

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 12.07.2018]

[Pronounced on : 26.11.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.501 of 2009

1. Selvam
 2. Anjalatchi
- ... Appellants/Accused 1 and 2

.. Vs ..

State by,
Deputy Superintendent of Police,
Chengalpattu Town Police Station.
Crime No.82 of 2007. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C. praying that the appeal may be allowed and conviction and sentence passed against the appellants in S.C.No.119 of 2007 by the Sessions Court (Mahila Court), Chengalpattu in its judgment dated 18.08.2009 may be set aside by acquitting the appellants and direct the trial Court to refund the find amount in the interest of justice.

For Appellants : Mr.R.Vijayakumar
For Respondent : Mr.R.Surya Prakash,
Government Advocate

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JUDGMENT

The convicted accused Nos.1 and 2 are the appellants herein. The sister of A.1 viz., A.3 was acquitted. The appellants herein/accused Nos.1 and 2 stand convicted by the learned Sessions Judge (Mahila Court), Chengalpattu in its judgment dated 18.08.2009 in S.C.No.119 of 2007 for an offence punishable under Section 498 (A) IPC and sentenced both of them to undergo rigorous imprisonment for one year and to pay a fine of Rs.250/- each in default to undergo simple imprisonment for three months and convicted both the appellants herein/accused Nos.1 and 2 for an offence punishable under Section 304(B) IPC and sentenced both of them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.750/- each in default to undergo simple imprisonment for one year and both the sentences of imprisonment were ordered to run concurrently. Further, both the appellants stand convicted for an offence punishable under Section 306 IPC also, but no separate sentence has been awarded, since they have been awarded punishment under Section 304(B) IPC. Challenging the correctness of the conviction and sentence passed by the learned Sessions (Mahila Court), Chengalpattu, in

S.C.No.119 of 2007, Accused Nos.1 and 2 have preferred this criminal appeal before this Court.

2. The case of the prosecution is that on 13.12.2004, the marriage of the first appellant/first accused with victim girl Latha was solemnized and they lived at Rajeswari Street, Gokulapuram at Chengalpattu. The second accused is the mother of the first accused and third accused is the sister of the first accused and all the accused harassed the deceased Latha and thereby demanding 20 sovereigns of gold and committed an offence under Section 498(A) IPC and in view of the continuous demand of dowry and non compliance of the demand, the accused assaulted the deceased Latha and called her as a beggar and in view of the dowry harassment, the victim girl Latha committed suicide by hanging in the matrimonial home on 25.03.2007 around 8.00 a.m. and hence, they have levelled with charge under Section 306 IPC and in view of the dowry demand soon before death, the charge under Section 304(B) IPC also was framed against all the three accused.

3. In order to prove the charges, the prosecution examined P.Ws.1 to 11 and marked Exs.P.1 to P.10 and produced M.O.1. On behalf of the defence, no witness was examined and no document was marked. The accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and they denied their complicity in the alleged crime.

4. On consideration of both oral and documentary evidence adduced on the side of the prosecution, the trial Court has acquitted A.3 from all the charges and convicted both A.1 and A.2 for the offences under Sections 498(A), 304(B) and 306 IPC. However, no separate sentence has been awarded for the offence under Section 306 IPC as stated supra. Challenging the above said conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chengalpattu, the convicted accused Nos.1 and 2/appellants have preferred this Criminal Appeal before this Court.

5. Learned counsel appearing for the appellants/accused Nos.1 and 2 would contend that the second appellant has not been arrayed

as an accused in the FIR and the implication of the second appellant afterwards is manipulation and afterthought. It is further contended that on the date of occurrence, the first appellant went away to attend his job in the morning and the second appellant went to her daughter's place along with her grandchildren two days prior to the date of occurrence and only on hearing the news, she came to the place of occurrence. It is contended that no documentary or oral evidence was adduced to prove that any previous case in connection with dowry demand was filed before the All Women Police Station and the non-examination of the independent witnesses/tenants to know what had happened on the fateful day, is fatal to the prosecution case. The learned counsel also contended that since there was no material evidence to the effect that in between 18.03.2007 and 25.03.2007, there was harassment or torture or demand of dowry and that there was abetment or instigation or intention to commit suicide, the conviction imposed on the accused for the offences under Section 304(B) and 306 IPC is unsustainable.

