

Bail Slip

1) Palanivel, S/o.Arumugam, Male aged about 64/15, 2) Anjalai, W/o.Palanivel, Female, aged about 54/15, 3) Dharmaraj, S/o.Palanivel, Male, aged about 38/15, 4) Rosappu, W/o.Dharmaraj, Female, aged about 34/15, was released on bail vide Court order dated 01.04.2015 made in MP(MD).No.1/2015 in Crl.A.(MD).No.86/2015, 5) Ramalingam, S/o.Palanivel, Male, aged about 35/15 was released on bail vide Court order dated 24.04.2015 made in MP(MD).No.2/2015 in Crl.A.(MD).No.86/2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A(MD)No.86 of 2015

and

Crl.A(MD)No.35 of 2016

Crl.A(MD)No.86 of 2015

1.Ramalingam
2.Palanivel
3.Anjalai
4.Dharmaraj
5.Rosappu

... Appellants / Accused Nos. 1 to 5

Vs.

The State rep. by
The Inspector of Police,
Sampattividuthi Police Station,
Pudukkottai District

... Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of Criminal Procedure Code, against the Judgment and Conviction, dated 24.03.2015 made in S.C.No.89 of 2012, passed by the learned Mahila Judge, Pudukkottai.

Crl.A(MD)No.35 of 2016

Govindasamy

... Appellant / Victim

Vs.

1.Ramalingam
2.Palanivel
3.Anjalai
4.Dharmaraj
5.Rosappu

... Respondents /Accused Nos. 1 to 5



6.The State rep. By
The Inspector of Police,
Sampattividuthi Police Station,
Pudukkottai District ... Respondent / Complainant

PRAYER: Appeal filed under Section 372 of Criminal Procedure Code, to set aside the Judgment passed by the Mahila Judge, Pudukottai in S.C.No.89 of 2012, dated 24.03.2015, and award the victim compensation and enhance the punishment to the respondents / accused.

For Appellants : Mr.K.Baalasundharam
in Crl.A.86/2015 &
Respondents/A1 to A5
in Crl.A.35/2016

For Appellant in : Mr.P.Aju Tagore
Crl.A..35 of 2016

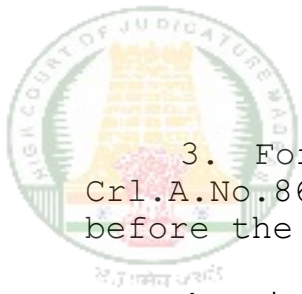
For Respondent : Ms.S.Bharathi
Complainant in Govt.Advocate (crl.side)
both the appeals

COMMON JUDGMENT

The appellants / Accused Nos.1 to 5 in Criminal Appeal No.86 of 2015 were charged and tried before the learned Sessions Judge, Mahila Court, in S.C.No.89 of 2012, and after trial, the Court below found the appellants/A-1 to A-5 guilty and by judgment dated 24.03.2015, convicted and sentenced the appellants as follows:-

S.NO.	OFFENCE	PUNISHMENT
1	Under Section 498 (A) IPC.,	3 years Rigorous Imprisonment and fine of Rs.1,000/- each, in default, to undergo Rigorous Imprisonment for 6 months;
2	Under Section 304 (B) ipc.,	7 Years Rigorous Imprisonment
3	Under Section 306 IPC.,	7 years Rigorous Imprisonment and fine of Rs.1000/- each, in default, to under go 1 year Rigorous Imprisonment.

2. The Criminal Appeal No.35 of 2016 has been filed by the appellant / Victim, to set aside the Judgment passed by the Mahila Judge, Pudukottai in S.C.No.89 of 2012, dated 24.03.2015, and award the victim compensation and enhance the punishment to the respondents / accused.



3. For the sake of convenience the appellants / accused in Crl.A.No.86 of 2015 will be referred to as A-1 to A-5, as arrayed before the trial court.

4. Since the issue involved in both the appeals are on the same set of facts and occurrence, this Court proceeds to dispose of both the appeals by this common Judgment.

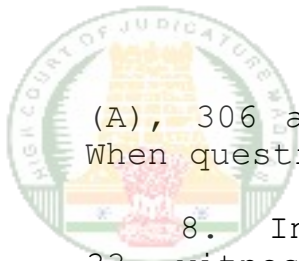
5. The case of the prosecution as unfolded from the evidence available on record, is as under :-

(i) On 25.03.2010, the marriage was solemnized between A1 and the deceased Seethalakshmi at Varapur Siva Temple, as per Hindu Rites and Customs. At the time of marriage, the defacto complainant gave 15 sovereigns of gold jewels, instead of 20 sovereigns demanded by A1, household articles and a vehicle viz., "Hero Honda" to the deceased, as 'Sridhana'. A1 was working as a driver in Tamil Nadu State Transport Corporation at Pudukkottai Branch. All the accused and the deceased were living together as joint family. The accused gave more household works and field works to the deceased and thereby, treated the deceased cruelly.

