

BAIL SLIP

The Appellant/Accused namely 1.Krishnan S/o Ponnusamy, was directed to be released on bail as per the order of this court dated 14.11.2011 in Crl.MP.No.1/2011 in Crl.A.699/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.01.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. APPEAL NO. 699 OF 2011

Krishnan .. Appellant

- Vs -

State, rep. By
The Assistant Commissioner of Police
Sembium Range
Chennai. .. Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence dated 14.10.2011 passed by the Sessions Judge, Mahalir Neethimandram, Chennai, in S.C. No.170 of 2009.

For Appellant : Mr. T.J.Kulasekar

For Respondent : Ms. Kritika Kamal.P., GA (Crl. Side)

JUDGMENT

The present appeal has been preferred by the appellant challenging the conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Chennai, in S.C. No.170 of 2009.

2. It is the case of the prosecution that the deceased Nalini got married to Krishnan (A-1) in January, 2008 and she committed suicide by hanging on 21.10.08 in her matrimonial home. On the complaint (Ex.P-11), given by Chinnammal, the Inspector of Police, Sivamani (P.W.9) registered a case in Crime No.1058/08 on 22.10.08 at 10.00 a.m., u/s 174 (3) Cr.P.C. and prepared printed FIR (Ex.P-12). Since the death was within 7 years of marriage, Paul Singh (P.W.7), the P.A. to the District Collector, conducted inquest over the body of the deceased and submitted inquest report along with enclosures (Exs.P-7 to P-9).

In his evidence as well as in the inquest report, P.W.7 has opined that death of Nalini was on account of dowry harassment. Therefore, an alteration report (Ex.P-17), dated 24.10.08, was submitted by the police to the jurisdictional Magistrate for altering the case from one u/s 174 (3) Cr.P.C. to one u/s 498-A and 304-B IPC.

3. Investigation of the case was taken over by Krishnan (P.W.10), Assistant Commissioner of Police. The body of the deceased was sent for post-mortem to the Kilpauk Government Medical College & Hospital, Chennai, where Dr.Hari Santha Seelan (P.W.8) conducted autopsy and issued post-mortem certificate (Ex.P-10). After obtaining viscera report, P.W.8 opined that the deceased would appear to have died of asphyxia due to hanging. P.W.8 further stated that except the ligature mark around the neck, no other ante-mortem injuries were found on the body of the deceased.

4. P.W.10, continuing with his investigation, went to the place of occurrence and prepared the observation mahazar (Ex.P-14) and rough sketch (Ex.P-13) in the presence of witnesses. From the place of occurrence, he seized the nylon saree (M.O.1) under the cover of mahazar (Ex.P-15). He arrested Krishnan (A-1) on 24.10.08. On 9.11.08, he arrested Chinammal (A-2) and Saroja (A-3) and they were produced before the jurisdictional Magistrate for remand. P.W.10 examined witnesses and collected the various reports and after completion of the investigation on 7.2.09, filed the final report in P.R.C. No.50/09 before the 5th Metropolitan Magistrate, Egmore, Chennai, for the offences u/s 498-A, 306 and 304-B IPC against Krishnan (A-1), Chinammal (A-2) and Saroja (A-3).

5. On appearance of the accused, the provisions of Section 207 Cr.P.C. was complied with and the case was committed to the Court of Session in S.C. No.170/2009 and the case was made over to the Mahila Court for trial.

6. The trial court framed charges u/s 498-A, 306 and 304-B IPC against the accused. When questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 10 witnesses (P.W.s 1 to 10), marked 17 exhibits (Exs.P-1 to P-17) and two material objects (M.O.s 1 & 2). When the accused were questioned u/s 313 Cr.P.C. on 20.09.10 about the incriminating circumstances appearing against them and they denied the same. Thereafter, Chinammal (A-2) died on 23.3.11. However, A-1 has stated that his wife was two months pregnant, but it aborted; he took her to the hospital and got her medicines; there was no quarrel between them. Two witnesses (D.W.s 1 & 2) were examined on the side of the defence. After hearing either side and considering the evidence on record, the trial court, by judgment

dated 14.10.2011 in S.C. No.170/09 acquitted Saroja (A-3), but convicted and sentenced Krishnan (A-1) as under :-

S. No.	Section	Sentence
1	U/s 304-B IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of seven years.
2	U/s 498-A IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of three months.

