

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 24.01.2019****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****Crl.A.No.595 of 2009**

1.Udhayakumar
2.Rajamani
3.Rangasamy

... Appellants

Vs.

State Represented by
Deputy Superintendent of Police,
Periyanaickanpalayam
Sub-division, Coimbatore District.

... Respondent

Prayer:

Appeal filed under Section 374 (2) of Cr.P.C. seeking to call for the records pertaining to S.C.18/2008 on the file of the Sessions Judge, Magalir Needhimandram, Coimbatore and set aside the Judgment and Order of Conviction dated 03.06.2009 recorded therein by the said court convicting the Appellants/accused for the offences under section 4 of Dowry Prohibition Act and under sections 498A, 306 and 304B IPC and sentencing them undergo Rigorous Imprisonment for one year and to pay a fine of Rs.5,000/- each in default to undergo Simple Imprisonment for six months for the offence U/s 4 of Dowry Prohibition Act, to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.500/- each in default to undergo Simple Imprisonment for six months U/s 498A IPC, to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/- each in default to undergo

Simple Imprisonment for six months U/s 306 IPC, to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/- each in default to undergo Simple Imprisonment for six months U/s 304B of IPC.

For Appellants : Mr.R.MD.Nasrullah
for M/s.K.V.Shanmuganathan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl. Side)

J U D G M E N T

The appellants have filed this appeal seeking to set aside the judgment dated 03.06.2009 made in S.C.No.18 of 2008 by the learned Sessions Judge, Magalir Needhimandram, Coimbatore.

2.The appellants herein are the accused 1 to 3 respectively, in the case in S.C.No.18 of 2008. The brief case of the prosecution is as follows: The first accused is the husband of the deceased, the second accused is the mother – in – law of the deceased and the third accused is the father – in – law of the deceased. The marriage between the first accused and the deceased Sulochana was solemnized on 01.06.2006 at Mettupalayam Vanabadrakaliamman Temple's Sakthi Mahal, as per the Hindu Customs and Conventions. The said marriage was arranged by the elders.

3.The deceased is the daughter of P.W.1 and sister of P.W.3. The deceased had studied upto X Standard and was working in Saradha Mills. P.W.3 was also working in the said Saradha Mills. At the time of marriage, P.W.1 gave four sovereigns of gold ornaments and household articles to the deceased and the marriage expenditure was equally shared by P.W.1 family and accused family. After marriage, the first accused and the deceased started to live a joint family life along with the second accused and third accused.

4.The deceased suffered acute stomach pain from her attaining puberty and for the said disease, the deceased had undergone treatment at Elango Hospital situated at Mettupalayam. The stomach pain got aggravated after the marriage. On 10.03.2007 at 11.45 a.m., the deceased suffered unbearable stomach pain and the first accused gave tincture which is a medicinal solution in an alcohol form for subsiding the pain. Even thereafter, the deceased had stomach pain. Hence the first accused made efforts to take her to the Hospital in his bicycle. At that time, the said Sulochana/ deceased poured kerosene all over her body and set fire by herself. On hearing her cry, the first accused extinguished the fire by pouring water all over the body. In the meanwhile, A2 and his brother reached the spot and with the help

of the said persons, A1 took his wife/ deceased to the Coimbatore Medical College Hospital in an Auto Rickshaw for treatment.

5. On 10.03.2008 at 12.10 p.m., the deceased Sulochana was brought by A2 before the Medical Officer attached to the Casualty of Coimbatore Medical College Hospital, Coimbatore. When the Medical Officer examined the said Sulochana, she has stated that she sustained burn injuries by pouring kerosene over her body by herself at around 11.45 a.m., at her house. She was conscious at that time. The Medical Officer found that she suffered 65% to 70% of burn injuries and after giving first aid, the Medical Officer admitted her in the Burns Ward. The proceeding was incorporated in the Accident Register and Ex.P17/ copy of accident register was issued. Soon after the admission of Sulochana at Burns Ward, the Medical Officer sent Ex.P16/ intimation to the Outpost Police Station attached to Coimbatore Medical College Hospital, Coimbatore.

