



CRL. A. (MD) NO.440 of 2009

Bail Slip

Petitioners / Appellants/Accused namely Chellappa, Muthu, Mariappan and Chinnadurai was released on bail as per order of this Court dated 20/01/2010 made in MP (MD)No.1/2010 in Crl.A(MD)No.440/2009.

Bail Slip

Petitioners / Appellants / Accused namely, Ganapathyammal, and Muthu was released on Bail as per order of this Court dated 07/01/2010 made in MP(MD) NO.1/2009 IN Crl.A(MD)No.440/2009.

Bail Slip

Petitioners / Appellants / Accused namely, Chellappa was released on Bail as per order of this Court dated 16/04/2019 made in Crl.MP(MD)No.3474 of 2019 in Crl.A(MD)No.440/2009,

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 23.11.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL. A. (MD) No.440 of 2009

and

Crl.M.P. (MD) .No.3475 of 2019

1.Chellappa
2.Ganapathyammal
3.Muthu
4.Mariappan
5.Chinnadurai
6.Muthu .. Appellants / Accused Nos.1 to 6

- Vs -

State of Tamil Nadu
rep. by Inspector of Police
Moondradaippu Police Station
Tirunelveli District. .. Respondent / Complainant
(Crime No.79 of 2003)

Prayer : Appeal is filed u/s 374 of the Code of Criminal Procedure, to set aside the judgment and conviction passed by the learned Sessions Judge, Mahila



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Court, Tirunelveli in S.C.No.304 of 2004, dated 18.12.2009 and acquit the appellants herein.

For Appellants : Mr.R.Anand
2 to 6

For Appellant 1 : No Appearance

For Respondent : Ms.M.Anantha Devi

Government Advocate (Criminal side)

JUDGMENT

The appellants were charged and tried before the learned Sessions Judge, Mahila Court, Tirunelveli, in S.C.No.304 of 2004, dated 18.12.2019, for the offence u/s 304 (b) I.P.C. and on being found guilty, were convicted and sentenced as under :-

Conviction under Section	Sentence
U/s 304 (b) IPC	To undergo seven years Rigorous Imprisonment

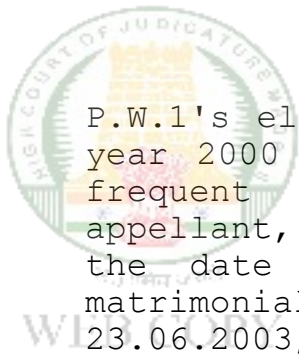
The sentence was directed to run concurrently and set off u/s 428 Cr.P.C. was also ordered. Aggrieved by the said conviction and sentence, the appellants/accused have preferred the present appeal.

2. The facts of the case are briefly stated hereunder :-

2.(1). P.W.1 is the sister of the deceased. P.W.2 is the uncle's son of the deceased. P.W.3 is working as a Coolie in the Nedungulam Rice Mill. P.W.4 is the elder brother of the deceased. P.W.5 is the neighbor of the family of the deceased. P.W.6 is residing in Marukalangurichi Village and he was not examined by the Police. P.W.7 is the Doctor, who conducted postmortem and given a postmortem report-Ex.P.2. P.W.8 is residing in the Nedungulam Village and he has signed in the Observation Mahazar-Ex.P.4 and Mahazar-Ex.P.5. P.W.10 is working as a Sub Inspector of Police (Trainee) in the Moondradaippu Police Station. P.W.11 is working as a Sub Inspector of Police in the Moondradaippu Police Station, who filed First Information Report in Crime No.79 of 2003, against the appellants herein. P.W.12 is the Revenue Divisional Officer in the Tirunelveli District. P.W.13 is the Deputy Superintendent of Police, Nanguneri Division, Tirunelveli District.

2.(2). The first appellant is the husband of the deceased. The second appellant is the mother of the first appellant. The appellants 3 to 6 are siblings of the first appellant.

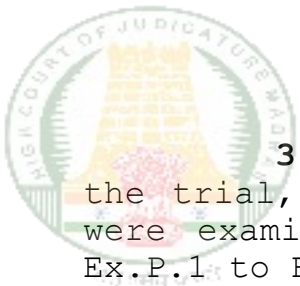
2.(3). It is the case of the prosecution that P.W.1-complainant viz., Nambithai was residing in the Nedunkulam Village.



