

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2017  
Date of Verdict : 10.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal No.751 of 2008

State: Represented by  
The Assistant Commissioner of Police  
Vadapalani Range, Chennai.  
(R-5 Virugambakkam P.S.  
Cr.No.885 of 2005) ... Appellant/Complainant

Vs.

1.Palavesham @ Ranjith  
2.Parathesh @Iyappan  
3.Kalaivani ... Respondents/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to call for the records in S.C.No.625 of 2005 on the file of the Magalir Neethimandram, Chennai and to set aside the Judgment of acquittal passed in S.C.No.625 of 2005 dated 16.7.2007

For Appellant : Mr.E. Raja  
Additional Public Prosecutor

For Respondents : Mr.B. Mohan

JUDGMENT

The appeal is preferred by the State against the acquittal of the respondents/accused from the charges under Section 498 (A), 304(B) r/w 34 I.P.C.

2. The brief facts of the prosecution case is as follows:

2.(a) P.W.1 is mother of the deceased Banurekha. P.W.10 is father of the deceased and P.W.2 is the sister of the deceased. The deceased was given marriage to A1 who belongs to Coimbatore. A2 and A3 are father and mother of A1 respectively. Before marriage, the accused demanded Rs.10 lakhs, Car and 100 sovereigns of gold. However, P.Ws.1 and 10 stated that they cannot give Rs.10 lakhs, but they prepared to do whatever given to their elder daughter during her marriage. For their elder daughter they have given 100 sovereigns of gold jewels, a Car and 50% of the marriage expenses. Accused were accepted the

offer and insisted P.Ws.1 and 10 to perform the marriage in a grand manner. Accordingly betrothal was solemnised on 3.9.2004. Thereafter, one week prior to the marriage, 3<sup>rd</sup> accused demanded Rs.1,25,000/- from P.W.1 for decorating the room. Subsequently, marriage was solemnised on 15.11.2004.

2.(b) After marriage, the accused and deceased were taken to P.W.1's house. The accused informed P.W.1 that around 25 persons would be coming to their house. However, for the accused side nobody has come. At the time of marriage, 100 sovereigns of jewel, seer articles were given to the deceased. Rs.10 lakhs was also spent for Marriage expenses by P.Ws.1,2 and 10. 2 days after the marriage, the girl and the bridegroom were sent to the matrimonial home. Thereafter, the accused also complaining that the gold jewels were lesser weight than they accepted. When P.W.1 went to the house of accused, they treated her without any respect. Whenever they visited the accused house, they never allowed the deceased to speak with their parents. In the matrimonial home, she lost her weight. When they enquired the deceased, she informed that the accused demanded Rs.10 lakhs and she was subjected to cruelty. During Pongal, the accused have demanded Rs.10,000/-. Accordingly, P.W.1 gave Rs.10,000/-, micro woven and other seers. In the month of March, 10 sovereigns of gold jewel were also given to the deceased.

2.(c) Thereafter, during the Wedding Day function of A2 and A3, P.W.1 and family members were participated. 3 days after that function, 3<sup>rd</sup> accused informed to P.W.1 that the deceased was admitted in the hospital. When P.W.1 went to the hospital, A3 was scolding the deceased. Thereafter, they took the deceased to Karaikudi. In the month of May, the deceased talked over the phone to P.W.1 and told that the accused were demanding Rs.10 lakhs and car and they were treating her cruelly. After two days of that incident, she was admitted in the hospital and she has also become very thin. The accused demanded Rs.10 lakhs of money repeatedly and due to that the deceased lost lot of her weight. After the treatment, the deceased was taken to the house of P.W.1. There also she was subjected to cruelty by her husband and in-laws. On the date of death also, there was a phone call from A1. After 10 minutes, the deceased committed suicide by hanging herself. Thereafter, P.W.1 and others went to the police station and P.W.1 lodged complaint Ex.P.1. She has also given statement Ex.P.2 before the Tahsildar. The Saree which was used by the deceased for hanging was marked as M.O.1.

2.(d) P.W.2 is sister of deceased and daughter of P.Ws.1 and 10. P.W.3 is friend of deceased. P.W.3 deposed that the deceased told to her with regard to the cruelty by the accused in connection with the dowry of Rs.10 lakhs in her matrimonial home. P.W.4 is medical officer attached to the Apollo First Med Hospital. He has given treatment to the deceased on 26.4.2005 for the breathing problem and referred to her psychiatrist Gowtham Doss on the same day and was discharged on 27.4.2005.

