



Bail Slip

Sivakumar, S/o.Apparoo, Appellant/Accused No.1, is released on bail vide Court order dated 06.04.2011 made in MP(MD)No.2 of 2011 in Crl.A(MD)No.264 of 2010

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.A(MD)No.264 of 2010

Sivakumar : Appellant/Accused No.1

Vs.

The Inspector of Police,
Thirubhuvanam Police Station,
Sivagangai District.
Crime No.298 of 2002.

: Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the judgment passed in S.C.No.133 of 2005, dated 12.07.2010 on the file of the Assistant Sessions Judge, Sivagangai.

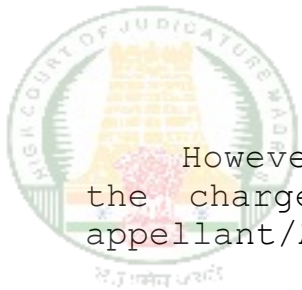
For Appellant : Mr.T.Antony Arul Raj,
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed as against the conviction and sentence imposed by the trial Court, namely, the Assistant Sessions Court, Sivagangai, in S.C.No.133 of 2005, dated 12.07.2010.

2.The appellant along with his parents was tried for the offence under Sections 498 (A) and 304 (b) IPC and the trial Court found the appellant/A1 guilty, convicted and sentenced him as follows:

Penal Provision	Punishment
498 (A) IPC	One year Rigorous Imprisonment with fine of Rs.1,000/-, in default, 6 months Simple Imprisonment.
304 (b) IPC	10 years Rigorous Imprisonment.



However, the trial Court acquitted the parents/A2 & A3 from the charges. Aggrieved over the conviction and sentence, the appellant/A1 preferred this Criminal Appeal.

3. The brief facts of the case of the prosecution are as follows:

3.1. The appellant and the deceased were residing in the same village. They loved each other. They eloped and married at Ramanathapuram against the wish of their parents. After marriage, they resided at Ramanathapuram for a period of three months. But, they could not survive at Ramanathapuram and therefore, they returned to their native place and were living separately in a rented house. P.W.1, namely, Rajammal is the mother of the deceased. P.W.2, namely, Sathya and P.W.3, Thavamani are sister and father of the deceased respectively. They were living away from the deceased's house.

3.2. The appellant/first accused was working in a workshop. On 21.08.2002, at about 09.00.am, he returned from his work and at that time, a person ran away from his house. The appellant questioned his wife/deceased about that person and he suspected her fidelity and also assaulted her. Thereafter, he went in a bicycle, returned with his mother/accused No.2 and they have abused the deceased. After that, the deceased's mother [P.W.1] came to her house and insisted to come with her, but, she refused. In view of the incident, the victim girl poured kerosene and set fire on her own. She was taken to Rajaji Government Hospital and admitted in the hospital.

3.3. On receipt of intimation from the husband (A1) , the Head Constable [P.W.10], Thirubhuvanam Police Station, went to the Hospital on 22.08.2002 at 10.30.am, and recorded the statement [Ex.P.1] from the victim.

3.4. On intimation from the Hospital, Madurai on 22.08.2002 at 03.45.a.m, the learned Judicial Magistrate No.V, Madurai, namely, Indirani [P.W.4] went to the Hospital and recorded the dying declaration of the deceased in the presence of Dr.M.Radhakrishnan. The Doctor has also attested that the patient was conscious and was in a fit state of mind to give dying declaration before the learned Judicial Magistrate. The deceased gave a dying declaration that since her husband questioned her fidelity, she poured kerosene and set fire and at that time, there was nobody near her. The statement recorded by the learned Judicial Magistrate was marked as Ex.P.2.

3.5. P.W.10, the Head Constable, Thirubhuvanam Police Station, returned to the police station at about 12.30.pm, and handed over



the statement of the deceased [Ex.P.1] to the Sub Inspector of Police [P.W.11]. On receipt of the same, a case was registered in Crime No.298 of 2002, as against the appellant and his parents for the offence under Sections 498(A) and 304(b) IPC on 22.08.2002 at 12.30.pm.

