



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2016

CORAM:

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

CRL.A[MD].Nos.378 and 388 of 2013
and
M.P(MD).No.1 of 2013

1.Rengaraj
2.Selvi
3.Meena : Appellants in Crl.A(MD).No.378 of 2013/
Accused Nos.2 to 4
Durairaj : Appellant in Crl.A(MD).No.388 of 2013/
Accused No.1

Vs.

State rep by
The Deputy Superintendent of Police,
Pudukkottai Division,
Pudukkottai District,
[Crime No.151/2008]. :Respondent

PRAYER: Appeals are filed under Section 374 of the Code of Criminal Procedure to call for the records relating to the Judgment dated 02.12.013 made in S.C.No.78 of 2011, passed by the learned Sessions Judge, Mahila Court, Pudukkottai and set aside the same and acquit the accused by allowing these Criminal Appeals.

Crl.A. (MD) .No.378 of 2013:-

For Appellants : Mr.T.R.Subramanian
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

Crl.A. (MD) .No.388 of 2013:-

For Appellant : Mr.PT.Ramesh Raja
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

COMMON JUDGMENT

[JUDGMENT of the Court was delivered by S.NAGAMUTHU, J]

The appellant in Crl.A.(MD).No.388 of 2013 is the first accused and the appellants in Crl.A.(MD).No.378 of 2013 are the accused Nos.2 to 4 in S.C.No.78 of 2011, on the file of the learned Sessions Judge, Mahila Court, Pudukkottai. They stood charged for the offences punishable under Sections 498(A) and 304 (B) of the Indian Penal Code, in the alternative under Section 302

of the Indian Penal Code. By Judgment dated 02.12.2013, the Trial Court has convicted the accused and sentenced them, as detailed below:--

Accused No.	Convicted under Sections	Sentence imposed	Fine amount
1 to 4	498(A) IPC	Each to undergo rigorous imprisonment for three years.	Rs.3,000/- each, in default to undergo simple imprisonment for three months.
1	304(B) IPC	To undergo imprisonment for life.	Rs.3,000/-, in default to undergo simple imprisonment for three months.

However, the Trial Court acquitted all the accused from the charge under Section 302 of the Indian Penal Code and the accused Nos.2 to 4 from the charge under Section 304(B) of the Indian Penal Code. The sentences imposed on the first accused/the first appellant have been ordered to run concurrently. Challenging the said conviction and sentence, the appellants have come up with these Criminal Appeals.

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

The deceased, in this case, was one Mrs.Parimala. The first accused is the husband of the deceased. The accused 2 to 4 are the family members and relatives of the first accused. At the time of marriage, according to the prosecution, seven sovereigns of gold jewels and a Hero Honda Motorcycle were given as dowry to the first accused. After the marriage, it is alleged that all the accused started demanding three more sovereigns of gold jewels and also a new motorcycle as dowry. Since the deceased did not fetch these jewels from her family, it is alleged that all the accused harassed her. Unable to bear the harassment, according to the prosecution, on 05.05.2008, at 03.30 PM, the deceased, at the house of the first accused, committed suicide by hanging.

2.1. PW-1 is the step-father of the deceased. He was informed about the suicide committed by the deceased. Then, he went to the Kandarovakkottai Police Station and made a complaint, on 05.05.2008, at 08.00 PM. On the said complaint, a case in Crime No.151 of 2008, under Section 174 of the Code of Criminal Procedure was registered. EX-P1 is the complaint and EX-P6 is the First Information Report.

2.2. PW-13, the Deputy Superintendent of Police, took up the case for investigation. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of the witnesses. At his request, PW-12, the Revenue Divisional Officer, conducted inquest on the body of the deceased. Then, he forwarded the dead body for postmortem.



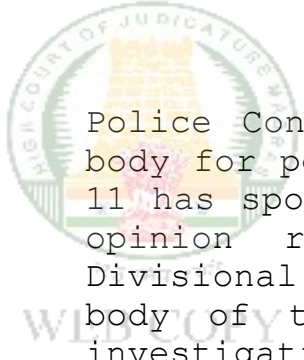
2.3. PW-11, Dr.Krishnaraj, conducted autopsy on the body of the deceased, on 06.05.2008, at 09.00 AM. He found a ligature mark around the neck. Having considered the said external injury and the corresponding internal injuries, he gave opinion that the death of the deceased was due to hanging. EX-P7 is the postmortem certificate.

2.4. PW-13, during the course of investigation, recovered a Nylon Rope, [MO-1], with which the deceased committed suicide, by hanging. He examined PW-15 and few more witnesses. He altered the case into one under Section 304(B) of the Indian Penal code. On the same day, at 02.00 PM, he arrested the first accused and forwarded him to the Court for judicial remand.

2.5. The investigation was continued by PW-14. He examined the doctor, collected the postmortem certificate and the chemical analysis report. On completing the investigation, he laid charge sheet against the accused.

2.6. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 14 witnesses were examined, 14 documents and one material object were marked. Out of the said 14 witnesses, PW-1 is the step-father of the deceased. He has stated about the marriage held between the first accused and the deceased. He has further stated that, at the time of marriage, seven sovereigns of gold jewels and a old motorcycle were given as dowry to the first accused. Thereafter, it is alleged that the first accused demanded for a new motorcycle and he refused to receive the old motorcycle. He has further stated that PW-1 assured him that he would purchase a new motorcycle for him. Thereafter, it is stated, the deceased committed suicide.

