

Bail Slip

The Appellant herein/Accused, namely S.Settu S/o.Saravanan, aged 24 years was directed to be released on bail vide order dated 02/06/2010, made in MP.No.1 of 2010 in CrI.A.No.328 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No. 328 of 2010

S.Settu

... Appellant

Vs.

State Deputy Superintendent of Police
Vazhapadi Sub Division, Vazhapadi Police Station
Salem District.

... Respondent

PRAYER: This Criminal Appeal is filed, under Section 374(2) of the Criminal Procedure Code, against the Judgment of conviction and sentence, dated 10.05.2010, made in SC.No.333 of 2008, by the Sessions Judge, Mahila Court, Salem.

For Appellant : Mr.Hariharan for Mr.P.Palaninathan

For Respondent : Mr.K.Prabakar, APP

JUDGMENT

This appeal has been filed, against the Judgment of conviction and sentence, dated 10.05.2010, made in SC.No.333 of 2008, by the Sessions Judge, Mahila Court, Salem, wherein the Trial Court, found the appellant/accused guilty for the offences under Sections 498A and 304B of IPC and convicted him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 3 months Rigorous Imprisonment under Section 498A of IPC and 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 3 months Rigorous Imprisonment under Section 304B of IPC and ordered the sentences to run concurrently.

2. On the basis of the complaint, Ex.P1, given by PW.1, who is the father of the deceased, Amudha, the Appellant/

accused was charge sheeted for the offences under Sections 498A and 304B of IPC and 4 of the Dowry Prohibition Act, alleging that the marriage between the Appellant/ accused and the deceased had taken place on 28.6.2007 and that at the time of marriage, the Appellant/ accused had demanded and accepted two and half sovereigns of gold jewels and further, demanded Rs.10,000/- to purchase a vehicle, as dowry and that the Appellant/ accused had pledged the jewels and misappropriated the amount and that the accused had demanded more money as dowry from the deceased and that due to the harassment meted out to her and due to the abetment by the Appellant/ accused, the deceased committed suicide by hanging at the house of the accused on 14.10.2007 between 6.00 a.m. to 2.00 p.m. and that the death of the deceased caused otherwise than under normal circumstances within seven years of her marriage and that soon before her death, the deceased was subjected to cruelty and harassment in connection with demand of dowry.

3. The case was taken on file in SC.No.333 of 2008, by the 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.11 and also marked Exs.P1 to P12 and Mos.1 and 2.

4. PW.1, 2 and 3 respectively are father, mother and brother of the deceased; PW.4, is the mahazar witness; PW.5, is the brother-in-law of P.W.1; PW.6, is the Doctor, who conducted post mortem; PW.7, is the Head Constable of Vazhappadi Police Station, who received the complaint from the P.W.1; PW.8, is the Sub-Inspector of Police, who conducted investigation; PW.9, is the RDO; PW.10, is the Assistant Director in Forensic Department; PW.11, is the Additional Superintendent of Police, who conducted further investigation.

5. Ex.P1, dated 15.10.2007 is the complaint, Ex.P2, dated 15.10.2007 is the Observation Mahazar, Ex.P3 dated 15.10.2007 is the Seizer Mahazar, Ex.P4 dated 15.10.2007 is the requisition to conduct post mortem, Ex.P5 dated 15.10.2007 is the post mortem certificate, Ex.P6 dated 23.11.2007 is the chemical examination report with final opinion of P.W.6, Ex.P7 dated 15.10.2007 is the First Information Report, Ex.P8 dated 15.10.2007 is the Inquest report, Ex.P9 dated 15.10.2007 is the RDO's report, Ex.P10 dated 23.11.2007 is the Chemical examination report, Ex.P11 dated 15.10.2007 is the Rough Sketch, Ex.P12 dated 17.10.2007 is the Section alteration report.

6. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.

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 punishments, 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 Prosecution has miserably failed to prove the guilt of the Appellant/ accused, for the offences under Sections 498A and 304B of IPC, by letting in cogent and convincing evidence, both oral and documentary and in other words, the essential ingredients of Sections 498A and 304B of IPC have not been made out to warrant conviction on the Appellant/ accused.

b. PW.1 to PW.3, who are the father, mother and sister of the deceased, are interested witnesses. No independent witness was examined in order to prove the guilt of the Appellant/ accused.

c. Though the Appellant/ accused was rightly acquitted from the offence under Section 4 of the Dowry Prohibition Act, which provides penalty for dowry demand, the Trial Court erred in convicting the Appellant/ accused under Sections 304B and 498A of IPC on the same set of facts.

d. The alleged demand of dowry has not been established, inasmuch as there is no such allegation in the complaint, Ex.P1 given by PW.1 and except the ligature mark caused by hanging, there was no other injuries on the body of the deceased to prove that the Appellant/ accused harassed the deceased, by demanding dowry. There is not even an iota of evidence both oral and documentary to show the demand of dowry by the Appellant/ accused and harassment or cruelty meted out to the deceased by the Appellant/ accused.

e. Though the occurrence was said to have taken place on 14.10.2007, between 6.00 a.m. to 2.00 p.m., the complaint was given only on 15.10.2007. The said delay was also not explained satisfactorily by the Prosecution.

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 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 reported in 2013 3 SCC 684 (Vipin Jaiswal Vs. State of AP), judgement of the Honourable Supreme Court dated 9.3.2015, made Crl.A.No.1145 of 2012 (Major Singh Vs. State of Punjab) and the judgement of this Court, dated 2.3.2012, made in Crl.A.No.619 of 2003 (Pandiarajan and others Vs. State).

