BAIL SLIP

The Appellants/Accused,namely 1.Manikandan M/Age 31 Years S/o.Nadanam 2.Nadanam M/Age 58 Years S/o.Natesan 3.Malliga F/Age 45 Years S/o.Nadanam 4.Santhanam M/Age 27 Years S/o.Nadanam 5.Pandian M/Age 29 Years S/o.Nadanam this Original Appeal filed against the SC .NO.240/11 on the file of the District Mahila Sessions Judge, Cuddalore the accused/ Appellants 2 to 5 had already been suspended by the trial court and Suspendend the sentence of imprisonment of all accused made in MP.NO.1/12 IN CRL A.NO.467/2012 Order dated 13.08.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2019

PRONOUNCED ON : 27.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.467 of 2012

1.Manikandan
2.Nadanam
3.Malliga
4.Santhanam
5.Pandian .. Appellants/Accused

Vs.

The State rep. by
Dy. Superintendent of Police
Chidambaram
(Crime No.489 of 2009) .. Respondent/ Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 30.07.2012 passed by the Sessions Judge (Mahila Court), Cuddalore in S.C.No.240 of 2011.

For Appellants : Mr.S.Saravanakumar
For Respondent : Mr.G.Ramar,
Govt. Advocte (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 30.07.2012 passed by the Sessions Court (Mahila Court), Cuddalore in S.C.No.240 of 2011.

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2.The prosecution case is as under :

2.1.The deceased Parimala was the daughter of Rajeswari (P.W.2), sister of Manivasagan (P.W.1) and sister-in-law of Marudhamani (P.W.3). The family of the deceased is from Virudhachalam village.

2.2.Manikandan (A1) is the son of Nadanam (A2) & Malliga (A3) and brother of Santhanam (A4) & Pandian (A5). The accused hail from Chidambaram.

2.3.Parimala got married to Manikandan (A1) on 01.11.2007 and at the time of marriage, the bride's family gave 15 sovereigns of gold and household articles worth Rs.50,000/-, a motorcycle etc. to the groom. After marriage, Parimala lived in joint family with the accused in Virudhachalam.

2.4.Parimala had completed B.Pharm. and was employed as lecturer in Jain Pharmacy college in Sribooshanam. Manikandan (A1) was employed in Sriram Chits Funds in Chidambaram. A girl child was born to them, who was 10 months old at the time of incident.

2.5.It is alleged that the accused demanded more dowry and subjected Parimala to cruelty. Parimala committed suicide by hanging on 28.06.2009 around 09.30 p.m. in the first floor portion of her matrimonial home. Her body was seen hanging down the ceiling in the bedroom by Manikandan (A1), on his return from work. He broke open the door and lowered the body and took it to the hospital, where Parimala was declared brought dead. Her family was informed.

3.On the written complaint (Ex.P1) given by Manivasagan (P.W.1), the younger brother of Parimala, Aranganathan (P.W.12), HC 534 registered a case in Crime No.489 of 2009 under Section 174(3) Cr.P.C. on 29.06.2009 at 04.00 hours and prepared the printed F.I.R. (Ex.P9).

4.Investigation of the case was taken over by Narendran Nayar (P.W.10), Deputy Superintendent of Police, who went to the place of occurrence, prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P7). Since the death of Parimala was within 7 years of marriage, Ramalingam (P.W.9), Revenue Divisional Officer, conducted inquest over the body and submitted the inquest report (Ex.P6), wherein, he has opined that death of Parimala was due to dowry harassment. Therefore, the police altered the case from one under Section 174(3) Cr.P.C. to Section 498-A and 304-B IPC and Section 4 of the Dowry Prohibition Act, 1961 (for brevity "the DP Act") vide alteration report (Ex.P8).

5.Dr.Kalaiselvi (P.W.8) performed autopsy on the body of the deceased and in her evidence as well in the post-mortem certificate (Ex.P5), has opined that the death was due to

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asphyxia caused by hanging. The viscera report (Ex.P4) shows that poison was not detected in the sample of the visceral organs.

6.Investigation passed hands, from Narendran Nayar (P.W.10) to Moovendhan (P.W.11), then to Sivanesan (P.W.13) and finally to Natarajan (P.W.14). After recording the statements of witnesses and collecting various reports, the police completed the investigation and filed a final report in P.R.C.No.14 of 2011 before the Judicial Magistrate No.II, Chidambaram for the offence under Sections 498-A and 304-B IPC and Section 4 of the DP Act against Manikandan (A1), Nadanam (A2), Malliga (A3), Santhanam (A4) and Pandian (A5).

7.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.240 of 2011 and was made over to the Mahila Court, Cuddalore, for trial. The trial Court framed charges under Sections 498-A and 304-B IPC and Section 4 of the DP Act against the accused. When questioned, they pleaded "not guilty".

8.To prove the case, the prosecution examined 14 witnesses and marked 9 exhibits. When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the accused nor any document marked.

