

BAIL SLIP

The Appellants/Accused No 1 & 2 viz Kanagavel @ Kannan S/o. Shanmugam, Tamilarasi w/o. Shanmugam have been released on bail as per the order of this court made in CRL.MP(MD).Nos 1 and 2 of 2015 in CRL.A.(MD).No. 370 of 2015 respectively.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.A.(MD) No.370 of 2015

1. Kanagavel @ Kannan

2. Tamilarasi

... Appellants/Accused Nos.1 & 2

Vs.

The Inspector of Police,
Thiruverumpur Police Station,
Thiruverumbur,
Trichy District.

... Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the judgment dated 14.10.2015 in S.C.No.170 of 2013, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli and set aside the same.

For Appellants

: Mr.N.Anandkumar

For Respondent

: Mr.M.Muthumanikkam

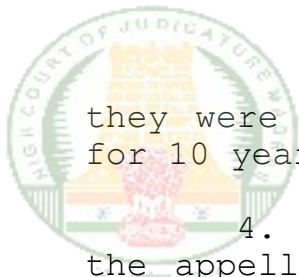
Government Advocate (Crl.side)

JUDGMENT

The present Criminal Appeal is directed against the conviction and sentence, dated 14.10.2015, made in S.C.No.170 of 2013, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli.

2. The appellants are arrayed as accused Nos.1 & 2 in the above referred case. Along with one another accused they stood charged for the offences under Sections 498(A) and 304(B) of IPC.

3. After full-fledged trial, the learned Sessions Judge, Mahila Court, Tiruchirappalli, came to the conclusion that both the appellants were found guilty for the offences punishable under Sections 498(A) and 304(B) of IPC. After concluding as above, for an offence under Section 498(A) of IPC, the learned Sessions Judge, Mahila Court, Tiruchirappalli, convicted and sentenced the appellants to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs.1,000/- each, in default, to undergo Simple Imprisonment for 3 months. Similarly, for an offence under Section 304(B) of IPC,



they were convicted and sentenced to undergo Rigorous Imprisonment for 10 years. The sentences are run consecutively.

4. Being dissatisfied with the above conviction and sentence, the appellants are before this Court by way of filing the present Criminal Appeal.

5. The case of the prosecution is that:-

(i) P.W.1-Sandhar was residing at Thirunallur Village, Pudukkottai District and doing agricultural work. P.W.2-Rangammal is his wife and they were blessed with four girl children and one son. The deceased Jaya @ Jayalalitha is their third daughter. She married the first accused in the year of 2010 at Samayapuram temple. During the time of marriage, P.W.1 gave 13 sovereigns of gold and Rs.50,000/- to the first accused as Sridhana property. After the marriage, the deceased lead a joint family along with the accused in the matrimonial home.

(ii) After 6 months from the date of marriage, both the accused demanded the deceased to bring a cash of Rs.50,000/- and 5 sovereigns of gold. In such circumstances, in order to fulfill the demand made by the accused, P.W.1 gave Rs.50,000/- to the first accused and promised to give 5 sovereigns of gold within a month. Not satisfying with the words given by P.W.1, both the accused given a constant torture to the deceased and thereby, the deceased came to P.W.1's house and told about the harassment given by the accused.

(iii) Before the occurrence, the deceased informed the P.W.1 through phone about the intolerable situation prevailed in her house. In this regard, P.W.1 informed to the deceased that he would come and pickup her. But, the deceased told to P.W.1 that she would come by herself. In the said situation, P.W.1 received an information as his daughter was died. The neighbours of the accused informed about the death to P.W.1. Immediately, after receipt of the said news, the family members of P.W.1 came to Thiruverumbur and lodged a complaint before P.W.13.

(iv) P.W.13-P.Rajendran, the then Special Sub-Inspector of Police, Thuvakkudi Police Station, on 30.03.2012 received a complaint from P.W.1 and registered a case in Crime No.169 of 2012 under Section 174 of Cr.P.C. The signature of P.W.1 found in the complaint was marked as Ex.P1 and the copy of the First Information Report was marked as Ex.P9. Further, the alleged complaint given by P.W.1 was marked as Ex.P20 through the Investigating Officer. After registration of the case, he forwarded the copy of the FIR to the Revenue Divisional Officer (RDO) for enquiry. Further he sent another one copy to the Deputy Superintendent of Police (Palanisamy, now died) for investigation.

