



BAIL SLIP

The Petitioner / Accused namely Moidheen Male aged 33 years S/o.Abdul Khadar was directed to be released on bail vide order dated 28.03.2018 in CrI.MP.No.8773/2017 in CrI.A No.173/2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2022

PRONOUNCED ON : 01.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Criminal Appeal No.173 of 2016

Moidheen

.. Appellant

.. Vs ..

The State by Inspector of Police
Sankarapuram Police Station
Crime No.559 of 2010
Villupuram District.

.. Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records relating to the Judgment dated 18.02.2016 made in S.C.No.189 of 2014 on the file of the III Additional District and Sessions Court, Villupuram @ Kallakurichi and set aside the same.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.J.Subbiah
Government Advocate (CrI. Side)

JUDGMENT

The accused in S.C.No.189 of 2014 on the file of the III Additional Sessions Judge, Villupuram @ Kallakurichi, is the appellant herein.

2.The appellant/accused was prosecuted by the Deputy Superintendent of Police, Tirukoilur in Crime No.559 of 2010, for having caused dowry harassment upon his wife and in consequence, she died and thereby caused dowry death, offences punishable under Sections 498(A), 306 and 304 (B) IPC.



3. Before the Trial Court, the prosecution has examined P.Ws.1 to 17 and marked exhibits Exs.P.1 to 12. Besides, material objects were marked as M.O.1 to 5. On the side of the defence, no witness has been examined and none of the document was marked. However, on the side of the Court, C.W.1 was examined and Ex.C.1 and C2 were marked.

4. The Trial Court after considering the oral and documentary evidence found that the charges were proved as against the appellant/accused and hence, convicted and sentenced as follows:-

Sl.No	Offences under Section	Sentence
1.	498 (A) IPC	1 year Rigorous Imprisonment and fine of Rs.1,000/- in default 3 months Simple Imprisonment
2.	304 (B) IPC	10 years Rigorous Imprisonment of Rs.5,000/- in default 1 month Simple Imprisonment

5. Both the sentences are ordered to run concurrently. Since the offence under Section 306 IPC has not been proved by the prosecution, the appellant/accused was acquitted from the charges under Section 306 IPC. The period of imprisonment already undergone by the appellant/accused was ordered to be set off against the sentence of imprisonment as per Section 428 Cr.P.C.,.

6. Aggrieved by the said conviction and sentence, this Criminal Appeal has been filed by the appellant/accused.

Case of the Prosecution is as follows:-

7. The appellant/accused-Moideen is the husband of the deceased-Mubeena Begum. The appellant and the deceased got married on 28.06.2006, at Vada Semapalayam Village. They have 3 children. After one year of the marriage, the appellant started construction of a house, for which he demanded the jewels from his wife. Since she refused to give the jewels, there were frequent quarrel between them. Due to which, the deceased preferred a complaint before the All Women Police Station and it was compromised between the parties. Thereafter, both the appellant/accused and the deceased were living in a separate portion of P.W.1's house (mother of the deceased). Even thereafter, the appellant demanded the



deceased to transfer the vacant plot measuring about 0.8 cents, stands in the name of P.W.1-Rahima Bee, in his favour and also demanded a tractor. Since the deceased refused to act upon the appellant's wish, he treated the deceased cruelly. On 11.09.2010 at 10.30 am., when P.W.1 - Rahima Bee went to a private hospital in Sankarapuram, for taking treatment to her grand daughter. At that time, the deceased committed suicide by hanging herself in the central beam. When P.W.1 was nearing the house, she heard the loud cry of the appellant/accused, calling the name of the deceased. Since, the front door was locked, P.W.1 entered into the house through the back door and found the deceased lying on one side without any movement. P.W.1 along with the neighbours took the deceased to hospital. The private doctor at Sankarapuram reported that the deceased died one hour back. Hence, she preferred a complaint before the Saknarapuram Police and the complaint has been marked as Ex.P.1.

8.Upon receiving the complaint, P.W.13 - Ms.Sujatha, Sub Inspector of Police registered the same in Cr.No.559 of 2010 under Section 174(3) Cr.P.C., and sent the FIR and complaint to the Revenue Divisional Officer and also the other copies to the higher officials. Printed FIR is marked as Ex.P.4. On the complaint made by the P.W.1, Mr.Ganesan, Deputy Superintendent of Police, took up the case for investigation. On 12.10.2010, he went to the place of occurrence and prepared Observation Mahazar - Ex.P.9 and Rough Sketch - Ex.P.10 in the presence of Balusamy -P.W.11 and Sadaiyan. Thereafter, in the presence of the witnesses, Balusamy -P.W.11 and Sadaiyan, seized the material objects, M.Os.1 to 5. Further, the Investigating Officer received the Marriage Invitation -Ex.P.8 and altered the FIR for the offences under Section 498 (A), 304 (B) IPC and the alteration report is marked as Ex.P.11. Thereafter, he recorded the statements of P.W.2-Kamal Basha, maternal uncle of the deceased, P.W.3-Hajiran Bee, neighbour of P.W.1, P.W.4-Mohammed Ismail, P.W.5-Shahul Hameed, P.W.6-Ilavarasan, P.W.7-Vijaya and other witnesses.

