

BAIL SLIP

This appellant/accused No 1 & 2 named Balaji age 33 years s/o Perumal(A1) & Meera aged 54 years w/o Perumal(A2) was directed to be released on bail in and by the order of this court dated 10.03.2014 and made in MP.1/14 in Cr1.A.123/14 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.03.2020
PRONOUNCED ON:14.07.2020

CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

Cr1.A.No.123 of 2014
and
M.P.No.2 of 2014

1. Balaji

2. Meera

...Appellants/A1 & A2

-Vs-

The Assistant Commissioner of Police,
Pattabiram Range,
Tiruvallur District,
Crime No.245 of 2011,
Thiruninravur police station.

... Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of Cr.P.C against the judgment dated 28.02.2014 passed in S.C.No.95 of 2013 on the file of the Court of Magalir Neethi Mandram, (Fast Track Mahila Court), Tiruvallur.

For Appellants : Mr.L.V.Rohit
For Respondent : Mr.R.Ravichandran
Government Advocate(Cr1. Side)

JUDGEMENT

By judgment dated 28.02.2014 passed in S.C.No.95 of 2013, the Magalir Neethi Mandram, (Fast Track Mahila Court), Tiruvallur, has convicted the appellants /A1 & A2 under section 498A IPC and sentenced them to undergo Rigorous Imprisonment for two years each, and also to pay a fine of Rs.20,000/- each in

default to undergo Rigorous imprisonment for 6 months each, convicted the first appellant /A1 under section 304B IPC and sentenced him to undergo Rigorous imprisonment for 10 years and the sentences of imprisonment imposed on the first appellant/A1 has been ordered to run concurrently and acquitted the first appellant /A1 of the offences under section 302 IPC and acquitted the second appellant/A2 of the offences under sections 302 and 304B IPC and challenging the conviction and sentence imposed on them, the appellants had preferred the Criminal Appeal.

2. The respondent police has filed the final report against the accused alleging that the marriage between A1 and the deceased Kumudha was held on 18.09.2010 and after the marriage, the accused and the deceased lived at Door No.4/1503 Kambar street, Anna Nagar West, Thiruninravur as a joint family and that on or before 10.06.2011, in the abovesaid house, both A1 and A2 subjected the deceased Kumudha to cruelty, harassment and ill-treated her physically and mentally with a view to coerce her for obtaining more money and household articles from her parents house and on 10.06.2011, during the night hours in the abovesaid house, the accused due to the non-fulfilling of their illegal demand of dowry by the parents of the deceased Kumudha, did commit murder on Kumudha intentionally and knowingly caused her death by making head injury to her and as a result of the same, Kumudha had died and the accused had caused the dowry death of the deceased Kumudha, soon before her death by subjecting her to cruelty in connection with the illegal demand dowry made by them and on account of the willful cruel acts of the accused, they had caused the dowry death of the deceased Kumudha within 7 years of the marriage between the deceased Kumudha and A1 and thus it is putforth that the accused had committed offence punishable under sections 498A, 302 and 304B IPC.

3. To sustain the prosecution case, P.Ws.1 to 15 were examined. Exs.P1 to P10 were marked. No Material Object has been marked and on conclusion of the prosecution evidence, the accused were examined under section 313 Crpc with reference to the incriminating evidence tendered against them by the prosecution witnesses and the accused had denied the same. According to the accused, the case had been falsely foisted against them and they had not committed the offences putforth against them. On the side of accused, no oral evidence has been adduced. Ex.D1 has been marked. No M.O has been marked.

4. On an appreciation of the materials placed on record, as above pointed out, the trial court was pleased to convict and sentence both the appellants/A1 and A2 under section 498A IPC and further convicted and sentenced the first appellant/A1 under

section 304B IPC and acquitted the first appellant of the offence under section 302 IPC and further acquitted the second appellant of the offences under section 302 and 304B IPC.

