

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 23.10.2018****CORAM:****THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN****Crl.O.P. (MD)No.2025 of 2018****in Crl.A(MD)No.SR35072 of 2017**

S.Selvaraj

:Petitioner in Crl.O.P.
Appellant in Crl.A. & S.R.

Vs.

1.Eswaran

2.Kothalammal

3.Annaparvathi

4.Murugaiah

.. Respondents/Accused 1 to 4
(in Both Cases)

5.The State of Tamil Nadu

Through its Assistant Superintendent of Police,
Tenkasi Sub Division,
Shenkottah Police Station,
Tirunelveli District.
(Crime No.176 of 2018):Respondent/Complainant
(in Both Cases)

PRAYER in Crl.O.P.(MD)No.2025 of 2018: Criminal Original Petition filed under Section 378 (4) Cr.P.C., to pass an order to grant leave to the petitioner to file the appeal against the judgment of acquittal passed in S.C.No.102 of 2016 dated 03.07.2017 on the file of the Mahila cum Sessions Court, Tirunelveli.

PRAYER inCrl.A(MD)No.SR35072 of 2017: Criminal Appeal filed under Section 372 Cr.P.C., to call for the records of the Mahila cum Sessions Court, Tiruvelveli in S.C.No.102 of 2016 dated 03.07.2017 and set aside the acquittal rendered in favour of the accused and convict them.

For Appellant
For R1 & R2: Mr.S.Alagarsamy
: Mr.B.Selvaraj

For R3 & R4

: Mr.P.Jeyasankar

For R5

: Mr.A.Robinson
Government Advocate (Crl.side)

**ORDER**

Heard the learned counsel appearing for the petitioner, the learned counsels appearing for the respondents 1 to 4 and the learned Government Advocate (Crl.side) appearing for the 5th respondent.

2. Against the acquittal of respondents herein, this revision petition is filed and the de facto complainant seeks leave of this Court to prefer an appeal against the order of acquittal.

3. Records indicate that on 01.08.2014, one Selvi, wife of the first respondent/Eswaran, consumed phenol and succumbed to death on 03.08.2014. Alleging that she consumed poison due to dowry harassment, the father of the deceased has preferred a complaint. Therefore, the case registered under Section 174 Cr.P.C., was later altered into 304(B) IPC, as against the respondents herein. The first respondent is the husband of the deceased and the second respondent is the mother-in-law of the deceased and the third and fourth respondents are mediators to the marriage alliance.

4. In the complaint it has been alleged that the first respondent and his family members used to harass the said Selvi by demanding dowry and thereby, ill-treated her. Eleven months prior to the incident, the first accused met with an accident and sustain injury. For the medical expenses, the jewels of the deceased were pledged. When the defacto complainant and the deceased requested the first accused to redeem the jewels, the first accused demanded a sum of Rs.1,00,000/- as dowry for redeeming such jewels. Based on the complaint, the prosecution has investigated the case and filed a final report. To prove the charges, the prosecution examined 14 witnesses and marked 10 exhibits.

5. The trial Court after considering the evidence has found that there is no enough materials to convict these accused persons, held the charge of dowry harassment not proved.

6. The learned counsel appearing for the petitioner / de facto complainant contended that in view of Section 113 (B) of Indian Evidence Act, the accused persons have to prove their innocence. The defence has not discharged the said burden and therefore, the trial Court ought to have convicted the accused for offence under Section 304(b) IPC.

7. As per Section 113 of Indian Evidence Act, the prosecution should initially establish the fact that soon before the death of the victim, she has been subjected to cruelty or harassment. In this case, right from the complaint, there is nothing to show soon before the death of the deceased, she was subjected to cruelty. The



vague allegation made in the complaint and the evidence of P.Ws.1 to 4, who are all interested witnesses, do not speak anything about the harassment or cruelty soon before the death.

7. Since this Court finds no error in the findings of the trial Court, there is no necessity to grant leave to file Criminal Appeal. Accordingly, the grant leave petition is dismissed. Consequently, the Criminal Appeal in CrI.A.(MD)No.SR35072 of 2017 is rejected at the S.R. stage itself.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1.The District Judge, Mahila cum Sessions Court,
Tiruvelveli.

2.The Assistant Superintendent of Police,
Tenkasi Sub Division,
Shenkottah Police Station,
Tirunelveli District.

+1 CC To MR.S.ALAGARSAMY, Advocate SR. NO. 91321

CrI.O.P.(MD)No.2025 of 2018
in
CrI.A(MD)No.SR35072 of 2017
23.10.2018

GNS

TR/SV/SAR-I(12.11.2018) 3P 4C