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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	21.02.2018
Orders Pronounced on	27.03.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Crl.A.(MD) Nos.190 and 208 of 2016

Crl.A.(MD) No.190 of 2016

Muruganandham

... Appellant/A1

-vs-

State rep. by
The Inspector of Police,
Thuvakudi Police Station,
Tiruchirappalli,
Tiruchirappalli District.
(Crime No.128 of 2010)

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure praying to call for the records in S.C.No.148 of 2011 on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, Tiruchirappalli District and set aside the judgment dated 22.04.2016 and acquit the appellant of the charges levelled against him and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Appellant : Mr.A.Thiruvadikumar
For Respondent : Mr.K.S.Duraipandian
Addl. Public Prosecutor

Crl.A.(MD) No.208 of 2016

1. Idumban
2. Manikandan

... Appellants/A2 & A3

-vs-

State rep. by
The Inspector of Police,
Thuvakudi Police Station,
Tiruchirappalli,
Tiruchirappalli District
(Crime No.128 of 2010)

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure praying to call for the records in S.C.No.148 of 2011 on the file of the learned Sessions Judge, Mahila Court,
<https://hcservices.ecourts.gov.in/hcservices/>



Tiruchirappalli, Tiruchirappalli District and set aside the judgment dated 22.04.2016 and acquit the appellants of the charges levelled against them and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

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For Appellants : Mr.A.Thiruvadikumar
For Respondent : Mr.K.S.Duraipandian
Addl. Public Prosecutor

C O M M O N J U D G M E N T

S.VIMALA, J.

The first accused is the husband, the 2nd accused is the father-in-law and the 3rd accused is the brother-in-law of the deceased, who are facing charges under Sections 498-A, 304(B) and 302 IPC. The conviction and sentence against A1 to A3 runs as under:

Rank	Offences	Conviction and Sentence
A1	Section 498-A IPC	To undergo 3 years Rigorous Imprisonment and to pay Rs.500/-, in default to undergo 3 months Rigorous Imprisonment.
A1	Section 304-B IPC	To undergo Life Imprisonment. (both sentences to run concurrently)
A2 & A3	Section 498-A IPC	To undergo 3 years Rigorous Imprisonment and to pay Rs.500/-, in default to undergo 3 months Rigorous Imprisonment.
A2 & A3	Section 304-B IPC	To undergo 10 years Rigorous Imprisonment. (both sentences to run concurrently)

2. The case of the prosecution is that the marriage between the first accused and the deceased Chitra took place 29.08.2003; that they blessed with a female child by name Kumaravalli; that at the time of marriage, the deceased was provided with 8½ sovereigns of gold jewels; that 2 ½ sovereigns of gold jewels was given to A1.

3. As per the case of the prosecution, while the deceased was living in a joint family along with the in-laws, A1 to A3 demanded dowry and they treated the victim cruelly.

4. The specific allegation against A1 is that he called upon PW4/Murugesan, who was employed in a foreign country and received a sum of Rs.15,000/- from him. Even thereafter, the victim



was driven out of the home in the year 2008. She was residing with her child along with her grandmother.

5. It is the case of the prosecution that during the month of March, 2010, the accused forcibly took the custody of minor child and thereafter, prevented the deceased from seeing the child. On 07.05.2010, the deceased consumed insecticide / organophosphorous, as she was prevented from seeing the child and therefore, it is alleged that the accused instigated the deceased to hang herself in a near by tree.

6. The prosecution has examined 15 witnesses and marked 17 documents, apart from exhibiting material objects.

7. The case of the defence is that the deceased had been suffering from epilepsy and she developed suicidal tendency and there was also animosity, as the first accused was instrumental in solemnizing marriage of his cousin sister Megala with PW3 / Kulaithaivelu @ Sasikumar, which was against the wishes of PWs.1 & 2.

8. In order to attract the offence under Section 304(B), the following essential ingredients are to be established:

Section 304-B IPC deals with dowry death which reads as follows:

"304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

9. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304-B IPC, the essential ingredients are as follows:



(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

10. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths.

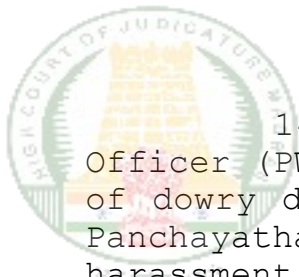
11. Section 113-B reads as follows:

"113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

12. The necessity for insertion of the two provisions has been amply analyzed by the Law Commission of India in its Twenty-first Report dated 10-8-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive in Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death.

13. The question to be considered is the demand for dowry stands proved in this case. The prosecution relies upon the evidence of PW1 to the effect that Al was doing Mason Work, apart from looking after his own agriculture.



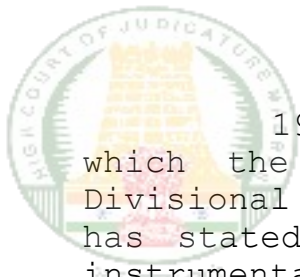
14. The prosecution also relies upon the report of Revenue Officer (PW12), in which it is stated that the death was as a result of dowry demand. He has admitted during cross examination that the Panchayathar during enquiry stated that there was no dowry harassment. IN any event, the statement of witnesses cannot be marked straightaway, as it is a substantive evidence. It can be construed only as earlier statement, which can be used for contradiction. The statement made by those witnesses do not make out the offence of dowry demand.

