuous quarrel in between the deceased and A1. A1 & A2 forced the deceased to collect money from PW1 and PW2. Often PW1 & PW2 also given amount to the deceased. PW1 in his chief examination admitted that he paid amounts in several times. However, in Cross Examination, it is seen that the said amounts were paid on condition that the deceased should repay the principal amount. The statement of P.W.1 in the chief and cross examination are contradictory.

17. The evidence of PW1 indicates that there was quarrel between the deceased and A1, A2 prior to the occurrence and thereafter, the same was reported to P.W.2. P.W.2 assures that she will take care of the deceased. Thereafter, some panchayat was conducted in between the accused family and P.W.1 family. However, on 09.11.2004, the deceased committed suicide by hanging herself in the cattle shed situated just opposite to her matrimonial home. The evidence of P.W.3 did not correlate with the evidence of PW.1 and PW.2 and they are contradictory in nature. As per the panchayat conducted by P.W.1 and other persons A1 and deceased lived together in a separate home, since the deceased refused to stay along with her mother-in-law and sister-in-law thereby the 2 families were to put them into separate family at Singaperumalkovil. At that time P.W.2 gave Ten Thousand Rupees for two times to the deceased. Thereafter, the first accused switched over to the matrimonial home back to Ponvilainthakalathur because of his sister's marriage.

18. P.W.1 and PW3 also fairly admitted that A1 did not have any bad habits and A1 and the deceased after their marriage they lived each other happily. PW4 is the sister in law of the

deceased and wife of PW1 indicated at 7 o'' clock on 09.11.2004 the deceased called to PW4 through Phone and informed that the accused person demanded Rs.50,000/- as dowry and she decided to commit suicide instead of living with A1. However, in her cross examination she stated that P.W.1 arrived at 9.30 pm. PW4 did not reveal anything with regard to the cruelty metted by the deceased from her husband or A2.

19. The very charge of the prosecution itself is that there was a demand of dowry and cruelty and unable to bear the cruelty and harassment, the deceased was forced to commit suicide. However on a perusal of the evidence of P.W.4 who is the wife of P.W.1, it is seen that the deceased resided along with A1 & A2 and she did not reveal that there was harassment soon before the death of the deceased.

20. There is also no plausible explanation from the prosecution to show that soon before her death, the deceased was subjected to cruelty or harassment by her husband forcing her to take the extreme step of committing suicide by hanging herself.

21. It is relevant to refer Section 304 (B) of IPC which relates to dowry death hereunder:

"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 relative 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."

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life"

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".

22. Section 113-B of Indian Evidence Act is also related to Section 304-B of 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".

23. As per Section 304-B of IPC, if death of a woman was caused other than normal circumstances within seven years from the date of marriage and if it is proved that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband, then such death shall be called 'dowry death'.

24. In the absence of any material to substantiate that soon before the death of the deceased, she was subjected to cruelty or harassment by her husband/ first appellant forcing her to take the extreme step of committing suicide, this Court is not able to accept the view taken by the Trial Court.

25. However, trial Court convicted the accused under Sections 498 (A) & 304 (B) IPC. In this context this Court of the view that the prosecution miserably failed to see whether there is any harassment meted out by the deceased in connection with the demand of dowry. In view of the same, conviction under 304 (B) of IPC is liable to be set aside and accordingly the sentence under section 304 (B) of IPC is also set aside.

26. The next issue is that whether the prosecution has to prove the guilt under Section 498 (A) of Cr.P.C. or not ?

27. Insofar as, the conviction under Section 498 (A) is

concerned as stated above there must be a categorical cogent evidence to prove the charge of demand of dowry.

Section 498 (A) of IPC 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.