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6.P.W.11/ Grade-I Police Constable attached to Thudialur All Women Police station received the intimation over phone about the particulars of Ex.P16 from the Outpost Police Station, Coimbatore Medical College Hospital, Coimbatore. Based upon the said intimation,

P.W.11 went to the Outpost Police Station and received Ex.P16 in I.R.No.1331. Thereafter, she went to MS-II Burns Ward and examined Sulochana and obtained Ex.P12/ statement and also obtained the left thumb impression on it. Thereafter, P.W.11 returned to the Police Station and on the strength of Ex.P12, registered a case in Crime No.5 of 2007 under Section 309 of IPC. The First Information Report registered by P.W.11 was marked as Ex.P13.

7.P.W.12/ Inspector of Police took up the case for investigation. During the course of investigation, P.W.12 examined P.W.1, P.W.3 and P.W.7 and recorded their statements. Thereafter, P.W.12 went to the spot of occurrence and prepared Ex.P4/ observation mahazer in the presence of P.W.7 and Ex.P14/ rough sketch.

8.While the injured was undergoing treatment, the Medical Officer attached to the Burns Ward sent a requisition to the learned Judicial Magistrate, to record the dying declaration of Sulochana. P.W.9/ Judicial Magistrate No.VI, Coimbatore, on 10.03.2007, after carrying out the necessary formalities recorded Ex.P5/ dying declaration, wherein, the declarant has stated that for the past one week she suffered acute stomach pain and therefore, she poured

kerosene over her body and set fire herself. P.W.9 also obtained Ex.P6/ certificate from the Medical Officer and after completion of the proceedings forwarded the same to the learned Judicial Magistrate No.I, Coimbatore on 12.03.2007.

9.On 15.03.2007, the injured Sulochana succumbed to injuries at 01.00 a.m. and the death intimation was sent to the Police Station. Based upon the death intimation, the case in Crime No.5 of 2007 was altered from under Section 309 of IPC to under Sections 498-A, 306 and 304-B of IPC.

10.P.W.13/ Deputy Superintendent of Police took up the case for further investigation and since the death of Sulochana occurred within seven years of marriage, he resorted for an inquiry by the Revenue Divisional Officer under Sections 174 and 176 of Cr.P.C. and sent the case file to the Revenue Divisional Officer for appropriate action.

11.P.W.10/ Revenue Divisional Officer, Coimbatore, received the case file on 15.03.2007 and took up the same for investigation. During the course of investigation, he went to the Coimbatore Medical College Hospital, Coimbatore, and in the presence of Panchayatars, conducted inquest over the dead body and also examined P.W.1,

P.W.3 and the Panchayatars and recorded their statements under Ex.P7, Ex.P8 and Ex.P9 and also prepared Ex.P10/ inquest report and Ex.P11/ inquiry report.

12.In their statements, P.W.1 and P.W.3 had stated that the accused caused harassment and cruelty for not bringing the dowry demanded by them and they also ill treated the deceased by suspecting her fidelity and due to the unbearable cruelty caused by the accused, the said attempt was done by the deceased. Hence, P.W.10 requested P.W.13 to conduct inquiry to find out the real cause of death and also sent a requisition to the Professor, Forensic Medicine Department, Coimbatore Medical College Hospital to conduct autopsy over the body of Sulochana with a request to send the postmortem report for necessary action.

13.P.W.2/ Tutor in Forensic Medicine, Coimbatore Medical College Hospital and one Dr.Diraviyaraj/ Tutor in Forensic Science Medicine, Coimbatore Medical College Hospital received the requisition of P.W.10 on 15.03.2007 at 01.00 p.m. The body was identified by P.W.8/ Woman Head Constable. During autopsy the Medical Officer preserved the internal organs of the deceased and sent the same to

the Regional Forensic Science Laboratory, Coimbatore through P.W.8. P.W.2 and Dr.Diraviyaraj issued Ex.P1/ postmortem report.

14.Thangambhavani, Scientific Assistant Grade-II and Mupdathi, Assistant Chemical Examiner to Government examined the internal organs and did not detect any poison over the same. To that effect she issued Ex.P2/ chemical analysis report. Based upon the postmortem report and upon considering Ex.P2, P.W.2 and Dr.Diraviyaraj issued Ex.P3/ opinion, wherein, they opined that the cause of death was due to the burns and its complications.

