

Bail Slip

The Appellants/Accused 1 & 3 namely Sasi @ Sasikumar, S/o.Late Ponnaiyan, Male, aged about 28 years and Gnanammal, W/o.Late Ponnaiyan, Female, aged about 55 years, were directed to be released on bail as per order of this Court dated 31.07.2015 in MP(MD).No.1 of 2015 in Cr1.A.(MD).No.165 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2019

Delivered on : 13.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

Criminal Appeal (MD) No.165 of 2015

1.Sasi @ Sasikumar
2.Gnanammal

... Appellants/Accused 1 & 3

vs.

The State of Tamil Nadu,
rep.by The Inspector of Police,
Kuzhithurai Police Station,
Kuzhithurai,
Kanyakumari District

... Respondent/Complainant

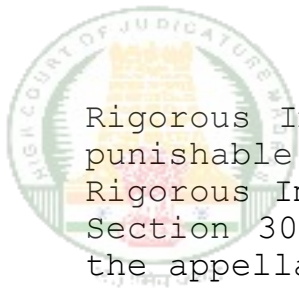
Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 09.07.2015 passed by the Sessions Judge, Fast Track Mahila Court, Kanniyakumar at Nagercoil, in S.C.No.180 of 2009.

For appellants : Mr.N.Dilip KUMar

For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

JUDGMENT

The appellants herein are accused 1 and 3 in Sessions Case No.180 of 2009, on the file of the Sessions Judge, Fast Track Mahila Court, Kanniyakumar at Nagercoil. They were charged under Sections 498-A and 304-B of the Indian Penal Code. After trial, by judgment dated 09.07.2015, the trial Court convicted them for the above said offence and sentenced them to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5000/-, in default, to undergo



Rigorous Imprisonment for six months for the commission of offence punishable under Section 498-A IPC and sentenced to undergo 10 years Rigorous Imprisonment for the commission of offence punishable under Section 304-B IPC. Challenging the said conviction and sentences, the appellants/A1 and A3 are before this Court with this appeal.

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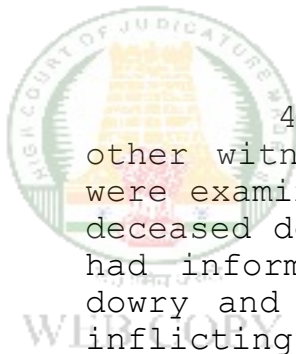
2.The case of the prosecution in brief is as follows:

(i)The first appellant herein/A1 was married to the deceased, viz., Kanmani, after elopement. They eloped to the State of Kerala and got married on 04.08.2008 by registering their marriage in that State. It appears that the girl's family opposed the marriage and due to the marriage, which was not approved by the family, the girl's family completely severed their connection with the girl.

(ii)While so, suddenly on 09.09.2008, the wife of the first appellant/A1 committed suicide, barely after a month from the date of their registered marriage. A complaint was lodged by the father of the deceased on 10.09.2008, at about 7.15 hours and on the basis of the said complaint, initially a case was registered in Kuzhithurai Police Station, in Crime No.474 of 2008, under Section 174 Cr.P.C. After investigation, a final report was filed by the Investigating Officer, who was examined as P.W.11 and a charge-sheet was filed altering the case for offence under Sections 498-A and 304-B IPC against A1 to A3, A1 being husband of the deceased, A2 father of A1 and A3 mother of A1 and all the three accused were arrested. After observing legal formalities, under the provisions of the Criminal Procedure Code, the trial was set in motion against A1 to A3, however, A2, father of A1, died during trial. A1 and A3 are the appellants herein.

(iii)On behalf of the prosecution 11 witnesses were examined as P.Ws.1 to 11 and 13 documents were marked as Exs.P1 to P13. One Material Object was marked as M.O.1. On behalf of the defence one witness was examined as D.W.1 and no documents were marked on the defence side.

