

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.01.2018

DELIVERED ON : 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.148 of 2016

Suresh Kumar

... Appellant

Vs

State By
Inspector of Police,
Nelakottai Police Station,
The Nilgiris.
(Crime No.123 of 2012)

... Respondent

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to set aside the judgment of the learned Sessions Judge, Magalir Neethimandram (Fast Track Court), Uthagamandalam, The Nilgiris in S.C.No.17 of 2014 dated 13.08.2015 and acquit the Appellant herein from the said charges.

For Appellant : Mr.T.Shanmugam

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

The instant Criminal Appeal is preferred by the appellant who is the first accused and was convicted in Sessions Case No.17 of 2014, on the file of the learned Fast Track Mahila Court, Uthagamandalam, for the offence under Sections 498(A) and 304(B) of I.P.C. dated 13.08.2015.

2.The case of the appellant is that he got married with the deceased namely Sangeetha on 01.06.2012 at Thikkan Maleeswarar Temple at Krishnarayapuram in Nilgiris District. At the time of the arranged marriage, the deceased was gifted 4½ sovereigns with dotations and the appellant was gifted a golden ring. Further, the deceased was living with him hardly for about 41 days and she

committed suicide by self immolation at the matrimonial house. Further, followed by the suicide, a case in Crime No.123 of 2012 was registered by the Inspector of Police, Nilakottai Police Station, Nilgiris District. At the completion of the investigation by the Deputy Superintendent of Police, Koodalur Division filed final report for the offence under sections 498(A) and 304(B) of Indian Penal Code against the appellant along with his parents as 2nd and 3rd accused respectively. Thereafter, the final report filed by the respondent was taken on file by the learned Judicial Magistrate, Koodalur and assigned PRC.No.10 of 2012 on the file of the said Court. After complying with the legal formalities the case was committed to the file of the learned Principal Sessions Judge, Udthagamandalam. Pursuant to the committal, the case was taken on file as Sessions Case No.17 of 2014 and the same was made over to the file of the learned trial Court after the framing of charge.

3.To prove the prosecution, PWs.1 to 16 were examined and Exhibits P1 to P11 were marked apart from the production of Materials objects MOs1 to 5. Further by considering the totality of the case, the learned trial judge has recorded conviction of the appellant under sections 498 A and 304 (B) of IPC and convicted 1 year of rigorous imprisonment for the offence under section 498 (A), and also convicted for a period of 7 years of rigorous imprisonment for the offence of 304(B) of IPC and also imposed a sum of Rs.5,000/- as fine and in default the appellant has to undergo 6 months of imprisonment with a stipulation of all the sentences shall run concurrently and the period already under gone was ordered to be set-off, at the same time the 2nd and 3rd accused are acquitted by the learned trial Court.

4.Feeeling aggrieved over the judgment of conviction, the 1st accused has preferred the instant Criminal Appeal.

5.According to the learned counsel for the appellant that the learned trial Judge failed to appreciate that the prosecution has not proved the case beyond reasonable doubt and the evidence of the prosecution has not made out any offence either for dowry demand or for the under section 304(B) of IPC. The learned counsel for the appellant would further submit that even though PW1 to PW4 had not deposed that there was any negotiation in respect of the demand and offering of dowry prior to the marriage, apart from that

even in the crucial days that is between the date of marriage and the date of suicide no reliable evidence is produced by the prosecution to substantiate their case.

6. Apart from that it is also the contention of the learned counsel for the appellant that simply because the presumption under section 113(b) of the evidence act is against the accused, it cannot be stated that the appellant is guilty for the charges framed against him. Though the presumption under section 113(b) of the evidence act is in support of the case of prosecution, the learned trial Court ought to have appreciated and testified the evidence of each prosecution witness. However without proper appreciation of the evidence available, the recording of the conviction as against the appellant is liable to be set-aside by this Court.

7. At the same time the learned Government Advocate (Criminal Side) would contend that the prosecution has proved the case beyond all the reasonable doubts by producing cogent evidence. The Government Advocate (Criminal Side) has pointed out that though the learned trial judge has relied on the evidence of the prosecution witness 1 to 4, the conclusion of the learned trial judge was based on the evidence of the independent witnesses, who are the neighbours of the appellant/accused. Since their evidence assumes importance in the instant case and it is no need, in any manner to intervene the finding of the learned trial judge, hence he prays for the dismissal of the criminal appeal.

