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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2021

PRONOUNCED ON : 15.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.67 of 2021

1.Jayachandran

2.Sinthamani

..Appellants/Accused 1 & 3

Vs

State

Rep. By

The Inspector of Police

Velankanni Police Station

Nagapattinam District

Crime No.268 of 2012

..Respondent/Complainant

PRAYER : Criminal Appeal filed u/s.374(2) of Cr.P.C., against the judgment dated 03.02.2021 in S.C.No.39 of 2014 on the file of Sessions Judge, Fast Track Mahila Court, Nagapattinam District.

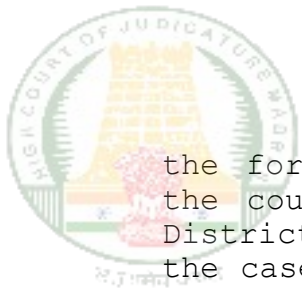
For Appellants : Mr.K.Kannan

For Respondent : Mrs.T.P.Savitha
Govt.Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed against the judgment dated 03.02.2021 in S.C.No.39 of 2014 on the file of Sessions Judge, Fast Track Mahila Court, Nagapattinam District.

2. The respondent police originally filed case against three persons in Crime No.268/2012 under Section 174 Cr.P.C. The appellants herein are A-1 and A-3. A-2 is the father of the 1st appellant and husband of the 2nd appellant. After enquiry and inquest, section of the offence was altered into Section 306 IPC. After the investigation, the respondent police laid the charge sheet before the Judicial Magistrate, Nagapattinam. After completing the formalities, the learned Magistrate taken the charge sheet on file in PRC.No.1 of 2014 and after completing



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the formalities, since the offences are triable exclusively by the court of Session, the case was committed to the Principal District and Sessions Judge. The learned Sessions Judge taken the case on file in S.C.No.39 of 2014. Since the offence against women, the case was made over to the Fast Track Court Mahila Judge, Nagapattinam. The learned Special Judge, after completing the formalities framed the charges against all the accused for the offence under Section 498-A, 306 IPC and Section 4 of Dowry Prohibition Act. After framing charges, during the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined as PW.1 to P.W.12 and 10 documents were marked as Ex.P.1 to Ex.P.10. Besides one Material Object M.O.1 was exhibited. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. All of them have denied as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

3. On completion of trial, after hearing the arguments advanced on either side and also considering the materials available on record, the trial court found that for all the charges framed against A-1 and A-3, they were found guilty and A-2 was not found guilty. A-1 and A-3, the present appellants are convicted as under:

(i) 1st appellant is sentenced to undergo two years rigorous imprisonment for offence under Section 4 of Dowry Prohibition Act and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

(ii) 1st and 2nd appellants/A-1 and A-3 are sentenced to undergo two years rigorous imprisonment for offence under Section 498-A IPC and to pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment.

(iii) 1st and 2nd appellants/A-1 and A-3 were convicted for offence u/s.306 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, in default, to undergo one month simple imprisonment.

4. Challenging the said judgment of conviction and sentence, A-1 and A-3 filed the present appeal before this court.

5. The learned counsel for the appellants would submit that earlier complaint given by the father of the deceased was suppressed by the investigating officer who also admitted the same during the cross examination. Further there was no allegation in the FIR with regard to demand of car in the initial stage of marriage as stated by P.W.1. But before the



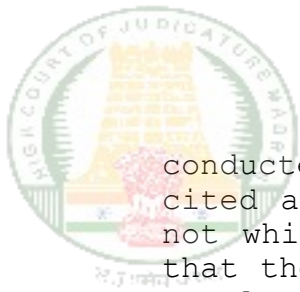
trial court, contrary to that, P.W.1 stated that the appellants caused cruelty to the deceased to bring car, without specifying the dates of such demand. Further he would submit that the entire prosecution case never revealed money demand immediately after the marriage of the 1st appellant and the deceased and even assuming marriage was said to have taken place in the year of 2005 and deceased died on 12.08.2012, Section 4 of Dowry Prohibition Act cannot be invoked without ascertaining the year of marriage and date of death of the deceased. Thus, the prosecution failed to establish that the deceased died after marriage and within 7 years from the date of the marriage. Further there is no specific demand of dowry before the marriage or during the marriage or even subsequent to the marriage.

6. It is further submitted that the trial court acquitted A-2 stating that the prosecution failed to prove the charges against A-2 and so, on the very same ground, benefit should have been extended to the appellants also.

