

Bail Slip

The Accused No.2, Lalitha, W/o.Natesan, Female and the 1st Accused, Elango, S/o.Natesan, Male, has been released on bail as per the order of this Court dated 10.11.2010 in Crl.MP(MD).No.1 of 2010 in Crl.A(MD).No.409 of 2010 and Crl.MP(MD).No.2 of 2011 dated 04.08.2011 in Crl.A(MD).No.409 of 2010, respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD) No.409 of 2010

1.Elango

2.Lalitha ... Appellants/Accused Nos.1 & 2

Vs.

1.State represented by

The Assistant Commissioner of Police,
Srirangam,
Trichirapalli District.

2.The Inspector of Police,
Woraiyur Police Station,
Trichirapalli District.

... Respondents

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to call for the records in S.C.No.38 of 2009, by the Sessions Judge, Mahila Court, Trichirappalli, dated 23.09.2010 and set aside the same and acquit the appellant/accused.

For Appellant : Mr.S.Ramakrishnan, Legal Aid Counsel

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

J U D G M E N T

The appellants were convicted for the offences under Sections 498(A) and 304(B) of I.P.C. and sentenced to undergo two years rigorous imprisonment and seven years rigorous imprisonment respectively vide judgment dated 23.09.2010 in S.C.No.38 of 2009 on the file of the learned Sessions Court, Mahila Court, Tiruchirappalli.



2.The case of the prosecution is that the first appellant got married to one Bama in the year 2007. The second appellant is the mother of the first appellant. Bama was subjected cruelty and dowry demand. Unable to bear the same, she committed suicide by hanging herself on 25.02.2008 at about 10.30 a.m. In this regard, P.W.1, the father of the deceased/Bama lodged Ex.P.1/complaint before Woraiyur Police Station. Based on the same, Ex.P.13/FIR in Crime No.132 of 2008 was registered under Section 174 of I.P.C. Investigation was taken up and final report came to be filed against the appellants for the offences under Sections 498(A) and 304(B) of I.P.C. before the learned Judicial Magistrate No.IV, Tiruchirappalli. The case was committed to Sessions Court vide P.R.C.No.4 of 2009. The case was made over to the learned Mahila Court for trial in S.C.No.38 of 2009. Charges were framed against the appellants. The appellants pleaded not guilty to the charges and claimed to be tried.

3.The prosecution examined as many as 17 witnesses and marked Exs.1 to 16. on the side of accused, six witnesses were examined.

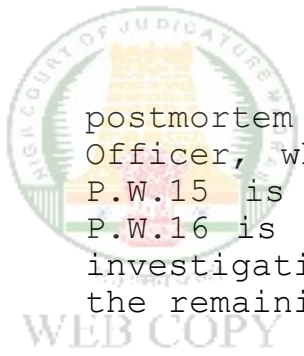
4.The learned Trial judge after a detailed consideration of the evidence on record convicted and sentenced the appellants as mentioned above. Challenging the same, this criminal appeal has been filed.

5.The learned counsel for the appellants reiterated all the contentions set out in the appeal memorandum and wanted this Court to set aside the impugned judgment of conviction and sentence.

6.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss the appeal.

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

8.P.W.1 is the father of the deceased. P.W.2 is the mother of the deceased. P.W.3 is the brother of the P.W.1. P.W.4 is a relative. P.W.5 is the uncle of the deceased. P.W.6 is the co-brother of P.W.1. P.W.7 witnessed the observation mahazer and he turned hostile. P.W.8 is the owner of the house, where the deceased committed suicide. He also turned hostile. P.W.9 is the sister of A2. She informed P.W.1 about the death of the deceased. P.W.10 is the neighbour, who turned hostile. P.W.11 is the scientific expert. P.W.12 is a Grade-I constable, who produced the body for



postmortem as well as inquest. P.W.13 is the Revenue Divisional Officer, who conducted inquest. P.W.14 is the postmortem Doctor. P.W.15 is the Sub Inspector of Police, who registered the FIR. P.W.16 is the investigating officer, who conducted the part of the investigation. P.W.17 is the Assistant Commissioner, who conducted the remaining part of the investigation and filed the final report.

