

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2020

Pronounced on : 03.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.A.No.307 of 2014

Dhanalakshmi

... Appellant / P.W.1

Vs.

1. Sivakumar

2. State rep. by

Deputy Superintendent of Police,

Erode City Sub Division,

Erode, Erode District.

... Respondents / Accused &
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of the learned Sessions Judge, Magalir Neethimandram, (Mahila Court), Coimbatore, in S.C.No.69 of 2011 dated 12.03.2014, acquitting the 1st respondent/accused for an offence under Sections 304-B and 498-A of IPC.

For Appellant : Mr.Swami Subramanian
for Mr.K.S.Rajagopalan

For Respondents : Mr.N.Manokaran (for R1)
Mr.S.Karthikeyan (for R2)
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed to set aside the judgment of acquittal dated 12.03.2014 passed in S.C.No.69 of 2011 by the learned Sessions Judge, Magalir Neethimandram, (Mahila Court), Coimbatore.

2. The appellant herein is the defacto complainant / PW1 in S.C.No.69 of 2011. The 1st respondent is the accused in above referred Sessions Case. Upon the complaint given by the appellant, the 2nd respondent police registered a FIR in Cr.No.845 of 2008 for the offence punishable under Sections 498-A, 306 of IPC. Subsequently, after the conclusion of the investigation, the 2nd respondent police filed a final report

alleging that the 1st respondent committed an offence under Sections 498-A and 304-B of IPC. Charges have also been framed for the said offences.

3. By judgment dated 12.03.2014, the learned Sessions Judge, Magalir Neethimandram, (Mahila Court), Coimbatore acquitted the 1st respondent, by saying that the prosecution miserably failed to prove the offence under Sections 304-B and 498-A of IPC. Aggrieved over the said acquittal, the defacto complainant is before this Court, by way of filing the present Criminal Appeal.

4. The case of the prosecution, in brief, is as follows:-

(i) PW1/appellant is the mother of the deceased. On 23.08.2007, marriage between the accused and the deceased was solemnized at Gujarathi Marriage Choultry, Thirupur. At the time of marriage, the accused jointly with his parents, demanded 40 sovereigns of gold jewellery as dowry. Accordingly, 40 sovereigns were offered as dowry along with household articles. After some time from the date of marriage, the deceased telephonically contacted the PW1 and informed that the accused demanded more money and jewellery. Further she informed that the appellant made such threat by saying, if the said demand is not fulfilled, he would marry another women, who would bring more money and jewels as dowry.

(ii) In the mean time for celebrating Diwali, two sovereigns of chain and one sovereign of bracelet were offered to the accused. Even after receiving the same, always by demanding more money and jewels from the deceased, the accused gave torture to her. The family members of the accused also demanded the deceased to bring Rs.1,00,000/- as dowry. In this regard, two months prior to the death, the parents of the deceased gave Rs.1,00,000/- as dowry to the accused. Apart from that Rs.5,001/- was also given to the deceased to the Diwali. The deceased told the witness by crying that her life became spoiled, for which PW1/appellant consoled the deceased.

(iii) Ultimately, because of the continuous torture given by the accused, the deceased committed suicide by hanging. This was informed to the PW1/appellant, by her elder son-in-law and her son-in-law was informed by the friends of the accused. Immediately, on receiving the information, PW1/appellant went to the house of the accused and saw the deceased's body. Thereafter, she lodged a complaint before the 2nd respondent police under Ex.P1. After the incident, PW1/appellant asked to return the jewels and household articles offered to the deceased for which parents of the accused told that they would return the jewels and articles if the complaint lodged before the 2nd respondent police is withdrawn by PW1/appellant.

(iv) On receipt of the complaint given by PW1, PW9-Mr.Rajendran, the then Sub Inspector of Police, Erode North Police Station, on 18.10.2010 at about 7.00PM registered a case in P.S.Cr.No.845 of 2008 under Sections 498-A and 306 of IPC. The printed FIR is marked as Ex.P3. After registering the case, he sent the copy of the FIR and the complaint to Revenue Divisional Officer for enquiry. Further, after taking the photographs of the dead body of the deceased in the scene of occurrence, he made arrangements for handing over the dead body for post mortem. Further, he handed over the copy of the case records to Deputy Superintendent of Police, Erode Town Division [PW11], for investigation.

