

BAIL SLIP

The Petitioner/Appellant Viz Harish, aged 38 years, S/o.Natarajan, was directed to be released on bail as per order dated 10.04.2012 made in CrI.Mp.No.3 of 2012 in CrI.A.No.153 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2019

DELIVERED ON : 23.10.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.A. No.153 of 2012

Harish .. Appellant/1st accused

vs.

1 The Assistant Commissioner of Police
Kilpauk Range
Chennai 600 010
(Cr. No.284 of 2007)

2 T.K. Suriyanathan

(2nd Respondent impleaded as per order
dated 29.02.2012 made in MP.1 of 2012)

.. Respondents/Complainant & P.W.2

Criminal Appeal preferred under Section 374 (2) Cr.P.C. challenging the judgment and order dated 24.02.2012 passed by the Court of Session Judge, (Mahalir Neethi Mandram), Chennai 600 104 in S.C. No.196 of 2009.

For appellant Mr.V.Karthic, Sr.Counsel
for Mr.R.Vivekanathan

For R1 Mrs.P.Kritika Kamal
Govt.Advocate (CrI. Side)

For R2 Mr.S.Ananthanarayanan, Sr.Counsel
for Mr.S.M.Nandhie Devhan

JUDGMENT

This criminal appeal is directed against the judgment and order dated 24.02.2012 passed by the Court of Session (Mahalir Neethi Mandram), Chennai 600 104 in S.C. No.196 of 2009.

2 The precis of the germane facts that gave rise to this criminal appeal is as under:

2.1 Harish (A1) is the son of Natarajan (A2) and Usha (A3). Arun (A4) is the younger brother of Harish (A1). Suresh (A5) is the maternal uncle of Harish (A1) and Hema (A6) is the wife of Suresh (A5).

2.2 Harish (A1) was a software professional. The family comprising Harish (A1), Natarajan (A2), Usha (A3) and Arun (A4) was living in the ground floor portion of the house at Door No.21, Inner Circular Road, Kilpauk Garden Colony as tenants, in the first floor of which, Shyam Frederick (P.W.4), landlord, was living. Suresh (A5) was working in the Chennai Central Cooperative Bank, Aminjikarai Branch.

2.3 Yogapriya, the deceased in this case, was the daughter of Suryanathan (P.W.2) and Dhanalakshmi (P.W.3) and the elder sister of Senthil (P.W.1). Suryanathan (P.W.2) was the owner of Senthil Bikes who were the authorised dealers for Hero Honda bikes.

2.4 Suryanathan (P.W.2) and Suresh (A5) knew each other well and through Suresh (A5), the marriage alliance of Harish (A1) and Yogapriya was fixed. The betrothal was held on 28.08.2005 and thereafter, the marriage was solemnized on 10.03.2006. After marriage, Yogapriya was living in her matrimonial home with her husband and in-laws. Suresh (A5) and Hema (A6) were living separately.

2.5 A son was born to Yogapriya on 20.12.2006. On 06.05.2007, at 9.00 p.m., Yogapriya committed suicide in her matrimonial home by hanging. At that time, Harish (A1) had gone out to buy some snacks and DVD and Natarajan (A2) had gone out for buying fruits. On hearing the child crying from inside the bedroom, Usha (A3) and the servant maid Leena (P.W.6) broke open the bedroom door and found Yogapriya hanging. They sent word to Harish (A1) and Natarajan (A2), who returned home soon and lowered the body. The family requested Dr. Balasubramaniam (P.W.7) and Dr. Beena (P.W.8) (their neighbours) for medical help and both the said doctors examined Yogapriya and advised the family to take Yogapriya immediately to a nearby hospital. Accordingly, Yogapriya was rushed to Rigid Hospital in New Avadi

Road in the car driven by Thirumurugan (P.W.5), where, she was declared brought dead.

2.6 Yogapriya's parents were informed of this and on a written complaint (Ex.P.1) given by Senthil (P.W.1), Anbazhagan (P.W.14), Inspector of Police, registered a case in Cr. No.284 of 2007 under Section 174 Cr.P.C. on 06.05.2007 at 11 p.m. and prepared the printed FIR (Ex.P.13).