Discharge Summary is Ex.P.3 P.W.5 is medical officer attached to Surya Hospitals examined the deceased on 23.6.2005 at about 10.35 a.m. and informed that she had died. He informed the police and handed over the dead body to the police. A.R. Copy issued by P.W.5 Medical Officer of Surya Hospitals is Ex.P.4. Virugambakkam police taken the dead body to the Government Hospital, Royapettah, where P.W.7 conducted autopsy on the dead body on 24.6.2005 and issued Post Mortem Certificate Ex.P.6 and opined that the deceased would appear to have died of asphyxia due to hanging.

2.(e) P.W.8 is Tahsildar who conducted Inquest over the dead body of the deceased and prepared Inquest Report Ex.P.7 and also recorded statements of P.Ws.1 and 2. He also recorded the statement of the accused and filed report Ex.P.12 to the police to investigate and find out the reason for the death. P.W.9 is P.A.to the District Collector, instructed P.W.8 to conduct Inquest and examine the witnesses. After receipt of his report, he sent the file to the Assistant Commissioner of Police, Vadapalani circle for conducting further investigation. P.W.10 father of the deceased and P.W.11 is the neighbor of the deceased. P.Ws.12 and 14 are also known to P.Ws.1, 2 and 10. According to P.Ws.11 to 14, the deceased was cruelly ill-treated in connection with dowry demand by the accused. P.W.15 Inspector of Police, after receipt of the complaint Ex.P.1 from P.W.1, registered a case in Cr.No.885 of 20205 under section 498-A I.P.C., and 174 Cr.P.C. and forwarded the same to the Court and marked a copy to the Assistant Commissioner of Police, Vadapalani Circle.

2.(f) P.W.16 Assistant Commissioner of Police, took up the investigation and went to the place of occurrence and prepared Observation Mahazar, Rough Sketches of house and bed room which are Exs.P.15, P.18 and P.19 respectively. He also seized M.O.1 Saree under Seizure Mahazar Ex.P.16. Exs.D.1 to D.3 are the letters written by the deceased, seized by P.W.16 from the house of the deceased. He also forwarded the requisition letter Ex.P.8 to P.A.the Hon'ble Collector seeking orders to conduct Inquest on the dead body of the deceased, since the deceased died within seven months from the date of marriage. Thereafter, he examined witnesses. P.W.16 received one more report from the P.A.to Collector and thereafter altered the charges under Section 498 (A) and 304(B) I.P.C. He completed his investigation and filed charge sheet under the same sections.

3. In order to establish the case, the prosecution examined P.Ws.1 to 16; marked Exs.P.1 to P.23 and marked one Material Object. After the examination of prosecution witnesses, the accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which they denied their complicity. No witness was examined on the side of the accused, but three exhibits were marked during the cross examination of P.W.1. The Trial Court, after analyzing the

evidence on record, acquitted all the three accused from the charges under section 498(A), 304(B) r/w 34 I.P.C. Challenging the acquittal, the State has preferred this appeal.

4. The learned Additional Public Prosecutor appearing for the State submitted that P.Ws.1,2,10 to 14 have clearly spoken about the cruelty met out by the deceased in connection with dowry demand. He admitted that the deceased died within 7 months from the date of marriage, evidence shows that the deceased was admitted in the hospital instantly proved that soon before the death the deceased was subject to cruelty due to the dowry demand. The learned trial judge has not applied his mind and hence the learned Additional Public Prosecutor prayed for conviction of the accused by allowing the appeal.

5. The learned counsel for the respondents submitted that unfortunately the deceased committed suicide within 7 months from the date of marriage. P.Ws.1,2,10, of course, have spoken about the alleged demand of dowry and cruelty met out by the deceased, but their evidence is highly contradictory to each other. Further, much importance cannot be given to the evidence of P.W.s.11 to 14 because they are also very close to the family of P.Ws.1 and 10 and their evidence cannot be given much importance, since it is natural for any witness to give such evidence when the death was done within the 7 years from the date of marriage.

6. It is the contention of the learned counsel for the respondents/accused that the entire evidence relied by prosecution is that due to the harassment caused to the deceased, she became sick and was admitted in the hospital, whereas the appellant evidence would show that the deceased was suffering from depression and she was treated by psychiatrist previously. It is also the contention of the learned counsel for the respondents that the deceased also left the suicidal note prior to her death, seized by the Investigating Officer from the occurrence place where the deceased committed suicide. Exs.D.1 to D.3 suicide notes given an indication that she had no grievance against the accused at any point of time. She has taken such extra step due to her ill-health. The learned trial judge has clearly analysed the entire evidence and come to the right conclusion that the respondents/accused are not guilty.

