

Bail Slip

The Accused viz., C.Ramakrishnan, S/o.Chinnasamy was released on bail on 25/02/2010 vide Crl.M.P.NO. 1 of 2010 in Crl.A.No.121 of 2010 on the file of the High Court Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.121 of 2010

C.Ramakrishnan ... Appellant

Vs

State by Deputy Superintendent of Police,
Rural Sub-Division, Salem,
Yercaud Police Station

.... Respondent

Prayer:- Criminal Appeal is filed against the judgement of conviction and sentence, dated 24.4.2009 made in SC.No.369 of 2006, by the Sessions Judge, Mahila Court, Salem.

For Appellant : Mr.T.M.Ramalingam

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 24.4.2009, made in SC.No.369 of 2006, by the Sessions Judge, Mahila Court, Salem, convicting and sentencing the appellant for the offence under Section 498A of IPC to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/-, in default, to undergo three months rigorous imprisonment and for the offence under Section 304B of IPC to undergo rigorous imprisonment for seven years and ordering the sentences to run concurrently.

2. The case of the prosecution has arisen on the basis of the complaint Ex.P1, dated 10.04.2005, given by P.W.1, who is the mother of the deceased, Dhanalakshmi, alleging that the marriage between the deceased and the appellant/accused had taken place 1½ years before the date of occurrence and that at the time of marriage, the parents of the deceased had given 10 sovereigns of jewellery and a cash of Rs.15,000/-,

to the appellant/ accused and that from the date of their marriage, the appellant/accused frequently subjected the deceased to cruelty and harassed her, by demanding dowry and that on 08.04.2005, the appellant/accused demanded a sum of Rs.2,000/-, as dowry and also assaulted her with Chappal and that unable to pay the money and unable to tolerate the torture meted out to her, she had committed suicide at her mother's house by hanging on 9.4.2005 at 7.00 p.m.. Hence, the appellant/accused was charge sheeted for the offences under Sections 498A and 304B IPC.

3. The case was taken on file in S.C.No.369 of 2006, by the learned Sessions Judge, Mahila Court, Salem and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.12 and also marked Exs.P1 to P.12.

4. P.W.1 is the mother of the deceased, who gave the complaint Ex.P1. P.W.2 and P.W.3 are the sisters of the deceased. P.W.4 and P.W.5 are the neighbours of the deceased. P.W.6 is the Doctor, who conducted post-mortem. P.W.7 is the Village Administrative Officer, who attested in the Observation Mahazar Ex.P5. P.W.8 is the Scientific Assistant Grade-I, Regional Forensic Science Laboratory, who examined the viscera of the deceased and submitted a report to the Professor of Forensic Medicine, Government Mohan Kumaramangalam Medical College, Salem under Ex.P6. P.W.9, is the Head Constable, who handed over the body of the deceased for post-mortem at Salem Government Hospital and after post-mortem, he handed over the body to the father of the deceased. PW.10 is the Sub Inspector of Police, who had registered a case in Crime No.51 of 2005 under Section 304B of IPC and prepared Ex.P7, First Information Report. P.W.11 is the Revenue Divisional Officer, who conducted inquest and submitted an inquest report under Ex.P8. P.W.12 is the Deputy Superintendent of Police, who conducted further investigation and filed the final report against the accused under Sections 498A and 304B of IPC.

5. Ex.P.1, dated 10.04.2005 is the complaint given by P.W.1. Ex.P2, dated 11.4.2005, is the requisition letter to conduct inquest. Ex.P3, dated 11.4.2005, is the inquest certificate. Ex.P4, dated 11.5.2005 is the final opinion of the Regional Forensic Science Laboratory, Coimbatore. Ex.P5, dated 10.4.2005 is the Observation Mahazar. Ex.P6, dated 19.5.2005 is the Chemical Analysis report. Ex.P7, dated 10.4.2005, is the First Information Report. Ex.P8, dated 11.4.2005, is the inquest report. Ex.P9, dated 13.4.2005, is the RDO report. Ex.P10, dated 10.4.2005, is the rough sketch. Exs.P11 and P12, are the photographs and negatives.

6. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the

evidence of the prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and Ex.D1 was marked. DW.1 is the Reporter, who prepared the News Article in the weekly magazine, regarding the reason for the death of the deceased. DW.2 is the friend of the appellant/accused. Ex.D1 is the Nakkeeran Tamil Fortnightly Magazine-2005, May 01-04 18-5.

7.The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishment as referred to above, which is challenged in this Criminal Appeal.

8.This Court heard the submissions of the learned counsel on either side.

9. The learned counsel for the appellant/accused has assailed the impugned order of conviction and sentence, on the following infirmities, discrepancies and grounds:-

a. The death of the deceased was not a dowry death and it was only due to the illicit intimacy with one Dhayalan Rajesh, inasmuch as, since the appellant/accused saw the deceased and said Dhayalan Rajesh in a compromising position and questioned the deceased, the deceased had committed suicide by hanging, which is also evident from the inquest report, Ex.P8 and final report, Ex.P9, of the Revenue Divisional Officer and the evidence of PW.11, Revenue Divisional Officer and the independent witnesses, DW.1 and DW.2 and Ex.D1.

b. There was also unexplained delay in lodging the complaint, Ex.P1, given by PW.1, after a delay of 10 hours, which is fatal to the case of the Prosecution

c. On the side of the Prosecution, except the evidence of P.W.1 to P.W.3, who are respectively the mother and sisters of the deceased and interested witnesses, no other independent witnesses were examined, about the demand of dowry from the deceased. Further, the evidence of PW.1, PW.2 and PW.3 had given contradictory statements before the Revenue Divisional Officer. The appellant had let in evidence, by examining two independent witnesses, as DW.1 and DW.2 and marking Ex.D1.

d. Even it is the case of P.W.1 that the appellant / accused was also living with them in the same house and there was no harassment and demand of dowry soon before the death and that she had been informed by the deceased that the appellant / accused demanded an amount of Rs.2,000/-, only towards household and family expenses and not towards the dowry. There was also no agreement between the parties, regarding jewels or valuable at the time of marriage or after marriage. There is not even an iota of evidences available on record to show that soon before the death, the deceased was subject to cruelty or harassment by

her husband regarding the demand of dowry. The essential requirements for application of 304B IPC are not made out against the appellant / accused.

e. The evidence of PW.1, PW.2 and PW.3 are contradictory in nature and that they have also suppressed the fact that the deceased had illicit intimacy with the another person. None of the independent witnesses who were examined during the inquest by the Revenue Divisional Officer and in the enquiry made by the Respondent Police were examined in Court.

f. The allegation of assaulting the deceased with a chappal by the Appellant is also not supported by any medical evidence.

10. The learned counsel for the appellant/accused would ultimately contend that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to convict the Appellant/ accused under Sections 304B and 498A of IPC and that only when the Prosecution proves beyond doubt that the deceased was subjected to cruelty in connection with dowry demand soon before her death, presumption under Section 113B of the Indian Evidence Act can be invoked and that in the case on hand, the investigation was not done in a proper manner and that the Prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and that the Trial Court is not correct and justified in convicting and sentencing the appellant/accused and hence, the appellant/accused is entitled for acquittal. In support of his contentions, he would rely on the decision of the Honourable Supreme Court rendered in the case of Baijnath and Others V. State of Madhya Pradesh reported in (2017) 1 SCC 101.

11. On the other hand, the learned Additional Public Prosecutor for the Respondent, while supporting the impugned judgement of conviction and sentence, would contend that that the appellant/accused married the deceased 1 ½ years before the date of occurrence, thereby making it clear that the death had occurred within seven years of their marriage and that on 08.04.2005, the appellant/accused had sent the deceased to her mother's house, demanding dowry and unable to pay the money, she had committed suicide at her mother's house by hanging and that though the R.D.O has given a finding that the death was not due to the demand of dowry, it can only be used as a piece of corroborative material and when there are other materials, the impugned judgement of conviction and sentence warrants no interference by this Court.

12. I have given my careful and anxious consideration to the rival contentions put forward by either side and perused the entire evidence available on record and also perused the impugned judgement of conviction, including the relevant provisions of law and authorities.

