

DATED 22.7.2010

CORAM

THE HONOURABLE MR.JUSTICE K.N.BASHA

Crl.A.No.1036 of 2003

Nagararajan .. Appellant/Accused No.1

Vs

State rep. By

The Inspector of Police,

Sembiam Police Station,

Chennai-10 .. Respondent/Complainant

Prayer: Criminal Appeal filed against the judgment of conviction and sentence dated 18.5.2003 made in S.C.No.167/2003 on the file of Addl. District and Sessions Judge (IV Fast Track Court), Chennai.

For Appellant : Mr.T.V.Krishnakumar

For Respondent : Mr.J.C.Durairaj, GA (Crl.side)

J U D G M E N T

The challenge in this appeal is to the judgment of the learned Additional District and Sessions Judge (Fast Track Court IV), Chennai dated 18.5.2003 made in S.C.No.167/2003, convicting the appellant who has been arrayed as A1, for the offence under Section 498A IPC and 306 IPC and sentencing him to undergo 5 years rigorous imprisonment and convicting the appellant for the offence under Section 304-B IPC and sentencing him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment. The sentences are ordered to run concurrently. There are two accused in this case viz., A1 & A2 and A2 has been acquitted by the trial Court.

2. The background facts of the case in a nutshell are hereunder:

2.1. A1 is the husband of the deceased. A2 is the mother of A1. The marriage between A1 and the deceased took place on 16.9.1999. A female child was born out of their wedlock. At the time of marriage, PW1, the father of the deceased has given 40 sovereign jewellery and Kinetic Honda two wheeler to A1, apart from household articles. A1 was running business under the name and style of 'Kamatchi Travels' and as there was loss in the said business, he has asked financial assistance through the deceased from PW1. PW1 in turn took up a chit for Rs.85,000/- which was valued at Rs.1,00,000/- and given the said amount to the deceased. Again he has obtained a loan of Rs.50,000/- for the sake of his daughter, the deceased for lesser interest. 2.2. A1 and A2 frequently subjected the deceased to cruelty by asking her to get money from her parental house. Lastly, a week prior to the death of the deceased, A1 asked Rs.6,000/- for putting up a mechanic shed and PW1 gave that amount. Subsequently both A1 and A2 came to the house of PW1 after going to the Doctor for medical check up. PW1 asked them to stay back at his house, but they informed that, they would come on the wedding day of PW1 i.e., on 4.6.2001. 2.3. On 3.6.2001 at 11.00 p.m, PW1's brother's son one K.Prasad came and took PW1 to Kilpauk Medical College Hospital, where he found that his daughter already died. PW11, father of A1

stated that, on 3.6.2001, the deceased went into her room with the child. At 4.30 p.m, he heard the crying of the child. Both PW11 and A2 knocked the door but it was bolted inside. When they saw through the window, they found the deceased was hanging from the fan. They break open the door with the help of neighbours. They have called for nearby doctor. Thereafter, PW11 gave a report Ex.P6, which was received by one Devarajan, Sub-Inspector of Police. He registered the case in Crime No.740/2001 under Section 174 Cr.P.C. Ex.P8 is the F.I.R. 2.4. As the death has occurred within 7 years from the date of marriage, the investigation was taken up by PW13, Deputy Superintendent of Police. He went to the scene of occurrence and prepared Observation Mahazar, Ex.P9 and Rough Sketch, Ex.P10 in the presence of witnesses. He recovered nylon saree, M.O.1 under Ex.P11. He examined the witnesses. He has altered the offences to one under Sections 498A, 306 and 304-B IPC. The altered F.I.R is Ex.P12. 2.5. PW12, the Tahsildhar conducted inquest on the dead body of the deceased. He held the inquest on 3.6.2001 and submitted the inquest report Ex.P7. It is stated in the inquest report that, there was no dowry demand.

2.6. PW10, the Doctor attached to Kilpauk Medical College Hospital, conducted postmortem on 4.6.2001. Ex.P4 is the postmortem report. He found the following injuries:

A brown colour incomplete ante mortem ligature abrasion over the front and side of the neck 23 x 3 cm above the Thyroid cartilage. On the right side it was 4 cm below the right mastoid process and 7 cm below the left mastoid process. The are underneath the ligature abrasion was pale and parchment. There was no extravasation of blood below the ligature abrasion. The hyoid bone and thyroid cartilage were in tact. Tongue, nails were intensively cyanosed. No other external or internal injury present. 2.7. PW10 is of the opinion that the deceased would appear to have died of Asphyxia due to hanging.

