

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03..08..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.483 of 2014

Marry ... Appellant / P.W.2

-Versus-

1.State Rep. by
The Deputy Superintendent of Police,
Neyveli Sub Division,
Cuddalore District.
[Neyveli Thermal Police Station]
[Crime No.214 of 2011]

... Respondent /complainant

2.Ramesh Babu

3.Saroja

4.Ravichandran

5.Kalaimathi

... Respondents / A1 to A4

Criminal Appeals filed under Section 372 of Cr.P.C.
challenging the order of acquittal recorded by the learned
Sessions Judge, Mahila Court, Cuddalore, in S.c.No.159 of 2012
dated 17.04.2013.

For Appellant

: Mr.S.Jayakumar

For Respondents

: Mr.E.Raja, APP for R1

: Mr.S.Senthilvel for R2 to R5

*[court appointed Legal Aid
Counsel]*

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

This is an appeal against acquittal filed by the mother of
the deceased. The respondents 2 to 5 are Accused Nos.1 to 4 in
S.C.No.159 of 2012 on the file of the learned Sessions Judge,

Mahila Court, Cuddalore. The 1st respondent is the complainant in the said case. They stood charged for offences under Section 498 and 304-B of IPC. The trial court by judgement dated 17.04.2013, acquitted the respondents 2 to 5. Challenging the same, the mother of the deceased has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:-

The deceased in this case was one Mrs. Jacqueline Jerome. When she was studying in a college, A1 also studied in the same college. They got introduced themselves which developed into a love for each other. A1 and the deceased eloped without the knowledge of the parents of the deceased. P.W.2 is the mother of the deceased. She along with her family members went in search of the deceased. For two months the whereabouts of the deceased and A1 were not known. At last, when they found them after two months, it came to light that A1 and the deceased married each other and the said marriage was also registered. Thereafter, the family members of the deceased and A1 in the presence of some mediators had a talk and then, finally both their families decided to perform marriage between A1 and the deceased as per Hindu marriage customs and rites in a Lord Murugan Temple. For this arrangements, P.W.2 and her other family members also agreed though they were Christians by religion. Accordingly, as per the Hindu marriage customs and rites, the marriage between A1 and the deceased was again celebrated. After the marriage, A1 and the deceased were living together as husband and wife. A2 is the mother of A1. A3 is the elder brother of A1 and A4 is the wife of A3. A2 to A4 were living separately. Thus, A1 and his wife, the deceased, were living together.

3. In course of time, according to the prosecution, it came to light that A1 had developed illicit intimacy with another woman. This was initially because of the quarrel between the deceased and A1. It is further alleged that A2 once told that at the time of marriage between A3 and A4, fifty sovereigns of gold jewels were presented by the parents of A4, but, nothing was given by the parents of the deceased as dowry. On account of the same, it is stated that A2 was harassing the deceased.

4. While so, the deceased, out of the said wedlock, became pregnant. When she was three months pregnant, it is alleged that A2 wanted the deceased to abort the pregnancy because, though marriage between A3 and A4 was held long before, they were not blessed with any child. The deceased refused. Thereafter, A2 demanded rupees ten lakhs as dowry. When the deceased expressed to go to the police with the complaint, it is alleged that all the accused manhandled her. On 27.09.2011 around 11.30 p.m it is alleged that when the deceased spoke to P.W.2 over phone, she told that all the accused had manhandled her. Then, she gave the

phone to A2. A2 who spoke to P.W.2 demanded fifty sovereigns of gold jewels as dowry. P.W.2 told A2 that she would come on the next day and settle the issue. On the next day around 12.00 noon, accordingly, P.W.2 came to the matrimonial home of the deceased, but, the deceased had in the mean while, committed suicide by hanging. P.W.1, the Village Administrative Officer of Kolliruppu Village was informed by his Assistant about the same. P.W.1 immediately rushed from the place of occurrence. By the time, the body was removed from the noose and laid on a bench. Then, P.W.1 made a complaint to the police. P.W.11, the then Special Sub Inspector of Police, on receipt of the said complaint from P.W.1, the Village Administrative Officer, registered a case in Crime No.216 of 2011 under Section 174(3) of Cr.P.C. Ex.P.7 is the FIR. P.W.11, thereafter, forwarded the complaint (Ex.P.1) and the FIR (Ex.P.7) to the court which were received by the learned jurisdictional Magistrate at 09.30 a.m. on 29.09.2011. P.W.11, in the mean time, handed over the case diary to the Inspector of Police for investigation.

