

**BAIL SLIP**

Shanmugasundaram, S/o.Saravanamuthu, male, aged 33 years old, Accused No.1, was released on bail vide order of this Court dated 04/08/2011 made in MP(MD)No.1 of 2011 in CrI A(MD) No.24 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A(MD)No.24 of 2011

Shanmugasundaram

... Appellant/Accused No.1

Vs

State represented by
Deputy Superintendent of Police,
Lalgudy Division,
Samayapuram Police Station,
Trichirappalli District.
(Crime No.228/2009)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Judgment and Conviction passed by the Sessions Judge (Mahila Court) Trichy in S.C.No.56 of 2010, dated 12.01.2011 and acquit the appellant herein.

For Appellant : Mr.S.A.Ajmal Khan

For Respondent : Mrs.S.Bharathi

Government Advocate (CrI.side)

JUDGMENT

The appellant was convicted for the offences under Sections 498(A) and 304(B) of IPC and sentenced to undergo rigorous imprisonment for two years and seven years respectively, vide Judgment dated 12.01.2011 on the file of the Mahila Court, Thiruchirapalli. Questioning the same, this appeal has been filed.

2.The case of the prosecution is that the appellant got married to the deceased Akilandeswari on 03.11.2006 at Samayapuram. A girl child by name Kanishka was born. While so, the appellant subjected the deceased to cruelty and demanded dowry from her. Unable to bear the same, Akilandeswari committed suicide by hanging herself in the house of the appellant on 21.06.2009 in the evening hours. In this regard, P.W.1-Periyasamy father of the deceased lodged Ex.P1 Complaint before the Samayapuram Police Station. Based on the same, Crime No.228 of 2009 was registered for the offences under Sections 498(A) and 304(B) of IPC. Later, there was an



alteration and since it appeared to be a case of dowry death and the investigation was taken over by the Deputy Superintendent of Police, Lalgudi Division. After completing the usual formalities, final report came to be laid before the learned Judicial Magistrate No.III, Tiruchirppalli, not only against the appellant but also his parents, namely Jothi and Saravanamuthu for the offences under Sections 498 A and 304 B of IPC. Since the case was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case to the Sessions Court in P.R.C.No.1 of 2010. It was made over to the Mahila Court, Tiruchirappalli in S.C.No.56 of 2010. The charges were framed under the aforesaid offences. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 16 witnesses and marked Ex.P1 to Ex.P.15. On the side of the accused, Ex.D1 and D2 were marked. M.O.1-photos taken in the Panchayat was also marked with the negatives. The learned trial Judge, by the impugned Judgment, acquitted the parents of the appellant and convicted the appellant alone for the offences with which he was charged. Questioning the same, this appeal has been filed.

3.The learned counsel appearing for the appellant submitted that Ex.P1-complaint was not even written by the father of the deceased/P.W.1 and that the FIR shows corrections. He drew my attention to the testimony of P.W.15, in which, it was admitted that there were corrections and erasures. He then submitted that while P.W.1 would claim that he paid a sum of Rs.10,000/- as dowry to his daughter, P.W.3 brother of the deceased and son of P.W.1 would state that a sum of Rs.10,000/- was directly paid to the accused. The learned counsel appearing for the appellant submitted that no poison was found in the body of the deceased. He further drew my attention to the testimony of P.W.16-Investigating Officer/Deputy Superintendent of Police to highlight his contention that P.W.1 had improved his version before the Court and stated things that were not originally set out in the complaint. He also submitted that independent witnesses from the neighbourhood were not examined. Finally, he submitted that the accused had returned all the sridhana articles and that this complaint had been given in order to retain the custody of the minor child Kanishka.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not warrant any interference and that, this criminal appeal has to be dismissed.

5.I carefully considered the rival contentions and perused the evidence on record.

