

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1473 of 2005

And

Crl.A.No.195 of 2008

Crl.R.C.No.1473 of 2005:

R.Mukilan ... Petitioner

Vs.

1.Nagasubramaniam

2.Ruckmani

3.The State rep. by

The Deputy Superintendent of Police,
Sirkazhi

... Respondents

Prayer:

Revision filed under Sections 397 and 401 of Cr.P.C., seeking to call for the records in S.C.No.25 of 2005 and to set aside the judgment dated 27.09.2005 in the file of the learned Assistant Sessions Judge - cum - Chief Judicial Magistrate, Nagapattinam in so far as it is relating to the acquittal of the respondents 1 and 2 under the charge no.2 for an offence under Section 304 B IPC.

For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.R.Vivekananthan

For Respondents: Mr.R.Shivakumar for R1 and R2
Mr.R.Ravichandran for R3
Government Advocate (Crl. Side)

Crl.A.No.195 of 2008:

1.Nagasubramaniam

2.Ruckmani

... Appellants

Vs.

The State rep. by
The Deputy Superintendent of Police,
Sirkazhi

... Respondent

Prayer:

Appeal filed against the judgment dated 27.09.2005 made in S.C.No.25 of 2005 passed by the learned Assistant Sessions Judge - cum - Chief Judicial Magistrate, Nagapattinam.

For Appellants : Mr.R.Shivakumar

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. Side)

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

Crl.R.C.No.1473 of 2005 has been filed seeking to call for the records in S.C.No.25 of 2005 and to set aside the judgment dated 27.09.2005 passed by the learned Assistant Sessions Judge - cum - Chief Judicial Magistrate, Nagapattinam, in so far as the acquittal of the respondents 1 and 2/ accused 1 and 2 under charge no.2 for an offence under Section 304 B IPC.

2.Crl.A.No.195 of 2008 has been listed today without E.B. The appeal has been filed against the judgment dated 27.09.2005 made in S.C.No.25 of 2005 passed by the learned Assistant Sessions Judge - cum - Chief Judicial Magistrate, Nagapattinam.

3.The appellants in the criminal appeal are the accused 1 and 2 in the case in S.C.No.25 of 2005. The petitioner in the criminal revision is P.W.2 in the case in S.C.No.25 of 2005/ brother - in - law of A1.

4.The case of the prosecution is that the marriage inbetween A1/ first appellant and the deceased was solemnized on 11.11.2002. A2/ second appellant is the mother - in - law of the deceased. The appellants demanded 30 sovereigns of gold and Hero Honda Splendor and other household articles as dowry, however, P.W.1/ father of the deceased gave 25 sovereigns of gold and TVS Suzuki Motor Cycle and other household articles as dowry at the time of marriage. After marriage, A2 harassed the deceased stating that only 25 sovereign of gold has been given instead of 30 sovereigns and a cheaper motor cycle has been given instead of Hero Honda Splendor and also sent the deceased to her parental home. A1 also driven away the deceased from the matrimonial home immediately after marriage. The accused 3 to 5 also tortured the deceased. Hence, the deceased committed suicide by self immolation.

5.The brief facts of the case is as follows: The marriage between A1/ first appellant and the deceased was solemnized eight months prior to the date of occurrence. The second appellant is the mother - in - law of the deceased and mother of A1. At the time of marriage, 30 sovereigns of gold and Hero Honda Splendor and other household articles were demanded as dowry by the appellants, however, P.W.1/ father of the deceased gave 25 sovereigns of gold and TVS Suzuki Motor Cycle and other household articles as dowry at the time of marriage.

6.On the third day of marriage the first appellant informed to his sister that P.W.1 gave a cheaper motor cycle and also harassed the deceased to convert ordinary jewellery into stone studded jewellery immediately. This was informed by the deceased over phone to P.W.1 and other family members. The deceased was subjected to cruelty by the appellants very often and driven away from the matrimonial home immediately after the marriage. Thereafter, P.W.1 pacified his daughter and sent her back to the matrimonial home.

7.Again the accused harassed the deceased with regard to the exchange of old motorcycle. Thereafter, the deceased telephoned her father/ P.W.1 and asked him to dispose of the old motorcycle and get new motorcycle as demanded by the accused. P.W.1 sent his son/ P.W.2 to the house of the appellants to bring the old motorcycle. At that time, the first appellant insisted his brother - in - law to take the motorcycle and the deceased and asked him to send her back after fulfilling the demands. Thereafter, the first appellant enquired about the disposal of the old motorcycle and requested P.W.1 to fulfil their demands and took the deceased Usha to the matrimonial home.

