

**BAIL SLIP**

The Appellant/Accused No.1 namely Sesaiah, Aged about 29 years was released on bail by the order made in MP(MD)No.1 of 2009 in Crl.A(MD)No.350 of 2009 dated 16.11.2009.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	27.07.2019
Date of Judgment	20.11.2019

CORAM

THE HONOURABLE JUSTICE MRS.T.KRISHNAVALLI
CRL.A(MD).No.350 of 2009

Sesaiah : Appellant/1st Accused
Vs

State represented by
The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
(Crime No.1169 of 2005)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code against the judgment passed by the Sessions Judge (Mahalir Needhimandram), Tirunelveli, in S.C.No.272 of 2006, dated 24.10.2009.

For Appellant : Mr.K.Prabhu

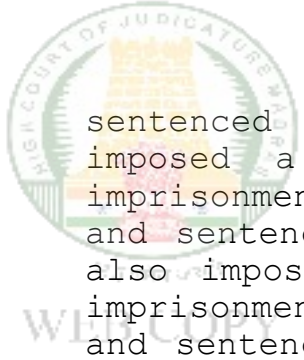
For Respondent : Mr.A.P.G Ohm Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is directed against the judgment passed by the Sessions Judge (Mahalir Needhimandram), Tirunelveli, in S.C.No.272 of 2006, dated 24.10.2009.

2.The case of the prosecution is that the marriage between the deceased and the appellant/A1 was solemnized on 27.08.2004 and at the time of marriage, the parents of the deceased gave Rs.20,000/- and also 40 sovereigns of gold jewels as dowry and after marriage, the appellant/A1 along with A2 to A4 demanded Rs.30,000/- as additional dowry and caused cruelty and on 13.11.2005 at about 8.00 pm, the deceased Sasikala has committed suicide by consuming poison. The Inspector of Police attached to Perumalpuram Police Station, Tirunelveli has filed a final report against the accused examining the witnesses.

3.The trial court, after proper appreciation of the entire materials available on record, convicted the appellant/A1 and



sentenced him to undergo 3 years rigorous imprisonment and also imposed a fine of Rs.2,500/-, in default to undergo simple imprisonment for 3 months for the offence under section 498(A) IPC and sentenced him to suffer rigorous imprisonment for 7 years and also imposed a fine of Rs.5,000/-, in default to undergo simple imprisonment for 6 months for the offence under section 304(B) IPC and sentenced him to suffer rigorous imprisonment for 3 years and imposed a fine of Rs.2,500/-, in default to undergo simple imprisonment for 3 months for the offence under section 201 IPC and sentenced him to suffer rigorous imprisonment for 2 years and also imposed a fine of Rs.1,500/-, in default to undergo simple imprisonment for 2 months for the offence under section 4 of Dowry Prohibition Act and acquitted A2 to A5 from the charges levelled against them. Being aggrieved by the judgment of the trial court passed against him, the appellant/A1 is before this court.

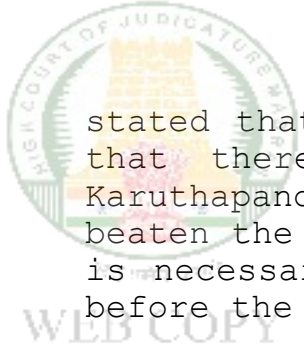
4. Heard both sides and perused the materials available on record.

5. The first contention raised on the side of the appellant/A1 is that the entire reading of the charges as well as the evidence of the witnesses disclosed that soon before the death of the deceased, there was no dowry demand and hence, the offence under section 304 (B) IPC is not made out.

6. In this case, PW1 and PW2 are the parents of the deceased. In respect of the occurrence, PW1 gave Ex.P1 complaint. PW1 in his complaint stated that at the time of marriage, he gave 40 sovereigns of jewels, Rs.20,000/- cash and he took his daughter to Madurai for delivery and at that time, his daughter told that A1 to A3 demanded Rs.30,000/- for purchasing auto and after delivery, A1 and A3 came to Madurai to see the child and they got 35 sovereigns of jewels of the deceased for purchasing auto and then he left his daughter in her matrimonial home and his brother Karuthapandi told him that on 10.11.2005, his daughter through phone told that there was quarrel in her matrimonial home and asked him to take her and for that, his brother asked her daughter to be patient and in the next day, A1 through phone told Karuthapandi that he had beaten the deceased and asked him to take her to Madurai and on 13.11.2005, A1 informed Karuthapandi that the deceased consumed poison and she was admitted in the Government Hospital and subsequently, she died and then, he gave the complaint to the police.

7. PW1 in his evidence stated that at the time of marriage, he gave 40 sovereigns of jewels and Rs.35,000/- cash and utensils and his daughter came to Madurai for delivery and after five months, A1 came to Madurai to take back his daughter and then, he left his daughter in her matrimonial home and after five days, he heard that his daughter consumed poison and then, he went to the Government Hospital and saw her daughter found dead and he saw injuries on her leg and chest and then, he gave Ex.P1 complaint.

