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Crl.A.(MD)No.11 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2024

Pronounced on: 22 .10.2024

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Crl.A(MD)No.11 of 2017

Eswari

... Appellant

VS

State represented by
The Inspector of Police,
Karaikudi South Police Station,
Sivagangai District
Crime No.13 of 2005

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records in S.C. No.7 of 2014 dated 09.01.2017 on the file of the District Fast Track Mahila Court, Sivagangai and set aside the same.

For Appellant	: Mr.T.Kumar
For Respondent	: Mr.A.Thiruvadi Kumar Additional Public Prosecutor



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JUDGMENT

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The second accused in S.C.No. 07 of 2014 on the file of the Sessions Court/District Fast Track Mahila Court, Sivagangai who suffered an order of conviction has preferred this appeal aggrieved by the judgment dated 09.01.2017.

2. The accused stood convicted and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
498(A) of IPC	Two years rigorous imprisonment	Rs.1000/- i/d to undergo three months rigorous imprisonment
306 of IPC	Five years rigorous imprisonment	Rs.5000/- i/d to undergo six months rigorous imprisonment
The sentences shall run concurrently		

3. It must be stated that the final report had been filed as against five accused. Charges had also been framed as against all the accused, but however A2, A4 and A5 were discharged by order of the Hon'ble Supreme Court. Therefore A3 had been re-arranged as A2 and she is the appellant herein.



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4. It is the case of prosecution that A1/Anantharaj had married Kamatchi Thilagam. The father, P.W.1/Duraipandi Nadar had given substantial dowry but did not provide her with a car. That was a source of irritation. It is contended that the accused demanded her to get a car from her father. On 14.01.2005 when the entire family went to the Athisayam Theme Park near Madurai, they criticised Kamatchi Thilagam for not having a car. It is stated that on 18.01.2005, due to frustration, Kamatchi Thilagam committed suicide by hanging. It was under those circumstances the respondent had filed final report against the accused charging them with commission of offences punishable under Section 498(A) and 304(B) of IPC.

5. This final report was taken cognizance by the learned Judicial Magistrate, Karaikudi as PRC No.11 of 2005. He furnished copies of all documents to the accused. Since the offences were triable exclusively by the Sessions Court, the learned Judicial Magistrate had committed the case to the Principal Sessions Court at Sivagangai under Section 209(c) of Cr.P.C



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6. The Principal Sessions Court, Sivagangai had taken the case on file as SC No. 7 of 2014 and made it over to the Sessions Court/ District Fast Track Mahila Court, Sivagangai. Charges were framed under Section 498(A) and 304(B) of IPC. The accused denied the charges. The prosecution was therefore called up to prove the charges.

7. The prosecution had examined P.W. 1 to P.W.14 witnesses and marked exhibits Ex.P.1 to P.14. The prosecution also produced one material object M.O.1

8. On completion of recording the evidence the statements of the accused were recorded under Section 313(1)(b) of Cr.P.C. Thereafter the Sessions Court/ District Fast Track Mahila Court, Sivagangai pronounced judgment on 09.01.2017. A1/Anantharaj, husband of the deceased Kamatchi Thilagam was acquitted of all charges. The appellant herein/A2 was convicted as stated above for offences under Sections 498(A) and 304(B) of IPC. Questioning the said judgment, the present criminal appeal had been filed.



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9. The facts in details are that P.W.1, father of the deceased Kamatchi Thilagam had, in his evidence stated that his daughter had married A1/Anantharaj and at that time he had given as dowry gold and diamond jewels of about 1kg apart from utensils. It was stated that there was however a constant demand for car. His daughter was not permitted to use the family car. He further stated that she came home and asked him to purchase a car for her. He had also promised and had made arrangements to give a car bearing Reg. No. TN 63 3663. Since the day on which he had taken that decision was a Tuesday, he told her that he would deliver the car on Wednesday. But on Wednesday she committed suicide.

10.He stated that the reason for suicide was that when the family members had gone to Athisayam Theme park in Madurai they kept harassing his daughter for not bringing a car. This was on 14.01.2005. On 18.01.2005 she committed suicide.

