



Bail Slip

Ponnar, S/o.Annavi, aged about 30 years was released on bail vide order made in MP(MD)No.1 of 2011 in Crl.A(MD)No.99 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.99 of 2011

Ponnar

... Appellant/Accused No.1

Vs

1.State represented by,
the Deputy Superintendent of Police,
Jeeyapuram Sub Division,
Tiruchirappalli.

2.The Inspector of Police,
Jeeyapuram Police Station,
Tiruchirappalli District.
(Crime No.53 of 2008)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Judgment and Conviction dated 09.03.2011 by the learned Sessions Judge, Mahila Court, Tiruchirappalli in S.C.No.85 of 2009 and acquit the appellant.

For Appellant
For Respondents

: Mr.S.Deenadhayalan
: Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellant and his mother and his brother were tried for the offences under Sections 498(A) and 304B r/w 34 of IPC in S.C.No.85 of 2009 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli. By Judgment dated 09.03.2011, the appellant's mother and his brother were acquitted but the appellant alone was found guilty of the offence under Sections 498(A) and 304(B) of IPC and sentenced to two years rigorous imprisonment and seven years rigorous imprisonment respectively. Challenging the same, this appeal came to be filed.

2.The prosecution case is that the appellant Ponnar got married to Mahalakshmi on 27.08.2007. The appellant treated his wife cruelly and also demanded additional dowry. Unable to bear the harassment of the appellant, Mahalakshmi committed suicide by hanging herself on 04.03.2008. In this regard, P.W.1- father of the deceased lodged Ex.P1 Complaint before the Jeeyapuram Police



Station, leading to registration of FIR-Ex.P10 in Crime No.53 of 2008 for the offence under Section 304(B) of IPC. Investigation was taken up and after completion of all the usual formalities, final report came to be laid before the Judicial Magistrate No.3, Tiruchirappalli against the appellant, his mother and his brother for the offence under Sections 498A and 304B r/w 34 of IPC. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.34 of 2008. The case was made over to the Mahila Court, Tiruchirapalli for trial in S.C.No.85 of 2009. Charges were framed all the three accused. They pleaded not guilty and claimed to be tried. The prosecution examined 17 witnesses and marked Ex.P1 to Ex.P13. M.O.1 and M.O.2 series were also marked. On the side of the accused, three witnesses were examined as D.W.1 to D.W.3. Ex.D1 and Ex.D2 were marked. After considering the evidence on record, the learned trial Judge, by the impugned Judge, acquitted the appellant's mother and brother, but convicted and sentenced the appellant as mentioned above. Questioning the same, this appeal came to be filed.

3.The learned counsel appearing for the appellant confined his arguments only to seeking acquittal in respect of the offence under Section 304(B) of IPC. He submitted that he would not challenge the finding of guilt in respect of the offence under Section 498A of IPC. But he only wanted substantial modification of the punishment imposed on him. Section 304(B) of IPC could have been invoked against the appellant only if it can be shown that soon before her death, the appellant's wife was subjected to cruelty and harassment in connection with demand for dowry. A reading of the evidence of P.W.1 would indicate that the appellant wanted his wife to bring money from her parents to tide over the serious financial crisis. Even according to P.W.1, the appellant told his wife that since he is not having any income from his work, he wanted P.W.1 to bring some amount. The appellant wanted to shift to Coimbatore, where, he was hopeful of getting work. But then, he was not having any money to pay the rental advance. Therefore, he wanted a sum of Rs.5,000/- which according to P.W.1, was given to him. Whether making such demand would amount to dowry or not is no longer res integra.

4.As rightly pointed out by the learned counsel appearing for the appellant, the Hon'ble Supreme Court in the decision reported in **2007 (1) MWN (Cr.) 30(SC) (Appasaheb and another Vs. State of Maharashtra)**, held as follows:-

"9.Two essential ingredients of Section 304-B, apart from others are:-

(i)death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and

(ii)woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for "dowry"

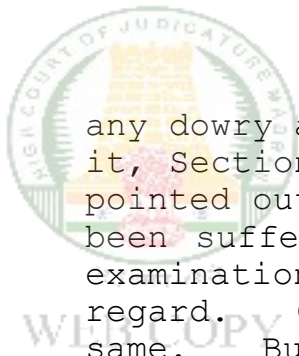
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(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

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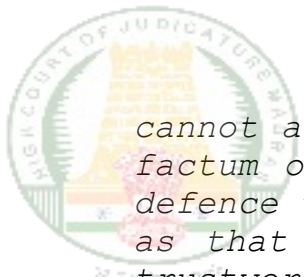