3.P.W.1 is the mother and P.W.2 is the brother of the deceased, P.W.3 is the cousin brother of the deceased and P.W.4 is the sister of the deceased. P.W.5 is Dr.Guruvelan, who filed the postmortem report Ex.P2. Ex.P.W.6 is a Mahazar witness. P.W.7 is a Head Constable, Kuzhithurai Police Station, who handed over the body of the deceased to her family. P.W.8 was the Sub-Inspector of Police, Kuzhithurai Police Station, who received the complaint and registered the same under Ex.P7. P.W.9 was the Revenue Divisional Officer, who conducted the enquiry and filed his report under Ex.P9. P.W.10 is the Investigating Officer, who obtained the 161 statements from the witnesses and prepared Observation Mahazar and P.W.11, the second Investigating Officer, completed the investigation and filed the final report.

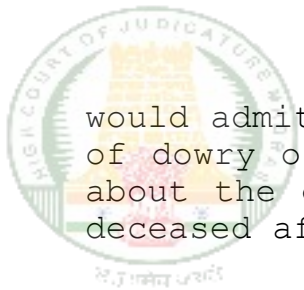


4.P.Ws.1 to 4 are close relatives of the deceased and all other witnesses were official witnesses. No independent witnesses were examined on behalf of the prosecution. P.W.1-the mother of the deceased deposed that after the marriage on 04.08.2008, the deceased had informed her that the appellants/accused have been demanding dowry and in the course of their demand of dowry, they have been inflicting cruelty on her. P.W.1 had counseled the deceased and requested her to be with her husband. But unfortunately, she died immediately. However, in the cross-examination P.W.1 had accepted that she did not participate in the marriage ceremony at all and she was not even aware of how the marriage had taken place between the first appellant/A1 and the deceased. Moreover, she had admitted that during their marital life, the deceased family and the accused family were not in taking terms at all. She has even admitted that the appellants' family, after the marriage, did not have any word with her. But, however, reiterated that there was a demand of Rs.2 lakhs towards dowry. However, she was unable to depose as to when her daughter was subjected to cruelty at the hands of the appellants/accused.

5.P.W.2 is the brother of the deceased, who would depose in his examination that the first appellant/A1 has engaged hirelings and assaulted him during the time when he had an affair with the deceased. In fact, he would admit in his deposition that the deceased was living happily with the first accused. But, however, would depose that there was a demand of Rs.2 lakhs towards dowry and this was informed to their father when he was grazing the cattle near a pond. He would further depose that their father counseled the deceased and advised her to remain calm and in fact, asked loan from the uncle of P.W.2, i.e. the elder brother of his father. Thereafter, they came to know about the death of the deceased and on the very next day, they rushed to the Police Station and gave a complaint.

6.In the course of examination, P.W.2 would also admit that they did not attend the wedding. He would, however, depose in the cross-examination that the demand of Rs.2 lakhs was informed by the deceased to her sister. However, he would deny the suggestion that the deceased committed suicide because of the fact that her elder sister Laila, who had not been married, had cursed the deceased in the chance meeting in a place and because of the said curse, the deceased has taken the extreme step to commit suicide.

7.P.W.3 is the cousin of the deceased and he was only a hearsay witness. P.W.4 is the elder sister of the deceased, who was, in fact, held responsible for the death of the deceased by the appellants/accused. She would depose in her Chief-Examination that P.W.2 had in fact beaten the first accused/A1 when they were having affair and A1 was warned by P.W.2 that he should not meet the deceased at all. She would depose that she came to know about the death of the deceased by the accused family. In the cross-examination she



would admit that she did not have any direct knowledge of the demand of dowry of Rs.2 lakhs, but she was informed by her family members about the demand. However, she would deny that she having met the deceased after the marriage, in her deposition.

8. During the course of examination, P.W.10, the first investigating officer, who obtained 161 statements, would depose that he did not record any statement regarding when the demand was made by the appellants/accused. In fact, he would admit that in his enquiry there was nothing recorded regarding the demand of dowry or any act of cruelty at the hands of the accused against the deceased and in fact, the demand of dowry was not a part of enquiry at all.

