

Bail Slip

The Appellants/Accused 2 to 4 viz 1.Gowri, W/O.Shanmugam, aged 55 years 2.Sampath, S/O Kuppuswamy, aged 55yrs 3.Chitra, W/O Pandian,aged 33yrs, were directed to be released on bail as per order dated:10/08/2011 made in CRL.MP.1/2011 in CRL.A.No.462 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.462 of 2011

1.Gowri
2.Sampath
3.Chitra

... Appellants/Accused:2 to 4

Vs

State rep. by,
The Inspector of Police,
Tiruttani Police station,
Thiruvallur District.
[Crime No. 57 of 2007]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction passed by the Additional District and Sessions Judge (FTC-III), Tiruvallur in SC.No.175 of 2009 dated 05.07.2011.

For Appellants : Mr.M.Erajasimhan
For Respondent : Mrs.P.Kritika Kamal, GA (Crl. Side)

J U D G M E N T

This Criminal Appeal has been preferred by the appellants/A2 to A4 against the judgment of conviction and sentence dated 05.07.2011 passed by the Additional District and Sessions Judge (FTC-III), Tiruvallur in SC.No.175 of 2009.

2.It is the case of the prosecution that Ammu @ Muniammal, wife of Mani (A1), committed suicide at 08.02.2006 by hanging, within seven years of her marriage and the death was on account of cruelty and harassment for dowry by Mani (A1) and his family members A2 to A4/appellants; on the complaint (Ex.P1) lodged by Rukkamal (PW1), mother of Ammu, Latha Maheswari (PW12), the Sub-

Inspector of Police, registered a case in Crime No. 57 of 2007 on 08.02.2007 under Section 174(3) Cr.P.C. and prepared the printed FIR (Ex.P5), which reached the jurisdictional Magistrate on 28.03.2007 at 03.10 p.m. and the investigation of the case was taken over by Senthilkumar (PW13), Deputy Superintendent of Police, who, went to the place of occurrence and prepared the Observation Mahazar (Ex.P6) and Rough Sketch (Ex.P7); since the death was within seven years of marriage, inquest was conducted by Jagadeesan (PW11), the Executive Magistrate, who, in his evidence and report (Ex.P4), has stated that the death of Ammu was not on account of dowry harassment; Dr.Prabhu Shankar (PW9), who conducted autopsy on the body of the deceased Ammu, in his evidence as well in the postmortem certificate (Ex.P3), has opined as, "the deceased would appear to have died of Asphyxia due to hanging"; the Investigating Officer recorded the statements of witnesses and filed final report in P.R.C.No.10 of 2007 before the Judicial Magistrate, Tiruttani for the offences under Section 304-B, 498-A and 306 IPC against Mani (A1), Gowri (A2), Sampath (A3) and Chitra (A4).

3.On the appearance of the appellants, they were furnished with the copies of the relied upon documents under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.175 of 2009 for trial. During the pendency of the case and before the charges were framed, Mani (A1) died and therefore, the charge against him abated. The Court of Session framed charges against the appellants under Sections 304-B, 498-A and 306 IPC. When the appellants were questioned, they pleaded 'not guilty'.

4.To prove the case, the prosecution examined 13 witnesses and marked 9 exhibits. When the appellants were questioned under Section 313 Cr.P.C about the incriminating circumstances appearing against them, they denied the same. No witnesses was examined nor any document marked on the side of the appellants.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 05.07.2011 in S.C.No.175 of 2009, has convicted and sentenced the appellants as follows.

Provision under which convicted	Sentence
Section 304-B IPC	10 years rigorous imprisonment each and to pay fine of Rs.10,000/- each, in default to undergo rigorous imprisonment each

Since substantive sentence was slapped for the offence under Section 304-B IPC, no separate sentence was slapped under

Section 498-A IPC. As regards the charge under Section 306 IPC, the trial Court has given following finding:

"Charge under Section 306 IPC is therefore redundant." Challenging the conviction and sentence, A2 to A4 have filed the present appeal.

6. Heard Mr.P.Ezhil Nilavan, learned counsel for the appellants and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the State.

7. Rukkammal (PW1), in her examination in-chief, has stated that Mani (A1) was married to one Vijaya (not examined) and had two children through her; he got estranged from his wife and therefore, he got married to Ammu, since he wanted someone to take care of his two children born through his first wife; the marriage of Ammu with Mani was performed four years prior to the incident; at the time of marriage, Ammu was given five sovereigns of gold chain, a necklace of two sovereigns, 1 sovereign of earrings and 3/4 sovereign of earrings, silver anklets, three sovereigns of thali chain, cot, bureau and other household articles; after marriage, Ammu was living in the joint family with Mani happily for about two months; while so, Mani's first wife returned home, on account of which, Mani started ill treating Ammu; Ammu's parents in-law and sister in-law also ill treated her; Mani established a separate home for Ammu, after his first wife returned home; Ammu conceived; since the appellants harassed her, she committed suicide by hanging; this information was conveyed by Settu (PW2) to her; she (PW1) lodged the complaint (Ex.P1). It is pertinent to note that nowhere in the chief-examination, Rukkammal (PW1) has stated that the appellants had demanded dowry and had harassed Ammu.

