



BAIL SLIP

Petitioner/Appellant/Accused namely, Murugan and Thulasi, were released on Bail as per order of this Court dated 12.06.2012 made in MP(MD).1 of 2012 in CRL A(MD)109/2012.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrl.A.(MD)No.109 of 2012

1. Murugan
2. Thulasi

... Appellants/Accused Nos.1&2

Vs.

The State rep. by,
The Deputy Superintendent of Police,
Thiruverambur Sub-Division,
Trichy District.
(Crime No.205 of 2010)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records relating to the Judgment dated 28.05.2012 made in S.C.No.19 of 2011 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli and set aside the same as illegal and allow the above appeal.

For Appellants : Mr.V.Kathirvelu, Senior Counsel,
for Mr.J.Sulthan Basha

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side).

JUDGMENT

The appellants are brother and sister. They were convicted for the offence under Sections 498(A) and 304(B) of I.P.C., and Section 4 of Dowry Prohibition Act, vide Judgment dated 28.05.2012 on the file of the Sessions Judge, Mahila Court, Thiruchirappalli.

2. The prosecution case is that the first appellant Murugan was married to Usha in the year 2008. While so, on account of dowry demand, she committed suicide by hanging herself in her



mother of the deceased Usha lodged Ex.P.1 complaint before Thiruverambur police station, Trichy. P.W.13 Sub Inspector of Police who received the complaint, registered First Information Report in Crime No.205 of 2010(Ex.P.11) under Section 174 of Cr.P.C.

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3. Investigation was undertaken and after completion of all the usual formalities, final report was filed against the appellants herein for the offences under Sections 498(A) and 304 (B) of I.P.C. and Section 4 of the Dowry Prohibition Act before the learned Judicial Magistrate No.VI, Thiruchirappalli. Cognizance of the offence was taken and the case was committed to the Sessions Court. The case was made over to the Mahila Court, Thiruchirappalli in S.C.No.19 of 2011. Charges were framed for all the three offences. The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 15 witnesses and marked Ex.P.1 to Ex.P.14. On the side of the accused, accused No.1, namely, the first appellant examined as D.W.1. Apart from that, the second appellant Thulasi examined herself as D.W.5. Apart from the appellants, three witnesses were examined on their side. The learned trial Judge by Judgment dated 28.05.2012 found the appellants guilty and sentenced them to undergo two years Rigorous Imprisonment for the offence under Section 498(A) of I.P.C., and ten years Rigorous Imprisonment for the offence under Section 304(B) of I.P.C., and one year Rigorous Imprisonment for the offence under Section 4 of the Dowry Prohibition Act. Fine amount was also imposed on the appellants. Aggrieved by the same, this Criminal appeal has been filed.

4. Heard the learned Senior counsel appearing for the appellants and the learned Government Advocate(Criminal Side) appearing for the respondents.

5. I carefully considered the rival contentions.

6. It is true that out of eight prosecution witnesses were examined in support of the charges, five of them turned hostile. That leaves us with the testimony of P.W.1 mother of the deceased, P.W.2 husband of the sister of the deceased and P.W.4 sister of the deceased. It is true that all these three witnesses have strongly supported the prosecution case. The prosecution case is that the appellants demanded a sum of Rs.20,000/- for buying a motorcycle. The Court below convicted the appellants herein in respect of the three offences with which they were charged by believing the testimony of the three witnesses P.W.1, P.W.2 and P.W.4.



7. Now the question arises as to whether the testimony given before this Court could have been acted upon.

8. The learned Senior counsel drew my attention to Ex.P.2. It is the statement of P.W.1 given before the Revenue Divisional Officer/P.W.9. In Ex.P.2, P.W.1 has categorically stated that her daughter was not so weak minded as to commit suicide and that there is no dowry related issue and that it is not a dowry related death. The specific case of P.W.1 is that the appellants have murdered Usha and then made it appear as if it is suicide. In other words, the case of P.W.1 as projected in Ex.P.2 is that it is a homicidal death. The prosecution however does not support the allegation that she was murdered. According to final report, she committed suicide. But then, this Court cannot gloss over the statement of P.W.1 made in Ex.P.2 that there was no dowry demand from the appellants. Of course in Ex.P.1 complaint, P.W.1 had stated that there was a pressure from the appellants for bringing money for running a business. But Ex.P.1 complaint is silent on the quantum of demand.

