

BAIL SLIP

The Appellant / Accused namely Mr.Viji @ Vijayan S/o.Natarajan, aged 28 years, was directed to be released on bail by the Order dated 20/04/2012 made in Crl.M.P.No.1/2011 in Crl.A.No.758 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.758 of 2011

Viji @ Vijayan ...Appellant/ Accused

Vs.

State of Tamil Nadu Rep. by
The Deputy Superintendent of Police,
OCU CBCID Salem City.
(Crime No.46/2008 on the file of
Venandur Police Station, Namakkal)...Respondent / Complainant

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, to set aside the conviction and sentence passed in Judgment dated 20.10.2011 made in S.C.No.103 of 2010 on the file of the Court of Additional District & Sessions Judge/Fast Track Court, Namakkal, and acquit the appellant/A2.

For Appellant : M/s.A.S.Prabhu

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

JUDGMENT

This criminal appeal has been filed against the judgment of conviction dated 20.10.2011 made in S.C.No.103 of 2010 on the file of the Court of Additional District & Sessions Judge, Fast Track Court, Namakkal.

2 Case of the prosecution is that the appellant is husband of the deceased and two other accused, against whom initially case was registered, are in-laws. P.W.1 is father and P.W.2 is mother of the deceased. The appellant is son of defacto complainant/P.W.1's sister and he married her own maternal

uncle's daughter. The appellant and other two accused had made dowry harassment on the deceased and due to the same, the deceased jumped into the well and thereby committed suicide and hence the respondent police registered a case against the appellant and two others in Crime No.46 of 2008 for the offence punishable under Sections 498(A), 304(B) of IPC and Section 4 of the Dowry Prohibition Act, 1961, (in short "the Act") and after investigation laid a charge sheet before the learned Judicial Magistrate, Rasipuram.

3 The learned Magistrate has taken the charge sheet on file in P.R.C.No.15 of 2010 and since the offence charged against the appellant/accused is triable only by the Court of Sessions, the case was committed to the learned Principal District and Sessions Judge, Namakkal, which was taken on file in S.C.No.103 of 2010 and the same was made over to the learned Additional District and Sessions Court, Namakkal, for disposal. The learned Judge, after completing legal formalities, framed charges against the appellant and two others for the offence under Sections 498(A), 304(B) of IPC and Section 4 of the Act.

4 Before the trial Court, in order prove the case of the prosecution, P.Ws.1 to 18 were examined and Exs.P1 to 12 were marked besides two material objects. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the appellant/accused, he denied as false. On the side of the defence, no one was examined and no document was marked.

5 The learned trial Judge, after trial, acquitted other two accused i.e. A1 & A3, who are in-laws of the deceased and found the appellant/A2 guilty for the offence punishable under Sections 498(A) and 304(B) of IPC and Section 4 of the Act and by judgment dated 20.10.2011 convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for a further period of three months for the offence under Section 498(A) and to undergo rigorous imprisonment for a period of seven years for the offence under Section 304(B) of IPC and to undergo rigorous imprisonment for a period of one year with fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a further period of three months for the offence under Section 4 of the Act. Aggrieved by the said judgment of conviction, the appellant is before this Court with the present criminal appeal.

6 Learned counsel appearing for the appellant would submit that P.W.1 is father and P.W.2 is mother of the deceased. P.W.1, the defacto complainant is none other than the maternal uncle of the appellant. The appellant married the daughter of

P.Ws.1 & 2, against their wishes. Even though, at later point of time, they have accepted the appellant, P.W.2 used to scold the deceased often, since she married the appellant against her wishes. There was no demand of dowry made by the appellant and the deceased only voluntarily given some amount. The deceased did not commit suicide because of the dowry harassment alleged to have been made by the appellant. P.W.2 mother of deceased used to scold her since she married the appellant against her wishes and also for not having any issue. No witnesses has spoken about the dowry harassment alleged to have been made by the appellant. Prosecution has failed to prove the ingredients of Section 304 (B) and hence conviction under this Section could not be made. In support of his contention, the learned counsel relied on the decisions of the Hon'ble Supreme Court reported in (2015) 3 SCC 724 (Sher Singh Alias Partapa vs. State of Haryana) and (2017) 6 SCC 792 (Bibi Parwana Khatoon Alias Parwana Khatoon vs. State of Bihar). The trial Court disbelieved the evidence of prosecution witnesses with regard to the allegation of dowry harassment made against the in-laws and acquitted them, but erroneously come to the conclusion that the appellant made dowry harassment and has failed to consider the above facts and erroneously convicted the appellant/accused, which warrants interference.

