

BAIL SLIP

The 4th Appellant / Accused No.4 viz Loganathan was directed to be released on bail by the order of this court dated. 16.9.2002 and made in Crl.M.P.No.9101 of 2002 in Crl.A.No.1131 of 2002.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2009

CORAM:

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

Crl.A.No.1131/2002

1.Purushothaman  
2.Rajabadhar  
3.Devaki @ Gowri  
4.Loganathan

.. Appellants /Accused 1 to 4

Vs

State by Inspector of Police  
Cheyyur Police Station  
Kancheepuram District  
(Cr.No.440/99

..Respondent /Complainant

Prayer:- This Criminal Appeal is filed against the judgement dated 23.7.2002 made in SC.No.250/2001 by the learned Assistant Sessions Judge, Maduranthakam, Kancheepuram District, convicting and sentencing the Appellants/A1 to A4 (1) for the offence under Section 306 of IPC and to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.2000/- each, in default to undergo three months Simple Imprisonment and (2) for the offence under Section 304(B) of IPC and to under go 10 years Rigorous Imprisonment each and (3) for the offence under Section 498A of IPC and to undergo three years Rigorous Imprisonment each and to pay a fine of Rs.1000/- each in default to undergo one month Simple Imprisonment each and ordering the sentences to run concurrently.

For Appellant : Mr.V.Gopinath, SC for  
Mr.L.Mahendran

For Respondent : Mr.Hasan Mohammed Jinnah, APP

ORDER

This Criminal Appeal is filed by A1 to A4 in SC.NO.250/2001 against the judgement dated 23.7.2002 passed by the learned Assistant Sub Judge, Maduranthagam, Kancheepuram District, convicting and sentencing them as stated supra.

2. The case of the Prosecution is as follows:-

The deceased Kanchana had committed suicide by hanging herself on 21.9.1999 at the residence of the accused. PW.1 and PW.2 are the father and mother of the deceased. The deceased was

given in marriage to the 1<sup>st</sup> accused by giving gold ornaments worth of 15 sovereigns and household articles. Though the parents of the deceased offered to get a cot and a bureau, the accused declined and instead asked Rs.4000/- in lieu of those articles. A1 and the deceased had lived in his native place in Thattampedu Village for about 14 months. A1 demanded the deceased to get a cot, godrej bureau and a dining table and the same were given to the couple. The accused told them that they would perform the Seemandam and the accused demanded 5 sovereigns of jewels, but the parents of the deceased could give only 1 sovereign. When PW.1 and PW.2 came to their home with Seervarisai, the accused refused to take them and performed the Seemandam in their house. The next day the deceased had been sent to her parents' house for delivery and she gave birth to a male child. After three months, she and her child were taken to the home of the accused and on demand for two sovereigns of gold ornaments, only one sovereign was given to the child. At the time of ear boring ceremony, the accused demanded five sovereigns, but PW.1 and PW.2 gave only one sovereign and they were not treated properly and before they could arrive at the place of ceremony, the function was held and they were insulted. Two months prior to her death, when the deceased attended the marriage of her relative at Cuddalore, she told her parents that they accused persons are torturing her for not giving the balance ornaments.

3. On 21.9.1999, the deceased committed suicide by hanging and the same was informed to PW.1 over phone, who had rushed to the house of the accused along with other Prosecution witnesses and relatives. PW.1 then lodged a complaint with the Cheyyur Police Station and the Inspector of Police, Cheyyur Police Station had registered a case in Cr.NO.440/1999 under Sections 304B, 498A and 306 of IPC and had prepared Ex.P15 printed FIR and sent a copy to the Revenue Divisional Officer for conducting an enquiry.

4. PW.17, Revenue Divisional Officer, had conducted inquest, examined the father, husband, father-in-law of the deceased and submitted the report Ex.P10. The statement of the above said witnesses are Ex.P8 Series and the inquest report is Ex.P9. He has given his report stating that there is no dowry harassment.