(ii) Further, A1 had illicit intimacy with A5, which was questioned by the deceased and A1 responded by saying that deceased was sick person and A1 was made to tie the wedding-knot. All the accused compared the deceased with one Sathiya, insulted, scolded her to die, mentally and physically caused cruelty to the deceased, and on 26.06.2010, the deceased committed suicide, by drowning in the 'Well'. Thereby, A1 to A5 committed the offence under Section 498(A) IPC. All the accused incited the deceased to commit suicide and thereby, committed the offence under Section 306 IPC.

6. The death of the deceased was informed by A4 / brother of A1, to P.W.2 / brother of the deceased, through phone. Immediately, P.W.1 along with others went to the residence of the deceased. Thereafter, P.W.1 gave the complaint, Ex.P1 on 26.06.2010, at about 3.45 p.m. before P.W.27 / Sub-Inspector of Police, Sampattaviduthi Police Station, P.W.27, on receipt of the complaint, immediately registered Ex.17 / FIR, took up investigation and he inspected the spot and prepared observation mahazar. On 26.06.2010, he arrested the accused and their confessions were recorded. Thereafter, the appellants were brought before the Judicial Magistrate, Aranthangi and they were remanded to judicial custody. After investigation, final report has filed against the accused.

7. The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed for trial by framing charges against the appellants for the offence under Sections 498



(A), 306 and 304(B) IPC., and Section 4 of Dowry Prohibition Act. When questioned, the accused pleaded not guilty.

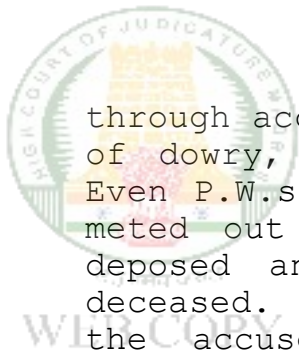
8. In order to prove the case, on the side of the prosecution 33 witnesses were examined as P.Ws.1 to P.Ws.33 and 25 documents were marked as Exs.P1 to Exs.P25.

9. The Court below, by pointing out the incriminating materials recorded during the course of trial, questioned the appellants under Section 313(1)(b) of Cr.P.C., and the appellants denied the same as false. On the side of the appellants / accused, neither oral nor any documentary evidence were adduced. The trial court, on the basis of the evidence, both oral and documentary, convicted and sentenced the accused as above, aggrieved by which the present appeal has been preferred.

10. The learned counsel appearing for the accused submitted that the appellants did not commit any offence, as alleged by the prosecution. In fact, the marriage of the 1st appellant and the deceased is not in dispute, their marriage was performed on 25.03.2010 and the deceased died on 26.06.2010, by drowning in the well. Initially, P.W.1 made Ex.P1 / complaint before the law enforcing agency. The said complaint did not disclose the commission of offence by the accused persons. P.W.1, simply suspected the death of the deceased and made a complaint.

11. It is further contended by the learned counsel appearing for the accused that investigation was conducted by the Revenue Divisional Officer, under Section 174 Cr.P.C., Further, the RDO enquiry did not reveal anything with regard to dowry demand. Further, the evidence of P.W.1, the father of the deceased finds no corroboration with the evidence of P.W.2 and P.W.3, the brothers and P.W.4 the mother of the deceased. In fact, P.W.1 in his complaint did not disclose the commission of offence by the accused persons and the evidence of P.W.1 is an improved version, which is inadmissible. Even in his evidence, P.W.1 did not disclose that there was cruelty soon before the death of the deceased. However, the law enforcing agency initially registered a case under Section 174 Cr.P.C., but altered the same into one under Section 302 IPC and, thereafter, final report has been filed under Sections 498A and 306 IPC. At the time of framing charge, the Court itself framed an additional charge under Section 304(B) IPC.

12. It is his further contention that all the ingredients for attracting the offences for which the appellants have been charged is totally different, which have not been fulfilled to establish the case against the appellants. It is the further submission of the learned counsel for the appellants that except the relatives of the deceased, no independent witnesses have been examined with regard to the alleged cruelty meted out to the deceased by the appellants soon



through acceptable evidence. In the present case, except the demand of dowry, no other allegation has been made by the prosecution. Even P.W.s 1 to 4, who have been examined to establish the cruelty meted out by the accused persons against the deceased have not deposed anything with regard to the cruelty meted out to the deceased. In the absence of any cruelty or harassment, convicting the accused for the above said offence is not sustainable, accordingly, the learned counsel prayed for allowing the appeal.

