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Crl.A.No.598 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.598 of 2016

Moorthy

... Appellant

Vs.

1. The State Represented by
The Inspector of Police,
Vikkravandi Police Station.
(Crime No.227/2013)

2. Jagan @ Manimaran

... Respondents

PRAYER: Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973 against the judgment dated 10.02.2015 passed in S.C.No.555 of 2013 by the learned Sessions Judge, Magalir Needhi Mandram, (Fast Track Mahila Court), Villupuram.

For Appellant : Mr.M.G.Udayashankar

For R1 : Mr.S.Rajakumar
Additional Public Prosecutor (Crl.side)

For R2 : Ms.Nethra
Legal Aid Counsel



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JUDGMENT

Challenging the order of acquittal dated 10.02.2015 passed in S.C.No.555/2013 by the learned Sessions Judge, Magalir Needhi Mandram, (Fast Track Mahila Court), Villupuram, the present appeal is filed by the father of the deceased Savitha.

2. The case of the prosecution is that the deceased Savitha, the daughter of the defacto complainant married the second respondent / accused Jegan @ Manimaran on 02.05.2007. Their marriage was a love marriage and they were blessed with two male children by name Nithish and Santhosh.

2.1. According to the prosecution, the accused used to come home in an inebriated condition and demand dowry from his wife (the deceased). Savitha unable to meet out torture at the hands of the second respondent committed suicide on 09.04.2013 by consuming Orgeno phosphorous toxic substance in her matrimonial home. She was immediately rushed to the



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Government Hospital, Villupuram on 09.04.2013 and died on 13.04.2013.

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2.2. Her father (the appellant) lodged a complaint with Thiru.Harikara Sukan (P.W.11), the then Sub Inspector of Police, Villupuram Police Station on 10.04.2013. P.W.11 registered an FIR in Crime No.227/2013 (Ex.P10) against the second respondent / accused for the offences punishable under Section 309 IPC.

2.3. He took up investigation on 11.04.2013 went to the place of occurrence, prepared an observation mahazar (Ex.P11) and a rough sketch (Ex.P12) in the presence of the witnesses Dhandapani (P.W.5) and Manikandan (P.W.6).

2.4. On receipt of death intimation from the hospital on 13.04.2013 he altered the section from 309 IPC to 304 (B) IPC and sent the alteration report (Ex.P14) to court. He then placed the entire records before Thiru.J.Sankar, the then Deputy Superintendent of Police for further investigation.



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2.5. Thiru.Supothkumar (P.W.9), Revenue Divisional Officer, conducted an inquest on the body of the deceased and the inquest report was marked as Ex.P7.

2.6. Dr.Lalidhraj Deepak (P.W.7) and Dr.Pugazhendhi (P.W.8), medical officers attached to Government Hospital, Villupuram, conducted postmortem on the body of the deceased and sent the visceral organs for chemical analysis. After getting viscera report they gave the final opinion stating that 'the deceased appear to have died due to Orgeno phosphorous Poisoning.'

2.7. Thiru.J.Sankar (P.W.12), Deputy Inspector of Police, examined the witnesses individually and recorded their statements under Section 161(3) Cr.P.C. He arrested the accused on 18.07.2013 at Vikravandi toll gate and recorded his confessional statement. He then produced him before the Judicial Magistrate Court No.II, Villupuram for remanding him to



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judicial custody.

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2.8. P.W.12, after completing the investigation laid a final report before the Judicial Magistrate Court No.II, Villupuram in P.R.C.No.87/2013, who in turn committed the case to the Principal Sessions Court, Villupuram after furnishing copies of records to the second respondent under Section 207 Cr.P.C.

2.9. The learned Principal Sessions Judge, Villupuram took up the case on file in S.C. No.555/2013 and made over the same to the Sessions Court, Fast Track Mahila Court, Villupuram. The Learned Sessions Judge, Fast Track Mahila Court, Villupuram, framed charges against the accused for the offences punishable under Sections 498(A), 304(B) IPC.

2.10. In order to bring home the guilt of the accused, the prosecution examined 12 witnesses and marked 16 documents. When the accused was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 of Cr.PC, he denied of having



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committed any offence. However, he did not examine any witness on his side.