15.When P.W.13 examined P.W.1 and P.W.3, they had stated that the accused requested the deceased while undergoing treatment not to disclose the reality as it would cause problem to the accused and the deceased in turn requested them not to disclose anything against the accused as she if survived has to live with the accused. Hence, they did not make any statement against the accused. But infact the accused joined together and caused unbearable cruelty to the deceased for the non-fulfilment of the dowry demand and the accused also suspected the fidelity of the deceased and ill-treated her.

16. On 28.07.2007, P.W.13 completed the investigation of the case and laid the final report against the accused under Section 4 of the Dowry Prohibition Act and under Sections 498-A, 306 and 304-B of IPC.

17. When the accused were questioned under Section 313 of Cr.P.C and explained about the incriminating circumstances available against them in the evidence, they denied the same as not true. Thereafter, trial was proceeded against the accused.

18. On the side of the prosecution, 13 witnesses were examined as P.W.1 to P.W.13 and 17 documents were marked as exhibits Ex.P.1 to Ex.P.17. On the side of the accused no witness was examined, however, five documents were marked as exhibits Ex.D1 to Ex.D5.

19. After trial, the Trial Court convicted the appellants/ accused under Section 4 of the Dowry Prohibition Act and under Sections 498-A, 306 and 304-B of IPC and sentenced them to undergo 1 year rigorous imprisonment and to pay a fine of Rs.5,000/- each in default to undergo 6 months simple imprisonment for the offence under Section 4 of the Dowry Prohibition Act; to undergo 2 years rigorous

imprisonment and to pay a fine of Rs.500/- each in default to undergo 6 months simple imprisonment for the offence under Section 498-A of IPC; to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- each in default to undergo 6 months simple imprisonment for the offence under Section 306 of IPC; and to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- each in default to undergo 6 months simple imprisonment for the offence under Section 304-B of IPC. The sentences of imprisonment alone were ordered to run concurrently. Aggrieved by the said conviction and sentence, the appellants / accused have filed this appeal before this Court.

20.The learned counsel appearing for the appellants would submit that in her dying declaration, the deceased has categorically stated that she suffered acute stomach pain and therefore, she poured kerosene over her body and set fire herself. The deceased has not implicated any of the accused in the said offence. Hence the evidence let in by P.W.1 and P.W.3 before P.W.13 that the accused requested the deceased while undergoing treatment not to disclose the reality as it would cause problem to the accused and the deceased in turn requested them not to disclose anything against the accused as she if

survived has to live with the accused and hence, they did not make any statement against the accused, is nothing but false. The said tutored statements were made in order to implicate the accused in the offence.

21. The learned counsel appearing for the appellants would further submit that there is nothing available on record to show that the accused have instigated the deceased to commit suicide, particularly, there is no iota of evidence to implicate the appellants 2 and 3/ accused 2 and 3 in the present crime. Accordingly, he prayed for acquittal of the appellants/ accused.

22. The learned Government Advocate (Crl. Side) would submit that after treatment if the deceased was alive, necessarily she has to live with the accused. Hence, in dying declaration the deceased did not implicate the accused in the above said crime and during treatment she requested P.W.1 and P.W.3 not to disclose anything against the accused. The evidence of P.W.1 and P.W.3 clearly demonstrate that due to the torture and harassment of the accused, the deceased was forced to take the extreme step of committing suicide. The above act itself would amount to instigation. Hence, the

well considered judgment of the Trial Court need not be interfered with. Accordingly, he prayed for dismissal of the appeal.

23. Heard the arguments advanced on either side and perused the materials placed on record.

24. In the light of the above submissions, now it has to be analyzed as to whether the prosecution has proved the guilt on the accused beyond all reasonable doubt.

25. It is not in dispute that on 10.03.2007 the deceased sustained burn injuries and she was taken to the Coimbatore Medical College Hospital for treatment. When the Medical Officer examined the deceased, she has stated that she sustained burn injuries by pouring kerosene over her body by herself at around 11.45 a.m., at her house.

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26. It is also relevant to note here that immediately after the occurrence, the first accused extinguished the fire by pouring water all over the body. Thereafter, he also took the deceased to the Coimbatore Medical College Hospital for treatment. P.W.9/ Judicial

Magistrate No.VI, Coimbatore, on 10.03.2007, recorded Ex.P5/ dying declaration, wherein, the deceased has stated that for the past one week she suffered acute stomach pain and therefore, she poured kerosene over her body and set fire herself.