6. Learned Government Advocate (Crl.Side) made submissions in support of the judgment of the trial Court.

7. Heard both sides and perused the materials available on record.

8. The points for consideration are:

(i) Whether the conviction passed by the trial Court against A.1 and A.2 for the offences under Sections 498(A) and 304(B) and 306 IPC is sustainable in law? and

(ii) Whether the sentence awarded by the trial Court against A.1 and A.2 for the offences under Sections 498(A) and 304(B) IPC is excessive?

9. Learned counsel appearing for the appellants/accused Nos.1 and 2 has vehemently contended that the trial Court has mainly relied upon the evidence of P.W.1 and P.W.2 with regard to the previous criminal case launched against the appellants however, failed to take note of the fact that A.2 was living separately while A.1 and the deceased were living separately from 18.03.2007 and further contended that no document has been filed in connection with the case in Crime No.4 of 2006 to prove that the accused had demanded

dowry from the deceased. Even the police officer has not produced any document and not proved the alleged compromise which has led to the acquittal in the previous criminal case.

10. Learned counsel appearing for the appellants further drawn my attention to the fact that the prosecution has not let in any evidence to the effect that between 18.03.2007 [date of setting up of separate matrimonial home by A.1 along with the victim] and 25.03.2007 [date of death of the victim] whether there was any demand of dowry or harassment or cruelty meted out by the deceased at the hands of the appellants/accused Nos.1 and 2.

11. Per contra, the learned Government Advocate (Crl.Side) has stated that previously, there are two police complaints have been given by the deceased Latha herself one before Melmaruvathur police station and on compromise, both the deceased and first accused went and lived together. Subsequently, since there was no development in the smooth functioning of the matrimonial home, again, the deceased Latha has given another complaint and a case in Crime No.4 of 2006 was registered and in connection with the said case, both A.1 and A.2

were arrested and remanded to judicial custody and final report has been filed and at the instance of judicial officer, the matter has been compromised and the case has been ended in acquittal and thereafter, since there was dowry demand made, the deceased had committed suicide within a week from the date of reunion [pursuant to the settlement arrived] and made submissions in support of the order of the Sessions Court.

12. After hearing the respective counsel for the respective parties and after perusing both oral and documentary evidence available on record, it is seen that P.W.1 and P.W.2 are the parents of the deceased (Latha) while P.W.3/Suresh is the brother of the deceased and P.W.4/Radhakrishnan is an independent witness belonged to the same village and the versions of the private prosecution witnesses P.Ws.1 to 4 are to the effect that even before the marriage, A.1 and the deceased were in love with each other and the deceased was made pregnant by the first accused and subsequently, the deceased got married to A.1 and there was frequent demand of dowry and consequent cruelty on the part of A.1 which has resulted in a complaint before the Melmaruvathur police station and it

appears that in the presence of P.W.4 and at the advise of the elders, compromise was arrived and the first accused and the deceased were advised to go and join with the family and hence, the complaint given before the Melmaruvathur police station has been closed. Even thereafter, it appears that there was a complaint for further demand of Rs.50,000/- and also for a bike as deposed by P.W.2/mother of the deceased. It is to be stated that in this connection, the Inspector of Police, All Women police station, Chengalpattu has registered a case in Crime No.4 of 2006. In this regard, the evidence of P.W.9/Inspector of Police assumes relevance and she could categorically deposed that on 14.06.2006 at 5.00 p.m., the deceased Latha had lodged a complaint and based on the said complaint, a case was registered for the offence under Sections 498(A) and 506(ii) IPC and arrested both A.1 and A.2 herein in their house and subsequently, after investigation, filed final report on 23.06.2006 and at the instance of the learned Judicial Magistrate, compromise has been arrived at between the parties and thereby, the deceased was advised to go and live with the matrimonial home on condition that the first accused has to set up separate house. Accordingly, the case has been ended in acquittal as the compromise entered between the parties on 10.01.2007.

