



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

Crl.A.No.572 of 2017

P.Gandhimathi @ Akila

...Appellant

-Vs-

1. S.Krishnamoorthy

2. State rep. By
Inspector of Police,
All Women Police Station
Erode

...Respondents

Prayer:- Criminal Revision Petition is filed under Section 397 r/w.401 of Cr.P.C against the judgment of acquittal dated 29.01.2011 in C.A.No.427 of 2005 on the file of the Additional Sessions Judge (Fast Track Court I), Erode reversing the judgment dated 07.12.2005 on the file of the learned Judicial Magistrate No.1, Erode.

For Petitioner : M/s.D.Shivanathan

For Respondent -1 : Ms P.K.Surya
for M/s.P.Palani Nathan

For Respondent-2 : Mr.S.Udaya Kumar
Government Advocate (Crl.side)



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ORDER

This Criminal Appeal is filed by the defacto complainant against the order of acquittal passed by the Additional Sessions Court, Fast Track Court I, Erode in C.A.No.427 of 2005 dated 29.01.2011.

The case of the prosecution in brief is as follows:

2. The Accused No-1 is the husband of defacto complainant. The second and third accused are the parents of Accused No-1. Accused No-4 /Murugavel is the elder brother of Accused No-1. Accused-5/Nisha is the wife of Accused-4. Accused-6/Kavitha is the wife of Yuvaraj (Brother of Accused No-1).

- Defacto complainant and the Accused No-1 got married on 22.04.1999.
- It was an arranged marriage. Parents of the defacto-complainant presented her 20 sovereigns of gold jewels and household articles worth about Rs.15,000/- at the time of her marriage.
- In the matrimonial home, Accused-2 to Accused-4 were also living along with Accused No-1 and P.W-1.
- After marriage, Accused No-1 used to come to home under intoxication, used to beat P.W-1, and committed acts of cruelty by asking her to get cash and jewels from her parents. Accused-2 to



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Accused-6 instigated the Accused No-1 to beat P.W-1, thereby committed act of cruelties.

- On 30.04.2003, at about 10.30 p.m, Accused No-1 under intoxication came home, abused, bet her and told her to get cash of Rs.2,00,000/-. He sent her out and locked the door. When P.W-1 asked for the key, Accused-2 to Accused-6 joined with Accused No-1 and sent her out and assaulted her. During the period between 22.04.1999 and 13.04.2003, Accused No-1 got 20 sovereigns of gold jewels and household articles and again demanded her to get cash of Rs.2,00,000/- by assaulting her. Thereby, Accused No-1 is charged under Section 498A and 323 of I.P.C and under Section 4 of Dowry Prohibition Act, 1961.

3. The case was taken on as C.C.No.7 of 2004 on the file of the learned Judicial Magistrate I, Erode against all the 6 Accused. Charges were framed under Section 323, 498A of I.P.C and under Section 4 of Dowry Prohibition Act, 1961. After trial, Accused-2 to Accused-6 were acquitted. Accused No-1 was found guilty and sentenced and convicted for the offences under Section 498A of I.P.C for three (3) years of Rigorous imprisonment and under Section 4 of Dowry Prohibition Act, 1961, sentenced and convicted for two (2) years of rigorous



imprisonment with a fine of Rs.5,000/- and in default of payment of fine, he has to undergo two months rigorous imprisonment.

4. Aggrieved, the Accused No-1/Krishnamoorthy preferred the appeal before the Fast Track Court I (Additional Sessions Court, Erode) in C.A.No.427 of 2005 and an order of acquittal was passed. This order of acquittal is sought to be challenged by the defacto-complainant in this appeal.

5. The learned Counsel appearing for the Appellant/defacto-complainant vehemently contended that Accused No-1 along with other Accused, demanded the defacto-complainant, cash of Rs.2,00,000/-. It is the evidence of P.W-1 that the Accused No-1 used to play with Accused-5 and Accused-6. He did setup a separate matrimonial home. P.W-1 would state that her husband/Accused No-1 demanded her to bring 10 sovereigns of gold jewels and an amount of Rs.2,00,000/-. He assaulted her on her back and head.