2.8. PW13, in continuance of his investigation, arrested A1 and A2 on 5.6.2001 at Perambur Paper Mills Market Road.

2.9. PW14, on perusal of the records and statements recorded by PW13, laid the charge sheet on 21.8.2001 for the offence under Sections 498A, 306 & 304-B IPC.

3. The prosecution, in order to substantiate its case, examined PWs.1 to 14, filed Exs.P1 to P12 and marked M.O.1.

4. When the accused were questioned under Section 313 Cr.P.C., in respect of incriminating materials appearing against them, both the accused have come forward with the version of total denial and they have stated that they have been falsely implicated in this case.

5. Mr.T.V.Krishnakumar, learned counsel appearing for the appellant, vehemently contended that the prosecution has miserably failed to prove its case by adducing clear and consistent evidence and put forward the following contentions: (1) There is absolutely no materials to implicate the accused for the demand of dowry.

(2) Even as per the admitted version of PW1, A1 was cordial with him throughout.

(3) The evidence of PW1 discloses that, A1 and the deceased frequently visited the house of PW1, even a week prior to the date of occurrence and there is absolutely no materials to show that, there was any strained feelings between A1 and the deceased. (4) PW1 categorically admitted that the marriage and seemandam expenses were met only by the accused house. Such being the position, it is unbelievable to allege that the accused demanded dowry.

(5) There is absolutely not an iota of evidence available on record to show that soon before the death, the deceased was subject to cruelty by A1.

(6) The evidence of PWs.2 & 3 is also vague and they have not come forward with any definite version of allegation of cruelty or demand of dowry.

(7) The report in this case was given only by PW11, the father of A1 and the accused was present at the scene after the occurrence and the conduct of A1 proves his innocence.

(8) The RDO report, Ex.P7 discloses that, there is no dowry demand from the accused.

(9) Even as per the evidence of independent witness PW7, it is quite clear that the relationship of A1 and the deceased are cordial and he has specifically stated in the chief examination that the accused family is a affluent family.

6. Per contra, Mr.J.C.Durairaj, learned Government Advocate (CrI.side) contended that the prosecution had proved its case by adducing clear and cogent evidence through PWs.1 to 3 viz., father, mother and brother of the deceased. It is contended that, there is no infirmity or inconsistency in the evidence of PWs.1 to 3. The learned Government Advocate (CrI.side) further submitted that, PW1 has categorically stated that A1 demanded finance due to the loss of his business in travels and further demanded an amount of Rs.6,000/- for putting up a mechanic shed. It is submitted that the said version of PW1 is corroborated by the version of PW2. Therefore, it is submitted that the prosecution has proved its case beyond reasonable doubt against the accused.

7. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly perused the entire materials available on record.

8. At the outset, it is to be stated that the main allegation as per the version of PW1 is revolving around financial assistance sought for by A1 through his daughter due to the loss of his business in travels. There is absolutely no other allegation of demand of dowry or cruelty. It is categorically stated by PW1 that on 24.2.2001, A1 having suffered loss in the travel business namely Kamatchi Travels sought for financial assistance and he has taken a chit of Rs.85,000/- which is valued Rs.1,00,000/- and given to the deceased. Again he has stated that, he has obtained a loan of Rs.50,000/- for lesser interest to her daughter. It is further stated by PW1 that, for putting up a mechanic shed, he has given Rs.6,000/- to his daughter a week before the date of occurrence.

9. It is pertinent to note that, at no point of time, it is alleged by PW1 or PW2 that, A1 directly demanded any amount from PW1. It is categorically admitted by PW1 that, A1 was cordial with him and he has never questioned A1 or A2 in respect of money alleged to have been demanded by A1. It is also categorically admitted by PW1 that, he has not whispered a word about the alleged demand of such amounts by A1 to anyone of his relatives. Hence, by no stretch of imagination, it could be stated that, seeking for financial assistance would amount to demand of dowry. At this juncture, it is relevant to refer to the decision of the Hon'ble Apex Court in Appasaheb and Another v. State of Maharashtra reported in (2007) 9 SCC 721, wherein the Hon'ble Apex Court has held as under: "10. Section 2 of the Dowry Prohibition Act reads as under:

"2. Definition of 'dowry'.- 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.

11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business of transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garage Nylons Ltd. and Chemical and Fibres India Ltd. v. Union of India). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood." The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case also admittedly, A1 sought for only financial assistance for his travels business and for putting up a mechanic shed and there is not an iota of material available on record to show that, at any point of time, A1 has demanded dowry.

