

BAIL SLIP

The Petitioners/Accused Namley 1.Saravanan, 2.Sivakumar, 3.Mohanambal, was released on bail as per the order of this court dt.15/11/11 in Crl.MP.No.1/11 in Crl.A.686/11 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

C O R A M

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Crl.A.No.686 of 2011

1. Saravanan

2. Siva Kumar

3. Mohanambal

... Appellants/Accused 1 to 3

-Vs-

State rep. by
The Deputy Superintendent of Police,
Mayiladudurai Division,
Mayiladuthurai, Nagapattinam District.
(Cr.No.1144/2009)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C, praying to set aside the judgment dated 20.10.2011 passed in S.C.No.131 of 2010 by the learned Principal Assistant Sessions Judge, Mayiladuthurai.

For Appellants : Mr.S.Conscious Ilango

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

JUDGMENT

This Criminal appeal has been filed to set aside the judgment dated 20.10.2011 passed in S.C.No.131 of 2010 by the learned Principal Assistant Sessions Judge, Mayiladuthurai.

2. The respondent police registered a case in Crime No.1144 of 2009 against the appellants herein originally for the offence under Section 174 of Cr.P.C., subsequently, after investigation, laid a charge sheet before the learned Judicial

Magistrate-I, Mayiladuthurai informing the commission of offence under Section 304B of IPC. The learned Magistrate taken the charge sheet on file in PRC.No.19 of 2010 and found that the offence was triable by the Court of Sessions and committed to the learned Principal Sessions Judge, Nagapattinam. The learned Principal Sessions Judge, after taking the case on file in S.C.No.131 of 2010 and made over the same to the learned Assistant Sessions Judge, Mayiladuthurai for disposal. The learned Sessions Judge, after completing the formalities, framed charge against the appellants/accused for the offence under Sections 304B of IPC.

3. During trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 15 witnesses were examined and marked 10 documents and 16 Material Objects. After completing the evidence of prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses were put before the appellants/accused, they denied as false. On the side of the defence, no oral and documentary evidence was produced. The learned Assistant Sessions Judge, after hearing the arguments advanced on either side and perused the oral and documentary evidence, came to the conclusion that all the accused were found guilty for the offence under Section 304B of IPC and sentenced them to undergo 10 years Rigorous Imprisonment, by judgment dated 20.10.2011. Challenging the said judgment, the present appeal has been preferred by the convicts before this Court.

4. It is reported that during pendency of this appeal, the third appellant/A3 died. Therefore, this appeal is dismissed as abated as against the third appellant/A3 herein.

5. Now the appellants 1 and 2 are before this Court. The learned counsel for the appellants 1 and 2 would submit that there is no evidence to show that there was a demand of dowry and due to the demand of dowry, the death of the victim was happened. Even PW-1, who was instigating the marriage for both the first appellant and the victim, who is none other than the sister of the mother of the victim, has not spoken about demand of dowry even prior to the marriage, at the time of marriage or subsequent to the marriage. PW-2/mother of the victim, PW-3/sister of the victim and PW-4/uncle of the victim and brother of PWs-1 and 2, have not stated about the dowry demand in their evidence and they have stated that there was some wordy quarrel and displeasures had happened in the family and there is no specific allegations of demanding dowry. There was a dispute regarding the claim of share of the victim out of the sale proceeds, which was said to have been received by the mother of the victim. There is no evidence to show that there is any land and no sale deed was produced before the Court to establish that there was a sale of land. PWs-5

and 6 are the independent witnesses and they have not supported the case of the prosecution since they turned hostile. PWs-7 and 8 are the mahazar and recovery witnesses and their evidence will not be helpful to the prosecution to establish that there was a dowry demand, due to which, the death was occurred. The main witnesses in this case is the Revenue Divisional Officer, who conducted the inquest report. The marriage between the first appellant and the victim was solemnised on 01.02.2009 and the victim died on 23.10.2009. Since the death was occurred within 7 years from the date of marriage, the enquiry of the Revenue Divisional Officer was ordered and PW-12 conducted inquest and during enquiry, none of the witnesses either the relatives of the victim or the relatives of the first appellant or any independent witness or panchayat members have specifically spoken about the demand of dowry. All the witnesses have stated that there is no dispute in the victim's family regarding the demand of dowry. Despite PW-12/Revenue Divisional Officer given the finding that the death of the victim is a dowry death, there is no material to prove the same. The Investigating Officer also admitted that there is a material contradiction between the prosecution witnesses. Therefore, the prosecution has failed to prove its case beyond reasonable doubts. The allegation made by PWs-1 to 4 is not sufficient to convict the appellants for the offence under Section 304B of IPC. The ingredients of Section 304B of IPC is not made out from the prosecution witnesses. The learned Assistant Sessions Judge has failed to consider the materials placed before the court during the trial and also failed to consider the legal as well as the factual positions and wrongly convicted the appellants for the offence under Section 304B of IPC. The accused cannot be convicted because the girl died in a matrimonial home due to some reason, which cannot be given a colour to dowry death. There is no iota of evidence to implicate the appellants 2 and 3 in this case and there is no materials to show that they have been involved in this case. The second appellant is the elder brother of the first appellant and they were residing separately and therefore, he cannot be implicated. Except PW-2 stated during her evidence that when the first appellant and her daughter came to her house, the second appellant telephoned to the first appellant and the first appellant immediately left the place by saying that I will take you there. The learned Sessions judge failed to consider that there is no sufficient material to convict the appellants 2 and 3.