6. The learned counsel appearing for the Appellant took this Court to the evidence given by her in detail. It is her evidence that as her husband did not turn up to home for 2 to 3 days, on her request, her parents came to her house. At that point of time, her husband came and demanded her parents money and jewels. He sent her a legal notice for divorce on 08.10.2001. Her father presented a complaint before the Police Station on



21.09.2001. On 26.01.2003, Accused No-1 again assaulted her and her baby and they were thrown out. She went and lodged a complaint to the Women Police Station on 21.02.2003 and the Accused No-1 was suitably advised.

7. Further, it has also come on record through her evidence that she again lodged complaint on 29.04.2003 against all the Accused before the All Women Police Station and got admitted in the hospital.

8. The learned counsel further argued that the defacto-complainant's parents spoken about the above said details (P.W-1 to P.W-3). The sisters of P.W-1 namely P.W-4 Kalaiselvi, P.W-5 Amuthasundari also strengthened the case of the prosecution. Therefore the charges leveled against the Accused No-1 stood proved. It was rightly appreciated by the trial Court and he was convicted as mentioned supra. But the Additional District Court in the appeal preferred by the Accused No-1 did not appreciate the prosecution side evidence and acquitted the Accused No-1 is perverse and needs to be interfered by allowing the appeal.

9. Whereas the learned Government Advocate (Crl.side) Mr.S.Udaya Kumar stoutly contended that P.W-1 has extensively spoken about the demand of dowry made by Accused No-1. The learned Government Advocate further argued that her evidence was corroborated by the evidence of her parents (P.W-2 and P.W-3). He would point out that



during the cross examination of P.W-2 and P.W-3, no suggestion was put forth to them by the Accused side to the effect that dowry demand was not made. As the demand was made within the house, P.W-1, her parents and sister have spoken about the charges. Relying on the above said evidence, the trial Court rightly convicted Accused No-1 under Section 4 of Dowry Prohibition Act, 1961 and under section 498A of I.P.C as mentioned supra.

10. Per contra, the learned Counsel appearing for the Respondent-1 contended that complaint was lodged on 22.04.2003. The manner in which the complaint was lodged was not proper. The learned counsel would further contend that in the F.I.R, there was no allegation as regards section 498A of I.P.C and section 4 of Dowry Prohibition Act. The day before registering a Complaint (Ex.P-1), she gave another complaint before Erode Women Police Station for return of her sreethana articles.

11. Learned counsel appearing for the Respondent-1 would argue that P.W-1 had the tendency of always doubting her husband and the learned Additional District Judge, appreciated the above facts and details of evidence and rightly acquitted the Accused No-1. It is his further argument that her evidence did not inspire confidence of the Court and clearly substantiate the grounds under which her case is not believable were explained in detail and an order of acquittal as against Accused No-1



was passed and pleaded for dismissal of the appeal.

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12. Upon the complaint of defacto-complainant to the Superintendent of Police, Erode on 22.04.2003, it was forwarded to the Erode Women Police station and on the same day, case under Crime No.4 of 2003 under Section 498A of I.P.C and under 4 of Dowry Prohibition Act was registered.

13. The Complaint which was given by the defacto-complainant on 22.04.2003 was closed by giving proper advice to Accused No-1. After examining, the witnesses, relatives, neighbours and the medical witness, besides examining the Police, the Investigating Officer laid a charge sheet under Section 498A and 323 of I.P.C and under Section 4 of Dowry Prohibition Act. Subsequent to the registration of F.I.R (Ex.P-5), the Investigation Officer/P.W-19 took up the case for investigation, proceeded to the Sankagiri Hospital and examined the witnesses and recorded their statements.

14. The case was taken on file in C.C.No.7 of 2004 on the file of learned Judicial Magistrate I, Erode. On appearance of the Accused, when they were questioned they denied the charges. Charges under as Section under Section 498A and 323 of I.P.C and under Section 4 of Dowry Prohibition Act were framed against the Accused.

