



Bail Slip

The Appellants/Accused namely 1. Boopathy, aged about 38 years, S/o.Angamuthu, 2. Gnanambal, aged about 71 years, W/o.Angamuthu are directed to be released on bail as per order of this Court dated 25.06.2014 and 20.08.2014 made in MP(MD)No.1&2 of 2014 in CRL.A(MD)No.171 of 2014.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 03.02.2020
PRONOUNCED ON : 18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) No. 171 of 2014

1.Boopathy
2.Gnanambal

.. Appellants / Accused 1 & 3

- Vs -

State,
represented by the Inspector of Police,
Naducauvery Police Station,
Thanjavur District.
(Crime No.75 of 2008)

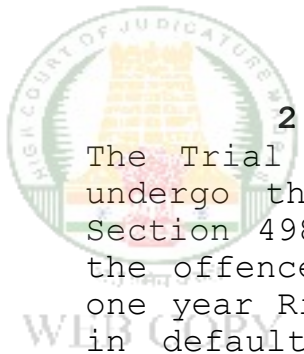
.. Respondent / Complainant

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to set aside the conviction imposed on the appellants by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court, Thanjavur, by the judgment dated 30.04.2014 in S.C.No.328 of 2011 and acquit the appellants.

For Appellants : Mr.G.Karnan
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Criminal side)
Assisted by Mr.A.Thiruvadi Kumar
for P.W.2

JUDGMENT

This Criminal Appeal has been filed against the judgment and conviction passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court, Thanjavur, by the judgment dated 30.04.2014 in S.C.No.328 of 2011.



2. The appellants are Accused Nos.1 and 3 in this case. The Trial Court convicted the Accused and imposed a sentence to undergo three years Rigorous Imprisonment for the offence under Section 498 (A) and to undergo ten years rigorous imprisonment for the offence under Section 304 (b) I.P.C. and imposed a sentence of one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- each in default to undergo six months rigorous imprisonment for the offence under Section 4 of Dowry Prohibition Act. The period of imprisonment already undergone by the accused is ordered to be set off under Section 428 Cr.P.C. Against which, the present Appeal has been filed.

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

The case of the prosecution is that the marriage between the first appellant and the deceased was solemnized on 01.06.2006. During the marriage, 25 sovereigns of gold was insisted to be given as dowry. But, P.W.1 / mother of the deceased had given only seven sovereigns of gold to their marriage. Out of their wedlock, they had one male child. After three months the accused Nos.1 and 3 demanded further five sovereigns of gold jewels and Rs.50,000/- as additional dowry and subjected the deceased to cruelty. Unable to bear the same, on 22.05.2008, the deceased committed suicide by hanging. Hence, a case came to be registered under Section 174 Cr.P.C. Thereafter, the Revenue Divisional Officer conducted enquiry and the offences were altered into Sections 498 (A), 304 (B) I.P.C. and Section 4 of Dowry Prohibition Act and charge sheet came to be filed.

4. In order to prove the case, on the side of the prosecution as many as 15 witnesses were examined as PW.1 to PW.15 and 14 documents were marked as Ex.P.1 to Ex.P.14 and one material object was marked as M.O.1. On the side of the accused, no witness was examined nor any document was marked.

5. When the appellants were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing 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.

Submissions:-

7. The learned counsel appearing on behalf of the appellant made the following submissions:

7.(1). In this case, during the trial, the appellants, who are Accused Nos.1 and 3 were tried along with three others, Accused No.2 is the father and Accused Nos.4 and 5 are the sisters of