any dowry as such from his in-laws. Therefore, on the very face of it, Section 304(B) of IPC is not attracted. That apart, as rightly pointed out by the appellant's counsel, the deceased appears to have been suffering from some kind of mental depression. In the cross examination of P.W.1, a specific suggestion had been put in this regard. Of-course, the father of the deceased-P.W.1 denied the same. But then, the appellant had examined as many as three witnesses to establish his defence. D.W.1 is the Local Panchayat President. They have deposed that two days prior to the occurrence, that is 02.03.2008, the deceased hit herself against the lamppost and suffered injuries on her forehead. She was taken to one Doctor-Kannan who examined the woman and also gave treatment. The said Doctor Kannan was examined as D.W.3. He had stated that the deceased Muthu Lakshmi did not give proper answers when he questioned her. D.W.2 is also another important witness. He had worked along with the appellant at Coimbatore. He had deposed that the deceased Muthu Lakshmi attempted to commit suicide at Coimbatore and that is why, they were asked to vacate the house by the house owner and they returned to their native place thereafter. It is relevant to note here that the marriage took place on 27.08.2007. Muthu Lakshmi committed suicide on 04.03.2008. They were the residents of Somarasempettai, Trichy. They had moved to Coimbatore for better prospects. But then, they returned to their native place on 02.03.2008. This probabilises the statement made by D.W.2 in his evidence. This Court wanted to know if in the postmortem, the injuries suffered by Muthu Lakshmi on her forehead, was reflected. The learned counsel appearing for the appellant drew my attention to Ex.P8-Postmortem Certificate, in which, this injury have been specifically noted. Therefore, I am satisfied that D.W.1 and D.W.3 are speaking the truth. At this stage, it is relevant to refer to the decision of the Hon'ble Supreme Court reported in **(2002) 1 Supreme Court Cases 351 (Munsi Prasad and others Vs. State of Bihar)**. The Hon'ble Supreme Court held in the said decision as follows:-

"3.Without attributing any motive and taking the evidence on its face value, therefore, it appears that the place of occurrence was at 400-500 yards from the place of Panchayat and it is on this piece of evidence, the learned advocate for the State heavily relied upon and contended that the distance was far too short so as to be an impossibility for the accused to be at the place of occurrence- we cannot but lend concurrence to such a submission a distance of 400-500 yards cannot possibly be said to be "presence elsewhere"-it is not an impossibility to be at the place of occurrence and also at the Panchayat meet, the distance being as noticed above: the evidence on record itself negates the plea and we are thus unable to record our concurrence as regard acceptance of plea of alibi as raised in the appeal. Before drawing the curtain on this score, however, we wish to

clarify that the evidence tendered by the defence witnesses

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cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought to be attributed to the defence witnesses on a par with that of the prosecution-a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecution witnesses."

6. Merely because, D.W.1 to D.W.3 were examined on the side of the defence, their testimonies cannot be put on a lower pedestal. As held by the Hon'ble Supreme Court, their testimonies are entitled to equal respect as that of the prosecution witness. Thus, the appellant is entitled to be acquitted on both the grounds.

1. Section 304B of IPC is not attracted to this case.

2. The death of Muthu Lakshmi appears to be more due to her mental depression rather than due to harassment in connection with dowry demand.

7. Of-course, the decision cited by the learned counsel appearing for the appellant reported in **2007 (1) MWN (Cr.) 30 (SC) (Appasaheb and another Vs. State of Maharashtra)**, will not come to the appellant's rescue, while considering the validity of his conviction under Section 498A of IPC. Section 498A of IPC states that if the women had been subjected to cruelty, it is an offence. The expression cruelty has been defined in the explanation to Section 498A of IPC as false. The expression dowry is not mentioned in Clause (b) of the explanation. Therefore, technical or the narrow meaning that is formally attached to the expression "dowry" cannot be imported into Section 498A of IPC. The decision of the Hon'ble Supreme Court rendered in **2007 (1) MWN (Cr.) 30 (SC) (Appasaheb and another Vs. State of Maharashtra)**, cannot come to the appellant's rescue at all. In this case, the prosecution had established beyond reasonable doubt that the appellant had harassed his wife Muthu Lakshmi to bring money from her parents. It is certainly an unlawful demand. It may not amount to dowry within the technical meaning of the term. But then, demanding money from the in-law is certainly an act of cruelty falling within the purview of Section 498 A of IPC.

8. Having regard to the evidence on record and the statutory definition, the learned counsel appearing for the appellant submitted that he would not challenge the finding of guilt in respect of the offence under Section 498A of IPC. He only wanted leniency in the matter of punishment.

9. The occurrence had taken place way back in the year 2008. We are now in the year 2019. The appellants appears to have re-married a few years back. Two children have been born to the



appellant through his second marriage. If the appellant is sentenced to undergo a long term of imprisonment, certainly, it will have a ruinous impact on his new family. Therefore, taking into account all these mitigating aspects and also the fact that the appellant demanded only to meet out his dire financial necessity, the interest of justice will be served by reducing the sentence of imprisonment from two years rigorous imprisonment to six months rigorous imprisonment. It appears that the appellant had already been in prison for about 65 days. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C. The conviction and sentence imposed on the appellant under Section 304(B) of IPC is set aside. The conviction imposed on the appellant under Section 498(A) of IPC is confirmed. The sentence is reduced to six months rigorous imprisonment.

10. With this modification, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Deputy Superintendent of Police, Jeeyapuram Sub Division, Tiruchirappalli.
2. The Inspector of Police, Jeeyapuram Police Station, Tiruchirappalli District.
3. The Sessions Judge, Mahila Court, Tiruchirappalli.
4. The Superintendent, Central Prison, Trichy.
5. The Judicial Magistrate No.III, Trichy.
6. The Chief Judicial Magistrate, Trichy.
7. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.DEENADHAYALAN, Advocate SR-82542.

CrI.A.(MD)No.99 of 2011

16.08.2019

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