

BAIL SLIP

The Appellants/Accused 1 to 3 /Petitioner namely 1.Mahesh, S/o.Ramachandran, 2.Ramachandran, S/o.Sriramulu Naidu, 3. Vasantha W/o.Ramachandran were released on bail dated 03/11/2011, and 29/09/2011 made in Mp.2 of 2011 and M.P.1 of 2011 in CrI.A.578 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 07.01.2019
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.578 of 2011

1.Mahesh
2.Ramachandran
3.Vasantha

... Appellants/Accused 1 to 3

Vs

State rep. by,
Inspector of Police,
Muthupudupettai Police station,
Tiruvallur District.
[Cr. No.18 of 2009]

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 09.09.2011 passed by the Additional District and Sessions Judge (FTC-III), Tiruvallur in S.C.No.41 of 2010, convicting the appellants for the offences under Section 498-A and 304-B IPC and sentencing them for the charge under Section 304-B IPC to undergo 10 years rigorous imprisonment each and to pay a fine of Rs.10,000/- each in default to undergo 6 months rigorous imprisonment.

For Appellants : Mr.D.J.Venkatesan

For Respondent : Mr.G.Ramar, GA (CrI. Side)

J U D G M E N T

This Criminal Appeal has been preferred against the judgment of conviction and sentence dated 09.09.2011 passed by the Additional District and Sessions Judge (FTC-III), Tiruvallur in S.C.No.41 of 2010.

2.It is the case of the prosecution that the deceased Dhanalakshmi married Mahesh/A1 on 10.03.2008 and after marriage, she was subjected to dowry harassment by Mahesh/A1 and his

parents Ramachandran/A2 and Vasantha/A3, on account of which, she committed suicide on 06.03.2009 by self-immolation in her matrimonial home. On the complaint (Ex.P1), lodged by Mahendran (PW1), brother of the deceased, Valli (PW11), the Sub Inspector of Police, registered a case in Crime No.18 of 2009 under Section 174(3) Cr.P.C. on 07.03.2009 and prepared the printed FIR (Ex.P10), which reached the jurisdictional Magistrate only on 09.03.2009 at 11.30 a.m. Since the death was within 7 years of marriage, Subbarayan (PW10), the Executive Magistrate, conducted inquest over the body of the deceased and submitted the Inquest Report (Ex.P9), opining that the death of Dhanalakshmi was due to dowry harassment. Investigation of the case was taken over by Srinivasan (PW12), the Deputy Superintendent of Police, who despatched the body for postmortem. Dr.Anbuselvan (PW8), who conducted the autopsy on the body of the deceased, in his evidence as well in the Postmortem Certificate (Ex.P7), he has stated as follows :

"The deceased would appear to have died of hypovolemic shock due to burns (100%)."

The Viscera Report (Ex.P6) did not show the presence of any poison in the visceral organs. Srinivasan (PW12) went to the place of occurrence and prepared the Observation Mahazar (Ex.P11) and the Rough Sketch (Ex.P12) in the presence of witnesses Munusamy (PW6) and Paulraj (PW7). From the place of occurrence, he seized a 10 litre plastic can with kerosene (MO1), matchbox (MO2) and a partly burnt skirt (MO3) under the cover of Mahazar (Ex.P13), in the presence of Munusamy (PW6) and Paulraj (PW7). After examining the witnesses and collecting various reports, Srinivasan (PW12) filed Final Report in P.R.C.No.31 of 2009 before the Judicial Magistrate No.II, Tiruvallur for the offences under Sections 498-A and 304-B IPC against Mahesh/A1, Ramachandran/A2 and Vasantha/A3, who are the appellants herein.

3.On the appearance of the appellants, copies of relied upon documents were furnished to them under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.41 of 2010 for trial. The trial court framed charges under Sections 498-A and 304-B IPC alternatively 306 IPC against the appellants and when they were questioned, they pleaded 'not guilty'.

4.To prove the charges, the prosecution examined 12 witnesses and marked 14 exhibits and three material objects. When the appellants were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked on behalf of the appellants.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 09.09.2011 in S.C.No.41 of 2010, convicted and sentenced the appellants as under.

