

Bail Slip

The Appellants herein/Accused namely Suresh S/o. John, Vanitha W/o. John, John S/o. Kanikairaj and sumathi W/o. Peruaml were directed to be released on bail as per order of this Court dated 10.09.2012, 08.10.2012 and 30.10.2012 made in CrI.M.P. 1/2012, 2/2012 and 2/2012 in CrI.R.C.No.1133/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2019

PRONOUNCED ON : 24.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1133 of 2012

1.Suresh
2.Vanitha
3.John
4.Sumathi

.. Petitioners/
Accused/Appellants 1 to 4

Vs

The State rep. by Inspector of Police,
Thiruppathur Taluk Police Station,
Vellore District.
(Crime No.1077/2006)

... Respondent/
Complainant/Respondents

Prayer: Criminal revision preferred under Section 397 and 401 of Cr.P.C. to set aside the judgment and order dated 22.08.2012 passed by the Additional District and Sessions Judge (Fast Track Court), Thirupathur in CrI.A.No.4 of 2012 confirming the judgment and order dated 22.08.2011 passed by the Assistant Sessions Judge, Thirupathur, in S.C.No.185 of 2007.

For Petitioner : Mr.M.G.Udayashankar
for Ms.S.Shanthakumari

For Respondent : Mr.G.Ramar, GA (CrI. Side)

O R D E R

This Revision Petition has been preferred challenging the judgment and order dated 22.08.2012 passed by the Additional District and Sessions Judge (Fast Track Court), Thirupathur in Cr1.A.No.4 of 2012 confirming the judgment and order dated 22.08.2011 passed by the Assistant Sessions Judge, Thirupathur in S.C.No.185 of 2007.

2.The prosecution story is as under :

2.1.The deceased Ganga was the daughter of Kaliammal (P.W.1) and Rajamanickam (P.W.2), elder sister of Ravinkumar (P.W.3) and Rajkumar (P.W.4), and younger sister of Nadhiya (P.W.5). They hail from Kalavur village in Thirupathur Taluk. Vanitha (A2) is the sister of Rajamanickam (P.W.2) and paternal aunt of the deceased Ganga. Suresh (A1) is the son of Vanitha (A2) and John (A3), and brother of Sumathi (A4). The accused hail from Kodiur village in Thirupathur Taluk, which is about 3 kms away from Kalavur village. The marriage of Suresh (A1) with Ganga was solemnized by both the families on 17.04.2006. After marriage, Ganga lived with the accused in the matrimonial home at Kodiur village. Ganga committed suicide by jumping into the well of Ganesan (P.W.12) on 07.10.2006.

3.On the written complaint (Ex.P1) lodged by Kaliammal (P.W.1), Ganesan (P.W.19), Inspector of Police, registered a case in Crime No.1077 of 2006 under Section 174 Cr.P.C. Since the death of Ganga was within seven years of marriage, Sivaraj (P.W.20), Revenue Divisional Officer conducted inquest over the body of the deceased Ganga and in his evidence as well in his report (Ex.P8), has stated that Ganga committed suicide due to dowry harassment by the accused. Dr.Chezhian (P.W.15), who conducted autopsy on the body of the deceased Ganga, in his evidence as well in the post-mortem certificate (Ex.P4), has opined that, "The deceased would appeared to have died of Asphyxia due to drowning." Investigation of the case was taken over by Asra Garg, I.P.S. (P.W.21), Assistant Superintendent of Police, Thirupathur, who went to the place of occurrence and prepared the observation mahazar (Ex.P2 and Ex.P3) and rough sketch (Ex.P9). He filed an alteration report dated 12.12.2006 (Ex.P10) altering the case from one under Section 174 Cr.P.C. to Section 304-B IPC. After completing the investigation, he filed a final report in P.R.C.No.4 of 2007 under Section 498-A and 304-B IPC against Suresh (A1), Vanitha (A2), John (A3) and Sumathi (A4).

5.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.185 of 2007 and was made over to the Assistant Sessions Court, Thirupathur, for trial. The trial

Court framed charges under Sections 498-A and 304-B IPC against the accused and when questioned, they pleaded 'not guilty'.

6.To prove the case, the prosecution examined 21 witnesses and marked 10 exhibits. When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. On the side of the accused, one Shankar (D.W.1) was examined. No document was marked on the side of the accused.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 22.08.2011 in S.C.No.185 of 2007, convicted the accused and sentenced them as under :

Rank of the accused	Provision under which convicted	Sentence
Suresh (A1) Vanitha (A2) John (A3) Sumathi (A4)	Section 498-A IPC	one month rigorous imprisonment and to pay fine of Rs.1,000/- each, in default, to undergo one month rigorous imprisonment
	Section 304-B IPC	seven years rigorous imprisonment

The aforesaid sentences were ordered to run concurrently. The appeal in C.A.No.4 of 2012 filed by the accused was dismissed by the Additional District and Sessions Court (Fast Track Court), Thirupathur on 22.08.2012. Challenging the concurrent findings of the two Courts below, the accused have filed the present Criminal Revision under Section 401 r/w 397 Cr.P.C.

8.Heard Mr.Udaya Shankar, learned counsel for the petitioners/ accused and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent State.

9.While exercising revisional jurisdiction, this Court cannot act as a second appellate Court and reappraise evidence. However, if it is shown that there has been gross misappreciation of evidence by the two Courts below, the power of this Court to look into the evidence on record is preserved by Section 401(1) Cr.P.C. The prosecution has proved beyond cavil, the relationship between the parties, the marriage of Ganga with Suresh and the suicide of Ganga by jumping into the well of Ganesan (P.W.12) on 07.10.2006.

