



CRL.APPEAL 84/2008

That the Appellants herein/Accused viz; 1. Periasamy 2. Periyannan 3. Marudhayee were directed to be released on bail as per the order of this court Dated 5.2.2008 in MP.NO.1/2008 in Crl.Appeal No.84/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.84 of 2008

1. Periasamy
2. Periyannan
3. Marudhayee

... Appellants/Accused

vs.

State Rep. By the
Inspector of Police,
Gengavalli Police Station
Salem District

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.311 of 2006 dated 8.1.2008 on the file of the Mahila Court (Sessions Court), Salem.

For appellants : Mr.D.Shivakumaran

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The convictions and sentences dated 8.1.2008 passed in Sessions Case No.311 of 2006 by Magalir Neethimandram, Salem are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the first accused is the son of the accused 2 and 3 and prior to ten years, the first accused has married the deceased Kamatchi and both of them have been blessed with three children. The accused and Kamatchi have



lived in a joint family. After marriage, the accused 1 to 3 have demanded dowry from the deceased Kamatchi and also attacked her on several occasions. Further, the accused have told her that they would murder her, by way of saying that she has committed suicide. Prior to 6, 7 months from 20.4.2005, all the accused have joined together and attacked the deceased by way of suspecting her character. On 20.4.2005 at about 2 p.m., the first accused in drunken mood has attacked the deceased, since she has talked to her relative by name Murugesan. Further, the first accused has directed her to die. Due to conduct of the accused, on 20.4.2005, during night hours, the deceased has committed suicide by way of hanging in the house of the accused. After occurrence, the father of the deceased by name Pitchamuthu, as defacto complainant, has lodged a complaint and the same has been registered in Crime No.108 of 2005.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.9, has taken up investigation and made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr.Vallinayakam (P.W.6) has conducted Post Mortem and he found the following external and internal injuries on the body of the deceased:-

"1) An incomplete oblique ligature mark 24 cm total

Length 1 CM width present over the upper part of front and sides of neck above the level of Thyroid Cartilage.. on the R side of Neck the upper border of the Ligature Mark was found to be 5 Cms. below the R Mastoid Process and on the L side of Neck same was found to be 2 cms. below the L Mastoid process and merges with the hairline in the back of the neck.

O/D the Base of the Ligature Mark was pale dry and parchment like Hyoid bone was found intact (ante mortem)

And bite mark over inner of both upper and lower limbs (Postmortem)

Other finds: Eyes -clear-peritoneal cavity and pleural cavity - empty - Heart-cavities contained R side heard fluid blood L side of heart empty Myocardium- normal. Coronaries -patent. Larynx, Trachea, Hyoid bone -intact. Lungs-both on c/s. congested with oedematus stomach - 200 GM of partly digested cooked rice food present. No smell. Mucosa - congested. Liver-spleen, Kidneys-Capsule intact, congested. Bladder -Empty, Uterus normal cavity empty Genetalia Normal Hymen . No fresh injuries. All other internal organs-congested."



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The Post Mortem Certificate has been marked as Ex.P.3. Further investigation has been done by P.W.10, Inspector of Police and he laid a final report on the file of Judicial Magistrate Court No.2, Attur and the same has been taken on file in P.R.C.No.34 of 2006.

4. The Judicial Magistrate No.2, Attur, after considering the facts that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the court of Sessions, Salem Division and the same has been taken on file in Sessions Case No.311 of 2006 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed first charge against all the accused under Section 498-A, second charge against them under section 306 of the IPC and the same have been read over and explained to them. The accused have denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to 10 and Material Object No.1 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found all the accused guilty under Section 498-A of the IPC and sentenced them to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- upon each of them with usual default clause. Further, they have been found guilty under Section 306 of the IPC and sentenced to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- upon each of them with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellants.

9. The consistent case put forth on the side of the prosecution is that prior to 10 years, the first accused has married the deceased Kamatchi and both of them have been blessed with three children. The accused and deceased have lived together in a joint family and all the accused have demanded dowry and thereby attacked the deceased and prior to 6, 7 months from 20.4.2005, all the accused have attacked her by way of saying that the deceased is having illicit intimacy. On 20.4.2005, at about 2 p.m., since the deceased has talked to her



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relative, viz., Murugesan, the first accused by way of suspicion, has attacked her and also directed her to commit suicide. The further case of the prosecution is that due to torture alleged to have been caused by all the accused, on 20.4.2005, the deceased has committed suicide in the house of the accused by way of hanging.

10. The learned counsel appearing for the appellants/accused has raised the following points:

(A) The defacto complainant, viz., father of the deceased has been examined as P.W.1. During the course of cross-examination, he has candidly admitted to the effect that the first accused has lent financial assistance to him for conducting marriage of his another daughter. Further, P.W.1 has deposed to the effect that the family of the first accused is having sufficient lands and therefore, the question of demanding dowry from the deceased does not arise.

(B) The specific case of the prosecution is that on 20.4.2005, since the deceased has talked to her relative by name Muregesan, on suspicion, the first accused has attacked her and also directed her to commit suicide and the said Murugesan has been examined as P.W.5, but he has not spoken to the effect that only on the basis of suspicion, the first accused has attacked the deceased.