15. At trial, to substantiate the charges on the prosecution side, 19



witnesses were examined. 5 documents were marked. No witness was examined by the Accused side.

16. P.W-1/ Gandhimathi @ Akila is the wife of Accused No-1 Krishnamoorthy P.W-2 – Palaniappan, P.W-3 Rajammal are the parents of P.W-1. P.W-3 Kalaiselvi P.W-4 Amutha are the Sisters of P.W-1. Neighbours are P.W-6 to P.W-9. Out of the said witnesses, P.W-7 to P.W-9 did not support the prosecution case.

17. The friend of P.W-2/Appusamy was examined as P.W-10. , who was running a tea shop at Sankagiri was examined as P.W-11. P.W-12/Dr.Sivakumar had issued medical certificate for 60 days, on the request of P.W-1. P.W-13/Dr.Sugajemma treated P.W-1 on 28.04.2003 and issued Accident Register Ex.P-2. P.W-14/Head constable who went to the Sankagiri Government Hospital and recorded the statement of P.W-1. PW-17 Rani, Sub Inspector of Sankagiri Police Station, based on the CSR No.430 of 2001 and enquired Accused No-1. P.W-18 is Rajasekhar ,P.W-1 Sister's Husband. P.W-19 Rukumani is the Investigating Officer.

18. It is the evidence of P.W-1/Gandhimathi that her husband (Accused No-1) demanded her cash of Rs.2,00,000/- from her parents as dowry. At that point of time, all the Accused along with P.W-1 were living together as a joint family and the other Accused also demanded her 10 sovereigns of jewels and cash.



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19. It is her evidence that on her Baby Shower function, neither her parents nor her husband's relatives attended the same. It is her further evidence that thereafter also her husband demanded 10 sovereigns of jewels in order to extend his cycle shop and also demanded an amount of Rs.2,00,000/-. She would further state that when her parents came to her matrimonial home, her husband shouted at her that she did not bring cash and jewels from her parents. She further deposed that on 13.08.2000 also she was assaulted by her husband and her husband demanded 10 sovereigns of jewels and Rs.2,00,000/- and she went to her parents home.

20. P.W-2 and P.W-3 have also spoken about the demand of dowry of 10 sovereign of jewels and Rs.2,00,000/- cash demanded by the Accused No-1 and other accused.

21. P.W-4/Kalaiselvi in her evidence would state that after the marriage of P.W-1, Accused No-1 demanded 10 sovereigns of jewels and committed acts of cruelty and thereafter also several times he demanded cash of Rs.2,00,000/- from her sister P.W-1 But her parents refused to give the same. Even during the cross examination, P.W-4/Kalaiselvi would state that P.W-1 was assaulted by Accused No-1 and demanded dowry of Rs.2,00,000/-.

22. Another Sister of P.W-1, P.W-5/Amuthasundari also



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corroborated the above evidence of above said witnesses. Among the evidence of neighbours (P.W-6 to P.W-9) Matheswaran/P.W-6 has spoken about the demand of dowry made by the Accused No-1. P.W-7 to P.W-9 turned hostile and did not support the prosecution case.

23. P.W-1 originally presented the complaint to the Superintendent of Police, Erode along with her father which is Ex.P-1. It was forwarded to the Women Police Station, Erode and the case was registered in Crime No.4 of 2003 under Section 498A of Dowry Prohibition Act on 29.04.2003 by P.W-19/Rukumani.

24. It has come on record through P.W-19 that on 21.04.2003, P.W-1 gave another complaint to handover her sreeethana articles in which there was no whisper about the demand of dowry. It is the categorical evidence of P.W-1 that on 13.04.2003, she was assaulted by her husband and he demanded dowry and committed acts of cruelty. These details were not whispered in the complaint dated 21.04.2003. (Ex.P-4). She has stated in Ex.P-4 that her husband was not properly taking care of her and her child and the matter was compromised.

