



Bail Slip

Karthick, S/o Kannan, aged about 32(2016), Accused No.1, was released on bail vide order of this court in 06.09.2016, in Crl.MP(MD)No.7381 of 2016 in Crl.A(MD)No.139 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **02.08.2021**

CORAM:

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

Crl.A. (MD)No.139 of 2016

Karthick

: Appellant/Accused No.1

Vs.

State rep by
The Deputy Superintendent of Police,
Thirupparankundram Sub-Division,
Madurai District,
Thirunagar Police Station.
(In Crime No.4 of 2008)

: Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Sessions Judge, (Mahila Court), Madurai, in S.C.No.161 of 2011 dated 01.04.2016.

For Petitioner : Ms.N.Juliet Latha
Legal Aid Counsel

For Respondent : Mr.M.Muthumanikkam
Government Advocate

JUDGMENT

This criminal appeal has been filed to set aside the conviction and sentence dated 01.04.2016 passed in S.C.No.161 of 2011, on the file of the learned Sessions Judge (Mahila Court), Madurai.

2.The appellant is the first accused, his mother and father are arrayed as Accused Nos.2 and 3 in the above referred case. Before the trial Court, the appellant and other accused stood charged for the offence under Sections 498(A) and 304(b) or 302 of I.P.C. The accused denied all the charges and opted for trial. Therefore, they were put on trial on the charges. After full-fledged trial, the learned Sessions Judge [Mahila Court], Madurai, found the appellant/accused guilty of offence under Section 498(A) and 304(b) of I.P.C. Accordingly, the appellant alone convicted and sentenced to undergo three years rigours imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months simple imprisonment under Section 498(A) of I.P.C. Further, he has been convicted under Section 304(b) of I.P.C., and sentenced to undergo ten years rigours imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment. The learned Sessions Judge [Mahila Court], Madurai, has acquitted accused Nos.2



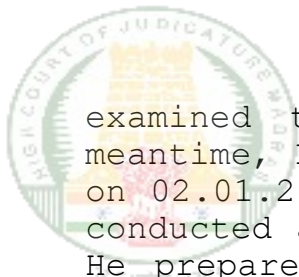
and 3 from all the charges. The sentences are directed to run concurrently. Challenging the conviction and sentence, the appellant/first accused is before this Court, by way of filing the present Criminal Appeal.

3.The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

3.1. The deceased Tamilselvi is the wife of the appellant/first accused. PW1-Pandiyammal is the mother of the deceased. PW2-Uma is the sister to the deceased and PW3-Sekar is the husband of PW2. The marriage between the appellant and the deceased was solemnized on 02.01.2008. After the marriage, the deceased Tamilselvi leads the matrimonial life in Vilachery along with appellant/accused. During the time of marriage, the accused was paid with 15 sovereigns of gold and Rs.30,000/- as stridhana property. After becoming pregnant the deceased was brought to her parents house, wherein she told to PW1 as her husband demanded to pay a sum of Rs.50,000/- for purchasing a Bike, for which the father of the deceased replied that the said amount will be paid after harvesting the sugarcane. On the same day, in the night hours, the first accused came to PW1's house and assaulted the deceased saying that instead of receiving Rs.50,000/-, she had happily stayed in her parents house. Ultimately, the accused brought the deceased to his house. After three days from the said occurrence around 10.00 p.m., PW1 received the Telephonic Message as her daughter died. Immediately, after receiving the said Message, PW1 along with her relatives went to the house of the accused, wherein the dead body of the deceased was found in the pool of blood. Immediately, she shifted her daughter's dead body to the Government Rajaji Hospital, Madurai. Thereafter, her husband and PW3 went to the Thirunagar Police Station and lodged a complaint under Ex.P1 against the accused.

3.2. PW11-Vimala, the then Sub-Inspector of Police, on 03.01.2008 at about 00.30 hours, while she was in Thirunagar Police Station, received the complaint from the husband of PW1 and registered a case in Crime No.04 of 2008 under Section 174 of Cr.P.C. The copy of the printed FIR was marked as Ex.P4. After registration of the case, she handed over the case records to the Deputy Superintendent of Police for investigation and also she handed over the copy of the FIR to the Revenue Divisional Officer, Madurai, for enquiry.