P.W.1's elder sister viz., Esakkithai was given on marriage in the year 2000 to a person viz., Chellappa / first appellant. Due to frequent quarrel between Esakkithai and Chellappa / first appellant, she used to return to the parental home. One week before the date of occurrence, the deceased was taken back to her matrimonial home by her in-laws for the Temple Kodai festival. On 23.06.2003, due to quarrel with her husband, the deceased returned to her paternal home through bus. At about 11.00 a.m., after unboarding from the bus, she fell down on the road and became unconscious. Suddenly, P.W.3-Chinnadurai came to the house of the deceased and informed that her sister was lying unconscious. When the family members of the deceased and others rushed to the spot, they smelt a poisonous odour from her mouth. Thereafter, the victim was taken to the Hospital at Nanguneri and at about 12.30 p.m., she was taken to the Government Hospital for further treatment. P.W.7, who is the causality Doctor, working in the Tirunelveli Medical College, declared the victim "brought dead".

2. (4). On receipt of information from the Government Hospital, P.W.10-the Sub Inspector of Police(trainee) attached to the Moondradaippu Police Station went to the Hospital, recorded the statement of P.W.1 and placed all the materials before P.W.11. P.W.11-the then Sub Inspector of Police, attached to the Moondradaippu Police Station, registered a case against the appellants for the offences under Section 174 Cr.P.C., in Crime No.79 of 2003 on 23.06.2003, since the death was unnatural and suspicious. Thereafter, he prepared an F.I.R-Ex.P-6 and despatched the same to the higher officials. P.W.12-Revenue Divisional Officer gave Ex.P.7-inquest Report. The deposition of Panchayatars and witnesses have been marked as Ex.P.8 and the Revenue Divisional Officer's report has been marked as Ex.P.9. P.W.13-the then Deputy Superintendent of Police / Investigating Officer went to the occurrence place along with P.W.10, recorded the statement of the witnesses, recovered M.O.1-white lid of the bottle, prepared Observation Mahazar-Ex.P.8 and rough sketch-Ex.P.10. P.W.9-the then Inspector of Police identified the body of the deceased in the Hospital.

2. (5). After completing the investigation, the offence under Section 174 Cr.P.C was altered into under Section 304 (b) I.P.C. and the Deputy Superintendent of Police filed Ex.P.11-Alteration Report and the Police laid a charge sheet before the learned Principal Sessions Judge, Tirunelveli in P.R.C.No.63 of 2003. Thereafter, the case was committed to the Principal Sessions Court, Tirunelveli and thereafter, it was assigned to the learned Sessions Judge, Mahila Court, Tirunelveli. The learned Sessions Judge took the case on file in S.C.No.304 of 2004 and after completing the formalities, framed the charge for the offence under Section 304 (b) I.P.C, the trial Court convicted and sentenced the appellants to undergo seven years Rigorous Imprisonment, against which, the present appeal has been filed.



3. In order to prove the case of the prosecution, during the trial, on the side of the prosecution as many as 13 witnesses were examined as P.W1 to P.W.13 and 11 documents were marked as Ex.P.1 to Ex.P.11 and one Material object-M.O.1 was marked.

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4. When the appellants were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. On the side of the appellants, one witness was examined as D.W.1 and no exhibit was marked.

5. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellants.

6.(1). Learned counsel appearing for the appellants would submit that the prosecution has failed to prove the case beyond reasonable doubts and there is no evidence to show that there is a dowry demand soon before the death of the deceased.

6.(2). None of the witnesses have spoken about the demand of dowry soon before her death. Even P.W.1, who is a younger sister of the deceased / complainant has not specifically stated anything about the demand of dowry in the complaint-Ex.P.1 itself. P.W.2, who is a cousin of the deceased, working as a Lecturer in the Polytechnic College, went to the matrimonial home of the deceased on 22.06.2003. In his evidence, he has also not spoken anything about the demand of dowry soon before her death.

6.(3). The second appellant is none other than the mother of the first appellant. On the date of occurrence, the second appellant was in her house.

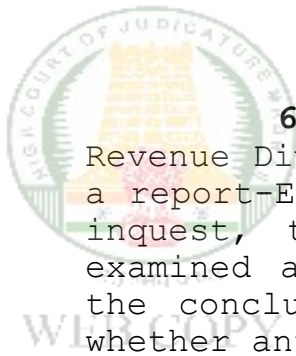
6.(4). P.Ws.3 to 6 were not residing jointly and they were residing in some other place and therefore, the offence under Section 304 (b) will not attract the appellants 3 to 6.

6.(5). P.W.3 has only informed about the place, where the deceased was found. He further submitted that P.W.4, who is the brother of P.W.1, has also not clearly spoken anything about the demand of dowry.

6.(6). One week before the occurrence date, the deceased was taken back to her matrimonial home by her in-laws for the Temple Kodai festival.

6.(7). There is no evidence to show that all the appellants were jointly living together under the same roof and there was no specific demand of dowry.

6.(8). In the statements recorded under Section 161 Cr.P.C., they have also not clearly spoken about the demand soon before her death and subsequently, during the cross-examination, the prosecution side witnesses improved their versions and P.W.4 has spoken about the name of all the appellants only during the evidence.



