



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A. (MD)No.338 of 2014

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1.Balasubramanian
2.Chinniah
3.Rani
4.Bharathi

... Appellants / Accused 1 to 4

-Vs-

State represented by
The Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.
(Crime No.68 of 2007)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the judgment and conviction dated 06.12.2014 by the learned District Sessions Judge, Mahila Court, Pudukkottai in S.C.No.38 of 2011 and acquit the appellants.

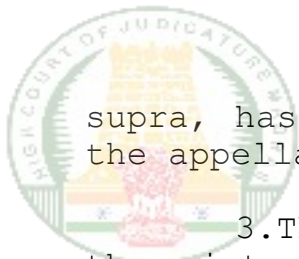
For Appellants : Mr.D.Rameshkumar
For Respondent : Ms.S.Bharathi,
Government Advocate (Crl.Side).

JUDGMENT

The appellants / accused were charged and tried before the learned District Sessions Judge, Mahila Court, Pudukkottai, in S.C.No.38 of 2011, for the offences under Sections 498(A), 304(b), 306, 302 r/w 109 IPC. The trial Court, vide the impugned judgment dated 06.12.2014, convicted and sentenced the appellants as under :-

Section	Sentence
U/s 498(A) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of three [3] years and to pay fine amount of Rs.5,000/-, in default to undergo six months simple imprisonment.

2.However, the trial Court has acquitted the appellants in respect of the offences under Sections 304(b), 306 and 302 r/w 109 IPC. The appellants, aggrieved by the conviction and sentence awarded by the trial Court vide the impugned judgment referred



supra, has filed the present appeal. For the sake of convenience, the appellants will be referred to as the accused.

3.The case of the prosecution is that the marriage between the sister of the defacto complainant and the first accused was solemnized on 09.09.2002. Thereafter, they blessed with two female children and after the marriage, frequently the accused harassed the deceased person for demanding huge money as dowry and repeatedly, they pacified the deceased person / sister of the defacto complainant and sent back to the matrimonial home. While so, on 30.05.2007 at about 04.00 p.m., one Kalavathy through phone call informed the defacto complainant as if his sister and her two children were consumed poison and they were taken to the hospital. On receipt of the said information, the defacto complainant and his mother went to the hospital and they found that the bodies were laid down in the hospital. Thereafter, the defacto complainant made a complaint against all the accused. His statement is marked as Ex.P.1 and the First Information Report is marked as Ex.P.12.

4.The accused were furnished with the relied upon documents under Section 207 Cr.P.C. and the case was committed to the learned District Sessions Judge, Mahila Court, Pudukkottai, for trial. After framing charges for the offences under Sections 498(A), 304 (b), 306, 302 r/w 109 IPC, when the accused were questioned, they pleaded not guilty.

5.In order to prove the prosecution case, P.W.1 to P.W.20 were examined and Exs.P.1 to P.20 were marked and also M.O.1 and M.O.2 were marked. When the Trial Court examined the accused under Section 313(1) of Cr.P.C., in respect of incriminating the evidences available against them, they denied the same as false. Though they have stated that on their side, witnesses and documents are there, they did not choose to examine any witness nor to exhibit any document.

6.Initially, the final report was filed and charges are framed, implicating the accused for the offences under Sections 304 (b), 306 and 302 r/w 109 and 498(A) IPC. However, the trial Court upon consideration of the oral and documentary evidence, has acquitted the accused from the offences under Sections 304(b), 306 and 302 r/w 109 I.P.C., and convicted the accused for the offence under Section 498(A) IPC. Against which, the present Criminal Appeal is filed by the accused.

