

Bail Slip

The Petitioner/Accused, namely 1.Rajammal 2.Moorthy 3.Dhanasekar Appellants in Crl.A.No.851 of 2011 AND 1)Balam & Balakrishnan Appellant in Crl.A.No.852 of 2011 were released on bail as per order of this Court dated 28.02.2012 and 19.04.2012 in MP.NO.1/12 IN CRL A.NO.851/2011 and CRL MP.2/12 IN CRL A 852/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.A.Nos.851 & 852 of 2011

1.Rajammal
2.Moorthy
3.Dhanasekar ... Appellants in Crl.A.No.851 of 2011

Balam & Balakrishnan ... Appellant in Crl.A.No.852 of 2011

Vs

State Rep by,
The Inspector of Police,
Vengal Police Station,
Tiruvallur District.
Crime No.194 of 2006 ... Respondent in Crl.A.No.851 of 2011

The Inspector of Police,
Vengal Police Station,
Tiruvallur District,
Crime No.19 of 2008 ... Respondent in Crl.A.No.852 of 2011
PRAYER in Crl.A.No.851 of 2011:: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the case in S.C.No.162 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court-III, Tiruvallur, and set aside the same.
PRAYER in Crl.A.No.852 of 2011: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the case in S.C.No.162 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court-III, Tiruvallur, and set aside the same.

For Appellants : Mr.V.Krishnamoorthy (in both cases)
For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Criminal Side)
(in both cases)

O R D E R

Two appeals are arising out of the judgment in S.C.No.162 of 2009. The appellants in Crl.A.No.851 of 2011 are the accused two to four in S.C.No.162 of 2009; appellant in Crl.A.No.852 of 2011 is the first accused. The learned Additional District and Sessions Judge, Fast Track Court III, Tiruvallur, while deciding the case, convicted all the accused for the offence under Sections 498 (A), and 304(B) r/w 306 IPC. Challenging the said judgment, the accused have filed these two appeals before this Court.

2 It is seen that the respondent police registered a case against these appellants for the offence under Sections 498 (A), 306 and 304(B) IPC in Crime No.194 of 2006 and after investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No-I, Tiruvallur. The learned Judicial Magistrate No-I, has taken the charge sheet on file in P.R.C.No.16 of 2008 and after completing the formalities and since the offences are triable by the Court of Sessions, committed the case to the learned Principal District and Sessions Judge, Tiruvallur. The learned Principal District and Sessions Judge, has taken the case on file in S.C.No.162/2009 and made over the case to the Additional District and Sessions Judge, Fast Track Court-III, Tiruvallur for disposal. After, the procedural formalities, the learned Additional District and Sessions Judge, convicted the appellants for the above said offences and sentenced them to undergo two years Rigorous Imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo one month Rigorous Imprisonment for the offence under Section 498(A) IPC, sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.3,000/- each in default to undergo six months Rigorous Imprisonment each for the offence under Section 304(A) IPC..

3 Challenging the said judgment, first accused preferred the appeal in C.A.No.852 of 2011 and A2 to A4 have preferred the appeal in C.A.No.851 of 2011 before this Court. Since both the appeals are arising out of the same judgment, they are disposed of by the common judgment.

4 In order to prove the case of the prosecution as many as 11 witnesses were examined and 12 documents were marked besides one Material object. After completing the prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses before the accused, they denied as false. On the side of the defence, no oral and documentary evidences were produced.

