

Bail Slip

The Petitioners/Accused, namely 1. Stalin 2. Thulasingham S/o. K.Ponnusamy were released on bail as per order dated 01.12.2011 in CRL MP.NO.1/11 IN CRL A.NO.764/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.764 of 2011
and
M.P.No.1 of 2011

1. Stalin
2. Thulasingham

... Appellants/Accused

Vs.

State represented by
Inspector of Police,
W-5, All Women Police Station,
Ambattur,
Chennai Suburban Police.
(Crime No.2 of 2009)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to set aside the conviction and sentence imposed upon the appellant by the learned Additional District & Sessions Judge, Fast Track Court-I, Poonamallee in S.C.No.236 of 2010 by a judgment dated 11.11.2011.

For Appellant : Mr.A.M.Rahamath Ali
For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment and conviction passed by the learned Additional District & Sessions Judge, Fast Track Court-I, Poonamallee in S.C.No.236 of 2010, dated 11.11.2011.

2. The respondent police registered a case against the appellants for the offence under Section 376 and Section 4 of Dowry Prohibition Act. After investigation, the police laid a charge sheet before the learned Judicial Magistrate-I, Poonamallee against the first accused for the offence under Section 376 IPC and Section 4 of Dowry Prohibition Act, 1961; and against the accused 2 and 3 for offence under Section 4 of Dowry Prohibition Act and the same was taken on file in

P.R.C.No.29 of 2010. Since the offences are triable by the Court of Sessions, the learned Magistrate committed the case to the learned Principal district and Sessions Judge, Thiruvallur. As the offences are against the woman, the learned Sessions Judge made over the case to the learned Sessions Judge, Mahila Court, Poonamallee, which was taken on file in S.C.No.236 of 2010. Before the Sessions Court, on the side of the prosecution, the respondent police examined as many as 12 witnesses viz., P.W.1 to P.W.12 and as many as 11 documents as Ex.P.1 to Ex.P.11 and produced one material object(M.O.1).

3. After completion of examination of the evidence on the prosecution side, the accused was questioned under Section 313 (1)(b) 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. After hearing the arguments of both sides and considering the records, the learned Sessions Judge held the accused 1 and 2 guilty for the offence under section 4 of Dowry Prohibition Act, 1961, and convicted and sentenced them to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo six month simple imprisonment; and found the first accused not guilty for the offence under Section 376 IPC and third accused under Section 4 of Dowry Prohibition Act, 1961, and acquitted them.

4. Challenging the said judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Poonamallee in S.C.No.236 of 2010 dated 11.11.2011, the appellant/accused 1 and 2 have preferred the present Criminal Appeal before this Court.

5. The learned counsel for the appellants would submit that on the side of the prosecution, except the victim and her family members, no other independent witnesses have been examined to prove demand of dowry. P.W.12 is a Social Welfare Officer and he is not an eye witness and he is only a hearsay witness and the persons who have attended the betrothal, have not spoken anything about demand of dowry. The bride is a Christian and the bridegroom is a Hindu. P.W.1 victim and first accused loved each other and they convinced their parents for marriage. Their parents accepted the proposal and arranged their marriage. Betrothal of the boy and girl had taken place on 30.03.2006 and their marriage was fixed on 06.03.2009. Before marriage, the girl had accepted to convert into Hinduism. After betrothal, she refused to change her religion. The girl was not interested to convert into a Hindu. She threatened that she would commit suicide. Therefore, the appellant filed a complaint before the respondent police against the victim that in case she commits suicide, they should not be punished and they are not responsible. Taking advantage of that, in order to escape from the clutches of law, they have foisted a false case stating that the boy/A.1 had sexual intercourse with her

forcibly, and accused 1 to 3 have demanded 100 sovereigns jewels and also a car and bungalow for the marriage. There is absolutely no evidence to show that the appellants demanded dowry and even P.W.4 and P.W.5 have not spoken anything about demand of dowry. The learned Sessions Judge, disbelieving the evidence of the P.Ws.1,2,3 and 12, held that there is no evidence against first accused for the offence under Section 376 IPC and accordingly, acquitted him; and held that there is no evidence to show that A3 demanded dowry. However, the learned Sessions Judge believed the evidence of P.Ws.1,3 and 12 and convicted the Accused 1 and 2 for the offence under Section 4 of Dowry Prohibition Act. The learned counsel would further submit that absolutely there is no independent evidence for demanding dowry and the witnesses P.W.1 to P.W.3 are interested witnesses and P.W.2 is a hearsay witness. The prosecution has failed to prove its case beyond reasonable doubt. The learned counsel for the appellants prays to set aside the judgment of the trial Court.

6. Per contra, the learned Government Advocate (Crl. side) appearing for the State would submit that P.W.1, who is the victim, has clearly stated that after betrothal, the first accused called her to his house. At that time, he forced her to have sexual intercourse with her. Taking advantage of that, while distributing the marriage invitation, the appellants have demanded dowry of 100 sovereigns of jewels, car and house, failing which, they would stop the marriage. Evidence of P.W.1 to P.W.3 have corroborated with each other and P.W.12 independent witness, the Social Welfare Officer, had enquired several persons in the village and also relatives of the victim and he has given his evidence that the marriage was stopped due to demand of dowry. P.W.5 has also stated that he has not seen the boy and girl in the Church. Even Ex.P.10 clearly proves that the appellants demanded dowry and the victim's family could not provide the same and therefore, they had stopped the marriage. Therefore, the prosecution has proved its case beyond any reasonable doubts. The Session Judge has rightly appreciated the evidence of the prosecution and convicted the accused. There is no reason to interfere with the judgment of the Sessions Court.