8.However, on 22.06.2003, P.W.1 and his family members were informed through phone that his daughter Usha was in serious condition. Immediately thereafter, P.W.1 and his family members rushed to the appellants' home and found that his daughter's body was laid down on the bed in the hall and on enquiry, it revealed that his daughter committed suicide by self immolation, inrespect of which, P.W.1 lodged the complaint Ex.P1.

9.P.W.12 is the Head Constable who received the complaint from P.W.1 and registered a case in Cr.No.374 of 2003 under Section 174 of Cr.P.C. under Ex.P7. P.W.14/ Deputy Superintendent of Police took up the case for investigation and went to the scene of occurrence and prepared observation mahazer Ex.P8, rough sketch Ex.P9 and recovery mahazer Ex.P10. P.W.14 also filed alteration report Ex.P11 altering the Section of Law from 174 Cr.P.C. to Section 304 (b) of IPC. P.W.7 conducted inquest over the dead body of the deceased in the presence of independent witnesses and issued inquest report Ex.P3.

10.After completion of investigation, the Investigating Officer/ Deputy Superintendent of Police, Sirkazhi, laid final report as against the accused before the learned Judicial Magistrate No.2, Mayiladuthurai. The case was committed to the Court of Sessions, Nagapattinam, by the learned Judicial Magistrate No.2, Mayiladuthurai and made over to the Trial Court.

11.It is relevant to note here that initially, there were five accused in this case. Before the Trial Court, A3 to A5 filed petition under Section 227 of Cr.P.C., seeking to discharge them from the case. Accordingly, as per the order dated 24.05.2005 made in Crl.M.P.No.172 of 2005, A3 to A5 were discharged from the case.

12.Based on the materials produced before the Trial Court, the Trial Court framed charges as against the accused for the offence under Sections 498 (A) and 304 (b) of IPC. The charges against the accused were explained and read over to them and the accused denied the charges. Hence, trial was proceeded against the accused.

13.On the side of the prosecution, 16 witnesses were examined as P.W.1 to P.W.16, 13 documents were marked as exhibits Ex.P.1 to Ex.P.13 and 8 material objects M.O.1 to M.O.8 were marked. The accused neither choose to examine any witness nor to mark any document.

14.After trial, the Trial Court convicted the appellants/ A1 and A2 for the offence under Section 498 (A) of IPC and sentenced the appellants/ A1 and A2 to undergo 1 year rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo three months rigorous imprisonment each for the offence under Section 498 (A) of IPC. The Trial Court acquitted the appellants/ A1 and A2 from the charge under Section 304 (b) of IPC. Aggrieved by the said conviction and sentence, the appellants / A1 and A2 have filed the appeal before this Court and aggrieved by the acquittal of the appellants/ A1 and A2 from the charge under Section 304 (b) of IPC, P.W.2/ brother of the deceased has filed the revision before this Court.

15.The learned counsel appearing for the appellants would submit that there is no material whatsoever available on record to prove the offence under Section 498 (A) of IPC as against the accused. Ex.P1 is contrary to the evidence of P.W.1, P.W.2 and P.W.3. He would further submit that marriage between A1 and the deceased was arranged by one Pasupatham who was examined as P.W.3. P.W.3 in his deposition has clearly deposed that there is no dowry harassment as alleged by the prosecution. However,

P.W.3 admitted that the deceased has completed M.A. Degree and A1 has studied only +2. In view of crossing the age of the deceased as well as A1, with the consent of the deceased father P.W.1, the marriage was performed.

16.The learned counsel appearing for the appellants would further submit that even the cross examination of P.W.1 clearly discloses that without the consent of his daughter, marriage was performed and there is no compatibility inbetween the deceased and A1. On perusal of the entire evidence, there is no dowry demand and no ingredients available to implicate the appellants under Section 304 (b) of IPC. Hence, the Trial Court rightly acquitted the appellants from the charge under Section 304 (b) of IPC. However, the Trial Court convicted the appellants under Section 498 (A) of IPC. Accordingly, he prayed for allowing the appeal.

17.The learned Senior Counsel appearing for the revision petitioner would submit that P.W.1 is the father of the deceased. P.W.2 is the brother of the deceased. P.W.1 gave 25 sovereigns of gold and TVS Suzuki Motor Cycle and other household articles as dowry at the time of marriage. However, A1 and his family members harassed the deceased for exchange of TVS Suzuki Motor Cycle to Hero Honda Splendor. The deceased was driven out from the matrimonial home along with the motor cycle through the revision petitioner. Thereafter P.W.1 pacified her and sent her back to the matrimonial home. Due to the unbearable torture and cruelty given by the appellants, the deceased committed suicide.