2.7. PW-2 is the wife of PW-1. She has stated about the marriage between the deceased and the first accused. She has also stated that the accused refused to take the old motorcycle, which was presented at the time of marriage, demanding new vehicle. PW-3 is a neighbour. He has stated that the deceased was harassed by all the four accused demanding dowry. PW-4 is the uncle of the deceased. He has also stated about the same facts, as spoken by PW-1. PW-5 is yet another relative of the deceased. He has also stated about the same facts, as spoken by PW-4. He has also stated about the preparation of Observation Mahazer and the Rough Sketch and the recovery of MO-1, Nylon Rope, at the place of occurrence. PW-7 has also stated about the preparation of Observation Mahazer and the Rough Sketch. PW-8 has spoken about the demand made by the first accused for a new motorcycle. PW-9 has spoken about the registration of the case on the complaint of PW-1. PW-10, Grade I



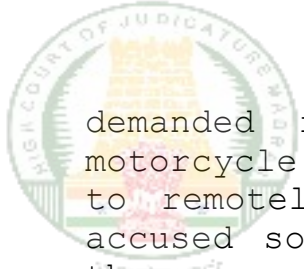
Police Constable, has spoken about the handing over of the dead body for postmortem, as directed by the Investigating Officer. PW-11 has spoken about the postmortem conducted by him and the final opinion regarding the cause of death. PW-12, the Revenue Divisional Officer, has spoken about the inquest conducted on the body of the deceased. PW-13 and PW-14 have spoken about the investigation conducted by them and the filing of final report.

2.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellants, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants are now before this Court with these Criminal Appeals.

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

4. As we have already pointed out, the prosecution mainly relies on the evidences of PW-1 to PW-3, who have spoken about the marriage held between the first accused and the deceased. Admittedly, the marriage between them took place on 10.02.2008, whereas the deceased died on 05.05.2008, viz., after three months of the marriage. PW-1 to PW-3, the family members of the deceased, have stated that seven sovereigns of gold jewels and a old motorcycle were presented to the first accused. It is their case that after the marriage, the first accused demanded for a new motorcycle, which PW-1 assured to give him. There is absolutely no evidence as against the accused Nos.2 to 4 that either they demanded dowry before the marriage or after the marriage. These witnesses have stated, in a very vague manner, that the accused demanded dowry. In our considered view, on the evidences of these witnesses, it would not be safe to sustain the conviction of these accused Nos.2 to 4. Absolutely, there is no acceptable evidence upon which these accused [A2 to A4] could be convicted for the offence under Section 498(A) of the Indian Penal Code. The Trial Court has disbelieved the evidences of these witnesses as against the accused Nos.2 to 4, in respect of the charge under Section 304 (B) of the Indian Penal Code. In our considered view, even the conviction of the accused Nos.2 to 4 for the offence under Section 498(A) of the Indian Penal Code, on the evidences of these witnesses, cannot be sustained and therefore, they are entitled for acquittal.

<https://hcservices.courts.tamilnadu.gov.in/> as the first accused is concerned, PW-1 to PW-3 have stated that at the time of marriage, a old motorcycle was presented to the first accused, which he refused to receive. He



demanded for a new motorcycle. PW-1 assured to give a new motorcycle. However, absolutely, there is no evidence at all even to remotely infer that the deceased was harassed by the first accused soon before her death, demanding dowry. It is stated by the accused that due to some other domestic problem at her parental home, the deceased committed suicide. The cause for her decision to commit suicide is not very clear. At any rate, in the absence of any evidence that the first accused harassed the deceased soon before her death, demanding dowry, it cannot be concluded that the death of the deceased was a dowry death and the same was caused by the first accused. Therefore, the first accused is entitled for acquittal from the charge under Section 304(B) of the Indian Penal Code. However, since there is evidence that the first accused refused to receive the old motorcycle and demanded a new motorcycle as dowry from PW-1 and caused cruelty few days after the marriage, he is liable to be punished under Section 498 (A) of the Indian Penal Code.

6. Insofar as the quantum of punishment is concerned, it is reported that the first accused had already undergone sentence for a period of two and half years. He has also paid the fine amount of Rs.3,000/-. In our considered view, the said period would be the sufficient punishment.

7. In the result, CrI.A.(MD).No.378 of 2013 is allowed; the conviction and sentence imposed on the appellants/accused Nos.2 to 4 by Judgment, dated 02.12.013, made in S.C.No.78 of 2011, passed by the learned Sessions Judge, Mahila Court, Pudukkottai, is set aside and the appellants/accused Nos.2 to 4 are acquitted. Fine amount, if any, paid by the appellants/accused Nos.2 to 4 shall be refunded to them. Bail bond executed by them and the sureties shall stand terminated.

8. CrI.A.(MD).No.388 of 2013 is partly allowed; the conviction and sentence imposed on the appellant/first accused for the offence under Section 304(B) of the Indian Penal Code is set aside and he is acquitted from the said charge. Fine amount, if any, paid by the appellant/the first accused for the said offence shall be refunded to him. However, the conviction of the appellant/the first accused for the offence under Section 498(A) of the Indian Penal Code is confirmed, but, the sentence is reduced to the period already undergone, besides a fine of Rs.3,000/-, in default to undergo simple imprisonment for three months. Fine amount, if any, already paid by him, as imposed by the Trial Court, shall be adjusted accordingly. Bail bond executed by the appellant and the sureties shall stand terminated. Consequently, connected M.P.(MD).No.1 of 2013 is closed.

Sd/-

Assistant Registrar(CS-II)



To

1.The Sessions Judge, Mahila Court, Pudukkottai.

2.The Deputy Superintendent of Police,
Pudukkottai Division,
Pudukkottai District.

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

+1cc to M/s.T.R.Subramanian, Advocate in SR.50321

CRL.A[MD].Nos.378 and 388 of 2013
06.09.2016

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