



Bail Slip

Saravanan Appellant/Sole Accused, S/o.Selvam was released on bail vide Court order dated 05.01.2015 made in MP(MD)No.1 of 2014 in Crl.A(MD)No.292 of 2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.02.2020

PRONOUNCED ON : 28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A(MD)No.292 of 2014

Saravanan

... Appellant/Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Karaikudi South Police Station,
Sivagangai District.
(Crime No.500 of 2009)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to allow the appeal, to set aside the judgment passed in S.C.No.133 of 2010, dated 05.08.2014 on the file of the learned Sessions Judge, Sivagangai, acquit the appellant herein.

For Appellant : Mr.N.Mohideen Basha
For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

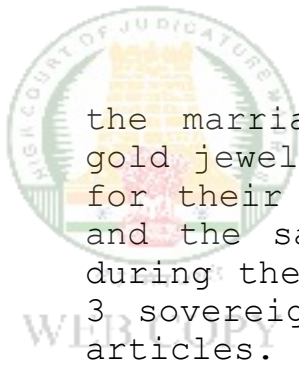
JUDGMENT

This Criminal Appeal arises out of the judgment of conviction rendered by the learned Sessions Judge, Sivagangai in S.C.No.133 of 2010, dated 05.08.2014.

2.The appellant is the sole accused. On conclusion of trial, the trial Court acquitted the appellant for the offence under Section 302 IPC and convicted him for the offence under Section 306 IPC and sentenced to undergo eight years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month rigorous imprisonment, against which the present appeal.

3.The case of the prosecution, in a nutshell, is as follows:-

(i)The victim/deceased, Muthulakshmi was married to the appellant on 22.03.2009, which was an arranged marriage. During



the marriage, the appellant's family demanded 11 sovereigns of gold jewels as dowry. PW1, the mother of the victim informed that for their elder daughter's marriage, she had given 10 sovereigns and the same would be given to the victim which was agreed and during the marriage 7 sovereigns of gold jewels for the bride and 3 sovereigns for bridegroom were presented along with household articles. After the marriage, the victim was living with the appellant and his parents. The victim was tortured by the appellant demanding more dowry. The appellant, who is a drunkard suspected the fidelity of the victim and caused harassment to her. Unable to tolerate the same, 1 ½ months prior to the occurrence, the victim left to her parents house, where she informed about the harassment to her mother/PW1, elder sister/PW9, brother/PW11 and other relatives. PW1 mother of the victim consoled her and informed over a period of time everything would get settled down. The mother of PW1 passed away and the family members of PW1 went to attend the funeral ceremony, at that time, the appellant had come and taken the victim against her wish back to the matrimonial house and thereafter, she was not allowed to contact her family members.

(ii) On 27.07.2009, the paternal grand mother of the victim/PW3 went to the house of the appellant and invited the appellant and the victim for Aadi Seer and requested them to stay for two days. The appellant informed that he would come in the evening hours and would leave the next day early morning and he would not stay further. The appellant also demanded 5 sovereigns of gold jewels as dowry. The parents of the appellant informed PW3 that they would convince their son and send the appellant and the victim to their house. PW3 at about 06.00 p.m., left from there and reached her Village at about 07.00 p.m and informed PW1 about the happenings. Thereafter at about 10.00 p.m., PW1 was informed by the Village Headman that his daughter had committed suicide and ended her life. At about 11.00 p.m., PW1 along with her relatives went to the house of the appellant in a van where she saw her daughter laid in a mat and frost, blood oozing from her mouth and nose. Getting suspicion on the death of her daughter, PW1 lodged a complaint on 28.07.2009 at the early hour at 02.00 a.m., to PW12, who received the complaint, registered an FIR in Crime No.500 of 2009 [Ex.P12] under Section 174 Cr.P.C., visited the scene of occurrence, prepared Observation Mahazar [Ex.P4], Rough Sketch [Ex.P13], examined the witnesses and recorded their statements. Since the victim had died within five months of her marriage, the copy of FIR and information were sent to PW7/RDO, who received the same at about 07.00 a.m., reached scene of occurrence at about 09.00 a.m., conducted inquiry and inquest on the body of the victim, forwarded the body for post-mortem. PW2, the Doctor conducted post mortem at about 11.10 a.m. on 28.07.2009.



