

BAIL SLIP

The Accused viz T.Dhatchinamoorthy, S/o.Thulasingham (S.C.No. 278/07 on the file of Mahil Court, Chengalpattu) was released on Bail in MP.No. 1/09 in Crl.A.No. 770/09 dated 23.12.2009 on the file of High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2019

PRONOUNCED ON : 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.No.770 of 2009

T.Dhatchinamoorthy

... Appellant

Vs

State rep. By
The Assistant Commissioner of Police,
Meenambakkam,
Pallavaram Police Station,
Chennai.

... Respondent

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the order of conviction passed by the learned Judge, Mahila Court, Chengalpattu, in S.C.No.278 of 2007, dated 10.11.2009.

For Appellant : Mr.R.Vijayaraghaven

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl. Side)

WEB COPY

JUDGMENT

This appeal is arising out of the conviction and sentence imposed by the learned Mahila Judge, Chengalpattu, in S.C.No.278 of 2007, dated 10.07.2009.

2. The appellant is the first accused in S.C.No.278 of 2007. The appellant along with four others has been tried before the trial Court for the offence punishable under Sections 498A, 304-B & 306 IPC. The learned trial Judge, in conclusion of the trial, found this appellant guilty for the offence under Sections 498A & 304-B IPC and acquitted him of the offence under Section 306 IPC. The other accused have been

acquitted from all the charges framed against them. The trial Court convicted and sentenced this appellant to undergo seven years rigorous imprisonment for the offence under Section 304-B IPC; and to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment for the offence under Section 498A IPC. Aggrieved over the same, the first accused / appellant has filed this appeal.

3. The brief facts of the prosecution case, in nutshell, are as follows:

3.1. The appellant married the deceased Yogalakshmi on 28.06.2006 and after the marriage, they lived along with the accused nos.2 to 5 at Mukanni Amman Koil Street, Periyar Nagar, Trisulam. At the time of marriage, as against the demand of 30 Sovereigns of Gold, the parents of the deceased [PWs 1 & 2] gave 15 Sovereigns of jewels along with other Seethana Articles. After the marriage, the appellant, under the influence of Alcohol, harassed his wife and insisted her for more dowry. When they were invited by PWs 1 & 2 for Thalai Deepavali, the appellant demanded one sovereign of jewel and when they were invited for Thalai Pongal, the appellant demanded a sum of Rs.10,000/- as dowry. PWs 1 & 2 were not in a position to meet out the appellant's demand and therefore, the appellant and the deceased did not attend their Thalai Pongal in PW1's house. On 18.01.2007, PW1 was informed that his daughter, Yogalakshmi, committed suicide by hanging herself. PW1 lodged the complaint before the Inspector of Police, S5 Pallavaram Police Station on 18.01.2007 at 03.00 pm and the same was registered in Crime No.41 of 2007 under Section 174(3) Cr.P.C. The complaint of PW1 was marked as Ex.P1 and the printed First Information Report was marked as Ex.P12.

3.2. After registering the case, the Inspector of Police [PW12] sent the printed First Information Report to the Investigation Officer / Assistant Commissioner [PW13]. PW13, after receiving the intimation, went to the place of occurrence, prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P13] in the presence of one Alagirisamy [PW7] and one Neelakandan. He also recovered the broken lock [MO1] under the cover of Mahazar Ex.P14. Thereafter, PW13 sent the dead body to the Government Hospital, Chrompet. Since the death occurred within a period of seven years from the date of marriage, the inquest was conducted by the Revenue Divisional Officer, Chengalpattu [PW9] on 18.01.2007 at Government Hospital, Chrompet. He examined PWs 1, 2 and other Panchayatars and submitted a report that there was a demand of dowry. The report of the Revenue Divisional Officer is marked as Ex.P6.

3.3. The Doctor [PW8], who conducted the Autopsy, gave her opinion that the deceased died due to Asphyxia due to hanging. According to the Doctor, no external injuries were

found on the body of the deceased and there was no poisonous substance in the examination of Viscera. The postmortem report is marked as Ex.P4.

3.4. The Investigation Officer arrested the accused on 20.01.2007 and in conclusion of the investigation, filed the final report. On behalf of the prosecution, 13 witnesses were examined, 16 exhibits were marked and one material object was also produced. The incriminating materials from the prosecution were put in to the accused under Section 313 Cr.P.C., and the accused have denied the same as false. Though he stated that there are witnesses to be examined, neither oral nor documentary evidence was let-in on behalf of the accused.