3.3. PW13-A.Ganesan, the then Deputy Superintendant of Police, on 03.01.2008, received the copy of the FIR and he took the same for investigation. On the same day, at about 8.00 a.m., he visited the scene of occurrence and in the presence of PW8-Dharmaraj and one Ganesan, he prepared an Observation Mahazar under Ex.P7. He prepared a sketch of the scene of occurrence and the same was marked as Ex.P6. He



examined the witnesses and recorded their statements. In the meantime, PW12-Jeyaraj the then Revenue Divisional Officer, Madurai, on 02.01.2008 received the copy of the First Information Report and conducted an enquiry in the presence of Panchayatars and witnesses. He prepared the inquest report under Ex.P10. After recording the statements of the witnesses, he came to the conclusion that the death of the deceased Tamilselvi to be caused due to the demand of dowry made by the accused. He sent a report to the District Collector in this regard. A copy of the report given by PW12 was marked as Ex.P5. He has further sent a requisition to the Doctor attached with the Government Rajaji Medical College Hospital, Madurai, for conducting autopsy over the dead body of the deceased.

3.4. Upon receipt of the requisition given by P.W12, PW9-Dr.Selvaraj and PW10-Dr.Vanitha conducted the postmortem and found the following injuries:-

'An Incomplete transversely oblique ligature mark 32 cms X 1.5 cms is noted on front sides and uppermost part of the neck leaving a gap of 8 cms noted on right side of neck.

The anatomical location of the ligature mark is as follows:-

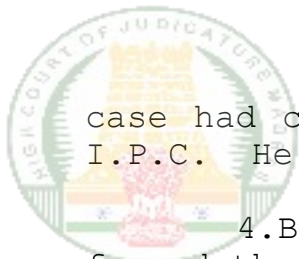
- 4cms from the left mastoid*
- 7 cms from the centre of chin*
- 8 cms from the centre of chin*

On bloodless dissection of the neck:

The base of the ligature mark is pale, hard, glistening white and parchment like. The underlying neck structures like thyroid, cricoid cartilages, and tracheal rings and tracheal rings and hyoid bone are normal. There is no extravasation of blood noted in the superficial and deeper planes of neck.'

They collected the visceral particles from the dead body of Tamilselvi and sent the same for chemical examination. In the examination, the Expert, who conducted the chemical examination did not deduct any poisonous substance. Therefore, after receipt of the chemical examiner's report, PW9-Dr.Selvaraj and Dr.V.N.Alaga Venkatesan, Tutor in Forensic Medicine, Madurai Medical College, Madurai, gave a final opinion (Ex.P.15) stating that the deceased would appear to have died of asphyxia due to hanging.

3.5. In continuation of investigation, PW13 after receipt of the report from PW12, altered the Section of law as Sections 498(A) and 306 of I.P.C and the same was marked as Ex.P14. After securing the accused, on 05.06.2008 he examined the Doctors, who conducted the postmortem and recorded their statements. He collected the certificate issued by the Doctor and ultimately, he came to the positive conclusion that the appellant and two other accused in this



case had committed the offence under Sections 498(A) and 304(b) of I.P.C. He filed a final report in this regard.

4. Based on the material available on record, the trial Court framed the charges for the offences under Sections 498(A), 304(b) or 302 of I.P.C. All the accused denied the charges and opted for trial. Therefore, all the accused was put on trial.

5. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 13 witnesses were examined as PW1 to PW13 and 15 documents were exhibited as Ex.P1 to Ex.P.15.

6. Out of the above said witnesses, PW1-Pandiammal is the mother of the deceased. In her evidence, she has stated about the details of marriage solemnized between the first accused and the deceased and about the payment of Stridhana property. She has further stated that after the marriage, both the first accused and the deceased were residing in Vilachery in an independent house and when at the time the deceased was five months pregnant, she was brought to her house for performing conventional function. Thereafter, while such a time the deceased is in her house, the accused came there and after made insult brought the deceased to his house. Later, within three days, she received an information that her daughter died and thereafter, PW1 along with the relatives went to the house of the accused and saw the dead body of her daughter in a pool of blood. In this regard, a complaint has been lodged by PW3.

6.1. PW2-Uma and PW-3-Sekar, also gave evidence in support of evidence given by PW1.

6.2. PW4 - Sampath speaks about the occurrence as in the year 2008, one day, at about 08.30 p.m. after hearing the news, he rushed to the appellant's house, wherein he found that the deceased Tamilselvi was hanging. According to him, he removed the dead body from the rope. PW5-Gurusamy has also visited the appellant's house after hearing the death Message of Tamilselvi.

6.3. PW6-Kumar, is the resident of Vilachery. He has stated before the trial Court as during the relevant point of time, he heard the news that after death of Tamilselvi, the appellant consumed poison and admitted in the hospital and after hearing the same, he visited hospital, in which the accused was taking treatment.