5. PW.21 D.Balachandran, the Deputy Superintendent of Police, Maduranthakam has taken up the case for investigation and recorded the statements of the parents of the deceased PW.1 and 2, brothers of the deceased PW.3 and 4, sister in law of the deceased PW.5, a tenant in the house of PW.1 as PW.6 and another relative of PW.1 as PW.7. Pws.1 to 7 had stated that the deceased had been subjected to cruelty by her husband and in laws for not getting a cot, a godrej bureau and a dining table and also four sovereigns of gold jewels for the child.

6. PW.21, Investigating Officer had inspected the place of occurrence and had prepared Ex.P13 and drew a rough plan Ex.P14. He had arrested all the three accused at Choonampedu and remanded them to judicial custody. He had sent the body for postmortem

through PW.15 Head Constable attached to the Cheyyur Police Station. PW.19 Dr.Hemalatha Gandhi attached to the Government Hospital, Madurantagam had conducted autopsy on the body of the deceased on 22.9.1999 at 11.00 a.m. and had opined that the deceased had died of Ashphyia due to hanging in his report Ex.P12. After examining some more witnesses and on completion of the investigation, he has laid charge sheet against the Appellants/A1 to A4 for the offences punishable under Section 498A, 306 and 304B of IPC before the court below.

7. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses, which they flatly denied as false. No witness was examined on the side of the accused.

8. The trial court, after hearing the arguments advanced on either side and looking into the materials available, took the view that the prosecution has proved the case beyond reasonable doubt and found the accused/appellants guilty under Sections Section 498A, 306 and 304B of IPC and awarded punishments as stated above, which is challenged in this Criminal Appeal.

9. The fact that the deceased had committed suicide by hanging is undisputed. The question which arises for adjudication is as to whether the Appellants are guilty of driving the deceased to commit suicide by their persistent demand of dowry and subjected her to harassment and torture with regard to the said demand of dowry.

10. According to the Prosecution, the deceased was forced to commit suicide because of consistent demand of balance of gold ornaments for the child, which could not be fulfilled by the parents. The accused persons started torturing and harassing the deceased which ultimately led to suicide.

11. After the incident, PW.17 the Revenue Divisional Officer had conducted enquiry on the next day at 8.50 a.m. and has examined PW.1 the father, A1 to A3, and the Village Administrative Officer. PW.1 has stated to him that he presented 15 sovereigns of jewels to his daughter, which was accepted by the accused and they told him not to give a cot and a bureau and instead asked him to give Rs.5000/-, whereas he gave a cash of Rs.4000/-. After two months his daughter asked him for a dining table and bureau which were also given to her. During Seemandam, the accused persons demanded a cash of Rs.5000/- instead of Seervarisai, but PW.1 could give only one sovereign and as PW.1 did not give the amount as demanded by them, they insulted them in the Seemandam Ceremony and after the delivery of the child, they asked for two sovereigns, but PW.1 presented only one sovereign to the child. He has further stated that his daughter attended the marriage of their relative on 6.9.1999 at Cuddalore and returned to her matrimonial home on 15.9.1999. To the Revenue Divisional Officer, he has only entertained a doubt that his daughter should have been subjected to cruelty by the accused persons.



12. On the other hand, A1 to A3 have stated to the Revenue Divisional Officer that the deceased had committed suicide as her desire to go for a separate living with her husband did not materialise. As there was no instances of harassment relating to dowry demand, PW.17 Revenue Divisional Officer had opined that it is not a dowry death.

13. On perusal of the complaint, Ex.P1 given by PW.1 to the Inspector of Police, Cheyyar Police Station, it is seen that PW.1 had stated that his daughter and A1 were leading the life happily and they were blessed with a male child. On 29.8.1989, the ear boring ceremony to the child was performed in a good manner and in lieu of the said Ceremony, A1 and A3 demanded 2 1/2 sovereigns of jewels for the child, but PW.1 gave only one sovereign. Thereafter, when the deceased came alone to attend the marriage of their relative at Cuddalore, she told him that the accused were torturing her and demanding the balance ornaments and he pacified her by saying that he would meet the said demand later.