13. The learned counsel, invited the attention of this Court to the Judgment of Hon'ble Apex Court in ***S.S.Chheena Vs. Vijay Kumar Mahajan & Anr. (2010 (12) SCC 190)***, wherein, it has been held as follows:-

"26. In *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

27. This Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.



The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

14. Reliance was also placed on the decision of the Hon'ble Apex Court in ***Mahesh Kumar Vs. State of Haryana*** reported in **(AIR 2019 SC 802)**, wherein it has been held as follows:-

9) The first and foremost question that arises in this case, and in respect of the necessary ingredients of Section 304-B IPC, is whether there is a proximate nexus between the death of the deceased with the cruelty or harassment inflicted upon her in respect of the demand of dowry. Section 304-B reads as under:

"304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

14) In the present case, the prosecution relies upon the statement of PW3 Sohan Lal - father and PW4 Rajbir - brother of the deceased which has been made basis of conviction by courts below. However, we find that such statements are not sufficient to prove 3 (2004) 11 SCC 291 4 (2015) 5 SCC 201 that the deceased was treated with cruelty relating to demand of dowry soon before her death in the absence of independent evidence though available but not examined. A memorandum Ex.PE/1 dt. 25.01.1992 was



relied upon and said to be executed by the in-laws of the deceased in the presence of members of Panchayat. But none of the Panchayat Members have been examined to prove the settlement arrived at. Therefore, the oral statements cannot be relied upon in view of the letters produced by the prosecution.

15) The prosecution also relies upon letter Ex. PF/1 written by the deceased to her father. The letter is to the effect that her in-laws have started hating and suspecting the deceased's father, therefore, he should not give them the gold chain but only cash. Such letter does not show that anything was demanded by the appellant. The date of sending such letter has not been proved by the prosecution, therefore, it cannot be said that such letter was written soon before her death. Similarly, another letter produced by the prosecution is Ex. PK/1 which is a letter of the deceased to her brother-in-law(sisters-husband) stating that she has no problem with her mother-in-law and sister-in-law but her husband beats her daily. The date of this letter has not been proved nor does such letter lead to any inference for the demand of dowry by the husband of the deceased. Further, an additional letter relied upon by the prosecution is Ex. PG/1 dated 25.05.1992, wherein the deceased has written that she is unhappy and harassed by her in-laws in as much as her mother-in-law does not like the food she cooks. Again, there is no inference of any demand of dowry in such letter as well. Therefore, the documentary evidence in the shape of letters does not support the story of the prosecution."

15. Assailing the Judgment of lesser conviction passed by the trial Court, Crl.A(MD)No.35 of 2016 has been filed P.W.1, the father of the deceased, seeking enhancement of punishment. Mr.P.Aju Tagore, the learned counsel appearing for the victim / defacto complainant submitted that the evidence of P.Ws.1 to 4 and 7 corroborated with each other and they have implicated the accused in the commission of the offence. It is the submission of the learned counsel that examination of independent witnesses is not necessary and only if a doubt arises in the testimony of the witnesses, who are related to the deceased, then corroboration in the form of independent witnesses is necessary. The evidence of P.W.s 1 to 4 and 7 corroborating each other and is reliable, the courts below have accepted the said evidence and convicted the accused.

16. It is the submission of the learned counsel that P.W.1 in his evidence clearly deposed that immediately after the marriage, the parents of A1 informed that out of 15 sovereigns of gold jewels, to the deceased there is a shortage of half a gram.



This, according to the learned counsel, shows not only the crooked mindset of the accused, but also the fact that the demand made by them has not been fulfilled, which has been brought to the notice of P.W.1. Learned counsel for the appellant highlighted various instances of the cruelty meted out to the deceased by the accused, as is relevant from the testimony of P.W.s 1 to 4. P.W.1 has also spoken about the ill-treatment faced by the deceased, where she was made to do agricultural work, of which she had made a complaint to her parents, viz., P.W.s 1 and 3, when she came to her parental home. P.W.1 has also deposed that the deceased was sad that such treatment is being shown to her by the appellants. P.W.2, the brother of the deceased, in his evidence, he clearly deposed that A1 and his family demanded rupees one lakh and 5 sovereigns of gold, as additional demand, and they continued to treat the deceased cruelly, which made the deceased to take the extreme step of committing suicide. The deceased had also informed P.W.2 about the demand made by the parents of A1 for a sum of Rupees one lakh and five sovereigns of gold, which is corroborated by P.W.s 3 and 4. P.W.7, a distant relative of the family of the deceased, had corroborated the evidence of P.Ws. 1 to 4.

