

Bail Slip

The Appellant/1st Accused namely Kaniyan, S/o.Murugesan was directed to be released on bail vide order dated 11.01.2013 made in CrI.A.No.681/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.A.No.681 of 2012

Kaniyan
S/o.Murugesan

... Appellant/1st Accused

Vs.

State by

The Inspector of Police,
Irumbulikulurichi Police Station,
Perambalur District,
Perambalur.

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment passed in S.C.No.45 of 2012 on the file of the Principal District and Sessions Court, Ariyalur, dated 24.09.2012.

For Appellant : Mr. S. Kumaresan
for Mr . K.Gandhi Kumar

For Respondent : Mr. R. Surya Prakash
Government Advocate (CrI. Side)

J U D G M E N T

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence, dated 24.09.2012, passed in S.C.No.45 of 2012 on the file of the Principal District and Sessions Court, Ariyalur.

2.The case of the prosecution is as follows :

2.1.The deceased Manimegalai was the daughter of Anbalagan (P.W.1) and Kalairani (P.W.2), and sister of Kiruthika (P.W.5) and Mangaiyarkarasi (P.W.6). The family of Manimegalai hailed from Mathumadakki Village in Ariyalur District.

2.2.Kaniyan (A1) is the son of Murugesan (A2) and Tamilmani (A3) and brother-in-law of Valarmathi (A4 - A1's

brother's wife). The family of the accused hailed from Ponparappi Village, which is about 4 km away from Mathumadakki Village.

2.3.The marriage of Manimegalai with Kaniyan (A1) was solemnized on 28.06.2006 and at the time of marriage, the bridegroom party is said to have told the bride's family that it would suffice if they give the usual stridhana that was given to their daughters. After marriage, Manimegalai lived in joint family in Ponparappi Village.

2.4.It is alleged that Manimegalai suspected that Kaniyan (A1) was having illicit intimacy with his sister-in-law Valarmathi (A4) and when she questioned it, she was assaulted by her husband, due to which, she once attempted to commit suicide by hanging in her matrimonial home, but was saved. It is also alleged that the accused were demanding 40 sovereigns of gold from the parents of Manimegalai and were torturing her for that.

2.5.On 02.05.2007, Manimegalai called her father, Anbalagan (P.W.1) and asked him to take her back home. Hence, Anbalagan (P.W.1) sent Sekar (P.W.3) and Renganathan (P.W.10) to bring her home. Manimegalai came to her natal home in the evening and told her parents that she was being subjected to torture by her husband and in-laws and that they were demanding 40 sovereigns of gold. Her parents convinced her that they will meet the demand after the harvest.

2.6.However, Manimegalai wanted to return to her matrimonial home on the same night and therefore, she was sent with Sekar (P.W.3), Savithri (P.W.9) and Renganathan (P.W.10). When she reached Ponparappi Village, the accused refused to let her come into the house and said that, unless she brings the jewels, she will not gain entry into the house. Therefore, Manimegalai was brought back home on that night.

2.7.On 03.05.2007, Manimegalai consumed Endosulphan in her natal home, around 10.30 a.m. While she was being taken to the hospital by her mother, she died en route.

2.8.On the complaint (Ex.P1) lodged by Anbalagan (P.W.1), father of Manimegalai, Panner Selvam (P.W.8), Sub-Inspector of Police, registered a case in Crime No.30 of 2007 under Section 174 Cr.P.C. at 15.00 hours on 03.05.2007 and prepared the printed F.I.R. (Ex.P3).

3.Investigation of the case was taken over by Avinash Kumar (P.W.19), Deputy Superintendent of Police, who went to the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P8) in the presence of witnesses Kaliyaperumal (P.W.13) and Manivasagam (P.W.14).

4.Since the death was within seven years of marriage, Aruna (P.W.17), Revenue Divisional Officer, conducted inquest on the body of Manimegalai and submitted inquest report (Ex.P7) and opined that the death of Manimegalai was due to dowry harassment. The Investigating Officer altered the case from one under Section 174 Cr.P.C. to one under Section 304-B IPC and filed alteration report (Ex.P9).