2.11. The learned trial court judge after analysing the oral and documentary evidence on record acquitted the accused vide his judgment and orders dated 10.02.2015, aggrieved over which, the father of the victim has filed the present criminal appeal.

3. Heard Mr.M.G.Udayashankar, learned counsel for the appellant, Mr.S.Rajakumar, learned Additional Public Prosecutor for the first respondent and Ms.A.Nethra, learned Legal Aid Counsel for the second respondent.

4. The appellant (P.W.1) is the father of the deceased and P.W.2 is her mother. P.W.4 to P.W.6 are the neighbours of the accused's family. P.W.4 to P.W.6 did not support the case of the prosecution and therefore, they were all treated hostile. The prosecution in order to prove the case mainly relied on the evidence of P.W.1 to P.W.3. P.W.1 in his deposition had denied the



complaint lodged by him with the Sub Inspector of Police on 10.04.2013.

His specific contention was that the relatives of the accused forced him to file a complaint against the accused. Thus, he denied the entire complaint given by him.

5. A perusal of the complaint also shows that P.W.1 had stated in his complaint that her daughter Savitha (deceased) was suffering from prolonged severe stomach pain and therefore, she had consumed insecticide Orgeno phosphorous poison. It is also his evidence that on 11.04.2013 he filed a another complaint before the very same police. However, the said complaint was not adduced by the prosecution.

6. P.W.2, the mother of the deceased and P.W.3 (sister of the deceased) had deposed that the deceased was murdered by the family of the accused. P.W.2 had also deposed that her husband and her sister's husband were assaulted by the relatives of the accused namely Arunagiri, Kumar, Jayapal, Rajendran and Asokan and, her husband was forcibly taken by them in a car and compelled him to give a complaint against the accused. The evidence of P.W.2 and P.W.3 does not inspire confidence of this court since there are so many glaring discrepancies in their evidence.



WEB COPY 7. All these aspects have been analysed by the trial court judge and the learned trial court judge had observed thus :

It is pertinent to note that in the instant case the only evidence on which reliance can be placed was the evidences of PW1 to PW3, the father, mother and aunt of the deceased. The other independent witnesses had turned hostile. Considering the scope of section 304(B) IPC and presumption u/s. 113(B) of the Evidence Act, due weight-age to be given to their evidences when they are reliable. Except for the evidences of PW1 to PW3 there is other evidence regarding physical and mental torture which the deceased was alleged to have been subjected. But the evidences of PW1 to PW3 do not inspire the confidence of this court. There are several anomalies and improvements in the evidences of PW1 to PW3. PW1 to defacto complainant deposed that he was forced to give Ex.P13 complaint by the relatives of the accused. And that he had admitted only his signature (Ex.P1) in the complaint and denied the contents of the complaint. He had stated in his chief examination that on 10.4.2013 one Arunagiri, Jeyapal, Rajendran assault him and his brother-in-law in the hospital where his daughter was admitted and forcibly obtained his signature in the complaint and he did not knew what was written in the said complaint. On



11.4.2013 he had lodged another complaint before the police. The said complaint is not before this court. Again, in the cross examination he had deposed that his signature was obtained in a car and since it was dark he was not aware whether the document was written. The Sub-Inspector of police, Tirunavalur (PW11) had deposed that on 10.4.2013 at about 21.30 hrs. PWI appeared before the police station and lodged Ex.P13 complaint based on which FIR (Ex. P10) was registered. He further stated that Ex.P13 complaint was hand written by PW1. In Ex. P13 complaint it is mentioned the deceased Savitha was suffering from prolonged stomach pain and she had consumed insecticide Orgeno phosphorous poison. Moreover, in Ex P13, the doctor's endorsement is made stating that it is a case of OPC poison and the patients is in unconscious state. PWI in the cross examination admitted the endorsement made by the doctor below his signature in the complaint. He further stated that he was not examined by any of the police officials and he was only examined by RDO who had also not recorded his statement as stated by him. He had stated so many facts before this court which do not found mentioned neither in the complaint nor in the statements before the police and RDO. He had stated that few months after the marriage the accused snatched the 'Thali' of the deceased and chased her to her parents house to get more dowry and he compromised her and