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 the death of the deceased had occurred within four months of her marriage and the deceased committed suicide due to the demand of Rs.10,000/- for purchasing a vehicle, which is evident from the evidence of PW.9, Revenue Divisional Officer and that even though the PW.1 to PW.3 are father, mother and brother of the deceased, their evidence is consistent and credible and amply established that the deceased was subjected to harassment and cruelty in connection with the demand of dowry and on their evidence, the Trial Court rightly convicted and sentenced the Appellants under Section 498A and 304B of IPC and hence, 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 thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction, including relevant provisions of Law.

13. What is to be seen is as to whether the Prosecution has proved its case beyond all reasonable doubts, by cogent evidence and satisfied the essential ingredients of 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 the facts, then the entire testimony can 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 was said to have taken place on

14.10.2007, between 6.00 a.m. to 2.00 p.m., the complaint was given only on 15.10.2007, 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 not in dispute. It is to be seen that whether the death of the deceased occurring within seven years of marriage is due to cruelty or harassment or in connection with demand of dowry and whether there is reasonable nexus between the alleged harassment and death.

17. 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.

18. 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.

19. 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.

20. On a careful scrutiny of the evidence, both oral and documentary, it is seen that in Ex.P1, the complaint given by PW.1, who is the father of the deceased, the allegation was only regarding missing of a gold jewel, which was given at the time of marriage and PW.1 has also admitted the same in his cross-examination. Further, PW.1 has not spoken anything about the demand of dowry having made by the appellant/accused to the deceased. Further, nothing has been spoken about any kind of harassment meted out to the deceased on account of demand of

money and no specific date has been mentioned either in the evidence or in Ex.P1, complaint.

21. It has also come out in evidence, particularly, the evidence of PW.1, that the deceased had come to his house, three months prior to the occurrence and there she had taken food and also taken food for her mother-in-law. This conduct would show that there was no kind of harassment meted out to her. Like wise, PW.2, who is the mother of the deceased has also not stated anything about the demand of dowry or any money. She had stated that her daughter was living happily and thereafter, she felt sad and that she came to know that her daughter died. Further, nothing had been stated, as if any demand of dowry has been made and that the appellant/accused committed cruelty on her.

22. P.W.3, who is the younger brother of the deceased, is only a hearsay witness and he has not spoken anything about the demand of dowry. P.W.5, who is none other than the brother of PW.2 and the maternal uncle of the deceased has also not spoken anything, as if there was any demand of dowry.

23. Further, no independent witnesses have been examined on the side of the Prosecution to prove that the deceased had committed suicide, due to demand of dowry, soon before the death or that she had committed suicide, since her husband scolded her. This Court finds no evidence to establish the essential ingredients of Sections 498A and 304B of IPC.

24. PW.9, Revenue Divisional Officer, has also admitted in his evidence that the Appellant had asked Rs.10,000/- for purchase of a vehicle and at that time, he told the Appellant/accused that he could not give that money and later the Appellant purchased the vehicle. But, he did not know as to how the Appellant purchased the vehicle.

25. The Trial Court has acquitted the Appellant/accused under Section 4 of the Dowry Prohibition Act, which provides for penalty for demanding dowry. When the Appellant/accused was discharged from the offence under Section 4 of the Dowry Prohibition Act, on same set of facts, convicting the Appellant/accused under Sections 498A and 304B of IPC is not proper.

26. It is also seen from the inquest report, Ex.P8 that the allegation of missing of gold chain cannot be sustained, since the Appellant himself admitted that later he pledged his wife's jewel and purchased the vehicle and consequently, the report, Ex.P9 of the Revenue Divisional Officer cannot also be accepted.

27. Further, except the evidence of PW.1 to PW.3, who are the father, mother and brother 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.

28. The above reasoning would go to that the allegation of harassment and demand of dowry made by the Appellant/ accused is nothing but a story created at a later stage by the Prosecution, not supported by cogent evidence.

29. In the case on hand, while scrutinizing the evidence, both oral and documentary, as has been discussed above, it came to light that there is no evidence let in by the Prosecution to prove that the appellant/ accused has committed dowry death of the deceased and the deceased was subjected to cruelty or harassment by the appellant/ accused or his relatives and that such cruelty or harassment was for or in connection with any demand for dowry and such cruelty or harassment was soon before her death.

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 Sections 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] .

32. 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.

33. 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.

34. 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 of 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."

35. In 2017 1 SCC 101 (Bajinath and Others V. State of Madhya Pradesh) , 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.

36. In 2013 3 SCC 684 (Vipin Jaiswal Vs. State of AP) relied on by the learned counsel for the appellant, the Hon'ble Supreme Court has laid that the Prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused and that the onus was on the Prosecution to prove beyond reasonable doubt the ingredients of Sections 498A and 304B of IPC and that since the Prosecution was not able to prove the same, set aside the impugned judgement

of conviction and sentence.

37. In the case on hand, 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 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.

38. 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.

39. 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(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate NO.6,
Salem.

2.do thro
The Chief Judicial Magistrate,
Salem.

3.The Sessions Judge,
Mahila Court, Salem.

4.The Superintendent,
Central Prison, Salem.

5.The Deputy Superintendent of Police
Vazhapadi Sub Division
Vazhapadi Police Station
Salem District.

6.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Palaninathan, Advocate sr.no.16002

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