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3.6. On receipt of information about the case in Crime No.298 of 2002, the Deputy Superintendent of Police, Manamadurai Circle [P.W.12] went to the place of occurrence and prepared an observation mahazar [Ex.P.3] and a rough sketch [Ex.P.8] in the presence of witnesses [P.W.5 and P.W.6]. He also recovered a five liter kerosene Can [M.O.1] and the burned jacket, inner wear and saree of the deceased [M.Os.2 to 4, respectively], from the place of occurrence.

3.7. Thereafter, he proceeded to the Hospital and recorded the statement from the victim and her mother [P.W.1]. Thereafter, he went to the occurrence place and recorded the statement from the deceased's sister, namely, Sathya [P.W.2], Thavamani, father of deceased [P.W.3], Munisamy [P.W.7] and one Malaisamy and Karuppaiah. The Deputy Superintendent of Police, namely, Muthusamy [P.W.12] arrested the accused on 24.08.2002 and remanded him to judicial custody. He also arrested the accused No.2, namely, Irulayi on 02.09.2002. He examined the Doctor [P.W.8], who conducted the postmortem and the Doctor, who treated the deceased and thereafter, filed the final report, after obtaining opinion from the Deputy Director of Prosecution, on 29.11.2002.

4. During the trial 12 witnesses were examined and 8 documents were marked and 4 material objects were also produced.

5. The available evidences from the prosecution side are as follows:

(i) P.W.1 is the mother of the deceased and she speaks about the love marriage performed by the first accused and the deceased and the incident that has taken place on the occurrence day.

(ii) P.W.2, Sathya is the sister of the deceased and P.W.3 is the father of the deceased. Their evidence corroborates with the evidence of P.W.1.

(iii) P.W.4, Mrs.Indirani, learned Judicial Magistrate No.V, Madurai, who recorded the dying declaration of the deceased on 22.08.2002.

(iv) P.W.5 and P.W.6 were examined as mahazar witnesses and they were treated as hostile witnesses.

(v) P.W.7, another villager, turned hostile.

(vi) P.W.8, Dr. Alaudin, conducted the postmortem and according to the Doctor, he conducted the postmortem on 27.08.2002 at 02.10.am on the deceased. The deceased died due to extensive



superficial burnt of 70% and the complications there on. The postmortem certificate is marked as Ex.P.5.

(vii) P.W.9, Anandasainam is the Revenue Divisional Officer, who conducted the inquest in this case and the inquest report is marked as Ex.P.6.

(viii) P.W.10, Sekaran, is the Head Constable, who received the intimation from the Government Rajaji Hospital and recorded the statement [Ex.P.1] from the deceased.

(ix) P.W.11, Mohan Doss, is the Sub Inspector of Police of Thirubhuvanam Police Station, who registered the case in Crime No.298 of 2002.

(x) P.W.12, is the Deputy Superintendent of Police, who conducted the investigation in this case and filed the final report.

6.After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Though they have stated that there are witnesses in their favour, they did not examine any witnesses during the trial. In conclusion of the trial, the trial Court acquitted the accused Nos.2 and 3 and found the appellant/A1 guilty for the offence under Sections 498(A) and 304(b) IPC, convicted and sentenced him as stated above.

7.Heard Mr.T.Antony Arul Raj, learned counsel for the appellant and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the respondent/State.

8.The learned counsel appearing for the appellant raised the following points for consideration:

8.1. the marriage between the deceased and the appellant was solemnized only six months prior to the occurrence and it was a love marriage and that their marriage was solemnized against the wish of their parents. Therefore, P.W.1 to P.W.3 were having grudge against the love marriage solemnized between the appellant and the deceased and have exerted a false evidence before the trial Court.

8.2. The victim was admitted in the Hospital on 21.08.2002 and immediately, intimation was sent to the Judicial Magistrate. The learned Judicial Magistrate No.V, Madurai (P.W.4) has also recorded the dying declaration from the victim on 22.08.2002 at about 03.45.a.m, in the presence of the Dr.M.Radhakrishnan, who has also attested the state of mind of the victim girl before recording the dying declaration. But, the said Doctor was not examined as a witness in this case.



8.3. According to the prosecution, the victim was conscious at the time of recording the dying declaration and she has stated that her husband has suspected her fidelity and quarrelled with her on the date of occurrence and therefore, she poured kerosene, set fire on her own and at that point of time, there was nobody present in her house. There was no averment as to any demand of dowry by the accused.