4. The available evidence from the side of prosecution are as follows:

4.1. The father and mother of the deceased were examined as PWs 1 & 2. The sister of the deceased was examined as PW3. They speak about the marriage of the deceased with the appellant and the demand of dowry made by the appellant. The tenant in the accused house was examined as PW4 and the brother of the accused was examined as PW5, but they have not supported the prosecution case. A neighbour of the accused was examined as PW6. PW7 is the mahazar witness, but he was treated as hostile. The Doctor, who conducted the Autopsy, was examined as PW8. The Revenue Divisional Officer was examined as PW9. PW10 is the Constable, who identified the deceased to PW9 for inquest and after inquest, he handed over the body for postmortem. The learned XV Metropolitan Magistrate, George Town, who recorded the 164 Cr.P.C statements of PWs 1 & 2 was examined as PW11. PW12 [Inspector of Police] has registered the First Information Report and PW13 [Assistant Commissioner of Police] has conducted the investigation and filed the final report.

5. In appreciation of the evidence, the trial Court has convicted this appellant and acquitted the other accused as stated supra. Aggrieved over the conviction and sentence imposed against this appellant, this appeal is filed.

6. Heard Mr.R.Vijayaraghaven, learned Counsel appearing for the appellant and Mr.T.Shanmuga Rajeswaran, learned Government Advocate (Crl. Side) appearing for the respondent / State.

7. The learned Counsel for the appellant has raised the following points for consideration of this Court:

7.1. The evidence of PWs 1 to 3 are contradictory to each other with regard to the demand of dowry and therefore, their evidence have been rightly disbelieved by the trial Court and the accused nos.2 to 5 have been acquitted from all the charges. The benefit of doubt given to accused nos.2 to 5 ought to have been extended to this appellant also.

7.2. PWs 1 & 2 in their earlier statements before the learned Magistrate under Section 164 Cr.P.C have not stated anything about the demand of jewels and cash and only as an improvement, in the evidence before the trial Court, they have deposed, as if the appellant had demanded jewel and cash.

7.3. For the very same set of facts, the trial Court has concluded that this appellant has not committed the offence of cruelty or abetted the deceased for committing suicide, thereby, acquitted the appellant in respect of the offence under Section 306 IPC, but, the trial Court has wrongly convicted the appellant under Section 304-B IPC. On the one hand, the trial Court acquitted the appellant under Section 306 IPC and on the other hand, relying upon the very same set of evidence, convicted this appellant under Section 304-B IPC.

7.4. At the time of lodging the complaint, the complainant was not sure as to the cause for death. The complaint was lodged on suspicion and therefore, it was registered only under Section 174 Cr.P.C and the offence under Section 498A IPC has not been added at the time of registering the complaint.

7.5. The learned Counsel for the appellant has also relied upon the following decisions for the consideration of this Court:

i) (2011) 1 MLJ (CrL.) 672 (SC), in the case of Dr.Sunil Kumar Sambhudayal Gupta and others v. State of Maharashtra, wherein at Paragraph No.27, the Hon'ble Supreme Court has held as follows:

"27. ...The rules of appreciation of evidence requires that Court should not draw conclusions by picking up an isolated sentences of a witness without advertent to the statement as a whole. In such a fact-situation, it is not safe to rely on his testimony for the simple reason that he had made a lot of improvements / embellishments while deposing in Court and vital contradictions exist with his earlier recorded statement".

ii) (2009) 11 SCC 106 in the case of State of Rajasthan v. Rajendra Singh, the Hon'ble Apex Court has held that where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.

iii) (2010) 9 SCC 73, in the case of Durga Prasad and another v. State of Madhya Pradesh, wherein, the Hon'ble Supreme Court has held as follows:

"As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B

IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise that under normal circumstances, within 7 years of her marriage, it has also to be shown that soon before her death, she was subjected to cruelty or harassment by her husband for, or in connection with, any demand for dowry. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned."

8. The learned Government Advocate made his submissions based on the evidence of the Revenue Divisional Officer [PW9] and the evidence of PWs 1 to 3 and submitted that the available evidence clearly establish the guilt of the accused for having demanded dowry. The deceased, who got married on 28.06.2006, died on 18.01.2007, within a period of six months from the date of marriage, as such, the offence under Section 304-B IPC is also made out as against the accused and the trial Court has rightly convicted the appellant. Therefore, he prays for dismissal of this appeal.