14. The only instance spoken to by him is the statement made to him by his daughter that the accused (without naming the person as to who demanded) are torturing her with the demand of the balance jewels. But, in his evidence before the court had improved his version and stated that the accused persons demanded a cot, a bureau and a dining table which were given to them and demanded 5 sovereigns of jewels for the child, as against which they could only give one sovereign at the time of ear boring ceremony. Demand of a cot, a bureau, a dining table and 5 sovereigns of jewels at the time of Seemandam was not mentioned in the complaint as well as in the statement made during the enquiry conducted by the Revenue Divisional Officer. That apart, it is stated by PW.1 in the complaint and to the Revenue Divisional Officer that for ear boring ceremony two and half sovereigns were demanded, but in his testimony before the court he has added that five sovereigns were demanded.

15. PW.1 alone had stated that his daughter told him that she was tortured by the accused for not bringing the balance jewels for the child. It is significant to note that PW.2, mother of the deceased did not say anything about the disclosure made by her daughter regarding the cruelty meted out to her by the accused, when she attended the marriage at Cuddalore. She has only stated as extracted below:-"

"நகை பத்தவில்லை என்று என் வீட்டிற்கு என்னுடைய மகள் வந்தது. நகை பத்தவில்லை என்று ஆஜர் எதிரிகள் எல்லோரும் கேட்டதாக என்னுடைய மகள் சொல்லிச்ச. நாங்கள் எங்கள் மகளிடம் கொஞ்ச நாட்கள் கழித்து வாங்கித் தருவதாக சமாதானம் செய்து அனுப்பினோம். திரும்பவும் எங்கள் வீட்டிற்கு வந்து ஒரு வாரம் இருந்தார்கள். அதன் பிறகு என்னுடைய பேரக் குழந்தைக்கு காது குத்து விழா தட்டாம்பேட்டில் செய்தார்கள். அதற்கு நாங்கள் எல்லாம் போய் 1 சவரன் நகை செய்தோம் மற்றும் சீர்வரிசை எல்லாம் செய்தோம். காது குத்திற்கு ஒரு வாரம் கழித்து வந்து போச்சு. சனிக்கிழமை தாட்டாம்பேட்டிற்கு அவர்களை அனுப்பினோம். செவ்வாய் கிழமை காலம்பற எதிரி ராஜபாபாதர் சுமார் 8 மணியளவில் காஞ்சனா இறந்துவிட்டது என்று போன் செய்து சொன்னார். என்னுடைய பெண்ணுக்கு சீர் கொடுக்கவில்லை என்ற

காரணத்திற்காக செத்துபோய்விட்டது."

16. PW.2 has not stated anything about the insult and improper treatment meted out to them, when they attended the Seemandam and thereafter at the ear boring ceremony. She has not whispered anything about her daughter telling them about the torture suffered by her for not giving the balance jewels from her parents. In fact, her evidence indicates the cordiality prevailed between the two families and they have mutually presented dresses to each other when the deceased was brought to the matrimonial home after delivery of the child.

17. PWs.3 to 5 though have stated that the deceased told them that she was subjected to harassment by the accused persons for not getting the remaining jewels as per their demand, but they have not stated it to the investigating officer. On a close scrutiny of the testimony of PW.1, PW.3 to 6, it is seen that they have made deliberate improvements in their statements in order to make it consistent with the dowry harassment to the deceased.

18. Mr.V.Gopinath, the learned senior counsel for the Appellants contended that in the absence of any evidence to show that the deceased was treated with cruelty or harassment with demand for dowry soon before her tragic end, it is not permissible to take recourse to the legal presumption envisaged under Section 113B of the Evidence Act. The learned counsel placed reliance on the decision of Honourable Supreme Court rendered in the case of Shamlal Vs. State of Haryana [1997-SCC-Crl-759] wherein it is held that it is imperative to prove that soon before her death, the wife was subjected to cruelty and harassment in connection with the demand for dowry and in the absence of such evidence, the accused cannot be convicted under Section 304B of IPC.