7. In the light of the above submissions of both the learned counsel, now the point for consideration is whether the prosecution has established the charges framed under Section 498 (A), 304 (B) r/w 34 I.P.C. against the accused beyond all reasonable doubt?"

8. P.Ws.1, 2 and 10 are mother, sister and father of the deceased respectively. P.W.11 to 14 are the persons highly connected to the family of P.Ws.1 and 10. This fact was not disputed by P.Ws.1, 2, and 10. It is the case of the

prosecution that at the time of marriage apart from 100 sovereign gold jewels, the accused had demanded Rs.10 lakh and also a car and as the amount could not be mobilised, the deceased was subjected to cruelty continuously. Therefore she lost her weight and she also informed about the cruelty suffered by her to P.W.1 her mother. P.W.1s cross examination clearly indicates that they themselves voluntarily given 100 sovereigns as they gave to their first daughter during her marriage. Further P.W.1 evidence also clearly shows that she has borrowed a sum of Rs.40,000/- from the second accused as loan. Though P.W.1 deposed in her evidence that there was a demand of Rs.10 lakhs, 100 sovereigns and a Car in the first time, it was absent in the complaint as well as the statement given before R.D.O. These facts clearly show that there are serious contradiction in her evidence. It is first time she has spoken before the court.

9. Minor contradictions between the evidence and the statement of witness will not affect the prosecution case. But the entire new set of facts spoken before the court in the substantive evidence cannot be taken as minor contradictions. Their evidence with regard to the demand of Rs.10 lakhs and with regard to the allegation that the accused measured that 100 sovereigns it was only 90 sovereigns are also found to be false in their evidence. Similarly, the evidence of P.Ws.1 and 2 with regard to the demand of Rs.10 lakhs for construction of the house and also a car, as the parents of deceased have not accepted to give that amount, the accused did not send the deceased along with A1 to their house also highly contradictory with each other. Similarly, P.W.10 evidence also unbelievable. The improved version of his evidence was absent before the R.D.O. and also before the Investigation officer. Therefore, when these facts are totally improved for the first time during the evidence, it cannot be given much importance.

10. Unfortunately, the girl has died within 7 months from the date of marriage. There is an evidence to that effect that she has already treated for depression by the Medical Officer. P.W.4 Medical Officer attached to the Apollo First Med Hospitals would clearly state that the deceased came to their hospital for breathlessness which was sudden in onset with lack of sleep and appetite since one week and she was not having proper sleep and she took psychiatrist treatment in the hospital, thereafter she was discharged on 29.4.2005. Ex.P.3 Discharge Summary also filed in this regard. The evidence of Medical Officer P.W.4 clearly shows that the deceased Banurekha was suffering from breathing difficulty and she was treated. P.W.4 further stated that since she was sleepless, she was treated by psychiatrist Gowtham Dass.

11. P.W.6 Dr.T. Girija while working in Sundaram Medical Foundation Hospitals, treated the deceased, who was brought to the hospital with sudden onset of weakness of both lower limbs. She had a past complaint of hyperventilation and she was

admitted in the emergency unit on the ground that she was not able to walk properly and her legs were weak. P.W.6 in his evidence has stated that on examination, it was found that there was no physical ailment and she was referred to Psychiatric treatment. This is one month after treatment given by P.W.4. The evidence of P.Ws.4 and 6 clearly show the fact that the deceased was in fact suffering from depression and she was treated for by psychiatrist and in fact in the month of May when she was referred to Psychiatrist, the deceased herself told that she wanted to take treatment as out-patient and accordingly she treated. Ex.P.5 is Discharge Summary issued by P.W.6.

12. After one month, while she was in her parent's house, the deceased was committed suicide and on the same day Inquest was conducted by the R.D.O. P.W.16 after receipt of F.I.R., went to the place of occurrence and prepared Observation Mahazar and Rough Sketch. He also seized cement colour saree M.O.1. Letters and suicide note Ex.D.1 to 3 written by the deceased were seized under Ex.P.16 Seizure Mahazar, from the room of deceased on the date of occurrence she committed suicide were not disputed by P.Ws.1,2 and 10. The cross examination of P.W.1 clearly shows that the police has seized Exs.D1 to D3 and also admitted the hand writing in the letters is of the deceased. Though P.W.1 has not seen the contents of the writings in the letters, the signatures of the letters are the deceased is not disputed by P.W.1. Similarly, P.W.2 is also aware of Exs.D1 to D3. In her cross examination she clearly depose that she came to know about that letters, through her uncle and aunt. P.W.10 has also admitted that he has also aware that the police seized 3 letters from the deceased room and he also seen the letter Ex.D2 addressed to their family members by the deceased. He admitted the writings in the Ex.D2 are his daughter's handwriting. The deceased has not complained anything about the dowry harassment in these letters.