Challenging the above conviction and sentence, the appellant (A-1) has preferred the present appeal.

7. Heard Mr.Kulasekar, learned counsel appearing for the appellant (A-1) and Ms.Kritika Kamal, learned Govt. Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

8. The following facts have been established beyond cavil :-

a) the deceased Nalini was the daughter of Perumal (P.W.1) & Kasiammal (P.W.2) and the niece of Pushparaj (P.W.3);

b) the family of the deceased hail from Ayakudi village in Trichy District; the deceased Nalini was married to one Perumal and on account of matrimonial discord, they got separated. Similarly, Krishnan (A-1) was married to one Kala and he was separated from his wife. Both Krishnan (A-1) and the deceased Nalini had not obtained any decree of divorce dissolving their earlier marriages. Despite that, the marriage of deceased Nalini and Krishnan (A-1) was conducted by both the families in February, 2008 in the house of P.W.1 on a low key without even printing any marriage invitation;

c) After marriage, Krishnan (A-1) and Nalini (deceased) lived in 10/30, Chinnasamy Street, Agaram, Chennai;

d) Krishnan's (A-1) mother Chinnammal (A-2) and his sister Saroja (A-3) were living separately and they were not living with Krishnan (A-1) and Nalini (deceased);

e) Krishnan was addicted to liquor;

f) Nalini committed suicide by hanging on 21.10.08

around 11.00 p.m. in the matrimonial home;

g) The complaint (Ex.P-13) was given by Chinnammal (-2) to the police on 22.10.08 at around 10.00 a.m. and FIR was registered as stated above; in the complaint (Ex.P-13), Chinnammal (A-2) has stated about the marriage of her son Krishnan (A-1) and Nalini (deceased); after marriage they both resided separately at 10/30, Chinnasamy Street, Agaram, Chennai; Nalini was depressed since she did not conceive; Nalini did not have periods for three months and so she thought that she had conceived; on 21.10.08 she got her periods; on 21.10.08 around 11.00 p.m., Krishnan (A-1) was consoling Nalini; that A-1 went to the bathroom and on coming out found Nalini hanging from the ceiling fan in the bedroom; he lowered her and untied the knot of the rope; he found her alive and slept with her; the next day he found that there was no life in her body and so he immediately took her to a private hospital in Raghavan Street, Perambur, where the doctor declared as 'brought dead'; therefore, he brought the body of Nalini to her house.

9. Thus, in this case, the complainant, Chinnammal (A-2) has been made as accused, but her complaint (Ex.P-13) is not inadmissible u/s 162 Cr.P.C. Because it has been given before the commencement of the investigation by the police. That apart, it is not a confession and certain facts stated therein could be treated as admission relevant u/s 21 of the Evidence Act for proving facts that are against the interest of the maker. As stated above, since the death of Nalini was within 7 years of marriage, the inquest was conducted by the Executive Magistrate (P.W.7), viz., the P.A. (General) to the District Collector and statements made by the accused are not rendered inadmissible u/s 162 Cr.P.C. Or u/s 25 of the Evidence Act, if the same is confession in nature.

10. Perumal (P.W.1), Kasiammal (P.W.2) and Pushparaj (P.W.3) have, in their evidence, before the trial court, stated that Nalini (deceased) got married to one Perumal and got separated; Krishnan (A-1) was also separated from his wife; however, the marriage of Krishnan (A-1) and Nalini (deceased) was performed in February, 2008, in their place; Nalini had studied for nursing; Krishnan (A-1) was working as mason; after marriage, both of them resided separately from their in-laws in Chennai.