5. The criminal action in the matter has been set in motion based on the complaint lodged by P.W.1 Gopal, the father of the deceased Kumudha. The said complaint has been marked as Ex.P1. The Ex.P1 complaint is said to have been lodged by P.W.1 Gopal on 10.06.2011 and based on the same, it is seen that the case had been registered under section 174(iii) Crpc. P.W.7 Vishnu is the Inspector of Police who had registered the F.I.R based on the complaint given by P.W.1 and the registered F.I.R has been marked as Ex.P5. The suggestion has been put by the accused to him that the complaint and the F.I.R had been prepared only during December 2011 and that the complaint and the F.I.R had not been prepared on the date and time mentioned in the said documents and the abovesaid suggestion has been denied by P.W.7. Similarly during the course of cross examination of P.W.1 also, the suggestion has been put up by the accused that Ex.P1 complaint had been preferred by him very belatedly. No doubt, the same had been denied by P.W.1. However, the abovesaid suggestion assumes importance for the reason, it is found that both Ex.P1 and the printed F.I.R. Ex.P5 had reached the court only on 02.12.2011. With reference to the delayed despatch of the complaint and the F.I.R to the Court, no proper explanation is forthcoming on the part of the prosecution. Considering the delay in the despatch of the F.I.R and the complaint, a serious doubt arises as to whether at all the complaint and the F.I.R would have been presented and registered on the date and time as projected by the prosecution.

6. Following the registration of the case under section 174 (iii) Crpc, according to the prosecution, it is found that as could be gathered from the materials placed on record, the F.I.R was also forwarded to the R.D.O, P.W.10 Govindasamy. P.W.10 during the course of his evidence has deposed that on the receipt of F.I.R, he had proceeded to Kilpauk Government Hospital on 10.06.2011 at 4.30 pm and the deceased father Gopal and the police constable identified the dead body to him and not noted any cut injury on the body, however noted the burn injury and on being confronted by the Court he would state that no burn injury was noted in his report and for the same no reason could be disclosed and failed to score off the portion mentioning burn injury in the other page and hence there is no burn injury and further deposed that he had directed the conduct of the postmortem of the deceased by the concerned doctor and also on the point of jurisdiction directed the enquiry to be conducted by Thiruvallur RDO and his report has come to be marked as Ex.D1. During the cross examination, P.W.10 has admitted that

during the inquest he had not inquired any Panchayathars and under the column 11(a) of the report filed by him Ex.D.1, he has mentioned the question does not arise and further admitted that he had signed in the inquest report Ex.D1 and further admitted that no complaint was given as regards the death of the deceased and at the time of conducting the inquest, the deceased father was present. On a perusal of Ex.D.1, it is found that the dead body of the deceased was taken by the father P.W.1 for performing the death obsequies. Therefore from the evidence of P.W.1 and Ex.D1 projected in the matter, it is found that at the initial stage, the inquest was said to be conducted by P.W.10 and the inquest report prepared by him has been marked as Ex.D1. With reference to the cause for the death, he would only state that he is unable to ascertain and for the question whether anyone is subjected for suspicion, he would only state that the question does not arise and therefore particularly when the deceased father P.W.1 was available at the time of inquest, if really as putforth by the accused counsel, the deceased had died due to the cruelty and illtreatment caused by the accused by demanding dowry amount as projected by the prosecution, definitely P.W.1 would have tendered statement pointing to the same to P.W.10. R.D.O. However P.W.10 has not whispered that P.W.1 stated anything as to cause for the death of the deceased during the course of inquest other than marking his presence. Therefore when P.W.1 has not whispered anything suspicious about the death of his daughter to P.W.10 and however when P.W.1 is found to have lodged the complaint subsequently marked as Ex.P1, he has come forward with the case as if the deceased was subjected to cruelty by the accused by demanding more money and jewels from her parents and only on that score the deceased had died and therefore when as above pointed out, when Ex.P1 complaint and the F.I.R registered following the same had not been immediately dispatched to the court and on the other hand found to have been despatched to the court nearly 6 months after the lodgment of the complaint and as to why P.W.1 had not complained about the accused during the course of inquest conducted by P.W.10, when with reference to the same, no plausible explanation is forthcoming on the part of the prosecution as well as P.W.1, a serious doubt arises as regards the truth and credibility of Ex.P1 complaint.

