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BAIL SLIP

The Appellants / Accused in CrI.A.No.318 of 2019 were released in bail vide order of this Court, dated 10.06.2019 made in CrI.M.P.No.7048 of 2019 in CrI.A.No.318 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NOS.318 & 604 OF 2019

CrI.A.No.318 of 2019 :

1.R.Ananth

2.R.Yasoda

...Appellants

Versus

State by
The Assistant Commissioner of Police,
Sembium Range, Chennai.
(Crime No.1592 of 2014)
(Sembium Police Station),
Chennai City.

...Respondents

CrI.A.No.604 of 2019:

Dharmalingam

...Appellant

Versus

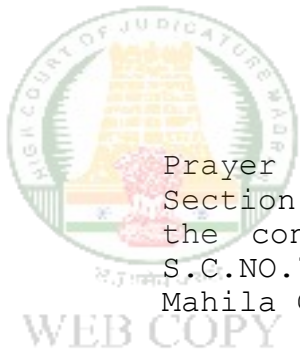
State rep by,
1.The Assistant Commissioner of Police,
Sembayam Range, Chennai.

2.Anand

3.Ramachandran

4.Yesodha

...Respondents



Prayer in both the Appeals : Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction imposed in Judgement dated 30.05.2019 made in S.C.NO.71 of 2016 on the file of the learned Sessions Judge, Mahila Court, Chennai.

Crl.A.No.318 of 2019 :

For Appellants : Mr.V.Karthic, Senior Counsel,
for Mr.E.J.Ayyappan.

For Respondent : Mr.S.Sugendran
Government Advocate [Crl. Side]

Crl.A.No.604 of 2019 :

For Appellant : Ms.D.Prasanna

For Respondents : Mr.S.Sugendran, (for R1)
Government Advocate [Crl. Side]
: R3 - Died and Charge abated
: Mr.V.Karthic, Senior Counsel,
for Mr.E.J.Ayyappan. (for R2 & R4)

COMMON JUDGMENT

The Criminal Appeal No.318 of 2019 is filed by the appellants, who are the accused in S.C.No.21 of 2016. The appellant in Crl.A.No.604 of 2019 is the de-facto complainant.

2.For the sake of convenience, the ranking of the parties are mentioned as arrayed in the Sessions case.

3.The respondent/police originally registered the case under Section 174(3) of Cr.P.C., in Crime No.1592 of 2014, against the accused A1, A2, A3. After inquest and investigation, the offences were altered into 498(A), 304(B) of IPC., or in alternative of Section 306 of IPC. After investigation, the investigation officer laid a charge sheet before the learned V Metropolitan Magistrate, Chennai. The learned Metropolitan Magistrate, taken the charge sheet on file in PRC.No.109 of 2015. After completing the formalities, since the offence is exclusively triable by the Court of Session, it has committed the case to the learned Principal Session Judge. The learned Principal Session Judge has taken the case on file in S.C.No.71 of 2016 and made it over to the Sessions Judge, Mahila Court, Chennai, for disposal of the case. The learned Sessions Judge, Mahila Court, on receipt of the records and after completing the formalities, framed the first charge against A1 & A3 for the offence under Section 498(A) of IPC., and the second charge



against the accused A1, and A3, for the offence under Section 306 of IPC. After framing charges and completing the formalities, the Trial Court altered the second charge of Section 304(B) of IPC., or in alternate Section 306 of IPC.

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4. In order to prove the case of the prosecution, on the side of the prosecution, during trial, 10 witnesses were examined as PW.1 to PW.10 and 17 documents were marked as Ex.P1 to Ex.P17, besides one material object was marked as MO.1. After completing the examination of prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses were put before the accused, they denied the same as false and pleaded not guilty. On the side of the defence one witness was examined as DW.1 and two documents were marked as Ex.D1 & D2.

5. On completion of trial and conclusion of the arguments advanced on either side, considering the oral and documentary evidence and other materials placed before the Trial Court, the Trial Court not found the accused guilty for the offence under Section 304(B) and 306 of IPC., and found A1 to A3 guilty of the offence under Section 498(A) of IPC., and sentenced them to undergo two years simple imprisonment and to pay fine of Rs.5,000/- each, in default, to undergo further period of six months simple imprisonment for the offence under Section 498(A) of IPC., and acquitted them for the offence under Section 304(B) or in alternate under Section 306 of IPC., During the pendency of trial, the accused/A2 died and the charge against him got abated.