18.The learned Senior Counsel appearing for the revision petitioner fairly conceded that there are ingredients and evidence available to implicate the appellants under Section 304 (b) of IPC. Further, there are lot of materials available to implicate the appellants under Section 498 (A) of IPC. He would further submit that as per Section 498 (A) of IPC, the punishment is three years, however, the Trial Court has imposed only one year punishment. Accordingly, he prayed for enhancement of punishment.

19.The learned Government Advocate (Criminal Side) would submit that the prosecuting agency did not prefer any appeal as against the acquittal of the appellants under Section 304 (b) of IPC. He would further submit that even a bare perusal of the evidences of P.W.1 and P.W.2 discloses that there are lot of materials available to implicate the appellants under Section 498 (A) of IPC. Hence, the well considered order of the Trial Court need not be interfered with.

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

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

22. The evidence let in by P.W.1/ father of the deceased indicates that after marriage, the deceased visited his house two times. In her first visit after three days of the marriage, A1 refused to take his daughter along with him. After 15 days he came to P.W.1's house and went along with his daughter. Thereafter, for change of new model motor cycle, A1 has driven away the deceased along with the old motor cycle through P.W.2 and demanded money for purchasing Hero Honda Splendor. The evidence of P.W.4 also corroborate with the evidence of P.W.1.

23. P.W.2 is the brother of the deceased/ revision petitioner. His evidence indicate that there was frequent quarrel inbetween A1 and the deceased, due to which the deceased committed suicide in the house of A1.

24. However, P.W.3 who is the neighbour of A1 and relative of the deceased as well as A1, in his evidence has deposed that at his insistence, marriage was arranged inbetween A1 and the deceased. His evidence did not indicate any harassment as alleged by the prosecution. In his evidence, P.W.3 has deposed that A1 has studied upto +2 and the deceased has completed MA Degree. His evidence further indicate that without the consent of the deceased, marriage was performed with the consent of the deceased's father. P.W.3 in his evidence has not whispered anything about the quarrel or harassment or abuse made by the appellants to the deceased. The other prosecution witnesses have no direct knowledge about the quarrel inbetween the accused and the deceased.

25. Admittedly, prior to the deceased committing suicide, she was residing at her matrimonial home. It is relevant to note here that P.W.1 in his complaint has not made any allegation as against A2 and other family members. The very charge of the prosecution itself shows that the alleged occurrence/ quarrel inbetween the accused and the deceased took place a month prior to the deceased committing suicide.

26. A close perusal of the evidence let in by P.W.1 reveal that when the deceased visited his house lastly, she went along with A1 happily. When that being the position, even assuming that there was a quarrel in which the deceased was abused, this Court view that the same would not amount to instigating the deceased to commit suicide.

27. 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:

"13. In order to appreciate the only evidence of Sibbo (PW-2), it is useful to refer the definition of "Dowry death" under Section 304B of IPC which reads as under:

"304B 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 purpose 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."

14. A perusal of Section 304B clearly shows that if a married woman dies 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 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 the death. The conditions precedent for establishing an offence under this section are :

a) that a married woman had died otherwise than under normal circumstances;

b) such death was within seven years of her marriage; and

c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.

This section will apply whenever the

occurrence of death is preceded by cruelty or harassment by husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.

15. We have already extracted and analyzed the statement of Sibbo (PW-2), the mother of the deceased and we are satisfied that she has not stated anything in her evidence with regard to harassment or maltreatment of the deceased by the appellants on the basis of her personal knowledge rather admittedly her knowledge is hearsay since her whole narration in this regard in the Court is based on whatsoever was stated to her by her husband - Bikkar Ram. We have already stated that under Section 60 of the Evidence Act hearsay evidence is not admissible as Bikkar Ram was not examined before the Court and no other witness was produced by the prosecution to prove about maltreatment and harassment of the deceased by the appellants. Therefore, the ingredients of Section 304B IPC were not met by the prosecution for holding the appellants guilty under the said offence. Even otherwise, since the demands made by the appellants were met by the parents of the deceased, there was no reason for the appellants to set the deceased on fire. Even the other witness, namely, Jeet Ram (PW-3), a resident of Soutran has nowhere stated in his deposition before the Court with regard to any maltreatment to the deceased or being aware of any such incident. Hence, his evidence is not helpful insofar as the allegation of harassment and maltreatment is concerned. Admittedly, except the abovementioned witnesses, the prosecution has not pressed into service any other witness to prove the demand of dowry, harassment and maltreatment.