9. The cross examination of P.W.1 is also quite significant. P.W.1 is a widow. Her husband had died a few years back. P.W.1 does not have any property. Even according to P.W.1, she was leading hand to mouth existence. Accused No.1 knew the family of P.W.1 from his childhood. Therefore, even if accused No.1 wanted, he could not have made P.W.1 part with a sum of Rs.20,000/- as made out in the testimony of P.W.1.

10. P.W.1 had admitted in her evidence that one day prior to the occurrence she visited her daughter and that it was accused No.1 who accompanied P.W.1 to the bus stand. If accused No.1 had any dowry related grievance, he would not have accompanied his mother-in-law up to the bus stand and saw her off. Even according to P.W.1, it is only his son-in-law who came to the bus stand and not her daughter. There is a reason for the daughter not accompanying P.W.1 to the bus stand. It appears that there was a celebration in the house of accused No.1 on the day prior to the occurrence. Accused No.1 invited not only accused No.2 but also his other two sisters. The grievance of accused No.1 against his wife Usha was that she did not welcome her sisters-in-law into the house. Accused No.1 complained about this to P.W.1 for her lapse. This appears to have caused some serious strain between accused No.1 and his wife Usha. On the fateful day, she did not do any cooking. Accused No.1 is said to have scolded her and thereafter left for his job. She had called accused No.1 at around 11.00 a.m., and told him that accused No.1 will not see her thereafter and she disconnected the conversation. When accused No.1 returned home, he



found his wife hanging. Accused No.1 immediately rushed her to the hospital. But the hospital authorities declared that she was brought dead. Immediately information was given to P.W.1 through one Mani.

11. In this case, both the appellants entered in the witness box and deposed. The prosecution could not shake them in their cross examination.

12. I am of the view that the Court below had totally ignored the stand taken by P.W.1 in Ex.P.2. Likewise, the version projected by the appellants has also been totally ignored. More significant is the admission of P.W.1 that accused No.1 accompanied her to the bus stand and saw her off just a day prior to the occurrence. She had also given contradictory answers in the cross examination. She would at one place claim that accused No.1 made a demand for money and in the same breath, also stated that accused No.1 did not demand money in person.

13. The suicidal death of the deceased was on 13.04.2010. The complaint was given only on the next day at about 11.30 a.m. Even after a lapse of one full day, P.W.1 would take a stand that her daughter was murdered by the accused. One therefore has to view her testimony with utmost suspicion. That calls in question her very credibility itself. The learned trial Judge did not properly appreciate the evidence on record. The prosecution has not at all established that it is a case of dowry related death. The impugned Judgment is set aside. The appellants are acquitted of the charges. The bail bond, if any, executed by them shall stand cancelled. The fine amount, if any, paid by them shall be refunded forthwith.

14. The Criminal Appeal stands allowed, accordingly.

Sd/-

Assistant Registrar(CO)

// True Copy //

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Sub Assistant Registrar(CS)

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To:

1. The Sessions Judge,
Mahila Court, Tiruchirappalli.

2. The Deputy Superintendent of Police,
Thiruverambur Sub-Division,
Trichy District.

3. The Section Officer(Criminal Records),
Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

4. The Superintendent, Central Prison, Trichy.

5. The Superintendent, Women Prison, Trichy.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-78606[F] dated
30/07/2019)

Cr1.A.(MD)No.109 of 2012
29.07.2019

vr(CO)

TR(27.05.2020) 5P 8C