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

8. The case of the prosecution is that A1 and the victim girl were in love. The accused is a Hindu and the victim is a Christian. However, their parents accepted for the marriage and betrothal function was also performed. After betrothal, A1 took the victim to his house under the pretext of introducing her to his relatives. According to the victim, the first accused had sexual intercourse against her will. Taking advantage of the situation that the first accused had had sexual intercourse with

the victim, A1 and his family members demanded dowry of 100 sovereigns of jewels, car and a house. If the demand was not met, they would stop the marriage. Based on the complaint given by the P.W.1 victim the police registered a case, investigated the matter, filed a charge sheet and prosecuted the matter.

9. The betrothal was conducted and after that the parents of the victim booked the marriage hall and printed marriage invitations, thereafter the appellants have demanded dowry and given complaint against the victim. The relationship of the parties are not in dispute. From the evidence of P.W.1, P.W.5 and P.W.6 it is seen that during betrothal, both the parents fixed the marriage date. Subsequently, the victim and appellant had physical relationship before the marriage. According to the prosecution, he had sexual intercourse with the victim forcibly. According to the defence, with the consent of the victim, they had. However, the learned Sessions Judge found that it happened with consent of both the boy and girl, therefore, acquitted the first accused for the offence under Section 376 IPC. From the evidence of P.W.1 to P.W.3 and P.W.12, it is seen that the appellants demanded dowry.

10. P.W.1 is the victim girl, P.W.2 and P.W.3 are the parents of the victim, P.W.4 is the mahazar witness, P.W.5 is the Pastor, P.W.6 is the relative of the victim, P.W.8 and P.W.9 are doctors, P.W.10 and P.W.11 are the investigating officers, P.W.12 is the Social Welfare Officer. The P.W.1 to P.W.3 are interested witnesses, P.W.12 is the Social Welfare Officer. He made an enquiry with the relatives and he has confirmed that there was demand of dowry. The learned counsel for the appellants submitted that the evidence of P.W.12 is only a hearsay witness and the persons mentioned in the Ex.P.10 were not examined before the Court. Therefore, the evidence of P.W.12 cannot be given weight and conviction cannot be recorded before the Court. P.W.4, P.W.5, P.W.6 and P.W.7 were present at the time of betrothal. They have not spoken anything about agreement for giving any dowry or providing jewels and other things. However, after betrothal, the boy had physical relationship with the girl. Thereafter, he refused to marry her and also they made a complaint before the police alleging that the girl was threatening to commit suicide. That has not been established by the defence. Though the evidence of P.W.1 to P.W.3 and P.W.12 Social Welfare Officer, have clearly spoken about the demand of dowry, there is no evidence to show that initially she accepted to change her religion from Christianity to Hinduism and subsequently, she refused to convert. In the suggestion put before the witnesses P.W.1 to P.W.3, they have denied the same. The said fact has not been established by the appellants. They should have proved their defence with substantial material. By examining the P.W.1 victim P.W.2 and P.W.3 parents of the victim and also P.W.12 Social Welfare Officer, who is an independent witness and gone to the village and examined relatives of the

victim, it is clear that the marriage was stopped due to demand of dowry for conducting of marriage. Taking advantage of the physical relationship with the boy and girl, the parents of the boy demanded dowry. Therefore, the trial Court has also rightly appreciated the evidence on record.

11. The Session Court has properly appreciated the entire evidence and found that the prosecution has proved its case beyond reasonable doubt and appellants have committed the offence as mentioned above. There is no merit in the appeal.

12. Accordingly, this Criminal Appeal is partly allowed. It is brought to the notice of this Court that subsequently, the first appellant and P.W.1 had married to different persons and they have settled in their lives. Under the said circumstances, if the first appellant sent to jail for two years, definitely, his marriage life get affected. However, considering the gravity of the offence, this Court is of the view that the sentence of two years could be reduced to one year. Likewise, the second appellant is a senior citizen and had several health issues. Therefore, taking a lenient view, this Court is of the opinion that sentence could be reduced to the period of one year. While confirming the conviction imposed on both of the appellants, this Court is inclined to reduce the sentence from two years rigorous imprisonment to one year rigorous imprisonment, which will meet ends of justice. The trial Court is directed to secure the custody of the appellants to undergo the sentence imposed upon them. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.THE ADDITIONAL DISTRICT & SESSIONS JUDGE,
FAST TRACK COURT-I, POONAMALLEE.

2.THE INSPECTOR OF POLICE,
W-5, ALL WOMEN POLICE STATION,
AMBATTUR, CHENNAI SUBURBAN POLICE.

3. THE PUBLIC PROSECUTOR,HIGH COURT OF MADRAS.

4.THE JUDICIAL MAGISTRATE,POONAMALLIE.

5.THE CHIEF JUDICIAL MAGISTRATE,THIRUVALLUR

6.THE DISTRICT AND SESSIONS JUDGE,THIRUVALLUR

+1cc to Mr.A.M.RAHAMATH , Advocate SR.No. 60316

Cr1.A.No.764 of 2011
and

M.P.No.1 of 2011

A.SK(27/01/2020)