13. What is to be seen is as to whether the Prosecution has proved its case beyond all reasonable doubts, by

cogent evidence and whether there are infirmities, discrepancies and contradictions, as projected by the Appellant and particularly, whether there are valid evidence to make out a case for the offences under Sections 498A and 304B of IPC.

14. At the outset, it is pertinent to state that the Honourable Supreme Court in various decisions, has held that nobody be convicted on surmises and conjectures. Similarly, nobody be convicted on mere suspicion, however strong it may be. Similarly, it has been held that the evidence can be rejected if it suffers from any serious infirmities or if there is any inherent inconsistency in the testimony. At the same time, if there is intrinsic merit in the evidence of the witnesses, the same cannot be rejected. Discrepancies and contradictions if found material and substantial in respect of vital aspects of facts, then the entire testimony cannot be discarded. Bearing in mind, the aforesaid principles, the rival submissions made by the parties are to be analysed and a detailed and proper analysis of the evidence is essentially required.

15. It is settled position of law that the delay in lodging the complaint is fatal to the case of the Prosecution. In the case on hand, it is seen from the materials on record that though the occurrence had happened at 4.30 a.m. on 10.04.2005, strangely the complaint, Ex.P1 was given at 16.00 hours on 10.04.2005, after a delay of 10 hours, for which, there was no explanation, much less, valid explanation, given by the Prosecution, thereby creating a doubt regarding the genuineness of the complaint.

16. In the case on hand, the fact that the deceased had committed suicide by hanging is undisputed. In order to attract the provisions of Section 498A of IPC, the cruelty or harassment meted out to the wife by her husband or relatives of her husband should be to the extent that it became unbearable. Thus, the essential ingredients of Section 498A of IPC are:-

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of harassment of such woman, with a view to coerce her to meet unlawful demand for property or valuable security.

17. To sustain the conviction under Section 304B of IPC and to prove a death as 'dowry death', the essential ingredients to be established are that the death of a woman should be caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such a death should have occurred within seven years of her marriage and 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.

18. If any death is caused in connection with dowry demand, Section 113B of the Indian Evidence Act, 1872 comes into play. The essential requirements to be proved for raising a presumption under Section 113B of the Indian Evidence Act, 1872 are that (i) whether the accused has committed dowry death of a woman, (ii) a 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 and (iv) such cruelty or harassment was soon before her death.

19. In the case on hand, while scrutinizing the evidence, both oral and documentary, it came to light that the appellant/accused and the deceased belonged to the same Village and to the same ST Community. Admittedly, the marriage between the appellant/accused and the deceased was a love marriage and there was no demand made towards dowry at the time of marriage, as well. The accused demanded money only for the household and family expenses. These facts are evidenced by the depositions of P.W.1, who is the mother and PW.2, who is the sister of the deceased and is not a direct witness to the occurrence.

20. With regard to the assault by a chappal, it is seen from the evidence of PW.6, Doctor, who conducted the postmortem on the body of the deceased, has deposed that an assault by a chappal would cause a swelling injury or contusion, but there was no such corresponding injury found on the cheek of the deceased and hence, the version of the Prosecution that the appellant/ accused subjected the deceased to cruelty by assaulting her with the chappal cannot be accepted.

21. Another significant factor is the evidence of PW.11, RDO and his inquest report, Ex.P8 and further report, Ex.P9, regarding the cause for the deceased to commit suicide. It is not in dispute that the deceased committed suicide by hanging. However, it is the categoric case of the Appellant/accused that the deceased had illicit intimacy with one Dhayalan Rajesh, who is the estate owner and since the appellant/accused saw the deceased and said Dhayalan Rajesh in a compromising position he had questioned her and thereafter, the deceased had committed suicide by hanging, which is supported by Ex.P8, inquest report and Ex.P9 Report of RDO and also the oral evidence of PW.11.