(v) On receipt of the copy of the FIR, P.W.15-G.Sampath, the Divisional Officer took up the same for enquiry. On the



same day, he visited the Government Hospital and in the presence of witnesses, he held inquest. He recorded the statements from the witnesses and gave opinion as due to the demand of dowry made by the accused, the deceased committed suicide. The report given by P.W.15 was marked as Ex.P10 and the inquest report prepared by him was marked as Ex.P22. After preparing the inquest, he submitted an application before the hospital authorities for conducting autopsy over the dead body of the deceased Jaya @ Jayalalitha and afterwards, P.W.16-Dr.A.Ravikumar attached with the Government Medical College Hospital, Tiruchirappalli on the same day around 3.15 p.m., conducted autopsy and found the following injuries:-

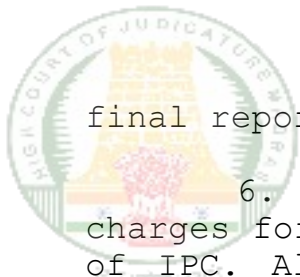
"Moderately nourished body of a female finger and toe nails intact and cyanosis injuries: (1) An oblique dark brown colour abrasion 27cm x 4 cm in the front and sides of the neck at the level of thyroid cartilage, the front of neck 4 cm from the right angle of mandible and 3 cm from the left angle of mandible and on the back of neck the ligature mark merges with hairline. On bloodless dissection of the neck the underlying ligatures are pale, firm and glistening.

2. Dark brown colour abrasion on the right side of lower leg 0.5 cm x 0.5 cm and linear abrasion on the right side of the neck 1 cm x 0.2 cm. The above mentioned wounds are antemortem. No other external, internal or bony wounds.

(vi) During such time, he collected a visceral particles and sent the same for chemical examination. In the chemical examination, P.W.18-S.S.Rajendran, has not detected any poison and therefore, he issued a report under Ex.P15 stating that no poison was detected. On receipt of the said report, P.W.16 issued a postmortem certificate under Ex.P12 along with final opinion as the deceased would appear to have died of hanging. The final opinion given by P.W.16 was marked as Ex.P13.

(vii) In the meantime, one Palanisamy, the then Deputy Superintendent of Police took up the case for investigation. He visited the scene of occurrence and prepared an Observation Mahazar under Ex.P18. He drawn the two rough sketch and the same was marked as Ex.P16 and Ex.P17. He examined the witnesses and recorded their statements. In the scene of occurrence, in the presence of witnesses, he recovered a saree (M.O.1) under the cover of seizure mahazar Ex.P21.

(viii) In continuation of investigation, after receipt of the report from the Revenue Divisional Officer, he altered the section of law from 174 Cr.P.C. to 498(A) and 304(B) of IPC. He sent the alteration report to the Court under Ex.P23. After concluding the investigation, he came to the positive conclusion that both the appellants herein and the other accused (now acquitted) are liable to be convicted under Sections 498(A) and 304(B) of IPC and filed a



final report, accordingly.

6. From the above materials, the trial Court framed the charges for the offences punishable under Sections 498(A) and 304(B) of IPC. All the accused denied the charges and opted for trial. Therefore, they were put on trial.

7. Before the trial Court, in order to prove their case on the side of the prosecution, 19 witnesses were examined as P.W.1 to P.W.19 and 23 documents were exhibited as Ex.P1 to Ex.P23, besides one material object (M.O.1)

8. Out of the above said witnesses, P.W.1-Sandhar is the father of the deceased. Before the trial Court, though he was treated as hostile witness, before that, he gave evidence as to the marriage solemnized between the first accused with the deceased and about the Sridhana property paid to them. He speaks about the occurrence as after 6 months from the date of marriage, all the accused made harassment to the deceased, wherein, they demanded the deceased to bring Rs.50,000/- and 5 sovereigns of gold from her parental. He had further given evidence that on 30.03.2012, all the accused had murdered his daughter and the same was informed to him by the neighbours of the accused.

(ii) P.W.2-Rangammal, P.W.3-Ammakkannu and P.W.4-Chinnaraja are the mother, sister and brother of the deceased respectively, spoken about the occurrence as after 6 months from the date of marriage, both the accused herein, started to give torture to the deceased and demanded to bring Rs.50,000/- and 5 sovereigns of gold from her parents house. They further stated about the panchayat held. According to them, the deceased frequently reported the manner of torture given by the accused. Further, they states about the result of panchayat, wherein, all the accused gave assurance as they do not made any further demand. It was a specific evidence given by them as after 2 months from the said panchayat, they received an information about the death of the deceased.