7. The father of the deceased is a hearsay witness and he has no direct knowledge and his complaint is marked as Ex.P.1 which is very vague. Further his complaint does not disclose about Panchayatdars who is said to have promised and consoled the deceased to return to matrimonial house. Further he would submit that there is no whisper about the act of cruelty by the appellants and further there is no whisper about the cruelty caused by the 1st appellant under the influence of alcohol and only for the first time, father of deceased P.W.1 given evidence to that effect and therefore, Section 498-A IPC would not attract.

8. The learned counsel would further submit that father of the deceased P.W.1 has categorically stated in his cross examination that even at the time of marriage, there was no allegation with regard to demand of Sreedhana articles alleged to have been given by the father of the deceased. Also there is no dowry demand. In such circumstances, the demand of car by the 1st appellant to P.W.1 through deceased was highly doubtful and therefore, it does not fall under the definition of dowry and it is not offence punishable under Section 4 of Dowry Prohibition Act.

9. The learned counsel would also submit that all the witnesses are interested witnesses and also relative witness. There is no eye witness to say that the deceased committed suicide only due to harassment made by the 2nd appellant and her son or that they committed abetment to commit suicide. There are contradictions between the prosecution witnesses and they are material contradictions. The Revenue Divisional Officer one who



conducted the enquiry was not examined as witness and not even cited as witness. P.W.7 who is elder sister of the deceased has not whispered about the demand of car and she has also admitted that the deceased has not indicated anything to her father about cruelty caused by the appellants. P.W.8 who is the resident to the opposite house of the deceased and the appellant has stated that she is not aware about the petty quarrels between the 1st appellant and the deceased. She has also stated that they were living happily and that apart, the said evidence was not considered by the trial judge.

10. It is further argued that the 1st appellant and the deceased were living separately and the 2nd appellant/A-3 and her husband A-2 were living separately. There was no specific demand or cruelty caused by the 2nd accused, therefore, A-2 was acquitted. As such, A-3 should also have been acquitted, since both are in same footing. However, trial Judge failed to consider the contradictions in the prosecution witnesses and also the medical evidence and wrongly convicted the appellants for the above said charges and it warrants interference of this court.

11. Learned counsel for the appellants has placed reliance on the following decisions:-

(i) Nachhatar Singh & Another Vs. State of Punjab [decision dated 03.02.2011 in CrI.A.No.808 of 2005]

(ii) Tarun Alias Gautam Mukherjee Vs State of West Bengal [decision dated 04.05.2000] (2001) 10 SCC 754

(iii) Anil Sutradhar Vs. State of Tripura [decision dated 19.03.2013 in CrI.A.(J).No.101 of 2008.

(iv) E.Balakrishnama Naidu Vs. State of Andhra Pradesh [decision dated 19.11.1991] 1992 Supp (3) SCC 71.

It is submitted that in the facts and circumstances of the case, the above decisions are squarely applicable to the case on hand and the trial Judge failed to look into the ratio decidendi of the Honourable Supreme Court. But, the trial Judge looked into oral and documentary evidence and based on sympathy and conjectures, appellants are convicted, which warrants interference.

12. Learned Government Advocate (Criminal Side) would submit that the marriage between the 1st appellant and the deceased was solemnized in the year 2005. The deceased died on 12.08.2012. The death of the deceased was within seven years. Further, the death of the deceased is not natural death. It is an unnatural death and she committed suicide. Therefore, when the female died within seven years from the date of the marriage, the presumption under Section 304-B IPC is that the death of the deceased falls under Dowry Death. Further, the investigation



reveals that the first appellant was a driver by profession. Since he has no sufficient income, he demanded the deceased to get car from her parents. Since she had no issue, the appellants harassed the deceased and caused physical as well as mental cruelty. Even one week prior to the occurrence, the 1st appellant driven the deceased to her paternal house and demanded car and after pacifying her, she was sent back. After going to matrimonial home, within one week, she committed suicide. Prosecution witnesses P.W.1 to 6 have clearly spoken about demand of car and harassment and cruelty made by the appellants to the deceased for not having issue. Therefore, the prosecution has clearly proved its case beyond all reasonable doubts. P.W.9 Scientific Officer has clearly stated that the death of the deceased is unnatural and also due to asphyxia, the deceased might have died. P.W.10 doctor who conducted autopsy also deposed that six hours prior to autopsy, deceased died due to asphyxia. Therefore, the prosecution has proved that the deceased died unnaturally and she has committed suicide due to demand of dowry and harassment and cruelty caused by the appellants. Hence, there is no merit in the appeal and the appeal is liable to be dismissed.

13. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.Side) for the respondent and also perused the material available on record.