13. It remains to be stated that from the evidence of P.Ws.1 to 4, the private prosecution witnesses that after the acquittal in the said criminal case, the first appellant has set up a separate matrimonial home on 18.03.2007 at Chengalpattu and the deceased had committed suicide on 25.03.2007 namely, within seven days assumes significance. P.W.4, in his evidence, has categorically admitted that after the acquittal before the Judicial Magistrate Court, a separate matrimonial home was set up by A.1 and while A.2 was living separately. Two days prior to the occurrence, the second accused has taken the two children to her daughter's house (A.3's house who was acquitted of all the charges by Sessions Court) and two days prior to the incident, A.2 was not available or not seen within the company of the first accused and deceased assumes significance. The said answer elicited in the cross-examination of P.W.4 also supported by the evidence of Investigating Officer P.W.9 assumes significance.

14. With regard to the absence of A.2 [few days prior to the occurrence), it remains to be stated that on perusal of the cross-examination of P.W.9/Sub Inspector of Police, All Women Police

Station, Chengalpattu, except formal suggestion of denial, there was nothing on record to doubt the veracity of the above said judicial proceedings taken at the instance of the deceased Latha as against A.1 and A.2 and accordingly, it appears from the records that the trial Court has taken into consideration those facts and the same cannot be found fault with as the same does not suffer from any irregularity or illegality. It remains to be stated that as per the evidence of P.W.9 coupled with the evidence of the private prosecution witnesses viz., P.Ws.1, 2, 3 and 4 are to the effect that before the incident of suicide, there were two police complaints regarding demand of dowry by A.1 and A.2 and in fact, in connection with the case in Crime No.4 of 2006, A.1 and A.2 were arrested and remanded to judicial custody by the competent Judicial Magistrate dealing with the dowry prohibition case and further, it appears that to save the institution of the marriage the parties are advised and compromised and the case resulted in acquittal. In the cross-examination of private prosecution witnesses, in the absence of any worthwhile consideration and taking note of the facts and circumstances of the case, this Court is of the considered view that the nature of compromise in the previous case lends support to the present case and version of witnesses P.Ws.1 to 4

herein stands fortified and therefore, the finding of the trial Court to that effect cannot be found fault with and accordingly, the plea raised by the appellants' counsel, in this regard is hereby negated.

15. Furthermore, it is to be stated that the marriage between A.1 and the deceased Latha was solemnized on 13.12.2004 and a criminal complaint against A.1 and A.2 was lodged before the All Women police station on 14.06.2006 and they were remanded to judicial custody and final report was filed on 23.06.2006 and based upon the compromise, they have been acquitted on 10.01.2007 and on 18.03.2007, the first appellant set up a separate matrimonial home wherein, the second appellant/second accused was not a party and the occurrence had taken place on 25.03.2007 and hence, on factual position, this Court finds that within seven years of marriage, the wife has committed suicide and the unnatural death of wife has happened in the matrimonial home set up by A.1 within seven days from setting up of separate home and soon before death there was a demand of dowry as could be seen from the earlier two complaints as spoken to by P.W.9 coupled with the version of P.W.1 to P.W.3 and hence, the prosecution has successfully fulfilled all the three essential ingredients

under Section 113(B) of the Indian Evidence Act and by operation of law, the prosecution is entitled to presumption in their favour, consequent, it is for the first accused to rebut the presumption arisen under Section 113(B) of the Indian Evidence Act.

