



BAIL SLIP

The Appellants namely 1)Gopal @ Bharathi, 2) Rajammal were released on bail as per the order of this Court dated 05.06.2012, made in MP(MD)No.1 of 2012 and MP(MD)No.2 of 2012 in Crl A(MD)No.90 of 2012.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.02.2020
PRONOUNCED ON : 19.02.2020

CORAM:
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A(MD)No.90 of 2012

1.Gopal @ Bharathi
2.Rajammal

... Appellants / A1 & A2

Vs.

State rep by
The Inspector of Police,
Bazaar Police Station,
Ramanathapuram District
(Crime No.12 of 2008

... Respondent / Complainant

PRAYER: Petition is filed under Section 374(2) of Criminal Procedure Code, against the Judgment and Conviction dated 16.03.2012, by the learned Chief Judicial Magistrate, Ramanathapuram in S.C.No.122 of 2009.

For Appellants : Mr.P.Senthur Pandian

For Respondent : Mr.K.Suyambulinga Bharathi
Govt.Advocate (crl.side)

JUDGMENT

This Criminal Appeal is filed by the appellants / accused, against the Judgment and conviction passed by the learned Chief Judicial Magistrate, Ramanathapuram in S.C.No.122 of 2009, dated 16.03.2012, convicting the appellants under Section 498-A IPC., and sentenced them to undergo 2 years Rigorous Imprisonment; convicting and sentenced to undergo 8 years Rigorous Imprisonment, for the offence under Section 304-B IPC., and convicting them under Section 4 of Dowry Prohibition Act and sentenced to undergo 1 Year R.I., and also pay a fine of Rs.2000/-, in default, to undergo 6 months Simple Imprisonment.



2. During pendency of this appeal, the 2nd Appellant / A2 died, and thus, appeal abates, insofar as A2 is concerned.

3. The facts of the case are briefly stated hereunder:-

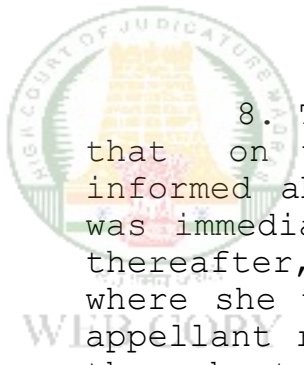
A1 is the husband and A2 is the mother-in-law of the deceased. The marriage between the 1st appellant and the deceased had taken place on 27.08.2006 at Manamadurai Alagarkovil. At the time of marriage, 25 sovereigns of gold jewels and Rs.1,00,000/- cash were given. Prior to one week of the incident, the accused sent the deceased to her parents house, demanding a sum of Rs.50,000/-, in order to expand his shop. On 09.01.2018, the defacto complainant / father of the deceased had given a sum of Rs.20,000/- and sent her to Ramanathapuram. After two hours of her arrival at Ramanathapuram, she called her father / defacto complainant, through phone and informed about the quarrel and torture by her husband and mother-in-law. Thereafter, at about 3.00 p.m., the defacto complainant came to know that her daughter died, through his relative, over phone.

4. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined, as P.Ws.1 to 17 and 13 documents were examined, as Exs.P1 to P13 and 3 Material Objects were marked as M.Os.1 to 3. On the side of the accused, 2 witnesses were examined as D.Ws.1 and 2 and no document was marked.

5. When the appellants were questioned U/s.313 Cr.P.C., about the incriminating circumstances appeared against them, they denied the same.

6. The learned trial Judge, on completion of trial and on considering the oral and documentary evidence and upon hearing both sides, convicted and sentenced the accused as aforesaid, resulting in filing of the present appeal before this Court.

7. Mr.P.Senthur Pandian, the learned counsel appearing for the appellant would submit that the marriage between the first appellant and the deceased had taken place on 27.08.2006. During the marriage, there was no demand of dowry, on the side of the appellant, and it was only 'Sridhana' articles presented. The deceased and the appellant were living happily and out of their wedlock, a male baby was born to them, within 8 months of marriage, in the year 2007. After delivery, she was there in her parents place for some time. On 05.01.2008, the deceased had gone to her parents' house, in connection with some Ayyappa Pooja and she was there, till 09.01.2008. On 09.01.2008, she had come back by 2.00 p.m., to the appellant house. The 1st appellant and his mother used to question her with regard to she frequently going to her parents house, which was objected, she was scolded for the same. Other than this, there was no dispute between them.