6.(9). The date of occurrence is on 23.06.2003, but the Revenue Divisional Officer conducted enquiry on 24.06.2003 and filed a report-Ex.P.9 on 25.06.2003. Even prior to the completion of the inquest, the said report was filed. The Investigating Officer examined all the witnesses and recorded the statement even before the conclusion of the Revenue Divisional Officer's enquiry as to whether any demand of dowry soon before her death was made or not.

6.(10). The death of the deceased is not only due to the demand of dowry. The prosecution has set up a case for their convenience and there is no evidence to prove that there is a demand of dowry soon before her death. Whereas, the deceased has not consumed poison in the matrimonial home since she died only on the road. Therefore, this itself shows that there is no dowry harassment in the matrimonial home.

6.(11). The prosecution has failed to prove its case beyond reasonable doubts.

6.(12). The learned Judge has failed to consider the main ingredients of Section 304 and failed to appreciate the evidence and the fact that there was no dowry demand soon before her death.

6.(13). The learned Judge has erroneously come to the conclusion that the appellants have committed the offence under Section 304(B) I.P.C. and it warrants interference of this Court.

6.(14). At this juncture, the learned counsel appearing for the appellant relied upon the judgment of the Supreme Court reported in the case of **(2017) 1 SCC 101-(Bajinath and others Vs. State of Madhya Pradesh)**.

7. Learned Government Advocate (Criminal side) would submit that the deceased married the first appellant and at that time, the first appellant was working in a Candy shop in Kovilpatti. At the time of marriage, the first appellant's family has demanded 15 sovereigns of gold. But the deceased's family provided only 10 sovereigns of gold and Rs.5,500/- for marriage expenses. The deceased and the first accused were living together without any problem for one year and after one year, the appellants harassed and also demanded dowry from the deceased. For three years, there was no issue for the first appellant and the deceased and hence, the first appellant compelled the deceased to give her younger sister on marriage to him. Though P.W.1-sister of the deceased has not specifically stated about the demand of dowry in the complaint-Ex.P.1, which is not an encyclopedia, but in the statement recorded under Section 161 Cr.P.C., and also in the evidence, she has clearly spoken about the demand of dowry.

7.(2). P.W.2, who is the cousin of the deceased, residing in Kovilpatti, heard about the problem just one week before the date of occurrence. Thereafter, he went to the matrimonial home of the deceased and pacified her. But on the very next day, he heard about the death of the deceased and in his evidence, he has clearly stated that during the marriage of the deceased and the first



appellant, the appellants demanded 15 sovereigns of gold, but P.W.4 provided only 10 sovereigns of gold to the deceased.

7.(3). P.W.3 in his evidence has clearly spoken about the place, where the deceased was found with consumption of poison. In his evidence, he has deposed that due to frequent quarrel, the deceased returned to Nedunkalam Village through bus. When she got down from the bus, she fell down on the road due to consumption of poison.

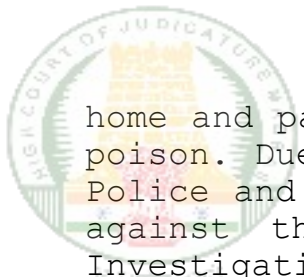
7.(4). P.W.4, who is the brother of the deceased has clearly spoken about the demand of dowry made by the appellants soon before her death and prior to the occurrence, the deceased telephoned to the neighbor of P.W.4. The neighbor informed to P.W.1-younger sister of the deceased about the demand of dowry and P.W.1 informed to P.W.4. This itself clearly shows that the deceased was subjected to dowry harassment by her in-laws soon before her death.

7.(5). P.Ws.1, 2 and 4 categorically spoken about the demand of dowry made by the appellants. P.W.12-the Revenue Divisional Officer conducted inquest and gave a finding that there was a demand of dowry soon before her death and due to the same, the deceased consumed poison.

7.(6). The trial Court had rightly appreciated the evidence and convicted all the accused under Section 304 (b) I.P.C., and imposed a sentence of seven years Rigorous Imprisonment. The Trial Court had also considered the fact that all the accused jointly demanded dowry from the deceased. The trial Court has also found that the prosecution has proved its case beyond reasonable doubts and there is no reason to interfere with the findings of the trial Court.