11. The prosecution examined P.W.2/Tamilselvi, mother of the deceased who also deposed on the same lines. During her cross examination P.W.2 stated that about two months prior to her death the



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deceased had tried to commit suicide by eating sleeping tablets. But however she was rescued. The reason for taking such decision was that A1/her husband was not given any separate business establishment and was not given property by his family members.

12. P.W.3/Kanchanadevi was the younger sister of the deceased. She spoke about the conversation between herself and the deceased and the deceased complaining about the harassment for not bringing a car.

13. P.W.4/ who is the husband of P.W.2 also spoke about the demand for car made by the family members of the accused.

14. P.W.5/Jambulingam also spoke about the same issue.

15. The prosecution also examined P.W.6/Dr.A.M.Uma who conducted post mortem on the deceased. She stated tha the death was due to hanging.



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16. P.W.7/Ramanathan stated that he came to know about the suicide later. He was declared hostile.

17. P.W.8/Varatharajan was working in the Sessions Court, District Fast Track Court, Sivagangai and spoke about the receipt of the Material Object.

18. P.W.9 had registered the First Information Report in Crime No. 13 of 2005 under section 174 of Cr.P.C. He forwarded a copy of the complaint and the First Information Report to the Revenue Divisional Officer, Devakottai, since the deceased had died within three years from the date of her marriage.

19. The prosecution also examined Gunaseelan as P.W.10, but however he was declared as hostile.

20. The prosecution also examined P.W.11/Elangovan who was working in the Regional Forensic Laboratory at Ramanathapuram.



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21.The prosecution further examined Dr.Meyyalagan/P.W.12 who was professor in forensic medicine Madurai Medical College. He conducted the post mortem. The report which he had given was marked as Ex.P.8.

22. The prosecution then examined P.W.14, Saminathan, Investigation Officer. He took up the investigation and went to the scene of occurrence at 5.45 pm., on 18.01.2005. He prepared observation mahazhar/Ex.P.10 and roughsketch/Ex.P.11 in the presence of witnesses Ravindran and Gunasekaran(P.W.10) He then seized a diary, letter and saree under seizure mahazhar Ex.P.12. The diary was marked as Ex.P.13 and the saree was produced as M.O.1. He then recorded the statement of Duraipandi/P.W.1, Tamil Selvi/ PW.2. He then arrested A1 on 20.01.2005 and A2 and A4 on 26.01.2005. He recorded the statements of Kanchanadevi/P.W.3 and Senthilkumar/P.W.4. He also recorded the statemet of the Sub Inspector of Police, Vinoji/P.W.9. He further recorded the statements of P.W. 5 and P.W.7. He also recorded the statements of Dr. Meyyalagaln and Elangovan. After completing investigation he filed charge sheet charging the accued with the commission of offences under



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section 306,498(A) r/w.34 of IPC and also under Section 4 of TNPHW Act.

He then filed an alteration report and restricted the offences to under Section 498(A) and 306 of IPC. The alteration report was marked as Ex.P. 14.

23. As state above this final report was taken cognizance as PRC No. 11 of 2005 by the learned Judicial Magistrate, Karaikudi and later committed to the Court of Sessions and made over to the learned Sessions Judge, Fast Track Mahila Court, Sivagangai and taken on file on S.C. No.7 of 2014. This appeal had been filed questioning the judgment in S.C.No. 07 of 2014.

24. The one factor to be examined even before proceeding further is that the originally the accused A2/Mohan, A4/Velmurugan and A5/Annalakshmi had approached the Hon'ble Supreme Court seeking to quash the case against them. The judgment in that case is reported in **(2011) 2 SCC 626**. This judgment had been placed reliance by the learned counsel appearing for the appellant who claimed that the ratio therein is directly applicable to the fact and circumstances of this case.

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25. Heard arguments advanced by Mr. T. Kumar, learned counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent.

26. It is the contention of the learned counsel appearing for the appellant that the evidence of P.W. 1 was disbelieved by the learned trial Judge so far as A1/Anandharaj was concerned. It was pointed out by the learned counsel that A1 was the husband of the deceased. The appellant herein was the brother's wife of A1. She was not at all connected with any of the issues between A1 and the deceased. It was also pointed out that the alleged visit to Athisiyam theme park was on 14.01.2005 and the deceased committed suicide on 18.01.2005 nearly after four days. The learned counsel stated that even if there was demand for dowry, it was not by this accused. This accused lived an independent life. The learned counsel further stated that the relief of acquittal which had been granted to A1 and that of discharge which had been granted to A2, A4 and A5 would also enure to this accused. The learned counsel argued that prosecution had not proved

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any of the ingredients required under Section 498(A) of IPC or under Section 304(B) of IPC and therefore contended that the appellant is also entitled for acquittal.

