

Bail Slip

The Appellants/Petitioner/Accused namely K.Shanmugan S/o Kandasamy was directed to be released on order dated 06/09/2011 made in Crl.M.P.No.1/2011 in Crl.A.No.541/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.541 of 2011

K.Shanmugam

... Appellant/Sole Accused

Vs.

State represented by
Deputy Superintendent of Police,
Omalur,
Jalakandapuram Police Station,
Salem District.
(Crime No.13 of 2008)

... Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, against the judgment of conviction and sentence dated 08.08.2011 in S.C.No.190 of 2011 on the file of the learned Additional Sessions Judge, (Full Additional Charge Mahila Court), Salem.

For Appellant : Mr.R.Ezhilarasan

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment dated 08.08.2011 in S.C.No.190 of 2011 on the file of the learned Additional Sessions Judge, (Full Additional Charge Mahila Court), Salem.

2. Based on the complaint given by one Thailappan/P.W.1/father of the deceased, the respondent police

registered the case under Section 498-A, 304(B) IPC and Section 4 of Dowry Prohibition Act, 1961 (hereinafter referred to as 'D.P.Act') in Crime No.188 of 2007. After investigation, the respondent police filed charge sheet before the learned Judicial Magistrate-II, Salem District in P.R.C.No.9 of 2008. Since offences are triable only by the Court of Sessions, the learned Magistrate committed the case to the Principal District and Sessions Court, Salem. In turn the learned Principal District and Sessions Judge, Salem, taken the case on file in S.C.No.190 of 2008 and the same was made over to the learned I Additional Sessions Judge, Salem for disposal. The learned Judge, after receiving the records, framed the charges against the appellant for the offence under Sections 498-A, 304(B) IPC and Section 4 of the D.P.Act.

3 Before the trial Court, in order to prove the case of the prosecution, as many as 11 witnesses have been examined viz., P.Ws.1 to 11 and as many as 9 documents were marked as Ex.P1 to Ex.P9 and there is no Material Object produced by the prosecution. After completion of the prosecution side evidence, the accused was put questions under Section 313 Cr.P.C.. The appellant denied the incriminating circumstances and denied all the evidences as false. There is no oral and documentary evidence on the side of the appellant. Subsequently, after hearing the arguments of both sides and on a perusal of the materials and documents, the learned Sessions Judge found the appellant guilty for the offence under Section 498(A) IPC and convicted and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for a period of three months. The accused was not found guilty for the offence under Section 304-B IPC and Section 4 of the D.P.Act and acquitted from the above offence.

4. Feeling aggrieved over the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem dated 08.08.2011, the appellant has preferred this Criminal Appeal before this Court.

5. The learned counsel for the appellant would submit that none of the witnesses have spoken about demand of dowry and also harassment made by the appellant. Even the Revenue Divisional Officer, one who recorded the statement of the witnesses and some other Revenue Divisional Officer who has not examined the witnesses and panchayat members and also other witnesses has filed the inquest report. P.W.1 is the father of the victim, P.W.2 is the mother, P.W.3 is the sister and P.W.4 is the neighbour. They have not spoken about the demand of dowry in their statements. P.W.1 has stated in the complaint i.e. Ex.P1 itself that the appellant has demanded dowry and also caused

cruelty and doubted the fidelity of the victim. While examining before the Court, the witnesses have not stated anything about the demand of dowry. Though P.W.1 has stated about the cruelty and demand of dowry, P.W.2 has not corroborated the evidence of P.W.1. P.W.3 has stated that on the previous night of the occurrence, the appellant assaulted the victim, due to which she sustained injury. The Doctor one who has conducted Post-mortem has not stated in the post mortem report that there was an external injury on the body of the deceased. Therefore, the evidence of P.W.3 has not corroborated with the medical evidence and that the prosecution has failed to prove its case beyond reasonable doubt. The trial Court has rightly appreciated the evidence of the witnesses and acquitted the appellant for offences under Section 304-B of IPC and Section 4 of the D.P.Act. There is no evidence to show that the appellant caused cruelty to the victim, due to which, the victim has taken a decision to end her life, these facts have not been taken into consideration by the trial Court and therefore, the conviction under Section 498-A of IPC warrants interference.

5. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1 has clearly stated that the appellant demanded dowry and also made cruelty to the victim. The occurrence has taken place within seven years of the marriage. Therefore, the presumption is that she committed suicide due to demand of dowry. It is for the appellant to rebut the presumption that the death was not due to demand of dowry. In this case, P.W.1 to P.W.4 have stated that the appellant has demanded dowry and also caused cruelty. The Doctor has also stated that the death was unnatural and she has consumed poison. Therefore, the prosecution has established its case beyond reasonable doubt. The trial Court has rightly appreciated the case and convicted the accused and there is no need to interfere with the judgment of the trial Court.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate(Criminal Side) appearing for the respondent and perused the documents available on record.