7. Subsequently, it is found that the prosecution has projected a case as if the inquest in the matter had been conducted by the R.D.O Thiruvallur, namely Chithira Senan who has been examined as P.W.9. P.W.9 would claim that he had conducted the inquest and examined the various witnesses and also the Panchayathars as detailed by him during the course of his report and finally concluded his enquiry marked as Ex.P6 holding that the deceased would have been murdered only on account of dowry harassment. During the course of cross

examination, P.W.9 has clearly admitted that he has not conducted any inquest and it is true to state that only on the request made by the police, he had submitted his report and the contents of Ex.P6 had been written only on 18.08.2011 and he does not know whether R.D.O Govindasamy has examined any witnesses and further admitted that the report filed by him and marked as Ex.P6 is not the inquest report and further admitted that it is true to state that Ex.P6 is not the inquest report and when he conducted the inquest, the dead body was not available and already burnt and accordingly the inquest has not been conducted by him and also admitted that he has conducted the enquiry beyond his authority. The above being the evidence of P.W.9, when he himself has admitted that he has not conducted the inquest and prepared the report only as directed by the police and also prepared the report beyond his authority, a serious doubt arises as regards the inquest report said to have been prepared by him marked as Ex.P6 and therefore based on Ex.P6, it cannot be safely concluded that the deceased had been subjected to death only on account of dowry harassment. In the light of the above said position, when a serious doubt arises with reference to Ex.P6 report furnished by P.W.9, his claim that he has examined the various witnesses and Panchayathars during his enquiry also falls to the ground. No safe credence could be attached to the alleged statements said to have been made to him by the various witnesses and Panchayathars. That apart, the prosecution has not endeavored to examine all the witnesses and Panchayathars said to have been examined by P.W.9 during the course of his inquest.

8. P.W.1, Gopal, the father of the deceased during the course of chief examination itself would state that the accused were aggrieved over the covering gold presented to them at the time of marriage and further would state that subsequently given the genuine/original gold as promised to be given for the marriage. Therefore, even as per the evidence of P.W.1 it is found that he had only presented the covering gold for the marriage and on account of the dispute raised by the accused, subsequently he had given the genuine gold. Now according to P.W.1, after the marriage, his daughter was subjected to cruelty by the accused by demanding more jewels and money and that his daughter had conveyed the same to him over phone and inasmuch as, his daughter was 6 months pregnant, he was under the impression that everything would be sorted out on the birth of the baby. P.W.1 has not clearly stated as to when his daughter complained to him about the ill-treatment and cruelty said to have been inflicted upon her by the accused over phone and therefore when his abovesaid claim of alleged cruelty and ill-treatment inflicted on his daughter by the accused (phone message) is not disclosed by him in the complaint Ex.P1 as well as not substantiated in the course of evidence and when as

above pointed out, P.W.1 has not complained about any suspicion about the death of his daughter to P.W.10 R.D.O and when his alleged statement to P.W.9 RDO cannot also be relied upon particularly when the inquest report Ex.P.6 prepared by P.W.9 RDO cannot at all be termed as inquest report as admitted by P.W.9 himself, when other than the unreliable and incredible testimony of P.W.1, we have no other acceptable and convincing evidence pointing to the alleged cruelty and ill-treatment said to have been caused to the deceased by the accused, as rightly contended by the accused counsel, no safe credence could be attached to the evidence of P.W.1 for concluding that the accused has subjected the deceased to cruelty by demanding more jewels and money.