14. The case of the prosecution is that on the complaint of P.W.1 on 12.08.2012, the respondent police initially registered the case against appellants/ A-1, A-3 and A-2 under Section 174 Cr.P.C. The complaint is that P.W.1's daughter committed suicide and died due to cruelty and harassment caused to her by the appellants who compelled her to bring car. After enquiry, offence has been altered under Section 306 IPC and the respondent Police filed charge sheet before the Judicial Magistrate, Nagapattinam. After completing the formalities, the learned Magistrate taken the charge sheet on file in PRC.No.1 of 2014. After completing the formalities, since the offences are triable exclusively by the court of Session, the case was committed to the Principal District and Sessions Judge. The learned Sessions Judge taken the case on file in S.C.No.39 of 2014. Since the offence against woman, the case was made over to the Fast Track Court Mahila Judge, Nagapattinam. The learned Special Judge, after completing the formalities framed the charges against all the accused for the offence under Section 498-A, 306 IPC and Section 4 of Dowry Prohibition Act. On completion of trial, A-2 was not found guilty of the charges framed against him and he was acquitted, whereas, A-1 and A-3/appellants herein are convicted as referred to above.



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15. This court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

16. The trial court framed charges against all the accused for offence under Sections 306, 498-A IPC and under Section 4 of Dowry Prohibition Act. In order to substantiate the charges framed against the accused, on the side of the prosecution, totally 12 witnesses were examined and 10 documents were marked. Besides one material object was exhibited. Out of 12 witnesses, the father of the deceased was examined as P.W.1.

17. P.W.1 has got two wives and the mother of the deceased is not alive. P.W.4 is the second wife of P.W.1. P.W.5 and 7 are the elder sisters of the deceased. P.W.1, P.W.4, P.W.5 and P.W.7 are the close relatives viz., father, stepmother and elder sisters respectively. They have spoken about the marriage of the 1st appellant and the deceased and also the quarrel between the 1st appellant and the deceased. They have also spoken about demand of car and that they caused cruelty on the deceased for not having child. The 1st appellant frequently used to quarrel with the deceased. He driven the deceased to her paternal house and thereafter P.W.1 used to pacify the issue with Panchayatdars and one month prior to the occurrence, such things happened. Even five days prior to the occurrence, in that way, it happened. P.W.1 has stated that during the marriage, they have given 7 ½ sovereign gold as sreedhanam. The 1st appellant is working as driver. The marriage took place in the year of 2005. After marriage, they lived together happily for 2 ½ years and thereafter, problem arose. Since the 1st appellant had no adequate income, the 1st appellant insisted the deceased to get car from her parents. Since P.W.1 father of the deceased is only a cooly and he has got six children through the 1st wife, mother of the deceased and after death of the 1st wife, he got married P.W.4, he is not in a position to satisfy the demands and needs of the appellants. Further, the 1st appellant and the deceased had no issue and therefore, the 1st and 2nd appellants also caused physical as well as mental cruelty and scolded the deceased in colloquial language for not having a child. Frequently there was quarrel and she was sent to her parents house and after pacifying her, parents of the deceased sent her to matrimonial house. However, the appellants have once again frequently started quarrel as they did earlier. The deceased was sent to her parents house once again and since she could not meet out the demand of car from her parents, after return, she committed suicide. Even though paternal and maternal house of the deceased are in the same village, P.W.1 father did not know

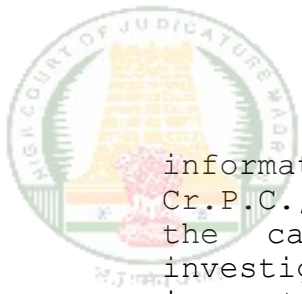


anything about the suicide committed by the deceased. After he coming to know about the suicide, he made a complaint. The prosecution taken the case and conducted enquiry and also after inquest and after completing the formalities, though the case was initially registered under Section 174 Cr.P.C., subsequently, during the investigation, the case was altered into Section 306 IPC and trial court framed charges for the offences under Sections 306, 498-A IPC and Section 4 of Dowry Prohibition Act.

18. The contentions raised by the learned counsel for the appellant are that earlier complaint was given by P.W.1 to the police and it was suppressed and the second complaint is the statement recorded under Section 161 (3) Cr.P.C., by the Investigating Officer and so the complaint is not genuine. It is only an afterthought and after deliberation and discussion and P.W.1 foisted false case against the appellants. Since the deceased does not have issue, she got frustrated and committed suicide. Appellants never committed any cruelty and there is no panchayat and pacifying the issue with panchayatdars in this case and the prosecution failed to prove the case. As far as the above contentions are concerned, a reading of the materials would go to show that complaint was initially registered under Section 174 Cr.P.C., for suspicious death. Subsequently after inquest and also enquiry by the RDO, section has been altered into offence under Section 306 IPC and charges were framed by the trial court for the offences under Sections 306, 498-A IPC and Section 4 of Dowry Prohibition Act.