Provision under which convicted	Sentence
Section 304-B IPC	10 years rigorous imprisonment each and to pay a fine of Rs.10,000/- each in default to undergo 6 months rigorous imprisonment.

Challenging the conviction and sentence, the appellants are before this Court.

6.Heard Mr.D.J.Venkatesan, learned counsel for the appellants and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the State.

7.Before advertng to the rival submissions, it may be necessary to catalogue the following facts admitted by either side:

- a) Ramachandran/A2 and Vasantha/A3 are the parents of Mahesh/A1;
- b) Mahesh/A1 married one Madhavi on 31.10.2003 and through her, he begot two children, viz. Janani and Dilip Kumar;
- c) when Dilip Kumar was four months old, he died of snake bite;
- d) unable to withstand the said loss, Madhavi committed suicide by hanging, leaving five year old Janani with her husband/A1;
- e) therefore, Mahesh/A1 wanted to marry someone to take care of his daughter;
- f) all these facts were informed to the deceased and with her consent, the marriage with Mahesh/A1 was held on 10.03.2008;
- g) at the time of marriage, neither Mahesh/A1 nor his family members demanded any dowry, since the second marriage of A1 was itself performed only for parenting Janani;
- h) after marriage, Mahesh/A1, the deceased and Janani were living separately and the parents of Mahesh/A1 (Ramachandran/A2 and Vasantha/A3) were living separately in a house nearby;
- i) on 06.03.2009, the deceased suffered burns and died on 07.03.2009 at 02.15 a.m.

8.Mahendran (PW1), in his examination-in-chief, has stated that his family is from the adjoining Nagari district in

Andhra Pradesh; Mahesh/A1 is a widower with a child knowing which, his sister Dhanalakshmi was given in marriage on 10.03.2008; at the time of marriage, Mahesh/A1 told them that his first wife had committed suicide after the death of his second son and to take care of his first daughter, he sought the hand of Dhanalakshmi; after marriage, he ill treated her by demanding dowry; on 04.09.2003, Dhanalakshmi called him over phone and told him that she is being ill treated by the accused, for which, he advised her to be patient; on 06.03.2009, he received information from one Jeeva, the aunt of Mahesh/A1, that Dhanalakshmi had self-immolated and has been admitted to the hospital; on hearing that, he came to the hospital where she was admitted and he got the information that his sister Dhanalakshmi died; hence, he gave the complaint (Ex.P1).

9. In the cross-examination, he has admitted that he came to know that Ramachandran/A2 has also suffered burn injuries in the incident. In the complaint (Ex.P1), Mahendran (PW1), has clearly stated that at the time of marriage, A1 and his family members did not demand any dowry. Sivanammal (PW2) and Ramaiyaa Naidu (PW3), the parents of Dhanalakshmi, generally corroborated the evidence of their son Mahendran (PW1). Mahendran (PW1) and Sivanammal (PW2), have not stated in their evidence as to what was demanded as dowry. Except making a general statement that the accused demanded dowry, they have not said who demanded and what was demanded.

10. At this juncture, it is necessary to state that even in the charge that has been framed by the trial Court, it has not been stated what was demanded as dowry by the accused. However, Ramaiyaa Naidu (PW3), has stated that Rs.40,000/- was demanded as dowry. Independent witnesses turned hostile to the case of the prosecution.

11. Subbarayan (PW10), the Executive Magistrate, who conducted the inquest, has stated that he examined five panchayatdars and from their statements, he concluded that it was a dowry death. However, in the cross-examination, he has admitted that of the five panchayatdars, four panchayatdars were from Nagari district in Andhra Pradesh, from where, PW1 to PW3 hailed and one panchayatdar was from Arakkonam, which is far away from Avadi, where the couple lived. Thus, it is clear that none of the five panchayatdars was from Avadi in Chennai, where the deceased lived with A1 and where the occurrence had taken place. In any event, the opinion of the Executive Magistrate can have no relevancy because, inquest is done, in order to find out the apparent cause of death and nothing more.

