



Bail Slip

The Appellant/Accused namely Arunkumar S/o. Mariappan was directed to be released on bail as per order of this Court dated 10.04.2015 in M.P. No. 01/2015 in CrI.A. No. 64/2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 21.10.2021]
[JUDGMENT DELIVERED ON : 01.12.2021]

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.64 of 2015

Arun Kumar ...Appellant/Accused No.1
..Vs..

State represented by
The Inspector of Police,
Anupparpalayam Police Station,
Thirupur District.
[Crime No.3783 of 2010]

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set aside the conviction and sentence imposed on the appellant by judgment dated 20.01.2015 in S.C.No.105 of 2012 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thirupur and acquit the appellant by allowing the appeal.

For Appellant : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.H.Rajasekar

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (CrI.Side)

JUDGMENT

The convicted A.1 is the appellant herein and he has preferred this criminal appeal as against the judgment dated 20.01.2015 passed by the learned Sessions Judge, Fast Track Mahila Court, Thirupur, in S.C.No.105 of 2012, wherein, he was convicted for the offence under Section 498(A) IPC and sentenced to undergo rigorous imprisonment for three years and to pay a



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fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months and also convicted for the offence under Section 306 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months. The above sentences of imprisonment were ordered to run concurrently.

2 [i]. The case of the prosecution, against the appellant/A.1 and his parents (A.2 and A.3), as could be seen from the records, is that the appellant and the deceased were married on 22.02.2007 with a dowry of Rs.2 Lakhs and 75 sovereigns of jewels. The deceased was sent to her parents' home with a demand of Rs.1 lakh as dowry and the parents of the deceased were unable to meet the demand. On 10.06.2010, the deceased contacted the accused 1 to 3 over phone and wanted them to take her back to the matrimonial home but accused Nos.1 to 3 have refused and reiterated the demand of Rs.1 lakh and due to the mental agony, the deceased committed suicide by hanging on 12.06.2010 at her parental home. Hence, the appellant and his parents were charge sheeted for the offences under Sections 489(A) and 304-B IPC and Section 4 of Dowry Prohibition Act.

[ii] The trial Court framed charges against the appellant/A.1 and his parents viz., A.2 and A.3 for the offences under Sections 489(A) and 304-B IPC and Section 4 of Dowry Prohibition Act. During trial, the prosecution examined 12 witnesses as P.Ws.1 to 12 and marked documents Exs.P.1 to P.16. On behalf of the accused, the appellant/A.1 examined himself as D.W.1 and marked documents Exs.D.1 to D.28.

[iii] On conclusion of trial, the learned Sessions Judge, Fast Track Mahila Court, Thirupur, had acquitted A.2 and A.3 from all the charges and held that the appellant/A.1 guilty under Sections 498(A) and 306 IPC and sentenced him as stated above. As against the said conviction and sentence imposed on him, this Criminal Appeal has been preferred by the appellant before this Court.

3. Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant/A.1 would contend that the learned Sessions Judge had erroneously relied upon the alleged suicide note, which was not satisfactorily proved to be authored by the deceased and that the documents furnished to compare the suicide note, in fact, were not admitted documents. Therefore, the reliance made by the learned Sessions Judge on the alleged suicide note alone was erroneous. The learned Senior Counsel for the appellant/A.1 further contended that when the Court itself had concluded that



there was no contact between the appellant and the deceased for more than 5 months prior to the date of incident, it is not understandable as to how the Court could give a finding that there was a harassment by the accused. Further, the learned Sessions Judge has concluded that Ex.P.3-Suicide Note, might not have been written immediately prior to the death and relied upon solely the said document to impose the conviction against the appellant.

4. According to the learned Senior Counsel for the appellant, a charge was framed under Section 304-B IPC, but conviction was laid under Section 306 IPC, without separate charge provided that the suicide was due to dowry demand. In the instant case, there was no dowry demand is the conclusion arrived at by the learned Sessions Judge and the suicide note was written due to the other reason. In such circumstances, there cannot be a conviction without charge under Section 306 IPC and hence, the learned Senior Counsel prayed for setting aside the judgment of conviction and sentence passed by the learned Sessions Judge and for allowing of the criminal appeal.