(iii) P.W.5-Chinnadurai, who is the cousin brother of the deceased, spoken about the panchayat held in respect to the dispute having by the first accused with the deceased. P.W.6-Manivel, P.W.7-Subramanian and P.W.8-T.R.Rajendran gave similar evidence in support of the evidence given by P.W.5.

(iv) P.W.9-T.V.Settu is the attested witness speaks about the preparation of Observation Mahazar by the Investigating Officer.

(v) P.W.10-Sekar is also gave evidence in respect of the preparation of Observation Mahazar.

(vi) P.W.11-Dr.Uma Kalyani attached with the Government Hospital, Tirappalli, gave evidence as on 30.03.2012, while she



was in duty, around 7.25 p.m., the first accused brought the deceased to the hospital for treatment. On examination, she found that the deceased brought dead. In this regard she issued an Accident Register copy under Ex.P8.

(vii) P.W.12-K.Senthilvel, is an alleged occurrence witness did not give any evidence in support of the case of the prosecution. Hence, he declared as a hostile witness.

(viii) P.W.13-P.Rajendran has spoken about the receipt of complaint from P.W.1 and about the registration of the case.

(ix) P.W.14-Marikannu gave evidence in respect to the identification of dead body before the doctor.

(x) P.W.15-G.Sampath, the then Revenue Divisional Officer, Tiruchirappalli, speaks about the preparation of inquest report and about the opinion given by him in respect to the reason for committing suicide by the deceased.

(xi) P.W.16-.Dr.A.Ravikumar speaks about the autopsy conducted over the dead body and about the opinion given by him in respect of the cause of death.

(xii) P.W.17-Kanimozhi, the then Inspector of Police, All Women Police Station, Thiruverumbur, speaks about the partial investigation made in this case.

(xiii) P.W.18-S.S.Rajendran, Junior Scientific Officer, speaks about the examination on visceral particles and about the issuance of report.

(xiv) P.W.19-Charles was working as personal writer of the then Deputy Superintendent of Police's Office, Thiruverumbur. According to him, the Investigation Officer Mr.Palanisamy is no more and being the reason that he was working along with him, he knows about the signature and handwriting of the Deputy Superintendent of Police Palanichamy. On that way, he gave evidence in respect of the investigation conducted by the then Deputy Superintendent of Police.

9. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. On the side of the defence, the first accused himself was examined as D.W.1 and gave evidence as on the third day of the occurrence, the Sridhana properties which were given by P.W.1 was returned to him. He gave further evidence as in the first night after refusing for cohabitation, the deceased torn the shirt owned by him. Further, the same was witnessed by P.W.3 and after came to the knowledge, both P.Ws.1 & 2 came there and brought the deceased to the temple, wherein, the Poosari gave sacred ashes (திருநீறு). He has further evidence that the deceased committed the same wrong and only due to



the same, the panchayat was held wherein, P.Ws.1 & 2 made assurance as their daughter become alright. According to him, the deceased was stayed in her parents house and only 2 months before the occurrence P.Ws.1 & 2 brought the deceased to his house and after reporting that she is having some pain without any intimation she committed suicide. It is the further evidence given by D.W.1 that after the occurrence, P.Ws.1 & 2 demanded Rs.5,00,000/- (Rupees five lakhs only) for not initiating any action against him. With the above evidence, the defence side evidence was closed.

10. Having considered all the above materials and on considering the arguments advanced by the learned counsels on either side, the learned Sessions Judge, Mahalir Court, Tiruchirappalli, came to the conclusion that both the appellants are found guilty under Sections 498(A) and 304(B) of IPC, convicted and sentenced the appellants as stated supra. Being dissatisfied with the said conviction and sentence, the appellants are before this Court with this criminal appeal.

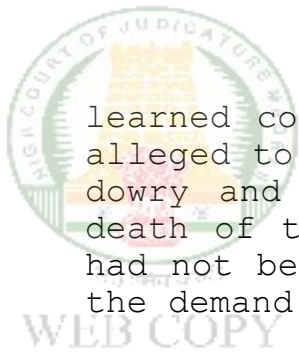
11. I have heard Mr.N.Anandkumar, learned counsel appearing for the appellants and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the State. I have also perused the records carefully.