27. The learned Additional Public Prosecutor however disputed the contentions raised. He also stated that the Hon'ble Supreme Court had discharged A2, A4 and A5 from the array of accused and that the judgement therein is reported in **(2011) 2 SCC 626**. The learned Additional Public Prosecutor further stated that the primary reason why the deceased committed suicide was demand for car and the humiliation which she suffered owing to not purchase of a car. The learned Additional Public Prosecutor also pointed out that the prosecution had adduced sufficient evidence to hold that there was constant demand from the family of the accused to the deceased. He also contended that in view of the evidence produced, this Court must uphold the conviction passed against the accused.

28. We have carefully considered the arguments advanced and perused the materials on record.



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29. P.W.1/Duraipandi had lodged a complaint/Ex.P.1 wherein he had stated that his daughter Kamatchi Thilagam was given in marriage to A1/Anandharaj. At the time of marriage he had provided 100 sovereigns of gold and diamond jewels apart from utensils. However there was always a demand for a car. He stated in his evidence that he had made arrangements to provide car but even before he could physically deliver it, his daughter had committed suicide. According to him on 14.01.2005 all the family members of his daughter's family went to Athisiyam Theme park near Madurai. While going they had humiliated the deceased, for not having a car. P.W.1 in his evidence stated that owing to such humiliation the deceased had committed suicide by hanging on 18.01.2005.

30. P.W.2 is the mother of the deceased. P.W.3 is the younger sister of the deceased and P.W.4 is the husband of P.W.3. They all stated the same facts.

31. On the basis of the very same evidence produced by the prosecution the Hon'ble Supreme Court had discharged A2, A4 and A5. A2



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is the husband of the present appellant. A4 is the brother of A1 and A2. A5 is the mother.

32. On the basis of the evidence adduced the learned Sessions Judge had acquitted A1/husband of the deceased. He had convicted this appellant alone.

33. So far as the evidence as against this appellant is concerned a perusal of the evidence of P.W.1 shows that he had never mentioned the name of this accused. P.W.2 had only stated that the deceased had lived in a joint family along with this accused and other accused. She had stated that this accused told the deceased that she should get the car but this is only a stray statement in the evidence of P.W.2.

34.P.W.3 had also stated that this accused would speak degradingly against the deceased.

35.P.W.4 had only given a general statement about the demand for car.



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36. It is seen that the visit by the family to Athisyam Theme park was on 14.01.2005 and the deceased had committed suicide on 18.01.2005 after four days.

37. While discharging A2, A4 and A5 the Hon'ble Supreme Court had observed as follows:

“25. The appellants also submitted that the entire case of the prosecution does not reveal even remote connection of the appellants with the commission of an offence punishable under Section 306 I.P.C.

26. The case of the prosecution is that on 14th January, 2005, the deceased wanted to use the family car to go to the Theme Park at Madurai from Karaikudi along with other family members but she was denied the permission to use the car. At that juncture Easwari (A-3) taunted the deceased that if she wanted to go around in a car, she has to get a car from her parents. These words deeply hurt the deceased and she had committed suicide on 18th January, 2005 at 1.30 p.m. at her matrimonial home.

27. The appellants submitted that even if the prosecution story that she was denied permission to use the car on 14th January, 2005 and the suicide had taken place on 18th January,



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2005 is believed, it cannot be said that the suicide by the deceased was the direct result of the expressions exchanged between the deceased and Easwari (A-3) on 14th January, 2005. Viewed from the aforesaid circumstances independently, still the ingredients of the "abetment" are totally absent in the case at hand. In these facts and circumstances, to compel the appellants to face the rigmarole of a trial would be an abuse of law.

28. The appellants also submitted that there is no material on record to proceed against the appellants for an offence punishable under [Section 306](#) I.P.C. No conviction can be recorded in absence of legal evidence. According to the appellants, any further proceeding in this case will be an abuse of the process. According to them, this is a fit case warranting interference by this Court

Emphasis supplied”.