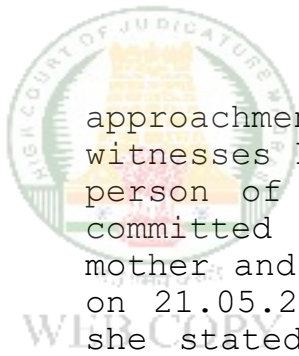
Accused No.1. The trial Court acquitted Accused Nos.2, 4 and 5 and on the same set of facts have convicted the appellants, who are Accused Nos.1 and 3, is perverse. The deceased in this case is the wife of the first appellant. The marriage between the first appellant and the deceased had taken place on 01.06.2006 and out of their marriage, they were blessed with a male child. On 22.05.2008, the deceased had committed suicide by hanging. The deceased was a degree holder and the appellant was uneducated. Though, initially, she had agreed for the marriage and after some time of their marriage, she was not happy as regards to the education status of the first appellant. Further, right from the date of the marriage, the deceased insisted the first appellant to come out from the joint family and set up a separate home. It was not accepted by the first appellant. Due to her persist demand, they started living in the first floor and set up a separate home. Further, P.W.1 did not allow the second appellant and the others in the family handling and playing with the child and there was constant dispute. Further, the deceased was suffering from severe stomach pain during the menstrual period and at that time, she was in a depressed state of mind. Even for small reasons, she would go back to her parents house. One such occasion when she had gone to her parents house, the first appellant had gone there and threatened her, if she fails to return to her matrimonial home, he would commit suicide. Thereafter, she returned to her matrimonial home and see the first appellant. Thus, the first appellant was giving emotional threat to the deceased and also physical harassment.

7.(2). In this case, except for P.W.1 and P.W.2 / the mother and brother of the deceased, no other private witness had not supported the case of the prosecution.

7.(3). P.W.7-Revenue Divisional Officer, who gave Ex.P.5 / report admits that he had not enquired anybody from the neighbourhood of the residence of the appellants, to prove the deceased being subjected to cruelty and harassment for demanding dowry.

7.(4). P.W.1 / mother of the deceased though states that the seethana articles which was promised to deliver during the marriage, could not be presented at that time. From the statement of P.W.1, it is cleared that there was no demand of dowry and it was only presentation of seethana. The demand projected by P.W.1 and P.W.2 for jewels and cash on various occasions are not substantiated by any of the witnesses or by attendant circumstances.

7.(5). Further, P.W.2-brother of the deceased admits that the jewel of the deceased was pledged for urgent family expenses by him. On his admission the case of the prosecution is demolished and there was no demand of dowry. Though P.W.1 and P.W.2 state that there were several mediations and panchayats held for re-



approachment between the first appellant and the deceased, no witnesses have been examined to prove the same. The deceased was a person of fickle state of mind and adamant. On 22.05.2006, she committed suicide by hanging. It is admitted by P.W.1 and P.W.2-mother and brother as well as P.W.7-Revenue Divisional Officer that on 21.05.2008, the parents of the deceased had spoken to her and she stated that she was happy. Further, the first appellant on seeing his wife attempting to commit suicide, immediately, rushed to save her, pulled her up, brought her down and rushed to the Hospital at Tanjore.

7.(6). P.W.8-causality Medical Doctor, who issued Accident Register copy, recorded the same and stated that during the time of admission in the Hospital, she was gasping for breath and later, she passed away.

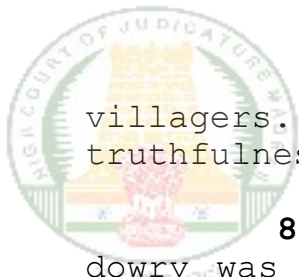
7.(7). P.W.9 and P.W.10 had categorically stated that the death was due to hanging and postmortem report / Ex.P.7 confirms the same. Thus, the appellants had taken all steps to take the deceased to the Hospital to provide medical assistance.

7.(8). Further, from the evidence of P.W.1, P.W.2 and P.W.7, it is clearly seen that the deceased was happy even on the prior date of occurrence to suicide. Hence, it is clearly proved that the appellants are not the reason for the death of the deceased. There is no evidence to show that there any demand of dowry and on the other hand, P.W.2 admits about pledging and using the jewels of the deceased to meet out his family expenses. Thus the only reason for suicide is that the deceased wanted to move out from the matrimonial home and to set up a separate home, which was resisted by the first appellant.

7.(9). In order to substantiate his submissions, the learned counsel appearing for the appellant relied on the judgment of this Court in the case of ***Senthilrajan Vs. State represented by the Assistant Commissioner of Police, Anna Nagar Range, Chennai***, reported in ***(2014) 1 MLJ 513***.