12. The learned counsel appearing for the appellants would contend that in respect of the offence under Section 304(B) of IPC, necessary ingredients which are all required to prove the said offence has not been brought out by the prosecution. He would further submits that the evidence given by the defence witness is a real one and therefore, it cannot be construed that the accused had harassed the deceased with a view to receive the more dowry from the deceased.

13. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent police would submit that the minor contradictions found in the evidence given by prosecution witnesses are not sufficient to disbelieve the case of the prosecution. According to him, the evidence given by the first accused (D.W.1) is an after thought and the same has not been substantiated by producing the relevant documents. Accordingly, he prayed for dismissal of this appeal.

14. I have considered the rival submissions made by the learned counsels appearing on either side.

15. To cull out the entire evidence given by P.Ws.1 to 4, it would appear that after 6 months from the date of marriage, both the accused herein, gave a constant torture to the deceased and made a demand to bring Rs.50,000/- and 5 sovereigns of gold as additional
said situation, it is the submissions made by the



learned counsel appearing for the appellants that the said demand alleged to be made by the accused are not come within the purview of dowry and therefore, it cannot be construed that soon before the death of the deceased, the accused herein, made a dowry demand and had not been committed any cruelty or harassment in connection with the demand of dowry.

16. At this juncture, it would be relevant to see the judgment of our Hon'ble Apex Court in the case of **Rajinder Singh v. State of Punjab AIR 2015 SC 1359 : (2015) 6 SCC 477** wherein, our Hon'ble Apex Court has held as follows:-

"20. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage."

Further in the same judgment, it was held as follows:-

21. The first two ingredients are satisfied in the instant case. So far as the third ingredient, namely, whether the deceased was subjected to cruelty soon before the death is concerned, the Hon'ble Supreme Court in number of cases considered what exactly "soon before death" means;

The Hon'ble Supreme Court of India in Rajinder Singh v. State of Punjab AIR 2015 SC 1359 : (2015) 6 SCC 477 : LNIND 2015 SC 133 : (2015) 1 MLJ (Cr1) 737 after considering number of judgments, has finally held as follows:

22. This Court in Surinder Singh v. State of Haryana had this to say:

17. Thus, the words 'soon before' appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words 'soon before' is, therefore, important. The question is how 'soon before'?. This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to mind set of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a



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woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be as grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death."

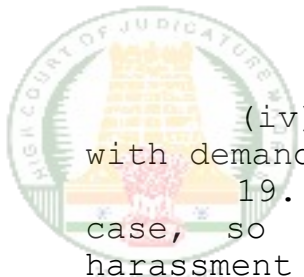
17. Now, applying the ratio laid down in the above referred judgment with this appeal, here it is a case projected by the prosecution is that after 6 months from the date of marriage, both the accused herein made demand to bring Rs.50,000/- and 5 sovereigns of gold. The further case of the prosecution is that in the panchayat held, Rs.50,000/- was paid by P.W.1. In respect to the said story, P.W.1 who is the person, who alleged to have paid Rs.50,000/-, gave evidence as in the Panchayat he paid Rs.50,000/- and 5 sovereigns of gold to the accused.

18. On the other hand, P.Ws.2 & 3, who are the family members of P.W.1 did not say about the paying of Rs.50,000/-. P.W.4, who is the son of P.W.1 gave evidence as he will pay Rs.50,000/- and 5 sovereigns of gold. Therefore, on a cull out the entire evidence given by the prosecution witnesses in respect of the further demand made by the accused, they had given an inconsistent evidence as to the demand made by the accused. Even assuming that the accused made dowry demand, being the reason that the same was made after 6 months from the date of marriage, the said demand is not within the meaning of dowry demand under Section 2 of Dowry Prohibition Act. In this occasion, for proving the offence under Section 304(B) of IPC, it is necessary for the prosecution to prove the following 4 conditions:-

(i) Death of the woman must have been caused by any burn or bodily injury or death must have been occurred otherwise under normal circumstances.

(ii) Death must have occurred within 7 years of her marriage

(iii) Soon before the death she must have been subjected to cruelty or harassment by her husband or any relative of her husband



(iv) Such cruelty or harassment must have been in connection with demand or dowry.