5. P.W.12, the then Inspector of Police, taking up the case for investigation, rushed to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.8 and another witness. He examined many witnesses including the family members of the deceased, more particularly, P.Ws.2 and 3. Then, he handed over the case diary to the Deputy Superintendent of Police, District Crime Record Bureau, Cuddalore, for further investigation.

6. The Revenue Divisional Officer had conducted inquest on the body of the deceased and forwarded the body for postmortem. P.W.9, the Doctor, who conducted autopsy on the body of the deceased at 03.00 p.m. on 29.09.2011 along with Dr.Parthasarathy, found the following on the body of the deceased: -

"Appearance found at the post-mortem - Body of a moderate built and nourished female body with partially opened eyes mouth and ears intact. Tongue within the mouth. Hands free. Blood stained fluid from nose present.

(1) Multiple linear abrasions 2 cm x 0.5 mm sized about 30 in number with dried blood in right fore arm

(2) Multiple punctuate wound of 2 mm x 2 mm
(3) thirty on left side of lower abdomen and (20) twenty in number on right side.

Ligature mark about 15 x 2 cm dark brown in colour running from right mastoid through thyroid cartilage to left mandible. Edges are echy mossed.

On dissection the underlying tissue is pale and parchment like. Scalp and skull intact. Lungs are congested and intact. Heart congested and intact about 50 ml of clotting both ventricles semi solid material. Stomach congested empty. Kidneys congested. Uterus corresponds to 16 weeks of pregnancy. On opening the uterus a single dead fetus corresponds to 16 weeks present external genitalia intact."

Ex.P.5 is the postmortem certificate. He gave opinion that the death of the deceased was due to asphyxia as a result of hanging.

7. P.W.13 continued investigation. He altered the case into one under Sections 498A and 304B of IPC. He examined the doctors who conducted autopsy and recorded their statements. The investigation was thereafter taken over by the Deputy Superintendent of Police [P.W.14], Neyveli Sub Division. P.W.14 examined few more witnesses and on completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 14 witnesses were examined and 8 documents were marked. No material object was marked.

9. Out of the said witnesses, P.W.1 was the then Village Administrative Officer of Kolliruppu. He has spoken about the complaint made to the police. P.W.2 is the mother of the deceased. She has stated that A2 demanded dowry and harassed the deceased. She has further spoken about the telephone conversation between herself and the deceased and after that between her and A2, as we have already narrated. P.W.3 is yet another daughter of P.W.2. She has also stated about the same facts as spoken by P.W.2. P.W.4 is the another daughter of P.W.2. She has also stated about the same facts. P.W.5 is the son of P.W.2. He has also stated about the facts spoken by P.W.2. P.W.6 has spoken about the marriage between A1 and the deceased. P.W.7 has also spoken about the marriage between A1 and the deceased. P.W.8 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence. P.W.9, the doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.10, the then Revenue Divisional Officer, has spoken about the inquest held on the body of the deceased and his report. According to his report, the death was due to dowry harassment. P.W.11 has spoken about the registration of the case on the complaint made by P.W.1.

P.Ws.12 to 14 have spoken about the investigation done by them. P.W.14 has further spoken about the filing of charge sheet against the accused.

10. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

11. Having considered all the above, the trial court acquitted A1 to A4, the respondents 2 to 5 herein, from both the charges. Aggrieved by the acquittal of the A1 to A4, the mother of the deceased [P.W.2] has come up with this criminal appeal.

12. We have heard the learned counsel appearing for the appellant/P.W.2, the learned counsel for the respondents 2 to 5/A1 to A4 and the learned Additional Public Prosecutor appearing for the 1st respondent/State and we have also perused the records carefully.