8. I heard Mr. T. Shanmugam, learned counsel for the appellant and Mrs. T. P. Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

9. It is the case of suicide of the wife of the appellant within the period of 41 days from the date of the solemnization of the marriage. The evidence of the PWs-1 to 4 has disclosed that it is an arranged marriage. Further gifts and dotations were offered during the time of marriage. At the same time, the prosecution has projected the case that there was a dowry demand of a sum of Rs. 20,000/- pursuant to the marriage. The said amount was demanded by the appellant to meet out his expenses for his employment in overseas. Further, when the deceased was in the matrimonial home, contusion was found on the cheek of the deceased during the post marital visit of the PWs-1 and

2. Apart from that the evidence of PW3 has disclosed that the deceased even in the marriage reception itself, informed her that the appellant demanded a sum of Rs.20,000/- as the same was accepted to be offered in the premarital negotiation.

10. It is unable to accept that a demand of a sum of Rs.20,000/- could be made by the appellant to meet out the expenses for his overseas employment. Further, though it is deposed by PW 3 that she was informed by her deceased sister that the appellant demanded the aforesaid money but, PWs-1 to 4 have not deposed that such a demand of Rs.20,000/- was subjected for negotiation in the premarital talk. Undoubtedly demand and offer of dowry is an offence. But the said offence would be completed if any demand was made. In the instant case no evidence is available that such a demand was made in the premarital talk. At the same time, this Court has scrutinized the evidence of neighbours as the learned trial judge has relied on their evidence. In this regard, the evidence of PW 6 was treated as hostile. The evidence of PW-7 Subramani has completely deviated even the prosecution version. At the same time the evidence of PW-10 is feeble as he is the nearby resident of the appellant but whose house locates adjacent to two houses, he is unable to say that on which circumstance he heard the demand of the appellant with the deceased. So, the evidence of this witness cannot be taken for consideration. At the same time the evidence of PW-3, the Revenue Divisional Officer of Koodaloor would disclose that he has not recorded the statement of witness independently and also disclosed that the witness have not informed him that there was any dowry demand on 12.07.2012 and 13.07.2012. Further, the evidence of PW-15 the postmortem doctor has not disclosed that the deceased was subjected for physical assault prior to the occurrence.

11. From the above discussion, though it is a case of suicide of a young woman, a newly married wife, it is unsafe to place reliance upon the evidence of the prosecution. At the same time though the accused has not examined any witness on their side, the suggestions put forth on the side of the appellant has some substance to link the suicide of the deceased, because, the deceased committed suicide within a period of 41 days from the date of her marriage with the appellant. Since the dowry demand of Rs.20,000/- is nothing in these days and the same cannot be believed that the money was demanded to meet out the expenses of the appellant for his overseas employment. At the same time this aspect has not been logically dealt with by the learned trial Court which is unacceptable and the same is not rational one.

12. Therefore, in the considered opinion of this Court, the arguments advanced by the learned counsel for the appellant has considerable force and fit for consideration. Accordingly, the Criminal Appeal is allowed by setting aside the conviction of the learned trial Court and the accused is acquitted from the charges. The bail bond if any executed by the appellant/accused is hereby cancelled and the accused is entitled to get the fine amount by taking out appropriate application before the learned trial Court, accordingly the appeal is allowed.

vs

Sd/-
Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

To
The Sessions Judge, Magalir Neethimandram
(Fast Track Court), Uthagamandalam,
The Nilgiris.

2. The Judicial Magistrate,
Gudalur.

3. do thro the Chief Judicial Magistrate,
udagamandalam (For Information)

4. The Inspector of Police,
Nelakottai Police Station,
The Nilgiris.

5. The Superintendent Central Prison,
Coimbatore

6. THE PUBLIC PROSECUTOR,
HIGH COURT
MADRAS.

Copy to
The section officer,
Criminal Section,
High court
Madras

+1cc to Mr. T. Shanmugam, Advocate SR.No. 76228

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ASK (08/11/2018)