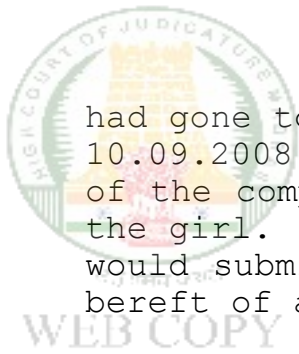
9. Ex.P3 is the Postmortem report. In the Postmortem report, the cause of death was mentioned as Asphyxia due to hanging. In the Accident Register, it was mentioned that the deceased was brought dead to the hospital at 7.40 p.m. on 09.09.2008.

10. As far as the defence witness is concerned, D.W.1 is the neighbour of the accused family and according to her, there was no quarrel between the couple at all during the period they lived after their marriage. She would completely plead ignorance about any cruelty meted out by the deceased at the hands of the accused and also about the demand of dowry at all.

11. After adverting to the oral evidence and the materials placed on record, the trial Court has come to the conclusion that the accused were guilty of offence under Sections 498-A and 304-B IPC and imposed the sentence as stated supra. The conviction and sentences imposed on the accused are challenged in the present appeal.

12. Mr. Dilipkumar, the learned counsel for the appellants/accused would, at the outset, submit that this is a case of no evidence. But, unfortunately, the trial Court, without appreciating the complete absence of evidence, has chosen to record conviction against the appellants/accused.

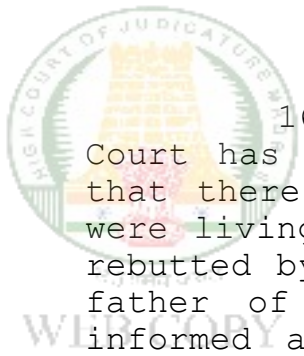
13. The learned counsel would submit that it was clearly established during the examination that the deceased family had completely severed connection with the family of the accused and the girl and absolutely there were no independent evidence to support the case of the prosecution. P.Ws.1 to 4 happened to be interested witnesses, since there was a motive to allege commission of offence against A1, in view of earlier complaint filed by the brother of the deceased-P.W.2 as against A1. In fact, immediately after the death of the deceased, it was only the husband/A1, who took her to the hospital at 6.45 p.m., but unfortunately, she died at 7.40 p.m. The girl's family was immediately informed on the same day, but none of the relatives or friends had chosen to visit the place of the accused, but



had gone to the Police Station straight away on the next day i.e. on 10.09.2008 for giving a complaint. The FIR was lodged on the basis of the complaint by the father of the deceased, without even seeing the girl. Therefore, the learned counsel for the appellants/accused would submit that the complaint itself was completely motivated and bereft of any truth at all.

14.The learned counsel would further submit that as per the postmortem report it was death due to hanging and no injuries were found on the body of the deceased. Therefore, the question of attracting Section 304-B IPC would not arise at all in this case. He would submit that the entire evidence of the prosecution did not even remotely establish the factum of inflicting cruelty on the deceased by the appellants/accused, as no specific details were mentioned as to when and what type of cruelty was inflicted on the deceased during their matrimonial existence. Therefore, the offence, which was found to be established by the trial Court under Section 498-A, cannot stand a proper judicial scrutiny in the eye of law, as it was unsupported by any worthwhile piece of evidence.