9.P.W.14-Nagapooshna Raj, Revenue Divisional Officer, who conducted inquest over the dead body of the deceased, prepared Ex.P.5-Inquest Report. P.W.15-Dr.Rajmohan, Assistant Civil Surgeon conducted post mortem on the dead body of the deceased and prepared Post Mortem report-Ex.P.6 and Viscera Report-Ex.P.7. Due to transfer, P.W.17 handed over the case records to P.W.16-Loganathan, Deputy Superintendent of Police, who in turn conducted enquiry upon the remaining witnesses and filed final report for the offence under Section 304(B) IPC.

10.The Trial Court after considering the prosecution witnesses and the documents convicted and sentenced the appellant/accused as mentioned above.

11.The learned counsel for the appellant submitted that the trial court failed to appreciate the prosecution evidence



properly. The evidences of P.W.1, 3, 4, 8 and 9 with regard to dowry harassment are inconsistent and there are material contradictions in the prosecution witnesses. Further, with regard to the position of the deceased at the place of occurrence, P.Ws.1, 3, 4, 5 and 9 deposed inconsistently before the Trial Court. Further, the evidence of P.W.1 is not corroborating with the complaint-Ex.P.1 given by her before the respondent police. In fact, the appellant/accused and the deceased were all living together with P.W.1-mother of the deceased. In such circumstances, demanding of dowry by the appellant/accused is unbelievable. Further, the evidence of P.W.15-Dr.Rajmohan, strengthened the case of the defence that the deceased committed suicide. The Trial Court failed to consider the evidence of P.W.15-Dr.Rajmohan, properly. The prosecution failed to prove the charge and the Trial Court thus erred in convicting the appellant/accused and pleaded to allow the appeal.

12.The learned Government Advocate (Criminal Side) appearing for the State would state that the prosecution witnesses, P.W.1-mother of the deceased, maternal uncle of the deceased and other neighbours, P.W.3, 4, 5, 6 and 7 deposed clearly about the quarrel between the appellant/accused and the deceased. P.W.1-mother of the deceased lived along with the appellant/accused and her daughter. She spoken about the quarrel and the panchayat conducted by the Jamaat. The prosecution proved the charges levelled against the appellant/accused and the Trial Court has rightly convicted and sentenced the appellant/accused and there is no reason to interfere with the finding of the Trial Court and no merit in the appeal and thus pleaded to dismiss the appeal.

13.Heard the learned counsels and perused the materials available on record.

14.I have considered the matter in the light of the submissions made by the learned counsels.

15.Admittedly the appellant/accused married the deceased - Mubeena Begum on 28.06.2006. They have three children. The appellant/accused, deceased wife and P.W.1- Rahima Bee, mother of the deceased were all living together at P.W.1's house. According to P.W.1, the appellant/accused constructing a house and for that expenses, he demanded jewels from the deceased. Apart from this, he demanded 8 cents of land stands in the name of P.W.1. Since the deceased was not willing for the above stated demands, the appellant/accused frequently quarrelled with her. On 10.09.2010 morning, before Ramzan worship, the appellant/accused went to attend his sister's engagement function. The deceased refused to attend the function along with the appellant and she also prevented the appellant to attend the function. However, the appellant alone went to the function and came back at 5 pm... Since, the appellant was not available at home for celebrating Ramzan,



the deceased had not spoken with him. On the next day morning, at about 10.30 a.m., when P.W.1 along with the 6 months old girl baby of the deceased, went to a private hospital at Sankarapuram, for taking treatment. At that time, the deceased had committed suicide by hanging herself by using a saree in the central beam of the house. Thereafter, P.W.1 reached home at 12.00 hours and she found that the house was locked inside and heard the cry of the appellant as 'Mubeena....Mubeena....'. Immediately she went to back side of the house and seen her daughter lying on one side, without any movements. On hearing the crying sound, neighbouring people gathered in the house of P.W.1. Thereafter, they took the deceased to Muthuvel Hospital and where, the Doctor declared the deceased as dead. Therefore, at about 12.30 p.m., P.W.1 preferred a complaint before the Sankarapuram police station, suspecting the death of her daughter. The complaint has been marked as Ex.P.1.