19. The next point for consideration raised by the learned counsel for the appellant is that there is a delay in filing the complaint. He submitted that P.W.1 has not stated the date of marriage and date of death in the complaint and in the FIR. There is no specific date of demand and also cruelty which is also fatal to the case of the prosecution and there are improvements, contradictions and discrepancies in the evidence. The trial Judge failed to appreciate the same.

20. As far as FIR is concerned, it is settled proposition of law that there could be more than one FIR in a case and any subsequent FIR will not be hit of Section 162 Cr.P.C. Every minute wise detail may not be required to be mentioned in the FIR. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case. Mere delay is not a reason to disallow the case of the prosecution. When the delay is not inordinate and the version of the victim's father is honest and straightforward, the delay will not be fatal. Therefore, if any



information disclose cognizable offence, as per Section 154 Cr.P.C., the Police Officer has no other option except to file the case. Therefore, in this case, any defect in the investigation or lapse on the part of the Investigating Officer is not fatal to the case of prosecution. As such, the contradictions and discrepancies pointed out by the learned counsel for the appellants in this regard, are not material contradictions which will affect the case of the prosecution and the same is rejected.

21. In the present case on hand, the marriage between the deceased and the 1st appellant is not in dispute. The father of the deceased was the defacto-complainant and he has not specifically stated the date of marriage and the date of cruelty. However he has stated that deceased is her daughter and she was married to the 1st appellant and for two years they were living happily. Subsequently there was quarrel and subsequently his daughter died and daughter's death is suspicious. Therefore, he preferred complaint. Initially, the respondent police registered the case under Section 174 Cr.P.C. After inquest, section has been altered into offence under Section 306 IPC. Father of the victim was examined as P.W.1. He has clearly stated that the marriage between the deceased and the 1st appellant was held in the year 2005 and his daughter died in the year 2012. Though there is no specific date of the marriage given, however, in this case, none of the witnesses P.W.1, P.W.4, P.W.5 and P.W.7, the father, stepmother and elder sisters have stated that during the marriage, the appellants demanded for dowry. Therefore, in the absence of demand for dowry during the marriage or prior to the marriage or subsequent to the marriage, in continuance of the marriage specifically, will not be treated as demand for dowry.

22. A combined reading of the evidence of prosecution witnesses would go to show that nowhere it is stated that the appellants demanded dowry during marriage. Even P.W.1 has stated that he provided 7 ½ sovereign jewellery as marriage sreedhana to her daughter. After marriage, for two years, they were living happily. Subsequently, no issue for them and also there is no income for the 1st appellant and so he demanded her to buy a car from her parents and caused cruelty and harassment and the said act does not fall under the definition of dowry demand. Therefore, the conviction and sentence against the 1st appellant for offence punishable under Section 4 of Dowry Prohibition Act is set aside.



23. Though there was no demand of dowry, from the evidence deposed before the trial court, it is seen that P.W.1 is the father, P.W.4 is the step mother, P.W.5 and P.W.7 are the elder sisters and they have categorically stated that in the year 2005, marriage took place; for two years, they were living happily, subsequently, the deceased had no issue and the appellants started causing cruelty and harassment to the deceased. 1st appellant was not having sufficient income and so he sent the deceased to parent's house to get a car. Even prior to one month to the date of occurrence, the appellants driven the victim to her parents house. All the relative witnesses have stated that just five days prior to the occurrence also, the appellants harassed the deceased and sent her to parents home and asked to get a car. So, the date of occurrence being 12.08.2012 just 5 days after her return, the death of the deceased is doubtful. P.Ws.2 and 3 are the independent witnesses and they also corroborated the evidence of P.W.1, 4, 5 and 7. They all categorically stated that the appellants caused physical and mental cruelty to the deceased for not having child and not provided car in her parent's house. Therefore, there is no doubt that death of the deceased is due to cruelty committed by the appellants and that they driven her to commit suicide. Therefore, the appellants abetted the deceased to commit suicide. It is only at the instance of cruelty and harassment, deceased committed suicide. Even though based on the information and knowledge of the harassment met out to the deceased, the relatives also have spoken about the same, they are the best persons to explain about it. Four witnesses have categorically stated about the cruelty and harassment made by the appellants.