15.Moreover, the offence under Section 304-B IPC also was not established for the simple reason that there was no date or time mentioned as to when was the demand of dowry of Rs.2 lakhs by the accused family. P.Ws.1 to 3 would only depose that there was a demand of dowry of Rs.2 lakhs, but each one has given a contradictory statement as to when the demand was made and as to how the demand came to their knowledge. P.W.2 would say that the deceased has informed her father about the demand when he was grazing the cattle near a pond. Of course, the father could not be examined because of his death at the time of trial. Whereas, P.W.1 would depose that she was informed by the deceased, but she did not say on what date and time she was informed. P.W.4, the sister of the deceased, would say that she was informed by her family members about the demand, but she could not have her own independent knowledge about the same. The learned counsel would, therefore, submit that such general deposition, without any specific corroborative evidence, would be too unsafe to be relied upon by the trial Court for the purpose of recording conviction against the appellants/accused. According to the learned counsel, unfortunately, the trial Court, oblivious of the non-existence of any cogent piece of evidence, has chosen to conclude against the appellants/accused and convicted them under Sections 498-A and 304-B IPC. The learned counsel also submitted that nothing prevented the prosecution from examining any independent witness to corroborate the case of the prosecution. In fact, statements of two neighbours, viz., i.e. Tmt.Baby and Mr.Sundaram, were obtained under Section 161 Cr.P.C., by the Investigating Officer, but however, the prosecution did not choose to examine them as their witnesses. Non-examination of independent witnesses was fatal to the prosecution cased, in the facts and circumstances of the case.



16.The learned counsel would also submit that the trial Court has not referred to the evidence of D.W.1, who would state that there was no demand of dowry and also state that the couple were living peacefully and happily. The evidence of D.W.1 was not rebutted by the prosecution. One of the crucial witnesses was the father of the deceased, who according to the prosecution, was informed about the demand of dowry of Rs.2 lakhs, when he was grazing cattle, near a pond. But before he could be examined in the trial, he died. In the absence of examination of the father, the entire story of the prosecution, namely, the demand of dowry, has to fall flat and therefore, the allegation of death due to demand of dowry cannot be established and offence under Section 304-B IPC was not made out at all, in the eye of law. Further, the learned counsel would submit that there was no injury at all found on the body of the deceased and it was merely a case of suicide, for which, no offence under Section 304-B could be made out. In fact, it was a consistent case of the defence that the deceased was made to commit suicide because of the conduct of her sister Laila, who was examined as P.W.4, who had scolded the deceased during her chance meeting just before the death of the deceased. Unfortunately, the trial Court has not referred to the defence of the accused, but has chosen to give more credence to the fragile evidence put forth on the side of the prosecution.

17.The learned counsel for the appellants/accused, in support of his contention, would rely on the decision of the Hon'ble Supreme Court of India in the case of **Mahesh Kumar vs. State of Haryana [(2019) 8 Supreme Court Cases 128]**. He would particularly rely on Paragraph Nos.9 to 17 of the judgment, which are extracted hereunder:

"9) The first and foremost question that arises in this case, and in respect of the necessary ingredients of Section 304-B IPC, is whether there is a proximate nexus between the death of the deceased with the cruelty or harassment inflicted upon her in respect of the demand of dowry. Section 304-B reads as under:

"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 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."

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10) This Court in Satvir Singh & Ors. v. State of Punjab & Anr.¹ examining the significance and implication of the use of the words 'soon before her death' in Section 304-B, has held as under:

"20. Prosecution, in a case of offence under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death". The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

"2. In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly—

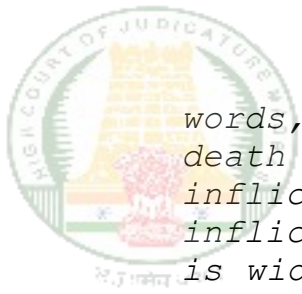
(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies."

xxx xxx xxx

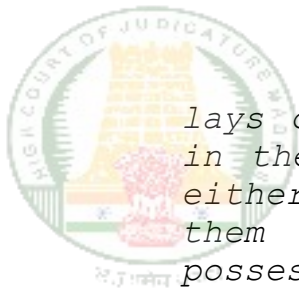
22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other



words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

11) In Hira Lal & Ors. v. State (Govt. of NCT), Delhi², this court held that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of death occurring otherwise than in normal circumstances. It was held as under:-

"9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It



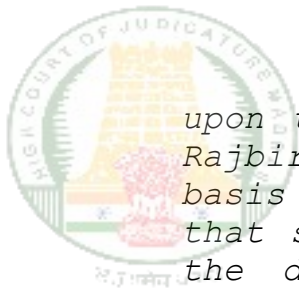
lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. 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."

