

Bail Slip

The Appellant/Accused, namely Mallika W/o Puagalendhi was released on bail as per order of this Court dated 14.03.2014 in MP.NO.1/14 IN Crl.A.No.836 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2020

PRONOUNCED ON : 03.06.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.836 of 2013

Mallika ... Appellant/Accused No.2

Vs.

State Represented by  
The Inspector of Police,  
Barur Police Station,  
Krishnagiri District,  
(Crime No.192/2008)

... Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 (2) Cr.P.C against the judgment dated 30.10.2013 passed in S.C.No.109 of 2011 on the file of the Sessions Judge, Mahila Court, Krishnagiri.

For Appellant : Mr.V.Rajmohan

For Respondent : Mr.R.Ravichandran (Crl.side)  
Government Advocate

JUDGMENT

The appellant (A2) and her son Ramesh (A1) were charge sheeted by the respondent police under Sections 498-A, 304-B IPC and Section 4 of Dowry Prohibition Act. The Sessions Judge, Mahila Court, Krishnagiri, by judgement dated 30.10.2013 passed in S.C.No.109 of 2011 acquitted A1 Ramesh of the offences put forth against him under Sections 498-A & 304-B IPC, however, proceeded to convict the appellant/A2 under Section 304-B and sentenced her to undergo rigorous imprisonment for seven years and pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months and under Section 498-A IPC and sentenced her to undergo rigorous imprisonment for three years and pay a fine of Rs.5,000/- in

default to undergo rigorous imprisonment for six months and the sentences of imprisonment imposed on the appellant / A2 are ordered to run concurrently. Impugning the same, the criminal appeal has been preferred by the appellant.

2.Shorn of unnecessary details, according to the prosecution case, A1 Ramesh married the deceased Jothi on 29.04.2007 and A2 is the mother of A1 and they were residing jointly at Karamur Village and at the time of marriage, the parents of the deceased had put 6 sovereigns of gold to their daughter and also gave Rs.12,000/- for the purchase of two wheeler and watch during the marriage and six months prior to 06.12.2008, the accused had sold 6 sovereigns of gold belonging to the deceased Jothi for purchasing a land for themselves and on several occasions, the accused have harassed the deceased by demanding Rs.50,000/- for the purpose of paying the balance amount for the abovesaid purchase of the land and three months prior to 06.12.2008, the accused picked up fight with the deceased Jothi and unable to bear the torture and ill-treatment inflicted upon her by the accused, it is put forth that Jothi committed suicide by jumping into the Well belonging to Pachaiappan and died due to drowning and thus, it is stated that the accused 1 and 2 had committed offences punishable under Sections 498-A, 304-B IPC and Section 4 of Dowry Prohibition Act.

3.The criminal law had set in motion based on the complaint lodged by PW1, the Revenue Assistant and according to PW1, while he was on duty on 09.12.2008, his Village Assistant Santhamurthy apprised him that a female dead body was found in the land of Pachaiyappan and on going there, they noticed one female dead body in the Well and identified the same as Jothi, wife of Ramesh (A1) and accordingly, it is stated that he had lodged the complaint to the police marked as Ex.P1 and PW10 Rajendran, Sub-Inspector of Police, based on the complaint lodged by PW1, registered the FIR marked as Ex.P6 and forwarded the same to the RDO vide the requisition letter marked as Ex.P7 and other higher officials for investigation. PW11 Sambasivam RDO based on that FIR visited the spot on 09.12.2008 and conducted the enquiry over the dead body and recorded the statement of the parents of the deceased and other villagers belonging to that area and filed the inquest report marked as Ex.P8 and further, conducted the enquiry and submitted his report holding that the deceased would have died due to dowry demand and accordingly, directed the police to conduct further investigation. The RDO report has been marked as Ex.P9. Following the same, PW12 Mani, DSP visited the spot and prepared the observation mahazer and rough sketch in the presence of the witnesses marked as Exs.P2 and P10 and examined the various witnesses including the complainant, the parents of the deceased and her relatives and it is found that the dead body was sent for post mortem