6.4. PW7-Mani is the neighbour of the accused. According to him, he has also heard the news, in otherwise before the trial Court he does not say anything about the occurrence. Hence, he has treated as hostile witness.



6.5. PW8-Dharmaraj is the witness to preparation of Observation Mahazar and Rough Sketch, he has not supported the case of the prosecution and therefore, he has also treated as hostile witness.

6.6. PW9 and PW10 are the Doctors attached with Government Rajaji Hospital, Madurai. They have stated about the details of the postmortem conducted on the dead body of the deceased Tamilselvi. They issued the postmortem certificate and final opinion as the deceased would appear to have died of asphyxia due to hanging.

6.7. PW11-Vimal, the then Sub Inspector of Police, Thirunagar Police Station, has stated about the receipt of the complaint and the registration of the case. PW12-Jeyaraj, the then Revenue Divisional Officer has stated about the receipt of copy of the FIR and preparation of inquest report. According to him, the deceased committed suicide due to the reason that the appellant demanded her to bring more dowry.

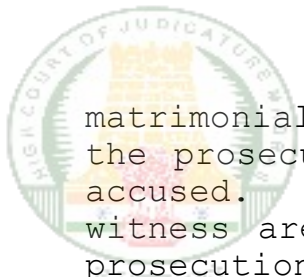
6.8. PW13-A.Ganesan, who is the Investigation Officer in this case, speaks about the details of investigation, arrest of accused, recording the statement from the witnesses and filing of final report.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., all the accused denied the same as false. However, they did not chose to examine any witness or mark any document on their side.

8. The learned Sessions Judge [Mahila Court], Madurai, after perusing all the above materials and on considering the arguments advanced by the learned counsel on either side, convicted and sentenced the appellant as stated supra. Aggrieved by the said conviction and sentence, the appellant is before this Court with this appeal.

9. I have heard Ms.N.Juliet Latha, learned counsel appearing for the appellant/first accused and Mr.M.Muthumanikkam, learned Government Advocate appearing for the State and also perused the records carefully.

10. The learned counsel appearing for the appellant would contend that since the appellant/first accused charged for the offences under Sections 498(A) and 304(b) of I.P.C, the evidence given by the prosecution witness must relates to the demand of dowry made by the accused. It is the duty for the prosecution to prove that before the occurrence, the deceased was subjected to cruelty or harassment by her husband or any relatives of her husband in connection with demand of dowry. He would further submit that here it is the case, the evidence given by PW1 reveals the fact that the deceased and the accused leads a happy



matrimonial life. Further, the witnesses examined on the side of the prosecution did not say about the demand of dowry made by the accused. According to him, the evidence given by the prosecution witness are having lot of contradictions and affects the root of prosecution case. Hence, she prayed to allow this appeal.

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11.Per contra, the learned Government Advocate (Crl.side) appearing for the State would contend that though there were some minor contradictions found in the evidence given by the prosecution witness, the same are all not in the form of affecting the entire case of prosecution. According to him, interference of this Court in the finding arrived at by the trial Court is not necessary.

12.I have considered the rival submissions made by the learned counsel appearing on either side.

13.First of all, since the appellant/first accused is convicted for the offences under Sections 498(A) and 304(b) of I.P.C, it would necessary for the prosecution to prove the following ingredients for convicting the accused under Section 498(A) of I.P.C :-

a) there is a married lady;

(b) she has died an unnatural death including death by burn or by bodily injury or by poisoning etc;

(c) that such death has occurred within seven years of the marriage;

(d) it must be found that soon before her death she was subjected to cruelty or harassment for, or in connection with any demand for dowry by her husband or any of his relatives.

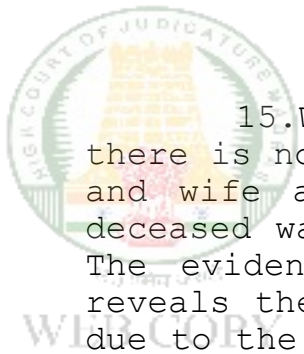
14.Further for convicting the accused under Section 304(b) of I.P.C., the prosecution must shown following ingredients:-

(a) that the victim was a married lady (she may also be a widow),

(b) that she has been subjected to cruelty by her husband or the relative of her husband,

(c) that such cruelty consisted of either (1) harassment of the woman with a view to coerce meeting a demand for dowry, or (2) a wilful conduct by the husband or the relative of her husband of such a nature as is likely to lead the lady to commit suicide or to cause grave injury to her life, limb or health;

(d) that such injury aforesaid may be physical or mental when the husband or the relative of a husband of a woman subjects such



15. When the position of law is thus, in the present case, there is no dispute that the appellant and the deceased are husband and wife and it is also an admitted fact that the death of the deceased was occurred within seven years from the date of marriage. The evidence given by the Doctor, who conducted the postmortem, reveals the fact that the deceased Tamilselvi committed suicide and due to the same, the death would occur. Therefore, the only aspect which is necessary to find out in this appeal is that whether the said Tamilselvi has committed suicide on account of demanding dowry by the accused.