16. Learned counsel appearing for the appellants would contend that "soon before death" as stated above, Section 304 (B) IPC has not been proved by the prosecution and presumption cannot be drawn as contemplated under Section 113(B) of the Indian Evidence Act.

17. This Court has given its anxious consideration to the submissions made by the learned counsel appearing for the appellants. Admittedly, upto 10.01.2007, A.1 and A.2 are facing criminal trial for the charge of Dowry Prohibition Act as could be seen from the deposition of the competent person viz., Sub Inspector of Police and in view of the compromise, it was resulted in acquittal on 10.01.2007. The first appellant set up a separate matrimonial home and took the deceased to the separate home where the deceased had committed suicide by hanging within seven days thereof.

18. In the instant case, the prosecution has successfully proved by the independent witness to discharge the burden to the extent that only on compromise arrived at the instance of the Court, earlier round of criminal case for the alleged offence of dowry has ended in acquittal and separate matrimonial home has been set up by the first accused with the victim on 18.03.2007 and since this is a case of dowry death, when the occurrence was taken place in the house of in-laws, the case is based upon circumstantial evidence then the onus on the inmates of the house to explain circumstance leading to unnatural death as stated by the Supreme Court in the case of **Kundula Bala Subrahmanyam And Anr vs State Of Andhra Pradesh** reported in **1993 (2) SCC 684**. In this connection, it is also relevant to refer to the principles underlying Section 106 of the Indian Evidence Act which reads as follows:-

"106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

19. As per the above said Provisions of Section 106 of the Indian Evidence Act, the burden to establish those facts which are within his personal knowledge goes on the person concerned and if he fails to establish or explain those facts, an adverse inference has been drawn

against him as held in the decision reported in **2016 (7) SCC 178 [Guddu @ Jitendra vs State Of U.P.]**. Admittedly, A.2 was not living with A.1 and the deceased, after the judgment was pronounced by the Magistrate Court. Further, there is nothing in the cross-examination to explain the special circumstances that are taken place between 18.03.2007 and 25.03.2007 in new matrimonial house fall upon A.1 only.

20. The fact remains that the suicide has taken place at the matrimonial home and what had happened in his house, is within the special knowledge of A.1. Nothing is stated when the accused was questioned under Section 313 of Cr.P.C. nor by way of written statement and further, no explanation has been offered by the accused which means no satisfactory explanation was offered by the accused to discharge both statutory presumption arisen in favour of prosecution as narrated in the preceding paragraphs and thus, this Court finds that while the prosecution has substantially proved the fact of dowry demand by A.1 which has resulted in first complaint before the Melmaruvathur police station and the consequent police complaint which culminated before the Judicial Magistrate under

Section 498(A) and Section 4 of Dowry Prohibition Act and also taking note of the fact that a compromise has been arrived at which has led to the acquittal and within one week, the first accused set up a separate home and the deceased Latha has committed suicide and therefore, in view of the chequered history and also the consequent events as spoken to by P.Ws.1 to 4 and the independent witness P.W.3 and police witness P.W.9, the trial Court has correctly held that the ingredients of the offence under Section 304(B) IPC are proved by the prosecution, is valid does not call for any interference by this Court in the appellate stage.

21. Furthermore, on a perusal of the answer given by the accused in the questioning under Section 313 of Cr.P.C. or in the written submission on behalf of the accused before the trial Court and in the absence of any explanation to explain the special circumstances as to what had happened between the above said two said dates, this Court has left with no other option but to hold that presumption arisen in favour of the prosecution for the alleged offence under Section 304(B) IPC and the said presumption in favour of prosecution was not dislodged by the accused and accordingly, the conviction and

sentence passed by the learned Sessions Judge (Mahila Court), Chengalpattu against A.1 for the alleged offence under Sections 498(A) and 304(B) IPC does not call for any interference and the same are hereby confirmed.