(iii)PW7 examined PW1, PW3, PW9 and one Rasu, relative of victim and examined Selvam, Selvi and Muthu who are the Father, Mother and Younger Brother of the appellant and the appellant. Further, PW5, VAO and PW8, a local resident were examined. PW7 submitted his report [Ex.P10] on 04.08.2009. In the meanwhile, the appellant had approached the Village Assistant Bose through whom he contacted PW5, VAO on 04.08.2009 and given extra-judicial confession/Ex.P5, admitting that he committed the murder of his wife by strangulating her by using saree.

(iv)PW5 produced the appellant and confession to the respondent. The appellant was arrested on 04.08.2009 at about 11.30 a.m who gave a confession. From his confession/Ex.P7, MO1 and MO2 were recovered. Thereafter, Section alteration report [Ex.P14], altering Section from 174 Cr.P.C to 302 IPC was filed. The viscera report [Ex.P15] dated 17.08.2009 was received. The final opinion was obtained from PW2 on 20.10.2009. On completion of investigation, charge sheet was filed on 24.10.2009.

4.During trial, the prosecution examined PW1 to PW13, marked documents Ex.P1 to Ex.P15 and material objects MO1 and MO2. On the side of the defence, no witness was examined and no document was marked.

5.The submission of Mr.N.Mohideen Basha, learned counsel for the appellant is as follows:-

(i)PW1 is the Mother, PW3 is the Paternal Grand Mother, PW9 is the Elder Sister, PW10 is the Maternal Uncle and PW11 is the Younger Brother of the victim. The evidence of these witnesses are contrary to each other. PW1 stated that the death of her daughter was due to dowry demand and harassmt, further complained that the appellant was having illicit relationship with another lady and he had brought her to his house which was opposed by the parents of the appellant and thereafter, she was sent out. Further, her daughter had informed that the appellant accepted for this marriage only on compulsion of his parents. Since PW1 recently lost his mother, she sent PW3, her mother-in-law to invite her daughter and son-in-law for Aadi Seer. On 27.07.2009, the appellant demanded dowry of 5 sovereigns of gold and refused to send her daughter which was informed by PW3 at about 07.00 p.m. On the same day at about 10.00 p.m., she received information that her daughter died. PW1 along with PW3, PW4, PW9, PW10, PW11 reached the scene of occurrence, where her daughter was laid in a mat. In the complaint [Ex.P1], PW1 specifically stated the demand of dowry and harassmt caused to her daughter and she had suspicion on the death of her daughter.

<https://hcservices.ecourts.gov.in/hcservices/> (ii)PW3, the Paternal Grand Mother stated that on



27.07.2009 she had gone to the house of the appellant, met the victim and the appellant, invited them for Aadi Seer. PW3 further stated that due to the relationship of the appellant with another lady, there was fight between them and there was no cordial relationship between the appellant the victim.

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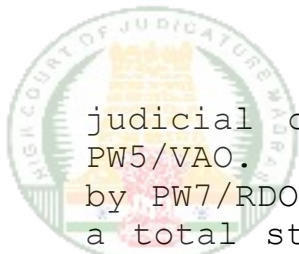
(iii)PW4 stated that he had gone along with PW1 and others to the house of the victim after getting information about the death. PW9, the Elder Sister of the victim stated that she was informed by the victim that her husband is a drunkard and after consumption of alcohol, he used to beat her, for which PW9 consoled her sister stating passage of time everything would get normal. Further stated that the brother of the appellant Muthu made advancements towards the victim. When PW9 questioned the same with the appellant, the appellant failed to take serious note of the same.

(iv)PW10, the Maternal Uncle of the victim stated that the victim informed him she was married in a wrong family and bridegroom selection was not proper and correct. PW10 was aware that the victim left the matrimonial house and came to her parents house. PW11, the Younger Brother of the deceased stated about receiving the information of his sister's death. The appellant suspected the fidelity of the victim with her uncle son. The evidence of these interested witnesses are contradictory to each other with exaggeration and embellishment.

(v)The allegations against the appellant made by them are (i)Dowry demand and harassment (ii)Appellant being a drunkard used to hit the victim (iii)Appellant suspected the fidelity of the victim on relationship with her cousin (iv)Advancements by Muthu, younger brother of the appellant. The death of the victim had taken place within five months of the marriage. During this time, twice the victim had come to her parents house and made complaint about the harassment meted to her.

