

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.69 of 2009

Selvam

Appellant

Vs

State rep. By
Deputy Superintendent of Police,
Sankari Sub Division,
Sankari Police Station,
Salem District.
(Crime No.770 of 2002)

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment passed in S.C.No.21 of 2008, dated 11.12.2008 on the file of the Sessions Judge, Mahila Court, Salem sentencing the petitioner to undergo 3 years R.I and a fine of Rs.1,000/- under Section 498A of IPC, to undergo 10 years R.I. and a fine of Rs.1,000/- under Section 304B IPC and 2 years R.I and a fine of Rs.1,000/- under Section 4 of the Dowry Prohibition Act.

For Appellant : Mr.N.U.Prassanna

For Respondent : Mrs.M.F.Shabana,
Govt. Advocate (Crl. Side)

JUDGMENT

The sole accused in S.C.No. 21 of 2008 on the file of the learned Sessions Judge, Mahila Court, Salem, is the appellant herein. He stood charged for the offences under Sections 498A and 304 B IPC and Section 4 of the Dowry Prohibition Act. By a judgement dated 11.12.2008, the trial Court convicted the appellant under Section 498-A IPC and sentenced him to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for 3 months; convicted the appellant under Section 304 B IPC, and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for 3 months and convicted the appellant under Section 4 of the Dowry Prohibition Act and sentenced him to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for 3 months. The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

There are three deceased in this case. One of the deceased,

Valarmathi, is the wife of the appellant/accused, and the daughter of

P.W.1. The marriage between the accused and the deceased took place on 23.1.1997. They had one male child, aged four years and one female child, aged 1½ years. Both of the them are residing at Sankagiri. At the time of marriage, the accused demanded Rs.20,000/- as dowry. As P.W.1 did not have money at the time of marriage, she promised the accused that she will pay later. Since the money was not paid as promised, the accused harassed the deceased and he had driven the deceased to her parent's house, she was in her parent's house along with her children for three months. Then the accused took the deceased and the children back to his house. Again, a day before the occurrence, the accused and the deceased came to P.W1's house and the accused demanded money. P.W.1 promised that she would arrange the money soon. On the next day, i.e. on 27.04.2002 at about 7.30 p.m the accused poured kerosene over the deceased and set fire on her. At that time, the two children, who were with the deceased also suffered severe burn injuries. Subsequently, the said Valarmathi and the two children died succumbed to injuries. P.W.1 after coming to know about the occurrence, filed a complaint before the respondent police under Ex.P.1.

3. P.W.14, the then Deputy Superintendent of Police attached to respondent police station, on receipt of the complaint

from P.W.1, registered a case in Cr.No.770 of 2002 for the offences under Sections 498A and 306 IPC and prepared F.I.R-Ex.P.10. He proceeded to the scene of occurrence and prepared Observation Magazar-Ex.P.2 and Rough Sketch-Ex.P.11. Then, he conducted inquest on the dead body of male child Saravanan in the scene of occurrence in the presence of panchayatars and he prepared a report Ex.P.12. Then, he sent the dead body for autopsy to Government Hospital. P.W.16, the then Deputy Superintendent of Police continued investigation.

4. P.W.10 the Doctor, who is working in the Government Hospital, conducted autopsy of the dead body and found the following injuries:

" Body of the male child moderately burnt. Moderately nourished. Eyes closed. jaws

External injuries: Various degrees of burns present all over the body from Head to foot 100 %. Heart weight 100 gms. Both lungs pale Rt 125 gms. left 100 gms.particle present in the trachea. Hyaid bone intact. Stomach empty. Liver pale 600 gms. Spleen pale 50 gm. Both kidneys pale 80 gms. Bladder empty.

On opening the skull membranes intact. Brain 800 gms. Spinal column intact. Appears to have died 12 to 16 hours prior to autopsy. Appears to have died of shock due to extensive burns."

She gave her opinion that the death was due to fire accident.

5. In the meantime, P.W.12, the then Revenue Divisional Officer, Sangagiri, conducted inquest on the dead body of the deceased Valarmathi, in the presence of panchayatars. He prepared inquest report Ex.P.8 and conducted enquiry and after completion of enquiry, he produced the enquiry report Ex.P.9.

