

Bail Slip

The Petition/Accused Viz., Muthu was released on bail as per order of this Court dated 14/06/2012 in Crl.MP 1 of 2012 in Crl.A.No.321 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.321 of 2012

Muthu Appellant/1st Accused

Vs.

State represented by
The Inspector of Police,
Kelambakkam Police Station. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) Cr.P.C. against the judgment and order dated 24.05.2012 passed in S.C.No.348 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chengalpattu.

For Appellant : Mr.M.Mohammed Rafi

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl. Side)

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 24.05.2012 passed in S.C.No.348 of 2008 on the file of the Sessions Court (Mahalir Neethimandram), Chengalpattu.

2. The concentrated facts of the case that are distilled from the records flow as under:

2.1 The deceased Geetha, aged about twenty two years, is the daughter of Neelavathi (PW1) and Ezhumalai (PW2). They hail from Ninakarai village in Kancheepuram District. Saarangan (PW4) is the brother-in-law of Geetha, he having married her (Geetha's) elder sister. Apoorvam (PW5) is also from Ninakarai village and is a family friend of Geetha.

2.2 Muthu (A1), the appellant herein and his mother Prema (A2) hail from Sonalur village near Kelambakkam.

2.3 The marriage of Geetha and Muthu (A1)/appellant was arranged by both families and it was solemnized on 28.09.2007. At the time of marriage, it is alleged that the family of the groom demanded twenty sovereigns of gold, but, the bride's family was able to give only fifteen sovereigns of gold. After marriage, Geetha lived in joint family in Sonalur village. It is also alleged that Geetha was continuously subjected to cruelty by the appellant (A1) and his mother (A2), who were demanding the balance of five sovereigns of gold and cash of Rs.1,00,000/-, on account of which, Geetha committed suicide by self-immolation in her nuptial home on 10.02.2008 around 8.00 p.m.

2.4 On getting the news, the family members of Geetha rushed there and on the written complaint (Ex-P1), given by Neelavathi (PW1), the respondent/police registered a case in Crime No.64 of 2008 on 10/11.02.2008 at 00.45 hours, for the offence under Section 174 Cr.P.C.

2.5 The investigation of the case was taken over by Balasubramanian (PW13), Deputy Superintendent of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P10) and rough sketch (Ex-P11). From the place of occurrence, he (PW13) seized a paint box (M.O.2) containing traces of kerosene, a piece of saree worn by Geetha (M.O.3), an used match stick (M.O.4) and a broken door latch (M.O.5) under the cover of mahazar (Ex-P12) in the presence of witnesses Varadharajan (PW10) and Pasupathi (not examined).

2.6 Since the death of Geetha was within seven years of marriage, Ramalingam (PW11), Revenue Divisional Officer, conducted inquest over the body of Geetha, who, in his evidence as well in the inquest report (Ex-P7), has opined that the suicide of Geetha could have been due to dowry harassment.

2.7 Therefore, the police filed an alteration report (Ex-P14) altering the case from one under Section 174 Cr.P.C. to one under Sections 498-A and 304-B IPC.

2.8 Dr.Parashakthi (PW7) performed autopsy on the body of Geetha, who, in her evidence as well in the postmortem report (Ex-P2), has noted 80% burns and opined that Geetha had died of shock due to burns.

2.9 The appellant (A1) became scarce and surrendered before a Magistrate, on coming to know of which, he (A1) was taken into custody by the police on 20.02.2008.

2.10 The seized materials were sent to the Tamil Nadu Forensic Sciences Laboratory, for examination and report. Chemical analysis report (Ex-P16), which is admissible under Section 293 Cr.P.C. states that kerosene was detected in the

plastic can (M.O.2), piece of saree (M.O.3) and the used match stick (M.O.4).

2.11 After examining witnesses and collecting various reports, the police filed a final report in P.R.C.No.29 of 2008 before the Judicial Magistrate Court No.I, Chengalpattu, for the offences under Sections 498-A and 304-B IPC altered to 306 IPC, against the appellant (A1) and his mother Prema (A2).

2.12 The trial Court framed charges for the aforesaid offences and when questioned, the accused pleaded "not guilty".

2.13 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they merely denied everything and did not offer any explanation whatsoever. On behalf of the accused, no witness was examined nor any document marked.