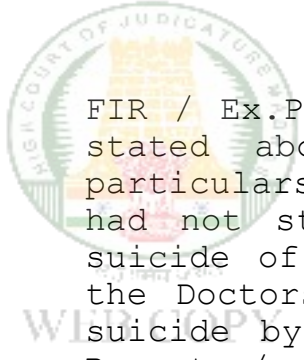


8. The learned counsel for the appellant would further submit that on the fateful day, at about 3.15 p.m., the appellant was informed about the deceased committing suicide by hanging and she was immediately taken to a nearby private Hospital, for treatment, thereafter, taken to the Government Hospital, at Ramanathapuram, where she was declared brought dead. On getting information, the appellant rushed to the Hospital and he was present in the hospital throughout. He was enquired during inquest and after postmortem, the body was not handed over to him and he was arrested on 12.01.2009, till such time, the appellant was very much available. Further, the appellant and his mother were enquired during inquest by the RDO / P.W.14. None of the neighbours had stated about any demand of dowry and harassment caused to the deceased. P.W.1 / father ; P.W.2 / Aunt and P.W.3 / Brother are interested witnesses, who are residing in Sattur Village, Manamadurai Taluk, a far away place, have falsely implicated the appellant in this case.

9. The appellant had examined D.Ws.1 and 2, who are the retired Child Welfare Officer and a neighbour; D.W.2 had categorically stated while he travelling in the bus from Madurai to Ramnad, the deceased and P.W.1 were travelling along had heated arguments between them. On reaching Paramakudi, P.W.1 got down from the bus and the deceased travelled upto Ramanathapuram. Thus, submitted that there was some dispute between the father and daughter. Added to it, from 05.01.2008 to 09.01.2008, it is admitted case that the deceased was residing along with the parents and at about 2.00 p.m., on 09.01.2008, she had come back from her parents place. During this time, the appellant was not in the house and he was in the shop. The deceased, after returning from her parents place, had immediately committed suicide, for which, the appellant cannot be the reason and it is only some dispute in her parents place.

10. P.Ws.1 to 3, are all interested witnesses; P.W.1 is the father; P.W.2 is the Aunt and P.W.3 is the brother of the deceased. P.W.1 admits that Ex.P1 / Compliant was written by the Head Constable in the Police Station and he signed the same, without reading the contents. Strangely, P.W.4 would submit that he had written the complaint / Ex.P1, as per the request of P.W.1. Further submitted that P.Ws.5 and 6, the witnesses for observation mahazar and recovery mahazar have not supported the case of the prosecution; P.Ws.7 and 8 are the junior father and Secretary of their Community Association have been examined with regard to demand of dowry. P.W.9 states that he had received the message about the death of the deceased through one Sekar and which was informed by P.W.10 to P.W.1. The said Sekar has not been examined, as witness, in this case.

11. It is further submitted that P.W.11, the Sub-Inspector of Police, who received the complaint and registered the FIR states that he had received a written complaint from P.W.1 and registered

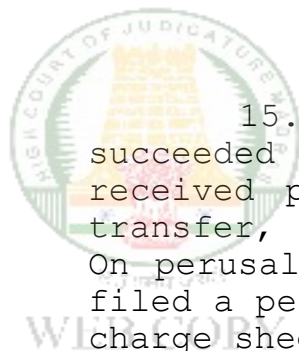


FIR / Ex.P6. From the perusal of Ex.P1 / complaint nowhere it is stated about the demand of dowry or any harassment, giving particulars. The complaint states that the deceased was murdered, had not stated any abetment and the appellant being cause for suicide of the deceased. Further submitted that P.Ws.12 and 13 / the Doctors, categorically state that the reason for the death is suicide by hanging. P.W.14 / Revenue Divisional Officer, in his Report / Ex.P9, had not stated about any demand of dowry or harassment. The report is not certain and conclusive and directs the Police to conduct further investigation.

12. One thing is certain that the deceased was with her parents from 05.01.2008 to 09.01.2008, she had come from her parents house at 2.00 p.m., reached Ramnad at about 3.00 p.m., and by 3.15 p.m., she had committed suicide by hanging. During this period, there was no contact, demand, harassment by the appellant and his mother and hence, soon before the death, the appellant, neither met the deceased nor caused any harassment and by no stretch of imagination, the appellant could said to have abetted the suicide of the deceased. Further submitted that due to the dispute over custody of the infant baby between the appellant and the family members of the deceased, the appellant has been implicated in the case and hence, prayed for acquittal.

13. He further submitted that to show his genuineness of love and affection towards his son, the appellant had settled the only house property, which devolved from his mother, in favour of his minor son and the same had been received by P.W.1. He undertakes to meet out the educational expenses and monthly maintenance to his minor son. The reason he had not done earlier is, the deceased family was not accepting then.

