



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.[MD].No.343 of 2013

Subramani : Appellant/Sole accused

Vs.

State rep. by
the Inspector of Police,
Ramji Nagar Police Station,
Tiruchirappalli District.
(Crime No.205/2008)

: Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C. against the judgment, dated 17.09.2013, made in S.C.No.118 of 2009, by the Sessions Judge (Mahila Court), Tiruchirappalli.

For appellant : Mr.T.Senthil Kumar
For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

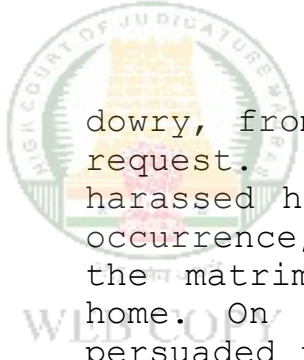
JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.118 of 2009 on the file of the learned Sessions Judge (Mahila Court), Tiruchirappalli. The trial Court framed a charge against the appellant/accused under Section 304-B IPC. By judgment dated 17.09.2013, the trial Court convicted the appellant/ accused for the offence under Section 304-B IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for six months. Challenging the said conviction and sentence, he is before this Court with this appeal.

2.The case of the prosecution, in brief, is as follows;

(a) The deceased in this case was one Mrs.Meena. She is the wife of the appellant/accused. The marriage between them was celebrated on 24.10.2007. It is alleged that six months after the marriage, the accused asked the deceased to get a motorcycle, as



dowry, from her parents. She was not able to concede to the said request. On account of the same, it is alleged that the accused harassed her repeatedly. While so, 15 days prior to the date of occurrence, the accused harassed the deceased and sent her out of the matrimonial home. Therefore, she returned to her parental home. On 29.06.2008, PW1 who is the brother of the deceased, persuaded the deceased to return to the matrimonial home, took her to the house of the accused and dropped her at the house of the accused. Thus, from 29.06.2008 onwards, the deceased was living at the house of the accused. While so, it is alleged that on 01.07.2008 around 01.00 a.m. the deceased died due to unnatural cause.

(b) PW1 made a complaint in this regard to Ramji Nagar Police Station, Tiruchirapalli, on 01.07.2008 at 10.10 a.m. PW11, the then Sub Inspector of Police, registered a case in Crime No.205 of 2008 under Section 174 Cr.P.C. Ex.P1 is the complaint and Ex.P12 is the FIR.

(c) PW12, the then Deputy Superintendent of Police, took up the case for investigation. Since the death of the deceased had occurred within 8 months of the marriage, he made a request to the Executive Magistrate cum Revenue Divisional Officer to hold inquest. At 11.30 a.m. on 01.07.2008 PW12 visited the place of occurrence and in the presence of PW3 and another witness, he prepared an observation mahazar and a rough sketch. The Revenue Divisional Officer - PW10, conducted inquest on the body of the deceased and submitted a report on 05.07.2008. Based on the said report of PW10, PW12 altered the case into one under Sections 302 and 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. Ex.P14 is the alteration report.

(d) When the investigation was in progress, the accused appeared before PW6, the then Village Administrative Officer of Paganoor Village and made a voluntary confession. PW6 reduced the same into writing. Ex.P3 is the said extra judicial confession. Along with Ex.P3, PW6 produced the accused before PW12 on 05.07.2008 at 4.00 p.m. PW12 arrested him. On such arrest, the accused gave a voluntary confession. Then, PW12 forwarded the accused to the Court for judicial remand. He collected postmortem certificate, examined the doctor who conducted postmortem and also few more witnesses. On completing the investigation, he laid a charge sheet against the accused on 12.07.2008 under Sections 498-A and 302 IPC.

(e) Based on the above materials, the trial Court framed charges under Sections 498-A and 302 IPC against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined and 14 documents were marked. On the side of the defence, one document viz., list of Sridhana articles given to the deceased by the

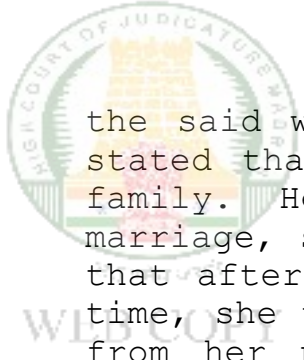
family members of the deceased was marked as Ex.D1.

(f) Having considered all the above, by judgment dated 22.02.2011, the learned Sessions Judge (Mahila Court), Tiruchirapalli, convicted the accused under Sections 498-A and 302 IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for three months for the offence under Section 498-A IPC and to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for six months for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant filed an appeal before this Court in Crl.A.(MD).No.78 of 2011.