9. This Court has considered the rival submissions made on either side and also perused the records carefully.

10. The marriage between the appellant and the deceased was solemnised on 28.06.2006. She committed suicide on 18.01.2007, i.e., during Pongal festival. The deceased was found hanging inside her room in the house of the appellant. The Investigation Officer [PW13] broke open the house and recovered the dead body. The broken lock was marked as M01. The evidence of the brother of the deceased [PW5] would also substantiate that the deceased was found hanging in the house of the appellant on 18.01.2007. PW6, who is the neighbour of the accused, has informed about the death to PW1 and he also states in his evidence that on 18.01.2007 at about 07.00 am, he heard that the deceased had committed suicide by hanging in the appellant's house, informed the same to PW1 over telephone. According to him, the first accused / appellant was residing in one portion and the accused nos.2 & 3 were residing in another portion.

11. PWs 1 to 3 have stated that at the time of marriage, they gave 15 Sovereigns of jewels and for attending the Thalai Deepavali, the appellant had demanded one Sovereign of jewel and for attending the Thalai Pongal, he demanded a dowry of Rs.10,000/-. Admittedly, the accused and the deceased have not visited PW1's house during the Thalai Pongal and immediately after the Pongal, i.e., on 18.01.2007, the deceased had committed suicide by hanging. The available prosecution evidence has established the demand of dowry made by the appellant for attending Thalai Deepavali and Thalai Pongal at PW1's house. The Revenue Divisional Officer [PW9], who conducted the inquest, has also given a report [Ex.P6] that there was a demand of dowry in this case.

12. Whoever, being the husband or relative of the husband of a woman, subjects such woman to cruelty is liable to be punished under Section 498A IPC. The cruelty for the purpose of Section 498A IPC as stated in the explanation is as follows:

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

13. If there is a demand of dowry soon before the death, then the presumption is against the accused. It is appropriate to refer Section 113-B of the Indian Evidence Act, which reads as follows:

"113-B. 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 has 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.

Explanation - For the purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code."

Cruelty or Harassment:

Cruelty or harassment differs from case to case. It relates to the mindset of the people, which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is of different shades. It can be verbal or emotional like insulting or ridiculing a woman. It can be giving threat of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraint on her movement. It can be not allowing her to take to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave so as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time.

Demand for Dowry:

If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, such demand would constitute "demand for dowry" the cause or reason for such demand being immaterial.

law in securing evidence to prove dowry related deaths, Legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive section 113-B in the Evidence Act, has been inserted. As per the definition of "dowry death" in section 304-B IPC and the wording in the presumptive section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under section 113-B is a presumption of law.

15. The presumption shall be raised only on proof of the following essentials:

i) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC)

ii) The woman was subjected to cruelty or harassment by her husband or his relatives.

iii) Such cruelty or harassment was for or in connection with, any demand for dowry.

iv) Such cruelty or harassment was soon before her death.

16. In view of the presumption under Section 113-B of the Indian Evidence Act, the offence under Section 304-B IPC is made out as against this appellant. The appellant has not rebutted the presumption by adducing any evidence and demolished the prosecution case with any other probability for the cause of death. Since the accused has not rebutted the presumption under Section 113-B of the Indian Evidence Act, the benefit of doubt cannot be extended to the accused on a minor contradiction with regard to the demand of dowry.

17. Though the case has been registered under Section 174 Cr.P.C., the demand of dowry has been alleged by PW1 in the complaint [Ex.P1] itself. PWs 1 to 3 have stated about the demand of dowry and the visit of the deceased on two occasions, earlier, to their house and the deceased died soon after the marriage and that too, immediately after the Thalai Pongal. It is the specific case of the prosecution that the deceased and the appellant did not attend PW1's house for the Thalai Pongal. Therefore, this Court does not find any perversity or illegality in the judgment of conviction and sentence imposed by the learned trial Judge, as such, this Court is not inclined to interfere with the same.

and the judgment passed by the learned Mahila Judge, Chengalpattu, in S.C.No.278 of 2007, dated 10.07.2009, stands confirmed. Since the appellant is in bail, the learned trial Judge is directed to secure the appellant and confine him to prison. Bail bonds, if any, executed by the appellant stands cancelled.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

gk

To

- 1.The Sessions Judge,
Mahila Court,
Chengalpattu.
- 2.The Judicial Magistrate,
Tambaram.
- 3.The Chief Judicial Magistrate,
Chengalpattu (For information)
- 4.The Assistant Commissioner of Police,
Meenambakkam,
Pallavaram Police Station,
Chennai.
- 5.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 6.The Public Prosecutor,
Madras High Court,
Chennai.
7. The Section Officer (Records),
Criminal Section,
High Court, Madras.

+lcc to Mr.R.Vijayaraghavan, Advocate, S.R.No. 38597

Cr1.A.No.770 of 2009

GN(13/11/2019)