10. It is pertinent to note that, PW1 admitted that the marriage and seemandam expenses were met by A1's family. Even after the unfortunate incident of the death of the deceased, it is categorically admitted by PW1 that A1 returned the jewellery put by PW1 and even as well as the jewellery put by A1's family. It is seen that, even a week prior to the occurrence, as per the categorical admission of PW1, A1 came along with his wife, the deceased to his house after taking the deceased for medical check up and they left the house saying that, they would visit again on the wedding day of PW1 i.e., on 4.6.2001. This specific admission of PW1 makes it crystal clear that the deceased was not subjected to any cruelty soon before her death. It is pertinent to note that the RDO report, Ex.P7 discloses that, there is no dowry demand from the accused.

11. At this juncture, it is relevant to refer to the specific evidence given by PW7, who is an independent witness. PW7 has categorically stated that A1's family is a well-off family and both A1 and the deceased were living happily and cordially without any quarrel between them. At this juncture, it is relevant to refer to the principle laid down by the Hon'ble Apex Court, in respect of ingredients of the offence under Section 304-B IPC. The Hon'ble Apex Court in Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar reported in (2005) 2 SCC 388 has held as under: " In order to attract application of Section 304-B IPC, the essential ingredients are as follows:

- (i) The death of a women should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the women soon before her death.

Presumption under Section 113-B, is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory for the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials: (i) The question before the court must be whether the accused has committed the dowry death of a women. (This means that the presumption can be

raised only if the accused is being tried for the offence under Section 304-B IPC). (ii) The women has subjected to cruelty or harassment by her husband or his relatives.

(iii) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(iv) Such cruelty or harassment was soon before her death.

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be materials to show that "soon before her death", the victim was subjected to cruelty or harassment "for or in connection with the demand of dowry". Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before her death" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test as indicated by the said expression both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. The determination of the period which can come within the term "soon before" under Section 114 Illustration (a) is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate live link between the effects of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the women concerned, it would be of no consequence." The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case also there is not an iota of material available on record to show that the deceased was subjected to cruelty soon before the death and there is absolutely no existence of a proximate or live link between the effects of cruelty based on dowry demand and the death concerned. In view of the above said finding, this Court is of the considered view that the prosecution has miserably failed to prove the case for the offence under Section 304-B IPC.

12. Now coming to the charge for the offence under Section 306 IPC, it is to be stated at the outset that, even in respect of offence under Section 306 IPC, the prosecution has miserably failed to prove its case as the evidence adduced by the prosecution do not constitute the ingredients of the said offence. As it is already pointed out, there is absolutely no evidence available on record, to show any quarrel on the fateful date of occurrence between A1 and the deceased or prior to the date of occurrence, driving the deceased to take the extreme step of committing suicide. At this juncture it is relevant to refer the decision of the Hon'ble Apex Court in Hans Raj v. State of Haryana reported in AIR 2004 SC 2790, wherein the Hon'ble Apex Court has held as under: " The mere fact that a women committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health of the women. Where in a criminal trial against husband for abetment of suicide by his wife, the prosecution was guilty of improving its case from stage to stage inasmuch as the allegations that the accused did not like to keep the deceased-wife with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the accused intended to re-marry and had told his wife about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, did not find place in the statements recorded by the police in the course of investigation and these allegations were made at the trial for the first time and all that

was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife, sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang' and the other allegation that the accused was aggrieved of the fact that his sister was not being properly treated by her husband who was brother of the deceased was also appeared to be untrue, it was held that the presumption under S.113-A of the Evidence Act could not be invoked to find the accused guilty of the offence under S.306 I.P.C." The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case it is pointed out that A1 and the deceased were living happily as per the admission of the independent witness PW7. Therefore, this Court has no hesitation to hold that the prosecution miserably failed to establish the offence under Section 306 IPC and under Section 498A IPC.

13. In view of the aforesaid reasons, this Court has come to the irresistible conclusion that the impugned judgment of conviction is unsustainable. Accordingly, the appeal is allowed and the conviction and sentence imposed on the appellant by the learned Additional District and Sessions Judge (IV Fast Track Court), Chennai dated 18.5.2003 made in S.C.No.167/2003 is hereby set aside. Fine amount, if any, paid by the appellant is directed to be refunded to the appellant. jvm

To

1. The District and Sessions Judge (IV Fast Track Court),

Chennai

2.The Public Prosecutor,

Madras High Court