sent her back to her matrimonial home. He further deposed, at one instant the accused dashed the deceased against the wall and she was admitted in the hospital. He further deposed once the accused demanded Rs.50,000/- from the deceased and tortured her. But he had not preferred any complaint against the accused for such attitude. Moreover, the above facts do not find mention in the complaint, statements before the police and RDO. Likewise, there are many improvements in the evidences of PW2 and PW3 the mother and aunt of the deceased respectively. They had also stated so many facts which is not mentioned in their statements before the police and RDO. Except bald statements made by the witnesses alleging that the deceased had been subjected to cruelty and harassment. They had also stated that they were not examined by any of the police official. PW2, the mother of the deceased had admitted that after the marriage, they had performed the 'Seemantham' of their daughter in a grand manner in which both the families participated. She further stated that till then there was no problem in the family. This version of PW2 is contra to the evidence given by PW1 who had deposed that the accused within 3 months after the marriage snatched the 'Thali' of the deceased and chased her to her parents house demanding more dowry. She further stated that she was not aware whether her daughter was suffering from severe stomach pain after giving



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birth of her children and got treatment at private hospital. She did not deny the above fact. PW1 to PW3 had deposed that they were assaulted and threatened by the relatives of the accused in the hospital to give a complaint stating that the deceased had consumed poison due to severe stomach pain. They further deposed that they were also forced by a police who was present in the hospital to lodge a complaint. But no complaint was lodged by PW1 to PW3 for the alleged incident. If really, any such incident had taken place PW1 to PW3 would have lodged a complaint against them. Moreover, PW1 had stated that he had preferred another complaint on 11.4.2013 narrating the real facts against which no case was registered. If the above fact is true, he would have taken further action. Till he had appeared before this court for adducing evidence he had not preferred any complaint before the higher police officials. The conduct of the above prosecution witnesses would prove that it is only an attempt to improvise their case. In Ex.P8 report, RDO had mentioned, “திரு.ஜெகனின் பொறுப்பற்ற செயலாலும் வேலைக்குச் செல்லாமல் நண்பர்களுடன் குடித்த விட்டு வருவதும், வண்டி வாங்கவும், கடன் தொகை செலுத்தவும் அடிக்கடி மாமியார் வீட்டில் பணம் கேட்டுள்ளதும் தெரிய வருகிறது. இதனால் மன வேதனையிலும், மன அழுத்தத்திலும் இருந்த திருமதி. சவிதா என்பவர் இந்த முடிவை எடுத்திருக்கலாம் என தெரிவித்துக் கொள்கிறேன். இவரது இறப்பிற்கு வரதட்சினை கொடுமையே காரணம் என தெரிவித்துக்



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கொள்கிறேன்.’ The accused consuming liquor, very often pressuring the deceased to get money from her parents for purchasing a vehicle and for discharging debts can not be construed as dowry harassment. Moreover, any such demand for dowry must be in connection to the marriage. Again, to bring home the offence U/s. 304(B) IPC the deceased must have been subjected to dowry harassment 'soon before her death. Even according to PW2 and PW3 the day before the alleged occurrence, the deceased and accused came to the house of PW1 and left their children in his house and went to see the grandmother of the deceased who had fallen sick. PW2, the mother of the deceased had deposed, “8.4.2013ந் தேதி என் மகள் என் வீட்டிற்கு வந்தார். என் சித்திக்கு உடல்நிலை சரியில்லாமல் இருந்தது. அவர்களை பார்ப்பதற்காகத்தான் அவர்கள் வந்திருந்தார்கள். குழந்தைகளை என்னிடம் விட்டுவிட்டு சித்தியை பார்க்க சென்றார்கள். மீண்டும் மாலை 7.30 மணிக்கு மகள் வீட்டிற்கு வந்தார். உடனே இருவரும் வீட்டிற்கு கிளம்பினார்கள். இருட்டு நேரம் என்பதால் காலையில் செல்லுங்கள் என்று சொன்னேன். அப்போது என் மகள் பிரச்சனையாக இருக்கிறது நான் இப்பவே செல்கிறேன் என்று சொன்னார். சனிக்கிழமை வரை மகனுக்கு தேர்வு இருப்பதாகவும் தேர்வு முடிந்தவுடன் வீட்டிற்கு வந்துவிடுவதாகவும் சொன்னார். என்ன பிரச்சனை என்று கேட்டபோது என் மாமனாரும், மூத்தாரும், மாமியாரும் வீட்டைவிட்டு போ என்று தாரத்துவதாக சொன்னார். அடிக்கடி பிரச்சனை செய்வதாக சொன்னார். என் கணவர் எதுவும் கேட்கமாட்டேன் என்கிறார்