(vi)PW7/RDO conducted inquest and enquiry, gave a report [Ex.P10]. The categorical finding of PW7 is that the appellant is a drunkard and he had relationship with another lady. Added to it, the appellant was suspecting the fidelity of the victim and these are the reason for the death of the victim and it is not a case of dowry demand. Further from Ex.P10, it is seen that the green colour saree was found in the scene of occurrence even on 28.07.2009. PW7 could not come to a conclusion whether it was murder or suicide, but gave categorical finding that the death was not due to dowry demand.

(vii)The learned counsel for the appellant further submitted that the lower Court had placed reliance on the extra-



judicial confession [Ex.P5] and the report [Ex.P6] submitted by PW5/VAO. PW5/VAO earlier attended inquest and enquiry conducted by PW7/RDO on 28.07.2009 and he was aware of the case. PW5/VAO is a total stranger to the appellant and there is no reason for the appellant to gain confidence with PW5 to give confession. Hence, the confession [Ex.P5] and report [Ex.P6] are of no consequence. Ex.P7 is the confession obtained by the respondent in the police station. PW6, the witness to the arrest and confession admitted that he is a relative of the victim and the confession was recorded by PW12 in the police station. Ex.P8, the Mahazar for seizure of MO1 and MO2 is also of no consequence for the reason that the confession has been recorded in the police station and MO1 was available in the scene of occurrence on 28.07.2009 as could be seen from the report of RDO [Exs.P9 & P10]. From the confession, there was no disclosure of fact. In view of the same, it cannot be said that MO1 and MO2 were discovered articles.

(viii)PW8, a resident near the scene of occurrence stated that the relationship between the deceased and the appellant was cordial and normal. There was no harassment or demand of dowry. This witness treated as hostile. The appellant on seeing his wife hanging, immediately taken steps to save her bring her down and sought service of Auto to take her to hospital. When the victim was brought down, then only it was found that she had passed away and thereafter, she was laid in the mat. The fact of the appellant's wife committing suicide was informed to the respondent Police. The presence of the respondent Police is admitted by PW8, PW11, Rajagopal, the Village Headman and Rasu, Senior Father of the victim. The family members of the appellant informed the presence of police, while they were examined by PW7/RDO. Thus the appellant had taken sincere efforts to save his wife and he is not the cause for the victim committing suicide.

(ix)From the evidence of PW2, Post mortem Doctor and Ex.P2 his report, it is seen that there is no notable external injuries, other than the horizontal ligature mark at the level of thyroid cartilage measuring 8x1.5 cm in the neck and a circumscribed abrasion 3 x 2 cm below the left angle of mandible. Further, on the internal examination, it is found that there had been no extravasation of blood seen in the superficial or Deep veins of the neck. Hence, the victim committed suicide by hanging is confirmed as could be seen from the medical report. Thus it is clearly seen the deceased had committed suicide by hanging. Thus from the above evidence, it is clearly seen that the appellant had not committed any murder of the deceased by strangulation. The appellant is not the cause and reason for victim committing suicide. The lower Court on the evidence and materials found that the appellant had not committed the offence of murder and acquitted the appellant from the charge of Section 302 IPC and strangely convicted him under Section 306 IPC, without any



(x) In this case PW12 conducted major portion of the investigation. PW12 failed to conduct investigation in proper manner. PW12 was not aware whether PW7/RDO examined the witnesses in the scene of occurrence or in his office. PW7/RDO admitted that the statements were recorded in the computer available in his office. Further, the Observation Mahazar [Ex.P4] shows only the place where the body was laid down and no steps have been taken to record the place of hanging and the features therein. Further, it is seen that the green colour saree [MO1] was available in the scene of occurrence. PW12 had not taken any steps to seize the saree when he visited the scene of occurrence on 28.07.2009. On the other hand, PW12 shows the recovery of saree [MO1] on 04.08.2009 after the arrest of the appellant. It is admitted by PW12 that the appellant was available on 28.07.2009. The appellant participated in the enquiry conducted by PW7/RDO. The witnesses have categorically stated that PW1 and her family members had no fight or commotion with the appellant's family when they reached the scene of occurrence. The investigation was not conducted in a proper manner. Hence, he prayed for acquittal.

