



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2020

PRONOUNCED ON : 06.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.85 of 2013

S.Varadharajan ... Appellant / Defacto Complainant
Vs.

1.State represented by
The Inspector of Police,
Thanjavur West Police Station,
Thanjavur.
[Crime No.319 of 2004] ... Respondent / Complainant

2.D.Karthikeyan

3.M.Duraiaraj

4.D.Vijayalakshmi

5.D.Devi ... Respondents / Accused 1,2,3 and 6

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the judgment dated 21.12.2012 made in S.C.No.113 of 2005 on the file of the II Additional District and Sessions Judge, Fast Track Court No.1, Thanjavur and set aside the same and convict the respondents 2 to 5 for the offence under Section 498 A and 304(b) IPC.

For Appellant : Mr.T.Antony Arul Raj

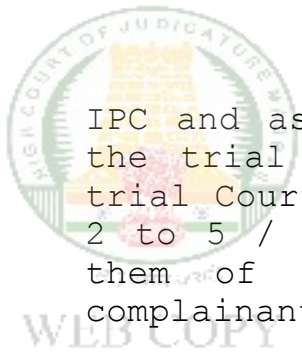
For Respondent : Mr.A.Robinson,
No.1 Government Advocate (Crl side)

For Respondent : Mr.R.Sundar
Nos.2 to 5

JUDGMENT

This Criminal Appeal has been filed by the defacto complainant [PW1] as against the judgment of the learned II Additional District Sessions Judge, Thanjavur passed in S.C.No.113 of 2005, dated 21.12.2012.

2.Respondent Nos. 2 to 5 are accused Nos.1,2,3 and 6 before the trial Court and the charges have been framed as against the second respondent for the offence under Sections 498-A and 304-B



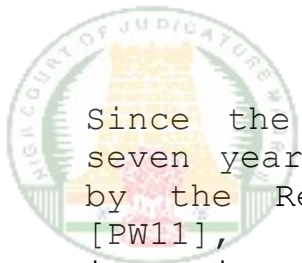
IPC and as against the respondents 3, 4, 5 / accused 2,3 and 6, the trial Court framed charges under Section 498-A IPC and the trial Court by its judgment dated 21.12.2012 found the respondents 2 to 5 / accused not guilty for the charges levelled, acquitted them of the charges. Aggrieved over the same, the defacto complainant [PW1] preferred this criminal appeal.

3.This is second round of litigation as against the order of acquittal and in this case, initially, the trial Court by its judgment dated 28.11.2007 has already acquitted respondents 2 to 5 and as against the order of acquittal the appellant/defacto complainant preferred a revision case before this Court in Crl.R.C (MD)No.49 of 2008 and the same was allowed by this Court on 18.10.2012, directing the trial Court to consider the evidence afresh and to take a decision. Pursuant to the orders of this Court in Crl.R.C(MD)No.49 of 2008 dated 18.10.2012, the trial Court once again re-appreciated the evidence and by its judgment dated 21.12.2012 passed the said order of acquittal.

4.The brief facts of the case are as follows:

(i)One Nirmala, deceased in this case is the daughter of the appellant and PW2. Nirmala was married to the first accused in the year 2002 and they were having two children, out of the wedlock. The appellant/ father of the deceased Nirmala gave 65 Sovereigns of jewels and Rs.75,000/- cash as dowry during the marriage. The deceased Nirmala was harassed by the private respondents in the Matrimonial house and even 15 days prior to the date of occurrence the deceased informed her parents PW1 and PW2 that the respondents/accused were demanding 5 sovereigns of jewels, each from her brother at the time of tonsuring and ear piercing function proposed to be conducted for her children. The accused has also demanded 4 sovereigns of necklace and some amount as deposit in the name of their children, apart from a motorcycle for the first accused. On this demand, the first accused is said to have beaten the deceased in the matrimonial home few days prior to the occurrence and on 22.06.2004, the deceased called her brother Ramu [PW3] that she was beaten and tortured by the accused and requested him to take her to his house. PW3 in turn informed this to his parents PW1 and PW2 and on the same day they received another call from neighbour of deceased Nirmala that Nirmala is in a serious condition. PW1 and PW2 rushed to the house of the accused and found their daughter Nirmala committed suicide by hanging.

(ii) PW1 lodged a complaint [ExP1] on the same day at about 10.00pm and the same was received by Sachithanandham [PW9], Head Constable attached to the respondent Police and he registered the complaint in Crime No.319 of 2004 [ExP8] under Section 174 CrPC.