(g) A Division Bench of this Court (wherein one of us (S.NAGAMUTHU,J) was a Member), by judgment dated 11.01.2013, found that the conviction of the accused/appellant for the offence under Section 302 IPC was not sustainable. It was argued before the Division Bench by the learned Additional Public Prosecutor that the evidence available on record would clearly prove the offence under Sections 304-B and 498-A IPC. That was opposed by the learned counsel for the accused. Since there was no charge framed against the accused for the offence under Section 304-B IPC, the exercise to appreciate the evidence and to find out whether any offence had been committed by the accused punishable under Section 304-B IPC cannot be undertaken. A number of judgments of the Hon'ble Supreme Court were cited by the learned Additional Public Prosecutor to substantiate his contention. More particularly, relying on the judgment of the Hon'ble Supreme Court in **Shamnsahed M.Multtani Vs. State of Karnataka**, reported in **2001 SCC (Cri) 358**, this Court held that the trial Court ought to have framed a charge under Section 304-B IPC in the alternative. Finally, this Court set aside the conviction and sentence of the accused both under Sections 498-A and 302 IPC and remitted the matter back to the trial Court with a direction to the trial Court to frame a charge under Sections 304-B and 498-A IPC and allow the parties to recall any witness for further examination or cross examination or to let in any further evidence either oral or documentary.

(h) Based on the said judgment and the directions issued thereunder, the trial Court again took up the case in S.C.No.118 of 2009 for trial. The trial Court framed a lone charge under Section 304-B IPC and neither the prosecution nor the defence, recalled any witness either for further examination or for further cross examination. However, on the side of the defence, the father of the accused was examined as DW1.

(i) As already pointed out, in order to substantiate the charges, on the side of the prosecution, as many as 12 witnesses have been examined and 14 documents have been examined. Out of



the said witnesses, PW1 is the brother of the deceased. He has stated that the deceased was living with the accused in a joint family. He has further stated that for about six months after the marriage, she was living very happily in the matrimonial home and that after six months, he returned to the parental home. At that time, she told PW1 that the accused wanted her to get a motorcycle from her parents. PW1 in turn told her that after the debts incurred on account of the marriage were settled, he would get a motorcycle for the accused. Thus, convincing the deceased, he sent her back to the matrimonial home. He has further stated that two months thereafter again she came to her parental home and this time also she told that the family members of the accused were demanding a motorcycle and harassing her. PW1 took back the deceased to the matrimonial home and left her at the house of the accused. Thereafter, according to him, the deceased committed suicide.

(j) PW2, the mother of the deceased, has stated that at the time of marriage, 10 sovereigns of gold jewels, a steel cot, a wrist watch and other household articles were given as Srithana properties. After the marriage, according to her, the deceased was happily living with her husband for six months. After six months, according to her, the deceased came to her house and told that for her husband, she should get a motorcycle. PW2 has also stated that she gave an assurance to the deceased that he would purchase a motorcycle, after the debts obtained for the marriage is settled. She has further stated that the deceased was, thereafter, sent back to her matrimonial home and subsequently, she died.

(k) PW3 is the cousin of the deceased. He has spoken about the preparation of observation mahazar and rough sketch in the place of occurrence. PW4 and PW5 have turned hostile and they have not supported the case of the prosecution, in any manner. PW6, the Village Administrative Officer, has spoken about the extra judicial confession given by the accused under Ex.P3, on 05.07.2008. PW7 has stated that he handed over the dead body to the Doctor for postmortem, as directed by PW12. PW8 has stated that he handed over the alteration report, on 05.07.2008, to the learned Magistrate.

(l) PW9, Dr.Karthikeyan, has spoken about the postmortem conducted and his final opinion regarding the cause of death. He found the following injuries on the body of the deceased;

"Injuries:

1.Dark brown colour abrasions; on the front of lower part of neck, 3 cm x 0.5 cm front of upper part of left side of chest, 4 cm x cms.

2.Bruising of right parietal region of scalp -dark red. On bloodless dissection of neck.



3. Bruising of soft tissues of neck in a diffused manner - dark red.

4. Diffusion of blood into the soft tissues of neck.

5. Fracture of lower laryngeal cartilages present.

6. Bruising of oesophageal wall - dark red.

7. Haemorrhagic spots in the mucous membranes of wind pipe and food pipe.

8. Bruising of neck muscles on the left side present - dark red. The above mentioned wounds are ante mortem. No other external, internal or bony wound present."

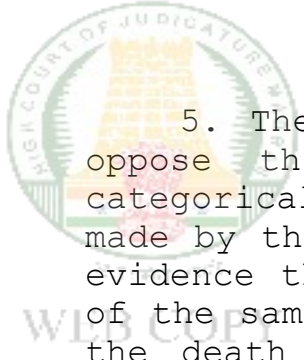
He gave opinion that the death of the deceased was due to manual strangulation. PW10, the Revenue Divisional Officer, has spoken about the inquest conducted by him. PW11 has spoken about the registration of the case on the complaint of PW1. PW12 has spoken about the investigation done and filing of the final report.

(m) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. The defence of the accused was a total denial. After the case was remanded, on the side of the accused, his father was examined as DW1. He has stated that there was no demand for dowry either by the accused or by any other family members of the accused. He has further stated that on the date of occurrence, around 9.00 to 9.30 p.m. the deceased had food and went to sleep and the accused went to his company for work and returned around 2.00 a.m. When he entered into the house, he found the deceased lying dead. He made a cry. Thereafter, it was informed to all including the Police.