12. Learned counsel for the appellants contended that Dhanalakshmi's saree caught fire, when she was lighting the kerosene lamp and therefore, Ramachandran/A2, her father-in-law,

immediately carried her to Kilpauk Medical College and Hospital, where she was examined by Dr.Rajasekaran (PW9); Dr.Rajasekaran (PW9), in his evidence as well in the Accident Register (Ex.P8), has stated that he examined Dhanalakshmi at 11.00 p.m. on 06.03.2009; she was accompanied by her father-in-law Ramachandran; she was conscious and oriented; she said that while she was lighting a kerosene lamp in her house at 10.00 p.m., her clothes caught fire; she suffered 90% burns.

13. Based on this evidence, Mr.Venkatesan, contended that the death of Dhanalakshmi was not on account of suicide by self-immolation, but, was on account of a sheer accident, which has been blown out of proportion by her agitated family members resulting in the present prosecution.

14. Per contra, Mr.G.Ramar, learned Government Advocate placed strong reliance on paragraph No.27 of the judgment of the Supreme Court in SURESHKUMAR Vs STATE OF HARYANA [(2013) 16 SCC 353], which reads as follows :

"27. Importantly, Section 304-B IPC does not categorise death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring "otherwise than under normal circumstances" can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a "dowry death" and the woman's husband or his relative "shall be deemed to have caused her death". The section clearly specifies what constitutes the offence of a dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death."

He contended that even if it is an accident, if there are materials to show that there was dowry demand prior to the death of Dhanalakshmi, provisions of Section 304-B IPC would stand attracted and the presumption under Section 113-B IPC should be invoked. He contended that much reliance cannot be placed on the evidence of Dr.Rajasekaran (PW9) and the copy of the Accident Register (Ex.P8) because, Ramachandran/A2 was present when the deceased made the statement to the Doctor.

15. At the first blush, his arguments did sound appealing.

However, the evidence on record militates against drawing such inferences. It is true that the deceased was brought to the hospital by Ramachandran/A2. The incident had taken place in the house of Mahesh/A1 and the deceased. Mahesh/A1, in his statement to the Magistrate, has said that he was not at home at that time. It is also not the case of the prosecution that Mahesh/A1 was there in the house, when the incident had taken place. Admittedly, Ramachandran/A2 and Vasantha/A3 were living separately, but, nearby. A half burnt skirt (MO3) has been recovered by the police at the scene of occurrence. It is not known as to how, it was found there. There is no investigation on that aspect at all. The incident had taken place around 10.00 p.m. and naturally, Ramachandran/A2, who was living nearby, would have gone to the rescue of his daughter-in-law. Mahendran (PW1), has admitted that Ramachandran/A2 had also suffered burn injuries. The police have not done any investigation on this aspect also.

16. In Suresh Kumar (supra), the deceased was hurriedly cremated, even before her parents arrived and the accused party told them that she died of electric shock. That apart, the doctor, who examined the deceased was not examined as a witness. In this case, the deceased herself has told the doctor as to how, she caught fire. Though the presence of Ramachandran/A2 (father-in-law) of the deceased, when the deceased told Dr. Rajasekaran (PW9) that her saree caught fire when she was lighting the lamp, may raise a suspicion that the said statement would not have been made on her own volition, yet, in the absence of contrary evidence by the prosecution, this Court cannot reject the said statement on the presumption that the deceased was tutored by her father-in-law to say so. Law does not permit this Court to draw such an adverse inference. Had the police produced any satisfactory material to show that, it was a case of self-immolation and not a case of accident, then, this Court can reject the statement of the deceased and proceed to mulct criminal liability on the accused, by invoking the presumption under Section 113-B IPC.

17. As stated above, at the time of marriage, there was no demand of dowry by the accused because, the accused wanted a bride only for taking care of his daughter Janani. Jananai was inside the house at the relevant point of time and it is not known, as to why she was not examined as a witness. The word "dowry" in Section 304-B IPC finds its roots in Section 2 of the Dowry Prohibition Act, 1961, which reads as under :

"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 after the marriage as consideration for 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."

