

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2020

PRONOUNCED ON : 09.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.375 of 2014

K.Ramachandran

...
Vs.

Appellant/A1

State rep.by:
Inspector of Police
Guduvancherry Police Station,
Kancheepuram District.
Crime No.589 of 2008

Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code against the judgment dated 30.06.2014 passed in S.C.No.176 of 2009 on the file of the Mahalir Neethi Mandram, Chengelpet, Kancheepuram District.

For Appellant

: Mr.V.Gopinath
Senior Counsel
for M/s.L.Mahendran

For Respondent

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

JUDGMENT

The Sessions Judge, Mahila Court, Chengalpet at Kancheepuram District, convicted the appellant/A1 under Section 498(A) IPC and sentenced him to undergo rigorous imprisonment for one year and under Section 304(B) IPC and sentenced him to undergo rigorous imprisonment for seven years and directed that the sentences imposed on him shall run concurrently and acquitted A2 and A3 of the offences put forth against them under Sections 498(A) and 304(B) and impugning the conviction and sentence imposed on him, the appellant/A1 has preferred the present criminal appeal.

2. Briefly stated, according to the prosecution case, the accused A1 to A3, on 14.12.2008 and prior to the same, had been demanding and harassing the deceased Sasikala to bring Rs.50,000/- for purchasing motor cycle and consequently, Sasikala had committed suicide on 14.12.2008 by pouring kerosene on her body and setting herself ablaze and on account of the dowry harassment caused by the accused A1 to A3 as aforesaid Sasikala died by committing suicide within seven years of her marriage and the first accused also had compelled/forced the deceased Sasikala to have sexual intercourse with him and accordingly also had committed rape on her when she was alone

in the house and thus, A1 to A3 had been charged under Sections 498(A) IPC & 304(B) IPC and A1 had been also charged under Section 376 IPC.

3. To sustain the prosecution charges, PWs 1 to 14 were examined, Exs.A1 to A15 were marked. Material Objects 1 and 2 were marked. 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 committed the offences put forth against them and further, it is stated that the deceased Sasikala was mentally affected and she had herself committed suicide on account of her mental illness and there has been no illtreatment and harassment of the deceased on the part of the accused by demanding dowry.

4. On the side of the accused no oral and documentary evidence has been adduced and no material object has been marked.

5. The trial Court, on an appreciation of all the materials placed on record, has finally concluded that the prosecution has miserably failed to establish that A1 has committed the offence of rape under section 376 IPC levied against him. Furthermore, also concluded that the prosecution has

miserably failed to establish that the accused A2 and A3 had committed cruelty and ill treatment to the deceased Sasikala by demanding dowry and Sasikala had not committed suicide due to dowry harassment on the part of A2 and A3 and accordingly, the trial Court had acquitted them of the offences levelled against them. However, proceeded to convict and sentence the appellant/A1 for the offences under sections 498(A) and 304(B) as aforestated.

6. The first accused is the Father in law of the deceased Sasikala. For sustaining the conviction and sentence imposed on the first accused, the trial Court seems to have placed reliance upon the evidence of PWs 1 to 3 who are the parents and brother of the deceased Sasikala. However, as contended by the accused counsel, in the complaint Ex.P1 lodged by PW1, the deceased's father, though has imputed A1 as dowry harassment, however, PW1 himself during the course of examination has admitted that he had not disclosed in Ex.P1 about A1's harassment to his daughter. On a reading of Ex.P1 complaint, as rightly contended by the accused counsel, nothing has been whispered in the same as to on what date A1 had demanded dowry at the first instance and also on what date he had demanded dowry at the second instance and on the other hand, the complaint reads very vaguely as if approximately one year prior to the death of the deceased, the first accused had ill-treated the

deceased by demanding dowry and threw her articles outside. That apart, no allegation of dowry demand and harassment has been mentioned in Ex.P1 complaint.

7. The RDO who had conducted the inquest in the matter has filed the report marked as Ex.P8 and in his report Ex.P8, he has held that there is no dowry harassment and only there is suspicion with the deceased's father in law, namely, A1. Therefore, the RDO who had conducted the inquest has come to the conclusion that there is no dowry demand on the part of the accused A1 to A3.