9.P.W.2 is the mother of the victim and is the most important witness. She had categorically stated that when the marriage was solemnized on 29.10.2007, there was a shortfall in the Seethana. Therefore, P.W.2 had to give four more sovereigns of gold and she also stated that the accused demanded Rs.50,000/-. But then, P.W.2 was not able to comply with the demand. She clearly stated that the accused subjected the deceased to cruelty and demanded that the deceased should bring more dowry. The specific allegation of P.W.2 is that the first appellant would come home drunk and beat the deceased/Bama. It has been further stated that the accused used to subject Bama to sexual torture. Three days prior to the occurrence, Bama suddenly came home. Bama told P.W.2 that she was subjected to torture in connection with dowry demand. P.W.2 had told the deceased that since her elder sister had just then delivered the baby, she was not in a position to give her additional dowry and that she would arrange within a span of three months. Even a day prior to the occurrence, the deceased had called P.W.2 over phone and cried. P.W.2, the mother of the deceased categorically asserted that it was the first accused/Elango, who was responsible for the death of Bama.

10.The testimony of P.W.2 is corroborated by the testimony of P.W.1, P.W.3 and P.W.4. The learned counsel for the appellants would challenge the testimonies as that of interested witnesses. I am unable agree with the said submission. In the very nature of things, in matters such as this only the close relatives of the victim or the deceased alone who would be in a position to depose. These are not cases in which one can look for third party evidence.

11.The other contention of the learned counsel for the appellants is that there is no evidence to establish that soon before the death, the deceased was subjected to cruelty in connection with dowry demand and that therefore, charge under Section 304(B) of is not made out. I am unable with this submission. As rightly pointed by the learned Government Advocate (Crl. Side), the marriage between the first appellant and the deceased/Bama took place on 29.10.2007. The suicide took on 25.02.2008. Therefore, within a period of four months from the date of marriage, the suicide had occurred. The learned Government Advocate (Crl. Side) drew my attention to the decision of the Honourable Supreme Court reported in (2015) 6 SCC 477 (Rajinder



Singh Vs. State of Punjab), in which, it has held as follows:-

''23. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304B would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304B.''

12.Thus the expression "soon before" has been interpreted as not being "soon immediately before". In this case, the deceased/Bama and the appellant got married on 29.10.2007. P.W.2, the mother of the deceased had clearly deposed that the deceased was subjected to continuous dowry harassment. Therefore, applying the aforesaid decision of the Honourable Supreme Court, I am of the view of that the charge under Section 304 of I.P.C. is clearly made out. But then, the prosecution established the charge beyond reasonable doubt only against the first appellant. The second appellant admittedly lived separately. The first appellant and the deceased used to work in a certain place and lived in a rented house. P.W.2 in her evidence also wants to put the entire blame only on her son-in-law, namely., Elango. Therefore, this Court can safely come to the conclusion that the prosecution has not established the case against the second appellant/Lalitha.

13.I must also record another feature in this case. The accused suggested to the prosecution witnesses that the deceased/Bama was having an immoral past and that was the reason for committing suicide. In fact, defence witnesses were examined to support this theory. D.W.1 would claim in his evidence that he used to hear about the immoral conduct of the deceased. In fact, when a similar suggestion was put to the uncle of the deceased/P.W.5, he registered strong protest and characterized the question as scandalous. I am of the view that this shows the perverse mentality of the first appellant.

14.The appellants' counsel wanted this Court to show leniency in the matter of punishment. The first appellant has got married and he is having two children. This again shows the first appellant in a very poor light. He was convicted way back in September 2010. Therefore, he ought not to have remarried or got children through



his second marriage till the appeal was disposed of.

15. The learned Trial Judge rightly came to the conclusion that the prosecution had established its case against the first appellant/Elango beyond reasonable doubt. I find no ground to interfere as far as the conviction and sentence of the first appellant is concerned. However, the second appellant is acquitted of all the charges. This criminal appeal is allowed as far as the second appellant and dismissed as far as the first appellant is concerned. The bail bond, if any, executed by the second appellant shall stand cancelled.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

ias

To:

1. The Sessions Judge, Mahila Court, Trichirappalli.
2. The Assistant Commissioner of Police,
Srirangam, Trichirapalli District.
3. The Inspector of Police, Woraiyur Police Station,
Trichirapalli District.
4. The Judicial Magistrate No.IV, Trichirappalli.
5. Do through The Chief Judicial Magistrate, Trichy.
6. The Superintendent, Central Prison, Trichy (2 Copies)
7. The Superintendent of Police, Trichy District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.RAMAKRISHNAN, Advocate (SR-81070[F] dated 09/08/2019

Crl.A.(MD)No.409 of 2010
09.08.2019

JMN(27.09.2019) 5P : 11C