17. The learned counsel further submitted that the testimony of P.W.s 1 to 4 clearly reveal that after marriage, all the accused mentally and physically harassed the deceased with regard to the lesser 'Sridhana' brought by the deceased along with her. Further, the evidence also reveals that cruelty was caused by the accused demanding additional dowry of Rs.1,00,000/- and five sovereigns of gold from the deceased. Though the deceased had informed the same to P.W.s 1 to 4, however, they had pacified her, but unable to bear the torture meted out to her by the appellants, she had taken the extreme step of ending her life by drowning in the well.

18. It is the further submission of the learned counsel that though the prosecution, through cogent, convincing and corroborative testimony have proved all the ingredients necessary for the offence u/s 498A, 306 and 304B, however, the court below has not appreciated the cruelty faced by the deceased, which has led to her committing suicide even within a period of three months from marriage. It is the submission of the learned counsel that the cruelty had been to such an extent that the deceased was forced to commit suicide, which is nothing but a form of inducement on the part of the appellants and, therefore, the trial court ought to have considered the same while sentencing the appellants, which it failed to do by giving only lesser sentence, which requires to be enhanced by this Court.

19. In support of his contention, reliance was placed on the Judgment of the Hon'ble Supreme Court in ***Raja Lal Singh Vs. State of Jharkhand (2007 Crl. L.J 3262)***, in which it has been held as follows:-



"17. It has been held in Satvir Singh (supra) that the essential components of Section 304-B are : (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. In the present case, Gayatri died about 7 months after her marriage in April, 2000. Also, it has come in evidence that she had been harassed for dowry 10 or 15 days before her death. This has come in the evidence of her father PW5 and brother PW3 and we see no reason to disbelieve them. She had earlier also been subjected to harassment on account of demand for dowry when she had gone to her parents' house in August, 2000, as has come in the evidence of PW5 Dashrath Singh. Thus, in our opinion, the ingredients of Section 304-B IPC are satisfied in this case [see also in this connection T. Aruntperunjothi vs. State (2006) 9 SCC 467] .

18. It may be mentioned that the words "soon before her death" do not necessarily mean immediately before her death. As explained in Satvir Singh (supra), this phrase is an elastic expression and can refer to a period either immediately before death of the deceased or within a few days or few weeks before death. In other words, there should be a perceptible nexus between the death of the deceased and the dowry related harassment or cruelty inflicted on her.

19. In the present case, we are of the opinion that there is a clear nexus between the death of Gayatri and the dowry related harassment inflicted on her. As mentioned earlier, even if Gayatri committed suicide, S. 304-B can still be attracted. A person commits suicide in a fit of depression due to extreme unhappiness. Thus, even if Gayatri committed suicide, it was obviously because she was extremely unhappy, and unless her husband gave a satisfactory alternative explanation for the suicide we have to take it that it was the persistent demand for dowry which led to her suicide. It is evident from the evidence that Gayatri's father was a poor man and he did not have the money to give the dowry immediately and he wanted time up to January, 2001 so that he could collect some funds from somewhere, but the appellant, Raja Lal Singh was heartless and he wanted immediate compliance of his demand. Since that was not fulfilled, he either killed Gayatri or harassed her so much that she was driven to suicide



on account of the said dowry demand. The writing on Gayatri's palm is, in our opinion, not very relevant. In view of the above, we dismiss the appeal of Raja Lal Singh."

20. Attention of this Court was also drawn to the Judgment of the Hon'ble Supreme Court in ***Sharad Vs. State of Maharashtra*** reported in ***(2012 Crl. L.J 2170)*** in which it has been held as follows:-

"5. We find no merit in the submission and, in our view, the decisions relied upon by the counsel have no application to the facts of this case and do not advance the case of the present Appellant in any way. PW.1 in his deposition before the court said that Savita last came to them to see her ailing father just two days before committing suicide. In that visit also she told her father that unless he paid Rs. 5,000/-, she would not remain alive and it would be the end of her life. The following day, she left her father's place and went to her matrimonial home and in the evening of the same day she committed suicide. PW.3, who was one of the neighbours of Savita's parents, said that Savita came to see her ailing father on a Sunday and she went back on Monday. She had then told her that her father was ill and the accused were demanding dowry and ill-treating her. She also told her that she would not remain alive thereafter. On the next day, they got the message that Savita died due to burn injuries. We find it difficult to imagine a more proximate link between harassment and cruelty in connection with the demand of dowry and the death of the victim resulting from it."