2.7 Since the death of Yogapriya was within seven years of marriage, the investigation of the case was taken over by Rajamani (P.W.15), Assistant Commissioner of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P.4) and rough sketch (Ex.P.5). He also seized the rope (M.O.1) that was used by Yogapriya for hanging and the broken latch (M.O.2) under mahazar (Ex.P.5).

2.8 On the requisition of the Investigating Officer, Rajagopal (P.W.11), Tahsildar, conducted inquest over the body of Yogapriya and during inquest, he examined Suryanathan (P.W.2), Dhanalakshmi (P.W.3) and Harish (A1). The statements of Suryanathan (P.W.2) and Dhanalakshmi (P.W.3) were marked as Exs.P.2 and P.3 respectively. In his evidence as well in the inquest report (Ex.P.9), he has stated that there are incriminating materials only against Harish (A1) with regard to demand of house of his parents-in-law and that there are no materials to implicate the other accused.

2.9 Dr. S. Kuppusamy (P.W.10) performed autopsy on the body of Yogapriya and in his evidence as well in the post-mortem certificate (Ex.P.6), has opined that Yogapriya would appear to have died of asphyxia due to hanging. He did not observe any external injury, except the ligature mark around Yogapriya's neck.

2.10 After examining witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C. No.27 of 2009 before the V Metropolitan Magistrate Court, Egmore, Chennai, under Sections 498-A and 304-B IPC or alternatively under Section 306 IPC against Harish (A1), Natarajan (A2), Usha (A3), Arun (A4), Suresh (A5) and Hema (A6).

2.11 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed the Court of Session in S.C. No.196 of 2009 and was made over to the Court of Session, Chennai, for trial.

2.12 The trial Court framed charges under Sections 498-A and 304-B IPC and also framed an alternative charge under Section 306 IPC against the accused. When questioned, the accused pleaded "not guilty".

2.13 To prove the case, the prosecution examined 15 witnesses and marked 21 exhibits and 41 material objects.

2.14 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. However, Harish (A1) gave a written explanation under Section 313 Cr.P.C. denying the allegations and explaining the circumstances, under which, his wife Yogapriya committed suicide. On the side of the accused, no witness was examined. However, one exhibit, i.e., invitation of baby shower function, was marked in the cross-examination of one of the prosecution witness.

2.15 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 24.02.2012 in S.C.No.196 of 2009, acquitted A2 to A6 of the charges, however, convicted and sentenced Harish (A1) as under:

Provisions under which convicted	Sentence
S.498-A IPC	One year rigorous imprisonment and fine of Rs.50,000/- in default to undergo three months simple imprisonment.
S.304-B IPC	Seven years rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

3 Calling into question the correctness of the aforesaid conviction and sentences passed by the trial Court, Harish (A1) is before this Court.

4 Heard Mr.V.Karthic, learned Senior Counsel representing Mr.R.Vivekananthan, learned counsel on record for the appellant, Mrs.P.Kritika Kamal, learned Govt. Advocate (Crl. Side) and Mr. S. Ananthanarayanan, learned Senior Counsel representing Mr. S.M. Nandhie Devhan, learned counsel on record for Suryanathan (P.W.2).

5 Before advertng to the contentious submissions raised at the bar, it may be apposite to state here that the prosecution has proved the following facts beyond a peradventure:

- The relationship of the parties;
- Conduct of betrothal on 28.08.2005;
- Solemnization of marriage on 10.03.2006;
- Birth of child on 20.12.2006; and
- Death of Yogapriya due to suicide by hanging.

6 Mr. V. Karthic, learned Senior Counsel appearing for the appellant took this Court to the complaint (Ex.P.1) lodged by Senthil (P.W.1), Yogopriya's brother and submitted that except a general statement that the accused had harassed Yogapriya for dowry after marriage, there is no other material in it. He further contended that Senthil (P.W.1/de facto complainant) suspected foul play in the death of his sister Yogapriya and wanted a thorough investigation; only subsequently, the witnesses started improving their case by contending that all the accused were demanding more and more dowry and that the accused wanted the family of Yogapriya to transfer their ancestral house in the name of Yogapriya and on that score, they subjected her to cruelty and that had resulted in her death. He also took this Court through the evidence of various witnesses to show that immediately on coming to know of the death of Yogapriya, the family members of Yogapriya came with a gang comprising lawyers and assaulted everyone including Harish (A1) and laid a siege around the police station insisting that the police should implicate all the family members of Harish (A1), including his uncle and aunt who were living elsewhere. He therefore contended that the whole prosecution was engineered with the help of legal minds to fix the entire family of the accused.