6. P.W.11, the Doctor who is working in Government Hospital, Sangagiri, conducted autopsy of the dead body of the deceased Valarmathy and found following injuries:

"A Female body lies on back. Moderately nourished, symmetrical eye lids closed. Tongue seen between the teeth. Hair singed. Teeth complete in nos.

External injuries: Burns seen all over the body 100%. Skin all over the body charred. No external injuries.

Internal examination: Heart 350 gms. Chamber full. Lungs Rt.400 gms. Lt.350 gms. Hyaid bone intact. Stomach semi solid material about 200 ml seen. Liver 1200 gm. Spleen 120 gms. Kidneys each 120 gms. Bladder empty. All organ c/s Congested.

Uterus: Normal in size. c/s Normal. Opening of Head: Membranes intact. Brain 1200 gms. c/s congested. Visera presented for chemical analysis. No internal injuries."

He has issued the Post-Mortem report Ex.P.6. He also conducted autopsy of another dead body of female child viz., Annapoorani and found following injuries:

"A Female baby body lies on back. Moderately nourished, Symmetrical eye lids closed. Tongue seen between the teeth. Hair singed. Teeth 5/5
5/5.

External injuries: 100% Burns seen all over the body. Skin all over the body charred. No external injuries.

Internal examination: Heart 200 gms. Chamber full. Lungs Rt.200 gms. Lt.225 gms. Hyaid bone intact. Stomach:empty; Liver 750 gms. Spleen 75 gms. Kidneys 75 gms

each. Bladder empty. All organs c/s. Opening of the Head: Membranes intact. Brain 700 gms. c/s congested. Visera presented for chemical analysis. General appearance do tally with police report. Death would have appeared to have occurred about 16-18 hours prior to post mortem. "

He has also issued the Post-Mortem report Ex.P.7.

7. P.W.14, the then Deputy Superintendent of Police attached to respondent Police Station, conducted investigation and arrested the accused. He recorded the statement of witnesses and handed over the investigation report to P.W.16. P.W.16, the another then Deputy Superintendent of Police conducted further investigation. After completion of investigation, on 8.10.2003, he laid the charge sheet against the accused for the offences under Sections 304 B and 498-A IPC.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the, on the side of the prosecution, as many as 16 witnesses were examined and 16 documents were exhibited.

9. Out of the witnesses examined, P.W.1 is the mother of the deceased Valarmathi. According to her, at the time of marriage, she promised to give Rs.20,000/- to the accused. After marriage, the deceased complained to P.W.1 that the accused harassed her and she also came to P.W.1's house with her children and residing there for three months. Thereafter, the accused came to her house and took back the deceased and children. A day before the occurrence, the deceased Valarmathi came to her house and asked money and P.W.1 promised her that she would arrange the money soon. On the next day, the deceased Valarmathi committed suicide. In the cross-examination, she has stated that after the marriage, both the accused and the deceased Valarmathi were living happily and the accused did not demand any money. Thereafter, the accused asked for money. Since P.W.1 did not give any money to the deceased Valarmathi at the time of marriage, she promised to give Rs.20,000/- for purchasing a house.

10. P.W.1, further stated that since the deceased Valarmathi and the accused were residing in a rented house and the house owner asked them to vacate the house, P.W.1 promised her to give money to purchase a house. Prior to the date of occurrence, both the accused and the deceased Valarmathi came to her house and she told them that she would arrange money within eight days and after

arranging the money she would call them and give the money. Hence, both the accused and the deceased Valarmathi left.

11. P.W.2 is a nephew of P.W.1. She is a hearsay evidence. She came to know about the harassment through P.W.1. P.W.3 is the sister of the deceased Valarmathi. According to her, the deceased Valarmathi told her that to purchase a house, the accused sent her to P.W.1's house for money and they have asked the money after three years of the marriage.

12. P.W.4 is also a nephew of P.W.1. According to her, the deceased Valarmathi used to come to P.W.1's house and asked for money and she pacified her and sent her to the accused house. P.W.5 is the owner of the house, where both the accused and the deceased Valarmathi stayed and he turned hostile. P.W.6, the then Head Constable, Sangagiri took the dead bodies of the deceased Valarmathi and her child Annapoorani and handed over it to the Government Hospital for Post-Mortem. P.W.7 is another Head Constable, accompanied with P.W.6 for taking dead bodies to the Hospital. P.W.8 is also a Head Constable carried the dead body of child Saravanan to the Hospital for Post-Mortem. P.W.9, Village Administrative Officer is a witness to the Observation Magazar.

