

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2020

PRONOUNCED ON : 10.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.745 of 2013

1.Nandakumar
2.Krishnaveni

...

Appellants/Accused

Vs.

State By:

The Asst.Commissioner of Police,
P5. MKB Nagar Police Station,
Chennai.

...

Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 (2) of the Criminal Procedure Code against the judgment dated 10.10.2013 passed in S.C.No.301 of 2012 on the file of the Sessions Judge, Mahila Court, Chennai.

For Appellant : Mr.S.Ananthanarayanan
Senior counsel
for Mr/R.Vijayakumar

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

JUDGMENT

The Sessions Judge, Mahila Court, Chennai, by judgment dated 10.10.2013, passed in S.C.No.301 of 2012, has convicted the appellants/A1 and A2 under section 498 A IPC and sentenced them to undergo rigorous imprisonment for three years each and to pay a fine of Rupees 5,000/- each in default to undergo simple imprisonment for three months and acquitted A1 of the offences under section 302 or alternatively under section 304B and under section 302 IPC and impugning the conviction and sentences imposed on them, the criminal appeal has been preferred by the appellants.

2. Shorn of unnecessary details, the prosecution case is that the deceased Sivaranjani and the first accused were engaged in love and got married without the permission of their parents on 11.4.2008 and thereafter, the deceased parents provided six sovereigns of gold and 1/4 kg of silver articles and thereafter, the deceased and A1 set up their residence at Vyasarpadi and a female child was born to them and the deceased had entrusted half sovereign of gold chain and two rings to her mother Meenatchi and the first accused had demanded the return of the same from the deceased mother and also used to abuse the deceased for not bringing adequate seer and the second accused also abused the deceased that the seer provided by her parents is inadequate and

demanded the deceased to bring more jewels and cash and resultantly, the first accused used to pick up quarrel with the deceased and pushed her down on 05.08.2011 at 11:30 p.m. and poured kerosene and set fire and though the deceased was rushed to the hospital for treatment, she succumbed to the burn injuries on 10.8.2011 at 9:30a.m. and thus, it is put forth that the accused has committed the offences levelled against them.

3. To sustain the prosecution case, PWs 1to16 were examined, Exs. P1 to P25 were marked. Material objects 1 and 2 were also marked.

4. On the conclusion of the prosecution evidence, the accused were examined under section 313 Cr.P.C. qua the incriminating evidence and the accused had denied the same. According to the accused, they had not demanded any dowry from the deceased and not committed any torture and ill treatment to her as put forth by the prosecution and further, it is put forth that the deceased and one Sathish was noted in an inappropriate position by the first accused on the date of the incident and the deceased, unable to bear the same, committed suicide by pouring kerosene and setting fire on her and when the first accused attempted to douse the fire, the first accused also sustained burn injuries and though the deceased was rushed to the hospital immediately, she

subsequently succumbed to the burn injuries and therefore, according to the accused, they have not committed the offences put forth against them.

5. In support of their version, DWs 1 and 2 were examined, Exs.D1 to D4 were marked. No material object has been marked.

6. In so far this case is concerned, it is not required to deal with the aspect of the case of the death of the deceased as to whether the deceased has committed suicide by pouring kerosene on her body and set ablaze herself or the first accused has poured the kerosene and set her on fire and when with reference to the case projected by the prosecution that the first accused had poured kerosene and set fire to her having not been established by the prosecution beyond reasonable doubt, it is found that the trial Court had acquitted the first accused of the offences framed against him under section 302 alternatively under section 304B IPC and 302 IPC and acquitted him of the aforesaid offences.

7. The accused had been convicted only for the offence under Section 498A IPC. Therefore, it has to be seen that whether the accused had caused ill treatment and cruelty to the deceased for jewels and cash from the deceased as projected by the prosecution.