13. Admittedly, P.Ws.2 to 7 are the family members of the deceased. P.Ws.2 and 3 have spoken about the strained relationship between A2 and the deceased. A perusal of the evidence of these witnesses would go to show that there is no whisper made against A3 and A4. Therefore, there can be no difficulty to hold that there is no evidence against A3 and A4 and thus the order of acquittal of A3 and A4 does not require any interference at the hands of this court.

14. So far as A1 is concerned, as against him also, there is no evidence from these witnesses to the effect that either he demanded dowry or harassed the deceased at any point of time, more particularly, soon before the death of the deceased. The only allegation against him is that the deceased told P.W.2 that A1 had developed illicit intimacy with a woman. Except that there is no other evidence against him. P.W.2 has stated that lastly when the deceased spoke to her she told that all of them were harassing. This is a mere innocuous statement upon which no weightage could be given. Thus, as against A1 also there is no evidence to hold him guilty of the charges.

15. Now, turning to the case against A2, the learned counsel for the appellant would submit that there is enormous evidence as against her. But, the learned counsel for the accused would refute the said contention.

16. We have considered the above submissions carefully. A perusal of the evidence of P.W.2 would go to show that A1 and the deceased had eloped and married. Thereafter, both the

families sat together and decided to perform the marriage as per the Hindu marriage customs and rites. The marriage was accordingly solemnized at Lord Murugan Temple. There is no evidence at all that before the marriage there was any demand for dowry. The trial court has held that inasmuch as there was no demand for dowry before the marriage, any demand made subsequent to the marriage would not amount to dowry. It was on this footing the trial court has acquitted the accused. This conclusion arrived at by the trial court has ignored the explicit the provision contained in Section 304-B of IPC. Section 304-B of IPC states that any demand for property or valuable security in connection with the marriage by itself would be sufficient to satisfy the requirements of Section 304-B of IPC provided, the other requirements are also satisfied. It is not the law that such demand for dowry should have been made before the marriage. Therefore, the conclusion of the trial court that inasmuch as there was no demand for dowry prior to the marriage, no offence under Section 304-B of IPC could be committed, is absolutely an erroneous conclusion arrived at. But, at the same time, when we analyse the evidence of the family members of the deceased it would go to show that even after the marriage there was no demand for dowry and there was also no harassment.

17. A perusal of the evidence of P.W.2 would go to show that A1 prior to the death of the deceased, spoke to her over phone and then she gave the phone to A2. It is alleged that A2 demanded fifty sovereigns of gold jewels at that time. But, the investigation officer had not collected the call details of the alleged cellphone talk between A2 and P.W.2. Therefore, as rightly contended by the learned counsel for the accused, this part of the story of the prosecution is difficult to be believed. Apart from that, P.W.2 has stated that after some time of the marriage, when the deceased was pregnant for three months, A2 demanded fifty sovereigns of gold jewels as dowry. The trial court has disbelieved this part of the evidence of the prosecution witnesses. In this conclusion arrived at by the trial court, we do not find any reason to interfere with. An over all analysis and appreciation of the evidences of the family members of the deceased would go to show that they had some grudge against the accused for many reasons such as A1 had eloped with the deceased and that there were frequent domestic quarrels. Might be, as held by the trial court, because of the said grudge, these allegations of dowry harassment have been made against A2 also. It is the settled law that when two views are equally possible, it is not possible for the appellate court to substitute its view in the place of the view taken by the trial court. In this case, we do not find any perversity in the view taken by the trial court. Thus, we do not find any merit at all in this criminal appeal to interfere with the acquittal of the respondents 2 to 6/A1 to A4 and so, the criminal appeal

deserves only to be dismissed.

18. **In the result**, this criminal appeal fails and the same is accordingly dismissed.

kmk

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

- 1.The Sessions Judge, Mahila Court,
Cuddalore, Cuddalore District.
- 2.The Deputy Superintendent of Police,
Neyveli Sub Division,
Cuddalore District.
- 3.The Public Prosecutor, High Court, Chennai.
- 4.The Principal Sessions Judge, Cuddalore
- 5.The District Munsif cum Judicial Magistrate,
Neyveli.
- 6.The Chief Judicial Magistrate, Cuddalore

+1 CC Mr.S.Senthilvel Advocate SR.No.43934

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Crl.A.No.483 of 2014

SSI

MSI 12/11/2016

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