21. Reliance was also placed on the Judgment of the Hon'ble Supreme Court in ***Kulwant Singh and Others Vs. State of Punjab*** reported in ***(2013 (2) SCC (Cri) 339)*** wherein it has been held as follows:-

"30. The second contention urged by the appellants also does not merit any serious consideration. It is true that in the FIR Sukhdev Singh did not give any specific instance of the demand for dowry made by the appellants but he did categorically mention that there was a demand for more dowry by the appellants. Apart from the statement in the FIR, both the Courts have considered the overwhelming evidence of several prosecution witnesses to the effect that there was a demand for dowry made by the appellants and



concurrently held that the appellants had made a demand. We do not see any reason to interfere with this finding of fact.

37. Finally, reference was made to Vipin Jaiswal v. State of Andhra Pradesh, 2013 (3) SCALE 525 which also has no relevance to the present case since in that case the ingredients of harassment or cruelty had not been made out. Vipin Jaiswal's wife committed suicide and left behind a note to the effect that nobody was responsible for her death and that her parents and family members had harassed her husband and it is because of this that she was fed up with her life and the quarrels taking place.

38. There is no doubt that insofar as the present case is concerned, Rachhpal Kaur was harassed by her husband and in-laws for dowry and that she died under abnormal circumstances due to aluminium phosphide poisoning. In our opinion, there is sufficient evidence to hold the appellants guilty of offences punishable under Section 304-B of the IPC and 498-A of the IPC. We see no reason to disturb the conclusions concurrently arrived at by both the Courts below."

22. In support of his contention, reliance was also placed on the Judgment of the Hon'ble Supreme Court in ***Jatinder Kumar Vs. State of Haryana (AIR 2020 SC 161)***, in which it has been held as follows:-

"9. So far as present appeal is concerned, the depositions of the prosecution witnesses about torture and demand for dowry made by the appellant have been believed by the Trial Court as also the High Court. Barring the stray remark by P.W.2, both P.W.1 and P.W.2 have narrated facts which would constitute demand for dowry as also inflicting cruelty and torture upon the deceased victim. Such consistent stand of these two witnesses cannot be said to have been overshadowed by the above-referred stray statement of P.W.2 which is not in tune with rest of his deposition. As regards the appellant, it is a finding on fact upon proper appreciation of evidence. We do not find any major contradiction in the statements made by P.W.1 and P.W.2 on demand for dowry and subjecting the deceased victim to cruelty. They stuck by their statements in cross-examination. From their depositions, a link can be established between such acts of the appellant and death of the deceased victim. Once these factors are proved, presumption rests on the accused under Section 113-B of the Indian Evidence Act, 1872. The appellant in



his statement made in response to his examination under Section 313 of the Code of Criminal Procedure, 1973 attributed suicide of the victim to depression on account of several of her relatives' deaths within a short spell of time. Though the factum of several deaths in her family has been established, there is no corroboration of such a depressive state of mind of the deceased. The other defence of the appellant is that she was a modern urban lady and could not adjust to the life style of Mullana, a small town where her matrimonial home was situated. But both the Trial Court and the High Court rejected this defence. We find no reason to reappraise evidence on this aspect. Father of the deceased, as also P.W.2 have proved the demand for dowry. This version has run consistently from the statement forming the basis of F.I.R. to deposition stage and we do not think the Trial Court and High Court had come to such conclusion in a perverse manner.

10. It is also argument of the appellant that since on the basis of same set of evidences, the co-accused persons were acquitted, the appellant only for the reason of being husband of the deceased could not be subjected to a different standard or yardstick in the guilt finding process. The High Court has given the following reasoning for letting off the co-accused persons:-

"23. The next question, that arises for consideration is, as to which of the accused, could be said to have tortured Meenakshi, continuously, in connection with the demand of dowry, aforesaid leading to her death. It has come in the evidence, that Anil Kumar, and Atul Mittal, brothers of Jatinder Kumar, were living separately, from him. They had their separate mess, and business. It has come in the evidence, that Bimla Wanti, mother of Jatinder Kumar, was residing with her son Atul Mittal, who was unmarried, at that time. Under these circumstances, the only beneficiary, of the cash amount, for the purchase of car, or for extension of clinic, in the shape of dowry, could be said to be to the Jatinder Kumar, accused husband of deceased Meenakshi. A married brother, Atul Mittal, unmarried brother, and Bimla Wanti, mother of Jatinder Kumar, were not be benefitted, either on account of the demand of car, in the shape of dowry, or, on account of demand of cash, for the extension of clinic. It is matter of common knowledge that, when the

