

Bail Slip

The Appellants/Accused viz 1.Carter S/o.Shanmugham
2.Shanmugham S/o.Munusamy were directed to be released on bail
as per order dated 10/06/2010 in CrI MP No.1/2010 in
Cr.A288/2010 on the file of the this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.288 of 2010

1.Carter

2.Shanmugham ... Appellants/Accused 1 & 2

-Vs-

State represented by,
Deputy Superintendent of Police,
Madhavaram Milkcolony Police Station,
Crime No.226 of 2004. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Code of
Criminal Procedure, to accept the above appeal and set aside
the conviction and sentence passed by the learned Assistant
Sessions Judge, Ponneri against the accused/appellant by her
judgment dated 18.12.2009 under Sections 498(A), 306, 304B IPC
in S.C.No.165 of 2005 and acquit the accused/appellant.

For Appellants : M/s.M.G.Udayashankar for
M/s.Edinbrough

For Respondent : Mr.M.Prabhavathy
Additional Public Prosecutor

JUDGMENT

This appeal arises out of the conviction and sentence
imposed by the learned Additional Sessions Judge, Ponneri in
S.C.No.165 of 2005, dated 18.12.2009, the appellants were
tried for the offence punishable under Sections 498(A), 306
and 304B of IPC. The learned trial Judge has convicted the
appellants for offence under Section 498(A) of IPC and
sentenced them to undergo three years rigorous imprisonment
and to pay a fine of Rs.3,000/- each in default to undergo two
months rigorous imprisonment, for offence under Section 306 of
IPC sentenced them to undergo nine years rigorous imprisonment
and to pay a fine of Rs.5,000/- each in default to undergo

one years rigorous imprisonment and for the offence under Section 304B of IPC sentenced them to undergo nine years rigorous imprisonment and to pay a fine of Rs.5,000/- each in default to undergo one year rigorous imprisonment. The above sentences were ordered to run concurrently.

2.The case of the prosecution is that the 1st appellant is the son of the 2nd appellant. The marriage between the deceased and the 1st appellant had taken place on 11.06.2004. After the marriage, they were residing at Aziz Nagar, Mathavaram. The 2nd appellant was also residing with them. On 26.09.2004, the appellants had demanded dowry of Rs.30,000/- (Rupees thirty thousand only) from the deceased to be got from her parents. Unable to bear this, on 26.09.2004 the deceased poured kerosene on herself and committed self-immolation and died. Between the period of marriage from 11.06.2004 to 26.09.2004, the deceased was subjected to cruelty and harassment by the accused by demanding dowry often. Initially a demand of Rs.50,000/- (Rupees fifty thousand only) was yielded by PW1/father of the deceased and thereafter, the second demand of Rs.30,000/- could not be met by him immediately. This led to continuous harassment of the deceased by the accused and thereby pushed her to commit suicide by self-immolation. On the complaint [Ex.P1] of PW1, PW13 registered a case in Crime No.226 of 2004 [Ex.P10] for the offence under Sections 498(A), 304B and 306 of IPC. On completion of the investigation, charge sheet was filed and committed and tried in S.C.No.165 of 2005 by the learned Additional Sessions Judge, Ponneri.

3.Before the trial Court, prosecution has examined 15 witnesses and marked 13 exhibits.

3.1.PW1 the father of the deceased lodged complaint [Ex.P1]. According to PW1, the marriage between the 1st appellant and the deceased took place on 11.06.2004. He further stated that he and his family belonged to Hindu religion and the appellants are Christians. Since the deceased was in love with the 1st appellant, PW1 accepted and conducted their marriage. During the marriage, he gave 20 sovereigns of jewels and household articles as Sridhana. After the marriage, they resided in Moolakadai and thereafter shifted to Aziz Nagar, Madhavaram near PW1's house. He further stated that the marriage between the 1st appellant and the deceased was not his choice. Further, he deposed that the deceased complained about the continuous harassment and dowry demand of the appellants. Initially, PW1 has given Rs.50,000/- as dowry and thereafter within a short period another Rs.30,000/- was demanded which could not be paid by him, aggravated ill-treatment against his daughter and finally she committed suicide by self-immolation.

3.2.PW2 is the mother of the deceased. Her evidence is in conformity with the evidence of PW1. Further, she reiterated the dowry demand made by the appellants. On the fateful day, the deceased had come to her house crying and she stated the demand of dowry consistently made by the appellants and she was ill-treated by them. She stayed with PW2 for sometime and left to her house. Within two hours, she was informed by PW5, the house owner of the deceased, about her daughter's self-immolation. Immediately, PW1 to PW3 rushed to the house of the deceased and saw the 1st appellant standing there. The deceased was taken to Hospital where she was declared dead.