8. Immediately after the incident, the deceased was rushed to the hospital by one Sathish and it is also noted that even the first accused was admitted in the hospital by the said Sathish and the medical officer Suresh Babu examined as PW11 who has admitted them in the hospital has deposed that he found the deceased conscious and on examination, the deceased apprised him that she herself poured kerosene on her body and set fire at 11:30 p.m. on 05.08.2011 and therefore, the first version of the deceased that she had committed suicide on her own accord by pouring kerosene on her body and setting her ablaze as disclosed by her would belie the prosecution case that the accused had set her on fire by demanding dowry. If the abovesaid version of the prosecution is true, definitely the deceased would have apprised to the medical officer that she had chosen to end her life on account of the torture and ill treatment meted out by her to the accused, but, the deceased has not complained about the accused to the medical officer on being admitted in the hospital.

9. No doubt, during the course of her treatment, the deceased has given a dying declaration to the Judicial Magistrate and the dying declaration given by the deceased has been marked as Ex.P8. In Ex.P8 the deceased would assert that it is only the first accused who poured kerosene on her and set her ablaze. However, as above pointed out, the abovesaid case as projected by the

prosecution has not been established and the first accused has been acquitted of the charges levelled against him with reference to the same. In the dying declaration marked as Ex.P8, the only allegations levelled by the deceased against the first accused is that inasmuch as the deceased had entrusted the jewels presented to her female baby to her mother, the accused had been insisting upon her to get back the same from her mother and on that score, picked up quarrel with her. This is what she has alleged in the dying declaration. That apart, she has not averred that the first accused or the second accused had been demanding more jewels and money from her and insisted her to bring the same from her parents and on that score, committed torture and ill treatment to her and therefore the alleged torture and ill treatment said to have been caused by the accused to the deceased by demanding dowry is belied by the dying declaration and therefore, the insistence of the first accused directing the deceased to get back the jewels presented to their baby from the deceased parents cannot at all be construed as demand of dowry amount as such and furthermore, when the deceased has not disclosed anything about the ill-treatment or cruelty caused to her by the first accused or the second accused in the dying declaration and as above pointed out, the deceased having not complained about any torture caused to her by the accused to the medical

officer at the time of her admission in the hospital, the case projected by the prosecution that the deceased was subjected to torture and ill treatment by the accused by demanding dowry i.e., jewels and cash, as such, cannot be readily accepted.

10. The materials placed on record go to show that the deceased and the first accused were engaged in love and got married subsequently on their own. Only thereafter, the deceased parents had chosen to present some jewels and silver articles to them. The abovesaid presentation of jewels and silver articles are found to be presented to the deceased on their own accord and the same has not been shown to be demanded by the accused and thereafter, it is found that a female baby was born and subsequently, the female baby had died and it is also seen that in the meanwhile the deceased had entrusted the jewels to her mother and the accused had been insisting to get back the said jewels from her mother. When the deceased and the first accused had chosen to get married on their own without the involvement of the deceased parents, it is thus found that the first accused had chosen to marry the deceased without any insistence of dowry from her. When furthermore, the deceased and the first accused were leading their marital life and also had a female baby out of their wedlock during 2009 and when it is found that it is disclosed by the deceased during the

dying declaration that the jewels presented to the female baby had been entrusted to her mother and the accused had been only demanding the retrieval of the same from her mother and on that score, picked up quarrel with the deceased, in toto, it is seen that the natural simmerings between the first accused and the deceased had been blown out of proportion by the prosecution as if the accused had been causing ill treatment and torture by demanding more jewels and money.

11. In this case, the nature of the complaint is in serious doubt. Ex.P20 complaint is said to have been lodged by the deceased. The deceased herself has given the complaint. As could be seen from the materials placed on record, particularly, PW1, the deceased mother during the course of examination has admitted that the deceased was admitted in the hospital before they had reached the hospital by one Sathish and further, has admitted that immediately after the incident, the police came to the hospital within half an hour and on arrival at 1 O'clock, the police had examined her daughter and they were asked to wait outside and does not know whether they recorded any statement from her daughter.