In support of the contention, the learned counsel placed reliance on the following judgments:-

1. Meka Ramaswamy Vs. Dasari Mohan and others reported in [1998 Supreme Court Cases (Cri) 604].
2. Sunil Bajaj Vs. State of M.P reported in [(2001) 9 SCC 417]

3. Narayanamurthy Vs. State of Karnataka and another reported in [(2008) 16 SCC 512].

4. Sher Singh Alias Partapa Vs. State of Haryana reported in [(2015) 3 SCC 724].

5. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that though at the time of marriage, there is no demand of dowry, subsequently, the appellants started to demand dowry and also harassed the victim to bring more sridhana articles and also demanded a share from the property sold by her mother/PW-2, which belongs to her father and the deceased also informed the same to PW-2. Further, when the relatives of the deceased went to fulfil the formalities as the Hindu customs and rites during the first year of the marriage, the appellants used to insult the parents and relatives of the deceased and also demanded dowry. PW-7/Village Assistant, is the witness to the mahazar and PW-10 is the Forensic Officer and PW-11 is the doctor, who conducted autopsy to the victim. From the evidence of PW-10 & PW-11, it is proved that the death of the victim is unnatural. From the evidence of PW-12, the prosecution has clearly established that there was a dowry harassment. PW-2/mother of the victim has clearly spoken about the involvement of all the appellants. The appellants 2 and 3 scolded the victim that the sridhana articles brought by her are not sufficient to them. The evidence of PW-12/Revenue Divisional Officer, who conducted elaborate enquiry and also examined the relatives of the victim, clearly shows that a woman could not committed suicide in the place, which the appellants shown where the victim was alleged to have committed suicide and he inspected the surrounding circumstances and came to the conclusion that it is only dowry death, which false under section 304B IPC. Therefore, the prosecution has proved its case beyond reasonable doubts. The learned Sessions Judge rightly appreciated the entire evidence and convicted the appellants. Though the learned counsel for the appellants stated that there is no material to implicate the second appellant in this case, the evidence of PW-2/Mother of the victim has clearly stated that after the marriage, when she went to the house of the victim to see her, at the time the victim herself told her that the second appellant beaten her frequently and thrown her out. Therefore, the involvement of the second appellant also proved in this case. There is no reason to interfere with the judgment of the Court below.

6. Heard the learned counsel appearing for the appellants 1 & 2 and the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the entire materials available on records.

7. The case of the prosecution is that the marriage between the first appellant and the victim was solemnised on 01.02.2009. The appellants are alleged to have harassed the victim by demanding more dowry, due to which, she committed suicide and died on 23.10.2009. Since the death was occurred in the matrimonial home, there is a statutory presumption of dowry death that a woman died within 7 years of marriage and therefore, RDO enquiry was ordered and the said RDO was examined as PW-12 before the Trial Court and submitted his report. PW-12 has stated that after inspecting the place of occurrence, he found that it was not possible to commit suicide by hanging in the said place. Though the learned counsel for the appellants submitted that there is no independent witness spoken about the demand of dowry, even the panchayatars, who have been examined by the RDO, during enquiry, have not stated about the demand of dowry. As stated earlier, the marriage has taken place only on 01.02.2009 and the death was occurred on 23.10.2009 i.e., within seven months of marriage. Unless there is open demand in public, it will not come out. Initially, the demand like this would be only between the family of the bride and groom. Even the cruelty of the victim, PW-1-Aunt of the victim, who played the main role in the marriage. Though the marriage is arranged, the first appellant and the victim loved each other before marriage.

8. At the time of the marriage, the appellants have not demanded any dowry. Subsequently, they demanded more dowry from the victim. PW-2 has clearly stated that after the marriage, when she visited the victim's house, the victim told her that the second appellant beaten her frequently and demanded dowry. Though the learned counsel for the appellants vehemently contended that except the word stated by PW-2 that when her daughter and son-in-law visited her house, the first appellant received a phone call from the second appellant and he immediately left the house, there is no proof to show that there was a phone call from the second appellant.