9.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.07.2012 in S.C.No.240 of 2011, convicted and sentenced the accused as under :

Name of the accused	Provision under which convicted	Sentence
Manikandan (A1)	Section 498-A IPC	1 year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 1 month rigorous imprisonment
	Section 304-B IPC	7 years rigorous imprisonment
	Section 4 of the DP Act	3 months rigorous imprisonment

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Name of the accused	Provision under which convicted	Sentence
Nadanam (A2)	Section 498-A IPC	1 year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 1 month rigorous imprisonment
	Section 304-B IPC	2 years rigorous imprisonment
	Section 4 of the DP Act	3 months rigorous imprisonment
Malliga (A3)	Section 498-A IPC	1 year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 1 month rigorous imprisonment
	Section 304-B IPC	2 years rigorous imprisonment
	Section 4 of the DP Act	3 months rigorous imprisonment
Santhanam (A4)	Section 498-A IPC	1 year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 1 month rigorous imprisonment
	Section 304-B IPC	2 years rigorous imprisonment
	Section 4 of the DP Act	3 months rigorous imprisonment
Pandian (A5)	Section 498-A IPC	1 year rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 1 month rigorous imprisonment
	Section 304-B IPC	2 years rigorous imprisonment
	Section 4 of the DP Act	3 months rigorous imprisonment

The aforesaid sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentence, the accused have filed the present appeal.

10.Heard Mr.S.Saravanakumar, learned counsel for the appellants and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent State.

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11.The prosecution has proved beyond cavil the following facts :

i. The inter se relationship of Manivasagan (P.W.1), Rajeswari (P.W.2), Marudhamani (P.W.3) and the deceased;

ii. The inter se relationship of the appellants;

iii. The marriage of Parimala with Manikandan (A1) on 01.11.2007 and

iv. The suicide of Parimala in the matrimonial home on 28.06.2009.

12.Per contra, the learned Government Advocate (Crl. Side) refuted the contentions raised by the learned counsel for the appellants.

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

14.In the complaint (Ex.P1), that was lodged by Manivasagan (P.W.1), it is stated that Parimala was married to Manikandan (A1) on 01.11.2007; Manikandan (A1) would come drunk, beat Parimala and demand dowry from her; his parents and brothers would also join him in harassing Parimala; in March 2009, a problem became serious and so, he (Manivasagan-P.W.1) along with his mother (Rajeswari-P.W.2) went to Parimala's matrimonial home and mediated; around 12.30 in the night, they received information that Parimala has been admitted in the hospital and when they went there, they were told that she has died; that they suspect foul play in her death.

15.Manivasagan (P.W.1), in his evidence, has stated about Parimala's marriage with Manikandan (A1) and the Stridhana that was given to her at the time of marriage. He has specifically stated that the couple was happy, during the first six months of marriage; after that, Manikandan (A1) would come drunk and quarrel with Parimala and beat her, about which, his sister Parimala had told. Except making general allegations that all the family members of the accused were demanding dowry, there are no satisfactory materials in respect of the said demand, in the evidence of Manivasagan (P.W.1), Rajeswari (P.W.2) and Marudhamani (P.W.3).

16.However, all these witnesses have stated that Manikandan (A1) was demanding Rs.8,00,000/- from Parimala, for getting a job for himself in Annamalai University. When he started torturing Parimala for that, she informed about it and so, Manivasagan (P.W.1) along with his mother Rajeswari (P.W.2), brother-in-law Marudhamani (P.W.3) and the broker,

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who arranged the marriage, went to the house of the accused and explained to him that they are not in a position to give that much money.

17.Manivasagan (P.W.1), has stated that a week before his sister's (Parimala's) suicide, she came home and stated that her husband (Manikandan-A1) wants 7 sovereigns of gold and Rs.25,000/- and that, he will not permit her to enter the house without it. Therefore, the family borrowed Rs.5,000/- from their uncle Veeramuthu (P.W.6) and gave it to Parimala, who went back to her nuptial home. It may be relevant to state here that the demand of Rs.8,00,000/- for getting employment in Annamalai University and Rs.25,000/- for establishing a separate home in Chidambaram finds place, even in the statement given by these witnesses to the R.D.O (P.W.9).

18.It is trite that the statement given to the R.D.O (P.W.9), does not suffer the vice of a police statement, in that, such a statement can be used to corroborate or contradict the testimony of the deponent. In this case, this previous statement corroborates the testimony of the deponent about the cruelty inflicted on Parimala by Manikandan (A1), for making her to get Rs.8,00,000/- from her family, for the purpose of securing a job in the Annamalai University. The demand of Rs.25,000/- by Manikandan (A1) and the giving of Rs.5,000/- also finds corroboration in the statement to the R.D.O. (P.W.9). Similarly, the evidence of Manivasagan (P.W.1) that Manikandan (A1) would come drunk and beat his wife, has been stated to the police, even in the complaint (Ex.P1).

19.Mr.Saravanakumar took this Court to the 161(3) Cr.P.C. statement contradictions and submitted that the allegations of dowry harassment is an improvement.

20.This Court carefully considered the submission and scrutinised the evidence of the witnesses and the corresponding questions put to the Investigating Officer. What the defence has done is that, it has extracted portions of the examination in-chief of the witnesses to the Investigating Officer and has asked him, whether the witness has stated so far, which the Investigating Officer has stated in the negative.