(xi) In order to substantiate his arguments, the learned counsel for the appellant relied upon the following citations:-

- Javed Abdul Rajjaq Shaikh Versus State of Maharashtra reported in 2019 (4) Crimes 198 (SC).
- Gurucharan Singh Versus State of Punjab reported in 2017 (1) MWN (Cr.) 18 (SC).
- B.Velmurugan Versus State, rep., by the Inspector of Police, T4 Maduravoyal Police Station, Chennai reported in 2018 (2) MWN (Cr.) 627.

6.(i) *Per contra*, the learned Additional Public Prosecutor appearing for the respondent submitted that in this case PW1 is the Mother, PW3 is the Paternal Grand Mother, PW9 is the Elder Sister, PW10 is the Maternal Uncle and PW11 is the Younger Brother of the deceased. All these witnesses categorically stated about the demand of dowry, harassment caused to the victim, the appellant being a drunkard used to constantly hit the victim, the appellant was having illicit relationship with another lady and the victim was subjected to physical and mental harassment, the younger brother of the appellant had made advancements towards the victim which was not objected and controlled by the appellant. The victim had informed about the harassment to her mother/PW1, PW3/grand mother, PW9/elder sister and to her relatives.

(ii) The learned Additional Public Prosecutor further submitted that within five months of marriage the victim died. In this short period, the victim had twice come to her parents house. Lastly, 1-2 months prior to the occurrence, the victim had come to



her parents house, complained about the appellant behaviour and harassment. She was forcibly taken by the appellant. Thereafter, the victim was not allowed have any contact with her family members and finally on 27.07.2009, when PW3 had gone to invite the appellant and the victim for Aadi Seer, the appellant refused to send the victim to her parents house. On the same day at about 10.00 p.m., the message that the victim committed suicide reached the family. When the family members of the victim reached the appellant's house found the victim lying dead in a mat and frost and blood oozing. Getting suspicion on the death of the victim, PW1 lodged a complaint on the same day at early hours. On registering FIR [Ex.P12], the copy of the FIR were forwarded to RDO/PW7 and to other officials. Thereafter, PW12, investigating officer reached the scene of occurrence as well PW7/RDO.

(iii)The Observation Mahazar [Ex.P4] and Rough Sketch [Ex.P13] were prepared and witnesses present in the scene of occurrence were examined, PW7 conducted his enquiry. The family members of the victim as well as the appellant and independent witnesses were examined. On examination, the victim family categorically stated about the harassment and demand of dowry. The appellant and his family members merely denied the same. The categorical finding of PW7 is that the appellant was a drunkard and he was having illicit relationship with another lady and was suspecting the fidelity of the victim, assaulting and harassing the victim.

(iv)PW7/RDO could not come to a finding whether the death was suicidal or homicidal. He had given a finding that the death was not due to dowry demand, since the charge sheet under Section 302 IPC filed. It is admitted that the death had taken within five months of the marriage. During this period, twice the victim had come to her parents house due to the harassment caused by the appellant. The death had taken place in the matrimonial house, the appellant failed to give proper reason/explanation for the same. In this case, the appellant had merely denied the charges and failed to give any plausible explanation to probablize his case by producing any evidence to show that he is not the cause for death of the victim.

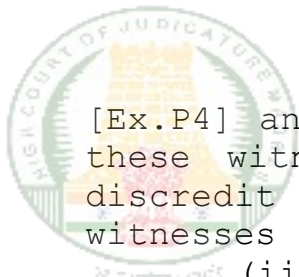
(v)It is well settled principle that any omission on the part of the investigating officer cannot go against the prosecution case. The omission of the investigating officer could not be taken in favour of the accused and he relied upon the judgment of the Hon'ble Apex Court in the case of "**Jai Prakash Versus State of Uttar Pradesh and others**".

7.This Court considered the rival submissions and perused the materials available on record.



(i) PW1 is the Mother, PW3 is the Paternal Grand Mother, PW9 is the Elder Sister, PW10 is the Maternal Uncle and PW11 is the Younger Brother of the victim. The marriage had taken place on 22.03.2009. After the marriage the victim was living with the appellant and his parents at Karaikudi. Within one month of the marriage, dispute and fight between the appellant the deceased started. The appellant had relationship with a lady from Managiri. Earlier they were living together in his house. At the instance of the appellant's parents, the said lady was sent away. Thereafter, the marriage between the appellant and the victim took place. The appellant had not severed his relationship with the lady and was continuing his relationship with her. Hence, there was a constant fight. The appellant was a drunkard and used to pick up fight, cause harassment and beat the victim constantly. These facts have been informed by the victim to PW1, PW3, PW9. PW9 had questioned the appellant, the appellant did not show any remorse and change his attitude, on the other hand he became more aggressive. The victim had committed suicide on 27.07.2009 in her matrimonial house, the marriage life of the victim and the appellant was roughly around five months. Hence, PW7/RDO conducted inquest, enquiry and examined the witnesses on both sides from the appellant and the victim.