(v) PW11-Mr.Karunakaran, the then Deputy Superintendent of Police, Erode Town Division, on receipt of the case records from PW9, took up the same for investigation on 19.10.2018, he visited the scene of occurrence and at about 6.00PM, in the presence of PW5-Mr.Saravanan, he prepared an observation mahazar and seized a yellow colour nylon rope, in two pieces. The observation mahazar and the seizure mahazar, are marked as Ex.P2 and Ex.P3, respectively. Further, he had drawn the rough sketch under Ex.P8. The two pieces of nylon rope is marked as M.O.1 series through PW1.

(vi) In continuation of investigation, PW11 also accommodated the Revenue Divisional Officer, during inquest. He has examined the witnesses and recorded their statements. On 20.10.2008, he also examined the witness, Raghunathan and on 21.10.2018, he examined the witness, Nagarajan and recorded their statements.

(vii) In the meanwhile, on receipt of the copy of the FIR, PW10-Mr.Kumaravel Pandian, the then Revenue Divisional Officer, Erode, on 19.10.2008 at about 7.00am in Government Hospital, Erode, examined the witnesses and Panchayatars. He prepared the inquest report under Ex.P7. According to him, the deceased committed suicide, due to the demand of dowry made by the accused. Thereafter, immediately after preparation of the inquest, he sent a requisition to the RMO, Government Hospital, Erode, for conducting postmortem over the dead body of deceased Sangeetha.

(viii) Upon receipt of the requisition given by the Revenue Divisional Officer, PW8-Dr.T.R.Ravindran, attached with Government Hospital, Erode on 19.10.2018, at about 1.10pm, conducted the postmortem over the dead body of the deceased Sangeetha and found the following injuries

External Injuries: Black discolouration at width 2cm seen present all around neck, except 5 cms in midline of the back of neck, near occipital hair line. Lower margin of the same, is irregular in front of neck.

Internal Examination: Head: Skull-intact, Brain-1300gm, congested Spinal Cord-Intact, Thorax:Hyoid-preserved, Ribs-Normal, Heart-300gms, Lungs: Rt. Side-350gms, Lt. Side-300gms, congested, Abdomen: Stomach-Empty, Liver:1000gms, congested, Spleen-100gm, congested, Each kidney-120gms, congested, Bladder-Empty, Uterus: Normal size, cut section - empty."

(ix) Further, PW8, collected the viscera and sent it for chemical examination. The chemical examiner under due examination sent a report that there was no poisonous substance found in the viscera. Further, there was an opinion received from the experts as hyoid bone was intact. After receiving the same, PW8 gave an opinion as the deceased would appeared to have died due to asphyxia. The postmortem report and the opinion given by PW8 were marked as Exs.P4 & P5, respectively.

(x) In continuation of the investigation, PW12-Mr.Dhanapal, the then Deputy Superintendent of Police, Erode North Division, has taken up the case for further investigation. On 24.11.2018, he examined the witnesses, who were already examined by the then Deputy Superintendent of Police, holding the charge. Since the witnesses have stated that their statements have already been recorded by the then Deputy Superintendent of Police, their statements were not recorded by PW12. Finally, after concluding the investigation, he came to the positive conclusion that the accused/1st respondent herein committed the offence under Section 498-A and 304-B IPC and he then filed the final report, accordingly.

5. Based on the above materials, the trial Court framed the charges under Sections 498-A and 304-B of IPC. The accused denied the same and opted for trial. In order to prove their case, on the side of the prosecution, 12 witnesses have been examined as PW1 to PW12 and nine documents were marked as Ex.P1 to Ex.P9, besides two Material Objects viz., M.O.1 and M.O.2.

(i) Out of the said witnesses, PW1-Mrs.Dhanalakshmi,, who is the mother of the deceased, has spoken about the details in respect to the solemnizing of the marriage, demand of dowry made by the accused and paying of Rs.1 Lakh to the deceased as a dowry. According to her, she was informed the occurrence by her elder son-in-law and thereafter, she rushed to Erode and after seeing the dead body of her daughter, she lodged a complaint before the police.

(ii) PW2-Mrs.Hemalatha and PW3-Mrs.Savithri are the sisters of the deceased. Both of them have deposed, as deposed by PW1. PW2 further added that the accused had not provided food to the deceased. PW3, in her evidence added another instance that on one occasion the accused brought the deceased in a vehicle and pushed her down and thereby the deceased came to PW1's house with full of mud.

(iii) PW4-Mr.Nagarajan, cousin brother of the deceased has also deposed, as deposed by PW1. PW6-Mr.Ramachandran, a resident of Kumalan Kuttai has deposed that he heard the incident that the accused's wife had committed suicide by hanging.