3.3.PW3, the son of PW1 and PW2 and brother of the deceased has stated about the marriage of his sister, constant demand of dowry made by the appellants and the death of the deceased by self-immolation.

3.4.PW4 is the wife of PW3 and her evidence is that of PW3. PW5 and PW6 are the house owners of the deceased. They heard the cry of the deceased, rushed to her house and found she was on fire and attempted to drowse it. Further, they have also spoken about the presence of the 1st appellant in the scene of occurrence. PW5 and PW6 are the witnesses for the Observation Mahazar [Ex.P2] and Seizure Mahazar [Ex.P3] for articles found in the scene of occurrence.

3.5.PW7 and PW8 are witnesses for arrest and confessions [Ex.P6 and Ex.P7] of the appellants. Ex.P4 and Ex.P5 are the signatures of PW7 found in the admitted portion of confessions [Ex.P6 and Ex.P7] of the appellants.

3.6.PW9 is the Tahsildar, who conducted inquest on the body of the deceased. PW10 the Postmortem Doctor conducted Autopsy on the body of the deceased and issued the Postmortem Certificate [Ex.P8]. PW11 is the son-in-law of PW5 and PW6, who on hearing the cry of the deceased, rushed to the scene of occurrence.

3.7.PW12/RDO conducted enquiry and marked his report Ex.P9. According to Ex.P9, the death occurred due to demand of dowry. PW13, the Sub-Inspector of Police on receipt of the complaint [Ex.P1] from PW1, registered F.I.R [Ex.P10] in Crime No.266 of 2004 for the offence under Sections 498(A), 304B and 306 of IPC.

3.8.PW15, the Deputy Superintendent of Police took up investigation, visited the scene of occurrence, prepared Observation Mahazar [Ex.P11], Rough Sketch [Ex.P12] and the Mahazar [Ex.P13], examined the witnesses present in the scene of crime. Since the death had occurred within 7 ½ years of the marriage, PW15 made a request to RDO for inquest and enquiry and forwarded F.I.R and other materials. On receipt of RDO report [Ex.P9], Postmortem certificate [Ex.P8] and other reports, PW14 conducted further investigation on

transfer of PW15, arrested the accused on 13.09.2004, filed the charge sheet on 09.12.2004.

4. On the side of the defence, two witnesses were examined and marked Ex.D1 to Ex.D4.

4.1. DW1 is a preacher of the local area Church. He has stated that the deceased has taken baptism confirmation as per Christian faith and the 1st appellant used to help DW1 during religious preaching. He further stated that the 1st appellant and the deceased were living happily and there was no demand of dowry.

4.2. The 1st appellant examined himself as DW2, the marriage certificate [Ex.D1], letter of the deceased to the 1st appellant, Accident Register [Ex.D3] and diary maintained by the deceased [Ex.D4] have been marked. According to DW2/1st appellant, he and deceased/wife were living happily and no demand of dowry was made. In order to prove the same, he marked Ex.D1 to Ex.D4, he attempted to save the deceased when she was on fire and thereby he sustained burn injuries, as could be seen from the Accident Register [Ex.D3].

5. The appellants were charged for the offence under Sections 498(A), 306 and 304B of IPC. On questioning under Section 313 Cr.P.C., appellants denied the charges. On appreciation of evidence, oral and documentary, the trial Court by Judgment dated 18.12.2009 in S.C.No.165 of 2005 convicted the appellants. Against which the present appeal.

6. Heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the respondent.

7. M/s. M.G. Udayashankar appearing on behalf of M/s. Edinbrough, learned counsel for the appellant would submit that the marriage between the 1st appellant and the deceased was held on 11.06.2004, which was a love marriage and hence the question of demand of dowry does not arise. Infact, the deceased had voluntarily adopted to Christianity faith and regularly attended the church. The 1st appellant never demanded any dowry and jewels. The articles presented during the marriage are Sridhana, which was admitted by PW1 and PW2. The deceased following Hindu religion got married with the 1st appellant by converting herself into Christianity, was not liked by her family members and she was not been treated properly by them after her marriage and conversion. This caused psychological effect on her and she was in a state of morse. Added to it on the fateful day at the request of her mother/PW2, she went to her parents house to help her in shifting to a new house. The deceased left her parents house to serve dinner to the appellants. For this, the deceased parents scolded the deceased very badly, which triggered her to commit self-immolation. Only two hours prior to the occurrence, she came from her parents house. At that time,

the 1st appellant had gone to attend nature's call, the deceased had set fire on her own and the 1st appellant attempted to save her. Hence, the reason for her death is due to the attitude of her parents and not for any dowry demand.

