

Bail Slip

Petitioners, namely 1.K.Balu, 2.K.Sumathi (Accused in C.A.No.46 of 2014 on the file of the Principal session Judge, Villupuram) were released on bail vide order of this Court, dated 16.10.2014 and made in CRL.M.P.No.1 of 2014 in CRL.R.C.No.952 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2022	Pronounced on : 07.07.2022
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Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.R.C No.952 of 2014

1. K.Balu, M/A 30 years,
S/o.Kaliyaperumal.
2. K.Sumathi, F/A 45 years,
W/o.Kaliyaperumal.

Both are residing at,
Piliyar Kovil Street,
Arunapuram Post,
Tirukoilur Taluk,
Villupuram District.

... Petitioners/Accused 1 & 3

/versus/

The State Rep., by
The Deputy Superintendent of Police,
Tirukoilur,
Arakandanallur Police Station,
Villupuram District.

... Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 read with 401 of Cr.P.C., to call for the records in Criminal Appeal No.46 of 2012 dated 20.08.2014 on the file of the Principal Session Judge, Villupuram dated 20.08.2014 confirming the order passed by the II Additional Assistant Session Judge, Villupuram in S.C.No.267 of 2010 dated 08.08.2012 respect of Section 304(B) of I.P.C., to undergo 4 years of Rigorous imprisonment and to pay Rs.1000/- as fine may be set aside as the same is arbitrary and non application of mind.

For Petitioners : Mr.T.Arockia Dass, for
M/s.Dass & Law Associates

For Respondent : Mr.N.S.Suganthan,
Government Advocate
(CrI.Side)

O R D E R

Balu and Sumathi, the petitioners herein are the son and mother. They were ranked as 1st and 3rd accused before the trial Court. For sake of convenience, they are referred as accused 1 and 3.

2. The revision petition is filed by these two accused persons, against the concurrent finding of the Appellate Court upholding the conviction and sentence of the Trial court against them for the offence under Section 304 (B) I.P.C. The accused were convicted and sentenced to undergo four years R.I and to pay fine of Rs.1000/- in default, 3 months S.I imposed by the trial Court vide judgement dated 08/08/2012 and same was confirmed by the Appellate Court vide judgment dated 20/08/2014.

3. The case of the prosecution is that, deceased Alamelu is the wife of the first accused. They both got married on 30/11/2006. At the time of marriage, 10 sovereigns of gold jewels and Sridhana properties was given as dowry on the demand of A-1 and his family members. After marriage, there was harassment for more dowry by the the husband, father-in-law, mother-in-law and mother of the mother-in-law of the deceased Alamelu, who are the accused 1 to 4 respectively. The deceased came to her parents house for delivery and after delivery, she refused to go to her husband house fearing dowry harassment. Her father pacified her took her to the matrimonial home. She was again subjected to cruelty. On 19/01/2009 night all the accused joined together and insulted her for not bringing 5 sovereigns of gold jewel. The next day morning at about 5.30 a.m., she doused kerosene over her body and immolated herself. She was admitted in the hospital for treatment but died on 21/01/2009 at JIPMER Hospital, Pondicherry.

4. The II Additional Assistant Sessions Judge, Villupuram framed charges for offence under Sections 498(A), 306 and 304 (B) I.P.C against A-1 to A-4 and tried them.

5. To prove the charges, the prosecution has examined 11 witnesses and marked 9 documents.

6. The defence plea i). to suspect the F.I.R registered after 3 days delay; ii). P.W-1 admits that, he used to get the jewels of her sister and pledge it for his expense. However, the first accused has condoned and took his sister to

the matrimonial home; iii). The contradictions between PW-1 and PW-2; iv). The suppression of the earlier version of the prosecution that the child of the deceased accidentally hit the lamp and the fire caught the mother were all negated by the Trial Court.

7. Relying upon the evidence of PW-1 and his wife PW-2 (Brother and Sister-in-law of the deceased) for demand of dowry and Ex.P-3 the dying declaration of the deceased recorded by the Judicial Magistrate, and taking the testimony of P.W-4 as corroboration, the trial Court held the deceased committed suicide leaving her toddler due to the abetment and cruelty of dowry harassment met at the hands of her husband and his family members, hence convicted the accused and sentenced as below:-

(i). A-1 to A-4: Guilty of offences under section 498 (A), 306(3) and 304(B) of I.P.C. Sentenced to undergo 4 years R.I and fine of Rs.1000/- each in default, 3 months S.I.