5. Per contra, Mr.S.Vinoth Kumar, learned Government Advocate (Crl.Side) relied upon a judgment of the Hon'ble Supreme Court reported in (2011) 2 SCC 47 [Narwinder Singh Vs. State of Punjab], and submitted that a charge under Section 304-B I.P.C can be converted into Section 306 I.P.C for laying conviction against the appellant. It is further submitted that the prosecution has let in positive evidence regarding seizure of Ex.P.3-suicide note and Ex.P.9-school notes written by the deceased and as per the evidence of P.W.11-Deputy Director of Forensic Department, the contents of Ex.P3 and Ex.P9 were written by one and the same person. Learned Government Advocate (Crl.Side) would draw my attention to the various recitals in Ex.P.3 and contended that the deceased was subjected to mental harassment and physical cruelty which driving her to take extreme step and accordingly, made submissions in support of the judgment passed by the learned Sessions Judge.

6. This Court has considered the submissions made by Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant/A.1 and Mr.S.Vinoth Kumar, learned Government Advocate (Crl.Side) appearing for the respondent-State and perused the materials available on record.

7. On close scanning and scrutiny of the Lower Court records, it is seen that the appellant/A.1 has been convicted for the offences under Sections 498(A) and 306 IPC, solely on



the basis of Ex.P.3-suicide note and Ex.P.9 purportedly in the handwriting of the deceased. The convicted appellant/A.1 seeks to set aside the conviction and sentence passed by the learned Sessions Judge. A.1 is the son of A.2 and A.3. A.1's wife has committed suicide in her parental home. In this connection, A.1 to A.3 were prosecuted for the offences under Sections 489(A) and 304-B IPC and Section 4 of Dowry Prohibition Act.

8. P.Ws.1, 2 and 3 are the father, mother and brother respectively of the deceased, while P.W.4 is the wife of P.W.3. P.W.5 is the neighbour said to have witnessed the picking up the alleged suicide note purported to have been written by the deceased Revathi. P.Ws.6 and 7 are the attestors of Ex.P.4-observation mahazar. P.W.8 has conducted inquest on the body of the deceased and submitted Ex.P.5-inquest report. P.Ws.9 and 10 are the medical witnesses and they deposed regarding the receipt of the issuance of Accident Register and Ex.P.6-Post-mortem Certificate. P.W.11 is the handwriting Expert and he deposed regarding Ex.P.10-Forensic science report, while P.W.12 is the Investigating Officer.

9. The accused examined himself as D.W.1 and he produced documents Exs.D.1 to D.28. Exs.D.1 & D.3 are the jewel receipt; Ex.D.2 is the betrothal invitation; Ex.D.4 is the office order copy for fixed deposit; Exs.D.5 and D.6 are the xerox copies of LIC policies taken in the name of the deceased and the accused respectively; Ex.D.7 is the payment receipt for higher education; Ex.D.8 is the instalment receipt for real estate; Ex.D.9 is the medical card relating to Sankara Eye Hospital; Ex.D.10 is the certificate for taken the vehicle; Ex.D.11 is the payment receipt; Exs.D.12 and 13 are the receipts for the chit amount; Ex.D.14 is the invoice; Ex.D.15 is the Certificate of appreciation issued to the appellant by the Head Master of Karuvalur for providing ten free computers to the Government High School; Ex.D.16 is the driving license for the deceased; Ex.D.17 is the copy of family ration card (deleted the name of the deceased); Ex.D.18 is the copy of family ration card of the appellant; Ex.D.19 is the insurance card relating to the deceased; Ex.D.20 is the mahal rent receipt; Ex.D.21 is the jewel receipt; Ex.D.22 is the savings plan receipt; Ex.D.23 is the Hall ticket for Group-2 exam; Exs.D.24 and D.25 are the mail acknowledgment for the complaints; Ex.D.26 is the RTI application form; Ex.D.27 is the letter issued by the Head Master of Thiruvallur Government High School to one Tmt.T.Indhira Gandhi for giving the details sought by her and Ex.D.28 is the medical receipt.



