

Bail Slip

The appellants/accused namely Bakkiyam W/O Loganathan, 2nd accused and sekar@ Dhanasekaran S/O Loganathan in S.C.No.140/2009 dated:30/03/2010 on the file of the Sessions judge, Mahila Court one directed to be released on bail on 08/04/2010 in MP.No.1/10 of 2/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A.No.230 of 2010

1.Sekar @ Dhanasekaran

2.Bakkiyam

... Appellants/Accused 1 & 2

Vs.

The Deputy Superintendent of Police,
Omalur Sub-Division,
Salem District,
Tharamangalam Police Station,
Salem District.
Crime No.125 of 2005

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence passed by the Sessions Judge, Mahila Court, Salem by judgment dated 30.03.2010 in S.C.No.140 of 2009.

For Appellants : Mr.B.Kumarasamy
(Amicus curiae)

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/A1 and A2, as against the conviction and sentence dated 30.03.2010 made in S.C.No.140/2009 on the file of learned Sessions Judge, Mahila Court, Salem.

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

P.W.1 is the father of the deceased. P.W.2 is the mother of the deceased. On 29.03.2005, the marriage between the appellant/first accused and deceased (Rukmani) was solemnized. A2 is the mother of A1 and mother-in-law of the deceased. The deceased along with A1 and A2 was residing at M.G.R. Colony as joint family. After marriage, A1 and A2 ill-treated the deceased that she must bring money from her parents. On 27.02.2005, the deceased was harassed by A1 asking her to bring Rs.10,000/- from her parents. Thereafter, on 29.03.2005 at 10.00am, A1 and A2 joint together and harassed the deceased as to what seervarisai she had brought and beaten the deceased with lock and firewood. Thereby, A2 mother-in-law fisted the face, due to their harassment, the deceased committed suicide by hanging herself at the house of A1. Immediately, after the death of the deceased, the same was informed to P.W.1 and P.W.2. Thereafter, they reached A1 house and found that her daughter's body was laid down on the floor. However, without hearing P.W.1 and P.W.2's request the body was taken to the burial ground and cremated. However, the said body was removed from the cremation ground, in respect of which P.W.1 lodged the complaint Ex.P1.

3.P.W.8 Sub Inspector of Police received the report from P.W.1 and registered a case in Crime No.125 of 2005 under Section 498A, 302 and 201 IPC. Ex.P9 is the printed FIR. The said report was forwarded to P.W.11-RDO and further handed over the investigation to P.W.13-Deputy Superintendent of Police. The Deputy Superintendent of Police, took up the case for further investigation, went to the scene of occurrence and prepared observation mahazar Ex.P2 and rough sketch Ex.P12 and recovered material objects MO1 to MO5. Thereafter, RDO/P.W.11 conducted inquest over the dead body and issued inquest report Ex.P10. After examining the medical officer and other witnesses the offence was altered into one under Sections 498A, 304b and 201 IPC. The alteration report is marked as Ex.P.14.

4.P.W.13, took up the case for further investigation and arrested A1 and A2 on 02.04.2005. Thereafter, he laid a final report as against the accused for the offences under Sections 498A, 304b and 201 r/w 511 IPC.

5.During the pendency of the trial, A6-Kuppusamy was reported to be dead. On production of death certificate, the case was abated against A6.

6. Based on the above materials, the trial Court framed the charges for the offences under Sections 498A 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.13 were marked, Exhibits P.1 to P.15 were marked and MO1 to MO5 were marked.

7. When the trial Court questioned the accused under Section 313 of Cr.P.C., in respect of incriminating evidence available against them, they denied the complicity in the crime and pleaded innocence. However, they neither chose to examine any witness nor marked any documents.

8. The trial Court after considering the oral and documentary evidence, found A1 and A2 guilty of the offences under Sections 498A and 304b IPC. Accordingly, the trial Court convicted the accused and sentenced them to undergo rigorous imprisonment for three years each and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months for the offence under Section 498A IPC., they were imposed sentence of seven years rigorous imprisonment and fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months for offence under Section 304b IPC. The sentence imposed on the accused were ordered to run concurrently. Challenging the said conviction and sentence, A1 and A2 have preferred this appeal.

9. Though the case was repeatedly listed before this Court, however, no one represented on behalf of the appellants. Hence, this Court appointed Mr.B.Kumarasamy, as amicus curiae, in the case to assist the Court. Heard, learned Government Advocate appearing for the respondent.