8.The learned counsel for the appellants would further submit that PW1 to PW4 are the family members of the deceased and they were unhappy since the deceased married the 1st appellant. Hence, the question of the 1st appellant's demand of dowry is the cause of her self-immolation is false. From 11.06.2004, they were residing separately and shifted their residence from Moolakadai to Mathavaram near the house of her families/PW1 to PW4. From 11.09.2004 to 26.09.2004, there was no dowry demand, harassment. Therefore, the reason and cause of death attributed against the appellants is false and motivated one.

9.PW4 and PW5 are the house owners and PW11 is the neighbour of the deceased. They have not spoken about any dowry demand or harassment made by the appellants. PW9 the Tahsildar conducted inquest on the deceased. His report as well as the statement of records have not been produced in this case. Further, the 1st appellant sustained burn injuries, while he attempted to save the deceased, which is an admitted fact. The appellants had probablized that there was no dowry demand and the relationship between the 1st appellant and the deceased was cordial. The attempt of saving the deceased by the 1st appellant and sustaining burn injuries would prove his conduct. The investigation has not been carried out independently. With a pre-conceived notion, the case has been worn around the appellants. Hence, he prayed for acquittal from all the charges against them.

10.Per contra, the learned Additional Public Prosecutor would submit that the prosecution in this case has proved the charges against the appellants by examining PW1 to PW15 and marking Ex.P1 to Ex.P13. PW1 to PW4 are the family members of the deceased. In a case of offence under Section 304B of IPC, the family members would be the right person to speak about the dowry demand and the harassment caused to her. The evidence of PW1 and PW2 are cogent and in conformity to each other as regards dowry demand. Both witnesses have clearly stated about the initial dowry demand of Rs.50,000/- and thereafter within a short period another demand of Rs.30,000/-. On the fateful day just few hours before the self-immolation, the deceased had visited her parents. According to PW2, she was in a sober mood and cried about persistent demand and harassment and suffering at the hands of the 1st appellant and that is the reason for the deceased to take extreme step of self-immolation and for her death. All the witnesses in the case have supported the prosecution case.

11.The learned Additional Public Prosecutor would further submit that PW9/Tahsildar conducted inquest on the body of the deceased and PW12/RDO conducted enquiry and marked his report

Ex.P9 with a finding that the appellants have made dowry demand. PW10, the Postmortem Doctor has spoken about burn injuries sustained by the deceased and the cause of death is due to burn injuries. PW13, the Inspector of Police, who registered the complaint [Ex.P1] immediately forwarded the same to the Revenue officials. PW14 and PW15 have conducted the investigation and filed the charge sheet in this case.

12.The trial Court on proper appreciation of evidences and materials produced by both sides, had come to a finding that the prosecution had proved the charges and the evidence of defence witnesses are incomplete and improbable. DW1 admitted that the 1st appellant assisted him in religious works and he is an interested witness to the appellants. The 1st appellant examined himself as DW2. His evidence does not inspire confidence for the simple reason that Ex.D1 is dated 07.06.2004 before the marriage conducted by the parents. Ex.D2 is the letter, Ex.D4 is the diary, which are written by the deceased prior to the marriage. Only after the marriage, the harassment has been caused to the deceased. It could be seen from Ex.D3 that 14 percent of burn injuries has been sustained by the 1st appellant.

13.Hence, the trial Court has rightly convicted the appellants. The trial Court findings needs no interference and the appeal to be dismissed.

14.This Court considered the submissions made by either side perused the available materials and records.

15.PW1 and PW2 are the parents of the deceased, who stated about the dowry demand made by the 1st appellant. PW3 and PW4 are the brother and sister-in-law of the deceased who corroborated the same. PW5, PW6 and PW11 seen the deceased on fire and also attempted to drowse it. Further, PW5 and PW11 have also spoken about the presence of the 1st appellant in the scene of occurrence. PW10, Postmortem Doctor has proved the fact that the deceased died due to burn injuries. PW9 and PW12, the Revenue officials conducted inquest and enquiry and further the enquiry report of PW12 has been marked as Ex.P9. On receipt of the complaint [Ex.P1] from PW1, PW13, registered F.I.R [Ex.P10] in Crime No.226 of 2004, immediately forwarded the same to revenue and higher officials. PW14 and PW15 are the investigating officers in this case. One thing is certain that the deceased died within three months of her marriage, which is a love marriage and it is an admitted fact that the death has occurred by self-immolation.