5 The learned counsel for the appellants would submit that there is no allegation about the demand of dowry. The appellants in Cr.A.No.851 of 2011 viz., A2 to A4 are living separately. The deceased and A1 were living separately. Neither A1 nor A2 to A4 demanded any dowry, neither the victim nor the defacto complainant. There are contradictions in the evidence of P.W.1 from that of the statement recorded under Section 161 Cr.P.C., and he has not spoken anything about the demand of money for purchasing the lorry. Before the RDO enquiry, A1 given the statement. At the time of occurrence, there is no eye witness in this case. The evidence of P.W.9 Inspector of Police, sent alteration report Ex.P.12 by altering the Section, has stated that there is no dowry demand. The judgment of the Court below is only on the basis of the circumstantial evidence. The Court below ought to have disbelieved the evidence of P.W.1, to P.W.11 and also ought to have held that Ex.P1 to Ex.P12 are not admissible. There is no chain of circumstances to draw irresistible conclusion that accused alone are found guilty for the offence alleged. There is no material to show that neither he demanded dowry nor induced her to commit suicide and they caused cruelty to the deceased. The Court below has failed to consider the contradictions in the evidence of P.W.2 that she reached the occurrence place before the body was taken to the hospital. But it was admitted by P.W.1 in his cross examination that they reached the Kommukkampedu village by 02.00A.M. and at that time there was no dead body of his daughter. The evidence of P.W.1 is totally contrary to P.W.2's evidence and motivated. He would further submit that the Court below has failed to consider that there was no allegations against the appellants. The appellants, only with the malafide intention clubbed into the above case and there was no connection between the appellants and the occurrence. Similarly the Court below failed to see that no public witnesses were examined but only on the basis of the evidence given by P.W.1 and P.W.2, the trial Court has come to the conclusion that the accused are found guilty, which is highly arbitrary and great injustice to the appellants. Finally the appellants are not residing in a joint family. The sketch produced by the respondents clearly shows that the appellants are residing in a separate house, which warrants interference by this Court.

6 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that, initially the case was registered for the offence under Section 174 Cr.P.C., subsequently. Even in the RDO enquiry, the parents of the deceased have stated about the demand of dowry. But, RDO when considering the statements made by the parents of the deceased, wrongly given the opinion that the death was not due to the demand of dowry. Even the Inspector of Police in Ex.P12, alteration report while alteration of charge sheet has given the

opinion without any subsistence. However the Investigation Officer, who has investigated the matter and recorded the statements from all the witnesses and P.W.1 and P.W.2 have clearly stated about the demand of dowry. After completing the investigation, since there was a priamfacie material available to file a charge sheet against all the accused, they laid a charge sheet before the learned Judicial Magistrate. The trial Court have appreciated the entire evidence including P.W.1 and P.W.2, who are the parents of the deceased and as such, the prosecution has proved its case beyond any reasonable doubt. In the considered opinion, the death of the deceased is an intentional one, which does not warrants any interference by this Court.

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

8 The case of the prosecution is that the deceased Nagarani @ Gajalakshmi is the wife of A1. A2 to A4 are the mother and brothers of A1. The deceased Nagarani, who was the daughter of the defacto complainant was illtreated by A1 to A4 both mentally and physically and harassed her for getting motorcycle as dowry from her parents house and thereby made demand of dowry. The cruelty and harassmet meted out by way of demand of dowry drove Nagarani to commit suicide and on 01.09.2006 at 08.00 p.m, at Indira Nagar, Komakkambedu Village in A1 to A4's house, the deceased Nagarani soon before death, due to harassmet and demand of dowry by A1 to A4 and due to their abetment by cruel treatment douzed herself with kerosene, set herself ablaze and committed suicide and died. The death was a dowry death and A1 to A4 by demand of dowry and harassmet committed abetment of suicide by Nagarani. Hence, the Deputy Superintendent of Police, Uthukottai, filed the final report against the accused A1 to A4 for the offences under Section 498 (A), 306 and 304-B IPC before the learned Judicial Magistrate No-I, Tiruvallur.