(iv) PW5-Mr.Saravanan, is the resident of Thirupur. He has spoken about the preparation of observation mahazar and rough sketch and also about the seizure of M.O.No.1, by the investigation officer.

(v) PW7-Mr.Alagu, is the photographer. He has deposed that on the request made by one Advocate Mr.Selvam, he visited the scene of Occurrence and took eight photographs, which have been marked as M.O.1 series. However, he was treated as the hostile witness in the trial Court.

(vi) PW8-Dr.T.R.Ravindran, attached with Government Hospital, Erode, has stated about the receipt of requisition given by the Revenue Divisional Officer, for conducting autopsy over the dead body of the deceased. He has further stated about the injuries sustained by the deceased and also about the cause of death.

(vii) PW9-Mr.Rajendran, the then Sub Inspector of Police, Erode North Police Station, had spoken about the lodging of complaint by the PW1 and about the registration of the case. PW10, the then Revenue Divisional Officer, Erode speaks about the examination of Panchayatars and witnesses and also about the preparation of inquest report. According to him, the suicide committed by the deceased is due to harassment of dowry made by the accused.

(viii) PW11 and 12 are the then Deputy Superintendents of Police, Erode. They have stated in their evidence in respect to the examination of witnesses, the details of investigation and about the filing of final report.

6. When the above incriminating materials were put to the accused, under Section 313 Cr.P.C., he denied the same as false. However, in order to prove his case, he examined one Mr.Subramani, who was working as Additional Manager, State Bank of India, Thirupur, as DW1. He has stated in his evidence, as prior to the occurrence in his bank, the deceased Sangeetha and the defacto complainant/appellant Dhanalakshmi are having joint account with Sl.No.10840882059. He has produced the application in respect to opening of the said account as Ex.D2. According to him, the deceased had opened a Recurring Deposit in Sl.No.30273848354 and in the said account, on 10.11.2007, she has deposited Rs.91,365/-. Further, he added that the said deposit would mature on 13.05.2009, but, before attain the maturity, the same was pre-closed on 09.08.2008, by the deceased. In this regard, the receipts issued by DW1 were marked as Ex.D3 and Ex.D4. Further, the matured amount of Rs.96,000/- was received by the deceased on the same day vide receipt Ex.D5 and the account statement in respect to the account standing in the name of the deceased was Ex.D6.

7. The learned Sessions Judge, Magalir Neethimandram, (Mahila Court), Coimbatore, after perusing all the above materials and on considering the arguments advanced by either side acquitted the accused as stated supra. Aggrieved over the order of acquittal, the defacto complainant is before this Court, with the present criminal appeal.

8. The learned counsel appearing for the appellant would contend that the testimonies of PW1 to PW3 has clearly narrated the occurrence without any contradictions. Further the opinion given by the Revenue Divisional Officer [PW10] corroborates the evidence of PW1 to PW3, thereby, the prosecution proved the fact that soon before the death, the accused made harassment to the deceased for bringing more dowry. But the learned Sessions Judge, without considering the same perspectively, came to the conclusion that prosecution has not proved the case, which is against the principles of law already settled by various precedence.

9. The learned Additional Public Prosecutor appearing for the 2nd respondent Police, reiterated the submission made by the counsel appearing for the appellant.

10. On the other hand, the learned counsel appearing for the 1st respondent/accused would rely on the judgment of our Hon'ble Apex Court, in Bannareddy and Others Vs. State of Karnataka and Others, reported in 2018 (5) SCC 790 and made a submission that the reasoning given by the trial Court in this case is well within the law formulated in the above referred judgment. He would further contend that the main ingredients which are necessary for the offence under Sections 304-B and

498-A of IPC, are not available in the evidences given by the prosecution witnesses and therefore, the findings arrived at by the trial Court is not having any infirmity. Ultimately, he prayed to dismiss this Criminal Appeal.

11. I have heard the learned counsel appearing for the appellant/defacto complainant, the learned Additional Public Prosecutor appearing for the 2nd respondent police and the learned counsel appearing for the 1st respondent/accused. I have also perused the records carefully.

12. First of all, to prove the offence under Section 304-B, the prosecution is to prove the following ingredients.

- (a) there was an unnatural death of a woman;
- (b) that woman had been married within seven years preceding her aforesaid unnatural death;
- (c) Soon before her death she was subjected to cruelty or harassment---

(i) such cruelty or harassment has been caused to her by her husband or husband's other relative;

(ii) that such harassment was for or in connection with any demand for dowry.