6.It is not in dispute that Akilandeswari/deceased was married to the appellant on 03.11.2006 and that a girl child Kanishka was born to them. It is not again in dispute that Akilandeswari committed suicide by hanging herself on 21.06.2009 in the evening hours. The hanging had taken place in the house of the appellant. What is significant is that Ex.P1-Complaint was lodged

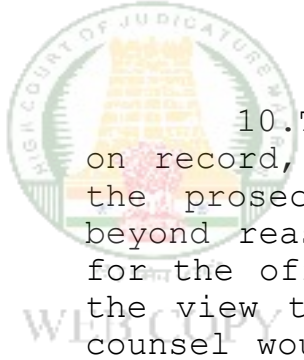


on 22.06.2009 by P.W.1-father of the deceased. Ex.P12-FIR was registered at about eight hours on 22.06.2009. In this case, the sequence of events is not in doubt. Even according to the appellant/accused, there was a temple festival in Thiruchengode from where, the deceased hailed from. For attending the festival, the accused had taken his wife and the child to Thiruchengode and after spending for hardly one hour, he had left. Of-course, the appellant would claim that he stayed for a day in his in-laws house. Be that as it may, fifteen days later, the deceased along with the child returned to the matrimonial home. In fact, P.W.3-Manivannan brother of the deceased accompanied the deceased. This is admitted by the appellant himself in his examination under Section 313 of Cr.P.C. P.W.3 in his testimony would state that on entering the house, the appellant had uttered harsh words and demanded to know as to whether they had brought the balance amount of Rs.40,000/-. Since P.W.3 was unable to bear the stress in the ambience, he told his sister not to open her mouth and he quietly left for Samayapuram Temple. When he returned after a while, there was no one at the house. He was informed that Akilandeswari had been taken in a Car. P.W.3 joined them shortly thereafter and they went to Trichy Government Hospital. Akilandeswari was lifted out of the Car. When the Doctor examined her, he told them she was already dead. P.W.3 would claim that he was not even informed that his sister was no more, when she was taken in the Car. The appellant's counsel would state that there is a contradiction between the evidence of P.W.1 and P.W.3. While, P.W.1 would claim that a sum of Rs.10,000/- paid to the daughter. P.W.3 would claim that it was paid directly to the accused.

7.I am of the view that these are two minor contradictions. The fact remains that according to both the witnesses, a sum of Rs.10,000/- was given as dowry. Both P.W.1 as well as P.W.3 in unison stated that the accused wanted to buy a lorry and that, he wanted a sum of Rs.50,000/-. A sum of Rs.10,000/- was already paid within fifteen days prior to the occurrence. On the fateful day, when the deceased returned home, he asked as to whether she had brought the balance amount of Rs.40,000/-. Thus, it is clear that soon before her death, she was subjected to dowry demand. The death of Akilandeswari and the cruelty meted out to her by the appellant are proximate in point of time. Thus, the ingredients set out in Section 304B of IPC are present in this case.

8.The appellant's counsel would contend that the independent witnesses were not examined.

9.I am of the view that for this omission on the part of the investigation, the entire case cannot be thrown out. The deceased hailed from Thiruchengode. The matrimonial home was at Chokalingapuram Colony, Samayapuram. Therefore, the people of the locality would naturally stand by the appellant. In any event, P.W.1 and P.W.3 are the best persons to speak as to what actually happened. Their testimonies command the confidence of this Court.



10. The Court below, after a careful analysis of the evidence on record, chose to acquit the parents of the appellants and hold the prosecution had established its case against the appellant beyond reasonable doubt. The appellant alone had been convicted for the offences under Sections 498(A) and 304(B) of IPC. I am of the view that there is no merit in this appeal. The appellant's counsel would point out that all the Sridhana articles had already been returned by the appellant to P.W.1. It is true that this has been substantiated by Ex.D1. But then, the appellant is bound to return the Sridhana articles that were gifted to him on the occasion of marriage. The appellant could not have retained them. Therefore, the fact that the appellant returned the articles cannot be a ground to exonerate him from the crime. This appeal is dismissed. The trial Court shall take steps to enforce this order.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.III,
Trichy
2. -Do- thro the Chief Judicial Magistrate,
Trichy
3. The Sessions Judge,
Mahila Court, Trichy
4. The Deputy Superintendent of Police,
Lalgudy Division,
Samayapuram Police Station,
Trichirappalli District.
5. The Superintendent,
Central Prison, Trichy
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
7. The Section Officer,
Criminal Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.S.A.AJMAL KHAN, Advocate (SR-75787[F] dated 17/07/2019)

Cr1.A(MD)No.24 of 2011
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