P.W.10, Doctor, working in Erode Government Hospital, conducted Post-Mortem of the male child viz., Saravanan and she issued Post-Mortem certificate Ex.P.4. P.W.11, the Doctor, who is working in Sangagiri Government Hospital, conducted Post-Mortem autopsy of the deceased Valarmathi and the female child Annapoorani and issued Ex.P.7. P.W.12, Revenue Divisional Officer conducted inquest of the dead body. P.W.13 is the sister of the deceased Valarmathi. According to her, at the time of marriage, P.W.1 promised to give Rs.20,000/- and frequently, the accused harassed the deceased Valarmathi to get money from P.W.1. P.W.14, Deputy Superintendent of Police, commenced the investigation and recorded the statement of witnesses. P.W.15, Doctor conducted Post-Mortem of the dead body along with P.W.11 and gave his opinion Ex.P.15 and Ex.P.16 stating that the death had occurred due to burning injuries. P.W.16, the then Deputy Superintendent of Police completed investigation and filed the charge sheet.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused examined his brother as D.W.1. According to him, the accused did not demand any dowry at the time of marriage and he was informed that the house of the accused got fire and he rushed there and saw that the children had suffered burn injuries and the

accused took male child Saravanan to the Government Hospital.

14. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

15. When the matter was taken up for hearing on 12.01.2007, there was no representation for the appellant. Hence, the matter was posted under the caption for dismissal on 1.2.2017. Even on that day, there was no representation for the appellant. In such circumstances, Mr.MU.Presanna, learned counsel was appointed as Legal Aid Counsel for the appellant.

16. I have heard Mr.M.U.Presanna, learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate (Crl.Side) appearing for the State and I have also perused the records carefully.

17. The learned counsel appearing for the appellant submitted that absolutely, there is no evidence that the appellant has demanded any dowry. Only P.W.1, the mother of the deceased Valarmathi stated that she has promised to give a sum of Rs.20,000/- at the

time of marriage. But, after three years of marriage, P.W.1 herself promised them to purchase a house for the accused and deceased and for that purpose she would arrange the money. On the next day due to fire accident, the deceased and her two children died. P.W.2 is a hear say evidence, and she came to know the occurrence only through P.W.1. Thus, from the evidence of prosecution witnesses, absolutely there is no material to prove that soon before the death of the deceased, there was a harassment demanding dowry.

18. Apart from that, there is a long delay in filing the First Information Report. Even though, the occurrence took place on 27.04.2002 at about 07.00 p.m, the F.I.R has been filed only on 28.04.2012. Hence, there is a delay in filing F.I.R and it creates a doubt in the prosecution case. There is no evidence available on record to show that the appellant harassed the deceased Valarmathi and therefore, the deceased Valarmathi had gone to the extent of not only committing suicide but also poured kerosene on her two children and set fire. From the above circumstances, the prosecution could not prove the charges beyond reasonable doubt. Hence, he sought for acquittal.

19. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submitted that the prosecution clearly established that the accused harassed the deceased Valarmathi by demanding dowry and unable to bear the harassment of the accused, she went to the house of P.W.1 and stayed there for three months. Even thereafter also, the accused demanded dowry and prior to the occurrence, both the accused and the deceased Valarmathi went to the house of P.W.1 and demanded money. On the next day, the deceased Valarmathi committed suicide along with two children. Hence, the prosecution established that soon before the death of the deceased Valarmathi there is harassment by the accused demanding dowry and the prosecution clearly established the case beyond any reasonable doubt and hence, she sought for dismissal of the criminal appeal.

20. I have considered the rival submissions and perused the records carefully.

21. The accused was convicted for the offence under Sections 498A and 304(B) IPC and Section 4 of the Dowry Prohibition Act.

22. The ingredients for the offence under Section 304 B IPC

are as follows:

"(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry."

23. The Hon'ble Supreme Court, considered the scope of Section 304 B IPC in the decision in **Rajinder Singh Vs. State of Punjab (2015 (6) SCC 477)** and held as follows:

"Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb's case followed by the judgment of Kulwant Singh do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in [Section 2](#) of the Dowry Prohibition Act, at or before or at any time

after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Coming now to the other important ingredient of [Section 304B](#) - what exactly is meant by "soon before her death"?"

"We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of [Section 304\(B\)](#) would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under [Section 304\(B\)](#)."