9. On reading of the evidence of PW-12, it is seen that the appellants 2 and 3 also demanded dowry from the victim. At the time of 5th month ceremony of the deceased, the appellants ill-treated and insulted the parents and relatives of the deceased since they have not provided the dowry as they expected. When the first appellant and the deceased visited the house of PW-2, the second appellant telephoned the first appellant and immediately, the first appellant started to go to their house and also received a sum of Rs.500/- by saying that after reaching his home, he will kill her daughter and informed the message. Next day morning when PW-4/uncle of the victim telephoned to the victim, at the time there was a quarrel regarding the dowry demand and after some hours, he received the message that the victim died. From the evidence

of PW-12, it is seen that at the time of alleged occurrence, the first appellant was very much available in the house. During the enquiry of PW-12, the second and third appellants themselves have stated that they saw the first appellant was sleeping inside the house. Therefore, there is no evidence to show that the first appellant was not available at the time of the alleged occurrence. Though there is no independent evidence for demand of dowry as stated that the death was occurred within seven years of marriage, the death is due to demand of dowry. In this case, there is no need to say that at the time of marriage, the appellants demanded dowry and the same was not proved by the prosecution by examining panchayatars. As stated earlier PW-1, who is the sister of PW-2 played main role in the marriage between the first appellant and the deceased. Therefore, the prosecution has established its case beyond reasonable doubts regarding the evidence of PWs-2 to 4 and also established the subsequent contact of the appellants. The RDO's report and the medical witnesses clearly show that it is not the case of suicide. The learned Sessions Judge rightly appreciated the entire evidence and convicted the appellants. This Court is of the view that there is no specific reason to discard the evidence of PWs-2, 4 and 12. The authorities cited by the learned counsel for the appellants 1 & 2 is not helpful to the present case on hand.

10. On reading of the entire materials, this Court finds that the appellants have committed the offences under Section 304(B) of IPC. There is no reason to interfere with the judgment of the Trial Court and there is no sound ground to allow this appeal and the same is liable to be dismissed.

11. Accordingly, this Criminal Appeal is dismissed. The judgment dated 20.10.2011 in S.C.No.131 of 2010 passed by the learned Principal Assistant Sessions Judge, Mayiladuthurai, is hereby confirmed. The Trial Court is directed to secure the accused to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Principal Assistant Sessions Judge,
Mayiladuthurai.
2. The Deputy Superintendent of Police,
Mayiladuthurai Division,
Mayiladuthurai,
Nagapattinam District.

3.The Public Prosecutor,
High Court,
Chennai-104.

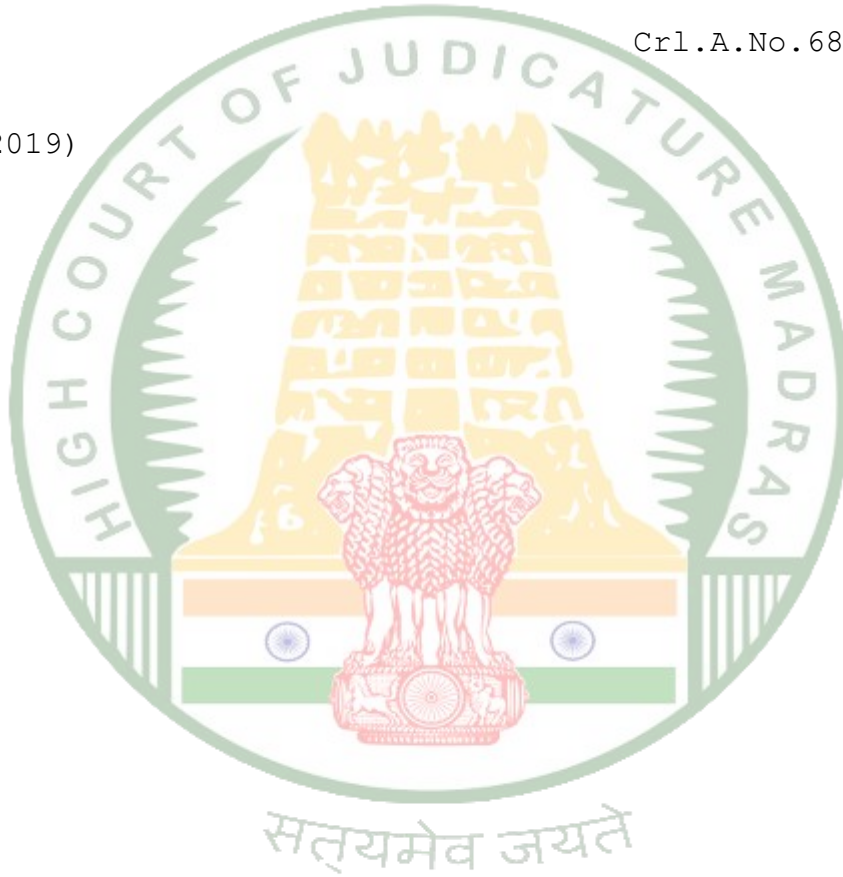
4.The Judicial Magistrate No.I,
Mayiladuthurai.

5.The Chief Judicial Magistrate,
Nagapattinam(For Information)

+lcc to Mr.S.Conscious Ilango, Advocate SR.75676

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SVI (CO)
CB(21/11/2019)



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