12. In the complaint Ex.P20 said to have been lodged by the deceased, she had only stated that she had entrusted certain jewels to her mother and the same had been asked to be retrieved by her husband and accordingly, her husband picked up usual quarrel with her and thereafter, poured kerosene on her body and set her on fire and therefore, even in the complaint, the deceased has only stated that her husband had been insisting her to get back the jewels which she had entrusted to her mother and not in specific pleaded that the accused had been demanding more jewels and money from her as dowry and thereby causing her ill treatment and torture. Therefore, as rightly contended by the accused counsel, the usual fights between the deceased and her husband had been projected by the prosecution in a different manner as if the same had occurred only due to the torture and harassment caused to the deceased on account of the dowry demand by the accused. The police is found to have examined the deceased at the early hours of 06.08.2011. Moreover, PW16, the investigation officer during the course of cross examination has admitted that one head constable had received the intimation at 1:30 a.m. and the FIR had been registered only at 8 a.m. With reference to the delay in the registration of

FIR, according to PW16, the same had occurred due to the travel from the hospital to the police station. PW15 is the Inspector of Police who had recorded the complaint lodged by the deceased marked as Ex.P20. When as per the evidence of PW1, the deceased was immediately enquired by the police in the early hours of 06.08.2011, if that be so, there is no explanation on the part of the prosecution as to why the FIR had not been registered there after. Therefore, the explanation on the part of the prosecution that the delay in the registration of the FIR is on account of the travel from the hospital to the police station as such cannot be readily accepted. In this connection, it is to be noted that PW2, the father of the deceased has been involved in the murder case and also in several prohibition cases. Therefore, it is found that he is having close contacts with the police. Other than the evidence of PWs 1 and 2, the parents of the deceased, there is no evidence worth acceptance on the part of the prosecution that the deceased has been subjected to cruelty and ill treatment by the accused by demanding more jewels and money. In this connection, though the prosecution has examined one Noorjahan as PW4 for establishing the cruelty alleged to have been caused to the deceased by the accused by demanding money and jewels, however, when it is found that PW4 Noorjahan was in the employment of PW2 Meenatchi, the deceased mother and therefore,

she being an interested witness, no safe reliance could be attached to her testimony that the deceased was inflicted with cruelty and ill treatment by the accused for demand of money as projected by the prosecution.

13. A nearby resident Revathi, who has been examined as PW3 has deposed that when she questioned the deceased as to the reason for committing suicide, according to her, the deceased has informed her that she set fire to herself on her own accord and not expected the serious result thereof and furthermore, PW3, during the course of cross examination has also admitted that the deceased and one Sathish are friends and people used to apprise that they are having illicit relationship and there are rumours that they are having illicit relationship and further, also admitted that it is only Sathish who had apprised her about the incident. Now, according to accused, on the date of the incident when the accused returned home, the door was open and the first accused saw both the deceased and Sathish in an inappropriate position and came out and immediately, he heard the shout of the deceased and rushed in and saw her in fire and attempted to douse the fire and thereby got himself burnt and as above pointed out, when it is only Sathish who had admitted the deceased and the first accused in the hospital, when the abovesaid incident is said to have been taken place on 05.08.2011 at 11:30 p.m. at the residence of

the deceased, the prosecution has not explained as to why Sathish was in the deceased house at that time of the incident. In this connection, a suggestion has been put to PW15 the investigation officer that despite the knowledge of the illicit relationship between the deceased and Sathish, he had not directed the investigation pointing to the same and the said suggestion had been no doubt denied by PW15. Similarly PW16, the other investigation officer has also denied such a suggestion put to him. However, as rightly contended by the accused counsel when admittedly Sathish is found to be at the place of occurrence, that too, at 11:30 p.m., the incident having occurred in the residence of the deceased, as to why he had been at the residence of the deceased at the odd hours has not been explained by the prosecution. Therefore, to throw more light on the issue, the prosecution should have endeavoured to examine Sathish and record his statement. The claim of the prosecution that Sathish was not available during the course of investigation, as such, cannot be believed and accepted. In this connection, PW1, the deceased mother has admitted that Sathish was residing in their area and further admitted that it was only Sathish who had apprise the incident to them over phone. Therefore, when Sathish is able to be easily located and despite his presence at the time of occurrence and when it is he who had admitted the