examination and the post mortem was conducted by PW8 doctor Hariharan and the Post mortem report issued by him has been marked as Ex.P3 and as per Ex.P3, the deceased is reported to have died due to drowning and on account of respiratory arrest and following the report of RDO and the post mortem certificate, the I.O PW12 altered the FIR under Sections 498-A, 304-B IPC and Section 4 of Dowry Prohibition Act and the alteration is report marked as Ex.P11 and thereafter, the investigation was taken up by PW13 Gunasekaran, DSP and after enquiring the further witnesses and recording the statement of doctors and the chemical lab report etc., he had arrested the accused persons and after completing the investigation, laid the final report against the accused under Sections 498-A, 304-B & Section 4 of Dowry Prohibition Act.

4.To sustain the prosecution case, PWs 1 to 13 were examined and Exs.P1 to 13 were marked. No MO has been marked. On the conclusion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C qua the incriminating evidence tendered against them by the prosecution witnesses and the accused had denied the same. According to the accused, they had not committed the offences levelled against them. No oral and documentary evidence has been adduced by the accused. No Mo has been marked.

5.On an appreciation of the materials placed on record and the submissions made by the respective parties, the Sessions Judge, Mahila Court, Krishnagiri, was pleased to acquit A1 Ramesh of the charges levelled against him. However, as above pointed out, convicted and sentenced the appellant/A2 under Sections 304-B & 498-A IPC. Challenging the same, the criminal appeal has been preferred by the appellant/A2.

6.The crux of the prosecution case is that the deceased Jothi was married to the first accused Ramesh on 29.04.2007 and the parents of the deceased on their own and out of love and affection had presented 6 sovereigns of Gold jewels to the deceased Jothi and Rs.12,000/- for the purchase of two wheeler and watch at the time of the marriage. Therefore, it is found that the abovesaid presentation of Jewels and cash were made by the deceased parents on their own and there was no demand of any dowry on the part of the accused. It is also further stated that Cow was also presented. As per the evidence of PW3 Valarmathi, the mother of the deceased, it is found that after the marriage, the deceased Jothi and Ramesh were leading a peaceful married life for 1 ½ years. Thereafter, it is stated that the accused had sold the jewels presented to the deceased Jothi for the purchase of the land and as they were in need of Rs.50,000/- for completing the abvoesaid land transaction, according to the prosecution, both the accused persons had been inducing the deceased to bring the sum of Rs.50,000/-

from her parents and on that score, they had been torturing and ill-treating her and the deceased had been complaining the same to her parents and also came to her parent's house at one stage of the matter and it is also stated that the deceased was pacified with the assurance that the parents would accede to her request and sent her back to the matrimonial home. However, a few days thereafter, according to the prosecution, the deceased committed suicide by jumping into the Well and died thereby and thus, it is put forth that the accused persons on account of their ill-treatment, torture and cruelty committed against the deceased, they were liable to be punished under Sections 304-B & 498-A IPC.

7. From the evidence of the parents of the deceased examined as PWs2 & 3 as well as the other prosecution witnesses, it is clear that the accused had been demanding money in a sum of Rs.50,000/- only for the purpose of completing the land transaction. Furthermore, as could be seen from the evidence of PW3, the mother of the deceased, when she confronted the deceased as to why she had entrusted the jewels to the accused and she had deposed that the deceased informed her that the deceased on her own accord had given the jewels to the accused for a better living and therefore, it is seen that the jewels had been handed over to the accused by the deceased on her own accord and consent and therefore, the trial Court, while discussing the matter, had come to the conclusion that the abovesaid demand of Rs.50,000/- on the part of the accused would not come under the category of dowry demand. It is not the case of the prosecution that the sum of Rs.50,000/- had been demanded by the accused from the deceased in connection with the marriage. On the other hand, when it is found that the deceased on her own accord and voluntarily had handed over the jewels to the accused for the purchase of land in order to augment her and her husband living condition and the same is found to be not grabbed from the deceased by the accused against her will and consent. In such view of the matter, the trial Court also had proceeded to hold that the demand of Rs.50,000/- by the accused would not come under the definition of dowry demand as contemplated under law.