(n) Having considered the evidences available, the trial Court found the accused guilty under Section 304-B IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for six months. Thus, the appellant is before this Court challenging the said conviction and sentence.

3. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent. We have also perused the records carefully.

4. The learned counsel for the appellant would submit that there is no evidence at all to even remotely prove that there was demand for dowry or harassment and on account of the same, the deceased died at the hands of the accused. The learned counsel took us through the evidence of PW1 and PW2 as well as the evidence of DW1 and submitted that the conviction of the accused under Section 304-B IPC is not sustainable.



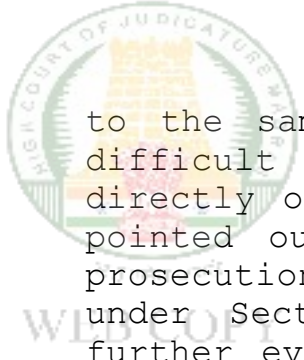
5. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, PW1 and PW2 have categorically stated about the demand for motorcycle, as dowry, made by the accused. He would further submit that there is also evidence that the deceased was harassed by the accused on account of the same. Thus, according to him, it has to be presumed that the death of the deceased was a dowry death. According to the learned Additional Public Prosecutor, the trial Court was right in convicting the accused under Section 304-B IPC.

6. We have considered the above submissions.

7. A careful reading of the evidences of PW1, the brother of the deceased and PW2, the mother of the deceased, would go to show that there is no evidence that there was any demand made for dowry either at the time of marriage or before the marriage. PWs.1 and 2 have categorically stated that for six months, after the marriage, the deceased was living with the accused very happily. They have not at all stated that during the said period of six months, there was any demand for dowry or any harassment, on account of the same. But, the charge framed against the accused reads that within two months of the marriage, the accused demanded a motorcycle as dowry from the deceased. In order to substantiate this allegation, absolutely there is no evidence on the side of the prosecution.

8. PW1 has further stated that only after six months of the marriage, for the first time, the deceased came to his house and told that the accused wanted her to get a motorcycle from the parents. But, PW2, the mother of the deceased, has not stated so. She has stated that the deceased once came and on her own volition wanted her to get a motorcycle for her husband. Thus, the evidence of PW2 would indicate that the deceased herself wanted the motorcycle and not on account of any demand made by the accused. Thus, the evidence of PW2 is just contrary to the evidence of PW1. PW1 has further stated that two months, thereafter, the deceased again came and told him that the family members of the accused demanded a motorcycle and harassed her. This is not the case of the prosecution at all. PW1 has not stated that the accused demanded motorcycle and harassed her. PW2 has not stated anything about that. Thus, absolutely, there is no acceptable evidence that soon before the death of the deceased either there was demand of dowry or harassment on account of the same. Therefore, the presumption under Section 304-B IPC and Section 113(b) of the Indian Evidence Act cannot be drawn in this case.

9. DW1 has stated that during the time of the occurrence, the deceased was at his house. Absolutely, there is no evidence contrary



to the same on the side of the prosecution. Thus, it is too difficult to hold that the death of the deceased was either directly or indirectly caused by the accused. As we have already pointed out, though sufficient opportunity was afforded to the prosecution to let in any further evidence to prove the charge under Section 304-B IPC, the prosecution had not let in any further evidence. After the case was remanded back for retrial, the witnesses examined already were not even recalled by the prosecution to bring on record sufficient materials to prove the charge under Section 304-B IPC. Thus, the prosecution case rests on the evidence already let in, when the accused was facing charges under Sections 302 and 498-A IPC. Thus, after the remand of the case, the prosecution did not let in any evidence to prove the charge under Section 304-B IPC. As we have already pointed out, since there is no evidence of demand for dowry or harassment on account of the same, before her death, the conviction of the accused under Section 304-B IPC cannot be sustained. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts.

10. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed by the trial Court against the appellant/accused is set aside and he is acquitted. Fine amount, if any, paid shall be refunded to the appellant. It is reported that the appellant is in prison. Therefore, he is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge (Mahila Court),
Tiruchirappalli.
2. do through The Principal District Judge,
Tiruchirappalli.
3. The Judicial Magistrate No.III, Tiruchy.
4. The Chief Judicial Magistrate, Trichy.
5. The District Commissioner of Police, Tiruchirappalli.
6. The Director General of Police, Chennai.



7. The District Collector,
Tiruchirapalli.

8. The Superintendent,
Central Prison,
Tiruchirapalli.

9. The Inspector of Police,
Ramji Nagar Police Station,
Tiruchirappalli District.

10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.T.SENTHIL, ADVOCATE IN SR No. 53066

GCG

TE/DB/SAR-I : 21/10/2016 : 8P/13C

Judgment in
Crl.A.(MD).No.343 of 2013
Dated: 16.09.2016