7.The learned counsel appearing for the appellants would submit that though the trial Court has acquitted the accused in respect of Sections 304(b), 306 and 302 r/w 109 IPC., convicted the accused in respect of Section 498(A) IPC. In respect of the acquittal, no appeal was preferred either by the defacto complainant or by the State. The trial Court has convicted the accused only

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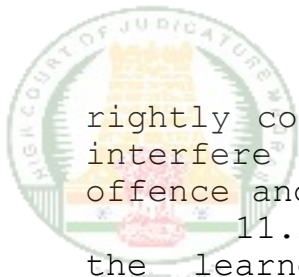


respect of the alleged demand of dowry by the accused. Without any discussion, the trial Court has simply convicted the accused for the offence under Section 498(A) IPC, which is unsustainable.

8.He would further submit that though in order to prove the prosecution case, the prosecution has examined P.W.1 brother of the deceased, P.W.2 mother of the deceased and P.W.3 the resident of the village of P.W.1 and P.W.2, the evidence of P.W.1 and P.W.2 is contradictory in nature. In fact, P.W.1 in his statement has stated that he borrowed jewels and amount from the deceased person, who is the wife of the first accused. However, in his evidence he categorically denied the borrowal of the jewels and money. P.W.2 clearly deposed that P.W.1 has borrowed the jewels and amount from the deceased person, later he returned the amount and jewels to the deceased person. This evidence is contradictory in nature. In fact, P.W.1 has frequently borrowed jewels and the same is permitted by the first accused as well as by other accused. This itself clearly proves the cordial relationship between two families. However, on extraneous consideration, the wife of the first accused was committed suicide by giving poison to her two innocent children and the investigating agency has not properly investigated the matter. The trial Court has rightly acquitted the accused in respect of Sections 304(b), 306 and 302 r/w 109 IPC, however, convicted the accused only in respect of Section 498(A) IPC, which is unsustainable.

9.He would further submit that the independent witness P.W.3 in her evidence deposed that there was a panchayat with regard to the alleged demand of dowry by the accused. However, in respect of the said panchayat, P.W.3 deposed that in the presence of one Chinnathambi (P.W.7) and Sannasi (P.W.10), there was a panchayat. However, P.W.7 and P.W.10 were turned hostile, hence, it is unsafe to convict the accused based on the evidence of P.W.3. Even P.W.3 did not made any specific allegation against the accused and her statement itself is vague. Hence, the conviction of the accused under Section 498(A) IPC without any evidence is unsustainable one. Therefore, he prayed for allowing the appeal.

10.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that it is true that there is a contradiction between the statement and evidence of P.W.1 in some aspects. Further, P.W.3 independent witness in her evidence clearly stated that the father of P.W.1 passed away prior to 12 years. The deceased person / daughter of P.W.2 and the first accused were happily lived for short time and thereafter, there were some issues between them and the accused demanded dowry and created problem thereby, there was a panchayat and the panchayatar warned the accused. Thereafter, P.W.3 came to know that the deceased person consumed poison by giving the same to her children also. Further, the prosecution has clearly established its case in respect



rightly convicted the accused persons. Hence, this Court need not interfere with the order of conviction in respect of the said offence and she prayed for dismissal of the appeal.

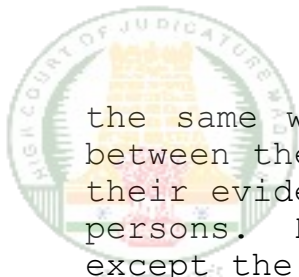
11. Heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record carefully.

12. The issues involved in the present case are (i) whether the accused demanded any dowry from P.W.1 and P.W.2 or not? and (ii) whether the deceased committed suicide for demand of dowry by the accused ?.

