

**BAIL SLIP - CRL A(MD) No.344 / 2010**

The Appellants/Accused namely 1) Karuppannasamy, S/O. Malaiappan, (M), 32, aged about 50, and 2) Arayee, W/O. Malaiappan (F), 50, aged about 50, are released on bail vide court order dated 02.11.2010, made in MP(MD) No.1 of 2010 in CRL A(MD) No.344/2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.A.(MD) No.344 of 2010

1. Karuppannasamy

2. Arayee

... Appellants/Accused 1 & 2

Vs.

State rep, by,
The Inspector of Police,
Velayuthampalayam Police Station,
Karur District.
(Crime No.572 of 2008)

... Respondent/Complainant

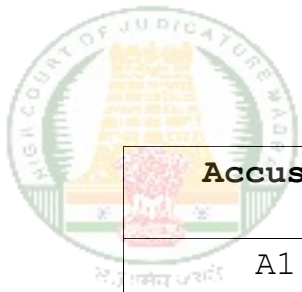
Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the conviction dated 01.07.2010, made in S.C.No.116 of 2009, on the file of Additional Sub-Judge Cum Additional Assistant Sessions Judge, Karur.

For Appellants : Mr.K.P.S.Palanivel Rajan

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

J U D G M E N T

The first appellant is the son while the second appellant is his mother and the third accused is his sister. All the three of them were tried in S.C.No.116 of 2010, on the file of the learned Additional Assistant Sessions Judge, Karur, vide judgment dated 01.07.2010. The third accused/Latha was acquitted while the appellants herein were convicted and sentenced as follows:-



Accused	Penal Provisions	Punishment
A1	304(b) IPC	To undergo ten years rigorous imprisonment
	498(A) IPC	To undergo two years rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo three months rigorous imprisonment.
	Section 4 of DP Act	To undergo two years rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo three months rigorous imprisonment.
A2	304(b) IPC	To undergo seven years rigorous imprisonment
	498(A) IPC	To undergo two years rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo three months rigorous imprisonment.
	Section 4 of DP Act	To undergo two years rigorous imprisonment and to pay a fine of Rs.250/-. In default, to undergo three months rigorous imprisonment.

2.The case of the prosecution is that the marriage between the first appellant/Karuppannasamy and the deceased/Chithra took place on 28.05.2008. It was an arranged marriage. On 15.10.2008, Chithra committed suicide by hanging herself in her matrimonial home. P.W.1/Lakshmi, the mother of Chithra lodged Ex.P.1/complaint before Velayuthampalayam Police Station. Crime No.572 of 2008 (Ex.P.8) was registered under Section 174 of Cr.P.C. Investigation was taken up and final report came to be filed against the three accused before the learned Judicial Magistrate No.II, Karur. Since the offences were exclusively triable by the Sessions Court, the case was committed to Sessions Court and made over to the learned Additional Assistant Sessions Judge, Karur in S.C.No.116 of 2009. Charges were framed against the accused for the offence under Section 304(b) and 498(A) of I.P.C. and Section 4 of Dowry Prohibition Act. The accused denied the charges and claimed to be tried.

3.The prosecution examined as many as 17 witnesses and marked Exs.1 to 12. On the side of the accused no evidence was adduced.



4. The learned Trial Judge by the impugned judgment while acquitting the third accused, convicted and sentenced the appellants as mentioned above. Questioning the same, this criminal appeal has been filed.

5. The learned counsel appearing for the appellants submitted that the death of the deceased cannot be traceable or related to any dowry demand. He took me through the testimony of P.W.16/Investigating Officer. In his cross examination, P.W.16 had stated that P.W.1/Lakshmi in her statement did not state that the accused demanded dowry. P.W.2/Manikkavasagam, the father of the deceased also did not state that the accused demanded two sovereign of gold and Rs.15,000/-.

6. A careful reading of the testimony of P.W.16/Investigating Officer and that of P.W.1 to P.W.4 would reveal that the deceased was not subjected to any cruelty related to dowry soon before her death. The learned counsel placed reliance on the decision of the Honourable Supreme Court reported in **2013 (7) SCC 219 (S.Anilkumar @ Anilkumar Ganna Vs. State of Karnataka)**. The Honorable Supreme Court held that once the prosecution failed to prove the basic ingredients of harassment or demand of dowry, it is not open to the Court to rely on the presumption set out in Sections 113(A) or 113(B) of the Evidence Act and convict the accused. The appellants' counsel also drew my attention to the recent decision dated 23.07.2019, rendered by the Honourable Supreme Court in **Crl.A.No.1475 of 2009 (Girish Singh Vs. The State of Uttarakhand)**. Paragraphs 34 and 35 of the said decision would read as under:-

'34. Section 304B treats this as a dowry death. Therefore, in such circumstances, it further provides that husband or relative shall be deemed to have caused her death. Section 113B of The Indian Evidence Act, 1872 provides for presumption as to dowry death. It provides that when the question is whether the dowry death, namely, the death contemplated under Section 304B of the IPC, has been committed by a person, if it is shown that soon before her death, the woman was subjected by such person to cruelty or harassment, for in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. It is no doubt a rebuttable presumption and it is open to the husband and his relatives to show the absence of the elements of Section 304B.

