



2. The first accused/petitioner is the husband of the deceased Nagamani. The second and third accused are the parents of the first accused.

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3. The case of the prosecution is that the deceased was subjected to a continuous mental and physical harassment due to demand of dowry; on 26.07.2011 at about 6.30 am, the deceased called her parents and told that it is not possible for her to live with the first accused at his house; after a short while, the deceased hanged her son Santhosh and after he died, she also committed suicide by hanging.

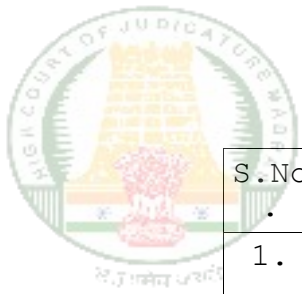
4. On the complaint given by P.W.1 - Ganesh, brother of the deceased on 26.07.2011 at 11.45 pm, P.W.8 - Special Sub-Inspector, registered a case in Crime No.176 of 2011 of Kelemangalam Police Station under Section 174 Cr.P.C., for doubtful death and prepared the F.I.R. (Ex.P5); thereafter, P.W.11 - Deputy Superintendent of Police, took up the case for investigation, went to the place of occurrence, prepared observation Mahazar and rough sketch in the presence of the witnesses and further, examined the witnesses and recorded their statements; since his enquiry revealed that the deceased had committed suicide after seven years of marriage, he prepared an alteration report by altering the charges under Sections 174 Cr.P.C into 304(B), 306, 498(A) IPC and Section 4 of Dowry Prohibition Act and sent the alteration report (Ex.P8) to Court; he arrested the accused on the same day i.e. on 27.07.2011 and sent him to judicial custody; on getting the intimation from Police, P.W.9 - RDO went to Government hospital (where the body of the deceased was kept) and conducted the inquest and prepared the inquest report (Ex.P6); in his inquest report, he had stated that the deceased had died due to dowry harassment.

5. P.W.6 - Doctor Anbarasu conducted post-mortem on the body of the deceased and given his post-mortem report (Exs.P2 & P3); in his post-mortem report, he has stated that both the deceased have died due to haltering. He noticed the following external injuries on the body of the deceased and given his final opinion as under:-

A male child body lies on its back with all four limbs extended.

External Injuries.

Ligature mark 22 cms x ½ cms starting from 3 cms below the middle of mandibular region encircling the nape of neck upto (Lt) angle of Mandible, another ligature mark



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S.No	Accused	Provisions under which convicted	Sentence
1.	A1	498 (A) IPC	3 years Rigorous Imprisonment and a fine of Rs.10,000/-
		304 (B) IPC	7 years Rigorous Imprisonment and a fine of Rs.10,000/-
		4 of Dowry Prohibition Act	1 year simple imprisonment
			In default of payment of fine 6 months Simple Imprisonment.
2.	A3 is acquitted under Section 235(i) Cr.P.C.		

All the sentence has to run concurrently.

10. The second accused died during the pendency of the case and the third accused was acquitted.

11. Aggrieved over the above judgement, the first accused has preferred this Criminal Appeal.

12. Heard the learned counsel for the appellant/first accused and the learned Government Advocate (Crl. Side) appearing for the respondent State.

13. The learned counsel for the appellant/first accused submitted that the materials available on record does not disclose any demand for dowry and the learned trial Judge had omitted to note this material aspect. It is further submitted that one of the witnesses has stated that the above said quarrel between the deceased Nagamani and the first accused was with regard to allowing their 1 ½ years old child carelessly to road; P.W.1, the brother of the deceased Nagamani also deposed evidence by stating that the deceased Nagamani and the first accused were living peacefully for one year from the date of marriage; the first accused was amenable to the desires of the deceased and he even set up a separate family by taking a separate house; these aspects were not properly dealt by the learned trial Judge and hence, the judgement has to be set aside.

14. The learned Government Advocate submitted that the occurrence had taken place within 7 years of marriage and there was a demand of dowry by way of demanding a land to be settled in his favour.



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15. Point for consideration:-

Whether the conviction and sentence of the accused for the offence under Sections 498 A, 304 B of IPC and 4 of Dowry Prohibition Act by the learned Sessions Judge based on the materials available on record is fair and proper?

16. Whenever a person is charged for the offence under Section 304(B), a presumption has to be taken against the accused as per Section 113B of the Indian Evidence Act. In order to draw such a presumption in favour of the prosecution, it is obligatory on the part of the prosecution to prove certain facts as seen in Section 113B. For better appreciation, Section 113B of the Indian Evidence Act is extracted as under:-

"113B. Presumption as to dowry death. ---When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death."