38. The records also reveal that the High Court had discharged the said accused for the offences under Section 498(A) and 304 (B) of IPC and refused to quash the case under Section 306 of IPC. The Hon'ble Supreme Court had quashed the case for the offence under Section 306 of IPC. Charges had been framed in this case only under Section 498 (A) and 304(B) of IPC.



39. Section 498(A) of IPC reads as follows:

**498A. Husband or relative of husband of a woman
subjecting her to cruelty**

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation —*For the purpose of this section, "cruelty" means—*

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

40. Section 304(B) of IPC reads as follows:

“304B. Dowry death —

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances



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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".

41. In both the provisions one crucial aspect is that cruelty which is complained should be soon before the death. There must be direct proximity between the alleged cruelty and death.

42. In the instant case the visit to the theme park was on 14.01.2005. The deceased committed suicide on 18.01.2005.

43. Even in the judgment of the Hon'ble Supreme Court in the case relating to the co-accused the Hon'ble Supreme Court has observed as follows:

“48.....There is also no proximate link between the incident of 14.1.2005 when the deceased was denied permission to use the Qualis car with the factum of suicide which had taken place on 18.1.2005. Undoubtedly, the deceased had died because



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of hanging. The deceased was undoubtedly hyper-sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. In a joint family, instances of this kind are not very uncommon. Human sensitivity of each individual differs from person to person. Each individual has his own idea of self-esteem and self-respect. Different people behave differently in the same situation. It is unfortunate that such an episode of suicide had taken place in the family....

Emphasis supplied”.

44. P.W.14/ Investigation Officer had actually admitted in cross examination that the Qualis car used by the family was in the name of Mohan/A2 who had been discharged and is the husband of this appellant. Therefore there is no direct link between this appellant and the particular car. He also stated that the allegations were not specific against this appellant but against all the accused.

45. In his cross examination with respect to the statments of P.W.2 he stated as follows:



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“அசா.2 எனது விசாரணையில் பொங்கலுக்கு மறுநாள் அதிசயம் என்ற இடத்திற்கு என் மகளின் குடும்பத்தார்கள் போனார்கள் புறப்படும் போது என் மகளும் காரில் ஏறப்போனார். அப்போது 2வது எதிரி நீ காரில் போகவேண்டும் என்றால் உன் அப்பாவிடம் வாங்கி வா காரில் ஏற்றமாட்டோம் என்று 2வது எதிரி மட்டும் சொன்னதாக சொல்லவில்லை. பொதுவாக ஐந்து எதிரிகளும் சொன்னதாக சொல்லியுள்ளார்□.

46. Thus it is seen that P.W.2 had stated that it was not just this accused but all the family members had taunted the deceased.

47. Witnesses, had during their evidence expanded the statements made by them before the Investigation Officer.

48. There is no direct evidence against this particular appellant. The deceased could also have been subjected to mental harassment by all the other accused. The other accused had been either acquitted or discharged.

49. I hold that the same benefit should be extended to this appellant



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also. I hold that the prosecution had not proved that this appellant was directly responsible for the suicide committed by the deceased. The charges had not been established specifically against this appellant beyond reasonable doubt.

50. In (2016) 10 SCC 519 (Jose @ Pappachan vs the Sub Inspector of Police), the Hon'ble Supreme Court had held as follows:

“56. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.”

51. In view of these reasons, I hold that the judgment of conviction against this appellant by the trial Court has to be set aside.



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52. Accordingly the conviction and sentence passed in S.C. No.7 of 2014 dated 09.01.2017 on the file of the Mahila Court, District Fast Track Court, Sivagangai against the appellant is set aside. The appellant is acquitted of all the charges and is set at liberty forthwith. The Bail bonds, if any, executed by this appellant shall stand cancelled. The fine amounts paid, if any, shall be refunded to the appellant.

22.10.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

1. The Mahila Court, Fast Track Court, Sivagangai.
2. The Inspector of Police,
Karaikudi South Police Station,
Sivagangai District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,

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ER/VR Section,
Madurai Bench of Madras High Court, Madurai.

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C.V.KARTHIKEYAN, J.

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Pre delivery Judgment made in
CrL.A(MD)No.11 of 2017

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