5.Dr.Mathiyalagan (P.W.16) conducted autopsy on the body of Manimegalai and issued post-mortem certificate (Ex.P6). The visceral samples were sent to the Tamil Nadu Forensic Sciences Laboratory, where, they were examined by Arunagiri (P.W.18), Scientific Assistant, who, in his evidence as well in his report (Ex.P5), has stated that Endosulphan, a poisonous polychlorinated pesticide, was detected in the visceral organs. Based on the Viscera Report, Dr.Mathiyalagan (P.W.16) gave his opinion as follows :

"the deceased would appear to have died of Endosulphan, a poisonous polychlorinated pesticide poisoning."

6.After completing the investigation, the police filed a final report in Cr.No.30 of 2007 before the Judicial Magistrate, Perambalur, against Kaniyan (A1), Murugesan (A2), Tamilmani (A3) and Valarmathi (A4) for the offences under Section 4 of the Dowry Prohibition Act, 1961 and Sections 498-A and 304-B IPC.

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.45 of 2012 for trial. The trial Court framed charges under Section 4 of the Dowry Prohibition Act, 1961, and Sections 498-A and 304-B IPC against A1 to A4. When questioned, the accused pleaded 'not guilty'.

8.To prove the case, the prosecution examined 19 witnesses and marked Exs.P1 to P11.

9.When the accused were questioned under Section 313 Cr.P.C., Kaniyan (A1) stated that, Manimegalai was in love with one Sekar and wanted to marry him, but her parents forcibly got her married to him and that was disturbing her; she was not having conjugal relationship with him; she had gone to her parents' house four days before suicide; she had a quarrel with her parents, who had advised her to be compatible and therefore, she must have committed suicide. No witness was examined nor any document was marked on the side of the accused.

10.During the pendency of the trial, Murugesan (A2) and Tamilmani (A3) died.

11.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 24.09.2012, acquitted Valarmathi (A4) and convicted Kaniyan (A1) and sentenced him as follows :

Provision under which convicted	Sentence
Section 4 of the Dowry Prohibition Act, 1961	One year rigorous imprisonment and also a fine of Rs.5000/- in default to undergo rigorous imprisonment for three months
Section 498-A IPC	Two years rigorous imprisonment and also a fine of Rs.5000/- in default to undergo rigorous imprisonment for six months
Section 304-B IPC	Ten years rigorous imprisonment

12.Challenging the conviction and sentence, Kaniyan (A1) is before this Court.

13.Heard Mr.S.Kumaresan, learned counsel for the appellant (A1) and Mr.R.Surya Prakash, learned Government Advocate (Crl. Side), appearing for the respondent.

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

- (i)inter se relationship between the prosecution witnesses and Manimegalai;
- (ii)inter se relationship of the accused;
- (iii)marriage of Manimegalai with Kaniyan (A1) was solemnized on 28.06.2006;
- (iv)post marriage, the couple was living in joint family in Ponparappi Village;
- (v)Manimegalai committed suicide on 03.05.2007 around 10.30 a.m. in her natal home by consuming Endosulphan.

15.The point for consideration is whether the death of Manimegalai was due to dowry harassment.

16.The evidence of the prosecution witnesses, especially, Anbalagan (P.W.1) and Kalairani (P.W.2) clearly show that, at the time of marriage, the accused did not make any demand of dowry. They have further stated that the accused themselves said that they are affluent and wanted the parents of Manimegalai to give stridhana as per their wish. However, the evidence of the prosecution witnesses show that, after marriage, while Manimegalai was in the joint family, the accused started demanding 40 sovereigns of gold. The prosecution witnesses have stated that Manimegalai would often complain to them that her husband was having illicit intimacy with his sister-in-law Valarmathi (A4) and that when she questioned him, he assaulted her and therefore, she even attempted to commit suicide by hanging in her matrimonial home, which was thwarted by her husband. The complaint made by Manimegalai to her parents is relevant under Section 8 of the Dowry Prohibition Act, 1961, and her statement to them that the

accused were demanding 40 sovereigns of gold is relevant under Section 32, *ibid.*, as dying declaration.