8. Similarly, Settu (PW2), in his examination-in-chief, has stated that the deceased (Ammu) is his sister; she was already married to a person and got estranged from him; similarly, Mani was also a married man, but, had got separated from his wife; Mani married Ammu and lived in the joint family for about two months; Mani's first wife returned home and so, Mani took a separate house to live with Ammu; while they were living separately, Mani and his family members treated Ammu cruelly; dowry was also demanded; Mani did not provide food for Ammu; unable to withstand that, she committed suicide by hanging. Settu (PW2) has not stated a word as to what was demanded as dowry. Except saying generally that they demanded dowry, he has not stated who demanded dowry and what was demanded.

9. Lakshmi (PW3) has stated in her examination-in-chief that, the deceased was her sister-in-law; she married Mani, after Mani

got separated from his first wife; Ammu told her that her sister-in-law and parents-in-law are quarrelling with her frequently, but, did not say the reason for the quarrel; on coming to know that Ammu had died, she went to her house to see the body.

10.Jayanthi (PW4), in her examination-in-chief, has stated that she is a distant relative of Ammu and does not know anything about the case; but, Ammu told her that her husband Mani was harassing her and has retained her jewels; after the return of Mani's first wife, Ammu refused to live in the same house; Ammu told her that her sister-in-law and parents-in-law are treating her cruelly; Ammu committed suicide because of that.

11.Raji (PW5), a flower vendor, has stated in her chief-examination that Mani married Ammu after his first wife deserted him; his first wife returned home, on account of which, trouble broke; Ammu cried to her saying that Mani and his mother are treating her cruelly and not even giving her food; Mani is not coming to her house at all; thereafter, she heard that Ammu committed suicide.

12.Thangavel (PW6), has stated that, Ammu was married to one Velu; Sampath (A3) performed the marriage of Ammu with Mani; at the time of their marriage, Mani's first wife had left him; after marriage with Ammu, the first wife returned, on account of which, there was trouble in their family; when Ammu came and sought his intervention to amicably solve the issue, he advised her to approach the persons, who had arranged the marriage with Mani.

13.This Court has consciously omitted to discuss the cross-examination of these witnesses because, the examination-in-chief itself lacks the substance to mulct criminal liability on the appellants. It has been established beyond doubt that Ammu committed suicide by hanging on 08.02.2006 in her matrimonial home, where she was living with her husband Mani. At the time of the death, she was not in the joint family with the appellants.

14.From the evidence of the prosecution witnesses discussed above, the following facts can be culled out:

- a) Mani was already married to Vijaya (not examined) and had two children through her;
- b) Ammu was married to one Venu and got separated from him;
- c) since Mani wanted someone to look after his children born through the first wife, he married Ammu;
- d) after marriage, they were living happily in the joint family set up for sometime;
- e) trouble broke, after the return of Mani's first wife;

f) since Mani was not able to maintain his first wife and Ammu under one roof, he established a separate home for Ammu.

15.Gowri (A2) is the mother of Mani and Chitra (A4) is the sister of Mani. As regards Sampath (A3), he was the person who arranged the marriage of Ammu with Mani. None of the witnesses has stated as to what dowry, the appellants demanded from Ammu. Except a stray statement that the family members of Mani ill treated Ammu, there is no other credible material to hold that Ammu was subjected to cruelty by the appellants.

16.In fact, Raji (PW5) has stated that, Mani was not providing food for Ammu and was not even visiting her. This evidence may incriminate Mani, nevertheless Mani had died, even before the charges were framed. Jagadeesan (PW11), Executive Magistrate, in his evidence and report (Ex.P4), has stated that the death of Ammu was not on account of dowry harassment, but, was on account of the fact the first wife of Mani returned home. Of course, this opinion is not binding on the Investigating officer.

17.Though the presumptions under Section 113-A and 113-B of the Indian Evidence Act, 1872, are available, yet, the evidence adduced by the prosecution, miserably falls short of the minimum requirements to prove the charges under Section 304-B and 498-A IPC for invoking the said presumptions.

In the result, this appeal is allowed and the judgment of conviction and sentence dated 05.07.2011 passed by the Additional District and Sessions Judge (FTC-III), Tiruvallur in S.C.No.175 of 2009 are set aside. The bail bonds are discharged and the fine amount paid if any, shall be refunded.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.Additional District and Sessions Judge,
(FTC-III), Tiruvallur.

2.The Inspector of Police,
Tiruttani Police station,
Tiruvallur District.

3.The Superintendent, Central Prison No.1,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

Copy to
The Section Officer,
CRL.Section, High Court,
Madras.

+1cc to Mr.P.Ezhil Nilavan, Advocate, S.R.No.1376

CRL.A.No.462 of 2011

VGI (CO)
GSP (04/02/2019)



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