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10. On perusal of the order passed by the learned Sessions Judge, it is seen that the learned Sessions Judge framed charge under Section 304-B IPC and in the judgment, it was converted into Section 306 IPC and conviction has been laid.

11. As extracted supra, the learned Senior Counsel for the appellant/A.1 has urged that on the facts and circumstances of the case, conviction recorded as against the appellant/A.1 under Section 306 IPC is legally impermissible, though the Court has got power to alter the charge at any time before pronouncing the judgment. In the facts and circumstances of the case, such alteration without giving proper opportunity to the defence completely prejudiced to the appellant/A.1. The ingredients of the offence under Section 304-B IPC and the offence under Section 306 IPC are entirely different. Since the appellant/A.1 was prayed for the charge under Section 304-B IPC, the prosecution has prosecuted him only for such charge. The defence also concentrated on the said charge. However, when the position be so, at the time of delivering the judgment, the learned Sessions Judge altered the charge under Section 304-B IPC into Section 306 IPC and convicted the appellant under the said charge.

12. In the decision reported in (2011) 2 SCC 47 [Narwinder Singh Vs. State of Punjab], the Hon'ble Supreme Court has negatived the similar contention raised before it and held that when the Court comes to the conclusion that the deceased had not committed suicide on account of demands of dowry but due to the harassment caused by her husband, in particular, the harassment by the appellant is compounded. The relevant portion is extracted hereunder:-

"16. We do not find much substance in the submission of Mr. Mahajan that the High Court could not have convicted the appellant under Section 306 IPC as the charge had been framed under Section 304-B IPC. On scrutiny of the entire evidence, the High Court has come to the conclusion that the deceased had not committed suicide on account of demands for dowry but due to harassment caused by her husband, in particular. The harassment by the appellant had compounded the acute depression from which the deceased was suffering after the murder of her father. There was no evidence of any demand for dowry soon before the death, and there was no demand whatsoever that the house in question should be



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transferred to either of the accused. Under Section 304-B IPC, the cruelty or harassment by her husband or any relative of her husband "for, or in connection with, any demand for dowry" is a prelude to the suicidal death of the wife. Such suicidal death is defined as "dowry death". The High Court has recorded a firm finding that the harassment was not for or in connection with any demands for dowry. But, at the same time, the High Court has concluded that the wife committed suicide due to the harassment of the appellant, in particular. In such circumstances, the High Court was, therefore, fully justified in convicting the appellant under Section 306 IPC."

13. Hence, the contention raised by the learned Senior Counsel for the appellant stands negatived as I find a similar reasoning has been assigned by the learned Sessions Judge for convicting the accused under Section 306 IPC while the charge being under Section 304-B IPC.

14. The other limb of the argument of the learned Senior Counsel for the appellant is that Ex.P.3-suicide note has not seen the light of the day. Long after the suicide, it was instituted in this case. The very genuineness of Ex.P.3 has not been established in the manner known to law. The sum and substance of the case of the learned Senior Counsel for the appellant is that a mere suicide note under Ex.P.3 is not sufficient to convict the appellant under Section 306 IPC.

15. The suicide note may contain so many things, however, to use it as ingredients, it must satisfy, the ingredients of the offence under Section 306 IPC. In other words, it should be to the effect that the appellant/A.1 (husband) had provoked and instigated the deceased to commit suicide. In this connection, Ex.P.3 is a suicide note projected by the prosecution purported to have been written by the deceased Revathi and said to have been picked up in the presence of P.W.5. Ex.P.9 is said to be the sample handwriting of the deceased which are in the nature of short questions and answers prepared for the students. These exhibits viz., Ex.P.3-suicide note and Ex.P.9-sample handwriting were sent to Forensic Department. P.W.11, handwriting Expert gave Ex.P.10-Forensic Science Report stating that the signature found in Ex.P.3 is as that of the handwriting of the person, who wrote Ex.P.9. Relying upon the Forensic Science Report-Ex.P.10 issued by P.W.11, handwriting Expert, it appears that the conviction has been laid by the learned Sessions Judge.



