

Bail Slip

The Petitioner/Accused namely Suresh, aged 28 Years S/O Mani was directed to be released on bail as per order of this Court dated 09/11/2010 in Crl.M.P.No.1 of 2010 in Crl.A.No.674 of 2010 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.674 of 2010

Suresh ... Appellant/Accused

Vs

State by Inspector of Police
Kandili Police Station,
Vellore.
Cr.No.83/08

... Respondent /Complainant

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 22.10.2010 made in SC.No.262 of 2008, by the Additional District and Sessions Judge, Fast Track Court, Tiruppathur, Vellore.

For Appellant : Mr.E.Kannadasan

For Respondent : Mr.K.Prabakar, APP

JUDGMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 22.10.2010 made in SC.No.262 of 2008, by the Additional District and Sessions Judge, Fast Track Court, Tiruppathur, Vellore, convicting and sentencing the Appellant/ accused for the offence under Section 498A of IPC to undergo two years Simple Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Rigorous Imprisonment and for the offence under Section 304B of IPC, to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo six months Rigorous Imprisonment and ordering the sentences to run concurrently.

2. The Appellant/ accused was charge sheeted for the offences under Section 4 of the Dowry Prohibition Act and Sections 498A and 304B of IPC, alleging that the marriage between the Appellant/ accused and the deceased Sangeetha took place before four years from the date of occurrence, and that before two months before the date of occurrence, the Appellant/ accused harassed the deceased, by demanding a sum of Rs.25,000/-, a cot and a bureau towards dowry and unable to tolerate the harassment meted out to her by the Appellant/ accused, the deceased died on 06.2.2008 at 8.00 p.m. by consuming poison.

3. The case was taken on file in SC.No.262 of 2008, by the Additional District and Sessions Judge, Fast Track Court, Tiruppathur, Vellore 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.10 and also marked Exs.P1 to P15 and MO.1.

4. 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 prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.

5. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, while acquitting the Appellant/ accused for the offence under Section 4 of the Dowry Prohibition Act, found the accused/appellant guilty for the offences under Sections 498A and 304B of IPC and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

6. This court heard the submissions of the learned counsel on either side. सत्यमेव जयते

7. The learned counsel for the Appellant/ accused would submit that the ingredients for the offence under Section 304B of IPC have not been proved beyond all reasonable doubts and that even according to the Prosecution, it is the evidence of PW.3, during the enquiry done by the Executive Magistrate that the victim committed suicide by consuming poison, suspecting that the Appellant was having illicit intimacy with his sister in law and that the victim was not having consummation for several years of marriage and that she was also suffering from severe stomach ailment, which lead her to commit suicide and that the allegations against the Appellant

have not been proved beyond all reasonable doubts and the benefit of doubt is to be given to the Appellant/ accused.

8. The learned counsel for the Appellant/ accused would submit that it is the admitted statement of PW.1 in Ex.P1 that the Appellant and the deceased were living happily together and there is absolutely no material to show that soon before her death, the victim was subjected to cruelty and that in order to infer the presumption against the accused, it is imperative that there should be legal evidence to prove that soon before her death, the victim was subjected to such cruelty or harassment and that when the evidence, in respect of the Appellant having committed cruelty soon before her death, was lacking, the Trial Court erred in convicting the Appellant for the offence under Section 304B of IPC.

9. The learned Additional Public Prosecutor for the Respondent would vehemently oppose, stating that the Prosecution has proved its case beyond all reasonable doubts and that PW.1 to PW.4 have categorically stated that there was demand of dowry and that the victim was subjected to cruelty on account of demand of Rs.25,000/- and that the Appellant had also demanded a cot and a bureau and that as per Section 113B of the Indian Evidence Act, the Court shall presume that the Appellant had caused the dowry death and that a duty is cast upon the Appellant/ accused to rebut the presumption and no evidence has been let in by the Appellant/ accused as rebuttal, whereas the Prosecution has clearly proved that there was demand for dowry, by cogent evidence and that when the presumption against the Appellant has not been rebutted by the Appellant, the Trial Court has rightly convicted the Appellant/ accused and he would pray for dismissal of this Criminal Appeal.

10. 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 the relevant provisions of Law and authorities of various Courts.