Since the deceased died under suspicious circumstances, within seven years from the date of marriage, the inquest was conducted by the Revenue Divisional Officer, Thanjavur [PW10]. Tmt.Uma [PW11], Deputy Superintendent of Police conducted the investigation, examined witnesses, subjected the dead body for postmortem, examined the Doctor and filed the final report as against the respondents for the offence under Sections 498 A and 304 B IPC.

(iii) The case was taken on file in PRC No.1 of 2015 by the learned Judicial Magistrate No.1, Thanjavur, who committed the same to the Court of Sessions and the trial was conducted by the learned II Additional District and Sessions Court, Thanjavur in S.C.No.113 of 2005.

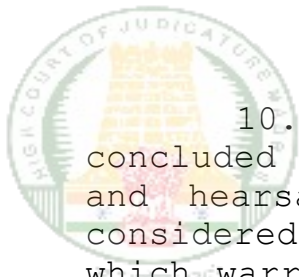
5.During the trial on the side of the prosecution 11 witnesses were examined, 14 exhibits were marked besides a material object saree of the deceased.

6.In conclusion of the trial, the trial Court by its judgment dated 28.11.2007 found the accused not guilty, acquitted them of the charges. Aggrieved over the same, the appellant filed the criminal revision case before Court in Crl.R.C.(MD)No.49 of 2008 and this Court, by order dated 18.10.2012 directed the trial Court to re-appreciate the evidence adduced by the prosecution witnesses. Accordingly, the learned II Additional Sessions Judge, Thanjavur considered the evidence and by his judgment dated 21.12.2012 found the accused not guilty, acquitted them of the charges and as against the order, present appeal has been filed.

7.Heard Mr. Antony Arul Raj, learned Counsel for the appellant and Mr.R.Sundar, the learned Counsel for the respondent/accused and the learned Government for the first respondent State.

8.Mr.Antony Arul Raj, learned Counsel for the appellant submitted that the deceased was subjected to harassment and cruelty by the accused in the matrimonial home and soon before her death, she was subjected to harassment. Therefore the demand of jewels and cash for their children has been established through PW1 to PW4.

9.The learned Counsel further submitted that the deceased died in the matrimonial home, within two years from the date of her marriage and therefore, the presumption is made against the accused as per Section 113 of the Indian Evidence Act, for the offence under Section 304 B IPC, but the trial Court without considering the evidence in a proper manner, acquitted the accused of the charges.



10.He also submitted that the trial Court, which has concluded that the evidence of PW1 to PW4 are not direct evidence and hearsay evidence and therefore, their evidence cannot be considered and this reasoning of the trial Court is perverse, which warrants interference of this Court. The evidence of PW1 to PW4 established the harassment and cruelty made to the deceased by the respondents / accused in the matrimonial home and in the case of the matrimonial dispute, the available evidence will be from the relatives and therefore, the reasonings of the trial Court on this ground is not sustainable.

11.The learned Counsel further submitted that the occurrence had taken place in the house of the accused and as per Section 106 of the Indian Evidence Act, the person who is having the knowledge of the act, has to prove the particular fact, but there is no explanation from the accused as to how the deceased was driven to the extent of committing suicide, when she is having two children. He further submitted the trial Court without properly appreciating the evidence and without assigning any reason simply disbelieved the evidence of PW1 to PW4, despite this Court's direction in Crl.R.C(MD)No.49 of 2008 dated 18.10.2012.

12.Mr.R.Sundar, learned Counsel for respondent Nos.2 to 5 submitted that the marriage between the second respondent / husband and the deceased was solemnised on 11.09.2002, they lived happily together and they are having two children out of the wedlock. There is no reference about any demand of dowry in the complaint Exp1 as well as in the evidence of PW1 and PW2. PW1 and PW2 have admitted in their evidence that her daughter was living happily even 15 days prior to the occurrence. Since she has committed suicide within two years from the marriage, the inquest was conducted by the Revenue Divisional Officer [PW10] and the RDO [PW10] in his report Exp9 stated that there is no demand of dowry in this case.

13.The learned Counsel further submitted that PW1 and PW2 in their evidence admitted that they have brought up their daughter so comfortably, but the in-laws have insisted her to do domestic work and on account of that there was a quarrel among themselves. Even prior to the date of occurrence, both the deceased and the first accused attended a marriage of their relative and the same is also admitted by the prosecution witnesses. The deceased being a short tempered, who had taken a wrong decision on a petty issue in the matrimonial home. But PW1 the father of the deceased a retired Tahsildar lodged the complaint by exaggerating that there was a demand of dowry and consequent to that his daughter has committed suicide and therefore, he prayed for dismissal of this appeal.