27.Further, the evidence of P.W.1 and P.W.3 clearly indicate that initially, there was no dispute inbetween the accused. After A1 lost his job, he started cruelty by demanding additional dowry from the deceased. Initially P.W.1 has taken care of her daughter by giving Rs.2,000/- and Rs.3,000/- frequently. However, their evidence makes it clear that they did not make any allegation as against the accused 2 and 3 and they made allegations as against A1 only.

28.Further P.W.5/ brother of P.W.1 in his evidence has deposed that after marriage, he visited the deceased at her matrimonial home and at that time, the deceased cried as if she was pushed into a well and that the accused suspected her fidelity and she exposed the sufferings made by the accused.

29.The evidence of P.W.1 and the dying declaration does not corroborate with each other. On perusal of the entire evidence, the evidence of P.W.1, P.W.3 and P.W.5 clearly indicate that there was

dowry demand by A1. Immediately after A1 lost his job, he started harassing the deceased by forcing the deceased to bring additional dowry from P.W.1. Except dowry demand to implicate the first accused under Section 4 of the Dowry Prohibition Act and under Sections 498-A of IPC, there is no ingredients available to implicate him under Sections 306 and 304-B of IPC.

30. Abetment involves a mental process of instigating or aiding a person to commit suicide. Without any positive act, instigating or aiding the person to commit suicide, conviction cannot be passed merely on the basis of some statement. In the absence of any evidence implicating the first accused under Sections 306 and 304-B of IPC is not sustainable one. There is also no ingredients available to implicate the accused 2 and 3 under Section 4 of the Dowry Prohibition Act and under Sections 498-A, 306 and 304-B of IPC.

31. The very same issue has been dealt with by the Hon'ble Apex Court in the decision reported in **(2013) 4 SCC 131 (Bakshish Ram and another Vs. State of Punjab)**, the relevant portion of which reads as follows:

“18. We have already noted Section 304B
IPC and its essential ingredients. Section 113-

B of the Evidence Act is also relevant for the case in hand. Both Sections 304-B and 113-B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B of the Evidence Act reads as under:

"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 has 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 304B of the Indian Penal Code (45 of 1860)."

As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B 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". While considering these provisions, this Court in *M.Srinivasulu vs. State of A.P.*, (2007) 12 SCC 443 has observed thus:

"8. '4. ... The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death. '*"

20. Another relevant aspect to be noted is that it was appellant No.1, husband of the deceased who took the deceased to the hospital and it was he who informed the police as well as parents of the deceased. It is also brought to our notice that he did not make any attempt to run away from the place of occurrence.

21. In view of the above discussion, we are satisfied that the prosecution failed to establish its guilt beyond reasonable doubt and the trial Court and the High Court committed an error in convicting the appellants and the same are liable to be set aside. Since appellant No.1 has already served out the period of sentence of 7 years, no further direction is required. However, since appellant No.2 is on bail, her bail bonds shall stand discharged. The appeal is allowed."

32. Considering all the aspects, the prosecution miserably failed to establish that soon before her death, the deceased was subjected to cruelty or harassed in connection with demand of dowry. However, I am of the view that there are ingredients available as against the first appellant/ first accused to convict him under Section 4 of the Dowry Prohibition Act and under Sections 498-A of IPC and there is no ingredients available to implicate him under Sections 306 and 304-B of IPC. Hence, this Court acquits the first appellant/ first accused from the charge under Sections 306 and 304-B of IPC. This Court is also inclined to modify the sentence imposed on the first appellant/ first accused under Section 4 of the Dowry Prohibition Act and under Sections 498-A of IPC.

33.Further, there is no ingredients available to implicate the appellants 2 and 3/ accused 2 and 3 under Section 4 of the Dowry Prohibition Act and under Sections 498-A, 306 and 304-B of IPC. Hence, this Court is inclined to set aside the judgment dated 03.06.2009 in S.C.No.18 of 2008 passed by the learned Sessions Judge, Magalir Needhimandram, Coimbatore, in respect of appellants 2 and 3/ accused 2 and 3 are concerned.