12) In Sakatar Singh & Ors. v. State of Haryana³, the Court was examining as to whether, letter written by the deceased discloses an offence under Section 304 B of the IPC. It was held that:

"11. In the above background, we will now consider the evidence led by the prosecution to establish the charge levelled against the appellants. In this process, we will first examine the letter written by the deceased to her mother. Though this letter does not mention the date, there is no dispute that the same was posted on 20-5- 1986 which is evident from the postal seal found on the envelope which would be a date prior to the incident leading to the death of Devinder Kaur and the children. The contents of the letter indicate what transpired during her mother's visit to her in-laws' house and does not anywhere even remotely indicate any demand made by her in-laws. It only reflects the attitude of the deceased towards her in-laws and that she entertained a feeling that her mother was not properly treated by her mother-in-law during her last visit...."

13) In Major Singh and Anr. v. State of Punjab⁴, the Court disbelieved the prosecution's story for the reason that no independent witnesses were examined, even though, the witnesses deposed that the Members of Panchayats were informed about the harassment.

14) In the present case, the prosecution relies



upon the statement of PW3 Sohan Lal - father and PW4 Rajbir - brother of the deceased which has been made basis of conviction by courts below. However, we find that such statements are not sufficient to prove that the deceased was treated with cruelty relating to demand of dowry soon before her death in the absence of independent evidence though available but not examined. A memorandum Ex.PE/1 dt. 25.01.1992 was relied upon and said to be executed by the in-laws of the deceased in the presence of members of Panchayat. But none of the Panchayat Members have been examined to prove the settlement arrived at. Therefore, the oral statements cannot be relied upon in view of the letters produced by the prosecution.

15) The prosecution also relies upon letter Ex. PF/1 written by the deceased to her father. The letter is to the effect that her in-laws have started hating and suspecting the deceased's father, therefore, he should not give them the gold chain but only cash. Such letter does not show that anything was demanded by the appellant. The date of sending such letter has not been proved by the prosecution, therefore, it cannot be said that such letter was written soon before her death. Similarly, another letter produced by the prosecution is Ex. PK/1 which is a letter of the deceased to her brother-in-law(sisters-husband) stating that she has no problem with her mother-in-law and sister-in-law but her husband beats her daily. The date of this letter has not been proved nor does such letter lead to any inference for the demand of dowry by the husband of the deceased. Further, an additional letter relied upon by the prosecution is Ex. PG/1 dated 25.05.1992, wherein the deceased has written that she is unhappy and harassed by her in-laws in as much as her mother-in-law does not like the food she cooks. Again, there is no inference of any demand of dowry in such letter as well. Therefore, the documentary evidence in the shape of letters does not support the story of the prosecution.

16) In view of the judgments referred to above, the prosecution has failed to prove either the demand of dowry or that any such demand was raised soon before her death. Therefore, the essential ingredients of offence under Section 304-B of IPC are not proved by the prosecution. The prosecution has even failed to prove the initial presumption under Section 113-B of the Evidence Act.

17) We find that the prosecution has failed to



prove the allegations levelled against the appellant beyond reasonable doubt. Consequently, we allow the present appeal and set aside the conviction of the appellant and set him at liberty as long as he is not involved in any other case. Bail bonds shall stand discharged."

18. In the above case, the Hon'ble Supreme Court of India has in extenso discussed about the ingredients of Section 304-B of IPC and finally held that there should be proximity nexus between the death of the deceased with the cruelty or harassment inflicted upon her in respect of demand of dowry. In that case, the Hon'ble Supreme Court has held that the proximity was not established and therefore, the ingredients of Section 304-B were not found and hence, acquitted the accused therein. Therefore, the learned counsel for the appellants would submit that the above case would squarely apply in favour of the appellants/accused in this case. On the whole, the learned counsel would submit that this is a case of no evidence and the trial Court's recording of conviction and sentence against the appellants/accused need to go lock, stock and barrel.