7 Refuting the contentions put forth by Mr. Karthic, learned Senior Counsel, Mr. Ananthanarayanan, learned Senior Counsel appearing for Suryanathan (P.W.2) submitted that the FIR cannot be treated as an encyclopedia of the prosecution case, especially in a case of this nature, where, the family members of Yogapriya would have been in a state of shock and grief. He further contended that the jewels that were given by the family of Yogapriya during marriage were kept in the joint locker in the name of Usha (A3) and Yogapriya in Chennai Central Cooperative Bank, where, Suresh (A5) was working; all these

clearly show that the accused were avaricious and were torturing Yogapriya for more dowry and that had resulted in she committing suicide leaving behind her kid.

8 Mrs. Kritika Kamal, learned Government Advocate (Crl. Side), while supporting the arguments advanced by Mr. Ananthanarayanan, also submitted that Harish (A1), in his statement to the Tahsildar during inquest, has spoken to about the Valasarawalkam land which only shows his guilty mind.

9 This Court gave its anxious consideration to the submissions made across the bar.

10 As rightly contended by Mr. Ananthanarayanan, learned Senior Counsel, the failure of Senthil (P.W.1/de facto complainant) to give full details of the nature of dowry harassment in the complaint (Ex.P.1) cannot be said to be fatal. However, this Court finds that in the evidence of Senthil (P.W.1/de facto complainant), Suryanathan (P.W.2) and Dhanalakshmi (P.W.3), there are material improvements qua their previous statements which have been elicited and established as required under Section 145 of the Evidence Act.

11 The nub of the prosecution case is that at the time of betrothal, the parents of Yogapriya had come forward willingly to transfer a piece of land belonging to them in Valasarawalkam after three years, since it was under mortgage; however, after marriage, the accused started pestering them to effect the transfer immediately; when they agreed to transfer that land, the accused wanted them to transfer their ancestral house in Nungambakkam instead of the Valasarawalkam land.

12 Senthil (P.W.1/de facto complainant), in the cross-examination, has admitted that in the complaint (Ex.P.1), he has not stated anything about the demand for the Valasarawalkam land or the ancestral house. Suryanathan (P.W.2), father of Yogapriya, has, in his statement to the police, stated that he had himself voluntarily come forward to give the Valasarawalkam land to his daughter, whereas, in the Court, he has stated that the accused had demanded that land. His previous statement was brought to his notice and the contradiction was established in the cross-examination of the Investigating Officer (P.W.15). Dhanalakshmi (P.W.3), mother of Yogapriya, has very clearly stated that it was Natarajan (A2), Usha (A3), Suresh (A5) and Hema (A6), who demanded that they cannot wait for three years for the transfer of the Valasarawalkam land and that they wanted it immediately. None of these witnesses has stated as to when they went to the house of the accused, where, the demand for the ancestral house in Nungambakkam was made by the accused. However, a reading of the evidence shows that all these were

prior to the baby shower ceremony after which child was born on 20.12.2006.

13 At this juncture, it may be relevant to analyse the contention of Mr.V.Karthic with regard to the situation that was created by Yogapriya's family on the date of the incident.

13.1 Thirumurugan (P.W.5), the driver who carried Yogapriya to Rigid Hospital, has stated in his examination-in-chief, that Yogapriya was admitted in the Rigid Hospital; her family members came with four or five persons and they started beating Harish (A1) and also him (P.W.5).

13.2 Anbazhagan (P.W.14), Inspector of Police, who registered the FIR (Ex.P.13), has stated that around 10.30 p.m., Senthil (P.W.1/de facto complainant) came with about 200 persons comprising advocates and others to the police station and created ruckus; they laid a siege around the police station and insisted upon the police demanding the arrest of the accused; he (P.W.14) called for additional police force from the nearby G3 Police Station to disperse the crowd and give protection to the family of the accused.