16. In this regard, PW1 to PW3 have narrated the incident as during the time of occurrence, while the deceased was in advanced stage of pregnancy, she brought to the house of PW1, wherein, conventional ceremony was performed to the deceased. After three days from the date of the said ceremony, the accused came there and brought the deceased to his house. In otherwise, PW1 to PW3 did not say anything about the demand of dowry made by the accused. In respect of demand of dowry, PW1 has specifically stated in her cross-examination as after marriage, both the deceased and the first accused leads a happy matrimonial life in a separate house. She has further stated that immediately within one month from the date of marriage, the deceased became pregnant. Further, in respect of pregnancy, the first accused alone given treatment to the deceased. PW1 has further stated that she knew the details of pregnancy, after lapse of five months from the date on which the deceased has become pregnant. Therefore, the said evidence reveals the fact that after marriage, the accused herein did not demand any dowry from the deceased.

17. Further, PW1 being the mother of the deceased, who is a capable lady to say the matrimonial life of the deceased. In this regard, it is true that PW2 and PW3, who are relatives of the deceased, gave evidence as after performing conventional ceremony, the accused came to the house of PW1 and insulted the deceased as she was not fit to bring Rs.50,000/- from her parents house. Therefore, in respect of the demand of dowry alleged to be made by the accused, two sets of evidence were found available in the evidence given by the prosecution. The availability of two sets of evidence in respect to the single occurrence are always fatal to the case of prosecution.

18. Yet another aspect it is necessary to decide in this appeal is that PW1 gave evidence as when at the time she visited the house of the accused, the dead body of the deceased is found available with pool of blood. In this regard, PW11 the then Sub Inspector of Police, who visited the occurrence place, after receipt of the complaint, has stated in his evidence as in occurrence place, no such blood is found available. Therefore, in respect of the presence of blood in the occurrence place, the evidence given by the



19.Yet another lacuna is found available in the prosecution case is that while at the time of giving evidence as PW1 the mother of the deceased has stated before the trial Court as during the time she visited the house of the accused, a number of police persons were present there, but in respect to the same, in her cross examination she has stated that only after seeing the dead body of her daughter, the complaint has been lodged before PW11 by her husband. Therefore, in respect of lodging of complaint also, the evidence given by the prosecution witness does not inspire the confidence of this Court.

20.More than that, it is the evidence given by PW4 that after the occurrence, the first accused herein consumed poison and attempted to commit suicide, further, it was stated by him that the first accused was taking treatment in the Government Hospital for consumption of poison by the accused. In this regard, none of the witnesses examined on the side of the prosecution has not stated about the details in respect of consumption of poison by the appellant. Further, during the time of investigation, the rope which was used for committing suicide was not recovered by the prosecuting agency and the same was admitted by PW11. In this regard, no explanation is offered for non-recovery of rope, which is important material object to prove the charges framed against the accused.

21.In the light of the above discussions, I am of the firm opinion that the contradictions elicited from the prosecution witnesses would clearly show that the prosecution has not proved the case beyond reasonable doubt. Hence, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/first accused, by the learned Sessions Judge [Mahila Court], Madurai, in S.C.No.161 of 2011, dated 01.04.2016, is set aside and the appellant/first accused is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him. The appellant/first accused is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

To:-

1.The Sessions Judge,
Mahila Court,
Madurai.

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



2.The Judicial Magistrate No. VI,
Madurai.

3.'Do'through The Chief Judicial Magistrate,
Madurai.

4.The Superintendent of Prision Central Prison,
Madurai.

5.The District Collector,
Madurai.

6.The Director General of Police,
Mylapore, Chennai.

7.The Deputy Superintendent of Police,
Thirupparankundram Sub-Division,
Madurai District,
Thirunagar Police Station.

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

Copy to

The Section Officer,
Crl. Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) No.139 of 2016
02.08.2021

RK (10.08.2021) 9P 11C