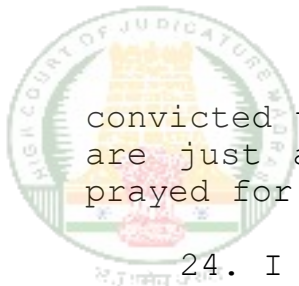


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unnatural circumstances, then no love is lost between the parents of the deceased, and members of her in-laws family. In such a situation, the parents of the deceased are out and out, to rope in, as many members of the in-laws family of the bride-groom, as they could possibly do. The evidence of Som Prakash, complainant, Bharat Bhushan, paternal uncle of the deceased, and Parveen Kumar, mediator, that the accused, other than Jatinder Kumar, used to torture Meenakshi, in connection with the demand of dowry, as a result whereof, she died, could not be said to be reliable. The basis of omni-bus allegations, against Bimla Wanti, Atul Mittal, and Anil Kumar, that they subjected Meenakshi to cruelty, in connection with the demand of dowry continuously, until her death, they could not be convicted. It appears that, Anil Kumar, Bimla Wanti, and Atul Mittal, were falsely implicated, in the instant case, with a view to exaggerate the number of the accused. Only Jatinder Kumar, committed the offences, punishable under Sections 304-B and 498-A of the Indian Penal Code. Out of abundant caution, Anil Kumar, Bimla Wanti, and Atul Mittal, accused, are required to be given the benefit of doubt, and, thus, are entitled to acquittal. The findings of the trial court, only to the extent aforesaid are affirmed."

11. We are not testing the legality of acquittal of the co-accused persons in this appeal. On the basis of the evidence on record, we are satisfied that the judgment and order of conviction and sentence was rightly confirmed by the High Court so far as the appellant is concerned. The factors which the High Court found for convicting the appellant, in our opinion, establishes guilt of the appellant beyond reasonable doubt. We find no reason to interfere with the judgment and order under appeal. The appeal is dismissed. We are apprised that appellant, at present, is on bail. The appellant's bail bond stands cancelled. Let the appellant surrender before the Trial Court within four weeks from date and undergo rest of the sentence."

23. Ms.S.Bharathi, the learned Government Advocate (crl.side) appearing for the State supported the Judgment of conviction of the trial Court and submitted that the trial court, on proper application of the evidence tabled by the prosecution has rightly



convicted the accused and the findings arrived at by the trial Court are just and proper, which need not be interfered with. Hence, prayed for dismissal of the appeals.

24. I have heard the learned counsel appearing for the respective appellants and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

25. The issues that arise for consideration in the present appeals are as follows:

1. Whether necessary ingredients of Sections 304B 306, 498A IPC stand established?

2. Whether there is proximate nexus between the death of the deceased in relation to the cruelty or harassment inflicted upon the deceased by demand of dowry by the accused?

3. Whether the conviction of the trial Court and the consequent sentence could be sustained or does the sentence requires further enhancement?

26. One of the grounds on which the conviction is assailed by the accused relate to the satisfaction of the ingredients in Sections 498(A), 306 and 304(B) IPC. For better clarity, the said Sections 498(A), 306 and 304(B) IPC., are extracted hereunder:-

"Section 498-A - Husband or relative of husband of a woman subjecting her cruelty - Whoever, being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, 'cruelty' means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of any person related to her to meet such demand."

Section 306 - Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Section 304B - Dowry death - (1) Where the death



of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

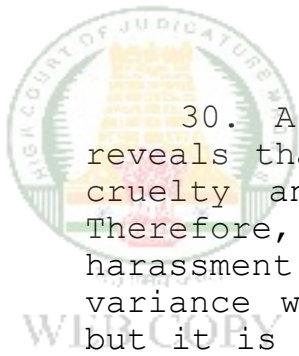
Explanation - For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.'

27. What flows from the above provisions of law is that the death of the victim should have been the result of cruelty or harassment by her husband or relatives and that there should have been coercion for the victim to commit suicide and that should be in relation to demand for property and that the said cruelty and harassment caused and demand made should be soon before the death of the woman so as to drive her to commit suicide. The above are the necessary ingredients that forms the scope and ambit of Sections 498-A, 306 and 304 (B) IPC. Further, the above sections also mandate the punishment that are to be awarded for the commission of the said offences.

28. In the above backdrop of the necessities contemplated in Sections 498-A and 304 (B) IPC, being that soon before death, the deceased should be inflicted with cruelty and that there should be demand for dowry or property / valuable security, this Court is tasked with an analysis to find out whether the ingredients as contemplated above have been satisfied.