13. The prosecution side has not done any investigation for comparing the hand writing of the deceased in the letter. It may be a mistake on the part of the investigating officer. But at the same time, the seizure of the letters from the deceased room and handwriting of the deceased in those letters are not disputed by the family members. P.W.10 admitted that Ex.D.2 addressed to him. P.W.2 came to know about the seizure of the letters from her uncle and aunt. Therefore, these admissions of P.Ws.1,2, and 10 coupled with the evidence of P.W.16 Investigating Officer, there can be no difficulty to come to the conclusion that the letters were seized from the room of the deceased by Investigating Officer on the same evening. P.W.16 evidence clearly shows that he shown the letter to P.W.2 and asked about the letters. Though P.W.2 has not spoken anything about the contents of the letters, this Court has no reason to disbelieve the evidence of P.W.16. Further, the evidence of P.W.1 clearly shows that the accused measured the gold and complaining of lesser weight, has not stated before the P.W.16.

Similarly the evidence of P.W.1 that the accused treated the deceased with disrespect and they never allowed to speak with the deceased, were not stated before the investigating officer. Similarly, the evidence of P.W.1 that the deceased has told that the accused demanded Rs.10 lakhs to her. The entire evidence about the demand of Rs.10 lakhs during pongal festival is also not stated before P.W.16. So, all these facts clearly show that P.Ws.1,2 and 10 evidence is nothing but improved one.

14. Exs.D.1 to D.3 letters were seized by the Investigating Officer on the date of death and sent them to the Court. P.Ws.1, 2 and 10 have not denied that the letters written by the deceased. Therefore, there could not be any difficulty in analysing these letters written by the deceased. The first letter Ex.D.1 addressed to A1, in which the deceased has written as follows:

"Dear Ranjit,

I am extremely sorry for spoiling your life. You can begin entirely new life. I couldn't stand up to your expectations. Thanks for all that love you showered upon me. I cannot and be like this. I don't like the way I am now. I am extremely possessive about you. I am now talking to you over phone. Thangamudiyale. Sorry honey, I really have no reason to live. Love you lots. Know you've done lots. CANT GET ANYONE BETTER THAN YOU. SORRY. TAKE CARE WILL BE ALWAYS WITH YOU. SORRY. LOVE YOU. GET MARRIED SOON.

TAKE CARE.

Please forgive me and forget me."

15. The above letter clearly indicates that there was no cruelty met out by the deceased at the hands of her husband/A1. The only thing the deceased accepted and said that she could not stand up to the expectations of her husband. She is very possessive about her husband. Similarly, Exs.D2 and D3 are read as follows:

Ex.D.2

"Dear Sasi,

U've always been there for me. Thank you Sasi, I will take care of your kid from heaven if I go there. Sorry for letting you down.

Dear Balami,

Be smart, you should not do the mistakes that I did. Take care.

Dear Vikki,

Always been best brother, please take care of yourself and the become the 'BEST'.

Dear Chittapa's and Chitti's

Thanks for being there when ever I needed you all.

Dear APPA/AMMA/KASTURI/SENTHIL. 'SORRY'. TAKE CARE.  
LOVE YOU ALL.

Dear Mummy and Daddy,

You've always been very kind to me I've always troubled you sorry for letting you Down, will never trouble you any longer. You've never complained about me. Sorry Sorry Sorry.

Rombha kasta padithitein. Thaanga mudiyala.  
Vera vazhi theriyale."

Ex.D.3

"Nobody is responsible for my death. I am unwell I cannot bear the way my physical and mental health is now. I don't want to be a burden to anybody.

Sd/-

(BANUREKHA PALAVESAM)"

16. All these letters indicate that there was no dowry demand as projected by P.Ws.1, 2 and 10. If really P.Ws.1,2 and 10 evidence are true and the deceased was treated in such cruelty physically and mentally, the normal conduct of a women, who particularly taking extreme step of losing her life because of such cruelty would be to implicate the persons who are the main cause to take such extreme step. But the entire portion of the letter clearly indicates that there was no such cruelty by any form suffered by the deceased at the hands of the accused. Ex.D3 Suicide Note also shows that she is taking such step only because of her physical health and she was not blaming anybody and letter Ex.D2 addressed to her brother, sister, parents and other family members, in which she has stated about herself and she had not made any mention about their in-laws and the cruelty met by her at their hands. None of the letters will indicate even slightest doubt about the alleged dowry demand and the cruelty.