8. The deceased's father PW1 has not supported the prosecution case wholly during the course of chief examination and a perusal of his evidence as adduced by him during the course of chief examination would only go to show that he would only state that the first accused used to solicit the deceased consent for having sexual intercourse and when the same is refused, he used to cause harassment to her by demanding amount. Further, he would also go to state that the deceased had complained to him about the first accused demanding a sum of Rs.50,000/- and abused her with reference to the same.

However, as above pointed out, nothing has been mentioned about any such

incident in Ex.P1 complaint.

9. Be that as it may, the main grievance of PW1 seems to be that the first accused in the guise of having sexual intercourse with the deceased had been causing harassment to the deceased by demanding dowry. However, the alleged sexual harassment caused by the first accused has not been established by the prosecution in any manner. Therefore, the case projected by the prosecution that on that score, the first accused had been causing ill treatment and torture to the deceased, as such, cannot be readily accepted. Furthermore, PW1 during the course of cross examination has admitted that he has not disclosed anything in the complaint that the accused had demanded Rs.50,000/- for purchasing two wheeler and also not informed the same to the police. Infact, it is seen that PW1 has been treated as hostile by the prosecution. Similarly PW2, the mother of the deceased has also not disclosed in the chief examination that the first accused had demanded a sum of Rs.50,000/- as dowry from the deceased and on that score causing ill treatment and harassment to the deceased. Furthermore, during the course of cross examination, she has clearly adduced that they had not disclosed in the complaint that the first accused had demanded Rs.50,000/- for purchase of the

vehicle and on that score caused ill treatment and cruelty to their daughter. Therefore, when there is no clear cut evidence adduced on the part of PWs.1 and 2 with reference to the alleged ill treatment and cruelty said to have been caused by the first accused by demanding a sum of Rs.50,000/- towards the purchase of the two wheeler from the deceased and on the other hand, they would only endeavour to assert that the first accused had been forcing to have sexual intercourse with the deceased one way or the other, however, the abovesaid allegations projected by the prosecution not having been established in any manner, therefore, as rightly contended by the accused counsel, merely on the strength of the evidence adduced by PWs 1 and 2 as above discussed, it would not be safe to hold that the first accused had caused ill treatment and torture to the deceased and been responsible for her death. PW3 Sankar, the brother of the deceased would state that the deceased used to complain to her mother about the harassment caused to her by the first accused by demanding a sum of Rs.50,000/-. He has also admitted during the course of cross examination that nothing has been whispered in the complaint Ex.P1 regarding the demand of Rs.50,000/- and the torture committed by the first accused to the deceased. Therefore, when the demand of Rs.50,000/- on the part of the first accused and the consequent torture meted out by him to the deceased has

not been spoken to in the complaint as such, the evidence of PW3 as above pointed out would not be sufficient to buttress the prosecution case.

10. PW4 Bagthavatchalam, father in law of PW1, i.e., the grand father of the deceased has not stated anything about the dowry demand made by the first accused and the ill treatment said to have been caused to the deceased by him. He has also admitted that nothing has been whispered in the complaint Ex.P1 as regards the demand of dowry and ill treatment caused by the accused to the deceased. It is found that it is only PW4 who had arranged the marriage of the deceased. Therefore, the evidence of PW4 would also not advance the case of the prosecution. PW5 Adikesavan has turned hostile and despite cross examination nothing has been culled out from him in support of the prosecution case. Similarly, PWs 6 to 9 had turned hostile and despite cross examination nothing has been elicited from them to buttress the prosecution case.

11. As above pointed out, the RDO has concluded the enquiry by holding that there is no dowry harassment and his report has been marked as Ex.P8.