29. P.W.1, the father of the deceased, in his evidence, has deposed that since he had suspicion in the death of his daughter, he had lodged the complaint, Ex.P-1, with the law enforcing agency. The earliest document, therefore, is Ex.P-1. A perusal of Ex.P-1 reveals that there is no whisper as to the demand for dowry or as to any cruelty or harassment meted out to the deceased, by the accused. The complaint merely proceeds on the footing requesting the law enforcing agency to investigate the death of the deceased. However, P.W.1, in his evidence, has deposed that his daughter was subjected to cruelty and harassment at the hands of the accused, who had demanded a sum of Rupees one lakh and five sovereigns of gold, as additional dowry. Further, the deposition of P.W.1 also reveals about the ill-treatment meted out by the accused to the deceased on various occasions.

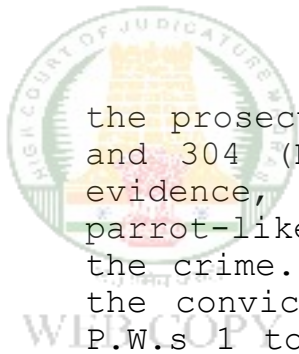


30. A conjoint reading of Ex.P-1 and the evidence of P.W.1 reveals that nowhere in Ex.P-1, P.W.1 had spoken anything about the cruelty and harassment caused to the deceased by the accused. Therefore, the deposition of P.W.1 with regard to cruelty and harassment and also the demand for additional dowry is not only at variance with his earliest version as found in Ex.P-1, complaint, but it is definitely an improvement from the version given in Ex.P-1. It is true that the evidence of P.W.1 gains corroboration from the deposition of P.W.2 also with regard to the demand of gold and money, and similarly, P.W.s 3 and 4 have also corroborated the testimony of P.W.1, however, the testimony of P.W.1 itself being at variance with Ex.P-1, and no cruelty or harassment having been attributed to the accused in Ex.P-1, the deposition of P.W.1 as also the corroboration of his evidence by P.W.s 2 to 4 is prone to serious doubt. Further, P.W.s 1 to 4 have not testified as to the steps taken by them to clarify with the accused as to the cruelty and harassment complained of by the deceased.

31. One other crucial evidence, which flows from the evidence of P.W.2 is the fact that the day before the death of the deceased, P.W.2 had contacted the deceased over phone and had enquired about her welfare for which the deceased had replied that she is fine. The above testimony of P.W.2 categorically reveals that soon before her death, there has not been any complaint made by the deceased as to the cruelty and harassment meted out to her, by the accused.

32. Further, it is to be pointed out that the testimonies of P.W 4 and P.W.7 is at variance and does not corroborate each other. P.W.7, according to the prosecution, is stated to be a distant relative of P.W.1. In his evidence, P.W.7 has deposed that there was illegal intimacy between the father-in-law and A-5, but curiously, the said testimony has been contradicted by P.W.2 deposing that the illegal relationship was between A-1 and A-5. Further, it is to be pointed out that nowhere in the testimonies of P.W.s 1 to 4, they have stated anything about there being illegal intimacy between any of the accused. There is no averment to the said fact of illegal intimacy in the complaint, Ex.P-1. Further, even if there had been any illegal intimacy between the father-in-law of the deceased and A-5, that would in way be said to be cruelty or harassment meted out to the deceased. Therefore, it is categorically clear that the necessary ingredients as contemplated u/s 498-A and 304 (B) IPC have not been established.

33. Further, it is to be pointed out that no independent witnesses have been examined by the prosecution with regard to the offences u/s 304 (B) and 498-A. Though, it is trite that it is not necessary for the prosecution to examine any independent witnesses and that the testimonies of related witnesses would be suffice, however, a rider is attached to the same, in that the testimonies of the related witnesses should be of such a nature so as to foreclose
<https://hccservices.mca.gov.in/services/> the possibilities of bias and tampering. In the case on hand,



the prosecution has miserably failed to prove the charges u/s 498-A and 304 (B) IPC through the testimonies of P.W.s 1 to 4, whose evidence, to put it more precisely, could only be stated to be a parrot-like version, implicating the accused in the commission of the crime. Their evidences could not in any way form the basis of the conviction u/s 498-A and 304 (B) IPC. Once the evidence of P.W.s 1 to 4 are discarded, the prosecution is left with no other evidence to project the commission of offences on the accused.

34. It is true that as per Section 113-B of the Indian Evidence Act, 1872, the presumption of dowry death can be raised on 4 circumstances i.e.,

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.)

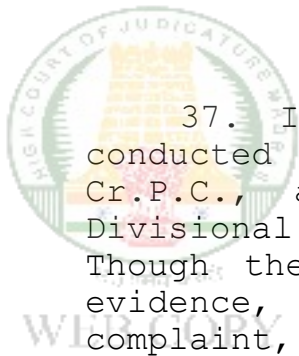
(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

35. In the present case, as stated above, the testimonies of P.W.1 to P.W.4 and P.W.7 not only in any way corroborates each other, but also falls short of fulfilling the ingredients contemplated u/s 498-A and 304 (B) IPC. There is no iota of evidence to hold that the deceased was subjected to cruelty or harassment soon before her death. Once the prosecution fails to establish the fact that there was any cruelty or harassment soon before her death, the presumption required under Section 113 of the Indian Evidence Act does not arise.