24. In the light of the decision cited supra, it has to be considered as to whether there is any demand of dowry by the accused, soon before her death which resulted in the death of deceased Valarmathi.

25. P.W.1 is the mother of the deceased Valarmathi. Even in her evidence, she has stated that the marriage took place on 23.01.1997 and at that time, she herself agreed that she would give a sum of Rs.20,000/-. Thereafter, the accused asked money and she has also promised to give the same. But, in the cross examination, she categorically admitted that for nearly three years after the marriage, there was no demand of money by the accused and both the accused and the deceased Valarmathi were living happily in a rental house, and the landlord suddenly asked them to vacate the house. Then, the deceased Valarmathi and the accused asked for money to purchase a house for them and she has also promised them to give Rs.20,000/- since she has not given any jewels to the deceased Valarmathi at the time of marriage. According to her, a day before the occurrence, the accused and the deceased Valarmathi came to her house and P.W.1 has also promised them to arrange the money within eight days after arranging the money she would inform them, and she has also asked them to come and collect the money, thereafter, both of them left the house of P.W.1.

26. From her evidence, it could be seen that the alleged demand was made nearly after three years of the marriage. From the evidence of P.W.1, it is further seen that P.W.1 only asked them

to purchase a house and promised to give a sum of Rs.20,000/-. P.W.3, who is the sister of the deceased stated that the deceased Valarmathi came to P.W.1's house for money to purchase a house and demand was made only after three years of marriage. P.W.4 is another relative of the deceased Valarmathi. He has also stated that the deceased Valarmathi came to P.W.1's house to collect the money. P.W.13 is the another sister of the deceased Valarmathi. She has also stated that P.W.1 promised the accused and the deceased Valarmathi that she would give Rs.20,000/- and hence, the accused asked the deceased Valarmathi to get money from P.W.1.

27. "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

"2. Definition of "dowry".-In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in

connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

*Explanation I.- [***] Explanation II.-The expression "valuable security" has the same meaning as in [Section 30](#) of the Indian Penal Code (45 of 1860)."*

28. As per Section 2 of the Dowry Prohibition Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly to one party to a marriage and the other party to the marriage or by the parents of either party to the marriage or by any other person, to either party to the marriage or to any other person. Such giving or receiving valuable property or valuable security must be in connection with marriage of the parties.

29. From their evidence, it could be seen that absolutely, the demand was not in relation to the marriage and it does not come under the purview of dowry. Apart from that, even as per the evidence of P.W.1 before the date of occurrence, both the accused and the deceased Valarmathi came to P.W.1's house and P.W.1 only promised to give a sum of Rs.20,000/- to purchase a house for the

deceased and the accused. Hence, absolutely, there is no evidence to show that the accused demanded any dowry from P.W.1 and others. In the above circumstances, this Court is of the considered view that the prosecution failed to prove the offence under Section 498-A and 304(B) and Section 4 of the Dowry Prohibition Act 1961 and the appellant/accused is not found guilty for all the above offences and he is entitled to acquittal.

30. In the result, the conviction and sentence imposed on the appellant is set aside and the appeal is allowed. The Appellant is acquitted of all the charges framed against him. Fine amount, if any, paid by the appellant shall be refunded to him. The bail bond if any, shall stand cancelled.

31. While parting with the case, I appreciate the services rendered by Mr.M.U.Pressanna, learned counsel, who appeared on behalf of the appellant as Legal Aid Counsel. The State Legal Services Authority is directed to pay his remuneration.