deceased and the first accused in the hospital, in my considered opinion, the investigation officer should have directed the investigation to find out as to whether there has been any illicit relationship between the deceased and the Sathish as projected by the accused and for one reason or the other the prosecution has not directed any investigation on that lines. Therefore, it is found that the deceased having chosen to end her life one way or the other and when the case projected by the prosecution that it is the first accused who has caused her death by pouring kerosene on her body and set fire on her has not been established by the prosecution and when the deceased at the first instance to the medical officer had not complained about the accused and also not complained about the accused demanding more jewels and money from her and ill treating her in her dying declaration marked as Ex.P8 and when with reference to the alleged demand of jewels and money from the deceased and the consequential torture inflicted upon the deceased by the accused has been spoken to only by the deceased parents examined as PWs 1 and 2, however, when the deceased herself has not made any such complaint to the police marked as Ex.P20 other than apprising that the first accused had been insisting her to get back the jewels which she had entrusted with her mother and thereby picked up quarrel with her, in such view of the matter, the case of the

prosecution that the deceased had been subjected to cruelty and ill treatment on the part of the accused by demanding more jewels and money, as such, cannot be believed and accepted and on a reading of the judgment of the trial Court, it is seen that as rightly contended by the accused counsel, the trial Court seems to have mainly focused upon the report of the RDO marked as Ex.P19 in holding that there has been dowry demand on the part of the accused. However, when the so called Panchayatars examined by the RDO had not been projected as witnesses by the prosecution and furthermore, when the RDO examined as PW14 has admitted that he has not examined any independent person other than the Panchayatars and also having admitted that Panchayatars has not complained about any dowry harassment and as above pointed out, the so called Panchayatars examined by the RDO had not been cited as witnesses by the prosecution, the determination of the trial Court in holding that the accused had committed ill treatment and torture on the deceased by demanding more jewels and money based on the RDO's report, as such cannot be legally countenanced.

14. The counsel for the accused in support of his contentions placed reliance upon the decisions reported in ***AIR 1982 SC 839 (Mohanlal***

Gangaram Gehani Vs. State of Maharashtra) and 2010(7) SCC 667 (Preeti Gupta & Another Vs. State of Jharkhand & Another). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

15. In the light of the abovesaid discussions, the prosecution having miserably failed to establish the alleged cruelty, torture and ill treatment said to have been caused to the deceased on the part of the accused by demanding more jewels and money and when the abovesaid case of the prosecution as projected is found to be surrounded with serious doubts, suspicions, lacunae and surmises, as no plausible explanation is given by the prosecution to dispel the same, the benefit of doubt emerging from the same should be extended in favour of the accused and accordingly, I hold that the prosecution has failed to establish the charge levelled against the accused under Section 498A IPC and acquit them thereof.

WEB COPY

16. In conclusion, the conviction and sentence imposed on the appellants/A1 and A2 by the Sessions Judge, Mahila Court, Chennai, by judgment dated 10.10.2013, passed in S.C.No.301 of 2012 are set aside. The appellants/A1 and A2 are acquitted of the offence under Section 498A IPC put

forth against them. Accordingly, the criminal appeal preferred by the appellants is allowed. The bail bond executed by the appellants shall stand cancelled. The fine amount, if any, paid by the appellants shall be refunded to them.