8. The case of the prosecution is that soon before the death of the deceased, all the accused demanded dowry. In Ex.P1, it is



stated that PW1 heard from Karuthapandi that his daughter told him that there was quarrel in her matrimonial home and further, Karuthapandi stated him that A1 through phone told him that A1 had beaten the deceased and asked him to take her to Madurai. Hence, it is necessary to decide whether there was any demand of dowry soon before the death of the deceased.

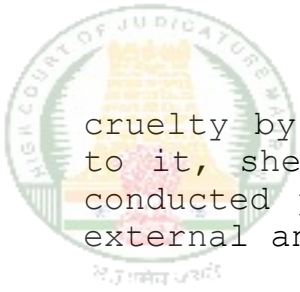
9.PW2 is the mother of the deceased. PW3 and PW8 are brothers of PW2. PW4 is the brother of the deceased. PW5 is the co-brother of PW1. PW6 is the wife of PW5. PW7 is the wife of PW3.

10.PW2 to PW8 are cited as occurrence witnesses. PW2 deposed that at the time of marriage, A1 was given 20 sovereigns of jewels, Rs.20,000/- cash and utensils and after the marriage, the deceased lived with her husband in Ayankulam and they took the deceased to Madurai for delivery and her husband left in the matrimonial home and at that time, A1 demanded Rs.50,000/- for purchasing auto and her husband agreed to give money later and one Sunday, he heard that her daughter consumed poison and she went to the Government Hospital, Tirunelveli and her daughter found dead and only due to the activities of all the accused, her daughter died.

11.PW3, PW4, PW6 to PW8 deposed that at the time of marriage, the deceased was given 40 sovereigns of jewels and Rs.20,000/- cash and utensils and after the marriage, the deceased lived with her husband in Ayankulam and they heard that the accused demanded more jewels and after delivery, PW1 left his daughter in her matrimonial home and they heard that due to quarrel, the deceased consumed poison and admitted in the hospital and went to the Government Hospital, Tirunelveli and they found that the deceased was died.

12.PW5 is the co-brother of PW1. PW5 deposed that at the time of marriage, A1 was given 40 sovereigns of jewels and Rs.20,000/- cash and utensils and after the marriage, the deceased lived in her matrimonial home with A1 and the deceased used to call him through phone and one day, she told him that her father in-law restrained her to use fridge and fan and further, on 10.11.2005 he received a phone call from the deceased stating that at the instigation of A4 and A5, A1 to A3 subjected her to cruelty and they have not given anything for her child and on 11.11.2005, A1 called him over phone and told him that he had beaten his wife severally and asked him to take back and he replied that in the next day, he will come and took the deceased, but on 13.11.2005, he heard that the deceased consumed poison and then, he went to the Government Hospital and saw the deceased found dead.

13.On the side of the appellant/A1, it is stated that due to consumption of poison, the deceased died. But on the side of the prosecution, it is stated that only due to the cruelty of the accused, she sustained injuries and only due to it, she died. To prove that due to demand of dowry, the deceased was subjected to



cruelty by the accused and the deceased sustained injuries and due to it, she died, on the side of the prosecution, the Doctor, who conducted postmortem was examined as PW9. PW9 found the following external and internal injuries on the body of the deceased:-

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"(1) contusion 3 x 1 cm inner aspect of upper lip;

(2) 2 x 1 cm contusion inner aspect of lower lip;

(3) Abrasion 1 x 5 cm left cheek;

(4) Contusion 3 x 1 cm right cheek;

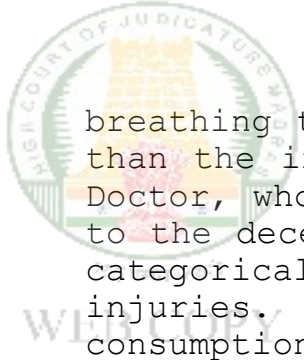
(5) Contusion 4 x 4 cm outer aspect of left arm;

(6) 13 human bite marks seen in the upper aspect of right shoulder. On dissection of scalp, skull and dura. Sub-Scalpal contusion 9 x 6 cm @ temporo-parietal region; Sub-dural hematoma 50 gms right temporo-parietal region corresponding to injury no.1 Sub-arachnoid hemorrhage seen in the right temporo-parietal region.

Peritoneal pleural cavities: Empty Heart: Normal Coronaries: Patent. Lungs: with nil specific smell. Mucosa: Congested. Small intestine: contains 20 ml of brown Colored fluid with nil specific smell. Mucosa: congested. Uterus: Normal Copper - T in-situ Brain: Congested."

14. PW9 sent the inner organs to find out whether it contains poison. The chemical report Ex.P4 was received by PW9. PW9 opined that the deceased appears to have died of complication of head injuries and not due to poison. DW3 deposed that he knew the signature of the Doctor, who gave treatment to the deceased and he gave evidence on the basis of the medical records. DW3 further stated that the Doctor, who gave treatment to the deceased opined that suspected organophosphorus compound poisoning. But the Doctor, who conducted postmortem, has categorically stated that on the basis of the chemical report, there was no poison in the inner organs of the deceased and she died only due to the head injuries.