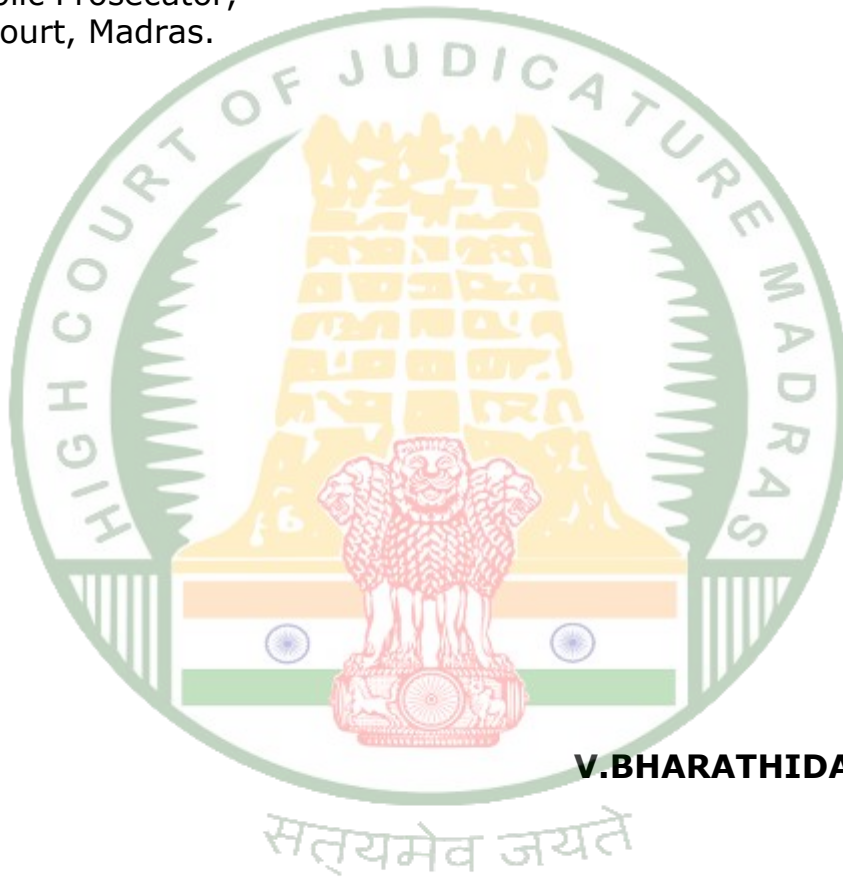
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Index:Yes

To

1. The Principal District and Sessions Judge,
Mahila Court,
Salem.
- 2.The Public Prosecutor,
High Court, Madras.

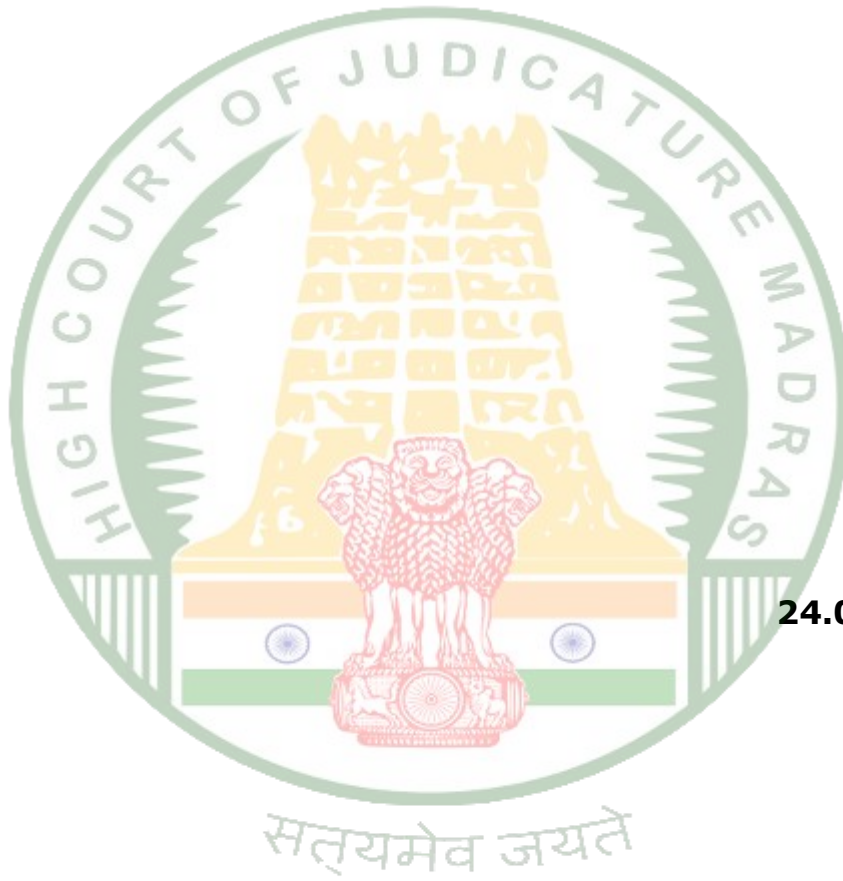


V.BHARATHIDASAN.J.,

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