16. Dr.Sakthivel-P.W.10 gave opinion under Ex.P.7 stating that the deceased would appear to have died of external compression of the neck, about 20-24 hours prior to autopsy (due to hanging). Hence, this Court finds that the deceased Revathi, wife of the appellant/A.1 died due to asphyxia hanging and it is a suicide in her parental house.

17. Ex.P.3-suicide note is an important piece of evidence in this case. In matrimonial violence cases, mostly direct evidence will be rare, since such alleged violences are being committed within the four walls of the house. Neither husband nor any in-laws will leave evidence for their alleged commission of such offences. But, a suicide note also has to be proved like any other piece of evidence relied upon and introduced in a criminal case. According to the appellant/A.1, Ex.P.3 was produced by the prosecuting agency nearly after few days of her suicide. The genuineness of such an important piece of evidence assumes single importance and hence, such an argument advanced by the learned Senior Counsel for the appellant as to the genuineness of Ex.P.3 and seizure of the suicide note by the prosecution after few days of her suicide requires to be examined as discussed in fra.

18. Taking into the time of production of Ex.P.3-suicide note, the learned Sessions Judge has rendered a finding that Ex.P.3, the alleged suicide note could not have been proximated to the suicide. Now, it is to be considered whether Ex.P.3-suicide note has been proved in the manner known to law. Let us examine Ex.P.3-suicide note purported to have been written by the deceased. Ex.P.9 purported to have been containing 8 pages and Ex.P.10-Forensic Science Report was given by P.W.11, scientific officer. After perusing the evidence of P.Ws.1, 2 and 5 from whom Ex.P.3 was supposed to be picked up by P.W.1 and handed over to the police is admittedly after few days of the suicide.

19. Whether the suicide note written by the deceased was proved by the prosecution by any acceptable evidence needs to be examined. According to the learned Senior Counsel for the appellant, it was planted subsequently. Taking into consideration the oral and documentary evidence as referred to above, it is an admitted case that on 12.06.2010, the occurrence took place and the police came on the evening on being informed and only thereafter, the body was lowered from where it was hanging and P.W.8-Revenue Divisional Officer visited the spot on the said date as could be seen from the evidence of P.Ws.1 and



2. However, Ex.P.3-suicide note was seized only on 13.06.2010. As per Ex.P.2-Mahazar, the alleged suicide note has been handed over by P.W.1 saying that it was found under the pillow. It is needless to say that there is no whisper regarding Ex.P.3 purported suicide note being handed over by P.Ws.1 and 3 in the witness box assumes reliance and significance.

20. Similarly, the admitted document in Ex.P.9 also has not been proved to have been written by the deceased and its origin is dubious. P.W.12, the Investigating Officer deposed that Ex.P.9 was handed over to him by P.W.1 on 10.07.2010 and was received under Ex.P.13 Form 95. Ex.P.13 shows that there were 3 sheets or 6 pages were handed over, but what has been marked in Ex.P.9, there are 8 sheets consisting of 16 pages. P.W.1 (father) has not spoken about the identification of Ex.P.9 and it was not identified to be in the handwriting of the deceased by any witnesses examined by the prosecution assumes significance.

21. Further, though P.W.11 had deposed that the contents in Ex.P3 and Ex.P9 were written by one and the same person, it has not been established that the said person was deceased. It appears that the deceased had done her post-graduation, attended school, colleges and institutes and a heap of contemporaneous documents could have been collected by the prosecuting agency with admitted handwritings of the deceased for comparison. Therefore, the documents in Exs.P.3 and P.9 should be rejected as not proved to be written by the deceased.

22. In fine, I find that neither Ex.P.3 was not identified by P.Ws.1 to 3 nor Ex.P.9 was spoken about or identified by P.W.1, father of the deceased and it was not identified to be the handwriting of the deceased by any other witnesses especially, the family members, assumes significance. As per the evidence of P.W.11, Ex.P.9 is said to be the sample handwriting of the deceased which are in the nature of short questions and answers said to have prepared by the deceased for the students and the said handwriting is that of the deceased. There is no positive evidence available on record to show that the deceased alone wrote Ex.P.3 or Ex.P.9 and hence, I find that the submission made by the learned Senior Counsel for the appellant that Ex.P.3 has been planted appears to be more probable and consequently, it caused serious doubt as to the prosecution theory.