19. Now, applying the above said ingredients with the instant case, so far as the fourth ingredient namely, such cruelty or harassment must have been in connection with demand or dowry.

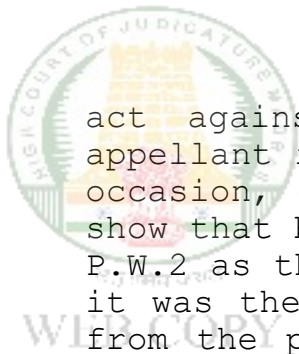
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20. Here is the case, the facts projected by the prosecution did not prove the nexus between the demand of dowry, cruelty or harassment, based upon such demand on the date of death of proximity. Therefore, the light of the above discussions stated supra, as far as the offence under Section 304(B) of IPC, I am of the opinion that the prosecution has failed to prove their case beyond reasonable doubt.

21. As far as the offence under Section 498(A) of IPC is concerned, it is an admitted fact that the alleged occurrence had happened in the matrimonial home. Though it was stated by the accused as the deceased is having some mental illness, in order to substantiate the same, he has not produced any relevant document to show that she is suffering from mental illness. In otherwise, the evidence given by P.Ws.1 to 4 are all in a similar way as after six months from the date of marriage, the appellants herein made a harassment and as a result of which, the deceased returned to her parental home and only after panchayat, which was arranged for settling the dispute having by the appellant with the deceased, the deceased was returned to her matrimonial home. Particularly, upon the undertaking given by the third accused she was returned to the matrimonial home, wherein, the alleged occurrence had happened. Therefore, as already stated, after six months from the date of marriage, there was a displeasure in the matrimonial home and the same was due to the attitude of the appellants. Though the panchayatars, who are all examined as P.Ws.5 to 8, are not supported the case of the prosecution with entirety before treating them as a hostile witness, they stated about the return of deceased to her parents home and about the panchayat held in respect to the matrimonial dispute having by the deceased. Therefore, the said evidence is sufficient to hold that in the matrimonial home, the deceased was subjected to cruelty and thereby, the said act committed by the accused is drive the deceased for committing suicide.

22. In this occasion, it would necessary to see whether both the appellants herein are committed willful conduct which is of such nature as is likely to drive the deceased to commit suicide or not. On going through the evidence given by P.Ws.1 & 2, who are the competent person to say about the occurrence, stated in their evidence as all the accused in this case had commonly demanded to bring the additional dowry.

23. On the other hand, as rightly pointed out by the learned
<https://hcservicescourts.gov.in/hcservices/> appellant that in the absence of any specific overt-



act against each appellant, we cannot hold that each of the appellant is held liable for committing the act of cruelty. In this occasion, on go through the evidence of P.W.2 the same would go to show that before left the matrimonial home, the deceased informed to P.W.2 as the first appellant alone assaulted the deceased. Further, it was the evidence given by P.W.2 that for take back the deceased from the parental home, the first accused raised an objection for not brought the deceased to his house. Therefore, the said evidence is quite clear that only the first accused alone responsible for the entire occurrence. Accordingly the said act committed by the first accused is within the limp of explanation (a) of 498(A) of IPC and therefore, I am of the considered opinion that the first appellant is guilty under Section 498(A) of IPC.

24. In fine, this Criminal Appeal is partly allowed. Conviction and sentence awarded under Section 304(B) of IPC is set aside in respect to both appellants and for the offence under Section 498(A) of IPC, the second appellant is acquitted and the first appellant is found guilty under Section 498(A) of IPC and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment. The period of imprisonment already undergone by the appellant shall be set off under Section 428 of Cr.P.C. The trial Court is directed to take steps to secure the custody of the first accused and make him to undergo the remaning period of the sentence.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To:-

- 1.The Sessions Judge,
Mahila Court, Tiruchirappalli.
- 2.The Inspector of Police,
Thiruverumpur Police Station,
Thiruverumbur,
Trichy District.
- 3.The Section Officer, (2C)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



4.The Judicial Magistrate No. VI,
Trichy.

5.The Superintendent,
Central Prison,
Trichy.

6.The Chief Judicial Magistrate, Trichy.

7.The Officer in charge,
Special Prison for Women, Trichy.

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

+1 CC to M/s.N.ANANDAKUMAR, Advocate (SR-31633[F] dated
07/10/2021)

Crl.A(MD)No.370 of 2015
06.10.2021

MA(CO)

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