7 Learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 is father and P.W.2 is mother of the deceased and they both have clearly spoken about the dowry harassment caused by the appellant on the deceased. P.W.17, the Doctor, one who conducted autopsy on the body of the deceased had deposed that the deceased died by suffocation in water. From the evidence of P.Ws.1 & 2, 17, prosecution has proved its case beyond reasonable doubt. Even though, the trial Court had acquitted the other two accused, who are in-laws of the deceased, but, found the appellant, who is husband of the deceased, had made demand of dowry and since the deceased could not bear the torture caused by the appellant, to commit suicide had jumped into the well and by suffocation in water, she died. From the evidence of parents of the deceased i.e. P.Ws.1 & 2 and P.W.17, the Doctor, prosecution has proved its case beyond reasonable doubt. Further the deceased died within a period of seven years of marriage and therefore presumption under Section 113(b) would come into play. The trial Court has rightly convicted the appellant, which does not call for any interference.

8 Heard the learned counsel appearing on either side and perused the materials available on record.

9 It is seen that P.W.1 is defacto complainant and father of the deceased and P.W.2 is mother of the deceased. The appellant is son of sister of P.W.1. Even prior to the marriage,

the appellant used to visit the house of P.Ws.1 & 2 and married their deceased daughter, against their wishes, for which, complaint was also lodged and subsequently withdrawn. Later, P.Ws.1 & 2 had taken the deceased to their house and given some sridhana articles, P.W.2 casually had stated that if he conducted marriage for her deceased daughter, she would have spent Rs.50,000/- immediately after hearing the words, the appellant and his mother demanded the same as dowry. P.W.1 borrowed a sum of Rs.20,000/- and given to the appellant and he insisted to pay the remaining amount. Since P.W.1 could not pay the amount demanded by the accused, he tortured the deceased and then P.W.1 paid again Rs.20,000/- and thereafter also the appellant insisted remaining amount of Rs.10,000/-. P.W.1 asked the accused to set up separate family, for which also the appellant/accused demanded money. P.W.1 provided household articles worth of Rs.15,000/-, even then the appellant had not satisfied and caused cruelty to the deceased, which resulted in the deceased committing suicide. Even though, the appellant/accused married the deceased against their wishes, P.Ws.1 & 2 tolerated the act of the appellant and given money as and when the appellant/accused made demand. But, the accused made dowry harassment continuously and the deceased could not bear the same, decided to commit suicide and jumped into the well situated in Sarkar Thottam, near by the house and due to suffocation in water, she died immediately. P.W.17, the Doctor, who conducted autopsy on the body of the deceased, had stated that the deceased died only due to suffocation in water. Cases like this, the Court cannot expect corroboration, rather evidence of victim itself would suffice, the Court has to see creditworthy of the evidence of victim. In this case, P.Ws.1 & 2, being victim, had clearly deposed the demand of dowry made by the appellant/accused at several occasions, which corroborates with each other.

10 It is contended by the learned counsel for the appellant, the other two accused i.e. A1 and A3 were acquitted by the trial Court. Since the deceased did not have any issue, P.W.2 scolded her stating that since the deceased married the appellant against her wishes and she could not beget a child, and hence due to frustration on the same, the deceased committed suicide. But a perusal of the materials reveal that there was no evidence to prove the defence taken by the appellant/accused, but there was evidence to show that the appellant made dowry harassment, not even at once, at several occasions. The marriage between the appellant and the accused took place in the year 2005 and the deceased committed suicide in the year 2008, within a short period, no girl would go to that extreme level committing suicide, due to not giving birth to child. Hence the contention of the learned counsel appearing for the appellant is not acceptable and there was no piece of evidence to prove the

same. On reading of the evidence of P.Ws.1 & 2, it reveal that the appellant/accused made demand of dowry at several occasions and since at one stage P.W.1 could not give the money as demanded by the appellant, the appellant tortured the deceased and since she could not bear the same, taken a decision to commit suicide. Prosecution has proved its case beyond reasonable doubt and the trial Court has given reason for convicting the appellant/accused, which is well founded. The decisions referred to by the learned counsel appearing for the appellant is not applicable to the present case on hand. This Court does not find any valid reason or sound ground to take a different view in this case.

11 In the result, the criminal appeal stands dismissed as devoid of merit and substance. Trial court is directed to secure the custody of the appellant/accused to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS III)

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To

Sub Assistant Registrar

- 1) The Judicial Magistrate, Rasipuram.
- 2) The Chief Judicial Magistrate, Namakkal
- 3) The Additional District & Sessions Judge/
Fast Track Court, Namakkal,
- 4) The Deputy Superintendent of Police,
OCU CBCID Salem City.
- 5) The Superintendent of Police,
Central Prison, Coimbatore.
- 6) The Public Prosecutor, High Court of Madras.

copy to: The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.A.S.Prabhu, Advocate, S.R.No.64419

CrI.A.No.758 of 2011

SJ(CO)
SSM(27/08/2019) .