8.4. The learned Judicial Magistrate No.V, Madurai (P.W.4), who recorded the dying declaration has also ascertained the consciousness of the victim at the time of recording the dying declaration. There is no whisper of any demand of dowry at that point of time. However, in Ex.P.1, which was recorded at about 10.30.am., an averment was introduced as if the appellant demanded Rs.50,000/- to start a business. The victim was alive for four days and died only on 26.08.2002 and she was under the custody of P.Ws.1 to 3.

8.5. He has also stated that P.Ws.1 to 3, were already having grudge against the appellant, because the appellant got married her daughter, against their wish. The appellant questioned his wife/deceased about the person, who ran away from his house. But, they have foisted this false case as if, there was a demand of dowry and on account of which, she committed suicide.

8.6. The learned counsel for the appellant has also pointed out that the evidence of P.W.3, the father of the deceased would show that the appellant and the victim were struggling to earn and to meet their needs. P.W.6, who is the resident of the village has suggested P.W.3 to help the appellant by giving a sum of Rs.50,000/-, so that, the accused can establish a cycle shop and can manage their life. Even assuming that there was a request for arranging a business, it cannot be treated as a demand of dowry, which was the cause for committing the suicide.

8.7. The trial Court, when extended the benefit of doubt as against the other accused, ought to have extended the benefit of doubt in favour of the appellant also. Therefore, he prays for allowing this appeal.

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent/State would submit that the occurrence has taken place within six months from the date of marriage and the accused has not only demanded money from the deceased, but, has also suspected her fidelity. On account of the same, the victim girl has committed suicide. There was a dowry demand in this case and the demand of dowry was also established by the prosecution witnesses P.W.1 to P.W.3 and the deceased also died in a suspicious circumstances. Therefore, the presumption



under Section 113 of Indian Evidence Act would apply in this case and therefore, the trial Court has rightly convicted and sentenced the accused and he prays for dismissal.

10. This Court has paid it's anxious consideration to the rival submissions and also perused the materials placed on record.

11. The marriage between the deceased and the appellant was solemnized only six months prior to the occurrence. It was a love marriage and their parents were against the marriage and therefore, the appellant and the deceased eloped and married at Ramanathapuram. After marriage, they resided at Ramanathapuram for a period of three months. They could not survive at Ramanathapuram and therefore, they returned to their native village at Vanniyenthal and were also residing separately in a rented house. Their parents were also residing in the same village.

12. According to the deceased, she set fire on her own on 21.08.2002 in her house. The victim girl was admitted in the Government Rajaji Hospital on 21.08.2002 at 08.00.p.m. There was no evidence available on the side of the prosecution as to who brought the deceased to the hospital. However, on intimation made to the learned Judicial Magistrate No.V, Madurai from the Hospital on 22.08.2002, P.W.4 has recorded the dying declaration from the deceased on 22.08.2002 at 03.55.am., in the presence of Dr.Radhakrishnan. The victim girl has stated that on the date of occurrence, her husband/appellant suspected her fidelity and quarrelled with her and therefore, she poured kerosene and set fire on her own.

13. In Ex.P.1 recorded by the Constable (P.W.10) on 22.08.2002 at about 10.30.a.m, it is mentioned that on 21.08.2002 at about 09.00.p.m, when her husband returned from the work shop, a person ran away from their house and the appellant/accused questioned about that person and on account of which, there was a problem arose between them. Thereafter, he went to his house and brought the second accused and the second accused insisted her to give the Mangalsuthra and to leave the house. Therefore, the deceased is said to have committed suicide by pouring kerosene.

14. According to P.W.1, the victim girl set fire at around 10.30.p.m and she was taken to the hospital. But, nowhere it is stated, who admitted the deceased in the hospital. The Doctor, who attended the deceased on 21.08.2002, who gave the intimation to the learned Judicial Magistrate No.V, Madurai (P.W4), as well as the Police Station, was also not examined. Similarly, the Accident Register copy was also not marked in this case.