7. The case of the prosecution is that the appellant is the husband and the victim/Sadhya is his wife. P.W.1, P.W.2 and P.W.3 are the father, mother and sister of the victim. The marriage was performed in the month of Karthigai, 2016. At the time of marriage, the parents of the victim offered sadhya with stud, nosery and silver anklet as sridhana articles. But the family of the appellant again demanded Rs.5,000/- as dowry for which the parents of the bride assured to give after the marriage. After marriage, the appellant and the deceased set up separate family at Jalakandapuram. The appellant did not go to any work, used to drink alcohol and frequently quarrelled with

his wife. During quarrel, he demanded money as dowry. As such, the appellant has driven the victim to commit suicide and she died on 25.06.2009 at about 9.20 a.m. at Salem Government hospital. Therefore, the appellant committed the offence punishable under Section 498-A and 304 (B) IPC and Section 4 of the D.P.Act.

8. Thereafter, P.W.1 has lodged a complaint against the appellant before the respondent police and they have registered the case against him for offences under Section 498-A and 304 (B) IPC and Section 4 of the D.P.Act and filed the charge sheet. Since the offences against woman only triable by the Mahila Court and the same was taken on file in S.C.No.190 of 2011, dated 08.08.2011, on the file of the learned Additional Sessions Judge, (Full Additional Charge Mahila Court), Salem. In order to prove the case of the prosecution, before the Appellate Court, the respondent police have examined 11 witnesses and marked 9 document and no material object was produced. On the side of the defence, no oral and documentary evidence was examined.

9. Though P.W.1 is alleged to have stated before the police about demand of dowry, cruelty, harassment and beating of the victim by the appellant regularly, during trial, none of the prosecution witnesses have spoken about the demand of dowry. P.W.1 has only stated that the appellant demanded dowry and caused cruelty and P.W.2 has not stated anything about it. There is a contradiction between the evidence of P.W.1 and P.W.2, who are the parents of the victim. The trial Court disbelieved the evidence of the prosecution about demand of dowry and therefore, acquitted the appellant for the offences under Section 304-B IPC and Section 4 of the D.P.Act.

10. The evidence of P.W.1 to P.W.4, reveals that the prosecution have failed to establish demand of dowry made by the appellant, due to which, the victim has committed suicide. On reading of the entire evidence, it is seen that a suggestion was made to P.W.1 to P.W.3, doubting the fidelity of the victim, the same was denied. Though the prosecution has failed to established its case beyond reasonable doubt, regarding the demand of dowry, no appeal was filed either by the defacto complainant or the prosecution. But the trial Court has found that there is physical and mental cruelty caused by the appellant to the victim. The appellant has doubted the fidelity of his wife and beaten her and caused cruelty. A perusal of the entire evidence, it is seen that there is a specific allegation and charge against the appellant in this regard. P.W.1 to P.W.4 have not specifically stated about the cruelty in the chief examination, but whereas in the cross examination, the defence has put a suggestion which creates suspicion. It is seen that the trial Court appreciated the evidence regarding cruelty and

the prosecution has failed to prove regarding the demand of dowry and the prosecution clearly established that the appellant caused cruelty to the victim. Therefore, the victim committed suicide and the post mortem report has also proved that the death of the victim was not natural. It is an unnatural death. It shows that she died due to consume poison.

11. The learned counsel for the appellant has stated that she consumed poison. Even earlier she had first marriage with another man and thereafter she got divorce. During the first marriage too, she attempted suicide. Therefore, she has the habit of threatening to commit suicide. A action of the victim is not due to harassment or cruelty of the appellant. It is her mode of threatening the spouse.

12. Under these circumstances, there is no material to show that she attempted suicide in her earlier marriage too for threatening her husband. On a perusal of the entire evidence, especially the suggestion put by the defence counsel, during the trial, from the cross examination of the prosecution witnesses, the appellant has caused mental as well as physical cruelty, doubting the fidelity of the victim. The trial Court has gone through the evidence in detail and rightly appreciated the same and acquitted the appellant for the offence under Section 304(B) IPC and Section 4 of the D.P.Act and the appellant was at fault and found guilty for the offence under Section 498-A IPC.

13. This Court does not find any reason to interfere with the judgment of the learned Additional Sessions Judge, Salem in S.C.No.190 of 2011 dated 08.08.2011 and there is no merit in the appeal.

14. However, in order to meet ends of justice, the sentence is modified from three years rigorous imprisonment to two year rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo three months rigorous imprisonment.

15. With the above modification and observation, this Criminal appeal is partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional Sessions Judge,
Salem.
- 2.The Judicial Magistrate No.II,
Mettur.
- 3.The Chief Judicial Magistrate,
Sale.
- 4.The Deputy Superintendent of Police,
Omalur,
Jalakandapuram Police Station,
Salem District.
5. The Public Prosecutor,
High Court of Madras.

CRL.A.No.541 of 2011
and
M.P.No.1 of 2011

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srg 29/01/2020