17. The last straw on the camel's back was the incident that occurred on 02.05.2007. Anbalagan (P.W.1), Kalairani (P.W.2), Sekar (P.W.3), Savithri (P.W.9) and Renganathan (P.W.10) have stated that Manimegalai was brought to her natal home from her matrimonial home on her request, on the evening of 02.05.2007; when she came home, she told Anbalagan (P.W.1) and Kalairani (P.W.2) that her in-laws were demanding jewels, for which, she was assured that the demand will be met after the harvest. Anbalagan (P.W.1) and Kalairani (P.W.2) have stated that Manimegalai wanted to return home on the same night and therefore, they sent her along with Sekar (P.W.3), Savithri (P.W.9) and Renganathan (P.W.10). Savithri (P.W.9) is the grand-mother of Manimegalai. Sekar (P.W.3), Savithri (P.W.9) and Renganathan (P.W.10) have stated that they went with Manimegalai to drop her in her matrimonial home at Ponparappi Village, in the evening around 8 o'clock and at that time, the accused did not permit Manimegalai to enter the house by saying that she will be admitted into the house only when she brings 40 sovereigns of gold; therefore, they brought back Manimegalai and dropped her in her natal house in the night. The defence was not able to make any serious dent in the cross-examination of these witnesses.

18. Mr. S. Kumaresan contended that there are discrepancies in the evidence of the prosecution witnesses inasmuch as Anbalagan (P.W.1) has stated that he sent Sekar (P.W.3) to drop Manimegalai at her matrimonial home, whereas, Sekar (P.W.3) has stated that Anbalagan (P.W.1) also accompanied him. Mr. S. Kumaresan further contended that Kaniyan (A1) was not present in the house on 02.05.2007, when the alleged incident took place.

19. The learned Government Advocate (Crl. Side) refuted the contentions and brought to the notice of this Court certain portions of the cross-examination of Renganathan (P.W.10), wherein, he has clearly stated that, Kaniyan (A1) was also there in the house, when Manimegalai was turned away.

20. As regards the discrepancy as to whether Anbalagan (P.W.1) had accompanied Sekar (P.W.3) or not, the evidence of these witnesses clearly show that Sekar (P.W.3), Savithri (P.W.9) and Renganathan (P.W.10) had accompanied Manimegalai to drop her back in her matrimonial home, at which time, the accused did not permit her entry. Thus, the stray averment of Sekar (P.W.3) that Anbalagan (P.W.1) had also accompanied him may not seriously impair the prosecution case. Even in the complaint (Ex.P1) that was given by Anbalagan (P.W.1), there is clear reference to the incident that took place in the evening of 02.05.2007. That apart, the statements that were given by Anbalagan (P.W.1) and Kalairani (P.W.2) to the Revenue Divisional Officer during inquest also corroborate their testimony.

21. Though this Court is of the opinion that there was no dowry harassment within the meaning of the Dowry Prohibition Act, 1961, as the demand was not made in connection with the marriage, but was made much after and hence, the conviction and sentence of the appellant for the offences under Section 4 of the Dowry Prohibition Act, 1961, and Section 304-B IPC may not be sustainable. Yet, the evidence on record shows that Manimegalai had suffered cruelty at the hands of the appellant and that had triggered her suicide on 03.05.2007 inasmuch as she was not permitted entry into her matrimonial home on the previous day for obnoxious reasons. Hence, the appellant is liable to be convicted under Section 306 IPC r/w. the presumption under Section 113-A of the Evidence Act. Though no charge was framed under Section 306 IPC, in view of the judgment of the Supreme Court in Gurnaib Singh Vs. State of Punjab [(2013) 7 SCC 108], the offence under Section 304-B IPC can be converted to one under Section 306 IPC.