6. Now challenging the said Judgment of conviction and sentence passed by the Trial Court against A1 to A3, they have filed Criminal Appeal No.318 of 2019. Challenging the acquittal of the accused for the offence under Section 304(B) or alternatively 306 of IPC., and also lesser punishment of sentence of imprisonment imposed against the appellants/accused A1 & A3 for the offence under Section 498(A), the de-facto complainant has filed the Criminal Appeal No.604 of 2019, before this Court.

7. Since both the appeals are arising out of the same Judgment, both appeals are heard together and decided by this Common Judgment.

8. The learned counsel for the accused/appellant in CrI.A.No.318 of 2019 would submit that the prosecution failed to prove its case beyond reasonable doubt. Though the Trial Court rightly appreciated the evidence and acquitted the accused for offence under Section 304(B) or alternatively 306 of IPC, the Trial Court erroneously found that the accused committed the



offence under Section 498(A) of IPC., Further, he would submit that there is no direct evidence to show that the accused demanded dowry either from the deceased or from the parents or from the relatives of the deceased. Further, he would submit that the prosecution failed to establish that soon before the death, either the accused or the relatives induced the victim to commit suicide, therefore, the Trial Court rightly appreciated the evidence and acquitted them for the offence under Section 304(B) or in alternate of Section 306 of IPC., Even there is no proof to show the demand of dowry and the accused caused cruelty on the deceased and without any valid reasons or without any substantial materials, only on the basis of assumption and sympathy ground, the Trial Court convicted the accused for the offence under Section 498(A) of IPC., which warrants interference by this Court. Further, he would submit that the marriage between the deceased and the first accused/A1 was held on 12.11.2010. The deceased gave a birth to a male child on 17.03.2013. As per the prosecution case, the deceased/Sobana committed suicide on 13.07.2014 by hanging herself on the ground of dowry demand. But the Trial Court disbelieved the demand of dowry by rejecting the evidence of PW.1, PW.2 and PW.3. Even the RDO in his enquiry report clearly falsified the offence of dowry demand and the RDO has given the report stating that there was no provocation to the deceased for committing suicide. PW.1, PW.2 and PW.3 have gradually improved their case in the oral testimony, but there is no such allegations existing in Ex's.P1, P2 and P3. The accused had arranged ear boring ceremony of the child on 08.06.2014, thereupon the deceased was staying in the house of PW1, PW2 & PW.3, for a period of one month. She came there before the alleged occurrence taken place. Further, her child was not well from 12.07.2014 and thus, the accused was not in a position to travel to Pondicherry to attend the function arranged by the Sister of PW.2. Since the accused did not attend the function arranged by the Sister of PW.2 the deceased committed suicide and it is not due to demand of dowry or not due to harassment. Even PW.4 has deposed that the deceased and A1 were living happily and no other independent evidence was let in to prove any quarrel or harassment allegedly caused by the accused.

9. There are apparent variations and improvements made by PW.1, PW.2 and PW.3. Ex.P15 as well as the evidence of PW.1 to PW.3 would falsify the prosecution version. The deceased committed suicide on 13.07.2014 and the postmortem was conducted only on 15.07.2014. Therefore, the report of postmortem cannot be fully relied on. The child was a premature baby, at the time of alleged occurrence. In fact, she was suffering from fever, as could be seen from the deposition of PW.1 and Ex.D2. The situation was not conducive for the appellant and the deceased to travel long distance ignoring the ten months old baby. The



deceased failed to understand the situation and taken a foolish decision to commit suicide, for which the accused cannot be made responsible. The accused did not commit any offence under Section 304(B) as well as 498(A) of IPC., and there is no injury found on the body of the deceased, when the investigating officer taken the body from the scene of occurrence. Therefore, the prosecution has miserably failed to prove the case. The Trial Court rightly appreciated that there is no demand of dowry and also abetment and rightly acquitted the accused for the offence under Section 304(B) or alternatively Section 306 of IPC., The Trial Court not believed the evidence of the prosecution for that offence, but however, erroneously convicted the accused for the offence 498(A), without any reason. Therefore, the Judgment of the Trial Court is liable to be set aside and the appeal filed by the de-facto complainant has to be dismissed.