(ii). A-1 to A-3: Guilty of offences under section 306 (3) I.P.C. Sentenced to undergo 4 years R.I and fine of Rs.1000/- in default, 3 months S.I.

(iii). A-1 to A-3: Guilty of offences under section 304 (B) I.P.C. Sentenced to undergo 4 years R.I and fine of Rs.1000/- in default 3 months SI.

(iv). A-4 : Guilty of offences under section 306(3) I.P.C and 304 (B) I.P.C. Sentenced to undergo one year R.I and fine of Rs.1000/- in default 3 months S.I. each. The period of substantive sentences ordered to run concurrently.

8. In the appeal preferred by the accused, the Appellate Court confirmed the conviction and sentence of A-1 and A-3 alone in respect of offence under section 304(B) I.P.C. It set aside the sentence and conviction rendered by the trial court in respect of offences under section 498 A IPC and 306(3) IPC against A-1 to A-4 and offence under section 304(B) IPC against Accused 2 and 4.

9. In the revision, the Learned Counsel for the revision petitioner, contended that, there is no evidence for the alleged dowry demand except the oral evidence of the interested witnesses P.W-1 and P.W-2. Through cross examination of P.W-1, the defence were able to establish that out of 5 sovereigns of gold jewels given at the time of marriage, 3 sovereigns were given back to P.W-1 and he pledged it for his need and not redeemed it. In spite of this, A-1 took her wife (the deceased) to his home. This admission of P.W-1 will disprove the allegation that there was demand of additional jewels from the parents of the deceased. The requisition letter of the police to the Judicial Magistrate, Pondicherry clearly say that, the injured has sustained burn injury due to

accidental fall of lamp. While so, the dying declaration implicating the accused on the instigation of the kith and kin of the deceased, has to be disbelieved, though it was recorded by a Judicial Magistrate. The delay of three days in registering F.I.R in spite of the proven fact that the police came to spot of occurrence and enquired the inmates of the house show that the truth has been distorted subsequently. P.W-9 admits he went to the hospital at Thirukovilur and enquired the victim but he did not register the FIR immediately. Therefore, the suppression of these fact happened soon after the occurrence gains importance. Further, the fate of RDO enquiry about the unnatural death of the married woman within 7 years of her marriage is not known PW-11, one of the investigating officer in this case feign ignorance of the enquiry report of R.D.O, despite the testimony of P.W-1 and P.W-2 that there was enquiry by RDO.

10. The Learned Counsel for the accused/revision petitioners relying upon the judgment of the Hon'ble Supreme Court Puran Chand -vs- State of Haryanan reported in 2010 (6) SCC 566, submitted that, the dying declaration relied by the prosecution bristles with suspicion. The voluntariness and truthfulness in the said statement is doubtful. The said dying declaration is the second statement of the deceased. The earlier statement is suppressed. The Courts below erred in relying upon the dying declaration which was in suppression of earlier statement.

11. The Learned Government Advocate (Crl.Side) for the respondent for the state submitted that, PW-9 have clearly stated in her evidence the cause for delay in registering the F.I.R. The injured was shifted from Thirukovilur hospital to JIPMER hospital at Pondicherry and that information was not available to her immediately. The allegation of suppression of earlier information is unfound and there was only one statement by the victim which was recorded by the Judicial Magistrate and marked as Ex P-3. The trust worthiness of this statement has been tested by both the Courts below and held to be reliable. On surmises that there was an earlier statement by the victim about the cause of the injuries, the defence try to take advantage of the entries made in requisition letter annexed to Ex P-3, which is not recorded based on the statement given by the victim. But based on the statement given by the members of accused family where the incident occurred. The entry made based on self serving statement of the accused persons cannot overweigh the statement of the victim duly recorded by a Judicial Magistrate under Section 164 Cr.P.C. which has been treated as dying declaration under section 32 of the Evidence Act since it speaks about the cause for her death.