15. The victim, in her dying declaration has stated that the



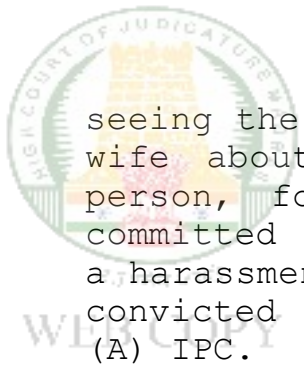
occurrence has taken place at 08.00.p.m on 21.08.2002, whereas, as per Ex.P.1, her husband returned from the workshop around 09.00 p.m and according to P.W.1, it was at 10.30.p.m, the victim girl poured kerosene and attempted to commit suicide.

16.P.W.2, sister of the deceased in her evidence, has stated that on the date of occurrence, a person was found in the deceased's house and as soon as the appellant arrived at the house, he ran away from that house, but she was not aware of that person. The appellant/accused questioned about that person and also suspected her fidelity. But, the father of the deceased (P.W.3) has not stated anything about this incident. But, he had spoken about the demand of Rs.50,000/- by the appellant/accused through P.W.6. According to P.W.3, P.W.6 is also the resident of Vanniyenthal village and he approached him and suggested to help the accused by giving a sum of Rs.50,000/-, so that the appellant can arrange for a shop.

17.The available evidence would disclose that the appellant and the deceased loved each other and the marriage was solemnized against the wish of their parents. But, they were not in a position to meet their needs at Ramanathapuram and they could not survive at Ramanathapuram. Therefore, they returned to their native place and were residing separately, in a rented house. The appellant was working in a mechanical shop. When he returned from his work shop on 21.08.2002, a person ran away from the house on account of which, the appellant has questioned the victim girl and also suspected her fidelity. Therefore, the victim girl poured kerosene and committed suicide.

18.The prosecution case is that the victim girl was subjected to harassment by demanding dowry of Rs.50,000/-, as per Ex.P.1 as well as the evidence of P.W.1 to P.W.3. But, P.W.3/ father of the deceased has categorically stated that this demand of Rs.50,000/- was made only through P.W.6, who is a resident of the same village and also by way of a suggestion for survival, has suggested P.W.3 to help the accused to arrange a vulcanizing shop by providing a sum of Rs.50,000/-. This evidence of P.W.3 would show that it was neither a demand and nor a dowry. If any amount has been sought, even either by the appellant or on behalf of the appellant as a financial help, it cannot be treated as a dowry to attract the offence under Section 304 (b) IPC.

19.However, in this case, the victim was subjected to harassment by suspecting her fidelity and on account of which, she committed suicide by pouring kerosene. Admittedly, as per Ex.P.1 as well as the evidence of P.W.2, an unknown person was found in the house of the appellant and he ran away from the house on



seeing the appellant. The appellant is said to have questioned his wife about that person. But, his wife was not aware of that person, for which, the appellant insulted her. Therefore, she committed suicide, on emotion. However, it can also be treated as a harassment soon before her death and the trial Court has rightly convicted the appellant/accused for the offence under Section 498 (A) IPC.

20. In view of the foregoing discussions and reasonings, this Court, while confirming the conviction under Section 498(A) IPC, is inclined to interfere with the impugned judgment passed by the learned Assistant Sessions Judge, Sivagangai in S.C.No.133 of 2005, dated 12.07.2010 insofar as the conviction under Section 304 (b) IPC is concerned.

21. In the result,

(i) the conviction and sentence imposed by the trial Court for the offence under Section 304(b) IPC are set aside and the appellant/accused is acquitted from this charge.

(ii) the conviction imposed by the trial Court for the offence under Section 498(A) IPC is confirmed. During the course of arguments, it was represented that the appellant has already undergone 323 days of imprisonment and the said fact has also been confirmed by the learned Additional Public Prosecutor. Therefore, the sentence of imprisonment is modified to that of the period already undergone by the appellant/accused. The fine amount as well as default clause remain unaltered.

(iii) bail bonds, if any, executed by the appellant/accused shall stand terminated.

22. With the above modifications, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

das

To

1.The Assistant Sessions Judge,
Sivagangai.



2.The Judicial Magistrate,
Manamadurai, Sivagangai District.

3.The Superintendent, Central Jail,
Madurai.

4.The Inspector of Police,
Thirubhuvanam Police Station,
Sivagangai District.

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

+1 CC to Mr.I. IRULLAPPAN, Advocate (SR-99848[F] dated 20/11/2019
)

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20.11.2019

KM (12.08.2020) 9P 7C