36. Though very many decisions have been relied on by the learned counsel appearing for the appellant/P.W.1, however, the same are not applicable for the simple reason that in those cases, harassment and cruelty were established through testimonies of independent evidences. However, in the case on hand, not only the testimonies of the related witnesses, viz., P.W.s 1 to 4 and 7 falls short of conviction, but equally, there being no independent witness examined to prove the said fact and there being no corroboration in the testimonies of P.W.s 1 to 4 and 7, this Court is left with no other alternative to hold that the prosecution have miserably failed to prove the offences u/s 498-A and 304 (B) IPC.



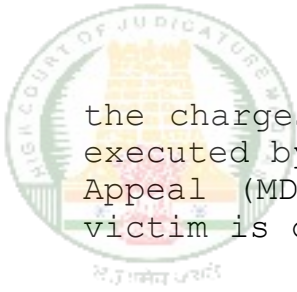
37. It is further to be pointed out that in the enquiry conducted by the Revenue Divisional Officer under Section 174 Cr.P.C., and who has filed Ex.P-24, his report, the Revenue Divisional Officer has clearly stated that there is no dowry demand. Though the said report, Ex.P-24, is not a substantial piece of evidence, however, the said report gains strength from Ex.P-1, complaint, which does not disclose any harassment or cruelty and dowry demand and, therefore, the said report can be relied upon as a corroborating piece of evidence.

38. It has been time and again held by the Hon'ble Supreme Court that instigation is a necessary concomitant for an offence u/s 306 IPC. The instigation should be of such a nature so as to urge, provoke, incite and encourage the victim to do a particular act. There should be an intention to provoke, incite or encourage a person to do a particular act, which alone would form the necessary ingredient of abetment. Abetment involves mental process of instigating a person or intentionally aiding a person in doing a thing and without there being a positive act on the part of the accused in instigating the victim to commit suicide, the offence u/s 306 IPC does not stand attracted. The act of the accused should be of such a nature in order to drive the victim to commit suicide.

39. The deposition of P.W.2, as stated above, clearly reveals that the preceding day, P.W.2 had a telephonic talk with the deceased and on enquiry, the deceased had told him that she was fine. Such being the case, it is incumbent on the prosecution to prove that things have happened in the interregnum between the time of telephone call of P.W.2 and the deceased committing suicide and that thing was the act of the accused in inflicting cruelty and harassment on the deceased, which had driven her to take the extreme step of committing suicide. However, to state without any ambiguity, the prosecution has not placed any evidence before this Court to even infer that there was some happening, which had caused the deceased to resort to the extreme step.

40. On a careful analysis of the entire materials available on record coupled with the legal position relating to law on Sections 498-A, 306 and 304 (B) IPC is concerned, this Court is of the irrefutable view that the prosecution has miserably failed to prove the culpability of the accused in the commission of the offence and the evidence tabled by the prosecution falls short of establishing the guilt of the accused. The trial court has not considered the evidence in proper perspective and has convicted the accused and sentenced them as above, which requires interference at the hands of this Court.

41. For the reasons aforesaid, the Criminal Appeal (MD)No.86 of 2015 is allowed setting aside the Judgment and Conviction, dated 24.03.2015 made in S.C.No.89 of 2012, passed by the learned Mahila Judge, Pudukkottai, and the accused/appellants are acquitted of all charges.



the charges for which they are convicted and sentenced. Bail bonds executed by them shall stand discharged. Consequently, the Criminal Appeal (MD)No.35 of 2016 filed for enhancement of sentence by the victim is dismissed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

- 1.The Mahila Judge, Pudukkottai.
- 2.The Inspector of Police,
Sampattividuthi Police Station,
Pudukkottai District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent of Prison,
Central Prison, Trichy.
- 5.The Superintendent of Special Cell for Women,
Trichy.

Copy to:

The Record Clerk, (2 Copies)
Criminal Section, (Records)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.AJUTAGORE, Advocate (SR-10804[F] dated 10/03/2020)

+1 CC to M/s.L.BAALASUNDARAM, Advocate (SR-10811[F] dated 10/03/2020

JUDGMENT MADE IN
Crl.A(MD)No.86 of 2015
and
Crl.A(MD)No.35 of 2016
09.03.2020

JMN(23.03.2020) 19P : 10C