16.It is admitted by PW1, PW2, PW5 and PW6 that from 11.09.2004 the 1st appellant and the deceased were living separately. There is no evidence to show that the 2nd appellant had any contact with the deceased soon before the death and was present in the scene of occurrence. Further,

PW9/Tahsildar has conducted an inquest on the body of the deceased, strangely there is no statement of witness in Ex.P9 report marked through PW12/RDO, though there is a finding that there was dowry demand without supporting materials. Ex.P9 is based on the inquest forwarded by the Tahsildar/PW9, Egmore-Nungambakkam Taluk, Chennai. The contention of the learned counsel for the appellants that there is no reason given on what basis such finding has been arrived. It is found that Ex.P9 is not prepared by PW9, Ex.P9 was not marked through him and it was marked through PW12. The enquiry report [Ex.P9] of PW12 is based on the report of Tahsildar-Nungambakkam Taluk, Chennai. The signature of the Tahsildar, Egmore-Nungambakkam Taluk, Chennai in Ex.P9/enquiry report varies from the signature found in deposition of PW9. Hence, PW9 is not a person, who conducted inquest and forwarded the report to PW12 cast cloud on the report.

17.Further, the evidence of PW9 cannot be acted upon that PW9's evidence has been stopped in between at the request of the Public Prosecutor in the lower Court and his evidence is completed and no opportunity was given to test his evidence by cross-examination of the defense. Hence, the evidence of PW9 is of no use. The enquiry report/Ex.P9 cannot be acted upon in the absence of non-examination of Tahsildar, Egmore-Nungambakkam Taluk, Chennai, who conducted inquest and recorded statements and forwarded to PW12. Ex.P9 is without supporting materials.

18.In view of the irregularities and infirmities found in the enquiry report/Ex.P9, the appellants/A1 & A2 cannot be held guilty for dowry death under Section 304B IPC. Hence, both appellants are acquitted from the charge of 304B IPC.

19.As regards the appellants' conviction and sentence under Section 498(A) of IPC, the lower Court convicted them for two years rigorous imprisonment, this Court confirms the conviction and sentence of 1st appellant/A1 and acquits the 2nd appellant/A2 by setting aside his conviction.

20.As far as the 2nd appellant is concerned, it is admitted that he was living separately and had no contact with them soon before the death of the deceased and was not present in the scene of occurrence. Hence, he is acquitted from the offence of abetment to commit suicide and his conviction under Section 306 of IPC is set-aside.

21.As regard the 1st appellant, it is admitted that the 1st appellant and the deceased were living together after the marriage. From 11.09.2004 to 26.09.2004, they were living separately and the death had taken place in the matrimonial house. The explanation given by the 1st appellant that he was attending the nature call is not acceptable. PW5, PW6 as well as PW11 confirms the presence of the 1st appellant in the scene of occurrence. From the Accident Report [Ex.D3], it is

seen that the burn injuries is only 14 percent which is on both ear lobe, nose and lips. Thus, the explanation that he attempted to save the deceased and sustained injuries is not acceptable.

22.The death of the deceased has occurred inside the house of 1st appellant and on the materials, this court finds that the 1st appellant abetted and he is the reason the self-immolation of the deceased. Hence, the 1st appellant is liable to be punished under Section 306 of IPC and the conviction of the trial Court is confirmed and the sentence of nine years is modified to five years.

23.With the above said modifications and observations, this Criminal Appeal is Partly-Allowed. The Court below is directed to take appropriate steps to secure the 1st appellant to undergo his remaining period of sentence, if he is outside.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Assistant Sessions Judge,
Ponneri.
2. The Judicial Magistrate, Thruivottiyur
3. The Chief Judicial Magistrate, Chengalpattu
- 4.The Deputy Superintendent of Police,
Madhavaram Milkcolony
Police Station.
5. The Superintendent, Central Prison,
Puzhal, Chennai-66
- 6.The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section,
High Court, Madras

+2cc to Mr.A.Edinbrough, Advocate SR.No.82581

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KK (CO)

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GM (22/11/2019)