22. In Ex.P8, it is stated that the death of the deceased was not due to dowry harassment. It is also stated that during the enquiry, it was the opinion of the Panchayatars that on 9.4.2005, the appellant/accused had seen the deceased and the said Dhayalan Rajesh in a compromising position and when he questioned her about the same, ashamed of her conduct, she herself committed suicide by hanging. To the same effect, PW.11 has given a report under Ex.P9 and deposed in oral evidence. Hence, one can infer that the death of the deceased was only due to the illicit intimacy, the deceased had with one

Dhayalan Rajesh and as the same was questioned and exposed by the appellant / accused, she committed suicide.

23. Further, except the evidence of PW.1 to PW.3, who are the mother and sisters of the deceased, no other independent witnesses were examined, about the demand of dowry from the deceased. There is not even an iota of evidence to show that there was agreement between the parties, regarding jewels or valuables at the time of marriage or after marriage. None of the witnesses were examined during the inquest and the enquiry by the Respondent Police. Further, the evidence of PW.1, PW.2 and PW.3 have also given contradictory statements before the Revenue Divisional Officer in the enquiry.

24. It has also come out in evidence of PW.1 that the marriage between the appellant / accused and the deceased was a love marriage and that the appellant / accused was also living with them in the same house and there was no harassment and demand of dowry soon before the death and that she had been informed by the deceased that the appellant/ accused demanded an amount of Rs.2,000/-, only towards household and family expenses and not towards the dowry.

25. The evidence of PW.1 in her examination that the marriage between the appellant/accused and the deceased was a love marriage and that she did not approve the marriage earlier and that later after some time, she accepted the marriage, would go to show that the accused did not demand dowry.

26. PW.11, RDO, during his cross examination has deposed that the Panchayatars, who were examined during the inquest, had stated that the deceased and the appellant/accused were living happily and that the character of the deceased was not good from the very beginning. There was also a concrete finding by the RDO to the effect that the death of the deceased was not due to the demand of dowry.

27. On the other hand, the appellant/ accused has proved his case, by letting in evidence, by way of examining the two independent witnesses DW.1, who is the Press Reporter and DW.2, who is the Village Head Man and the Tribal Leader, as stated above. They had also stated that since her illegal intimacy with one Dhayalan Rajesh, who is the estate owner, got exposed, ashamed of herself, she committed suicide and that there was no demand of dowry.

28. In order to rebut the legal presumption envisaged under Section 113B of the Evidence Act, against him, the appellant/ accused, through D.W.1 had marked as Ex.D1, News Article, which narrated about the entire incident and the cause for the death of the deceased, after examination of the Villagers. In Ex.D1, the same facts have been stated in Ex.D1 similar to Ex.P8 and Ex.P9.

29. Further, there is also a doubt regarding further investigation conducted by PW.12, the Deputy Superintendent of Police, who had laid the charge sheet. In his chief

examination, he has deposed that in the presence of witnesses at 5.30 p.m. on the day of occurrence, he prepared the Observation Mahazar, Ex.P5 and the Rough Sketch, Ex.P10 and on 11.04.2005 at 7.00 p.m., he arrested the appellant / accused near Yercaud. Whereas, the evidence of PW.1 and PW.2 are totally contradictory to the evidence of P.W.12. PW.1 and PW.2 have categorically deposed that at 6.30 p.m, on the date of occurrence, when the police have enquired the appellant was present at the scene of occurrence and that the respondent police enquired the appellant / accused also. Though several independent witnesses during the RDO enquiry had spoken about the illicit intimacy of the deceased with one Dhayalan Rajesh, the respondent/police had not taken any steps to enquire the said Dhayalan Rajesh. The said contradictory evidence would go to show that there was no proper investigation done by the Prosecution, thereby falsifying their case.

30. Now, adverting to the relevant statutory provisions, it may be noticed that cruelty as defined in Section 498A of IPC means any wilful conduct 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 or harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or on account of failure by them to meet such demand. Section 304B of IPC requires the presence of essential ingredients, as stated above, which in turn requires proof. In the aid of proof of these offences, the presumption is provided in the provisions of Section 113B as also under Section 114 of the Evidence Act, which reads as under:-

"113B:- 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 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 purposes of this section "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code (45 of 1860)..