19. Per contra, the learned Additional Public Prosecutor would submit that the fact remains that within 40 days of the marriage, the deceased committed suicide and therefore, there was a strong likelihood that the deceased died because of the compelling circumstances, for which, the appellants/accused alone are responsible. According to the learned Additional Public Prosecutor, since the girl's family had completely severed connection with the girl, there was no likelihood of any provocation from the girl's family for the deceased to take an extreme step of ending her life. According to the learned Additional Public Prosecutor, the circumstances would clearly point out that all was not well with the family of the appellants/accused and the girl, probably, was driven to commit suicide in view of the conduct of the accused persons and the demand of dowry. The story set up by the defence about the conduct of the sister of the deceased, which led the deceased to commit suicide, was unbelievable and in fact, that story was not supported by any materials or piece of evidence. In the absence of such evidence, the trial Court has rightly inferred, with the supportive materials, that the conduct of appellants' family alone was responsible for the deceased to commit suicide and therefore, has rightly held that the charges against the accused stood established in clear terms both on the basis of the documentary as well as oral evidence and recorded the conviction and imposed the sentences. According to him, there were enough and sufficient reasons and circumstances to point to the guilt of the accused and therefore, the trial Court has rightly convicted the appellants, which according to him, does not call for any interference by this Court.

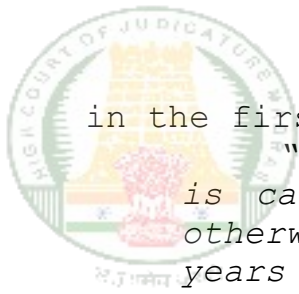


20. Considered the submissions made by Shri. Dilipkumar, the learned counsel appearing for the appellants/accused and also the learned Additional Public Prosecutor for respondent and perused the materials and pleadings placed on record.

21. No doubt, the deceased has committed suicide within 40 days from the date of her marriage, after elopement with the first appellant/A1, which gives rise to a serious doubt about the death and the surrounding circumstances, which led to the commission of suicide. At the same time, this Court sitting in appeal, cannot disregard the absence/presence of evidence altogether and come to a conclusion on the basis of mere inference and surmise or presumption. In support of the prosecution case, the prosecution has examined 11 witnesses, of which, four were family members or relatives of the deceased and the other witnesses were only official witnesses. There appears to be lack of consistency in the prosecution witnesses, i.e. P.Ws.1 to 4, as to the demand of dowry of Rs.2 lakhs by the accused family. P.W.1, the mother of the deceased, would depose that she was informed about the demand, but she would neither depose about the time nor about the date of information divulged by the deceased. As regards P.W.2, the brother of the deceased, the demand of dowry of Rs.2 lakhs was made known to their father when he was grazing cattle. But, even P.W.2 would not say specifically on what date and what time, this information was given to him. P.W.4, the sister of the deceased would depose that she was informed about the demand by her family members and therefore, she gave evidence that her sister had died because of dowry harassment. On the whole, the evidence by these persons, regarding demand of dowry, was too weak and slender, which can be hardly relied upon by the trial Court for the purpose of convicting the accused under Section 304-B IPC.

22. As regards the conviction under Section 498-A IPC, there is hardly any piece of evidence at all to show as to when the deceased was subjected to cruelty and what is the nature and type of cruelty meted to her. No doubt, the death of the deceased, at a young age, that too, within 40 days of the marriage, was unfortunate, nevertheless, the Court, which is entrusted with the task of justice dispensation, cannot ignore the gaping holes in the prosecution case, when the accused persons are sought to be convicted under Section 498-A and 304-B IPC. The entire prosecution case, in the absence of any independent evidence, is beset with material contradiction, which cannot be safely relied upon for the purpose of recording conviction against the accused.

23. Moreover, as far as the postmortem report is concerned, the final opinion given for the death of the deceased was due to hanging and as rightly contended by the learned counsel for the accused, there was no injury marks on the body of the deceased. In the absence of any injury marks, this Court is rather doubtful as to whether the ingredients of Section 304-B IPC were attracted at all,



in the first place. Section 304-B of IPC reads as under:-

"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."

