

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.130 of 2009

1. Balathandayathapanisamy
2. Deivarathinam

.. Appellants/Accused 1 & 2

Vs

State rep. By
The Inspector of Police,
Thondamuthur Police Station,
Pothanur, Coimbatore.
(Crime No.122 of 2003)

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction and sentence made in S.C.No.155 of 2006 on the file of learned Sessions Judge, Coimbatore by order dated 10.02.2009 and to set aside the same.

For Appellants : Mr.N.Anand

For Respondent : Mr.Mohamed Riyaz,
Govt. Advocate (Crl. Side)

JUDGEMENT

The accused 1 and 2 in S.C.No.155 of 2006 on the file of the Sessions Judge, Coimbatore are the appellants in this appeal. They stood charge for an offence under Section 304(b) of IPC. By judgement dated 10.02.2009, the Trail Court convicted the accused and sentenced them to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment. Challenging the above said conviction and sentence, the appellants/accused are before this Court.

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

The deceased in this case is one Chinnathangam, who is the sister of P.W.1. The deceased married to A1 on 12.04.1999 and right from their marriage, they were residing in a Farm house of P.W.1, for over a period of four years. From and out their wedlock, they were blessed with two male children. Sometimes later, they had been to their native place to attend some condolence and started staying there along with A1's

mother, who is the second accused in this case. Thereafter, the deceased Chinnathangam used to visit her mother's house now and then along with the children. While so, A1 and A2 obtained 10 sovereigns of jewels from the deceased and pledged the same for digging the bore well in A1's field. Though they had good income from the agriculture, A1 and A2 had not chosen to redeem the jewels of the deceased. Apart from that, they had forced the deceased to get Rs.10,000/- as dowry in order to meet the agricultural expenses. When things stood thus, on the occurrence day, i.e., on 24.12.2003, at about 10.00 a.m., the deceased along with her children went to her parent's home and informed the complainant/P.W.1, that there was a quarrel in her house, and A1 in a drunken mood at the instigation of A2 had beaten her, and they harassed her to get her share from the family, hence she wanted to stay in the parental home for few days. P.W.1, advised her and asked her to stay in the house for few days and went for his work. However, on the next day, i.e., on 25.12.2003, she left for her matrimonial home along with two children even without informing P.W.1 and others in the family. On the same day, she administered poison to her two children and then she also

consumed the same and committed suicide. She and her two children died. P.W.1 came to know about the suicide committed by her sister at about 10.00p.m., and immediately, he rushed to her place and then gave a complaint with the respondent police.

3. The Sub Inspector of Police, P.W.10, on receipt of the complaint, registered a case in Crime No.122 of 2003 for offences under Section 302 of IPC and 174 of Cr.P.C. After registering the FIR, he sent the same to the learned Judicial Magistrate No.VI, Coimbatore. Since the suicide had been committed within seven years from the date of marriage, he sent a copy of the FIR to the Revenue Divisional Officer to conduct inquest on the body of the deceased and her sons. Then, P.W.11, Deputy Superintendent of Police, took up the investigation and visited the scene of occurrence, prepared Observation Mahazar, and collected M.O.1, M.O.2, M.O.3 and prepared Ex.P29, Seizure Mahazar. P.W.2, Revenue Divisional Officer conducted inquest over the dead body of the deceased in the Government Hospital, Coimbatore in the presence of Panchayatars and submitted the inquest report, Ex.P3. After completion of enquiry, P.W.11, filed charge sheet against the

accused under Section 304(b) IPC. Based on the materials available on record, the Trial Court framed charges against the accused persons as stated supra. To establish the case, prosecution has examined 11 witnesses and produced 30 exhibits and M.Os.1 to 3, material objects were marked.

4. Out of the witnesses examined P.W.1, is the brother of the deceased. He is living with his mother. According to him, his sister, the deceased was living in her mother-in-law's place and she used to visit his house also. Two months prior to the date of occurrence, she used to visit his house frequently and at that time she was looking dull and when he enquired about the same, she replied that it is her fate. P.W.1, further deposed that initially, the deceased and A1 were residing separately and after four years they started living with their in-law's and further stated that A1 and A2 harassed his sister by demanding dowry and on two occasions he gave money. A day before the date of occurrence, the deceased along with her children visited his house and complained that both A1 and A2 slapped her and forced her to get her share from the family

property. Though he pacified her and told to stay back for few days, she returned to her in law's house on the same day, without even informing him, and after hearing the death he had given the complaint. P.W.5, is the sister of the deceased and she had also deposed to the effect that A1 along with A2 had tortured her sister by demanding dowry and hence, she administered poison to the children and then consumed the same.