8. Heard both sides and perused available records.

9.(1). The case of the prosecution is that the deceased / sister of P.Ws.1 and 4 was given marriage to the first appellant in the year 2000. At the time of marriage, the appellants demanded 15 sovereigns of gold. But the family of the deceased has given only 10 sovereigns of gold and Rs.5,500/- for marriage expenses. Even after three years of their marriage, the appellants continuously demanded dowry and also harassed the deceased for one reason or other. Due to the quarrel between the first appellant and the deceased, the deceased frequently came to the parental home. One week prior to the date of occurrence, the deceased was taken back to her matrimonial home by her in-laws due to the Temple Kodai festival. When, she came back to her matrimonial home, the appellants again demanded dowry and also insisted her to give in her younger sister for second marriage to the first appellant. The deceased telephoned to the neighbor of P.W.4 and informed that the appellants demanded remaining five sovereigns of gold jewel with stones. The neighbor of P.W.4 gave an information to P.W.1. One day prior to the date of occurrence P.W.2 went to the deceased's



home and pacified her. On the very next day, the deceased consumed poison. Due to which, P.W.1 preferred a complaint to the respondent Police and the respondent Police filed the First Information Report against the appellants. After completing investigation, the Investigating Officer filed a charge sheet before the Magistrate Court. The Magistrate also committed the case to the Sessions Court.

9.(2). A reading of the evidence of P.W.1 would clearly show that P.W.1 is none other than the younger sister of the deceased. She has clearly stated in her evidence about the demand of dowry made by the appellants soon before the death of the deceased.

9.(3). P.W.4, who is none other than the younger brother of the deceased, has also clearly spoken about the demand of dowry even before the death of deceased.

9.(4). P.W.2, is none other than the cousin of the deceased. He has clearly deposed in his evidence that on 22.06.2003, he went to the matrimonial home of the deceased and on that date, the second appellant and the deceased were only in her matrimonial home. In his evidence, he has clearly spoken about the demand of dowry made by the appellants.

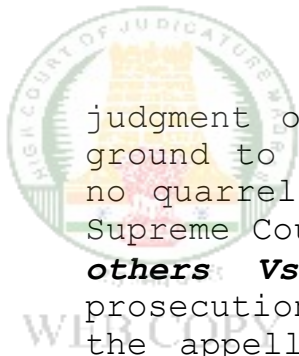
9.(5). P.W.3 in his evidence has clearly spoken that on 23.06.2003, he saw the deceased in the bus-stop. When the deceased came down from the bus, she fell down on the road. P.W.3 informed the said incident to P.W.1. Thereafter, the villagers rushed to the spot and they confirmed that the deceased consumed poison. Thereafter, she was taken to the Government Hospital and the Doctor declared her "brought dead".

9.(6). A reading of the evidence of P.W.12-Revenue Divisional Officer clearly shows that the deceased died due to dowry harassment. The postmortem report also reveals that she died due to consumption of poison and the only reason for consumption of poison is that the dowry demand made by the appellants.

9.(7). P.W.4 in his evidence has clearly spoken that during her sister's marriage, the appellants demanded 15 sovereigns of gold. But at the time of marriage, the family of the deceased has given only 10 sovereigns of gold. Hence, the appellants have demanded remaining five sovereigns of gold jewel with stones and insisted the deceased to give her younger sister for second marriage to her husband/ accused No.1. Further, in his evidence, he has stated that the deceased was not suited for the first appellant and there is no issue out of their wedlock for the past three years.

9.(8). A reading of evidence of P.W.1, P.W.2 and P.W.4 would clearly show that there was a demand of dowry soon before her death. Therefore, the trial Court has rightly come to the conclusion that the appellants have committed the offence under Section 304 (B) I.P.C.

10. This Court finds that the prosecution has proved its case beyond reasonable doubt and does not find any perversity in the



judgment of the trial Court and there is no sound and reasonable ground to interfere with the judgment of the trial Court. There is no quarrel with the proposition of law laid down by the Honourable Supreme Court in the case reported in **(2017) 1 SCC 101 (Bajinath and others Vs. State of Madhya Pradesh)**. Whereas in this case prosecution witnesses have clearly spoken about the demand made by the appellants soon before the death of the deceased. Hence the citation referred to by the learned counsel for the appellant is not applicable to the present case on hand.

Conclusion:-

11. In the result, the Criminal Appeal stands dismissed and the judgment passed by the learned Sessions Judge, Mahila Court, Tirunelveli in S.C.No.304 of 2004, dated 18.12.2009 is hereby confirmed. The respondent Police is directed to secure the appellants forthwith to undergo the remaining period of sentence. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)

tsg

To

- 1) The Sessions Judge, Mahila Court, Tirunelveli.
- 2) The Judicial Magistrate, Nanguneri, Tirunelveli Dt.
- 3) The Chief Judicial Magistrate, Tirunelveli Dist.
- 4) The Inspector of Police
Moondradaippu Police Station
Tirunelveli District.
- 5) The Superintendent, Central Prison, Palayamkottai,
Tirunelveli Dt
- 6) The Officer Incharge, Human Prison, Trichy.
- 7) The Section Officer, (2 copies)
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.
- 8) The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

JUDGMENT IN

CRL.A. (MD) NO. 440 OF 2009

Dated 23.11.2019

SMA/12/02/2020/8P/10C