17. During the course of the arguments, the learned counsel for the appellant relied on the decision reported in Manu/SC/0243/2013 [Bakshish Ram and Ors. Vs. State of Punjab] and submitted that before drawing the presumption, it should be proved that the woman was subjected to cruelty or harassment before her death. In the said judgement it is held as under:-

12 . We have already noted Section 304B Indian Penal Code and its essential ingredients. Section 113B of the Evidence Act is also relevant for the case in hand. Both Sections 304B and 113B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to compact the increasing menace of dowry deaths. Section 113B of the Evidence Act reads as under:

113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860)



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As per the definition of "dowry death" in Section 304B Indian Penal Code and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients amongst others, in both the provisions is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment "for or in connection with the demand for dowry". While considering these provisions, this Court in *M. Srinivasulu v. State of A.P.* MANU/SC/7892/2007 : (2007) 12 SCC 443 has observed thus:

... The presumption shall be raised only on proof of the following essentials:

- (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 304-B Indian Penal Code.)
- (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.

18. In the case in hand, there is no disagreement on the point that the marriage between the deceased and the first accused had taken place within seven years from the date of occurrence. However, it has been proved before the Court that the deceased was subjected to cruelty or harassment by the first accused or in connection with the demand of dowry and such cruelty or harassment should have been caused soon before the death of the deceased.

19. The defacto complainant, who was examined as P.W.1, has stated in his evidence that the deceased and the first accused were living peacefully for one year after marriage and thereafter, they lived as a separate family. That would show that immediately after marriage, they lived as a joint family and as per the wishes of the deceased, the first accused had set up a nuclear family. The couples were blessed with a child also. There are allegations against the accused that he was in a habit of demanding dowry in the form of land and jewels. It is seen from the evidence of P.W.1 that before 15 days of the occurrence, the couple had been to the mother's place of the

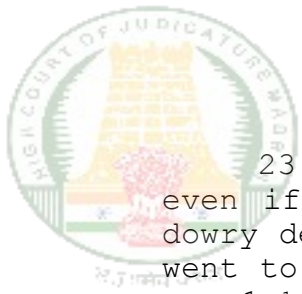


deceased for celebrating a temple festival; on the day of occurrence i.e., on 26.07.2011 at about 6 pm, P.W.1 is said to have received a call from his sister that he should come immediately and take her back; however, P.W.1 seem to have replied that he had some field work and he could only come at about 4 pm in the evening. At about 6 pm, he received a call from the neighbours of the deceased that she died due to hanging.

20. In the evidence of P.W.1, he has stated that due to continual dowry demand made by the first accused, they convened Panchayat and convinced him each time. P.W.4 - Gopal Reddy, who was examined as a Panchayatadar has stated that on coming to know about the harassment given to the deceased, he held a Panchayat along with the other villagers and convinced the accused but his evidence does not reveal the exact/approximate date and time when the said Panchayat was held; his evidence does not disclose the names of other Panchayatadars, who were present during the Panchayats. However, the cross-examination of P.W.1 would reveal that one Seenan also participated in the Panchayat but the said Seenan has not been examined.

21. It is curious to note from the evidence of P.W.1 that only according to the wishes of the deceased, the first accused agreed to set a separate family by settling her in a separate house. Since she wished to shift to a bigger house, he got back the advance amount of his old house and found a bigger one. When it was suggested to P.W.1 that the deceased was in a habit of coming to his house by quarrelling with her husband, P.W.1 denied. However, he has stated that his sister (deceased) used to come along with her husband and during that time, the husband would tell P.W.1 that his sister should be properly advised not to fetch frequent problems in the family.

22. The above evidence of P.W.1 would reveal that the life between the deceased and the accused was near normal and even the quarrels between them were also like quarrels that would usually come between the couples. And that is the reason why the first accused had requested P.W.1 to advise his sister. One further thing to be noted in the evidence of P.W.1 is that on the day of occurrence when the deceased called him, he did not rush to her house immediately to bring her back; he convinced her that he would come at 4'o clock as he had some other work. Had there been some serious consequences of the demand for dowry that was alleged to have been made on the day of occurrence, P.W.1 would have felt it badly and immediately rushed to take her back to his house. But P.W.1 had convinced his sister in a normal manner.



23. But one strange thing which is not understandable is even if it is accepted for the sake of argument that there was dowry demand, I find no convincing reason as to why the deceased went to the edge of taking the cruellest decision of killing her own 1 ½ years old child. Normally, when the woman is subjected to harassment due to dowry demand, she would not take such extreme steps of killing the child before killing herself. This strange episode has got some relevance to the statement of P.W.7 before the RDO. In the statement before the RDO, it appears that P.W.7 has stated that on the previous day of the occurrence, there was a quarrel between the couples in connection with letting their baby to road. The statement of P.W.7 to RDO, would also reveal that there was a quarrel between the couples before six months because of some family reasons.