14.This Court paid its anxious consideration to the rival submissions made on either side and also perused the available records.

15.Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V.Sejappa v. State [(2016) 12 SCC 150]**, wherein, the Hon'ble Supreme Court has followed its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

"23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

16.In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:



"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

17. There is no dispute that the marriage between the first accused and the deceased was solemnised on 11.09.2002 and out of the wedlock they are having two children [twins]. PW1 to PW3 have stated that at the time of marriage they gave 75 sovereigns of gold ornaments and Rs.75,000/- as cash. But they have not stated that it was on demand they gave it as dowry. It is the case of the prosecution that these jewels and money were given by PW1 and PW2 as Sridhana to their daughter [deceased].

18. The deceased had proposed to perform tonsuring and ear piercing function for their children and at the time the respondents/accused stated to have insisted for jewels and some deposit of money by PW1 in favour their grand children. This averment has not been stated by PW1 in his complaint ExP1. Similarly it was not informed by PW1 to PW4 during the inquest conducted by PW10. PW1 in his evidence has admitted that first accused scolded his wife, for having said so to her parents and



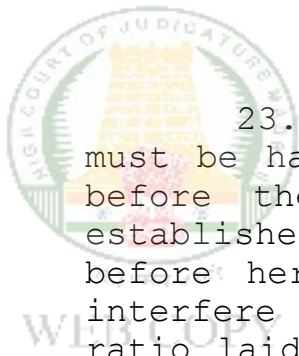
therefore, this demand for jewels and deposit of amount, soon before the death was not established by the prosecution.

19.Yet another demand is also projected by the prosecution that the accused demanded a motor cycle and this demand of motor cycle is also not mentioned in the complaint. In this case, PW1/father of the deceased is a retired Tahsildar and according to the prosecution witness there was some strained relationship 15 days before the occurrence and on the date of occurrence, the deceased is said to have called her brother [PW3] to take her to their house and on the information by PW3, PW1 from his office at Nagapattinam went to his house at Mayiladudurai taken his wife PW2 to the house of the accused at Tanjore at 7.30pm and thereafter he lodged the complaint before the respondent Police at 10.00pm.

20.According to the prosecution witness, the problem was in existence for nearly 15 days and even in the complaint the main averment with regard to the demand of jewels and motorcycle were not mentioned and if the deceased committed suicide on demand of dowri as projected by the prosecution, then the demand would have been mentioned in the complaint ExP1 itself. The RDO [PW10], who conducted the inquest has also stated that there is not demand of dowri.

21.As per the complaint ExP1, there was some domestic quarrel between the deceased and her mother -in-law, during the domestic work. PW1 has brought up his daughter deceased in a comfortable zone and the deceased was hesitating to do the domestic works in the matrimonial home and therefore, there was some dispute between the deceased and the accused one week prior to the occurrence. The first accused has also beaten his wife and when it was informed by the deceased to PW3 the brother of the deceased and son of PW1 and PW2, has advised not to interfere in matrimonial dispute of the deceased. On the date of occurrence, the deceased called her brother [PW3] and asked him to take her to their home. When PW1 has also called his daughter and verified, the deceased informed him that both her mother-in-law and her husband were scolding her. But they did not take any immediate steps to meet the deceased and the deceased has taken extreme step of committing suicide.

22.The evidence of PW1 and PW2 would disclose that the deceased was brought up in such a privileged background without allowing her to do any domestic work and when the mother-in-law insisted her to do the domestic work, she got upset and there is no sufficient evidence for any demand of dowri, soon before her death and therefore, the presumption under Section 113B of the Indian Evidence Act, is not attracted in this case.



23.To attract the offence under Section 304 B IPC, there must be harassment and cruelty, due to the demand of dowry, soon before the death and in this case, the prosecution has not established the demand of dowry, cruelty and harassment, soon before her death and therefore, this Court is not inclined to interfere with the orders of the trial Court. Considering the ratio laid down by the Hon'ble Apex Court, in deciding the appeal against acquittal and also considering the available evidence, this appeal is liable to be dismissed.

24.In the light of the above discussion,

- the appeal is dismissed and hence there is no reason to interfere with the judgment of the trial Court dated 21.12.2012 made in S.C.No.113 of 2005 on the file of the II Additional District and Sessions Judge, Thanjavur.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The II Additional District and
Sessions Judge, Thanjavur.

2.The Inspector of Police,
Thanjavur West Police Station, Thanjavur.

Copy to

1.The Record Keeper (2 copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

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

Crl.A(MD)No.85 of 2013

06.11.2020

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