15. On the side of the appellant/A1, the medical records pertaining to the deceased was submitted and the Doctor, who brought the above medical records was examined as DW3. DW3 deposed that on 13.11.2005 at 11.50 am, the deceased was admitted as inpatient and the Doctor, who admitted the deceased classified her as poison consumed patient (விஷம் அருந்திய நோயாளி) and the deceased was found in severe unconscious stage with braking trouble. There was no external injuries found. But after dissection of scalp on the right side brain, there was clotting of blood and the semi cations and



breathing trouble may be caused due to consumption of poison rather than the injuries sustained by way of assault on the scalp and the Doctor, who admitted the deceased and the Doctor, who gave treatment to the deceased on the basis that the deceased consumed poison. PW9 categorically stated that the deceased died due to the head injuries. Hence, it is clear that the deceased died not due to consumption of poison, but due to the cruelty committed by the accused. At this juncture, it is necessary to refer Section 304(B) IPC, which would run thus:-

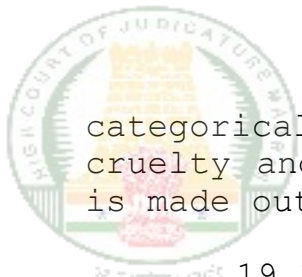
"304-B Dowry death.-(1)Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relatives shall be deemed to have caused her death.

(2)Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

16. In this case, there was no evidence for demand of dowry prior to the death of the deceased. The prosecution also failed to prove that A1 demanded dowry soon before the death of the deceased.

17. Further, on careful perusal of the evidence of PW1 to PW8, they have categorically stated that the accused demanded money for purchasing auto for A1. Further, the witnesses stated that due to it, the deceased was subjected to cruelty. PW5 deposed that the deceased told him through phone that on 10.11.2015, quarrel arose between her and the accused and due to it, she was assaulted by the deceased. They have not stated that prior to the death, there was demand of dowry. Hence, it is held that there was no evidence for the ingredients of 304(B) IPC soon before the death of the deceased.

18. The learned counsel appearing for the appellant/A1 argued that in this case, the death of the deceased is suspicious and the Doctor, who conducted postmortem has stated that he has not found any poison in the inner organs of the deceased. He found only injuries on the body of the deceased. But the witnesses stated that A1 told that the deceased on 30.11.2005 consumed poison and due to it, she was admitted in the hospital. Further, PW3 categorically stated that on 10.11.2005, quarrel arose between the deceased and the accused and all the accused assaulted her. But PW5 has not stated that he found bone injuries. In this case, there are contradictions in respect of the death of the deceased. Hence, the offence under section 304(B) IPC is not made out. The witnesses



categorically stated that all the accused subjected the deceased to cruelty and hence, only the offence under section 498(A) IPC alone is made out.

19. In this case, as per the prosecution case, PW1 told that his daughter consumed poison. But the Doctor, who conducted postmortem has not found any substance of poison in the stomach of the deceased and the Doctor found some injuries on the body of the deceased. Already it was decided that the accused demanded money for purchasing auto and due to it, quarrel arose between the deceased and the accused and thereby the deceased subjected to cruelty. But A1 when he brought his wife to hospital, has stated that his wife consumed poison. But the Doctor, who conducted postmortem found that there was no consumption of poison by the deceased and the above Doctor came to the conclusion that the deceased died due to the complication of head injuries. Hence, A1 concealed that he assaulted his wife and caused injury.

20. For all the reasons stated above, this court is of the considered view that the appellant/A1 is not found guilty under section 304(B) and 201 IPC and section 4 of Dowry Prohibition Act. Hence, the punishment imposed on the appellant/A1 for the offence under section 304(B) and 201 IPC and section 4 of Dowry Prohibition Act are set aside. But the punishment imposed on the appellant/A1 for the offence under section 498(A) is confirmed. However, considering the facts and circumstances of the case and the appellant/A1 is the sole breadwinner of the family, the punishment imposed on the appellant/A1 for the offence under section 498(A) IPC requires modification.

21. In the result, the Criminal Appeal is **partly allowed**. The punishment imposed on the appellant/A1 for the offence under Section 498(A) IPC is reduced to **2 years RI**. In respect of fine amount for the said offence, the findings of the trial court is confirmed. The appellant/A1 is directed to pay a sum of Rs.1,00,000/- towards compensation to the daughter of the deceased, failing which the findings of the trial court is confirmed. The period of sentence, if any, already undergone by the appellant/A1 is set off under Section 428 of Cr.P.C. The appellant/A1, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)



To,

1.The Sessions Judge (Mahalir Neethimandaram), Tirunelveli.

2.The Judicial Magistrate No.1, Tirunelveli.

3.-Do- Through The Chief Judicial Magistrate, Tirunelveli.

4.The Judicial Magistrate No.1, Trichy.

5.-Do- Through The Chief Judicial Magistrate, Trichy

6.The Superintendent, Central Prison, Palayamkottai.

7.The Inspector of Police, Perumalpuram,
Police Station, Tirunelveli

8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

+1 CC to Mr.K.PRABHU, Advocate (SR-100775[F] dated 22/11/2019)

Crl.A(MD).No.350 of 2009
22.11.2019

VB (18.06.2020) 7P 12C