Index : Yes / No
Internet : Yes / No
sli

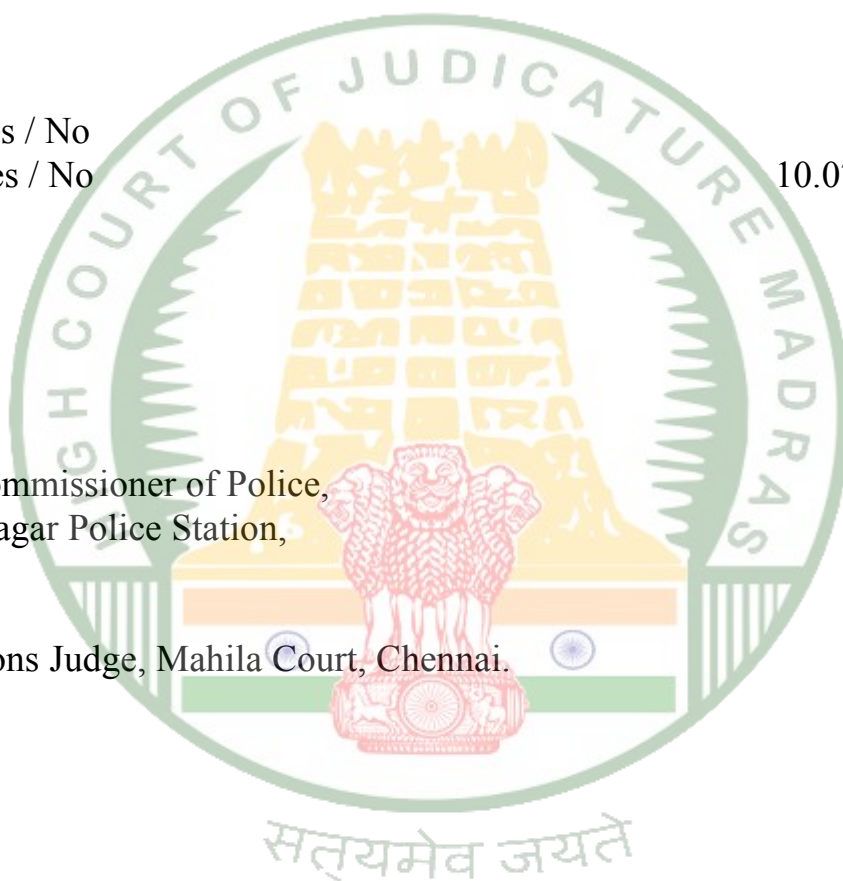
10.07.2020

To

1.State By:

The Asst.Commissioner of Police,
P5. MKB Nagar Police Station,
Chennai.

2.The Sessions Judge, Mahila Court, Chennai.

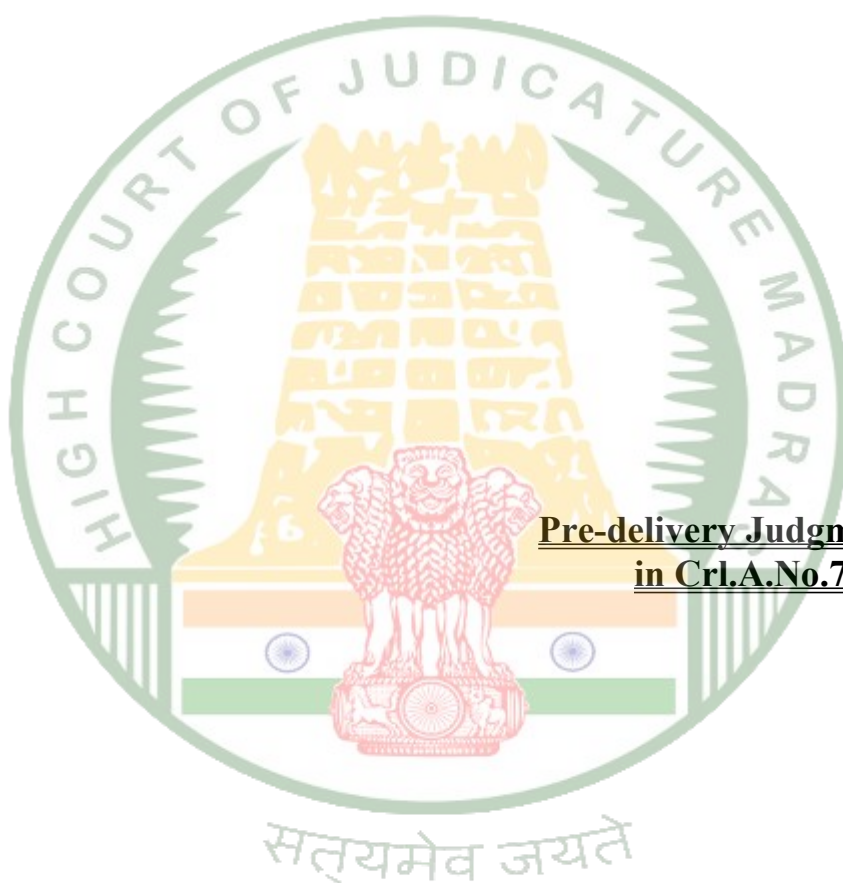


WEB COPY

Crl.A.No.745 of 2013

T.RAVINDRAN, J.

sli/sms



**Pre-delivery Judgment made
in Crl.A.No.745 of 2013**

WEB COPY

10.07.2020