24. The settled proposition of law is that the evidence of interested witnesses, if found to have creditworthiness, conviction could be based on an uncorroborated testimony. Credibility of the evidence of a witness does not depend on his financial status or his social status alone.

25. In this case, P.W.1 is a poor cooly, his first wife died and so he married P.W.4 and having six children. The deceased was one of his daughters. The deceased got married to the 1st appellant and the 2nd appellant is his mother. Though there is no demand of dowry prior to marriage, during the marriage or thereafter, subsequently, the evidence reveals that for two years, there was no much dispute and they were living happily. But subsequently problem arose. The deceased and the 1st appellant had no issue for two years and no sufficient income. Therefore, the deceased went to job in a Textile shop at Nagapattinam. Since the 1st appellant is a driver, he demanded the deceased to bring a car. P.W.1 is a poor cooly and father of



six female children and so he was not able to provide a car. So prior to the incident, the appellants caused cruelty to the deceased for having not brought car. P.Ws. 2 and 3 are independent witnesses. They also spoken about marriage between 1st appellant and deceased and that there was demand of car and caused cruelty. They also spoken that appellants used to send the deceased to P.W.1's house and after Panchayat and after pacifying the matter, deceased went to her matrimonial house. P.W.6 and 8 are the neighbours and they have not stated anything about harassment and cruelty. However P.Ws.2 and 3 are independent witnesses. P.Ws.1 is the father, P.W.4 is the step mother, P.Ws. 5 and 7 are elder sisters of the deceased. P.W.1 and 4 are also living in the same village in which the deceased was living and hence they cannot say they do not know anything about the cruelty. But poor father is not able to meet out the demand and satisfy the needs of her daughter's husband and also her in-laws. There used to be frequent quarrel and so unable to bear the torture caused to her and being scolded every day, she struggled and if the situation exceeds or if the demand prolonged, her father who is a poor innocent man could not meet out the demands and so she decided to take away her life.

26. Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide.

27. The evidence of the prosecution witnesses and medical evidence clearly show that death of the deceased was unnatural one and she committed suicide. Evidence of P.Ws.1, 4, 5 and 7, would go to show that due to cruelty and harassment, she committed suicide and died. As per the evidence of the prosecution witnesses, even few days prior to the date of the occurrence, there was cruelty caused by the appellants to the deceased. Therefore, this court is of the view that only due to the abetment caused by the appellants, deceased committed suicide and died. Therefore, offence under Section 498-A and 306 IPC is made out. Though the appellants have not committed offence under Section 4 of Dowry Prohibition Act, this court finds from the material evidence that the appellants have committed the offence under Section 498-A and 306 IPC. Therefore, the trial court rightly appreciated the evidence and convicted the appellants.



28. Learned counsel for the appellants in support of his contentions, placed reliance on above referred to decisions. However, a perusal of the same would go to show that the said decisions are not applicable to the present case on hand. This court has already stated that the deceased husband's family and her parents family are in the same village and the prosecution witnesses have clearly spoken about the demand of car and harassment and cruelty caused to the deceased for not having issue. Therefore, the prosecution has proved the case by cogent and consistent evidence. Further it is settled proposition of law that every criminal case has to be decided based on the facts and evidence available and not on precedence. The learned counsel for the appellants would submit that the parents of the 1st appellant were residing separately and therefore, they were not in a position to cause any cruelty to the deceased. But all the prosecution witnesses have stated that the 1st appellant, deceased and the parents of the 1st appellant were living as joint family. A-1 and A-3 caused cruelty and harassment to the deceased and so she committed suicide and died. Therefore, the appellants abetted for committing suicide. Therefore, this court does not find any merit in the appeal. This court finds that the appellants have committed offence under Section 498-A and 306 IPC.

29. For the above said reasons, this court does not find any reason to interfere with the finding of the trial court for the offences under Sections 498-A and 306 IPC. Therefore, the judgment of conviction and sentence passed for offence under Sections 498-A and 306 IPC are confirmed. However, conviction and sentence awarded against the 1st appellant for offence under Section 4 of Dowry Prohibition Act, is set aside. Accordingly, the Criminal Appeal is partly allowed with the above modification.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Inspector of Police, Velankanni Police Station, Nagapattinam District.
2. The Sessions Judge, Fast Track Mahila Court, Nagapattinam District.



3. The Judicial Magistrate, Nagapattinam.

4. The Superintendent, Central Prison, Cuddalore.

5. The Superintendent, Central Prison,
Trichy Women Cell.

6. The Section Officer,
Criminal Section, High Court, Madras.

7. The Public Prosecutor Office,
High Court, Madras.

Crl.A.No.67 of 2021

PVS (CO)
CB(06/08/2021)