8. In this connection, it is useful to refer to the decision of the apex Court dated 05.01.2007 rendered in Criminal appeal No.1613 of 2005, (Appasaheb and Anr. Vs. State of Maharashtra), wherein, the essential ingredients of Section 304-B IPC had been explained, particularly, with reference to the definition of dowry as contemplated under the dowry prohibition Act and the principles of law governing the same had been outlined by the apex Court in the abovesaid decision in the following manner:

"9. Two essential ingredient of Section 304-B IPC, apart from others, are

(i).death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) women is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

Section 2 of Dowry Prohibition Act reads as under:-

"2.Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(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 dowry or mahr in the case of the persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a

particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India V. Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibres of India Vs. Union of India, AIR (1997) SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz., demand for dowry is not established, the conviction of the appellants cannot be sustained.

9. Applying the principles of law enunciated by the apex Court to the facts and circumstances of the present case, when it is found that the evidence adduced by the prosecution witnesses in toto, only go to show that the accused had been demanding money in a sum of Rs.50,000/- for completing the land transaction and in such view of the matter, as held by the apex Court, the abovesaid demand would not fall under the definition of dowry demand, particularly, when the abovesaid demand of Rs.50,000/- is not sought for in connection with the marriage held between the deceased Jothi and the first accused.

10. As above pointed out, the trial Court on an appreciation of the evidence placed on record by the prosecution witnesses has more than once determined that the demand of money for betterment of living would not be a dowry demand.

11. In the light of the above factual position and therefore, even though the deceased is found to have died within seven years from the date of marriage, however, when there is no material pointing to the demand of dowry as such

by the accused from the deceased and also there is no acceptable and reliable evidence pointing out that the accused had committed any ill-treatment, torture, cruelty on the deceased by demanding any dowry amount as such, in my considered opinion, the trial Court is found to have erred in holding that the deceased had committed suicide only due to dowry demand and torture inflicted upon her by the accused. However, the trial Court itself has proceeded to hold that the deceased husband viz., A1 is not shown to have demanded any dowry from the deceased and also not inflicted any cruelty harassment torture etc., on the deceased and resultantly, the trial Court is found to have acquitted A1 of all the charges put forth against him.

12.As above pointed out, when there is no demand of dowry on the part of the accused persons and as above pointed out, when A1 is acquitted of the offence punishable under Section 304-B IPC, it does not stand to reason as to how come the trial Court had singularly proceeded to convict A2 for the offence under Section 304-B IPC, when the demand of dowry has not been established by the prosecution as such, therefore, as held by the apex Court, in the abovesaid position, the conviction of A2 by the trial Court under Section 304-B IPC cannot be sustained in any manner.

13.The point to be considered in this matter is, whether A2 has inflicted any cruelty, torture and harassment on the deceased Jothi by demanding a sum of Rs.50,000/- from her towards the conclusion of the sale transaction. In this connection, the trial Court seems to have mainly relied upon the evidence of PW6 Chinnasamy.

14.Inasmuch as the deceased had committed suicide in a suspicious manner, following the registration of FIR, it is found that the matter is referred to RDO for conducting enquiry, and no doubt, the RDO has submitted his report that the deceased would have died due to demand of dowry. However, the fact remains that the RDO during the course of his inquest or enquiry had not examined PW6 Chinnasamy, in particular. In this connection, the RDO examined as PW11 has clearly admitted that he has not examined PW6 Chinnasamy and that Chinnasamy had not tendered any statement to him. Quite inconsistent to the abovesaid evidence, PW6 Chinnasamy would assert that he had informed about the cause of death of the deceased at the time when he was examined by RDO and also denied the suggestion that he was not examined by the RDO and not given any statement to RDO. In the light of the abovesaid position, it is evident that PW6 has not been examined by the RDO during the course of inquest and enquiry. According to the accused, PW6 has been taken as a witness very belatedly, even according to the prosecution, several months after the occurrence and