34.In the result, the criminal appeal is partly allowed in respect of the first appellant/ first accused. The first appellant/ first accused is convicted under Section 4 of the Dowry Prohibition Act and under Sections 498-A of IPC. The first appellant/ first accused shall undergo 1 year rigorous imprisonment and shall pay a fine of Rs.5,000/- in default shall undergo 3 months rigorous imprisonment for the offence under Section 4 of the Dowry Prohibition Act and shall undergo 1 year rigorous imprisonment and shall pay a fine of Rs.500/- in default shall undergo 3 months rigorous imprisonment for the offence under Section 498-A of IPC. The modified sentences of imprisonment alone imposed on the first appellant/ first accused shall run concurrently. The first appellant/ first accused is acquitted from the charge under Sections 306 and 304-B of IPC. The conviction and sentence imposed on the

first appellant/ first accused by the learned Sessions Judge, Magalir Needhimandram, Coimbatore, vide judgment dated 03.06.2009 made in S.C.No.18 of 2008 under Sections 306 and 304-B of IPC are hereby set aside. The Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the first appellant/ first accused to undergo the remaining part of the sentence.

35.The criminal appeal is allowed in respect of the appellants 2 and 3/ accused 2 and 3. The conviction and sentence as against the appellants 2 and 3/ accused 2 and 3 in the judgment dated 03.06.2009 in S.C.No.18 of 2008 passed by the learned Sessions Judge, Magalir Needhimandram, Coimbatore, are set aside. The appellants 2 and 3/ accused 2 and 3 is acquitted from the charge under Section 4 of the Dowry Prohibition Act and under Sections 498-A, 306 and 304-B of IPC. The fine amount, if any, paid by them is ordered to be refunded to them. The bail bonds and sureties, if any, executed by them, shall stand terminated/ discharged.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

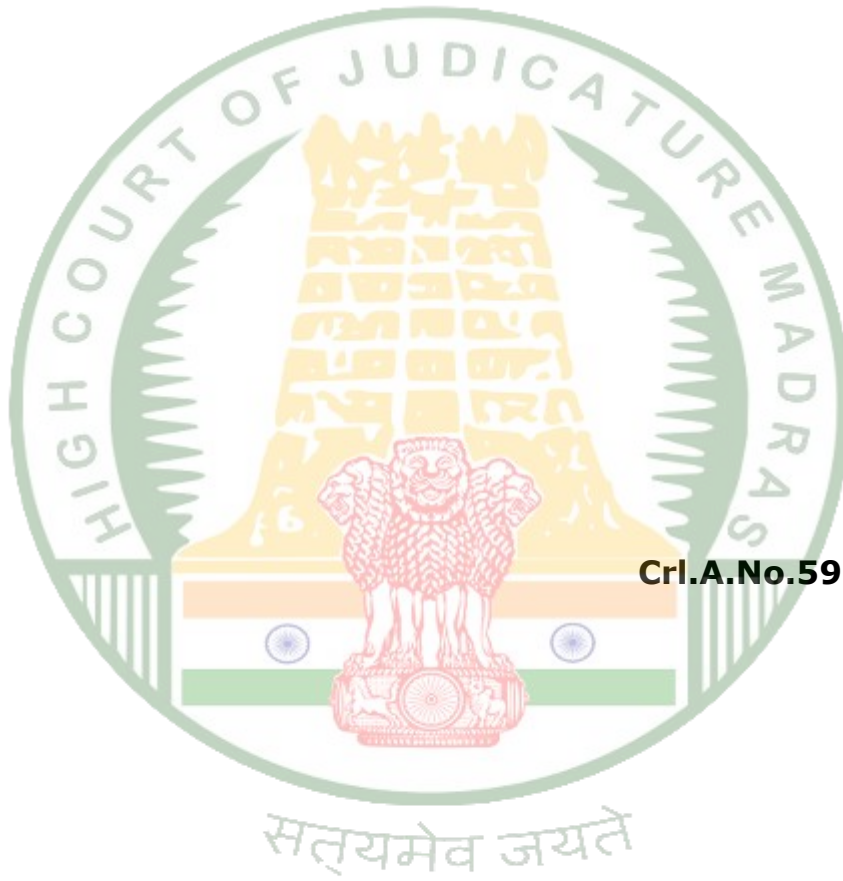
To

- 1.The Sessions Judge, Magalir Needhimandram,
Coimbatore.
- 2.The Deputy Superintendent of Police,
Periyanaickanpalayam
Sub-division, Coimbatore District.



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M.DHANDAPANI,J.
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