10. The learned counsel appearing for the appellants would contend that there is no material whatsoever available on record to prove the charges under Section 498A and 304b IPC. Ex.P1 complaint is totally contrary to the evidence of P.W.1 and P.W.2. Admittedly, the deceased committed suicide at her husband's house. P.W.1 in her Ex.P1 complaint says that A1 and A2 assaulted the deceased thereby, the deceased sustained injuries. As no injuries were found on her body and only the burn injuries were found on the deceased, the body of the deceased was removed from cremation. Initially P.W.1 and P.W.2 agreed to cremate the deceased daughter. Subsequently they changed their mind to lodge the complaint Ex.P.1 and implicated the accused persons in the above said offence is unsustainable. However, after investigation, the case was altered into under Sections 304b, 498A and 201 IPC.

11.The learned counsel appearing for the appellant further contended that there was no evidence to prove the harassment for demand of dowry by the appellants. Even RDO report which was marked as Ex.P.11, clearly says that there was no dowry harassment. Hence, ingredients required under Section 498A and 304b IPC were not established before the trial Court. Hence, he prays for acquittal of the accused.

12.Per contra, the learned Government Advocate (Crl.side) would submit that P.W.1 and P.W.2 have clearly spoken the quarrel between A1, A2 and the deceased and frequently they harassed the deceased for money from P.W.1 and P.W.2 and very often, they sent the deceased to the parents' home and demanded additional dowry. The prosecution proved the case against the accused beyond reasonable doubt and due to harassment of A1 and A2, the deceased committed suicide. Therefore, the judgment of the trial Court need not be interfered with.

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

14.The evidence of P.W.1, who is the father of the deceased indicates that he is residing at Vandavasi and he is doing weaving and he has two sons and one daughter. The marriage of the deceased daughter Rukmani and A1 was solemnized and at the time of marriage 6 ¼ sovereigns of gold and house hold things were given as seedhana to A1. Thereafter, they were beating her and demanding dowry. After three months from the date of marriage, he went to the daughter's matrimonial home and found A1 attacked the deceased in his presence. Thereafter, he took his daughter to his house. After two or three days, A1 came to house and pacified the deceased and took her to his house. Thereafter, P.W.1 arranged the marriage of his son. A1 and his daughter came to that marriage, at that time, A1 quarreled with the deceased that he would live with her only if she brings money from her father and A1 left the deceased in P.W.1's house and went to his house. After two or three days, again he came to P.W.1's house and pacified to send back the deceased to matrimonial home. Thereafter, P.W.2 went to the house of A1 and no respect was given to P.W.2 and the same was informed to P.W.1. Thereafter, the deceased along with plastic container and silver vessel, went to drinking water pipe to fetch water, at that time, A1 beaten the deceased with fire-wood and A2 beaten her with lock and caused injuries. Thereafter, P.W.1 and P.W.2 were informed that her daughter was dead. Without hearing the request of P.W.1 and P.W.2, A1 to A6 took the body of the deceased to cremation ground and cremated the deceased. Then P.W.1 and P.W.6 went to the cremation ground and pulled out the body from the fire. Thereafter, they went to the

police station and lodged Ex.P1 complaint. P.W.2 also corroborated with the evidence of P.W.1.

15.P.W.8, Sub Inspector of Police, while he was working as Sub Inspector of Police at Tharamangalam Police Station, after receipt of Ex.P1 complaint, registered a case in Crime No.125/2005 under Sections 498A, 302 and 201 IPC. The said FIR is marked as Ex.P2. Thereafter, he dispatched the copies of the FIR to the R.D.O., Mettur and D.S.P., Omalur Sub Division, for further investigation. The said FIR was handed over to P.W.10-Ramasamy Head Constable, in order to handover the same to the Judicial Magistrate, on 30.03.2005 at 2.30 am, the said FIR was handed over to jurisdictional Judicial Magistrate, Omalur.

16.P.W.11-RDO, while she was working as RDO at Mettur, on 29.03.2005, she received the copy of the FIR of the deceased. On the same day, at 1.00 am, she went to the cremation ground of Tharamangalam and saw the body of the deceased half burnt and she conducted inquest over the dead body of the deceased. Then she examined one Loganathan, Bakkiyam, Venkatachalam, Arthanari, Rathinam, Munusamy and Suseela before the Panchayatar. The inquest report and her report are marked as Ex.P.10 and Ex.P.11 respectively. She has stated in Ex.P.11 that the evidence clearly indicates that there is no dowry harassment.