11. As regards the demand of dowry, P.W.1 has stated that even at the time of marriage, A-1 to A-3 demanded 10 sovereigns of gold jewels, Rs.20,000/- and a motorcycle; however, P.W.1 was able to give his daughter only a nose stud, an ear ring and

assured them that he will meet their demands in the course of time. However, at the earliest point of time, in the statement (Ex.P-1) given by P.W.1 to the Executive Magistrate (P.W.7), P.W.1 has stated that at the time of marriage, he gave ½ sovereign ring, two nose studs, ear rings, thali chain and anklets for his daughter and ½ sovereign ring for his son-in-law apart from giving other household articles. A few days after marriage, Chinnammal (A-2) and Saroja (A-3) started demanding two wheeler from his (P.W.1) daughter.

12. The evidence of P.W.s 2 and 3 are also of the same tenor, but P.W.2 has specifically stated in her statement (Ex.P-2) to the Executive Magistrate (P.W.7) that three months after the marriage only, the accused started demanding 10 sovereigns of gold jewels, Rs.20,000/- cash and two wheeler.

13. However, it is the case of the accused that dowry was not the issue at all because it was the second marriage for both Krishnan (A-1) and Nalini (deceased) and the marriage itself was performed with hardly 50 guests in Trichy District and there was no demand of dowry either at the time of the marriage or at any time subsequently. P.W.1 has accepted the fact that the marriage was performed in the presence of about 50 guests from both the sides. Since the suicide of Nalini was within seven years of marriage, Section 113-B Cr.P.C. casts a burden on the appellant to prove that the death of Nalini was not on account of dowry harassment.

14. In cases of this nature, obviously there may not be any documentary evidence. The Court will have to proceed based on the oral evidence adduced by the relatives of the deceased and examine its veracity on the touchstone of the facts and circumstances obtaining in the case and common sense.

15. P.W.s 1 to 3 have also stated that Krishnan (A-1) was addicted to liquor. P.W.s 1 and 2 have further stated that on 19.10.08 Nalini (deceased) spoke to P.W.1 over phone and complained to him that if the demand of dowry is not met, she may be killed by the accused for which she was pacified that the demand would be met during Deepavali. It is seen that Perumal (P.W.1) was not an ordinary person, but he was the former Panchayat Union Secretary of AIADMK as could be seen from his statement (Ex.P-1). Had his daughter complained so, dictates of common sense states that he would have come to Chennai to look into her grievance. In the cross examination, he admitted that after the marriage, he came to Chennai only once to meet his daughter. He has further stated that on 21.10.08 around 11.00 p.m., he received a phone call from the appellant and the appellant informed him that he may not be able to see his daughter unless he brings the demanded dowry. However, in his

previous statement (Ex.P-1), he has stated that on 21.10.08 he only received a missed call from A-1 and when he returned the call his son-in-law (A-1) told him that Nalini (deceased) was sleeping. All these contradictions have been put to the witnesses, including P.W.7.

16. The appellant, in his statement to the Executive Magistrate (P.W.7) has stated that he was addicted to liquor; he lowered the body of Nalini and only the next day he realised that she was lifeless; A-1 has also examined his younger sister, Dhanalakshmi (D.W.1) and neighbour Latha (D.W.2) as witnesses.

17. Dhanalakshmi (D.W.1) has, in her evidence, stated that she is the younger sister of A-1 and the marriage of A-1 with Nalini was held in a temple in Trichy; at the time of marriage, her (deceased) parents gave her an ear ring, anklet, nose stud and ring; beyond that they never gave anything nor was any demand made; Nalini was already married to one Perumal and since she did not have a child, they got separated; Nalini lived in joint family with her brother (A-1) in Chennai for sometime and, thereafter, at her request, her brother took up a house at Agaram and lived separately with her; Nalini was working in subiksha and her brother was a mason; Nalini actually wanted to have a child and was happy that she did not have periods for three months; however, on 21.10.08, she had her periods after which she was very depressed; Nalini was weeping and did not eat; her brother consoled her; on coming to know of Nalini's death, her parents, P.W.s 1 & 2 came there and only during the inquest by P.W.7 on 23.10.08, their relatives exhorted them to say that the death of Nalini was on account of demand of dowry and, accordingly, they projected such a case. Dhanalakshmi (D.W.1) has candidly stated that her brother was addicted to liquor.