(ii) The finding of PW7/RDO is that the appellant was a drunkard, continuing his illicit relationship with another lady at Managiri. In this regard, constant fight prevailed between the appellant and the victim. The appellant was constantly harassing and assaulting the victim. The appellant is the cause of the death of the victim and PW7 found that the death had not occurred due to demand of dowry. Thus, it is categorically proved that the appellant had persistently caused harassment and assaulted the deceased. It is an admitted fact that the marriage had taken place on 22.03.2009 and the death had occurred within five months of the marriage. On 27.07.2009, PW3 had met both the appellant and the victim invited them for Aadi Seer. The appellant refused the same and his parents intervened and assured that they would send them. PW3 left the place at about 05.00 p.m., reached her village at about 07.00 p.m., informed PW1 about the same. By 10.00 p.m., the death message of the victim was received. The appellant as well as his mother had stated to RDO/PW7 during enquiry about their presence soon after the death of the deceased the appellant and the deceased was seen together by PW3, that time there was some fight between them, the appellant refused to send the deceased for Aadi Seer. The death had taken place in the matrimonial house. Hence, the presumption under Section 113(A) of the Indian Evidence Act comes into play. PW5/VAO and PW6 are the witnesses for the arrest, confession and recovery from the appellant. In the presence of PW4, the Observation Mahazar



[Ex.P4] and Rough Sketch [Ex.P13] were prepared. The evidence of these witnesses are credible and natural, nothing is shown to discredit these witnesses. The family members are the natural witnesses in these type of cases.

(iii)PW2, the Postmortem Doctor in his report Exs.P2 & P3 had given an opinion that **"the deceased would appear to have died of Asphyxia due to ligature compression over the neck"**. Further, it is seen from Ex.P2 that there is no external injuries, other than horizontal ligature mark at the level of thyroid cartilage measuring 8x1.5 cm in the neck and a circumscribed abrasion 3 x 2 cm below the left angle of mandible. It is also seen that there is no mark of violence which is normally found in Homicidal death. In the case of 'Hanging Death', saliva dribble down the mouth and chin which is also found.

(iv)The Hon'ble Apex Court in **"Dalbir Singh Versus State of Uttar Pradesh** reported in **(2004) 5 Supreme Court Cases 334"** and in **"Virendra Kumar Versus State of Uttar Pradesh** reported in **(2007) 9 Supreme Court Cases 211"** had categorically held that **"if the accused had been charged under Section 302 IPC and the charge is not established by the evidence, it would be possible to convict him under Section 306 IPC."** It is clear that the materials brought on record clearly formed a complete chain of circumstances which unerringly pointed out at the appellant being the author of the crime.

(v)Taking these aspects, the trial Court had found the appellant not guilty under Section 302 IPC and alternatively convicted under Section 306 IPC. This Court on scrutiny of the evidence and materials and the judgment of trial Court, found the basic ingredients of offence under Section 302 IPC has not been established by the prosecution.

(vi)Taking into consideration of overall materials available, this Court approves and finds the conviction of the appellant under Section 306 IPC sustainable. The appeal is, hereby, dismissed. The trial Court is directed to secure the appellant for sufferance of the sentence. Considering the age of the appellant and he taking earnest steps to save the victim/wife, this Court modifies the sentence of eight years rigorous imprisonment imposed by the trial Court for the offence under Section 306 IPC to five years rigorous imprisonment.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)



1.The Sessions Judge,
Sivagangai.

2.The Judicial Magistrate,
Karaikudi, Sivagangai District.

3.The Chief Judicial Magistrate,
Sivagangai.

4.The Superintendent of Central Prison,
Central Prison, Pudukkottai.

5.The Officer Incharge,
District Jail, Pudukkottai.

6.The Inspector of Police,
Karaikudi South Police Station,
Sivagangai District.

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

copy to

The Section Officer, Criminal Section-2 copies
Madurai Bench of Madras High Court, Madurai.

JUDGMENT IN
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28.08.2020

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