17.P.W.9 Subramani, the then Head-Constable, on 29.03.2005, after inquest, received the dead body and handed over to the Salem Government Hospital for postmortem. After postmortem, he handed over the body of the deceased to her relatives.

18.P.W.7 Dr.S.S.Meera, working as Assistant Professor in Forensic Medicine Department of Salem Government Hospital, on 30.03.2005, received a requisition from the RDO for conducting postmortem on the body of the deceased. On the same day at 1.00 pm, she along with Dr.Kesavalinagam conducted postmortem on the body of the deceased and found the following injuries on the body:-

"An oblique ligature mark 2-5 cms width, 19cms in total length over the upper part of front and sides of neck above the level of thyroid cartilage was found. On the right side of neck the upper border of the ligature mark was found to be 5 cms below the right mastoid process and on the left mastoid process."

19.The postmortem certificate, chemical examination report and another examination report are marked as Exs.P.6, P.7 and P.8 respectively. On perusal of her report Ex.P7, it is seen the deceased died due to hanging and on perusal of Ex.P7

postmortem report, it is seen that no external injuries as alleged by P.W.1 and P.W.2.

20.P.W.12 is the investigating officer, who took up the case for investigation. On 06.04.2005, he sent requisition to examine the witnesses Munusamy, Mallika and Kalaiselvi under Section 164 Cr.P.C. The 164 Cr.P.C., statement were not received from the Judicial Magistrate, Omalur. On 11.04.2005, he took A1 and A2 in the police custody and again sent them from remand. Thereafter, the case bundle was handed over to P.W.13, on 29.03.2005, he was working as DSP, Salem District, Crime Branch. On the same day at about 11.00 am, he took up the case for further investigation and proceeded to cremation ground of Tharamangalam and prepared an observation mahazar and examined all witnesses and filed a final report under Sections 498A, 304b and 201 r/w 511 IPC.

21.Though P.W.2 has also supported the version of P.W.1, she indicated there was some quarrel between A1 and her daughter prior to the occurrence, due to which the deceased committed suicide in the house of A1.

22.P.W.3 and P.W.4 turned hostile and their evidence is not useful for the case. P.W.5 is VAO. P.W.6 is relative of P.W.1 and in his evidence, he indicated that he removed the body from the fire, however, he did not disclose the reason for the death of the deceased. Admittedly, prior to her suicide, the deceased was residing in matrimonial home along with A1 and A2 is residing separately in some other place. P.W.1 and P.W.2 never whispered anything about the alleged quarrel or abuse made by the accused, soon before the death of the deceased.

23.It is relevant to note that P.W.1 and P.W.2, in their evidence clearly deposed that their daughter was subjected to cruelty. Particularly, A1 and A2 attacked with wooden stick and lock thereby, the deceased sustained grievous injuries on her forehead and face. The Doctor who conducted postmortem, issued postmortem certificate which did not reveal the external injuries on the body of the deceased, as alleged by P.W.1 and P.W.2.

24.When that being the position, the investigating officer rightly filed an alteration report before the trial Court. However, on perusal of the entire evidence, there was a quarrel between the deceased and A1. Even assuming the deceased was abused by A1 and A2, the same would not amount to incitement or abetment to force a person to commit suicide.

25. The very similar issue was dealt with by the Hon'ble Apex Court in the decision reported in (2017) 1 SCC 101 (Baijnath and others Vs. State of Madhya Pradesh), in which, it was held as follows:-

'24. The evidence on record and the competing arguments have received our required attention. As the prosecution is on the charge of the offences envisaged in Sections 304-B and 498-A of the Code, the provisions for reference are extracted 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.

Explanation.-For the purpose of this subsection, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(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.

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.

Explanation.-For the purposes of this section, "cruelty" means-

(a) any wilful 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."

25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the

ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

(i) any wilful 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 of health (whether mental or physical), or

(ii) 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.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

28. Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:

"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 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 304-B of the Indian Penal Code (45 of 1860).''