13.3 Senthil (P.W.1/de facto complainant), in the cross-examination, has further admitted that after the incident, a case was registered against him by the Aminjikarai police.

13.4 Suryanathan (P.W.2), Yogapriya's father, has admitted in the cross-examination that he was a friend of Suresh (A.5) and the marriage proposal was brought through Suresh (A.5).

13.5 Dhanalakshmi (P.W.3), has admitted in the cross-examination that she gave interview to the TV channels.

13.6 Thus, the evidence on record clearly shows that Yogapriya's family was demanding the scalp of all the family members of Harish (A1), including his distant relatives like Suresh (A.5) and Hema (A.6).

14 With regard to the keeping of the jewels in the locker, Mr.V.Karthic submitted that the locker was available in the Chennai Central Cooperative Bank, where, Suresh (A.5) was working and therefore, it was opened in the name of Usha (A.3) and Yogapriya so as to keep the jewels of both of them in it. Concededly, after the demise of Yogapriya, the police opened the locker in the presence of the Branch Manager and the jewels of Yogapriya were returned to her parents and the jewels of Usha (A.3) were taken by her under Section 451 Cr.P.C. In the opinion of this Court, in the facts and circumstances of this case, the opening of locker in the joint names of Usha (A.3) and Yogapriya cannot be said to be an incriminating circumstance against the accused. It is not the case of the prosecution that

there was any physical assault by Harish (A1) on his wife Yogapriya. As alluded to above, the prosecution case is that Harish (A1) was asking his wife Yogapriya to get the ancestral property at Nungambakkam in lieu of the Valasarawalkam property. This Court is unable to countenance this assertion and is of the view that it is a contrived one to fix criminal liability on the accused.

15 For fastening criminal liability under Section 304-B IPC, it is a prerequisite that the evidence adduced by the prosecution falls within the four corners of the definition of the word "dowry" as defined in Section 2 of the Dowry Prohibition Act, 1961. The soul of the definition is the expression "in connection with the marriage of the said parties". In this case, the accused did not demand the Valasarawalkam property and on the contrary, Suryanathan (P.W.2), being an affluent industrialist, had volunteered to give the Valasarawalkam property to his daughter Yogapriya. But, it is the contention of Suryanathan (P.W.2) that when he came forward to give the said property, the accused demanded the ancestral property at Nungambakkam in lieu. This Court has disbelieved this demand in paragraph no.12, supra. But, assuming for a moment that such a demand was made by the accused, that was not in connection with the marriage and was independent of it. Ergo, the proved facts are insufficient to sustain the conviction of Harish (A1) under Section 304-B IPC.

16 In the evidence of the prosecution witnesses, they have implicated all the six accused in every aspect of the case and the trial Court has rightly wished away the evidence qua Natarajan (A.2), Usha (A.3), Arun (A.4) and Suresh (A.5) and had acquitted them. Of course, the English legal principle *falsus in uno, falsus in omnibus*, is not applicable in India and this Court can embark upon removing the chaff from the grain to see whether there are credible materials to sustain the conviction of Harish (A.1). The evidence of Shyam Frederick (P.W.4) who was living in the first floor of the house where the family of the accused was living, shows that the Harish-Yogapriya couple was happy and there were no overt quarrels. In his explanation under Section 313 Cr.P.C., Harish (A1) has stated that he was deeply involved in a time-bound project and was unable to devote much attention towards his wife. All these must have weighed in her mind and made her take the extreme step of committing suicide. This Court cannot remain oblivious of the fact that the I.T. professionals are a tribe who are sinking under the weight of their competitive culture and suffer variegated illnesses - from diabetes to depression. The Family Courts are flooded with the matrimonial disputes of this tribe. This could possibly be a case where Harish's (A.1's) neglect of his wife owing to work pressure had brought doom on him.

17 Mr. Ananthanarayanan submitted that the accused had failed to discharge the presumption under Section 113-B of the Evidence Act and therefore, no interference in the judgment and order of the trial Court is warranted. Be it noted that, for invoking the presumption under Section 113-B, *ibid*, the prosecution should prove the basic ingredients of the offence under Section 304-B IPC. The prosecution is further required to prove that there was a demand of dowry in connection with the marriage and soon before the death of the wife, she must have been subjected to cruelty in connection with the demand. As alluded to above, in the absence of satisfactory evidence for the proof of the basic ingredients of the offence under Section 304-B IPC, the presumption under Section 113-B of the Evidence Act cannot be invoked and onus shifted on the accused. In this context, it may be profitable to refer to the following passages from the judgment of the Supreme Court in *Sher Singh @ Partapa vs. State of Haryana*¹.