9. Strangely in this case, the prosecution has not cited the mother and brother of the deceased as witnesses nor endeavoured to examine them as per law. Other than P.W.1 the deceased's father, the deceased's mother and her brother have not been examined and also the relatives of the deceased had also not been examined. They have chosen to examine one Sivagami, the neighbour of the accused house for evidencing the act of cruelty alleged against the accused. P.W.2 Sivagami would claim that the accused ill-treated the deceased and that she had directly witnessed the first accused beating the deceased and knew the fight between them, however would state that she does not know the date and month of the said occurrence. However, on a glance of her 161 Crpc Statement given by her, it is found that she has not whispered to the I.O that she had directly witnessed the beating of the deceased by the first accused and on the other hand, she had given the statement to the I.O that she was only informed about the ill-treatment made by the accused parents and therefore her claim during the course of her evidence that she has witnessed directly the beating of the deceased by the accused and that she knew the fight between them cannot at all be relied upon in any manner.

10. At this juncture, it is to be noted that the prosecution has claimed that the statements of the witnesses have been recorded during the June and August of 2011 itself. However, it is found that the same had been despatched to the court only on 02.02.2012. As to why the statements said to have been recorded by the I.O. during the course of investigation have been belatedly sent to the court, no explanation has been offered by the prosecution with reference to the same. Now according to the accused, the statements said to have been given by the witnesses, had been concocted very belatedly by the prosecution to suit their case one way or the other and accordingly it is stated that the statement had been belatedly forwarded to the jurisdictional court.

11. P.W.2 during the course of cross examination has

admitted that she had property dispute with her brother and the second accused had directed her to compromise the issue with her brother. Therefore, it is found that the second accused had intervened in the property dispute pending between P.W.2 and her brother and supported her brother's cause and on that score, it is noted as contended by the accused, P.W.2 is not well disposed of towards the accused. In any event, when P.W.2 has failed to establish that she had really witnessed the allege cruelty and ill-treatment said to have been caused to the deceased by the accused and when no such statements had been offered by her to the I.O and furthermore, when her statement as well as the statement of other witnesses have been belatedly sent to the court, it is found that P.W.2 had been subsequently projected by the prosecution to advance their case and accordingly P.W.2 is unable to depose anything clearly about the cruelty said to have been caused by the deceased by the accused.

12. P.Ws.3 and 4 have not deposed anything about the cruelty and illtreatment caused by the accused. Therefore, their evidence would be of no use to sustain the prosecution case.

13. P.W.5 Elumalai is stated to be the tea vendor and known to the first accused and he has deposed that the first accused had complained to him about the covering jewel presented at the time of marriage and thereby deceived him and he had advised the first accused to solve the problem amicably. That apart, he has not whispered anything during the course of chief examination with reference to the cruelty and ill-treatment said to have been caused to the deceased by the accused. However, he would claim that during the chief examination that the first accused had confessed to him that he had beaten and murdered his wife. During the course of evidence, he would admit that he had heard about the incident only through Magesh and therefore P.W.5's evidence being above, his evidence cannot at all be relied upon to hold that the accused had been causing cruelty and illtreatment to the deceased by demanding dowry as sought to be projected by the prosecution. The abovesaid Magesh has also not been examined.

14. P.W.6, Dr.Baskar is the Medical Officer, who had been on duty at the time when the deceased was admitted in the hospital and the accident register issued by him has been marked as Ex.P.4. As per the evidence of P.W.6 and from the accident register, it is found that the deceased was 6 months pregnant and she was brought dead to the hospital and at the time of bringing her to the hospital, her husband had informed him that she had fits and he had noticed the swelling in her legs at the time of his examination. Therefore, when the deceased was taken to the hospital, it is found that the first accused had only informed that the deceased had fits to the doctor and accordingly

when the deceased was brought dead to the hospital and considering the evidence of P.W.6 and the accident register Ex.P.4, it is found that he had noticed only the swelling of both the legs up to knee level and therefore from the said evidence of the doctor and the accident register prepared by him, it cannot be held that the deceased was subjected to any cruelty and illtreatment on the part of the accused. No burn injury was noted by P.W.6. The I.O. P.W15 has also admitted that the deceased did not die due to burn injuries.