his 161 statement has also reached the Court very belatedly. The abovesaid contention put forth by the accused cannot be brushed aside easily. The trial Court seems to have mainly relied upon the evidence of PW6 for concluding that the appellant / A2 had ill-treated the deceased by demanding money. In this connection, PW6 has deposed that the deceased had informed him that A2 had abused her by demanding money and on that premise, the trial Court is found to have held that inasmuch as PW6 has spoken to about the ill-treatment caused by A2 on the deceased, the appellant/A2 is liable to be convicted for the offence under Section 498-A IPC. On the other hand, as rightly contended by the accused counsel, PW6 is found to have not tendered any such statement to the I.O during the course of investigation. In this connection, PW12, who had examined PW6 during the course of investigation, has deposed that Chinnasamy had not given statement to him that he was examined by the RDO and not given any statement to him that he had been apprised by the deceased Jothi that the accused demanded her to bring Rs.50,000/- and also deposed that he had not given any statement as to how he came to know about the abovesaid facts and therefore, as rightly contended by the accused counsel, when PW6 has not given any statement to the I.O as regards the alleged treatment caused by the appellant on the deceased and also as having been informed to him by the deceased and when PW6 has also not disclosed the source of information as to how he had learnt about the matter to the I.O, his assertion in the Court that the deceased had informed him that the appellant/A2 had abused her by demanding money and that when he left the deceased in the matrimonial home, he had scolded the appellant/A2 when no such statement had been offered by PW6 to the I.O during the course of investigation, it is evident that PW6 has only tendered improved and extravagant version during the course of evidence and accordingly, when his evidence is not based on any direct knowledge as such and when he has not given any statement to the I.O pointing to the same, based on his improved version and embellishment, in my considered opinion, it would not be safe to hold that the appellant /A2 had caused cruelty, harassment and torture of the deceased as sought to be projected by the prosecution.

15. On an overall reading of the evidence adduced by the prosecution witnesses, particularly, the evidence of the deceased parents, it is only noted that the deceased had been directed by the accused to bring the sum of Rs.50,000/- for completing the land transaction and it is also found that the deceased parents had agreed to pay the said amount and so pacifying it is further noted that the deceased had been left in the matrimonial home and therefore, to say that the deceased had been ill-treated, tortured and harassed by the accused, particularly, the appellant/A2 without any basis, as such, cannot be countenanced and therefore, merely because, the deceased had committed suicide a few days after she had

been left in the matrimonial home, it cannot be presumed that she had committed suicide only on account of the torture, harassment and ill-treatment caused to her by the accused by demanding dowry.

16. When as above pointed out, the prosecution has failed to establish that the accused had demanded dowry in connection with the marriage as such and when none of the prosecution witnesses including the deceased parents had spoken about the ill-treatment meted out to the deceased by the accused, particularly, the appellant/A2, the case of the prosecution that the deceased had died only on account of the ill-treatment caused to her by the accused cannot be accepted and the trial Court having rejected the case of the prosecution as against A1, however, seems to have erroneously upheld the prosecution case as against A2 mainly based upon the evidence of PW6 Chinnasamy. However, as above pointed out, when PW6 Chinnasamy has given only an improved version in the Court and his evidence is not supported by any material, therefore, his evidence cannot be the basis for convicting the appellant/A2.