24.A plain import of the above Section would mean causing death of a woman by any burns or bodily injury or occurs otherwise, which would mean allied acts at the hands of the perpetrator/perpetrators and whether the Section can bring within its sweep a simple commission of suicide by the deceased, without any injuries found on her body, is a larger issue to be decided by the Courts in an appropriate case.

25.As far as the present case on hand is concerned, even assuming for a moment that the said Section is attracted for the allegations levelled against the accused, there appears to be no evidence at all to find any nexus between the so called act of the accused and the ultimate commission of suicide by the deceased, as held by the Honourable Supreme Court of India in the decision relied on by the learned counsel for the appellants/accused reported in **(2019) 8 Supreme Court Cases 128**, referred to supra. The facts of that case can be applied squarely to the facts and circumstances of the present case as well, in which event, this Court has come to an inexorable conclusion that the conviction recorded against the appellants/accused by the trial Court is erroneous and cannot be countenanced both in law and on facts.

26.The absence of crucial witness, viz., the father of the deceased, was fatal to the prosecution case, in the opinion of this Court, since the evidence point out to the fact that he was the one who was informed about the demand of dowry, by the deceased. Of course, unfortunately, he could not be produced as a witness due to his death, but, even otherwise whether his evidence would have made any material difference, is a matter of speculation only. Even the information given to the father of the deceased was only general in nature, did not specify the time or date. Moreover, the factum of demand of dowry and information about the same to the members of the deceased family is rather doubtful for the simple reason that the evidence by P.Ws.1 to 4 would clearly establish that the girl's family had completely severed their connection with the girl, after her marriage. Further, when a complaint was given to the police on 10.09.2008, the deceased family, admittedly, did not visit the place where the deceased was hospitalised and they have also not spared any efforts to see the girl before the complaint was lodged.



Therefore, it appears that without ascertaining the true facts, the girl's family has determined to implicate the accused in a crime, which might or might not have taken place at all.

27.This Court, once again, wants to remind that whatever be the circumstances of the case, unless concrete material is made available by the prosecution, it is not within the realm of criminal jurisprudence to convict the persons on the basis of mere inferences and presumption in the ordinary course of criminal trial. Such a course to be adopted by the trial Court would be too dangerous for the impartial dispensation of criminal justice. It appears from the approach of the trial Court, in this case, that in the absence of cogent evidence, the trial Court has determined to conclude in favour of the prosecution, as probably the trial Court was guided by the circumstances of the case, which led to the death of the deceased at an young age. While recording conviction, the trial Court need not be guided by pity and sympathy alone, but must be guided by the legal principles of the evidence, as otherwise, it will only end up by passing a wrong judgments, convicting wrong persons. It is too unsafe to rely on such fragile piece of evidence and in such an event, it is always safe to give the benefit of doubt to the accused and not the benefit of conviction in favour of the prosecution.

28.For the above said reasons, this Court unhesitatingly would conclude that it is a case of no evidence at all for convicting the accused for offences both under Sections 498-A and 304-B IPC. In view of all the above, this Court holds that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants are entitled for acquittal.

29.In the result, this criminal appeal is allowed; the conviction and sentences imposed on the appellants/A1 and A3 by the trial Court in Sessions Case No.180 of 2009, dated 09.07.2015, are set aside and the appellants/A1 and A3 are acquitted of all charges. Bail bond, if any, executed by them shall stand cancelled. Fine amounts, if any, paid by them, are ordered to be refunded forthwith.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msk



To :

1.The Sessions Judge, Fast Track Mahila Court,
Kanniyakumar at Nagercoil.

2.The Judicial Magistrate No.I, Kuzhithurai.

3.Do through The Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

4.The Inspector of Police,
Kuzhithurai Police Station,
Kuzhithurai, Kanyakumari District.

5.The Superintendent of Prison,
Palayamkottai.

6.The Superintendent of Women Prison,
Trichy.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-104924[F] dated 13/12/2019

Judgment in
Crl.A.No.165 of 2015
13.12.2019

JMN(22.01.2020) 15P : 9C