24. P.W.2, father of the deceased - Nagamani has also stated that before 15 days of the occurrence, the deceased had been to the native place with her husband for a temple festival; on the day of occurrence, at about 6 am, he called her son and told him that she was subjected to harassment by all the three accused by demanding dowry. However, none of the witnesses who are residing nearby to the house of the deceased had been examined to state that the parents of the first accused was also present at the place of occurrence during the relevant time. P.W.2, the father of the deceased has also stated in his evidence that the deceased and the first accused were living in a separate family as she refused to live in the village with her in-laws. He has further stated that his daughter Nagamani was having a tendency to get angry even for trivial issues.

25. With the above evidence of the prosecution witnesses, it is difficult to conclude that the deceased was subjected to the dowry harassment soon before her death. P.W.3 has given her submission during her cross-examination that when she was inquired by the RDO, she has not stated that the deceased was physically harassed due to the demands of jewels, money or land. P.W.3 being the mother of the deceased, had there been a demand for dowry, she would have been the first person who knew about the same. But she did not tell before the RDO that there was a demand for dowry and the deceased Nagamani was subjected to such harassments right from her marriage.

26. It is relevant to note that the deceased and the first accused were living a happy life without any problems between themselves. None of the witnesses has spoken about any of the events that had immediately proceeded the occurrence. Excepting the statement of P.W.1 that there was a quarrel between the couple in connection with the child. The extreme decision taken by the deceased Nagamani to hang her 1 ½ years old son would also show that she was in an extreme anger, apart from



frustration. So the evidence of P.W.2, who has stated that the deceased was very emotional and she would tend to get angry even for trivial issues assumes relevance. P.W.9 RDO who conducted the inquest has also stated in his evidence that the accused himself has given the statement before him by stating that only because he scolded Nagamani for not caring the child properly, they had a quarrel between themselves. But strangely RDO did not enquire into this aspect, despite he believed that whatever the accused stated is true and his evidence on this aspect are extracted as under:-

1 ம் தேதி என்னிடம் வாக்குமூலம் கொடுத்தபோது தன்னுடைய குழந்தை ரோட்டில் செல்வது தொடர்பாக அதனை சரியாக பார்க்கவில்லை என்பதற்காக திட்டியதாக வாக்குமூலம் கொடுத்துள்ளார் என்றால் சரி அவர் கூறிய விபரங்கள் பற்றி விசாரணை செய்யவில்லை. அவர் கூறியது உண்மை என்றுதான் நான் நம்பினேன்,

27. The very object of inquesting the Review Officer like RDO is to cull out the truth behind the death of the deceased, wherever the death of a woman had occurred within 7 years of marriage due to suicide. So it is obligatory on the part of the RDO to explore the facts and circumstances of her death by enquiring the witnesses and give a detailed report as to whether the dowry demand was a cause for her death. But P.W.9 did not conduct the enquiry in all seriousness despite he stated that there is some truth in the statement of the first accused before him. Even during the chief examination also the first accused had stated that they happened to quarrel only because of the child was led to the road. But the learned trial Judge failed to notice all these essential aspects.

28. Since the materials on record did not prove that the deceased was subjected to cruelty or harassment soon before her death in connection with any demand for dowry, the prosecution is not entitled to get the initial presumption under Section 113B. In the absence of initial presumption, it is for the prosecution to prove beyond reasonable doubts that the death of the deceased had occurred as stated by the prosecution.

29. It is seen from the evidence of the father and the brother of the deceased herself that they did not take it all seriousness when she called them in the morning and asked them to take her back. Had the deceased subjected to cruelty, they would have taken it very seriously and gone to her house immediately. Since the deceased killed herself and her 1 ½ years old son, it can be reliably presumed that she was a very emotional woman who might lose her temper even for small irritation. In the said backdrop of facts, I feel there are reliable materials available on record to give benefit of doubt



to the accused. Since the learned trial Judge omitted to appreciate the evidence in a right perspective, I feel that the judgement is liable to be set aside.

In the result, this Criminal Appeal is allowed and the judgement of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, dated 30.01.2015 in SC.No.92 of 2012 is set aside.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Sni

To

1. The Sessions Judge, Fast Track Mahila Court,
Krishnagiri District.
2. District Munsif cum Judicial Magistrate,
Denkanikottai.
3. The Superintendent of Prison,
Central Prison,
Vellore.
4. The Inspector of Police,
Kelemangalam Police Station,
Kelemangalam,
Krishnagiri District.
5. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Mohideen Basha, Advocate, S.R.No.65873

Cr1.A.No.119 of 2015

RR(CO)
SU(31/01/2022)