15. P.W.12 is the postmortem doctor and the postmortem certificate issued by her has been marked as Ex.P9 and on a perusal of Ex.P9, it is found that the deceased is reported to have died of head and brain injuries. P.W.13 had noted the head injury and contusions on the rear side/right side of the deceased head as described in the postmortem certificate and during the course of cross-examination, she would submit that she had noticed contusions on the head of the deceased and further admitted that a person suffering from fits, on accidental fall from the cot, there is possibility of sustaining head injury and also there is a possibility of head injury by dashing against the wall and therefore when as above pointed out the first accused while admitting the deceased had informed the doctor P.W.6 that the deceased had fits and when the head injury found on the head of the deceased was also possible by accidental fall from the cot or during falling, by dashing against the wall, in such view of the matter, merely from the contusions/injury found on the head of the deceased, it cannot be inferred that same had been caused by the illtreatment and attack committed by the accused on the deceased.

16. The I.O, during the cross examination has admitted that there is a delay in the despatch of the complaint and the F.I.R to the competent court and also admitted that they had not examined the R.D.O Govindasamy who had initially conducted the inquest and further admitted that his report had not been brought to their knowledge and furthermore, when as above pointed out, the statements of witnesses have also belatedly sent to the Magistrate Court all put together, a serious doubt arises in the prosecution case as to whether the deceased would have subjected to dowry harassment by the accused as sought to be projected by the prosecution.

17. When the prosecution has failed to give any explanation as regards the inquest conducted by the R.D.O examined as P.W.10 and marked as Ex.D1 and when the prosecution has failed to establish that the complaint Ex.P1 had been really lodged on 10.06.2011, particularly when the same had reached the Magistrate Court only on 02.12.2011 and furthermore when the

statement of witnesses had also been belatedly sent to the Court and when the involvement of the accused as admitted by P.W.13, Mangayarkarasi was made known only on 31.08.2011 and when P.W.13 had pleaded the complete ignorance of the existence of Ex.D1 and when the evidence of P.W.1,2 and 5 is very very vague and unclear as to the alleged acts of cruelty and illtreatment said to have been caused to the deceased by the accused and when according to the accused, the deceased was suffering from fits and thereby sustained head injuries and the same is admitted to be possible by the autopsy doctor and accordingly, it is found that on the whole, when the case of the prosecution is beset with serious doubts, suspicions, conjectures, defects and loopholes and when with reference to the same, no clear explanation is forthcoming on the part of the prosecution, in my considered opinion, the benefit of doubt emerging from the same should be extended in favour of the accused.

18. The Government Advocate contended that the accused has failed to discharge the presumption raised under section 113B of the Indian Evidence Act and further he has also contended that the accused have not given any possible explanation as to how the deceased had sustained the head injury particularly at the time when the head injury was sustained by the deceased, it was only the accused who were present with her and therefore according to the Government Advocate, section 106 of the Indian Evidence Act would come into play. However the abovesaid contention of the Government Advocate does not merit acceptance. When with reference to the alleged cruelty and illtreatment said to have been caused by the accused to the deceased, when the evidence of P.Ws.1,2 and 5 are found to be totally unacceptable and unreliable as above discussed and when the truth and credibility of the complaint said to have been lodged by P.W.1 has not been established by the prosecution and when the statements said to have been given by P.W.1 and other witnesses are also found to have been not recorded on the purported dates and the same had been subsequently prepared and the same could be gathered from the delayed despatch of the statements to the Court and when the accused has pleaded that the deceased had sustained head injuries on account of fits and fall from the cot and the medical officer has admitted the possibility of the same during the course of her evidence as above discussed, in such view of the matter, the contentions of the Government Advocate that the accused had not discharged the presumption raised under section 113B of the Indian Evidence Act and further not established the special knowledge about the injuries sustained by the deceased, as such, cannot be accepted. When a possible explanation has been offered by the accused with reference to the injury sustained by the deceased on the fateful day and the same is also admitted by the postmortem doctor, in such view of the matter, the prosecution cannot be allowed to rely upon

section 106 of Indian Evidence Act and the said section would not in entirety relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt.