12. Further, the Learned Government Advocate (Crl.Side) for the respondent submitted that, the defence theory that it was an accidental death, the deceased caught fire when the 7 months old toddler climbed the chair and pulled down the lamp is highly improbable and if that had happened then necessarily the toddler would have also sustained some burn injury.

13. The learned Government Advocate (Crl.Side) for the respondent submitted that the delay in registering the FIR properly explained. The dying declaration duly recorded by Judicial Magistrate proves beyond any pale of doubt that the deceased Alamelu was subjected to cruelty soon before her death and the appellants herein abetted her to commit suicide. The death has occurred within 7 years of marriage, hence the ingredients of section 304 (B) I.P.C is attracted and having proved the guilt beyond doubt, the concurrent finding needs no interference.

14. It is a case the deceased Alamelu and the 1st accused Balu got married on 30.11.2006 at Eswaran Kovil, Thirukovilur. The marriage was conducted by her brother P.W.1 (Elumalai). On 29.01.2009 at about 21.10 hours, the said Alamelu died at JIPMER Hospital, Pondicherry due to 50% burn injury. The prosecution case is that there was persistent demand of further dowry from her husband and in-laws. Since her brother was not able to meet out the demand, she took the extreme step of committing suicide. The said theory of prosecution is spoken through P.W.1, PW.2 and P.W.4. However, the defence version is that, on 20.01.2009, the 7 months old boy climbed the stool and pulled down the lamp, Alamelu was accidentally caught in the fire. First, she was taken to Thirukovilur Government Hospital and then shifted to JIPMER Hospital Puducherry and thereafter she died on 29.01.2009 out of septicemia.

15. The occurrence took place on 20.01.2009 at about 5.30 a.m. The rough sketch marked as Ex.P.7 indicates scene of occurrence which is outside the house in between cattle shed and backyard on his house. Though, the occurrence has been taken place on 20.01.2009, the F.I.R came to be registered only on 24.01.2009 at 7.15 hours, after recording the statement of the injured at JIPMER Hospital, Pondicherry.

16. P.W.10 Raja, Inspector of Police attached to Arakandanallur police Station, who registered the F.I.R after recording the statement of the victim admits that, the victim was first taken to Government Hospital, Thirukovilur for treatment on 20.01.2009 at about 5.30 hours. He admits that, in the letter addressed to the Chief Judicial Magistrate, Pondicherry, it is stated that Alamelu, wife of Balu sustained

burn injury while her 7 months child pulled Kerosene lamp and therefore, sought for recording her dying declaration.

17. P.W.11, Stalin, Deputy Superintendent of Police admits that, based on the information, he did not registered the F.I.R immediately. But, only after recording the statement of the victim, he registered the F.I.R and later, altered the charges. He also admits that, he did not make any enquiry at Thirukovilur Government Hospital, where the victim was taken up for treatment first.

18. The Learned Counsel for the petitioner strongly rely upon the lapse on the part of the Investigation Officer as a ground for acquittal. This Court, though, agree that there is lapse on the part of the investigation, in not registering the F.I.R as soon as information received regarding cognizable offence and the information found in requisition letter to Chief Judicial Magistrate, Pondicherry annexed to Ex.P.3. Contra to the prosecution case, it is to be analysed whether the said lapse has prejudice the accused in any manner.

19. Though the content of the requisition letter is based on the statement given by the victim neither P.W.9 (Sumathi) who is the author of the requisition letter nor the content of the letter indicate so. It is the information what P.W.10 received while making request for recording dying declaration. What stated by the injured was cause of her injury. It is recorded by Judicial Magistrate and same is marked as Ex.P.3 reading of the dying declaration and evidence (P.W.7) of Judicial Magistrate who recorded the statement, this Court finds that the statement of the injured has been recorded complying the necessary precaution and procedures. There is no indication to suspect that her statement was induced by some vested interest. The author of the requisition letter P.W.9 in fact admits in cross examination that he had made the requisition letter even before seeing the victim. The dying declaration of the deceased Alamelu had spoken about the comparison of her co-sister with her in laws house for not bringing enough dowry. She was not unable to bear the insult which she was facing for 2 years and therefore, she doused herself with kerosene and set herself fire. The statement of the death person in connection with cause of her death is relevant and has more evidentiary value. More so, when it is recorded by the Judicial magistrate after taking all the pre-caution, the minor inconsistency in the statement of prosecution witnesses and the contradictions are negligible when the statement of the deceased found to be reliable.