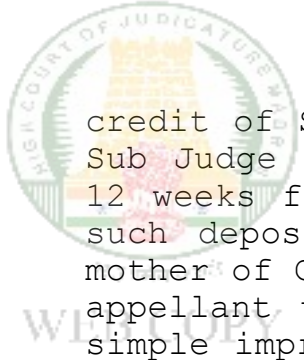
35. The foremost aspect to be established by the prosecution is that there was reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. Before the presumption is raised, it must be established that the woman was subjected by such person to cruelty or harassment and it is not any cruelty that



becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.''

7. Applying the principles let down above, I am of the view that the Court below clearly erred in convicting the appellant for the offence under Section 304(b) of I.P.C.

8. The testimony of P.W.3 sets out the immediate background in which, the deceased/Chithra committed suicide. On 14.10.2008, P.W.3, who is the brother of the deceased came to the house of the appellants for inviting them to attend the village function. According to P.W.3, on his request the appellants permitted the deceased/Chithra to go with him but after she stepped out, they dragged Chithra back into the house. The RDO/P.W.13, who held the inquest states that no such version was projected to him during inquest. But then, in Ex.P.1/complaint, P.W.1/Lakshmi, the mother of the deceased would refer to this incident. It is quite possible that this was not reported to the RDO during inquest. Be that as it may, the fact remains that the suicide of Chithra took place within one year and five months from the date of marriage. The testimony of P.W.3 commands the confidence of this Court. The deceased/Chithra was childless. Of course not many months had elapsed after the marriage and I reject the defence of the appellants that since she did not conceive she fell into depression and committed suicide. There is a reference not only in Ex.P.1/complaint but also in the testimony of the accused that the relationship between the first appellant and the deceased/Chithra was not all that cordial. P.W.1 had stated that the first appellant had physically harassed Chithra. P.W.3 had also stated that the first appellant beat Chithra and dragged her back to the house. The occurrence on 15.10.2008 coupled with her mental condition that was caused by the harassment of the appellants had induced her to commit suicide. Having regard to the evidence on record, the learned counsel appearing for the appellants submitted that he would not contest the finding of guilt as regards the offence under Section 498(A) of I.P.C. He also submitted that the appellants would pay a sum of Rs.50,000/- as compensation to P.W.1/Lakshmi, the mother of the deceased. It is seen that the first appellant had remarried. He is also having a child. The first appellant is only eking of his life as a load man. The first appellant had spent about nine months in prison while the second appellant had spent about six months in prison. Taking note of these mitigating aspects, this Court even while setting aside the conviction of the appellants for the offence under Section 304(b) of I.P.C. and Section 4 of Dowry Prohibition Act, confirms the conviction for the offence under Section 498(A) of I.P.C. The sentence of imprisonment imposed on the first appellant for the offence 498(A) of I.P.C. is reduced from two years rigorous impr to one year rigorous imprisonment. The sentence of imprisonment on the second appellant is reduced from two years rigorous imprisonment to the period already undergone by her. The first appellant is directed to deposit a sum of Rs.50,000/- to the



credit of S.C.No.116 of 2009, on the file of the learned Additional Sub Judge Cum Additional Sessions Judge, Karur, within a period of 12 weeks from the date of receipt of a copy of this judgment. On such deposit, the same shall be handed over to P.W1/Lakshmi, the mother of Chithra. In the event of failure on the part of the first appellant to do so, he shall undergo default sentence of one year simple imprisonment. The period of incarceration already undergone by the first appellant will be set off under Section 428 of Cr.P.C. With this modifications and direction, the criminal appeal is partly allowed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To:

- 1.The Additional Sub Judge Cum
Additional Sessions Judge,
Karur.
- 2.The Inspector of Police,
Velauthampalayam Police Station,
Karur.
- 3.The Superintendent,
Central Prison, Trichy.
- 4.The Superintendent,
Special Prison for Women,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:
THE RECORD KEEPER,
CRIMINAL SECTION (RECORDS),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
(2 COPIES)

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate (SR-78303[F] dated 29/07/2019)

Crl.A. (MD) No.344 of 2010
29.07.2019