In the opinion of this Court, this cannot be treated as a 161(3) statement contradiction because, no human being can verbatim repeat in the Court, the statement made by him to the police officer. The language will perforce differ.

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21. What is the meaning of contradiction qua Section 162 Cr.P.C.? The definition of the word "contradiction", as found in Webster's thesaurus is "a statement in opposition to another". If a witness testifies to an "X" fact in the Court and if that fact runs counter to a "Y" fact said by the witness to the police, then, it means that there is a contradiction. In other words, the "X" fact and "Y" fact should be irreconcilable. In some cases, if a witness had omitted to say a fact to the police and if he says that fact for the first time in the Court, that may also amount to a contradiction. Normally, such cases are treated as improvements made by the witness in his testimony to the Court. For instance, if a witness had stated to the police that he saw the accused attacking the victim at 10.00 a.m., but, in the Court, he states that he saw the occurrence at 6.00 p.m., these two facts are irreconcilable and would amount to contradiction. In such a case, in the cross-examination, the attention of the witness must be directed to his previous statement to the police that he saw the occurrence at 10.00 a.m. If he says that he did say so to the police, nothing further needs to be done. If he says that he had not stated so to the police, then, when the Investigating Officer is cross-examined, the statement made by the witness that he saw the occurrence at 10.00 a.m. should be proved. Thereafter, it is for the Court to appreciate the credibility of the witness and decide whether to wholly believe him, partly believe him or disbelieve him. Section 155(3) of the Evidence Act contemplates impeaching the credit of a witness by contradicting him with his previous statement.

22.A witness is not required to undergo a memory test in a Court of law. When the witness is being cross-examined, the Presiding Officer should have his previous statement and follow it up closely, so that, the defence does not misguide the lay witness. After all in our system, witnesses come to give evidence, several years after the incident and they may not really remember, what all they had told the police at the time of investigation. Mere omission to say a fact to the police by itself, will not render the evidence of the witness unworthy of acceptance. It is for the trial Court to appreciate the evidence from the standpoint of a prudent man.

23.In this case, there is satisfactory evidence to show that Manikandan (A1) used to come drunk, beat his wife, demanded Rs.8,00,000/- for getting an employment in Annamalai University and Rs.25,000/- for establishing a house in Chidambaram. These demands do not fall within the definition of the word 'dowry' because, they were not demanded in connection with the marriage. These demands were made much after the marriage. Of course, these demands and harassment meted out to the deceased would indubitably fall within the meaning of cruelty defined under Section 498-A IPC. The

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harassment has been so intense that Parimala was pushed to the wall and she resolved to die rather than endure the torments.

24.In the opinion of this Court, there are no satisfactory materials to sustain the conviction against Nadanam (A2), Malliga (A3), Santhanam (A4) and Pandian (A5), the family members of Manikandan (A1). Therefore, the conviction of the appellants under Section 304-B IPC and Section 4 of the DP Act deserves to be set aside.

25.However, there is sufficient material to uphold the conviction of Manikandan (A1) under Section 498-A IPC and convict him under Section 306 IPC read with the aid of the presumption under Section 113-A of the Evidence Act. Though no charge has been framed against Manikandan (A1) under Section 306 IPC, in view of the law laid down by the Supreme Court in Gurnaib Singh Vs. State of Punjab [(2013) 7 SCC 108], Manikandan (A1) can be convicted of the offence under Section 306 IPC, in the light of the presumption under Section 113-A of the Evidence Act and the evidence of the prosecution witnesses.

In fine, this appeal is partly allowed. The appellants are acquitted of the offences under Section 304-B IPC and Section 4 of the DP Act. Nadanam (A2), Malliga (A3), Santhanam (A4) and Pandian (A5) are acquitted of the offence under Section 498-A IPC. The conviction and sentence imposed on Manikandan (A1) for the offence under Section 498-A IPC stands confirmed. Manikandan (A1) is convicted of the offence under Section 306 IPC and is sentenced to undergo three years rigorous imprisonment. The sentences shall run concurrently. The trial Court is directed to secure Manikandan (A1) and commit him to prison to undergo the remaining period of sentence, if any. The Registry is directed to transmit the original records to the Court concerned forthwith.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gya
To

1.THE SESSIONS COURT (MAHILA COURT)
CUDDALORE

2.THE DY. SUPERINTENDENT OF POLICE
CHIDAMBARAM

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3.THE PUBLIC PROSECUTOR
HIGH COURT,MADRAS

4.THE DEPUTY REGISTRAR
CRIMINAL SIDE
HIGH COURT,MADRAS

5.THE JUDICIAL MAGISTRATE,NO.II, CHIDAMBARAM.
6.DO THRO THE CHIEF JUDICIAL MAGISTRATE, CUDDALORE
7.THE SUPERINTENDENT,CENTRAL PRISON,CUDDALORE(FOR INFORMATION)
8.THE DISTRICT MAHILA COURT SESSIONS JUDGE,CUDDALORE.

+1cc to Mr.S.Saravanakumar , Advocate SR.No. 98731

CRL.A.No.467 of 2012

A.SK(29/01/2020)

27.11.2019

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