2.14 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 24.05.2012 in S.C.No.348 of 2008, acquitted Prema (A2) of all charges, but, convicted and sentenced the appellant (A1) as under:

Provision under which convicted	Sentence
Section 304-B IPC	Eight years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment.
Section 498-A IPC	Sentence not given.

2.15 Challenging the above conviction and sentence, the appellant (A1) has preferred the present appeal.

3. Heard Mr.M.Mohammed Rafi, learned counsel for the appellant (A1) and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. Mr.M.Mohammed Rafi, learned counsel for the appellant (A1) submitted that there is no shred of evidence to show that the accused had demanded dowry and harassed Geetha for the same; Neelavathi (PW1), mother of Geetha, has clearly stated that, after marriage, the family of the appellant (A1) was happy with the dowry that was already given. He further submitted that there is no material to show that Geetha was subjected to cruelty by the appellant.

5. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the appellant.

6. This Court gave its anxious consideration to the rival submissions.

7. Neelavathi (PW1), mother of Geetha, has stated in her evidence that at the time of marriage, the appellant's family demanded twenty sovereigns of gold, but they (Geetha's family) gave only fifteen sovereigns of gold and other household articles; the appellant was working as a call taxi driver; her daughter lived with him in Sonalur village; Geetha and the appellant came for the maiden Diwali, for which also, appropriate gifts were given to them; after Diwali, they were living happily for some time; thereafter, the appellant started demanding ten sovereigns of gold and harassing Geetha after consuming liquor; the appellant would beat Geetha after drinking liquor; her daughter Geetha complained to her; once both of them came to her (PW1's) house; her daughter Geetha asked cash of Rs.1,00,000/- saying that her husband wants it for buying a new car, since he had sold his TATA Sumo car, for which, she (PW1) told him (appellant) that she did not have the amount; the couple came again for the Pongal festival and at that time also, her daughter Geetha said that her husband was demanding Rs.1,00,000/- for buying a car and harassing her; ten days later, she (PW1) along with her husband (PW2) and their family friend (PW5) went to Sonalur village to sort out the issue with the appellant and his mother and at that time, they were abused and sent back; a week later, when she (PW1) was getting ready to go for a wedding, her daughter Geetha telephoned her and told her that the appellant was not allowing her to go for the marriage and wept asking her why she (Geetha) was given in marriage to such a bad person; her daughter further asked her to go for the marriage, since it was the wedding of her friend; while they were on the way to the marriage hall, she received a phone call from Sonalur village that Geetha had died due to gas cylinder burst; hence, they all rushed to Sonalur village, where, the police were already there and she lodged the complaint (Ex-P1).

8. In the cross-examination, Neelavathi (PW1) admitted that she had brought up her child very affectionately and she was a sensitive girl; her daughter would want to come to her natal home frequently, but, the appellant would not allow her.

9. Based on these admissions, Mr.M.Mohammed Rafi, learned counsel for the appellant submitted that the suicide of Geetha was not on account of dowry harassment at all. The evidence of Ezhumalai (PW2), father of Geetha, Saarangan (PW4), brother-in-law of Geetha and Apoorvam (PW5), their family friend, also do not disclose that there was dowry harassment as defined under Section 2 of the Dowry Prohibition Act.

10. The evidence of these witnesses show that after marriage, Geetha and the appellant were living in Sonalur village, the appellant had sold his TATA Sumo car and

thereafter, he was harassing Geetha to get Rs.1,00,000/- from her parents for buying another car for his business.

11. Even at the earliest point of time, during the inquest of the Revenue Divisional Officer (PW11), Neelavathi (PW1) and Ezhumalai (PW2) have stated that the appellant would beat Geetha after consuming liquor, about which, Geetha confided to her mother (PW1).

12. Saarangan (PW4), co-brother of the appellant, had stated that he is the younger brother of Neelavathi (PW1) and he has married Geetha's elder sister; Geetha came to their house and stated about the cruelty meted out to her by the appellant and hence, he (PW4), along with his wife, went to Sonalur village for mediation, but to no avail.

13. Further, Neelavathi (PW1), Ezhumalai (PW2) and Apoorvam (PW5) have stated that they all went to Sonalur village to amicably settle all issues; they went to the house of the appellant and asked him as to why he is torturing Geetha, for which, the appellant defiantly stated that he will do like that and abused them and sent them away.