10.The learned counsel for the de-facto complainant/appellant in Crl.A.No.604 of 2019 would submit that the deceased gave birth to a male baby out of their wedlock and an ear boring ceremony conducted on 08.06.2014. Since the parents of the deceased not provided gifts and jewels to the kid or the gifts were not up to the satisfaction of the accused, the accused scolded the deceased and even they did not allow the deceased to go and participate in the function arranged by the sister of PW.1. The evidence of PW.1 to PW.3 clearly prove that from the date of marriage, the accused demanded dowry and also money, even, at the time of delivery also demanded certain things for the baby of the accused. But the things provided by the parents of the deceased is not satisfactory to the accused and they scolded her. Therefore, the accused provoked the deceased, induced her and abetted her to commit suicide. They harassed her physically and mentally and even they did not allow the deceased to talk to her parents and relatives. The first accused has not taken the deceased to the relatives premarital function to Pondicherry. The deceased therefore committed suicide and the accused only abetted her to commit suicide. Though the Trial Court rightly appreciated the evidence for the offence under Section 498(A), however, acquitted the accused for the offence under Sections 304(B) and 306 of IPC., There are sufficient materials to prove the charges for the offence under Section 304(B) alternatively, Section 306 of IPC., and the Trial Court erroneously acquitted the accused for the above said offence. Even though the trial court found the accused guilty of the offence under Section 498(A) it imposed sentence only for two years and therefore, aggrieved against such Judgment of the Trial Court, the de-facto complainant filed the present appeal before this Court. The prosecution has proved its case with enough materials placed before the Trial Court, to prove both the charges. The Trial Court failed to appreciate it properly.



There is perversity in the finding of the Trial Court for the offences 304(B) alternatively 306 of IPC., and the prosecution has proved its case beyond the reasonable doubt. However the Trial Court has not found guilty of the charged for the offence under Section 304(B) alternatively 306 of IPC., on the ground that those charges are not sufficiently proved by the prosecution and the material placed are not sufficient and hence, the benefit of the doubt has to be extended to the accused. Therefore, the Crl.A.No.318 of 2019 is liable to be dismissed.

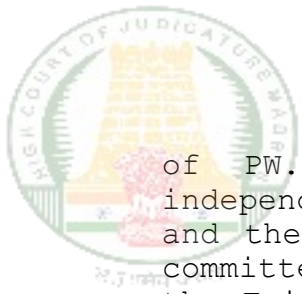
11. Heard both sides and perused the materials available on records.

12. The case of the prosecution is that the deceased committed suicide due to the harassment and cruelty caused by the accused by demanding dowry from her parents.

13. Since this Court is an Appellate Court, a final Court of fact finding, it can re-appreciate the entire evidence and give independent finding from the materials placed before this Court. Accordingly, this Court carefully perused the entire materials and the Judgment of the Trial Court.

14. The Trial Court framed charges against the accused for the offence under Sections 498(A), 304(B) or alternatively 306 of IPC. In order to substantiate, the above charges on the side of the prosecution, totally 10 witnesses were examined and 17 documents were marked, besides one material object was marked. Out of the ten witnesses, PW.1 to PW.4 are close relatives viz., PW.1 is the father of the deceased, PW.2 is the mother of the deceased, PW.3 is the elder brother of the deceased. PW.1 to PW.3, the brother and parents of the deceased have spoken about the marriage and other jewels and articles provided to the deceased for her marriage. They are no eye witnesses to the occurrence. They have stated that prior to the occurrence, ear boring ceremony was conducted to the son of the deceased and at the time, they provided jewels and articles and certain things to the deceased when the child was taken to matrimonial house. Subsequently, they heard that the deceased committed suicide and they have stated that the accused demanded certain things and they are also not satisfied with the performance of PW.1, PW.2 and PW.3, during the ceremony of the son of the deceased and thus dis-satisfied and the same would raise doubts.