13. The entire prosecution case revolves between P.W.1 to P.W.3.

- P.W.1 is the brother of the deceased person;
- P.W.2 is the mother of the deceased person;
- P.W.3 is the resident of the village, where P.W.1 and P.W.2 are residing;
- P.W.4, who is the hearsay witness, informed the death of the deceased person to P.W.1;
- P.W.5 is the neighbor of the appellants and his evidence is not much useful in deciding the case;
- P.W.6 to P.W.11 were turned hostile;
- P.W.12 is the doctor, who conducted postmortem in respect of the deceased 1 and 2 and his report is marked as Exs.P.6 to P.8;
- P.W.13 is the Sub-Inspector of Police, who initially registered First Information Report, which is marked as Ex.P.12;
- P.W.14 is the Head Constable, who sent the body of the deceased 1 and 2 to postmortem;
- P.W.15 is the Head Constable, who sent the body of the third deceased to postmortem;
- P.W.16 is also doctor, who conducted postmortem in respect of the third deceased and his report is marked as Ex.P.13;
- P.W.17 is also the doctor, who declared the death of the deceased 1 and 2 and sent their body to the postmortem;
- P.W.18 is the Revenue Divisional Officer, who conducted enquiry under Section 174 Cr.P.C., and his report is marked as Ex.P.14;
- P.W.19 is forensic expert and opined that due to poison, the deceased persons died; and
- P.W.20 is the Investigating Officer, who laid final report.

14. It is to be noted that the crucial evidence is P.W.1 to P.W.3. On perusal of the evidence of P.W.1 and P.W.2, it is seen that though their evidences were contradictory, they were made allegation against the accused family in respect of the demand of dowry and the same was corroborated each other to some issue. P.W.1 in his cross-examination has specifically denied with regard to the borrowal of the jewels and the money from the deceased person. However, P.W.2 mother of P.W.1 has clearly deposed that P.W.1 and money from the deceased person, subsequently,



the same were repaid. Hence, there was a contradictory statement between the evidence of P.W.1 and P.W.2. However, P.W.1 and P.W.2 in their evidence deposed about the demand of dowry made by the accused persons. However, no other evidence was produced before this Court, except the evidence of P.W.1 and P.W.2.

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15. Even on perusal of the evidence of P.W.3, it is seen that her evidence is also vague and in her evidence, she clearly stated that in the presence of P.W.7 and P.W.10, the panchayat was conducted. However, P.W.7 and P.W.10 turned hostile. Hence, it is unsafe to convict the accused persons based on the evidence of P.W.3. Further, the evidence of Revenue Divisional Officer, P.W.18, who has conducted enquiry under Section 174 Cr.P.C., also in the same line of P.W.1 and P.W.2. Based on the enquiry, P.W.18 Revenue Divisional Officer has given evidence and his evidence is also not much useful to decide the case. Further, it is the crucial aspect that even P.W.1 has initially given complaint to the Law Enforcing Agency, however, his complaint is not marked, only his statement was marked as Ex.P.1.

16. Further, P.W.2 in her evidence has clearly stated that the deceased daughter has given statement to the law enforcing agency. Even the statement is not marked as exhibit. Without marking the said complaint as well as the statement of the deceased person, it is unsafe to arrive at the conclusion as if the accused demanded dowry from P.W.1. Though the charges were framed for the offences under Sections 304(b), 306, 302 r/w 109 and 498(A) IPC, however, the trial Court acquitted the accused from the offences under Sections 304(b), 306 and 302 r/w 109 IPC. Further, the State has not preferred any appeal against the acquittal of the accused and no cogent reasons were placed before this Court to substantiate the conclusion arrived by the trial Court. In the absence of any materials and evidence, this Court has no hesitation to acquit the accused. Therefore, the judgment and conviction dated 06.12.2014 in S.C.No.38 of 2011 by the learned District Sessions Judge, Mahila Court, Pudukkottai, is set aside and all the accused are acquitted from the charge under Section 498(A) of IPC. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated.

17. Accordingly, this Criminal Appeal stands allowed.

Sd/-

Assistant Registrar P&A

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Sub Assistant Registrar(CS)



- 1.The District Sessions Judge,
Mahila Court, Pudukkottai.
- 2.The Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.RAMESH KUMAR, Advocate (SR-10098[F] dated
04/03/2020)

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