10.The question that requires to be addressed by this Court is, whether there was demand of dowry by the accused, in connection with the marriage. Both families are Dalit-

Christians and hail from a very poor background. As stated above, Vanitha (A2) is the mother of Suresh (A1) and elder sister of Rajamanickam (P.W.2), who is the father of deceased Ganga. Kaliammal (P.W.1), Rajamanickam (P.W.2), Nadhiya (P.W.5), Kannan (P.W.6), Perumal, S/o.Muniyan (P.W.7) and Perumal, S/o.Srinivasan (P.W.8), have all stated that the family of Suresh (A1) sought the hand of Ganga and at that time, Ganga's parents [Kaliammal (P.W.1) and Rajamanickam (P.W.2)] expressed their inability to give any dowry, for which, Suresh's (A1's) parents [Vanitha (A2) and John (A3)] stated that they do not want any dowry and that they want only Ganga to be their daughter-in-law. On this premise, the marriage was performed in a very subdued manner between both families. In the teeth of such a strong evidence, the findings of the two Courts below that the suicide of Ganga was on account of dowry harassment cannot be sustained.

11.The next question is, what triggered the suicide of Ganga ? The answer to this question lies in the evidence of Kaliammal (P.W.1), Rajamanickam (P.W.2), Ravinkumar (P.W.3), Rajkumar (P.W.4), Kannan (P.W.6) and Perumal, S/o.Muniyan (P.W.7). At the time of marriage, the parents of Ganga, Kaliammal (P.W.1) and Rajamanickam (P.W.2), had assured the groom's family that they will give the customary stridhana within six months of marriage and when they were delaying, Suresh (A1) and Vanitha (A2) started taunting and harassing Ganga for it. They specifically wanted Rs.10,000/- for expanding the business of Suresh (A1). Ganga complained about this to her parents. A week prior to the suicide of Ganga, she came to her natal home and cried to her mother Kaliammal (P.W.1) about the ill treatment faced by her from her mother-in-law. At that time, Rajamanickam (P.W.2) had gone to Bangalore to be with his eldest daughter Nadhiya (P.W.5). Kaliammal (P.W.1) assured Ganga that she will go to Bangalore, arrange the money and give it to her in-laws.

12.Ravinkumar (P.W.3) was 14 years of age and Rajkumar (P.W.4) was 16 years old, when the incident occurred. They have stated that on the fateful day (07.10.2006), they went to their sister's house, where, Ganga asked them to have food. At that time, Vanitha (A2) has commented, "tujl;riz bfhLf;f tf;fpy;y rhg;gpl te;J tpl;lh;fs;." Ganga became very much upset and weepingly told her brothers, not to come home to see her and that, she herself will come there to see them during weekends. On the very evening itself, Ganga jumped into the well and committed suicide.

13.Therefore, it is clear that Ganga committed suicide on account of cruelty meted out to her by her husband and mother-in-law, who were demanding Rs.10,000/- from Ganga's parents. There is no satisfactory evidence to mulct criminal liability on

John (A3) and Sumathi (A4). Sumathi (A4) was married to Perumal and was living separately. The evidence on record is sufficient to hold Suresh (A1) and his mother Vanitha (A2) guilty under Section 306 IPC read with Section 113-A of the Evidence Act. Though the accused were not charged under Section 306 IPC, yet, in view of the law laid down by the Supreme Court in Gurnaib Singh Vs. State of Punjab [(2013) 7 SCC 108], where, though the accused was not charged for the offence under Section 306 IPC, but under Section 304-B IPC, he was convicted of the offence under Section 306 IPC inasmuch as the basic ingredients of the offence under the said Section stood established by the prosecution beyond cavil, the accused herein can be convicted of the offence under Section 306 IPC, when charged under Section 304-B IPC. The relevant portion of the said judgment reads thus:

"20. There is no dispute that no charge was framed under Section 306 IPC. Though the charge has not been framed under Section 306 yet on a question that has been put under Section 313 CrPC, it is clear as crystal that they were aware that they are facing a charge under Section 304-B IPC which related not to administration of poison but to consumption of poison by the deceased because of the demand of dowry and harassment. It is major evidence in comparison to Section 306 IPC which deals with abetment to suicide by a bride in the context of Explanation clause (a) of Section 498-A IPC. The test is whether there has been failure of justice or prejudice has been caused to the accused.

25. In the case at hand, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, we convert the conviction from one under Section 304-B IPC to that under Section 306 IPC. As the accused has spent almost five years in custody, we limit the period of sentence to the period already undergone.

(emphasis supplied)

In the result, this Criminal Revision is partly allowed. John (A3) and Sumathi (A4) are acquitted of the charges under Sections 498-A and 304-B IPC. The conviction and sentence imposed on Suresh (A1) and Vanitha (A2) for the offence under Section 304-B IPC is set aside and in lieu of that, they are convicted of the offence under Section 306 IPC and sentenced to undergo three years rigorous imprisonment. The conviction and sentence imposed on Suresh (A1) and Vanitha (A2)

for the offence under Section 498-A IPC stands confirmed. The trial Court is directed to secure the presence of Suresh (A1) and Vanitha (A2) and commit them to prison to undergo the remaining period of sentence, if any. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

- 1.The Additional District and Sessions Court,
Fast Track Court,
Thirupathur.
- 2.The Assistant Sessions Judge,
Thirupathur.
- 3.The Inspector of Police,
Thiruppathur Taluk Police Station,
Vellore District.
- 4.The Deputy Registrar,
Criminal Section,
High Court, Madras.
- 5.The Chief Judicial Magistrate, Vellore (for information)
- 6.The Judicial Magistrate No.II, Thirupathur
- 7.The Superintendent, Central Prison, Vellore
- 8.The Superintendent, Special Prison for Women, Vellore
- 9.The Public Prosecutor,
High Court, Madras.

MR(CO)
SP(27/11/2019)

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