13. From the above ingredients, in the case in our hand, except the alleged cruelty or harassment caused to the deceased in connection with demand of dowry, the remaining two ingredients are admitted on the side of the accused. Before the trial Court, the case of the defence is that there was no harassment from the accused in connection with demand of dowry. Further the specific defence is that since the attempts made by the deceased in getting employment was failed, the deceased got frustrated and thereby she committed suicide.

14. Per contra, PW10, the Revenue Divisional Officer, who conducted inquest, gave opinion that the statement given by the witnesses created a prima facie case for the demand of dowry, by the accused. Though the opinion given by the PW10 is in support of prosecution, in this regard, the trial Court held that before Revenue Divisional officer, PW1, who is the crucial witness in this case has not taken a stand that there was no demand, either before the marriage or on the date of marriage or subsequent to the date of marriage, as dowry. Further giving Rs.1,00,000/- to the deceased after marriage that too from the Deposit Account which stands in the name of the deceased, does not comes under the purview of Section 4 of Dowry Prohibition Act and accordingly, there is no prima facie case, for the offence under Section 304-B of IPC.

15. In this regard, the learned counsel appearing for the appellant/defacto complainant/PW1 would contend that the above observation held by the trial Court is against the evidence given by the PW1.

16. Now, on considering the said submission with the relevant records, before the trial Court, the complaint given by the PW1, before the police, which is the earliest document for this case, has been marked as Ex.P1. In the said complaint, nothing was averred against the accused in respect to the demand of dowry. Though, it was stated that before two months from the date of occurrence, Rs.1,00,000/- was given to the deceased, as requested by the accused, the evidence given by PW1, proves the fact that the said amount is nothing but the matured amount of a deposit, which stands in the name of the deceased. Therefore, it cannot be said that only due to the demand made by the accused, the said amount was given to the deceased. In otherwise, in the complaint in respect to the harassment made by the accused, nothing was averred.

17. On the other hand, only during the time of giving evidence as PW1, she improved her version and gave an evidence in accordance with case of prosecution. Therefore, the testimony of PW1, is not at all having any trustworthy for accepting the case of the prosecution in entirety. Secondly, PW2 and PW3 are cited as an occurrence witnesses in this case. They gave evidence before the trial Court in support of the version stated by PW1. Though they have supported the evidence of PW1, their evidence is also not in a way that soon before the occurrence the accused made harassment or cruelty to the deceased for the purpose of bringing more dowry.

18. In the said circumstances though the opinion given by the Revenue Divisional Officer is in support of the prosecution, in this regard the trial Court has held that the signature found in the inquest report prepared by the Revenue Divisional Officer would create a doubt whether the said report has been prepared by PW10 on the particular date, as stated by the PW10.

19. Now on verifying the said finding, before the trial Court, the inquest report prepared by PW10 was marked as Ex.P7 and it appears that the said statement has been prepared by the Revenue Divisional Officer only on 21.10.2008. On the other hand as per his evidence, the inquest was conducted on 19.10.2008 at about 7.00pm. So it is an obligation on the part of the Revenue Divisional Officer that the said report ought to have been signed by the Revenue Divisional Officer only on 19.10.2008. But here it is a case, the said report is not in accordance with the evidence given by the Revenue Divisional Officer. PW10 has stated before the trial Court that after taking the notes in the Government Hospital, the said report has

been prepared in his office. But at the same time, in order to confirm the said evidence he has not enclosed the notes taken by him in the Government Hospital. Therefore, the finding arrived at by the trial Court in respect to the validity of the inquest report appears to be correct.

20. Another one important aspect in this case which has to be necessarily decided is that, during the time of trial, on the side of the defence they attempted to mark the death note which has been found in the house of the accused. In the said note, it was mentioned as follows:

“இது காறும் என்னை சகித்துக் கொண்டு வாழ்ந்ததற்கு நன்றி இப்படிக்கு (P.Sangeetha signed in English)”

21. In respect to the above said death note, the accused attempted to compare the said signature with the admitted signature of the deceased Sangeetha. In this regard, the appellant gave evidence as PW1 that she is ready to produce the handwriting which have been written by the deceased Sangeetha. Subsequent to that during the time of further cross examination, she has stated that the signature and the handwriting of the deceased were not available in her house. The said circumstances will prove that PW1, has refused to produce signatures of the deceased. She has specifically stated that those records have been subsequently destroyed. In this regard, the accused has been deprived from sending the death note for comparison through handwriting expert. In all instance, the deceased being a Post Graduate, definitely, there would be a possibility in holding the records, which would have been written by the deceased. In the said circumstances, refusing to produce the same, also creates a doubt over the case of the prosecution.