11. On perusal of the impugned judgement of conviction and sentence, it is seen that the Trial Court has mainly relied on the evidence of PW.1 to PW.4 to base conviction for the offences under Sections 498A and 306 of IPC, by drawing presumption under Section 113B of the Indian Evidence Act. Now, the question to be decided is as to whether there are valid evidence to make out a case for the offences under Sections 498A and 304B of IPC.

12. According to the Prosecution, the deceased died on 6.2.2008 at 9.00 p.m, by consuming poison, due to the cruelty meted out to the deceased by the Appellant/ accused, by demanding dowry. The marriage took place between them four years before the date of occurrence. It was alleged that the Appellant/ accused demanded a sum of Rs.25,000/-, a cot and a bureau towards dowry and demanding so, the Appellant/ accused caused cruelty to the deceased. In such circumstances, the ingredients under Section 498A and 304B of IPC are attracted against the Appellant/ accused.

13. PW.1, PW.3 and PW.4 are the close relatives of the deceased. PW.5 is the Revenue Divisional Officer, who conducted inquest and prepared Ex.P7, inquest report. PW.6 is the Doctor, who treated the deceased. Ex.P7 is the post-mortem report.

14. At the outset, in its judgement, the Trial Court has given a finding that there was no contention raised by the Appellant with regard to the delay in lodging the complaint, Ex.P1, however, it has held that it was natural that since the occurrence had happened in the night hours, the complaint was given in the early morning and hence, it was held that delay is not fatal. Even assuming that there was a delay in lodging the First Information Report, the delay in such like matters cannot be fatal to the Prosecution and it has to be borne in mind that matters arising out of a matrimonial dispute are always extremely sensitive and it is, after serious consideration and debate amongst the victims' family, that the FIR is lodged, as has been held by the Honourable Supreme Court in its decision reported in 2010 15 SCC 363 (Rajkumar and others Vs. State of Punjab).

15. Now, considering the conviction under Section 304B of IPC, it is relevant to refer to Section 304B of IPC, which reads as follows:-

"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 sub-section,

'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."

It can be seen from the provisions of Section 304B of IPC that 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 (i) death is caused in unnatural circumstances, (ii) death must have occurred within seven years of the marriage of the deceased and (iii) soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with, any demand for dowry.

16. Firstly, the fact that the deceased had committed suicide, by consuming poisonous substance cannot be disputed, inasmuch as, as per the evidence of PW.7, Doctor, who conducted the post-mortem on the body of the deceased and Ex.P13, post-mortem report, the deceased died due to consuming poison. Thus, it is seen that the death of deceased was an unnatural death.

17. Secondly, PW.1, in his evidence in chief, has deposed that the marriage between the Appellant and the deceased took place two or four years before the date of occurrence. PW.4 has also deposed that the marriage between the Appellant and the deceased took place two or four years prior to the occurrence. Though there are different version regarding the date of marriage, when compared with the date of occurrence, it can be held that the death of the deceased had occurred within seven years of the marriage of the deceased.

18. Thirdly, the question is as whether the Prosecution has proved that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with, any demand for dowry, by cogent and clinching evidence.

19. PW.4, who is the uncle of the deceased, in his evidence, has deposed that at 4.00 p.m. on the date of occurrence, PW.4 contacted the appellant over phone and advised him not to torture the deceased, to which the appellant replied to contact the deceased only and that the deceased told to PW.4 that the appellant tortured her by beating her and demanding money, cot and bureau and PW.4 told her that he will come on the

next day and enquire the issue. It is, thus, clear from the evidence of PW.4 that soon before her death, the deceased was subjected to cruelty by the appellant, by demanding dowry.

20. The aforesaid evidence of PW.4 is also corroborated by the evidence of PW.1, who is also the uncle of the deceased. PW.1 has deposed that PW.2 and PW.3 had told that after their marriage, the appellant harassed the deceased by demanding a sum of Rs.25,000/-, a cot and a bureau. PW.5, the Revenue Divisional Officer, who conducted inquest, has also stated in his evidence that already the Deceased informed about the harassment meted out to her by the appellant to PW.4 and opined in the inquest report, Ex.P7 that the appellant harassed the deceased, by demanding Rs.25,000/-, a cot and a bureau and hence, the deceased committed suicide by consuming poison. Hence, it is clear that the appellant harassed the deceased by demanding dowry and subjected the deceased to cruelty soon before her death.