12. The accused counsel contended that there is absolutely no material to establish that soon before the death, the deceased was subjected to cruelty in connection with the demand of dowry. Even as per the prosecution case, the deceased was put to dowry harassment on 14.12.2008 and prior to the same. However, as per the version of PW1, the deceased is said to have been complaining to him about the torture said to have been caused by A1 on 06.12.2008. However, there is no reliable and acceptable material to hold that soon before her death, the deceased was really subjected to cruelty in connection with the demand of dowry. In the decision reported in **2017 CRI. L.J 179 (Bajinath and others Vs. State of Madhya Pradesh)**, the Apex Court has held that the presumption as to dowry available under section 113B of the Indian Evidence Act would get activated only upon the proof of the fact that the deceased has been subjected to cruelty or harassment in connection with the demand for dowry by the accused and that too in the reasonable contiguity of death and further held that when the prosecution has failed to establish the precise case of the death of the deceased, the ingredients of cruelty and harassment cannot be held to have been proved and therefore, the benefit of presumption is not available. The principles of law with reference to the same outlined by the Apex Court in the abovesaid decision has been

extracted below.

“(A).Penal Code (45 of 1860), Ss. 304B, 498A – Dowry death and cruelty – Presumption as to – Proof of cruelty or harassment by husband or any relative of his in connection with demand of dowry and that too in reasonable contiguity of death – Is sine qua non to inspirit statutory presumption under S.113B of Evidence Act.

Evidence Act (1 of 1872), S.113B.

Presumption as to dowry death under S 113B of Evidence Act is grounded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith. A conjoint reading of provisions of Ss.498A, 304B of Penal Code and S.113B of Evidence Act thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two

offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

(B).Penal Code (45 of 1860), Ss.304B, 498A – Dowry death and cruelty – Proof – Allegations of cruelty and harassment to deceased and demand of motorcycle as dowry in marriage not supported by evidence of witnesses -On contrary their evidence fully consolidate defence version to effect that no such demand was made – Prosecution failed to prove precise cause of death of deceased as to whether it was suicidal or homicidal – Ingredients of cruelty and harassment not proved by direct and cogent evidence – Benefit of presumption under S.113B of Evidence Act, not availbale – Factum of unnatural death in matrimonial home within 7 years of marriage – Not by itself

sufficient to hold accused persons guilty of offence under Ss.304B and 498A – Conviction of accused persons, set aside.

13. Applying the abovesaid principles of law enunciated by the Apex Court to the case at hand, when as above discussed, the prosecution has miserably failed to establish that the first accused had caused dowry harassment to the deceased soon before her death and with reference to the same, nothing has been disclosed in the complaint and when the evidence of the prosecution witnesses is not clear on that aspect and the RDO's enquiry discloses that there is no dowry harassment, even the relatives of the deceased are not clear as to when the first accused had caused the dowry harassment and accordingly, they having not tendered clear evidence and being treated as hostile witnesses and when they have clearly admitted that they have not disclosed about any dowry harassment against the first accused in the complaint, all put together, it is seen that the deceased cannot be held to have died due to dowry harassment, particularly, on the part of the first accused and therefore, the conviction and sentence of the first accused by the trial Court under Sections 498(A) and 304(B) cannot be sustained in any manner.

14. In this case, the accused during the course of section 313 questioning has projected that the deceased was suffering from serious mental stress and she had been provided treatment with reference to the same and also furnished documents pointing to the same. In this connection, the deceased's father, PW1, during the course of cross examination, has admitted clearly that the deceased was sent to his house after the birth of the second child stating that she was mentally affected and he had provided treatment to the deceased at Chettinad hospital and they had taken the deceased to the hospital as she was mentally affected after the birth of the second child and they had also taken the deceased to the Doctor at Tambaram and the Doctor had prescribed medicines to the deceased and he had not disclosed about the mental illness of his daughter to the RDO and the police. Similarly, PW2, the mother of the deceased has also admitted that the deceased was provided treatment on account of her mental illness and they had also accompanied the deceased with reference to the same and she would go one step ahead that the deceased had been mentally affected on account of the torture given by the first accused. However, when that is not the case of the prosecution as such and on the other hand, when the materials placed on record go to disclose that the deceased has been suffering from mental illness one way or the other and been provided

with treatment with reference to the same, therefore, when there is a possibility of the deceased committing suicide due to the mental depression and when the IO examined as Ex.PW14 has also been apprised that the deceased had been having mental distress, however, the IO would claim that no document had been given to him pointing to the same, however, when the abovesaid fact has been admitted by the deceased parents themselves, a strong suspicion arises whether the deceased would have committed suicide on the alleged cruelty caused by the first accused. As above discussed, when the prosecution has not placed any material worth acceptance that the deceased was subjected to dowry harassment soon before her death as contemplated under law and when the evidence adduced by the prosecution regarding the death of the deceased due to the dowry harassment being very slender, unreliable, unacceptable and not appealing, in all, as rightly contended by the accused counsel, the first accused cannot be held to have committed ill treatment and harassment to the deceased and thereby the deceased would have ended her life.