5. P.W.6 is the photographer, who took the photographs of the deceased. P.W.7, turned hostile. P.W.8 is the Head Constable, who sent the dead body to the doctor for conducting autopsy. P.W.8, identified the body of the first deceased and P.W.9 another Head Constable identified the body of the children to the Post Mortem doctor. P.W.10 is the Inspector of Police, who received the complaint and based on the same he registered a case in Crime No.122 of 2003 for offences under Sections 302 and 174 of Cr.P.C. and prepared FIR, Ex.P.24 and sent the same to the Deputy Superintendent of Police. P.W.11 is the Deputy Superintendent of Police, at Pothanur circle and on receipt of the FIR, he commenced

investigation and proceeded to the scene of occurrence and thereafter, he prepared the observation mahazar and rough sketch, Ex.P27 and Ex.P28 and sent the dead bodies for autopsy and recorded the statement of witnesses and altered the FIR in to Sections 302, 364 and 304(b) of IPC and arrested the accused on 01.01.2004. After completing the investigation, he filed the final report. When the above incriminating materials are put to the accused under Section 313 of Cr.P.C., the accused denied the same.

6. A1, husband of the deceased had been examined as D.W.1 and marked four exhibits namely, Birth Certificate of the deceased, Hariprasad, Health Card of the deceased Chinnathangam, House tax receipts and the Voters List. According to the first accused after the marriage, he and his wife, the deceased, have resided in their house for nearly four years and absolutely, there was no dowry demand. He had also deposed that their marriage was not accepted by P.W.1 and his family members at first. On the date of occurrence, his wife, the deceased visited her mother's place and there was a quarrel between the family members and the deceased and

hence, she returned back immediately. Unable to bear with the words uttered by her brother and her family members, she had administered poison to the children and committed suicide.

7. The Trial Court after considering materials placed before it, had convicted the accused as stated supra. Now, challenging the same the appellant filed the appeal.

8. I have heard Mr.N.Anand, learned counsel for the appellant and Mr.Mohamed Riyaz, learned Government Advocate appearing for the respondent and perused the records carefully.

9. P.W.1 is the brother of the deceased, who is also the author of the FIR. According to him, he performed the marriage of the deceased and the first accused. After their marriage, they were living in his farm house, for nearly four years. Thereafter, the deceased along with A1 and children went to A1's village for a condolence. From that time onwards, they have started living with A2. Nearly after three years from the date of her marriage, he had given her 10 sovereigns of gold jewels. The same was pledged by first and second accused for

agricultural expenses. Subsequently, P.W.1 also gave Rs.10,000/- in cash for agricultural purpose as demanded by the first accused. It is the further case of P.W.1, that a day before the date of occurrence, the deceased along with her children visited his house and complained about the harassment made by her husband and mother-in-law to him and stated that she was harassed to get her share in the family property. It is also stated by her sister that the first accused is demanding money from her even for his day-to-day expenses. On the very next day, she left his house without informing anyone to her in-law's place.

10. P.W.4, who is another brother of the deceased had deposed to the effect that prior to the date of occurrence, the deceased visited his house but she had not made any complaints regarding demand of dowry or harassment. Both P.Ws.4 and 5 have deposed regarding the pledging of jewels, that the jewels were pledged by the first accused for agricultural purpose only. From that, it could be seen that the first accused and the deceased were lived together in a separate house for nearly four years and there were no quarrel between them at

that point of time and only after they left for the in-laws place, there had been some quarrel. Other than the brothers and sister of the deceased, no independent witnesses were examined to prove the demand of dowry. From the date of marriage, the first accused and the deceased were living together for nearly four years in a separate house, happily and no allegation of demand dowry or any harassment. Even their marriage had not been accepted by the deceased family, they were maintaining cordial relationship among themselves. The first accused, from the date of marriage maintaining his wife and children, and he had also admitted that the 10 sovereigns of jewels were pledged by him for agricultural purposes. If there had been a demand for dowry, it could have been made from the date of marriage, it is also stated that the first accused and the deceased were leading happy life for about four years. Apart from that P.W.4 another brother had admitted that before the date of occurrence the deceased came to his home and did not complain about the alleged harassment. In the said circumstance it is highly unsafe to convict the appellant based on the interested testimonies of the deceased, brother and sister.

11. In view of the same, I am of the considered view that the prosecution failed to prove the case beyond any reasonable doubt and the appellants are entitled for acquittal.

12. Hence, this appeal is allowed. The conviction and sentence imposed on the appellants are set aside. Fine amount, if any paid by the appellants, shall be refunded to them. The period of sentence already undergone by appellant/accused shall be given set off under Section 428 Cr.P.C.

25.01.2017

Index : Yes/No

To

1. The Sessions Judge,
Coimbatore.
2. The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN. J.,

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