என்று சொன்னார். என் கணவர் குடித்துவிட்டு வேலைக்கு செல்லவில்லை என்பதால் என்னிடம் பிரச்சனை செய்கிறார்கள் என்று கூறினார். 2 நாட்களுக்கு முன்பு மாமனார் மாமியார் பிரச்சனை செய்து என் மகளை அடித்துவிட்டதாக சொன்னார். நான் வந்து கேட்பதாக சொன்னேன். நீங்கள் கேட்டால் அதிகமாக பிரச்சனை செய்வார்கள் என்று சொன்னார். நர்ன பரிட்சை முடிந்தவுடன் வீட்டிற்கு வந்துவிடுவதாக சொன்னார். மறுநாள் பகல் 12.55 க்கு சேட்டு என்பவர் போன் செய்து உங்க மகள் சவிதா விஷம் குடித்து விட்டதாகவும் சீரியஸ்சாக இருப்பதாகவும் முண்டியம்பாக்கம் அரசு மருத்துவமனையில் இருப்பதாகவும் சொன்னார்.” PW3 the aunt of the deceased had deposed, “சம்பவத்திற்கு முதல் நாள் 8ந் தேதி என் சித்தி உடல்நிலை சரியில்லாமல் இருந்தார் அவரை பார்ப்பதற்காக எதிரியும் சவிதாவும் குழந்தைகளை என் அக்காவிடம் விட்டுவிட்டு சித்தியை பார்க்க சென்றார்கள். நான் 8.30 மணிக்கு வீட்டிற்கு வந்துகேட்டபோது என் மகள் அக்கா வீட்டிற்கு போய்விட்டதாக சொன்னார். ஏன் இரவு நேரத்தில் கிளம்பி சென்றுவிட்டார் என்று கேட்டபோது என் மகள் என்னிடம் இல்லை. அக்கா வீட்டில் 2,3 நாட்களாக பிரச்சனையாக இருப்பதாகவும் அதனால் தங்க முடியாது என்று போய்விட்டதாக சொன்னார். 13ந் தேதி மகனுக்கு பரிட்சை முடிந்தவுடன் வீட்டிற்கு வருவதாக சொல்லிவிட்டு சென்றுவிட்டதாக சொன்னார். எதிரியின் குடிபழக்கம் குறித்து அவரது பெற்றோரிடம் நான் கூறினேன். அதற்கு அவர்கள் உலகத்தில் யார் தான் குடிக்கவில்லை. இதை பெரிய பிரச்சனையாக சொல்கிறாயா என்று சொன்னார்கள். அது முதல் அவர்கள் வீட்டிற்கு நான் செல்வதில்லை. 9ந் தேதி மதியம் 12.55 மணி இருக்கும் என் அக்காவின் சின்ன மகள் அழுதுகொண்டே வந்து அக்கா மருந்து குடித்துவிட்டு மருத்துவமனையில் இருப்பதாக சேட்டு