21. In this regard, now, it is to be analysed in the light of Section 113B of the Indian Evidence Act and as to whether, the appellant/ accused has rebutted the presumption under Section 113B of the Indian Evidence Act, by valid evidence. 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.

22. According to the appellant/accused, the deceased died due to other circumstances, particularly, due to the intolerable stomach pain, she committed suicide and without conducting proper investigation, the final report has been filed. However, this Court finds no valid evidence both oral and documentary let in by the appellant/ accused to show that the deceased died due to other circumstances. Hence, the presumption under Section 113B of the Indian Evidence Act, drawn by the Trial Court is rightly justified. In other words, the Appellant/ accused has failed to rebut the presumption under Section 113B of the Indian Evidence Act, by cogent and convincing evidence.

23. Though PW.1, PW3 and PW.4 are the close relatives of the deceased and interested witnesses, it is settled law that the related witness would not allow the real culprit to escape and implicate the person who is innocent. However, the evidence

has to be carefully analysed, as has been held in 2010 1 SCC Cr1. 676 (Vijayakumar Vs. State). In the case on hand, a detailed and careful analysis of the evidence is done as above.

24. Mere fact that PW.1, PW.3 and PW.4 are related witnesses will not falsify their evidence, since because it was not also established by the Appellant/accused that there was previous animosity between them and that due to the previous animosity, the appellant/accused was implicated falsely and the appellant has not even made an averment in this regard.

25. The next contention of the learned counsel for the Appellant/ accused is that the Prosecution has failed to prove that the appellant/ accused subjected the deceased to cruelty, by demanding dowry.

26. In this regard, there are ample evidence to the effect that there was demand of dowry by the appellant/ accused and the deceased was subjected to cruelty. PW.4 has deposed in his evidence that two hours prior to the occurrence, the deceased told about the cruelty meted out to her by the appellant/ accused.

27. To draw the presumption under Section 113B of the Indian Evidence Act that a person has committed the dowry death of a woman, there must be material to show that soon before the death of a woman, such a woman was subjected to cruelty or harassment for or in connection with demand of dowry. The Prosecution has let in evidence, as analysed above, to draw the presumption under Section 113B of the Indian Evidence Act as against the Appellant/ accused. To rebut such presumption, on the side of the defence, no evidence both oral and documentary was let in. Hence, it can be safely held that the Prosecution has proved its case beyond all reasonable doubts, by letting in valid evidence.

28. Now coming to the charges under Section 498A of IPC, 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 (i) a woman must be married, (ii) she must be subjected to cruelty and (iii) 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.

29. As discussed above, PW.1, PW.3 and PW.4, in their evidence, have cogently deposed that after their marriage, the deceased complained that the appellant/ accused was demanding Rs.25,000/-, a cot and bureau and harassing her by demanding so.

It is seen from the evidence that there was a constant harassment done to the deceased by the Appellant/ accused and it is also proved by the Prosecution that the deceased died by consuming poison, unable to tolerate the cruelty meted out to her by the Appellant/ accused. Hence, it can safely be held that the Appellant/ accused has committed the offence under Section 498A of IPC.

30. As discussed above, when it also appears from the statements of the above witnesses that the deceased was maltreated and the accused made demands for more dowry and for that he harassed the deceased, as has come in the prosecution evidence, in my opinion, the Trial Court has rightly appreciated the evidence in relation to Sections 304B of IPC and also under Section 498A of IPC. The impugned judgement of conviction and sentence passed against the accused being based on cogent reasons deserves to be upheld.

31. In the result, the criminal appeal is dismissed. The impugned judgement of conviction and sentence is confirmed. The bail granted to the Appellant/accused is cancelled. The Trial Court shall take necessary steps to secure the presence of the Appellant/ accused and commit him to prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To:

- सत्यमेव जयते
1. Additional District and Sessions Judge, Fast Track Court, Tiruppathur, Vellore District
 2. Inspector of Police, Kandili Police Station Thiruppathur, Vellore District.
 3. The Public Prosecutor, High Court, Madras.
 4. The Judicial Magistrate III, Thirupapathur.
 5. The Chief Judicial Magistrate, Vellore. (for Information)

6.The Superintendent, Central Prison, Vellore.

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

+1cc to Mr.E.Kannadasan, Advocate Sr.27158

Crl.A.No.674 of 2010

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srg 27/04/2019



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