14. As regards the telephonic call that was received from Geetha by Neelavathi (PW1) on the fateful day around 6.00 p.m., there is a clear reference to that even in the complaint (Ex-P1).

15. The evidence of Neelavathi (PW1), Ezhumalai (PW2) and Apoorvam (PW5) show that Geetha's friend Beena was getting married on 10.02.2008, for which, they were going anticipating that Geetha will come to the marriage hall; however, around 6.00 p.m., Geetha called Neelavathi (PW1) and stated that her husband is refusing to send her and remonstrated by asking her why she (PW1) got her (Geetha) married to such a bad person; after this conversation, while they were proceeding to the marriage hall, they received the news of Geetha's death and hence, they rushed to Sonalur village.

16. As rightly submitted by Mr.M.Mohammed Rafi, learned counsel for the appellant, for fastening criminal liability under Section 304-B IPC, the harassment should have been for demand of dowry in connection with the marriage.

17. In this case, the evidence does not show that the demand of Rs.1,00,000/- was by way of dowry in connection with the marriage of Geetha and the appellant. As regards the demand of five sovereigns of gold, it is clearly an improvement and was not stated even before the Revenue Divisional Officer (PW11), during inquest.

18. However, there are sufficient materials to show that the appellant had subjected Geetha to cruelty by beating her after coming home drunk and demanding Rs.1,00,000/- from her

for buying a car as he had sold his TATA Sumo car. Admittedly, the appellant was a call taxi driver and he needed a car for his business.

19. The last straw on the camel's back was the refusal of the appellant to let Geetha go for her close friend's wedding on the fateful day, which triggered the suicide.

20. The appellant was available when Neelavathi (PW1) and others came to the place of occurrence and thereafter, he absconded and surrendered before the Court several days later.

21. On the conspectus of the facts obtaining in this case, this Court is of the view that the prosecution has produced sufficient materials to show that Geetha was subjected to cruelty, as defined under Section 498-A IPC, which had resulted in her suicide within five months of marriage.

22. This is a case where the presumption under Section 113-A of the Evidence Act, 1872, deserves to be invoked.

23. The appellant has failed to discharge the burden under Section 113-A, *ibid*, and he has not probabalized the reason for his wife's suicide by self-immolation. Strangely, the trial Court has not awarded any separate sentence for the offence under Section 498-A IPC, which practice deserves to be deprecated. It is the duty of the Court to award the sentence and thereafter, it can say that the sentence will run concurrently with the major sentence.

24. In such perspective of the matter, the conviction of the appellant for the offence under Section 304-B IPC is set aside and he is acquitted of the said charge.

25. In this case, the trial Court has framed the alternative charge under Section 306 IPC. Even in a case where a charge under Section 306 IPC is not framed, the conviction can be altered from one under Section 304-B IPC to one under Section 306 IPC, in view of the judgment of the Supreme Court in *Gurnaib Singh Vs. State of Punjab*¹ and it is ordered accordingly.

26. Mr.M.Mohammed Rafi, learned counsel for the appellant submitted that the appellant is a chronic Tuberculosis patient and produced medical certificates in support of the said submission. He further submitted that the appellant may not survive for long and pleaded for leniency in the sentence. Acceding to his submission, the substantive sentence of seven years rigorous imprisonment is reduced to three years rigorous imprisonment.

In the result, this criminal appeal is partly allowed. The conviction and sentence for the offence under Section 304-B IPC is set aside. The appellant is convicted of the offence under Section 306 IPC and sentenced to undergo three year rigorous imprisonment. The trial Court is directed to secure the appellant (A1) and commit him to prison to serve out the remaining period of sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Sessions Judge,
(Mahalir Neethimandram),
Chengalpattu.
2. The Inspector of Police,
Kelambakkam Police Station.
3. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.
4. The Deputy Registrar with a direction to return
(Crl.Section), the original records to the trial
Madras High Court,
Chennai - 600 104.
- 5.The Judicial Magistrate No.I,
Chengalpet.
- 6.The Chief Judicial Magistrate,
Chengalpet (For Information)
- 7.The Superintendent,
Central Prison, Puzhal, Chennai.
- 8.The Section Officer,
Criminal Section, High Court of Madras.

+2cc to Mr.M.Mohammed Raji, Advocate Sr.94770

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