(emphasis supplied)

Even in the complaint (Ex.P1), it is categorically stated that, the appellants did not demand any dowry at the time of marriage. That apart, even in the charge, it is not stated as to what was the dowry that was demanded by the appellants. There is also no satisfactory evidence to show that, the appellants had inflicted cruelty on the deceased Dhanalakshmi.

18.The evidence of Mahendran (PW1), Sivanammal (PW2) and Ramaiyaa Naidu (PW3) are very general in nature and an omnibus allegation that they had ill treated Dhanalakshmi has been made. Initially, the FIR was registered under Section 174(3) Cr.P.C. and it is not known, when it was altered by the police. Of course, that by itself has no bearing because, the investigation falls within the domain of the police and if remissness is committed by them, the accused cannot be acquitted. In this case, the evidence of PW1 to PW3, seen in the backdrop of the statement of the deceased herself to Dr.Rajasekaran (PW9), raises a very serious doubt in the mind of this Court.

In the result, this appeal is allowed and the judgment of conviction and sentence dated 09.09.2011 passed by the Additional District and Sessions Judge (FTC-III), Tiruvallur in S.C.No.41 of 2010 are set aside. The bail bonds are discharged and the fine amount paid if any, shall be refunded.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

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

2. Inspector of Police,
Muthupudupettai Police station,
Tiruvallur District.

3. The Judicial Magistrate No.11,
Tiruvallur.

4. The Chief Judicial Magistrate,
Tiruvallur.

5. The Superintendent,
Central Prison,
Puzhal, Chennai.

6. The Public Prosecutor,
High Court, Madras.

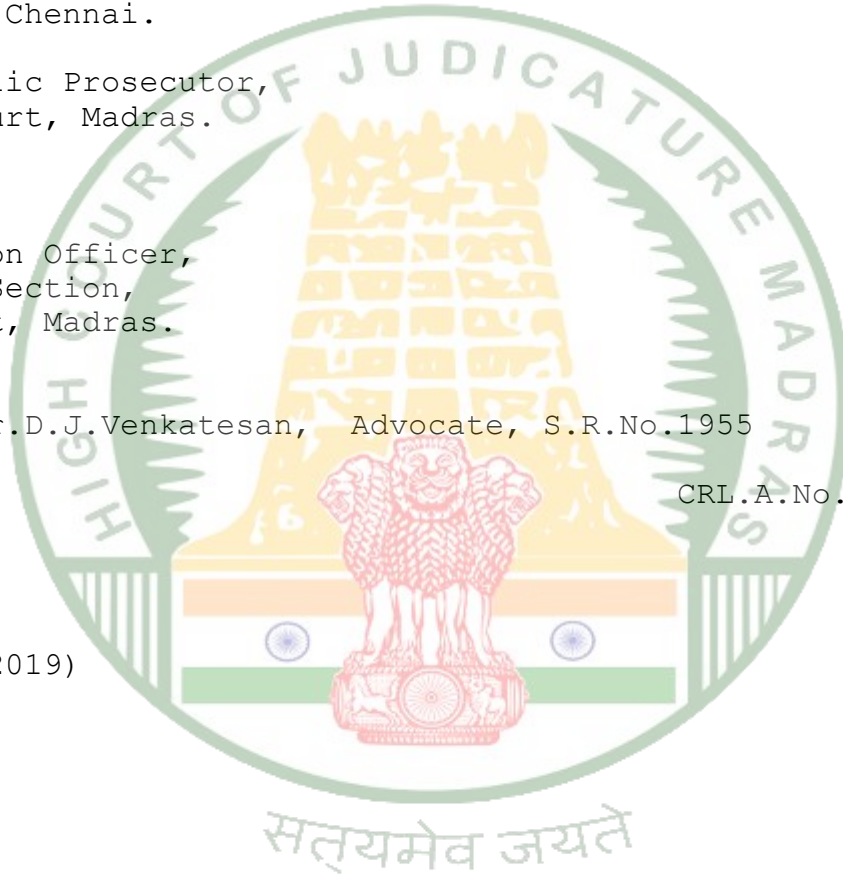
Copy TO

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

+1cc to Mr.D.J.Venkatesan, Advocate, S.R.No.1955

CRL.A.No.578 of 2011

SR(CO)
GN(15/02/2019)



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