14. Mr.K.Suyambulinga Bharathi, the learned Government Advocate (crl.side) for the State submitted that in this case, the marriage between the deceased and the accused had taken place on 27.08.2006. The deceased committed suicide on 09.01.2008, at that time, they had an infant baby of 8 months old. Within a period of 2 years, the death had occurred and hence, on 09.01.2008, a case under Section 174 Cr.P.C., was initially registered, on the complaint / Ex.P1, given by P.W.1, forwarded the same to P.Ws.14 to P.W.16, thereafter, RDO enquiry was conducted. P.W.14 had conducted inquest and enquiry and gave a Report / Ex.P9. During the inquest, he had examined the parents of the deceased, brothers, the appellant and his mother and other Panchayatars. The witnesses state about the demand of dowry and the harassment caused by the appellant. Thereafter, the report was forwarded to P.W.16, who had taken up investigation, visited the scene of occurrence, prepared observation mahazar, rough sketch, enquired the witnesses in the scene of occurrence and sent the body for postmortem.



15. P.W.15 is the Deputy Superintendent of Police, who had succeeded P.W.16, examined the postmortem Doctors / P.Ws.12 and 13, received postmortem report / Ex.P7 and Opinion / Ex.P8. On his transfer, P.W.17 had taken up investigation and filed charge sheet. On perusal of the documents and statement of the witnesses, he had filed a petition for alteration of Section and thereafter, filed the charge sheet in this case.

16. In this case, P.Ws. 1 to 16 had been examined and Exs.P1 to P13 were marked as well as M.Os.1 to 3. The defence had examined D.Ws.1 and D.W.2. The evidence of defence witnesses would clearly expose the falsity of the accused. The trial Court, on going through the evidence, had rightly convicted the appellant and his mother, which need not be interfered with. The learned Government Advocate (crl.side) affirmed about the settlement of property made by the appellant in favour of his minor son and the undertaking for meeting out the educational expenses and for monthly maintenance.

17. The Court heard the submissions made by the learned counsels on either side and perused the materials on record.

18. It is an admitted case that the deceased was with her parents from 05.01.2008 to 09.01.2008 and she had left the parents house only by 2.00 p.m., on 09.01.2009, reached the house of the appellant at 3.00 p.m., and by 3.15 p.m., she had committed suicide by hanging. She was immediately taken to the nearby hospital, thereafter, to the Government Hospital, Ramnad, where she was declared brought dead. During this period, the appellant neither met her nor had occasion to speak to her. Hence, soon before the death, the appellant had no occasion to speak to the deceased. The evidence of P.Ws.1, 2, 3, 7, 8 is about dowry demands said to have been made by the appellant and his mother over a period of time. There is no material other than the version of these interested witnesses to show that the demand was persistent from the marriage.

19. It is admitted that after the marriage, appellant and the deceased were happy quite some time and they were also begotten a male child. The neighbours, where the appellant and the deceased resided, had not stated anything about causing harassment to the deceased. Except for the family members and interested witnesses none have spoken to about any demand or harassment. It is also to be seen that all the documents in this case have reached the Court belatedly and no reasons have been given for the same. The presence of appellant throughout in the hospital, from the time of admission upto the inquest is not disputed. There was some dispute with regard to custody of the infant. Further, from the complaint it is seen that there is no particulars with regard to demand and harassment and the complaint has been lodged on the premise that the death of the deceased has been doubted. The reason for demand of dowry and harassment has been subsequent improvement and embellishment



does not inspire confidence. P.W.1 admits that he had not read the complaint and was not aware of the contents of the same.

20. Thus, the evidence of family members of the deceased creates some suspicion. In the absence of no corroboration, the evidence of these witnesses are doubtful, does not inspire confidence to be acted upon coupled with the admitted fact that soon before incident, the appellant had not seen her, met her or spoken to her and hence, the appellant is not the reason for abetment. Further, the minor boy appeared before this Court and states that he had been visiting his father regularly and taken care, showered with love, though he is staying with his maternal grandfather.

21. In view of the same, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / accused in S.C.No.122 of 2009, by the learned Chief Judicial Magistrate, Ramanathapuram, dated 16.03.2012, is set aside and the appellant is acquitted of the charges framed against him. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

- 1.The Chief Judicial Magistrate,
Ramanathapuram.
2. The Assistant Sessions Judge,
Ramanathapuram.
3. The Judicial Magistrate No.I,
Ramanathapuram.
4. The The Inspector of Police,
Bazaar Police Station,
Ramanathapuram District
5. The superintendent of Police,
Ramanathapuram.



6. The Superintendent Central Prison,
Madurai.

7. The Superintendent Special Prison for Women, Trichy.

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

9. The Record Clerk, (2 copies
Cr1 Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.P.SENTHUR PANDIAN, Advocate (SR-7355[F] dated
20/02/2020)

Judgment made in
Cr1.A(MD)No.90 of 2012
19.02.2020

VB(03.03.2020) 7P 13C