17. Considering the materials available on record, it is found that the deceased left the matrimonial home on 06.12.2008 and on the same being apprised to the deceased parents, it is found that all proceeded to search for the deceased and PW2, the deceased father as well as PW3, the deceased mother had deposed that immediately, they had conveyed the information to Barur Police Station with reference to the loss of their daughter and also about the suspicion on the accused and further, PW1 has asserted that he had given a complaint in the police station. Therefore, if according to PW1, he had already lodged a complaint with reference to the loss of his daughter at Barur police station by way of a complaint and the same has also been asserted by PW12, in such view of the matter, as rightly contended by the accused, prior to Ex.P1, there is a proper complaint lodged in the matter as alleged by PW2 at Barur Police Station and as to what had happened to the said complaint and what was averred in the said complaint has not been projected in the matter. In this Connection, PW12, the I.O would admit that PW2 in his statement has stated about the lodging of the complaint at Barur Police Station and according to PW12, he had not endeavored to ascertain whether any complaint had been lodged by PW2 at Barur Police station and also would state that he had not examined the Sub Inspector of Police at Barur Police station. Therefore, as rightly put forth by the accused counsel, the earlier complaint in the matter had been suppressed by the prosecution one way or the other and if really, the complaint had been lodged by PW2 as regards the loss of his daughter only due to the torture and harassment

caused by the accused, definitely to substantiate the same, the prosecution would have endeavored to collect the said complaint and project the same in the matter with reference to the first version given by the deceased parents as regards the incident. On the other hand, when it is found that no investigation at all had been directed by the I.O with reference to the same, a serious doubt arises as to the credibility of the prosecution case, particular, whether the deceased parents had actually complained about of any torture, harassment on the part of the accused which resulted in the loss of their daughter. On the other hand, it is found that only after the dead body had been noted in the Well of Pachaiyappan, the complaint had come to be lodged by the Revenue Assistant marked as Ex.P1. The abovesaid factor also throws a serious doubt in the truth of the prosecution case.

18.No doubt, the deceased is found to have died due to the drowning in the Well. Now according to the accused, the Well in question is a flat Well and therefore, it is put forth that there is every possibility of the accidental fall of the deceased in the Well and for that, the accused cannot be blamed and according to them, when they have not inflicted any torture, harassment on the deceased by demanding any dowry amount and as above discussed, when with reference to the same, there is no clear cut evidence on the side of the prosecution, particularly, attributing cruelty on the part of the appellant/A2, other than the unreliable and unacceptable evidence of PW6 as above pointed out, in such view of the matter, in my considered opinion, the trial Court is found to have erred in sustaining the conviction of A2 alone under Sections 304-B, 498-A IPC without there being any reliable and convincing material pointing to the guilt of the appellant/A2.

19.The accused counsel also placed reliance upon the decision of the apex Court dated 13.03.2003 passed in criminal appeal No.1431 of 2007, (Vipin Jaiswal Vs. State of A.P. Rep.by Pub.Prosecutor). The principles of law outlined in the abovesaid decision are also taken into consideration and followed as applicable to the case at hand.

20.In the light of the abovesaid discussions, when there are serious doubts surmises, failings and defects glaring in the prosecution case and when with reference to the same, no plausible explanation is forthcoming on the part of the prosecution to dispel the same, in such view of the matter, the benefit of doubt emerging from the same should be extended in favour of the appellant/A2 and accordingly, the appellant / A2 is held not guilty of the offences punishable under Sections 304-B and 498-A IPC and acquitted thereof.

21.For the reasons aforesated, the judgment dated 30.10.2013 passed in S.C.No.109 of 2011 on the file of the Sessions Judge, Mahila Court, Krishnagiri, convicting and sentencing the appellant/A2 under Sections 304-A & 498-B IPC are set aside and the appellant/A2 is acquitted of the charges laid against her under Sections 304-B and 498-A IPC and accordingly, the criminal appeal is allowed. Bail bond, if any, executed by the appellant/A2, shall stand cancelled. Fine amount, if any, paid by the appellant/A2 is ordered to be refunded to her.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Judicial Magistrate,Pochampalli.
  - 2.Do thro the Chief Judicial Magistrate, Krishnagiri.
  - 3.The Sessions Judge, Mahila Court, Krishnagiri.
  - 4.The Superintendent,Special women prison, Vellore.
  5. The Inspector of Police,  
Barur Police Station,  
Krishnagiri District,  
(Crime No.192/2008)
  6. The Public Prosecutor, High Court, Madras - 104.
- A.SK(04/08/2020) CrI.A.No.836 of 2013

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