20. In the said circumstances, the reason for delay in registering the F.I.R appears to be the Police could not get

right information about the incident and only on receipt of the intimation from Pondicherry, they were able to find out the whereabouts of the victim and her family members. Furthermore, as explained by P.W.11, Stalin Deputy Superintendent of Police, RDO enquiry could not be arranged in view of the interstate issue between Pondicherry and Tamil Nadu, hence, it cannot be great lapse to taint the prosecution case.

21. The Hon'ble Supreme Court in Palani -vs- State of Tamil Nadu reported in (2020) 16 SCC 401, has held as below:-

"19. Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused. In the present case, PW 1 had no motive to falsely implicate the accused. As pointed out earlier, PW 1 seeing her own son being brutally attacked, the effect of the incident on the mind of the mother cannot be measured. Being saddened by the death of her son, it must have taken sometime for PW 1 to come out of her shock and then proceed to police station to lodge the FIR. The delay of two-and-a-half hours in lodging the complaint and registration of FIR and the delay in receipt of the FIR by the Magistrate was rightly held as not fatal to the prosecution case."

22. In the said circumstances, if there is some material to show that there was some other statement of the deceased and what is recorded by the Judicial Magistrate is the subsequent statements, there can be some suspicion about the case of prosecution. But the statement found in requisition letter based on vague information collected, so it will not be a substantive evidence to over weigh to disbelieve the dying declaration recorded by Judicial magistrate.

23. In this connection, it is also relevant that under Section 113 (B) of Indian Evidence Act, there is some

presumption as to dowry death, which reads as below:-

113-B of Indian Evidence Act 1872:-
Presumption as to dowry death.-

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.-For the purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860).

304-B of I.P.C which reads as below:-

304-B. Dowry death.-

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

24. In fine, this Court concludes the prosecution has proved the death of Alamelu as occurred other than under normal circumstances. Within 7 years of her marriage and soon before her death, she was subjected to cruelty and harassment. The proof for it is her own dying declaration and evidence of P.W.1, P.W.2 & P.W.4.

25. The attempt made by the accused to rebut the presumption has miserably failed because there is no evidence to show that it was an accident occurred due to fall of kerosene lamp and no evidence to show that 7 months old boy had climbed the chair and pull down the kerosene lamp. The theory set up by the defence found to be false, on perusing the rough sketch where the SOC is shown in the open backyard of the accused house.

26. Regarding the sentence the Learned Counsel for the revision petitioner states that A1 is taking care of his 12 years old son who is perusing 7th standard and A2 & A3 has become 100% blind and struggling for life.

27. This Court finds that the statute under Section 304-B prescribes minimum sentence of 7 years. Whereas, the Courts below had imposed imprisonment of 4 years R.I and fine of Rs.1000/- to the petitioners. The error in awarding lesser sentence without even assigning reason in a case of minimum sentence prescribed under the statute is bad in law. However, taking note of the fact that nearly 14 years have lapsed from the date of occurrence and the minor boy is now brought up by A1. Whereas A2 has become blind and having one foot in the grave. This Court is of the view pointing the error in sentence, no further interference is required.

28. In the said circumstances, this Court confirms the correctness and legality of the finding given by the Courts below. Hence, the Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

bsm

To

- 1.The Principal Session Judge, Villupuram.
- 2.The II Additional Assistant Session Judge,
Villupuram.
- 3.The Deputy Superintendent of Police,
Tirukoilur, Arakandanallur Police Station,
Villupuram District.

4.The Superintendent, Central Prison,
Cuddalore.

5.The Superintendent, Central Prison,
Vellore.

6.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Das Law Associates, Advocate, S.R.No.43751

Cr1.R.C No.952 of 2014

GJ(CO)
SB(22/07/2022)