என்பவர் போன் மூலம் சொன்னதாக சொன்னார்.” The above evidences of PW2 and PW3 reveals that there was no dowry demand by the accused soon before the death to attract the provision of section 304(B) IPC. The above demand is not in connection to the marriage. Demand of money at later stage of marriage not in connection with marriage can not be said to dowry death 2011(1) TNLR 50. Hence, it can not be construed as dowry demand. Even in the statements recorded by the police and RDO it is mentioned that the families had civil dispute. The learned counsel for the accused had argued that there is civil dispute between the families. The accused is none other than the brother's son of PW2 and PW3. The mother of PW2 and PW3 had given her properties to her daughters. In order to prevent the sons from demanding a share in the property, PW1 to PW3 had foisted a false case against the accused. Even in the statements recorded by RDO PW1 to PW3 had stated about the civil dispute. Moreover, in this case according to medical evidence (Ex.P6) the deceased appear to have died due to Orgeno phosphorous poisoning. However, viscera sent for FSL analysis did not detect any poison. The viscera report is marked as Ex.P4. The said poison container was also not seized by the police. Such infirmity is also fatal to prosecution case. As per the prosecution, the statements of the witnesses were recorded on 11.4.2013 but there were sent to the court along with Ex.P14



alteration report only on 17.7.2013 with in ordinate delay. The investigating officer failed to explain the reason for delay. In Ex. P13 complaint which is the basis for registering the case, nothing is whispered about the alleged dowry demand and harassment. The investigating officer failed explain in what circumstances the Sub-Inspector of police had altered the section from 309 IPC to 174 (3) Cr.PC. The defacto complainant himself had disowned the complaint (Ex. P13) which is the basis for registering the case. PW1 to PW3 had deposed against the prosecution case. PW1 to PW3 had alone spoken about the alleged dowry demand by the accused for the first time before this court. There is no clear and cogent evidence about any demand of dowry. It is not safe to rely upon the evidence of such witnesses. The factum of dowry harassment is not proved by the above witnesses. None other witnesses had spoken about the alleged dowry demand and harassment. Even the RDO report do not reveal about demand of dowry and subjecting the deceased to cruelty. Though cruelty and harassment on a married woman and demand of dowry are generally committed within the four walls of residential houses and in secrecy, there by making it difficult to get direct evidence, due weight-age is to be given to the evidence of the family members of the deceased relating to demand of dowry. But in this case, PW1 to PW3 the parents and close relative of



the deceased had given different version in the complaint, in the statements recorded by the police and RDO. There is no clear and cogent evidence about any demand of dowry or harassment. There were lot of exaggerations and statements not made during investigations were made in court. In the statements recorded by the police and RDO PW1 to PW3 had stated that the accused had the habit of consuming liquor and used to pressure the deceased to get money from her parents for purchasing vehicle and for discharging debts. Moreover, the evidences of PW1 to PW3 for the alleged demand dowry is only hearsay. They had categorically stated that the deceased had complained to them at the alleged demand. They had not deposed that they had seen the accused demanding dowry and subjecting the deceased to cruelty and harassment. Hence the evidences of such witnesses being hearsay, vague and general not sufficient to attract the offence charged against the accused. Moreover, the prosecution had not established whether the deceased had died dos to stomach pain or due to the torture alleged to have been given by the accused. There is no specific instances of ill treatment proved on record. Even the RDO enquiry reveals that there was no dowry harassment in the deceased death. There was no proof of any demand of dowry soon before death and presumption Under section 113 B of Evidence Act could not be invoked. Hence, the prosecution



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failed to establish its case beyond reasonable doubt. The benefit of doubt is given to the accused."

8. All the observations of the trial court are perfectly in order and I do not see any reason to interfere with the order of the acquittal passed by the trial court judge.

9. In the result,

- i. The Criminal Appeal is dismissed.
- ii. Judgment and orders dated 10.02.2015 passed in S.C.No.555 of 2013 by the learned Sessions Judge, Magalir Needhi Mandram, (Fast Track Mahila Court), Villupuram, is confirmed.
- iii. This Court places on record its appreciation to Ms.A.Nethra, learned Legal Aid Counsel, for her valuable assistance in deciding this case. The Legal Services Committee is directed to pay a sum of Rs.10,000/- to the said counsel towards her fee.

10.06.2024

Index : yes/no
Speaking /Non speaking Order

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Copy to :

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai - 104.

To

1. The State Represented by the Inspector of Police, Vikkravandi Police Station (Crime No.227/2013).
- 2.The Sessions Judge, Magalir Needhi Mandram, (Fast Track Mahila Court), Villupuram,
- 3.The Public Prosecutor, Madras High Court, Chennai.
4. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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