8. The learned counsel appearing on behalf of P.W.2 / brother of the deceased made the following submissions:

8.(1). The admission of P.W.2 about the pledging of jewels of the deceased by him is a stray admission, which is being given undue importance by the appellants within the two years of marriage. P.W.1's daughter died and left one year old child, which is being taken care by them. During R.D.O enquiry, the witnesses have clearly stated about the dowry harassment, caused and subjected the deceased to cruelty on four or five occasions within the short span of two years. She was sent out from the matrimonial home on demand of dowry. The evidence of P.W.1 and P.W.2 are cogent. Both are



villagers. Hence, there are some embellishments which go to show truthfulness of the witnesses.

8.(2). Further P.W.2 clearly states that the demand of dowry was for agricultural purpose. P.W.8 had recorded that the reason for attempt to suicide is due to family trouble. There are several materials against Accused No.1.

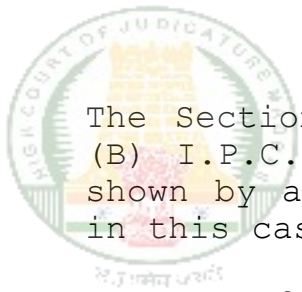
8.(3). In order to substantiate his submissions, the learned counsel appearing for P.W.2 relied on the judgment of the Hon'ble Supreme Court in the case of **Rajinder Singh Vs. State of Punjab** reported in **(2015) 3 SCC (Cri) 225**.

9. The learned Additional Public Prosecutor appearing for the respondent made the following submissions:-

9.(1). From the perusal of Accident Register copy, it is clearly seen that due to family dispute, she had committed suicide. Further, the admitted facts need to be proved as per Section 68 of the Evidence Act. Further submits that when a person commits suicide in the matrimonial house, it is under Section 106 of the Evidence Act, the persons present in the matrimonial home to prove that he is not the reasons for it. The statement given to the Revenue Divisional Officer is only a rebuttal statement. The witness before the Trial Court had clearly stated about the implications of the appellants. The evidence of P.W.1 and P.W.2 would clearly state that the deceased being harassed by the appellants. Further, it is to be seen that P.W.2 was examined in chief on 20.06.2012, was not cross-examined on the same day and he was cross-examined only on 17.08.2012. Hence, contradictions in cross-examination cannot be given undue importance. From the evidence of Revenue Divisional Officer's report which is Ex.P.5, it is categorically proved that the appellants had demanded dowry and subjected the victim to cruelty.

9.(2). P.W.8 is the causality Doctor, who issued Accident Register copy, which is Ex.P.6, which would clinchingly prove that the reason for suicide was family trouble. P.W.10 and P.W.11 are the doctors, who issued postmortem certificate, which is Ex.P.8. From which it is proved that the victim had died due to commitment of suicide by hanging.

9.(3). P.W.12 is the Sub Inspector of Police, who received the complaint and forwarded, registered the same to the Revenue Divisional Officer. P.W.15-Deputy Superintendent of Police, who conducted investigation since the regular Deputy Superintendent was on leave, he visited the scene of occurrence, prepared observation mahazar and rough sketch and examined the witness. The rope used for hanging is M.O.1. Thereafter, sent the body for postmortem and examined the Revenue Divisional Officer and the postmortem Doctor.



The Section was altered from 174 Cr.P.C. to Sections 498 (A), 304 (B) I.P.C. and Section 4 of Dowry Prohibition Act which has been shown by alteration report Ex.P.11 and charge sheet has been filed in this case.

9.(4). The trial Court on appreciation of the evidence had rightly convicted the accused in this case, which not to be interfered with.

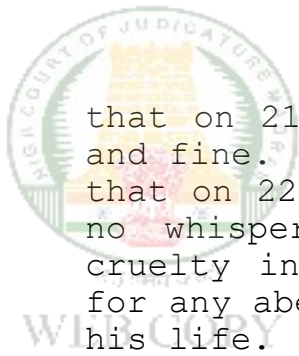
10. Discussions:-

10.(1). Considering the rival submissions made on either side and the materials available on record, this Court feels that the marriage between the deceased and the first appellant had taken place on 01.06.2006, which was arranged marriage and during their marriage 25 sovereigns of gold was given to be as seethana articles and only seven sovereigns of gold jewels were immediately presented and thereafter, the appellants along with the other accused demanding the same during the Changing of Thali function and baby shower function. Except P.W.1 and P.W.2, no other witnesses had corroborate their version.