19. In the light of the abovesaid discussions, it has to be held that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and resultantly, I hold that the impugned judgement dated 28.02.2014 passed by the Mahalir Needhi Mandram (Fast Track Mahila Court), Tiruvallur, in S.C.No.95 of 2013 convicting and sentencing the appellants/A1 & A2 under section 498A IPC and convicting and sentencing the first accused under section 304B IPC are liable to be set aside and consequently I hold that the appellants/A1 & A2 are not guilty of the offence under section 498A IPC and the first accused/A1 is not guilty of the offence under section 304B IPC and the appellants are acquitted of the aforesaid stated offences and accordingly the Criminal Appeal is allowed. Bail bond, if any, executed by the accused shall stand cancelled and the fine amount, if any, paid by the accused is ordered to be refunded to them. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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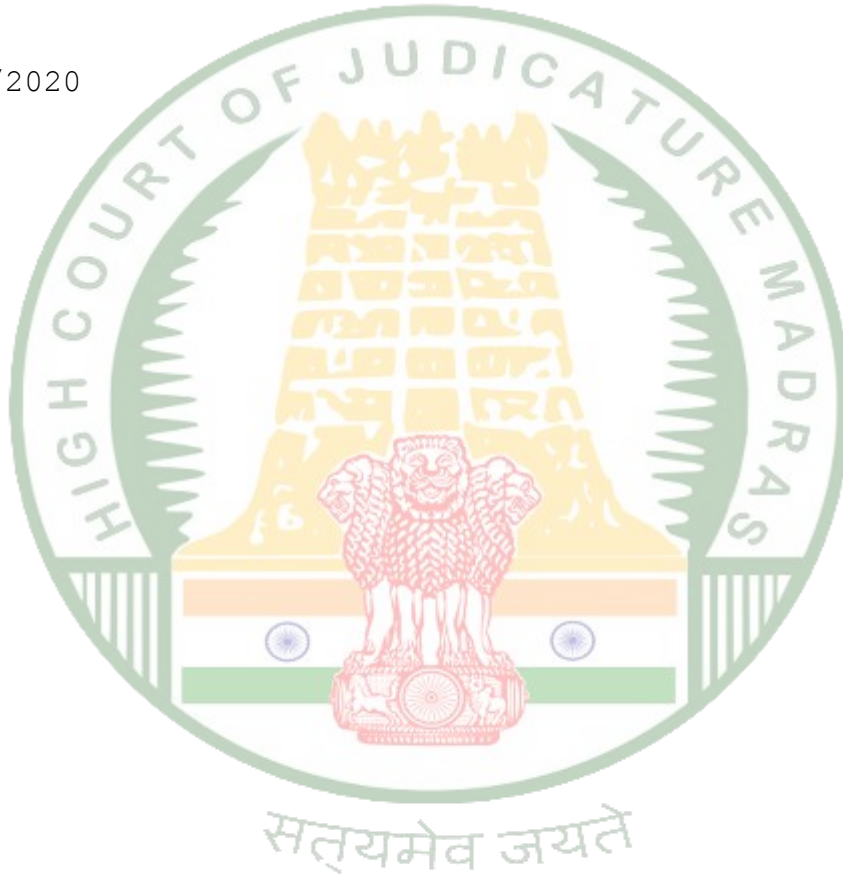
To

1. The Sessions judge,
Magalir Neethi Mandram,
(Fast Track Mahila Court),
Tiruvallur.
2. The Judicial Magistrate,
Thiruvallur.
3. The Assistant Commissioner of Police,
Pattabiram Range,
Tiruvallur District,
Thiruninravur police station.
4. The Director General of Police,
Mylapore, Chennai-4

5. The Superintendent of Police,
Thiruvallur District.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section, High Court, Madras.

Crl.A.No.123 of 2014

LN (CO)
KKV/17/08/2020



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