17. It is also clear that the deceased has been treated for physical as well as for her mental illness. For mental illness, psychiatric treatment was also taken as per the evidence of P.W.4. The doctor P.W.4 attached to Apollo First Med Hospital treated the deceased in the month of April 2005. She also referred to her for psychiatric treatment. Subsequently, in the month of May also she was referred for psychiatric treatment to the doctor attached to the same hospital. The very next day, she committed suicide in her parent's home and the letters and suicide note were seized from her room by the Investigating

Officer. From all these factors, it is clear that the possibility of committing suicide by the deceased due to severe physical as well as mental illness cannot be ruled out.

18. Any parents, who have lost their daughter within 7 months from the date of marriage, it is natural for them to have frustration and grievances against the accused and their family. Admittedly, in this case, the letters Exs.D.1 to D.3 which are extracted above are self-explanation of her life. Therefore, this Court is of the view that even assuming that the evidence of P.Ws.1,2 and 10 are believable, another version of the deceased by her record is more probable than the evidence of the parents. When two views are possible, one in favour of the accused, such view has to be taken note of and the accused should be given benefit of doubt.

19. Therefore, the trial court after analysing the entire aspects of the case, has rightly acquitted all the accused by giving benefit of doubt. This Court has also after analysing the entire evidence, come to the conclusion that the prosecution has not established the charges framed under Section 498(A), 304 (B) r/w 34 I.P.C. against the accused beyond all reasonable doubt. The judgment of the trial court does not suffer from any illegality or infirmity and the same is confirmed.

20. In the result, the appeal is dismissed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ggs

To

- 1.The Judicial Magistrate No.9,  
Saidapet, Chennai.
- 2.Do Through the Chief Judicial Magistrate,  
Chennai.
- 3.The Sessions Judge,  
Mahila Court, Chennai.
- 4.Do Through the Principal Sessions Judge,  
Chennai.
- 5.The Assistant Commissioner of Police,  
Vadapalani Range, Chennai.

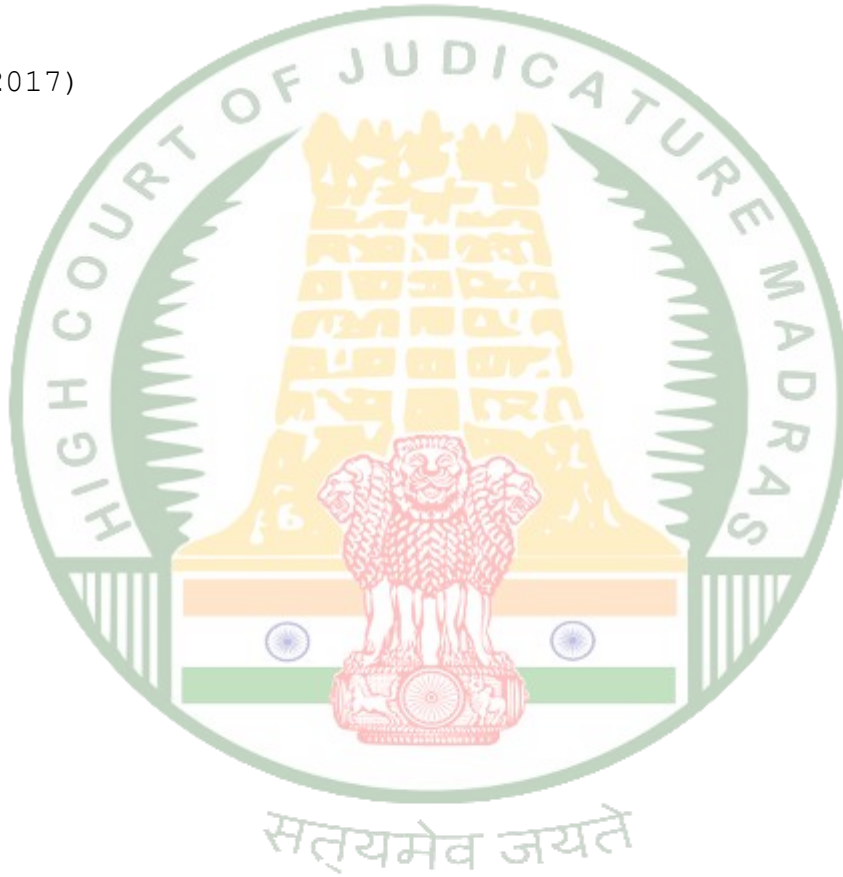
6.The Public Prosecutor,  
High Court, Madras.

7.The Section Officer,  
Criminal Section,  
High Court, Madras.

+lcc to Mr.B.Mohan, Advocate, S.R.No.44290

Crl.A.No.751 of 2008

SKV(CO)  
CA(26/07/2017)



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