16. The High Court, as a first Court of appeal, on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence. Mere reproduction of the assessment of trial

Court may not be sufficient and in the absence of independent assessment by the High Court, its ultimate decision cannot be sustained. The same view has been reiterated by this Court in Sakatar Singh & Ors. vs. State of Haryana, (2004) 11 SCC 291.

17. In Arun Kumar Sharma vs. State of Bihar, (2010) 1 SCC 108, while reiterating the above view, this Court held that:

"30. ... In its appellate jurisdiction all the facts were open to the High Court and, therefore, the High Court was expected to go deep into the evidence and, more particularly, the record as also the proved documents."

Contrary to the above principle, we are satisfied that in the case on hand, the High Court failed to delve deep into the record of the case and the evidence of the witnesses. The role of the appellate Court in a criminal appeal is extremely important and all the questions of fact are open before the appellate Court. The said recourse has not been adopted by the High Court while confirming the judgment of the trial Court.

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.'*"

19. As discussed above, a perusal of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. As observed earlier, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the case on hand, admittedly, the

prosecution heavily relied on the only evidence of Sibbo (PW-2), the mother of the deceased which, according to us, is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the above provisions. In such circumstances, as argued by the learned counsel for the appellants, accidental death cannot be ruled out."

28. On a perusal of the above decision makes it clear that there must be material to show that soon before her death, the deceased was subjected to cruelty or harassment. The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. In the present case, there is no material whatsoever available to implicate the accused under Section 304 (b) of IPC. The Trial Court rightly appreciated the evidence and rightly arrived at the conclusion and acquitted the accused from the charge under Section 304 (b) of IPC. Hence the order of the Trial Court in so far as the acquittal of the accused from the charge under Section 304 (b) of IPC need not be interfered with. Hence, the revision petition is dismissed.

29. However, perusal of the records discloses that P.W.1 is the father of the deceased. P.W.2 is the brother of the deceased. Initially, P.W.1 gave 25 sovereigns of gold and TVS Suzuki Motor Cycle and other household articles as dowry at the time of marriage. Thereafter, A1 demanded for exchange of TVS Suzuki Motor Cycle to Hero Honda Splendor and very often driven out the deceased from the matrimonial home. The evidence of P.W.2 clearly indicates that A1 sent the deceased and the motor cycle along with P.W.2. Hence, there are ingredients available to implicate A1 under Section 498 (A) of IPC.

30. The learned counsel appearing for the appellants submit that during the pendency of the appeal, the second appellant/ A2 passed away. He further submits that after the deceased committing suicide and after the death of the second appellant/ A2, the first appellant/ A1 is the only person available to take care of the entire agricultural operation and now he is aged about 54 years and he is also suffering from illness. Hence, this Court may consider for reduction in sentence.

31. Since the second appellant/ A2 has passed away during the pendency of the appeal, the criminal appeal is dismissed as abated as against the second appellant.

32. Considering the mitigating circumstances prevailing in the present case, this Court is inclined to reduce the sentence of imprisonment imposed on the first appellant/ A1 from 1 year

rigorous imprisonment to six months rigorous imprisonment.

33.In the result, the criminal revision is dismissed. Connected miscellaneous petition is closed.

34.The criminal appeal is partly allowed in respect of the first appellant/ A1. The conviction imposed by the learned Assistant Sessions Judge - cum - Chief Judicial Magistrate, Nagapattinam, in S.C.No.25 of 2005 under judgment dated 27.09.2005 as against the first appellant/ A1 is confirmed, however, the sentence imposed on the first appellant/ A1 is modified. The sentence of imprisonment imposed against the first appellant is reduced from 1 year rigorous imprisonment to 6 months rigorous imprisonment. The fine amount is confirmed. The Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the first appellant/ A1 to undergo the remaining part of sentence.

35.The criminal appeal is dismissed as abated as against the second appellant.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Assistant Sessions Judge - cum - Chief Judicial Magistrate, Nagapattinam.
 - 2.The Deputy Superintendent of Police, Sirkazhi.
- +1 CC to Mr.K.Vijayan, Advocate sr 1334.
+1 CC to Mr.R.Shivakumar, Advocate sr 1335.

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VD(CO)
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