18. The post-mortem does not show any external injury other than the ligature injury. Even in the complaint (Ex.P-11), it is stated that Nalini was taken to a hospital at Raghavan Street, Perambur, where the doctor declared as 'brought dead'. There is absolutely no investigation by the investigating agency on this aspect. On a conspectus of the facts obtaining in this case, it is evident that Nalini had suffered mental cruelty on account of the appellant's addiction to liquor and not on account of any demand of dowry by him. It is to be pointed out that the appellant must have been so drunk that he did not even know that his wife had died and he had slept by the side of her body and had realised that she had died only on the next day.

19. P.W.s 1 and 2 had initially taken the stand that demand of dowry was by A-2 and A-3 and that too after the marriage, but in the evidence before the Court, they changed their stance and

implicated A-1 to A-3. However, A-2 and A-3 have been acquitted by the trial court and the State has not chosen to file any appeal against the acquittal of A-3. At this juncture, it may be relevant to state that A-2 had died only after her examination under Section 313 Cr.P.C. and though the case against her had abated on her death, still the trial court has given a clear finding in her favour and has acquitted her, which cannot be said to be improper.

20. As regards the reasons for Nalini to commit suicide, the appellant has probalised that her suicide was on account of Nalini's belief that she has conceived, getting shattered on 21.10.08, after she got her periods. In the cross-examination of D.W.1, the Public Prosecutor has merely suggested to her that since the accused are close relatives, she is speaking untruth, which suggestion she denied. The chief examination of D.W.1 was done on 25.1.11 and at the request of the prosecutor, D.W.1 was recalled on 7.2.11 for cross-examination. Even in the cross examination, except suggesting to her that she is falsely testifying to support the case of her kith and kin, no other questions have been put to her to shake her testimony. Therefore, this Court has no reason to discredit her testimony, just because she is a close relative of the accused.

21. Thus, the appellant has probalised his case that the death of Nalini had occurred because of her belief that she has conceived stood belied after she got her periods on 21.10.08.

22. For all the reasons aforesaid, this Court is of the considered view that the prosecution has not proved the charge as against the appellant u/s 304-B IPC. However, the charge u/s 498-A IPC has been proved.

23. In the result, the criminal appeal is allowed in part. The conviction and sentence imposed on the appellant u/s 498-A IPC is confirmed. However, the conviction and sentence imposed on the appellant u/s 304-B IPC is set aside and he is acquitted of the charge u/s 304-B IPC. It is seen from the record that the appellant is on bail. The trial court shall take all steps to secure the presence of the appellant and commit him to prison to serve the balance portion of sentence imposed on him as above.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Sessions Judge
Mahalir Neethimandram, Chennai.
 2. The Public Prosecutor
High Court, Madras.
 3. The Assistant Commissioner of Police,
Sembium Range, Chennai.
 4. The Metropolitan Magistrate,
No.V, Egmore, Chennai.
 5. The Chief Metropolitan Magistrate,
Egmore, Chennai.
 6. The Superintendent of Central Prisons,
Puzhal, Chennai.
 7. The District Collector,
District Magistrate, Chennai.
 8. The Director General of Police,
Tamil Nadu, Mylapore, Chennai-4
 9. The Section Officer, Crl.Section Records,
High Court, Madras.
 10. The Deputy Registrar (Crl.Side)
High Court, Madras.
- +1cc to Mr.TJ.Kulasekar, Advocate SR.No.8076

सत्यमेव जयते

CRL. A. NO. 699 OF 2011

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