26.Further in the decision of the Hon'ble Apex Court reported in (2011) 11 SCC 517 (Shindo Alias Sawinder Kaur and Another Vs. State of Punjab) it is held as follows:-

"9.We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly, in a case of dowry death under Section 304-B, a presumption of Section 113-B, Evidence Act, does not arise against the accused. However, the presumption is relatable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredients that any demand for dowry had been made soon before the death has not been proved. In this view of the matter the presumption under Section 113-B of the Evidence Act cannot be raised."

27.Further in the decision of the Hon'ble Apex Court reported in (2013) 4 SCC 131 (Bakshish Ram and Another Vs. State of Punjab) it is held as follows:-

"20.Another relevant aspect to be noted is that it was Appellant 1, husband of the deceased who took the deceased to the hospital and it was he who informed the police as well as parents of the deceased. It is also brought to our notice that he did not make any attempt to run away from the place of occurrence."

28.In any event, the charges framed against the accused have not been established and a mere quarrel between the deceased, A1 and A2 for some issue much prior to the suicide cannot be brought under the ambit of cruelty to convict the person and the prosecution miserably failed to establish that the deceased was subjected to cruelty soon before the death. Thus, I am of the view that the prosecution has not established the guilt of the accused beyond all reasonable doubt, hence, the judgment of the trial Court needs interference and the same is liable to be set aside.

29.In the result, the criminal appeal is allowed. The conviction and sentence as against the appellants/A1 and A2 in the judgment dated 30.03.2010 in S.C.No.140 of 2009 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 and 304b of 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 III)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Sessions Judge, Mahila Court,
Salem.

2.The Judicial Magistrate,
Omalur.

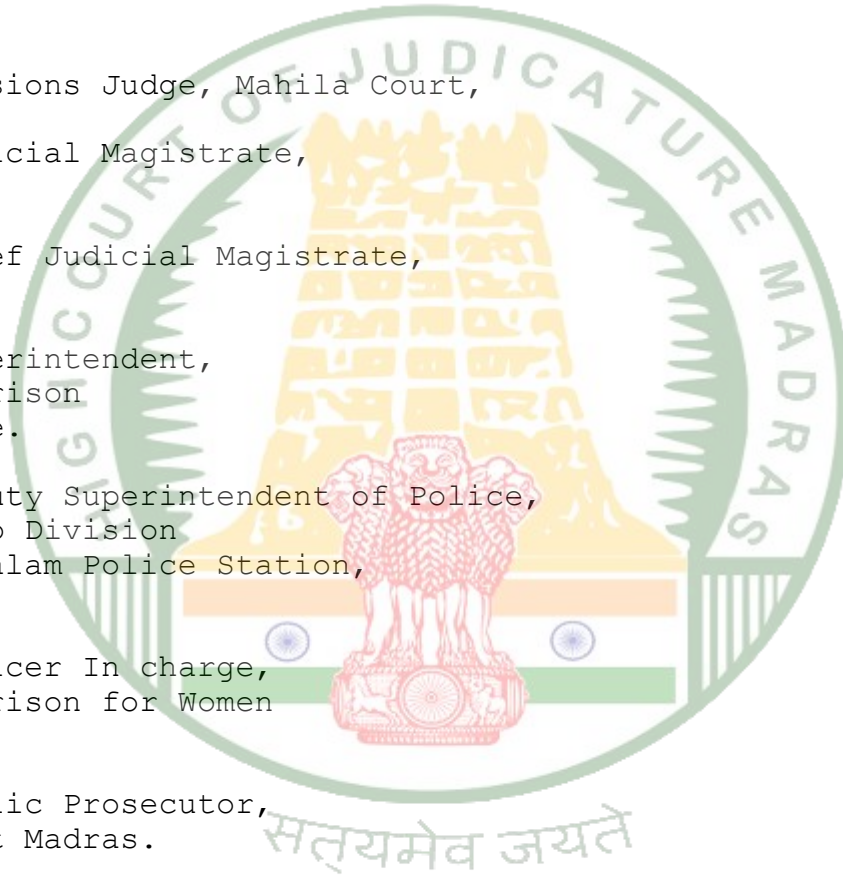
3.The Chief Judicial Magistrate,
Salem.

4.The Superintendent,
Central Prison
Coimbatore.

5.The Deputy Superintendent of Police,
Omalur Sub Division
Tharamangalam Police Station,
Salem.

6.The Officer In charge,
Special Prison for Women
Vellore.

7.The Public Prosecutor,
High Court Madras.



CrI.A.No.230 of 2010

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