16.Right from the inception of marriage, the appellant/accused and the deceased had misunderstanding and due to that, Jamath was convened. Thereafter, in All Women Police Station, Tirukoilur, a complaint was preferred by the deceased, stating that the appellant/accused demanding jewellery, tractor and money from the her and also treating her in a cruel manner. In the police station, both the parties arrived at a compromise. Even after that there were frequent quarrels took place and P.W.8, who is the maternal uncle of the deceased himself admitted in his deposition that he had conducted panchayat between the deceased and the appellant/accused for three times.

17.A perusal of the complaint-Ex.P.1, indicate the fact that the appellant/husband and the deceased/wife frequently quarreled for some domestic reasons and further the complainant herself stated that after some problems and panchayat, the appellant consented to come to P.W.1's house and lived with his wife. During the time of occurrence, they lived at the P.W.1's house. In the complaint-Ex.P.1, there is no element of harassment by way of dowry demand.

18.P.W.15-Dr.Rajmohan, who conducted post mortem on the body of the deceased, issued Ex.P.6-Post Mortem report and opined that the death of the deceased had been happened due to Asphyxia due to strangulation. Apart from the above, P.W.15 witnessed only one lacerated injury of 4 x 3 cm on the back side of the neck. He also deposed during cross examination that he did not find any finger prints around the neck of the deceased. Therefore, the evidence of Doctor clearly shows that the death of the deceased was only due to strangulation and there was no allegation that the appellant/husband murdered her. However, it was a case of unnatural death. Therefore, the question, whether the unnatural death of a woman was homicidal or suicidal is irrelevant for the purpose of Section 304 (B) IPC. Further, to attract the provision of



Section 304 (B) IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death she was subjected to cruelty and harassment in connection with the demand for dowry".

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19. I have considered the prosecution evidence of P.W.1. In the complaint she did not allege any demand of dowry in connection with the marriage. Except, P.W.1, all other prosecution witnesses are hearsay witnesses with regard to demand of dowry. Her evidence before the Trial Court clearly shows that there was some improvement. All the prosecution witnesses spoken about the small quarrels which took place between the appellant and the deceased. Every harassment or every type of cruelty would not attract Section 498 (A) IPC.

20. The meaning of the word 'cruelty' for the purpose of Section 304 (B) IPC has to be gathered from the language as it appear in the explanation of Section 498 (A) IPC, wherein cruelty means "any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or endangering the life limb or health whether mentally or physically of the woman are such harassment to coerce her or any other persons related to her to meet any unlawful demand for any property or valuable security". For the purpose of Sub Section (1) of Section 304 (B) IPC, "dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961".

21. In this case, quarrel between the appellant and the deceased with regard to some other domestic reasons and demand of the land stands in the name of P.W.1 and requesting his wife to give her jewels for construction of house that too after some years of marriage, not in connection with the marriage, can be inferred that the demand is only for advancing their life and such demand cannot be termed as dowry. Evidence regarding dowry demand is not convicting as accused is living at mother-in-law's house. In the absence of any evidence for demanding dowry, the presumption under Section 113 (B) IPC will not come in aid to the prosecution.

22. In this case, there is no specific allegation of any active role played by the appellant/accused for instigating the deceased to commit suicide. Evidence on record is insufficient in this regard. In the absence of any strong evidence that the appellant/accused harassed his wife, to meet the demand of dowry, the charge under Section 304 (B) will not attract. Unless cruelty is administered to be of a level that would give raise to suicide or it has infact given rise to committing of suicide, it would not be correct to record the conviction under Section 304 (B) and 498(A) IPC.

23. The order of conviction can be based only on legal evidence and not on hypothetical propositions or unwarranted inference. A moral conviction regarding the guilt of an



individual has no place in criminal jurisprudence. In this case, there is no satisfactory proof to make out the charges against the appellant/accused. Therefore, the appellant/accused is entitled for acquittal.

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24.Hence, the conviction and sentence imposed on the appellant/accused in S.C.No.189 of 2014 dated 18.02.2016 on the file of the III Additional District and Sessions Court, Villupuram @ Kallakurichi, is hereby set aside.

25.In the result, this Criminal Appeal is allowed and the appellant is acquitted from the charges leveled against him. Bail bond, if any executed shall stand cancelled and the fine amount paid, if any may be returned to the appellant.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Sankarapuram.
- 2.The Chief Judicial Magistrate,
Villupuram.
- 3.The III Additional Sessions Judge,
Villupuram @ Kallakurichi.
- 4.The Superintendent,
Central Prison, Cuddalore.
- 5.The Inspector of Police,
Sankarapuram Police Station,
Villupuram District.
- 6.The Public Prosecutor,
High Court of Madras.
- 7.The Section Officer,
Criminal Section Records,
High Court of Madras.

+1cc to Mr.N.Manokaran, Advocate SR. No.22569

Criminal Appeal No.173 of 2016