22. In view of the above discussion, the conviction and sentence of the appellant (A1) for the offences under Section 4 of the Dowry Prohibition Act, 1961, and Section 304-B IPC are set aside and the conviction and sentence for the offence under Section 498-A are sustained. The appellant (A1) is convicted of the offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for three years. The sentences shall run concurrently. The appellant will be entitled to set off under Section 428 Cr.P.C.

In the result, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellant (A1) and commit him to prison for undergoing the sentence imposed upon him.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True copy//

Sub Assistant Registrar

mkn

To

1. The Principal District and Sessions Judge,
Ariyalur.
2. The Judicial Magistrate,
Jayamkondam

3.The Chief Judicial Magistrate,
Perambalur (for information)

4.The Inspector of Police,
Irumbulikurichi Police Station,
Perambalur District,
Perambalur.

5. The Superintendent
Central Prison, Trichy.

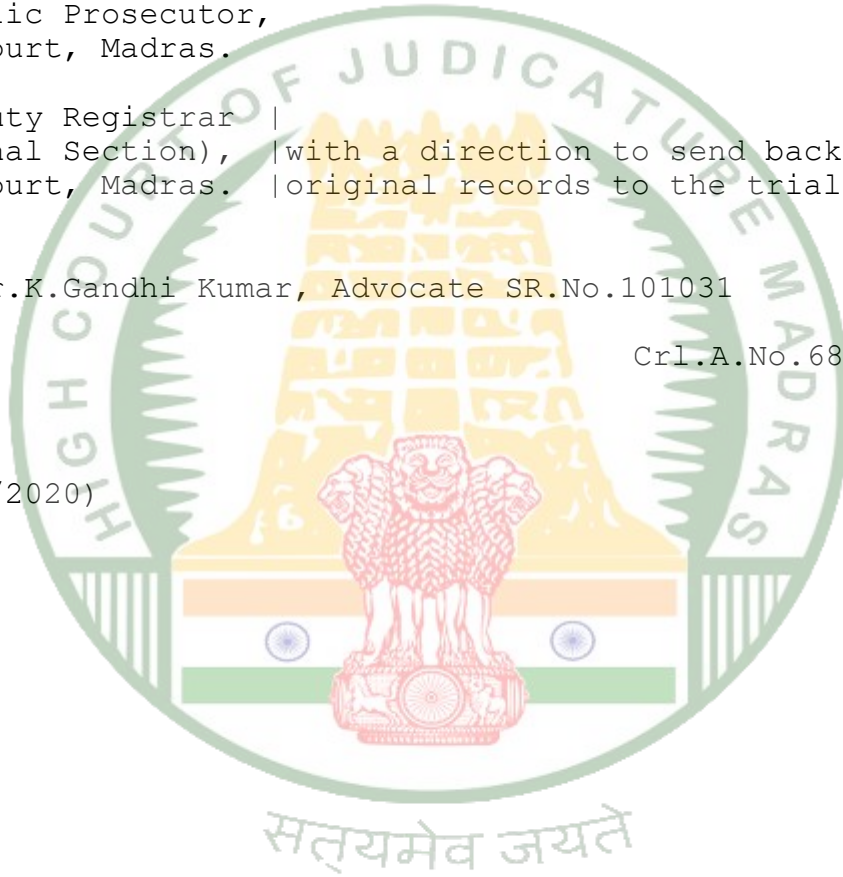
6.The Public Prosecutor,
High Court, Madras.

7.The Deputy Registrar |
(Criminal Section), |with a direction to send back the
High Court, Madras. |original records to the trial Court

+1cc to Mr.K.Gandhi Kumar, Advocate SR.No.101031

Crl.A.No.681 of 2012

RSI (CO)
GMY (30/01/2020)



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