25. It is the evidence of P.W-6/ Matheswaran, neighbour of Accused No-1 and P.W-1 that P.W-1 told him that Accused No-1 was demanding her dowry. He has not given the details of demand that was said to have been made by the Accused No-1. However during his cross examination,



he has stated that neither the parents of P.W-1 nor her sisters visited P.W-1.

26. That apart, it is specific evidence of P.W-6 that P.W-1 used to doubt the Accused No-1 and based on that, P.W-1 would quarrel with the Accused No-1. It is relevant to note that P.W-6 has stated that if the Accused No-1 did not come to live with her at Sankagiri her home town, she would lodge a dowry harassment complaint thereby threatened the Accused No-1. It is further evident that after lodging complaint, P.W-1 told P.W-6 that Accused No-1 was demanding dowry. More particularly it has come on record through P.W-2 that the complaint was given to the Superintendent of Police by him in the absence of P.W-1. P.W-4 as regards the lodging of complaint P.W-1 has stated that on 29.04.2003, she gave statement before the Women Police Station, Erode. She identifies her signature found in Ex.P-1/Complaint which was given to the Sankagiri Police Station, Erode.

27. It is interesting to note that the complaint was got typed by P.W-2 Palaniappan, father of P.W-1. It has come on record through the evidence of P.W-2 that on 22.04.2003, P.W-2 met the Superintendent of Police and after 15 minutes, he gave a complaint in typed version. He has acceded that at the time of typing the complaint, his daughter P.W-1 did not come there. Contra to his evidence, P.W-1 has stated that she



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narrated the details of complaint to her father P.W-2. P.W-2 appears to have got the complaint typed and presented to the Superintendent of Police, Erode. P.W-2 has knowledge about complaint given by the P.W-1 on 22.04.2003 before the Inspector of Police, All Women Police Station, Erode. From the evidence of P.W-2, is made clear, that totally P.W-1 and the Accused No-1 lived in 5 different places and P.W-1 has completed her P.G Degree.

28. It is the evidence of P.W-1 that Accused No-1 was demanding her to get 10 sovereigns of gold jewels and Rs.2,00,000/- cash as dowry from her parents. She has further stated that, other Accused also demanded dowry was disbelieved by the trial Court and Accused-2 to Accused-6 were acquitted of the charges framed against them. As mentioned supra, it is her evidence that when she was pregnant, Accused No-1 demanded her 10 sovereigns of gold jewels and cash of Rs.2,00,000/- for the purpose of extending of cycle shop.

29. A holistic perusal of evidence of P.W-1 and P.W-2, it is pellucid that it was lodged [at the 2nd page of Complaint (Ex.P-1)] that her husband in order to purchase a car, told her to get money from her parents and assaulted her. The candid evidence of P.W-2/Palaniappan is that he typed the complaint, Ex.P-1 and gave it to the Superintendent of Police, Erode. It was not his evidence that P.W-1 narrated the details of complaint. He has



not stated that at least as per his daughter's instruction, he typed the complaint. Therefore, P.W-1 is admittedly not the author of the complaint.

This has certainly caused a big dent on the case of the prosecution which cannot be set at right by any means.

30. Moreover, P.W-1 has during investigation and before the Court, has raised allegation of demand of dowry by her husband and his family members. . Law is well stated that all the details need not be mentioned in the complaint. The learned Additional Sessions Judge, Erode has discussed the material evidence, in particular, the evidence of P.W-1 and examined in detail and came to conclusion that the charges leveled against Accused No-1 were not proved and ordered to acquit the Accused No-1. This Court finds no valid reason to interfere with his finding.

31. In the result, this Criminal Appeal stands dismissed and resultantly the judgment of acquittal passed by the learned Additional Sessions Judge, Erode in C.A.No.427 of 2005 stands confirmed.

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Index : Yes/No
Speaking/Non-speaking order

To



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1. State rep. By
Inspector of Police,
All Women Police Station
Erode.
2. The Judicial Magistrate I
Erode
3. The Additional Sessions Court
Fast Track Court I, Erode.
4. The Section Officer, VR Records,
High Court, Chennai.

R.KALAIMATHI,J.

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