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15. In the light of the abovesaid discussions, the prosecution case being surrounded with serious doubts, suspicions, lacunae, defects and surmises and when with reference to the same, no plausible explanation is forthcoming on the part of the prosecution to dispel the abovesaid factors, the benefit of doubt

flowing from the same should be extended in favour of the first accused and resultantly, I hold that the prosecution has failed to establish the charges levelled against the first accused under Sections 498(A) and 304(B) beyond reasonable doubt and acquit him thereof.

16. In conclusion, the conviction and sentence imposed on the accused/A1 by judgment dated 30.06.2014, passed in S.C.No.176 of 2009, by the Sessions Judge, Mahila Court, Chengalpet at Kancheepuram District are set aside and the first accused is acquitted of the offences under Sections 498(A) and 304(B) IPC. Accordingly, the criminal appeal is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Index : Yes / No

Internet : Yes / No

सत्यमेव जयते

09.07.2020

To

1.State rep.by:

Inspector of Police

Guduvancherry Police Station,

Kancheepuram District.

Crime No.589 of 2008

2.The Mahalir Neethi Mandram,

Chengalpet, Kancheepuram District.

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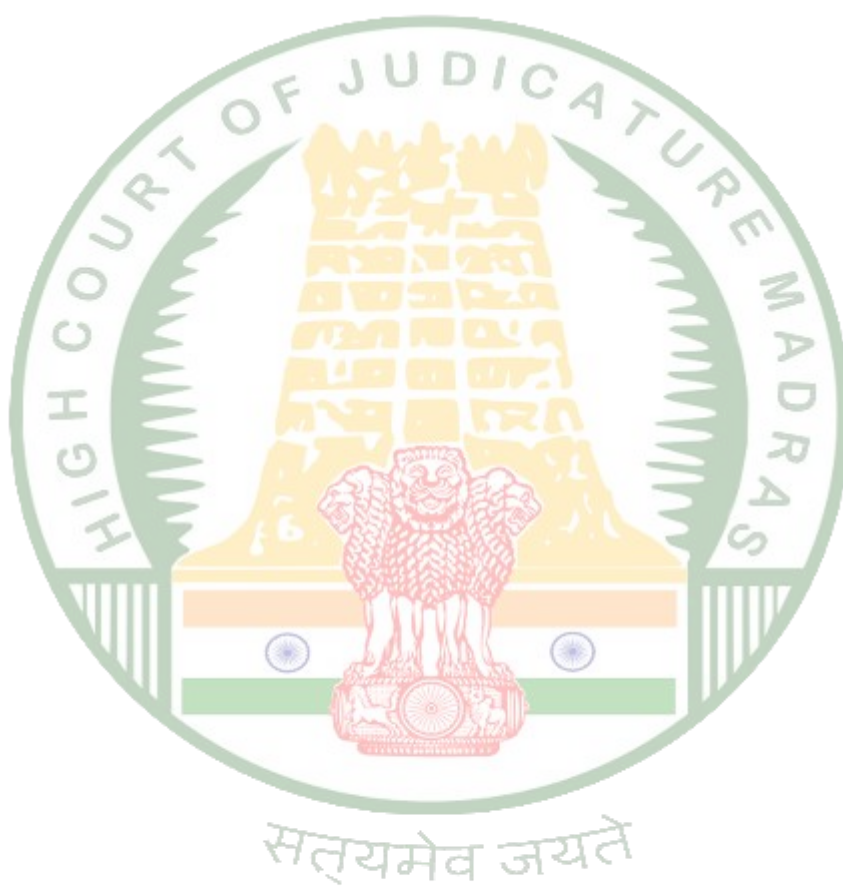
T.RAVINDRAN, J.
sli



Pre-delivery Judgment made
in Crl.A.No.375 of 2014

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09.07.2020



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