114. Court may presume existence of certain facts:-
The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

31. When the Prosecution fails to prove by way of reliable evidence the essential requirements for raising a presumption under Section 113B of the Indian Evidence Act, that

soon before death, the deceased was subjected to cruelty or harassment by her husband or by his relatives for or in connection with the demand of dowry, the provision of Section 304B of IPC and Section 113 of the Indian Evidence Act, 1872 cannot be attracted to hold that the husband is guilty of offence of dowry death in terms of Section 498A of IPC, as has been held in the cases of Harjit Singh Vs. State of Punjab [AIR-2006-SC-680] and Narayanamoorthy Vs. State of Karnataka and another [2008-2-MLJ-Crl-969-SC] .

31. In the cases of Kamesh Panjiyar alias Kamlesh Panjiyar Vs. State of Bihar [2005-2-SCC-388], Ram Badan Sharma Vs. State of Bihar with Surya Kant Sharma Vs. State of Bihar [2006-10-SCC-115], Kailash Vs. State of MP [2006-12-SCC-667], the Honourable Supreme Court reiterated and reasserted the settled principles laid down in the case of Hira Lal and others Vs. State (Government of NCT), Delhi [2003-8-SCC-80], wherein the essential ingredients to attract application under Section 304B are stated.

32. In the case of Shamlal Vs. State of Haryana [1997-SCC-Crl-759], it was held that it is imperative to prove that soon before her death, the wife was subjected to cruelty and harassment in connection with the demand for dowry and in the absence of such evidence, the accused cannot be convicted under Section 304B of IPC.

33. The Honourable Supreme Court in the case of Satvir Singh and others Vs. State of Punjab and another with Tejinder Pal Kaur Vs. State of Punjab and others [2002-SCC-Crl-48], has clearly laid down that the 'dowry' mentioned in Section 304B of IPC should be construed as any property or valuable security given or agreed to be given in connection with the marriage and customary payments in connection with the birth of a child or other ceremonies which are prevalent in different societies cannot be enveloped with the ambit of 'dowry'. At paragraphs 20 and 21 of the said decision, it is held as below:-

"20. Prosecution, in a case of offence under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death". The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

"2. In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case or persons to whom the Muslim personal law (Shariat) applies."

21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage."

34. In (2017) 1 SCC 101 (Baijnath and Others V. State of Madhya Pradesh) relied on by the learned counsel for the Appellant, it was laid down that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to convict the accused under Sections 304B and 498A of IPC and that only when the Prosecution proves beyond doubt that the deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, the legal presumption under Section 113B can be invoked.

35. Examining the relevant evidence as aforesaid, for the purpose of application of aforesaid statutory provisions, regarding the cause of death of the deceased, the evidence led by the Prosecution is not definite and there is every room for doubt. The testimony of the Prosecution witnesses cannot lead to an inference that the Appellant caused harassment on account of demand of dowry driving the deceased to commit suicide. In the absence of direct evidence, the Trial Court has erred in holding that the appellant/accused had driven the deceased to commit suicide.

36. The sum and substance of the analysis of the background facts are that there is no reliable evidence to hold that the deceased was harassed within the meaning of Section 498A of IPC. On a scrutiny of the entire evidence, I am of the considered view that the circumstances and instances shown by the Prosecution are far too meagre for reaching the conclusion that the Appellant had subjected her to cruelty or harassed her for or in connection with any demand of dowry. That being so, this Criminal Appeal deserves to be allowed.

37. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The appellant is acquitted of all the charges levelled against him. The bail bond if any, executed by the appellant, shall stand cancelled. The fine amount, if any, paid by the appellant is ordered to be refunded to him.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ms/srcm

To

- 1.The Sessions Judge,
Mahila Court, Salem
- 2.The Deputy Superintendent of Police,
Rural Sub-Division,
Salem, Yercaud Police Station.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent, Central Prison, Salem.
- 5.The Record Keeper,
Criminal Section,
High Court, Madras.

+2cc to Mr.T.M.Ramalingam, Advocate sr.17975

Crl.A.No.121 of 2010

nr 15/04/2019