"25. The fundamental and vital question that the Court has to ask itself and find a solid answer to, is whether this evidence even preponderantly proves that the appellant had treated the deceased with cruelty connected with dowry demands. It is only if the answer is in the affirmative will the Court have to weigh the evidence produced by the appellant to discharge beyond reasonable doubt, the assumption of his deemed guilt.

26. We have not lost sight of the fact that the deceased was pregnant at the time of her suicide and that only extraordinary and overwhelming factors would have driven her to take her life along with that of her unborn child. The fact remains that she did so. What motivated or compelled her to take this extreme and horrific step will remain a mystery, as we are not satisfied that the prosecution has proved or even shown that she was treated with such cruelty, connected with dowry demands, as led her to commit suicide. In the normal course dowry demands are articulated when the marriage is agreed upon and is certainly reiterated at the time when it is performed and such demands continue into a couple of years of matrimony. In normal course, if a woman is being tortured and harassed, she would not remain reticent of this state of affairs and would certainly repeatedly inform her family. This is specially so before she takes the extreme step of taking her own life. Added to this are the inconsistencies and contradictions between the statements of PW 4 and PW 7 with regard to the panchayat and the presence of and

1 (2015) 3 SCC 724

knowledge of Gurdip Singh. It is for these reasons that we are of the opinion that the prosecution has not shown/presented and/or proved even by preponderance of probabilities that the deceased had been treated with cruelty emanating from or founded on dowry demands. It is in the realm of a possibility that the ingestion of aluminium phosphate may have been accidental.

27. We may only observe that in his examination under Section 313 CrPC the accused has proffered details of his defence. This is not a case where he has merely denied all the questions put by the Court to him. As already stated above, because of the insufficiency or the unsatisfactory nature of the facts or circumstances shown by the prosecution, the burden of proving his innocence has not shifted to the appellant, in the present case."

18 In this case as well, Harish (A.1) has given a written explanation under Section 313 Cr.P.C. which is alluded to in paragraph no.16, supra.

19 Lastly, when this Court wanted to know where Yogapriya's child is, Mr. Karthic submitted that after the incident, Yogapriya's family members barged into the house of the accused and took physical custody of the child and since then, the child is with them.

20 Though Mr. Ananthanarayanan disputed the aforesaid allegation, yet, he fairly conceded that the child is with its maternal grandparents and not with its father. This Court is able to discern the anxiety of the complainant's side to ensure that the conviction and sentence of Harish (A1) is sustained so that it can be a ground to deny him the custody of the child. Of course, this observation of this Court is only on the flip side.

21 In the light of the foregoing discussion, the judgment and order of the trial Court insofar as it relates to convicting and sentencing the appellant, viz., Harish (A1) as stated in paragraph no.2.15, supra, is liable to be interfered with and is accordingly, set aside.

Ex consequenti, this criminal appeal is allowed. Bail bond executed by Harish (A1) shall stand discharged. Fine amount, if any, paid shall be refunded to Harish (A1).

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Assistant Commissioner of Police
Kilpauk Range
Chennai 600 010
 - 2 The Sessions Judge
Mahalir Neethi Mandram
Chennai 600 104
 - 3 The V Metropolitan Magistrate,
Egmore, Chennai.
 - 4 Do Thro Chief Metropolitan Magistrate,
Chennai.
 - 5 The Superintendent Central Prison,
Puzhal, Chennai.
 - 6 The Public Prosecutor
High Court of Madras
Chennai 600 104
 - 7 The Deputy Registrar (Crl.) Side
High Court of Madras
Chennai 600 104
- } with a direction to
transmit the original
records to the trial
Court.

+1cc to Mr.S.M.Nandhie Devhan, Advocate, S.R.No.88405

Crl.A.No.153 of 2012

VGI (CO)
CS/03/12/2019