22. In view of the discussions in the preceding paragraphs regarding the absence of A.2 after the compromise before the judicial Magistrate Court in earlier round of criminal litigation, and in the absence of any evidence to show positive role said to have been placed by A.2, (mother of A.1) in respect of the charge under Sections 498(A) and 304(B) IPC, I find that there is no positive material for the charge against A.2. Accordingly, the conviction passed by the learned Sessions Judge, (Mahila Court), Chengalpattu as against A.2 in respect of the charges under Sections 498(A) and 304(B) IPC is held to be unsustainable.

23. In the result,

[i] the order of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chengalpattu, in S.C.No.119 of 2007,

dated 18.08.2009, as against the first accused/first appellant are confirmed and the Criminal Appeal is dismissed.

[ii] The conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chengalpattu, in S.C.No.119 of 2007, dated 18.08.2009, as against the second accused/second appellant are hereby set aside and the Criminal Appeal is allowed and the second accused, who stands charged for the offences under Sections 498(A) and 304(B) IPC, is acquitted of the charges. The bail bond executed by the second appellant/second accused shall stand cancelled forthwith and the fine amount paid, if any, shall be refunded to her.

Index : Yes / No
Internet : Yes
Jrl

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26.11.2018

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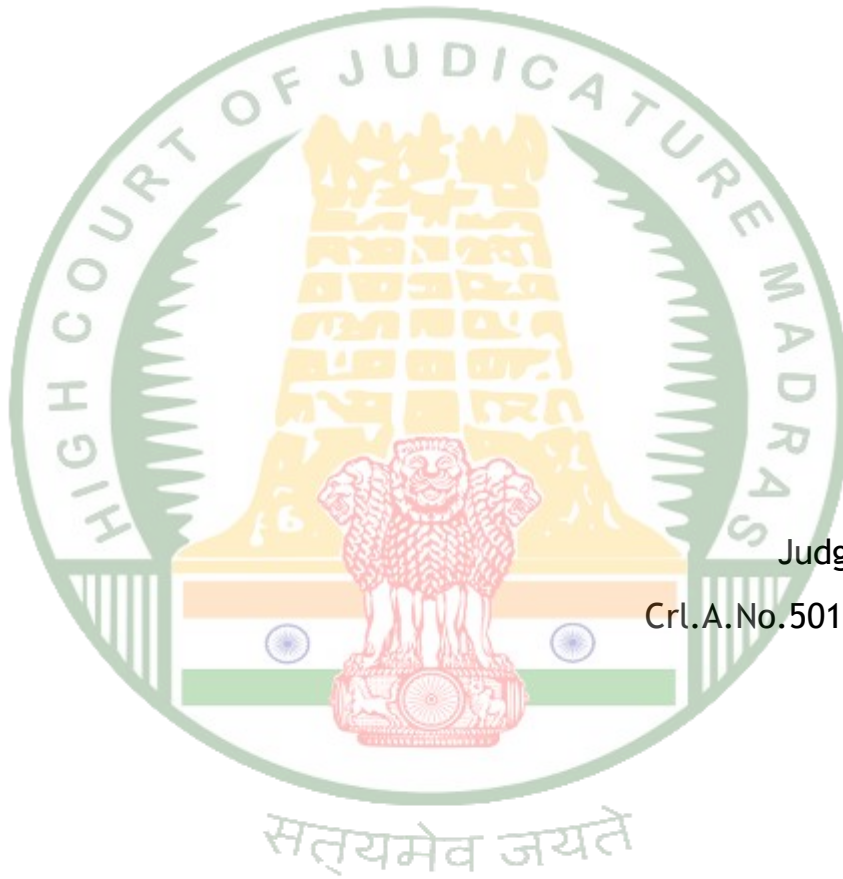
1. The Sessions Court,
Mahila Court, Chengalpattu.
2. The Deputy Superintendent of Police,
Chengalpattu Town Police Station.
3. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN, J.

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