15. Learned counsel for the defence contended that the deceased was suffering from epilepsy and therefore, by preponderance of probability, the accused has proved that the deceased had suicidal tendency and therefore, for the suicide committed, the accused cannot be held responsible.

16. Learned Additional Public Prosecutor would submit that the critical issue to be decided is, whether the suicide was voluntary or the forced one.

17. Learned counsel for the accused would submit that the charge itself is vague with regard to demand for dowry and in the charge, it is merely stated that the accused demanded more jewels and more money.

18. Learned counsel for the accused would point out the evidence of PW1, who is the mother of the deceased, who would admit that in the same night of the death, when she went to Police Station at about 10 - 10.30pm, the first accused was there. There is an admission by PW1 during cross examination that there was a marriage between his third son Sasikumar and cousin sister of A1, namely, Megala and this marriage was not to their liking. It is also admitted that when the third son Sasikumar (PW1) went to the house of the accused to extend invitation, there was a quarrel between A1 and A2 and son of PW1 and all of them took treatment in the hospital for one week. Therefore, it is claimed that the motive for false prosecution is established. In the evidence of PW1, it is further admitted that after the marriage, two years prior to the occurrence, the victim attempted to commit suicide by taking poison and that P.W.1 and others saved her. PW3 / Murugesan has admitted that his brother Sasikumar married Megala and the marriage was performed by A1. The report of the Doctor, who conducted postmortem pointed out, where-under the opinion is that the death was on account of poisoning as well as by hanging. It is stated in the evidence of Smt.Mahalakshmi (District Revenue Officer) that on 07.05.2010, the deceased went to the house of A1 and at that time, A1 had gone for his work and at about 7.00pm, when he returned home, he has found that the deceased committed suicide and that the reason for the same is not known. The RDO has further admitted that during enquiry, it came to light that apart from taking poison, the deceased attempted to commit suicide by hanging as well as attempted to die by falling in a railway track.



19. Even though A1 did not explain the circumstances under which the wife died, still, his statement before the Revenue Divisional Officer would disclose that he has explained the same. He has stated that it is only the mother of the deceased, who was instrumental in separating her daughter.

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20. From the evidence of PW1 and the attendant circumstances, it is evident that the allegation against A2 and A3 is not proved. So far as A1 is concerned, the allegation regarding dowry death is not proved. But, so far as the allegation regarding cruelty is concerned, it stands proved. Knowing fully well that the deceased was a woman, suffering from epilepsy and having mental problems, A1 should have taken steps to get herself cured. There is no evidence to show that she was taken for any treatment, even though it is alleged that there had been suicidal tendencies for her and that she also attempted to commit suicide on several times. It is alleged that the child was taken forcibly from her and only on that occasion, she had attempted to commit suicide and on the day of occurrence, it is alleged that she was prevented from seeing the child. Even assuming that it may not be safe to allow the child to be with the mother / deceased, even then, at least she should have been given an opportunity to visit her child. For the wife, who had been remaining separate, the child should have been the only consolation.

21. Under the circumstances, this Court holds that the offence of cruelty under Section 498-A IPC as against A1 is proved. Though the offence of cruelty under Section 498-A is as against the wife, the offence affects not only the wife, but also the child, who happens to witness the occurrence. In this case, the cruelty has led to the suicide of the wife thereby resulting in irreparable loss to the child. Therefore, the compensation is payable to the child, who is the invisible victim.

22. When this Court posed a question regarding the financial ability of the 1st accused to pay compensation to the female child, viz., Kumaravalli, the learned counsel for the 1st accused submitted that A1 is a Mason, having no property in his name, but any way, A1 is prepared to deposit a sum of Rs.1,00,000/- (Rupees one lakh only) in the name of the female child.

23. Therefore, A1 is directed to deposit a sum of Rs.1,00,000/- in the name of Selvi.Kumaravalli, within a period of four weeks from today and on such deposit being made, A1 shall be released from Prison treating the period already undergone as sufficient for the conviction of the offence under Section 498(A) IPC. It is made clear that if the amount is not deposited within the said period, the sentence would be for a period of three years.

24. The conviction and sentence imposed on A2 and A3 is set aside and they are ordered to be released forthwith, if not needed in any other case. The bail bonds in respect of A2 and A3, if any



shall stand cancelled and fine amount, if any, shall be refunded to A2 and A3.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

1. The Sessions Judge,
Mahila Court, Tiruchirappalli,
Tiruchirappalli District.
2. The Judicial Magistrate No.IV, Trichy.
3. The Chief Judicial Magistrate, Trichy.
4. The Superintendent, Central Prison, Trichy.
5. The Director General of Police,
Mylapore, Chennai-4.
6. The Inspector of Police,
Thuvakudi Police Station,
Tiruchirappalli, Tiruchirappalli District
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO M/S.A.THIRUVADI KUMAR, ADVOCATE, SR NO.58277

ORDER IN
Cr1.A.(MD) Nos.190 and 208 of 2016
27.03.2018

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MS/SV-MMS/SAR-4/04.04.2018/7P.9C