10.(2). From the perusal of Ex.P.1, it is seen that there is no mention about the appellants frequently demanding dowry from the deceased. There seems to be some dispute between the deceased and the first appellant with regard to setting up a separate independent home. This is the only the reason for their family despute. The first appellant had gone to second floor and living separately. But the deceased had insisted to come out from his house and live elsewhere independently, which was resisted.

10.(3). Further, it is seen that P.W.2 admitted in his evidence that he had pledged the jewels of the deceased for his urgent family expenses.

10.(4). It is also to be seen that the deceased is a degree holder and the husband / Accused No.1 is school drop out and there seems to be some dispute between both of them in this regard. Further the deceased was possessive and she was not willing to share her child to the paternal grandfather and grandmother and did not allow the child to be handled by them. Further, the deceased seems to be a person with fickle state of mind and she had gone to her parents house for more than one occasion. In one of the occasion she had gone along with the child and the first appellant had gone there and informed her if she failed to return back to matrimonial home, he would end his life. That is the intense love and affection shown by the first appellant towards his wife and the child. The deceased was in her matrimonial home from 19.02.2008 to 21.05.2008 and thereafter, till the death of the deceased i.e., 21.05.2008, both of them were living happily and during this period there was no dispute, as could be seen from Ex.P.1. P.W.1 and P.W.2 admitted



that on 21.05.2008, when the parents spoken to her, she was normal and fine. It is clearly proved from the evidence of P.W.1 and P.W.2 that on 22.05.2008, when the deceased had spoken to them, there was no whisper about the demand, harassment and subjecting her to cruelty indicating to the fact that the appellants are the reason for any abetment pushing the deceased to take extreme step of ending his life.

10.(5). It is to be seen that the neighbours namely P.W.3 to P.W.5 have not supported the case of the prosecution and on the other hand they have stated that the deceased and the first appellant were living happily.

10.(6). P.W.6 and P.W.11 are the witnesses to observation mahazar and rough sketch, who had not supported the case of the prosecution.

10.(7). P.W.7-Revenue Divisional Officer had stated in his report about the previous day phone call and P.W.1 's husband late Ramamoorthy has stated that their daughter was happy and fine and what has happened in between the phone call and what is the reason, she attempted to commit suicide on that date. There is no evidence to show that the appellants is the reason for the death of the deceased. From Ex.P.6, it is seen that the deceased was taken to the Government Hospital, Tanjore by the first appellant at about 07.45 p.m. on 22.05.2008 and at that time, the deceased was gasping for breathing and the first appellant states that the reason there was some family dispute.

10.(8). Further the dispute between the first appellant and the deceased is with regard to setting up a separate and independent home. P.W.9 and P.W.10 had clearly stated that the death is a suicide by hanging. Further, in this case, it is seen that the person present in the inquest has not been examined as witness.

10.(9). Further the documents have reached the Court very belatedly and no reason has been given for the same.

11. Considering the rival submissions as discussed above and the other materials available on record, this Court is inclined to interfere with the findings of the Trial Court.

Conclusion:-

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants in S.C.No.328 of 2011, passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court, Thanjavur, dated 30.04.2014, is set aside and the appellants are acquitted of the charges framed against them. The bail bonds, if any, executed by the appellants shall stand



cancelled. The fine amounts, if any, paid by the appellants shall be refunded to them.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

Tsg

To

- 1) The Sessions Judge,
Mahalir Neethimandram (Fast Track Mahila Court, Thanjavur
- 2) Do Thro' the Principal District Judge,
Thanjavur
- 3) The Judicial Magistrate,
Thiruvaiyaru
- 4) Do Thro' The Chief Judicial Magistrate,
Thanjavur
- 5) The Superintendent,
Central Prison, Tiruchirappalli
- 6) The Superintendent,
Central Prison for Women, Tiruchirappalli
- 7) The Inspector of Police,
Naducauvery Police Station,
Thanjavur District.
- 8) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 9) The Section Officer, (2 copies)
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.G.KARNAN, Advocate (SR-7409[F] dated 20/02/2020)

+1 CC to Mr.A.THIRUVADI KUMAR, Advocate (SR-6871[F] dated 18/02/2020)

JUDGMENT IN

CRL. A. (MD) No. 171 of 2014

Dated: 18.02.2020

MK (11.03.2020) 8P 13C

<https://hcservices.ecourts.gov.in/hcservices/>