28. Section 498 (A) of IPC was introduced with a view to appreciate whether the deceased husband has harassed or coerced for unlawful demand of dowry, cruelty or harassment has to be established on account of which the deceased was forced to commit suicide. To prove the cruelty, the prosecution relied upon the testimony of Pws.1, 2, 3 and 4. P.W.1 who is the brother of deceased deposed that at the time of marriage 25 sovereigns gold and household articles worth about 50,000/- were gifted to the deceased as Sridhana. Thereafter, the accused harassed the deceased very often demanding cash. However, P.W.2 who is the sister of deceased also given Rs.10,000/- for two times to the deceased and further stated in the cross examination the said amount was given on condition that the principal amount will be repaid. On a perusal of the evidence of PW1 it is being stated that he gave Rs.20,000/- to the deceased sister. As per the demand of A1 the deceased approached her brother and got a sum of Rs.10,000/-. The Revenue Divisional Officer/P.W.4 conducted the enquiry and concluded that there was cruelty in respect of demand of dowry.

29. However, on a close perusal of evidence of P.Ws.1 to 4 there is no iota of evidence to implicate A2 and no offence made against A2 either demand of dowry or harassment or torture the deceased. However, the evidence of P.W.s.1, 2 & 3 are cogent with regard to demand of dowry by A1. As such the prosecution categorically proved that the demand of dowry by A1/deceased husband committed offence under Section 498 (A) of IPC.

30. Mr.T.R.Ravi, learned counsel for the appellants would submit that A2 is 76 years old and A1 is the only breadwinner of the family and he is the only person available to take care of A2. After the death of deceased Mallika, A1 did not marry any of the girl, he lived along with his mother/A2 and the learned counsel requests before this Court to consider the aforesaid circumstances and award a minimum sentence.

31. In the light of the above submissions, there are

material evidence available as against A1 under Section 498 (A) of IPC. However, considering the passage of time I am inclined to reduce the sentence. In respect of A2 no evidence is available to implicate her in the above said offence and the prosecution has not proved the guilt on the accused/A2 beyond reasonable doubt. Hence, I am inclined to acquit A2 from all the charges.

32. In view of the above discussion the conviction under 498 (A) of IPC is confirmed as against A1 alone. However, the prosecution miserably failed to prove the case against 304 (B) of IPC. The appellants/A1 & A2 are acquitted from the offence under Section 304 (B) of IPC. However there are materials available to implicate A1 under Section 498 (A) of IPC. Accordingly the conviction imposed under Section 304 (B) of IPC is set aside.

33. In the result, this criminal appeal is partly allowed in respect of A1/first appellant. The conviction and sentence imposed by the Additional Sessions Judge (Mahila Court) at Chengalpattu, Kancheepuram District in SC. No.202 of 2006 dated 01.09.2009 on the first appellant is modified. The conviction under Section 498(A) of IPC is confirmed. The Sentence imposed by the Trial Court for the offence under Section 498(A) of IPC is reduced to six months R.I and the fine amount imposed by the trial Court is confirmed, in default. The first appellant/A1 shall undergo one month S.I. The conviction and sentence imposed on the first appellant/A1 for the offence under Section 304 (B) of IPC is hereby set aside. The first appellant/A1 is acquitted from the charges Under Section. 304(B) of I.P.C as well as the respondent shall take expeditious steps for securing A1/first appellant for the purpose of serving the remaining period of sentence.

34. The Criminal appeal is allowed in respect of the A2/second appellant. The conviction and sentence imposed on the second appellant/A2 in SC No.202/06 dated 01.09.2009 by the learned Additional Sessions Judge (Mahila Court) at Chengalpattu, Kancheepuram District are hereby set aside. The second appellant/A2 is acquitted from the charge under Sections 498(A) and 304(B) of I.P.C. Fine amount if any, paid by A2 shall be refunded to her. Bail bond, if any executed by her and the sureties shall stand terminated/discharged.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

rkp

To

1.The Judicial Magistrate No.II,
Chengalpattu.

2.Do thro The Chief Judicial Magistrate No.II,
Chengalpattu.

3.The Additional Sessions Judge
(Mahila Court) at Chengalpattu,
Kancheepuram.

4.do thro The Principal sessions Judge , chengalpattu.

5.The Superintendent of Central Prison, Puzhal, Chennai.

6. The Deputy Superintendent of Police,
Chengalpattu Taluk Police Station,
Kancheepuram District.

7.The Public Prosecutor, High Court ,Madras.

8. The section officer,
Criminal Section,
High court,Madras

+1cc to Mr.T.R.Ravi , Advocate SR.No. 619

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A.SK(13/02/2019)



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