22. In the given circumstances, particularly when there was no demand of dowry prior to marriage, on the date of marriage and subsequent to the date of marriage and as we have no direct evidence regarding the cruelty said to have been committed by the accused to the deceased, we cannot take the presumption under Section 113 (b) of the Indian Evidence Act. The trial Court has also come to the same conclusion that herein it is a case that the accused herein was denied the opportunity to prove his case and held that the prosecution has not proved its case beyond reasonable doubt.

23. In the said circumstances, since the appeal is filed against the order of acquittal, it is necessary to see the judgment of our Hon'ble Apex Court in Bannareddy and Others Vs. State of Karnataka and Others, reported in 2018 (5) SCC 790, wherein our Hon'ble Apex Court has held as follows:

"10. Before we proceed further to peruse the finding of the High Court, it is relevant to discuss the power and jurisdiction of the High Court while interfering in an appeal against acquittal. It is well settled principle of law that the High Court should not interfere in the well reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself. This principle has further been elucidated in the case of Sambhaji Hindurao Deshmukh v. State of Maharashtra, (2008) 11 SCC 186, wherein this Court observed that:

"13...The High Court will interfere in appeals against acquittals, only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt."

24. Further, in Union of India and others Vs. Sepoy Pravat Kumar Behuria, reported in (2019) 10 SCC 220, our Hon'ble Apex Court has held as follows:

"17. It is trite law that judgments of acquittal should not be disturbed unless there are substantial or compelling reasons. The substantial or compelling reasons to discard a judgment of acquittal were examined by this Court in Ghurey Lal v. State of Uttar Pradesh [(2008)10 SCC (Cri) 450] which are as follows:

"70....1

- i) The trial Court's conclusion with regard to the facts is palpably wrong;
- ii) The trial Court's decision was based on an erroneous view of law;
- iii) The trial Court's judgment is likely to result in "grave miscarriage of justice";
- iv) The entire approach of the trial Court in dealing with the evidence was patently illegal;

v) The trial Court's judgment was manifestly unjust and unreasonable;

vi) The trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial Court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate Courts must rule in favour of the accused."

25. Applying the ratio laid down in the above reported judgment, herein also the trial Court has rightly pointed out the omissions, improvements, found in the evidence given by PW1 to PW3 and also after weighing the validity of opinion given by the Revenue Divisional Officer, came to the correct conclusion that the prosecution has failed in the attempt to prove its case. This Court is also of the firm opinion that the prosecution has failed to establish the involvement of the accused, in respect to the demand of dowry and harassment made towards the deceased.

26. Another one aspect which is necessary to decide this appeal is while at the time of cross examining the PW1 on the side of the accused, it was suggested that due to the attempt made by the deceased in writing the exams for getting employment in Banks and in Government as Village Administrative Officer, ended in failure, she got frustrated and committed suicide. Though, the said suggestion was denied on the side of the PW1, the investigation officer [PW11] has stated that the investigation reveals that within one year from the date of marriage, the deceased has appeared for several examinations for getting jobs. Therefore, if the evidence given by the investigation officer is true one, that may be the reason for the deceased, for getting frustration and thereby committing suicide. In the said circumstances, it cannot be said that due to the harassment committed by the accused, in respect to the demand of dowry, the deceased committed suicide.

27. Therefore, keeping in view the facts and circumstances of the case, this Court holds that the prosecution was not able to establish the guilt of the accused person beyond reasonable doubt and therefore, this Court reaffirm the order of acquittal passed by the learned Sessions Judge, Magalir Neethimandram, (Mahila Court), Coimbatore, in S.C.No.69 of 2011 dated 12.03.2014. The Criminal Appeal is dismissed, accordingly.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To

1. The Sessions Judge,
(Magalir Neethimandram), Mahila Court,
Coimbatore
2. The Deputy Superintendent of Police,
Erode City Sub Division,
Erode, Erode District.
3. The Public Prosecutor,
High Court, Madras.

+1 CC to MR.Mr.N.Manokaran Advocate SR NO.39123

SR NO.[CO]
MK:19/12/2020

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