23. Besides, this Court finds that even if the sole "evidence" in the form of suicide note-Ex.P.3 is accepted as



true, while disclosing that the deceased was unhappy with the alleged bad habits of the appellant, does not disclose any activity on the part of the appellant confirming to abetment within the definition of Section 107 IPC. At the best, the exhibit shows that the deceased was unhappy with the appellant.

24. The evidence let in by the prosecution reveals that nothing was amiss till at least the marriage of the brother of the deceased on 01.11.2009. There is evidence that the brother of the deceased and his wife went for dinner to the appellant's house one month thereafter. Ex.P.1 shows that the deceased was in her parental home for three months prior to committing suicide. It is abundantly clear that there could not have been any form of harassment till she reached her parental home in the absence of any evidence.

25. The evidence of P.W.2 shows that the deceased was wishing that she should join her husband somehow and that she died since the appellant did not take her back and thus, this Court finds that the prosecution has failed to prove that the handwriting found in Ex.P.3, the alleged suicide note and Ex.P.9, alleged sample handwriting of the deceased, were that of the deceased and hence, I find that Ex.P.10 pale into insignificance.

26. Yet another point is that even as per Ex.P.3-suicide note, it does not disclose any action on the part of the appellant amounting to abatement as defined under Section 107 of IPC. The suggestive case of the defence is that the deceased was treated with affection all through her matrimonial life and there was no harassment warrants conviction of other limb of Section 498(A) IPC. Based upon the oral and documentary evidence of P.Ws.1 to 5, the learned Sessions Judge has correctly concluded that there was no demand of dowry by the accused. However, convicted for the offence under Section 498(A) IPC, by observing that the accused have committed harassment on the deceased. In Ex.P.3-suicide note, there is nothing on record to show the alleged harassment made by the accused. For the reasons stated supra, this Court rejects the documents Exs.P.3 and P.9 and consequently, for want of acceptable evidence to show and accept to demonstrate that it was the handwriting as that of the deceased, it is held that Ex.P.10-Forensic Science Report does not advance the prosecution case.

27. Taking into consideration the evidence of the appellant/D.W.1 coupled with the documentary evidence filed by



Ex.P.3 is not proved to be the handwriting of the deceased and Ex.P.9 is also not proved to have been written by the deceased. Consequently, Ex.P.10-Forensic Science Report about the handwriting of the deceased pale into insignificance. There is no positive evidence by the private prosecution witnesses in support of the charges under Sections 498(A) and 306 of IPC. There is no other material on record to show that the appellant/A.1 played an active role by an act of instigating the deceased to facilitate the commission of suicide.

31. Considering the facts and circumstances of the case and the discussions in the preceding paragraphs, I find that the learned Sessions Judge has committed an error in laying conviction under Sections 498(A) and 306 of IPC. Accordingly, the conviction and sentence passed by the learned Sessions Judge, are liable to be set aside.

32. In the result,

(i).The Criminal Appeal stands allowed.

(ii).The order of conviction and sentence passed in S.C.No.105 of 2012, by the learned Sessions Judge, Fast Track Mahila Court, Thirupur, dated 20.01.2015, are hereby set aside.

(iii).The appellant herein/A.1 is acquitted from the charges framed against him.

(iv). Bail bond executed by the appellant/A.1 stands cancelled and the fine amount paid, if any, is ordered to be returned to the appellant/A.1.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Thirupur.



2. The Judicial Magistrate No.I
Tiruppur.

3. The Superintendent
Central Prison, Coimbatore

4. The Inspector of Police,
Anupparpalayam Police Station,
Thirupur District.

5. The Public Prosecutor,
High Court, Madras.

6. The Section Officer
Criminal Section (Records)
High Court, Madras 104.

+1 CC to Mr.H.Rajasekar, Advocate sr 62745.

Crl.A.No.64 of 2015

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SP(13/12/2021)