19. He would further submit that even assuming that the Appellants demanded few sovereigns for the child at the time of ear boring ceremony, it would be considered only as customary gift in connection with the birth of the child, which is unrelated to the marriage ceremony and therefore, it would not fall within the ambit of 'dowry' as defined under Section 2 of the Dowry Prohibition Act.

20. The Honourable Supreme Court in the case of Satvir Singh and others Vs. State of Punjab and another with Tejinder Pal Kaur Vs. State of Punjab and others [2002-SCC-Crl-48], has clearly laid down that the 'dowry' mentioned in Section 304B of IPC should be construed as any property or valuable security given or agreed to be given in connection with the marriage and customary payments in connection with the birth of a child or other ceremonies which are prevalent in different societies cannot be enveloped with the ambit of 'dowry'. At paragraphs 20 and 21 of the said decision, it is held as below:-

"20. Prosecution, in a case of offence under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for

dowry and also that such cruelty or harassment was caused "soon before her death". The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

"2. In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies."

21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage."

21. In this case, the act attributed to the Appellants was that they harassed the deceased for not getting the balance of jewels for the child. In view of the law laid down by the Honourable Supreme Court, such a demand cannot be termed as 'dowry'. That apart, there must be a perceptible nexus between the infliction of dowry related harassment and cruelty on the woman and it should have happened soon before her death. There is dearth of evidence to show that the deceased was subjected to cruelty in connection with the demand for dowry soon before her death. In fact, after her disclosure to her father about the cruel treatment meted out to her for not fulfilling the demand of balance of ornaments, she had stayed in her parents' house for about a week and only thereafter, she had come to her husband's house. There is



absolutely no evidence to show that she was harassed in between the period of her return to the matrimonial home and the commission of suicide.

22. On a scrutiny of the entire evidence, I am of the considered view that the circumstances and instances shown by the Prosecution are far too meagre for reaching the conclusion that the Appellants had subjected her to cruelty or harassed her for or in connection with any demand of dowry.

23. The learned senior counsel for the Appellants submitted that there is absolutely no evidence to prove that they have abetted the suicide so as to warrant conviction under Section 306 of IPC. The learned senior counsel adverted to the evidence placed on record to support his argument that the ingredients of Section 306 of IPC have not been fulfilled. He relied upon the following decisions to countenance his argument that in this case there is absolutely no evidence to base a finding that the accused have abetted the commission of suicide by the deceased.

24. In *State of West Bengal v. Orilal Jaiswal* [AIR-1994-SC-1418; 1994-1-SCC-73], this Court has observed thus:-

The Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

25. It is held that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband or his relatives treated the deceased with cruelty is not enough.

26. In the case of *Sohan Raj Sharma Vs. State of Haryana* [2008-2-MLJ-Crl-645-SC], the ratio decidendi laid down by the Honourable Supreme Court is as below:-

"Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence. Under Section 306, when there is no proof of direct or indirect acts of incitement to the commission of suicide, the person cannot be convicted

under Section 306, Indian Penal Code, 1860".

27. Coming to the facts of the case, the Trial Court has erroneously held attributing to the acts of the Appellants as the cause for the suicide committed by the deceased without any evidence or basis to come to such a conclusion.

28. The only evidence to bring home the charge under Section 498A of IPC, is the evidence of PW.1 and PWs.3 to 6 that the deceased had told them that the Appellants were torturing her, as her parents failed to fulfill the demand of balance jewels. They have also deposed that when the deceased came to their house, she would tell them that the Appellants used to abuse her and tortured her. The Trial Court relied on the said evidence and held that charge under Section 498A of IPC against the Appellants was proved. Apart from the above statement attributed to the deceased, none of the witnesses had spoken anything which they had seen directly in so far as torture and harassment to the deceased was concerned.