(C) No independent witnesses have been examined with regard to occurrence alleged to have taken place on 20.4.2005.

(D) The occurrence has taken place on 20.4.2005. Only on 21.04.2005, Ex.P.1 has been registered under section 174 Clause (3) of Code of Criminal Procedure, 1973 and subsequently Section 498-A has been inserted and thereafter Sections of law have been altered and therefore, Ex.P.1 is nothing but a concocted document.

11. In order to sustain the convictions and sentences passed by the trial court, learned Additional Public Prosecutor has contended that with regard to demand of dowry alleged to have been made by all the accused, necessary materials are available in Ex.P.1, Complaint and author of the same has been examined as P.W.1 and he deposed to that effect, further one Murugesan has been examined as P.W.5 and his specific evidence is that on the date of occurrence at about 2 p.m., the first accused has attacked the deceased and the trial court, after considering the evidence available on record, has rightly found all the accused guilty under sections 498-A and 306 of IPC and therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.



12., The case of the prosecution can be divided into two parts. The first part is that all the accused have joined together and demanded dowry from the deceased and since she refused to concede their demand, they attacked her. The second part is that prior to 6, 7 months from 20.4.2005, all the accused have joined together and attacked the deceased by way of saying that she is having illicit intimacy with others. Further, on 20.4.2005 at about 2 p.m., only on the basis of suspicion, the first accused has attacked the deceased and directed her to commit suicide.

13. For considering the contentions put forth on the side of the prosecution, the Court has to meticulously look into the evidence given by P.Ws.1 and 5 and Ex.P.5.

14. In Ex.P.1, the demands of dowry alleged to have been made by all the accused have been mentioned. The author of Ex.P.1 has been examined as P.W.1 and during the course of cross-examination, he has clearly admitted to the effect that the first accused has lent financial assistance to him for conducting marriage of his another daughter. Further, he deposed to the effect that the family of the first accused is owning sufficient lands. Since P.W.1 has given totally contra evidence to the effect mentioned supra, it is highly impossible for coming to a conclusion that all the accused have demanded dowry from the deceased.

15. Now the Court has to look into as to whether the relevant evidence is available with regard to occurrence alleged to have been taken place prior to 6, 7 months from 20.4.2005. With regard to the said aspect, absolutely there is no evidence on the side of the prosecution. Since there is no evidence on the side of the prosecution with regard to the said aspect, it is not possible on the part of the court to come to a conclusion that all the accused have attacked the deceased prior to 6, 7 months from 20.4.2005 by way of suspecting her character.

16. The immediate cause for committing suicide as per the version of the prosecution is that on 20.4.2005, since the accused talked to P.W.5 (Murugesan), on suspicion, the first accused has attacked her and also directed her to commit suicide. The said Murugesan has been examined as P.W.5 and his specific evidence is that on 20.4.2005, while sitting in a field, the deceased has simply asked him as to why he is sitting there. At that time, the first accused has attacked her by using fudge. Further he deposed to the effect that the said occurrence has been seen by several persons. In fact, P.W.5 has not specifically stated that only due to suspicion, the first accused has attacked the deceased. Further, as rightly pointed out on the side of the appellants/accused, no independent witnesses have been examined for the purpose of



proving the occurrence alleged to have been taken place on 20.4.2005.

17. The prosecution has set the law in motion only on the basis of Ex.P.1. It is an admitted fact that the occurrence has taken place on 20.4.2005. The specific evidence given by P.W.1 is that before his arrival to the place of occurrence, Police have come to the place of occurrence. With regard to the said aspect, no explanation is found place on the side of the prosecution. Further, Ex.P.1 has been initially registered under section 174(3) of Code of Criminal Procedure, 1973 and subsequently Section 498-A of IPC has been inserted.

18. It has already been pointed out that with regard to first part of the case of the prosecution, absolutely there is no evidence. Likewise, with regard to second part of the case of the prosecution, the evidence given by P.W.5 is not at all sufficient. Therefore, virtually, the prosecution has failed to adduce proper/trustworthy evidence with regard to alleged demand of dowry and also the occurrence alleged to have been taken place prior to 6, 7 months from 20.4.2005 and also with regard to occurrence alleged to have been taken place on 20.4.2005. Since the occurrences mentioned in the charges have not at all been proved on the side of the prosecution and since the evidence given by P.Ws.1 and 5 is not sufficient for coming to a conclusion that all the accused have committed offences punishable under sections 498-A and 306 of IPC, it is needless to state that the convictions and sentences passed by the trial court are totally unwarranted and therefore, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellants/accused in S.C.No.311 of 2006 by the trial court are set aside. The appellants/accused are acquitted. Bail bonds, if any executed by them, shall stand cancelled. Fine amounts, if any paid by them, are ordered to be refunded forthwith.

ajr

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To :

- 1.The Mahila Court (Sessions Court), Salem.
2. -do- thro' The Principal Sessions Judge, Salem.



3. The Judicial Magistrate No.II, Attur.

4. The Chief Judicial Magistrate, Salem District.

5. The Inspector of Police,
Gengavalli Police Station
Salem District.

6. The Public Prosecutor, High Court, Chennai.

+ 1 cc to Mr.D.Shivakumaran, Advocate Sr 401.

UG/CO
KR/7/1/16

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