9 On reading of the evidence of P.W.1 and P.W.2, it is seen that they have clearly narrated about the marriage that happened between A1 and deceased one year prior to the occurrence. The marriage of A1 and deceased were performed. Out of their wed lock, they blessed with one male child. Soon after the marriage, A2 to A4 obtained the jewels of the deceased. They have not stipulated that they demanded money of Rs.50,000/- from P.W.1 for purchasing lorry. When P.W.1 asked about that, A1 purchased a lorry for a sum of Rs.50,000/- for which he has stated that he would arrange the loan for the balance amount. Even they have not stipulated that A1 has demanded the money for purchasing a lorry. From the evidence of P.W.1 and P.W.2., it is

seen that A1 used to quarrel with the deceased and insisted to get money and also provided 2 wheeler for him. Prior to the occurrence, P.W.1 went to the house of the deceased. At that time, the deceased told to A1 that for purchasing 2 wheeler for him, the deceased can ask her parents. P.W.1 and P.W.2's evidences shows that after one year of the marriage, A1 demanded money for purchasing lorry and also purchased two wheeler and even on the date of occurrence they went to their house, even one day prior to the occurrence, they celebrated the 1st birthday of their grand son. Despite inviting their in-laws, on the birthday celebration of his first son, neither A1 nor A2 to A4 were present on that date.

10 From the evidence of P.W.1 and P.W.2, it is seen that after blessing his grand son, they left the house of A1. At that time, A1 came to the house. They informed A1 and left the place from the house of A1. A1, Victim and Grand son were present at that time. Within two hours, they received the intimation of the death of their daughter. A1 was also present at the time of occurrence. Apart from the fact that the occurrence was alleged to have taken place in the house of A1 and the death of victim happened within 7 years from the date of marriage, there are allegations of demand of dowry.

11 Though the learned counsel for the appellants would submit that A1 does not flew away from the place of occurrence, but he was in the occurrence place, even after the death of the deceased and also the statement of A1 was recorded by the RDO, during inquest, he has not stated anything. Further, he has not come to the Court and explain as to why his wife, within two years from the date of marriage, committed suicide that too pouring the kerosene on her and set fire on her. It is for the husband of the victim to establish the same. Before the trial court, all the accused have not stated why the deceased committed suicide.

12 No doubt it is a well settled proposition of law, in the criminal cases, the prosecution has to prove its case beyond reasonable doubt. At the same time, the law also given the presumption that when the married girl commit suicide within 7 years intentionally in the matrimonial home, it is for the accused to explain why the girl committed suicide.

13 Learned counsel for the appellants vehemently contended that A2 to A4 are living separately hence the offence under Section 304 (B) IPC will not be attracted. Evidence of P.W.1 has clearly stated that the appellants are living together as a joint family. Though the learned counsel for the appellants pointed out from the mahazar and rough sketch there are two separate house. But, on careful reading of the mahazar and

evidence of P.W.1, it is seen that though there are two rooms, there is no material to show that they are living separately.

14 Further, it is quite common in the village even if more than one children for the parents and got married, they may have a separate roof, but still they live as a joint family. P.W.1 has clearly stated that they were living as a joint family. The appellants have not disproved the same.

15 Since, the Appellate Court is the final Court of fact finding and it has to re-appreciate the entire evidence, therefore, on reappraisal of entire evidence, this Court has come to an independent conclusion that the prosecution has proved its case beyond reasonable doubt and all the accused have committed the offences and the same is proved by the prosecution. The appellants have not rebutted the presumption in the manner known to law that the victim not died due to dowry harassment and there is no cruelty.

16 Considering the facts and circumstances of the case, it is clear that the accused have committed for the offences under Sections 498-A, 306 and 304 (B) IPC. This Court finds that there is no reason to interfere with the judgment of the learned Additional District and Sessions Judge, Fast Track Court-III, Tiruvallur, in S.C.No.162 of 2009. Therefore, this Court does not find any merit in these appeals.

17 Accordingly, these Criminal Appeals are dismissed. The trial Court is directed to secure the appellants to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The learned Additional District and Sessions Judge,Tiruvallur

2.The Inspector of Police,
Vengal Police Station,Tiruvallur District.

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

4.The Judicial Magistrate, Thiruvallur District

5. Do thro the Chief Judicial Magistrate, Thiruvallur

6. The Superintendent,Central prison, Puzhal, chennai

+2ccs to Mr.S.Kingston, Advocate SR.No. 6418&64169

Cr1.A.Nos.851 & 852 of 2011

A.SK(04/02/2020)