29. Now the question which arises for consideration is as to whether the statements attributed to the deceased could be used as evidence for reaching upon a finding that the accused subjected the deceased to cruelty as contemplated under 498A of IPC. The evidence of the Prosecution witnesses about what the deceased had told them against the accused regarding the torture and harassment is inadmissible under Section 32(1) of the Evidence Act and such evidence cannot be looked into for any purpose.

30. In a recent judgement of the Honourable Supreme Court rendered in the case of Bhairon Singh Vs. State of MP [AIR-2009-SC-2603], the Honourable Supreme Court has held that except under Section 32(1) of the Indian Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence and the statement of a dead person is admissible in law, if the statement is as to the cause of death or as to any of the circumstances of the transaction which resulted in her death, in a case in which the cause of death comes into question. Since for an offence under Section 498A of IPC the question of death cannot be an issue for consideration. The Honourable Supreme Court has referred to its decision rendered in the case of Inderpal Vs. State of MP [2001-10-SCC-736], wherein the Honourable Supreme Court considered the matter thus:-

"4. We will consider at first the contention as to whether there is any evidence against the appellant which can be used against him for entering upon a finding that he subjected Damyanti to cruelty as contemplated in Section 498-A, IPC. PW-1 father of the deceased and PW-8 mother of the deceased have stated that Damyanti had complained to them of her plight in the house of her husband and particularly about the conduct of the appellant. PW-4 sister of the deceased and PW-5 a relative of the deceased have also spoken more or less on the same line. Exhibit P-7 and Exhibit



P-8 are letters said to have been written by Damyanti. In those two letters reference has been made to here life in the house of her in-law and in one of the letters she said that her husband had subjected her to beating.

5. Apart from the statement attributed to the deceased none of the witnesses had spoken of anything which they had seen directly. The question is whether the statements attributed to the deceased could be used as evidence in this case including the contents of Exhibits P-7 and P-8 (letters).

6. Before deciding that question we have to point out that the High Court came to a conclusion that the allegation that she committed suicide was not substantiated. A dying declaration was recorded by the Executive Magistrate in which the deceased had stated that she got burns accidentally from a stove. If that be so, death could not be the result of either any harassment or any cruelty which she was subjected to. In this context we may point out that the State has not challenged the finding of the High Court that death of Damyanti was not due commission of suicide.

7. Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of Damyanti contained in Exhibit P-7 or Exhibit P-8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498-A, IPC disjunctured from the offence under Section 306, IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned."

31. Therefore, taking the totality of the materials on record and facts and circumstances of the case into consideration, it will only lead to the irresistible conclusion that the analysis of evidence by the Trial Court is not in a right perspective manner and it warrants interference by this court.

32. In the result, this Criminal Appeal is allowed and the conviction and the sentence passed by the court below in SC.No.230/2001 are set aside and they are acquitted of the charges

levelled against them. The bail bond if any executed by the appellants shall stand terminated and the fine amount if any paid is ordered to be refunded to them.

Srcm

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

- 1.The Assistant Sessions Judge,  
Maduranthakam, Kancheepuram
- 2.-do- Through The Principal Sessions Judge,  
Chengalpattu
- 3.The Public Prosecutor,  
High Court, Madras
- 4.The Judicial Magistrate,  
Madurantagam
- 5.-do- Through The Chief Judicial Magistrate,  
Chengalpattu
- 6.The Inspector of Polie,  
Cheyyar
- 7.The Superintendent,  
Central Prison, Vellore.
- 8.The Director General of Police,  
Mylapore, Chennai -4
- 9.The District Collector,  
Chengalpattu

1 cc To Mr.L.Mahendran, Advocate, SR.57859

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Pre Delivery Order in  
Crl.A.No.1131/2002

NG (CO)  
SS (17.11.2009)