15. The evidence of PW.1 to PW.3 clearly stated that prior to the occurrence, the deceased telephoned and informed that A1 quarreled with her and also beaten her and stated that money and Jewels provided for the ear borings ceremony are not sufficient and she should not participate in the function of the relative



of PW.1 and therefore, she committed suicide. Though no independent evidence was examined to prove the demand of dowry and there is no material to show that soon before the deceased committed suicide, there was no demand of dowry and abetment, the Trial Court extended the benefit of doubts in favour of the accused and that the prosecution has not proved the charge under Section 304(B) alternatively 306 of IPC., Therefore, the accused was acquitted. However, from the evidence of PW.1 to PW.3 and also the postmortem report of the Doctor and RDO enquiry report, it is clearly proved that the accused caused physical and mental cruelty to the deceased. Therefore, he was convicted for the offence under Section 498(A) of IPC., Therefore, this Court does not find any merits in the appeal in Crl.A.No.318 of 2019 filed by the accused and it is liable to be dismissed.

16.As far as the Crl.A.No.604 of 2019 filed by PW.1 is concerned, since there is no sufficient materials to prove the charge under Section 304(B) alternatively 306 of IPC., beyond reasonable doubt, there is no reason to interfere with the finding of the acquittal made by the Trial Court for the offence under Section 304(B) alternatively, 306 of IPC.,

17.It is well settled preposition of law that while interfering with the order of the acquittal by the Trial Court, the Appellate Court must assign reason for interference with the findings of the Trial Court and to show how the judgment of the trial court is untenable. If two views possible, the benefits would have to be extended to the accused. Unless there are compelling circumstances, an Appellate Court should not interfere with the order of acquittal, when two views are possible. The Trial Court has recorded the order of acquittal on appreciation of evidence, hence, the interference of the Appellate Court is to be restricted. A reading of the entire materials produced by the prosecution before the Trial Court, especially the evidence of PW.1 to PW.3 shows that the Trial Court found that the prosecution has not proved the charge for the offence under Section 304(B) alternatively Section 306 beyond the reasonable doubt.

18.This Court does not find any compelling circumstances to interfere with the finding and the acquittal made by the Trial Court for the offence under Section 304(B) alternatively 306 of IPC., but, however, this Court finds that there are sufficient materials available and the prosecution also proved the charge for the offence under Section 498(A) of IPC., against the accused. PW.1, PW.2 and PW.3 have categorically stated that there was a quarrel between the deceased and the appellants on the ground that the Jewels and money provided by the parents of the deceased was not sufficient and the articles provided does not meet out the expectations of the accused and therefore they



caused cruelty to the deceased. Soon before the deceased committed suicide, there was no demand of dowry or abettment to commit suicide and it was not proved, however, cruelty caused by the accused to the deceased was proved by the prosecution. Though the Trial Court found the accused guilty of the offence under Section 498(A), it imposed sentence for only two years. Considering the facts and circumstances of the case, due to the cruelty caused by the accused the deceased committed suicide, the sentence imposed by the Trial Court is liable to be enhanced, hence, the sentence of two years imposed by the Trial Court is modified and enhanced to three years, which would meet the ends of justice. Therefore, Crl.A.No.604 of 2019 is partly allowed.

19.In the result, Crl.A.No.318 of 2019 is dismissed and Crl.A.No.604 of 2019 is partly allowed, with modification as indicated above.

20.Since the accused were released on suspension of sentence, the respondent/police is directed to secure the accused to serve remaining period of imprisonment.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Mahila Court,
Chennai.
- 2.The Assistant Commissioner of Police,
Sembium Range, Chennai.
(Sembium Police Station),
Chennai City.
- 3.The Chief Metropolitan Magistrate,
Egmore,
Chennai (For Information)
- 4.The V Metropolitan Magistrate,
Egmore,
Chennai.



5.The Public Prosecutor,
High Court,
Madras.

+3ccs to Mr.E.J.Ayyappan, Advocate Sr.No.38696 & 38607

CrI.A.Nos.318 & 604 of 2019

SSV(CO)
RVM(14/02/2022)