



Crl.A.No.36 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.36 of 2022

1. Sathish

2. Parvathammal

3. Kirshnappa

4. Rathinammal

5. Arunkumar

... Appellants

Vs.

The State Rep. By
The Inspector of Police,
Shoolagiri Police Station,
Krishnagiri District.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of CrI.P.C., to call for the records in S.C.No.95 of 2019 on the file of the learned Sessions Judge, (Fast Track Mahila Court), Krishnagiri District dated 28.12.2021 and set aside the judgment dated 28.12.2021 made in S.C.No.95 of 2019.

For Appellants : Mr.P.Muthamizh Selvakumar

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 28.12.2021 passed in S.C.No.95 of 2019 on the file of the Sessions Judge, (Fast Track Mahila Court), Krishnagiri District.

2. The respondent police registered the case against the appellants 1 to 3 for the offence under Sections 304 (B) IPC and against the appellants 4 and 5 for the offence under Section 304(B) read with 109 IPC in Crime No.425 of 2016.

3. After investigation, laid a charge sheet before the Judicial Magistrate No.I, Osur. The learned Magistrate taken the charge sheet on file in P.R.C.No.1 of 2018. Since the offences are exclusively triable by the Court of Sessions, the case was committed to the learned Principal Sessions Judge, Krishnagiri and he has taken the case on file in S.C.No.95 of 2019 and made over to the learned Sessions Judge, (Fast Track Mahila Court), Krishnagiri District. The learned Special Judge after completing the



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formalities, framed the charges against the appellants 1 to 3 for the offence 498(A) and 304(B) IPC and against the appellants 4 and 5, for the offence under Section 304(B) read with 109 IPC.

4. After framing of charges and completing the formalities during trial, in order to prove the case of the prosecution, as many as 20 witnesses were examined as P.Ws.1 to 20 and 14 documents were marked as Exs.P1 to P14. No material object was exhibited.

5. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses, put before the accused by questioning under section 313 Crpc., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, two witnesses were examined and two documents were marked.

6. On completion of trial, hearing the arguments advanced on either side and considering the materials the trial judge found the appellants 1 to 3



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guilty for the offence under sections 498(A) and 304(B) IPC., and convicted them and sentenced to undergo two years Rigorous Imprisonment and to pay fine of Rs.3,000/- in default to undergo six months Rigorous Imprisonment for the offence under Section 498(A) IPC and sentenced to undergo 10 years Rigorous imprisonment for the offence under Section 304(B) IPC. Further, the trial court found the appellants 4 and 5 guilty for the offence under Section 304(B) read with 109 IPC and sentenced to undergo 10 years Rigorous Imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

7. Learned counsel for the appellants would submit that the deceased is the wife of the first appellant and the deceased committed suicide on 09.09.2016 at the house of the defacto complainant by hanging with her saree. The date of occurrence is 09.09.2016, but the complaint preferred by the defacto complainant on 10.09.2016 at about 11 am. Delay in filing the F.I.R was not properly explained by the prosecution. He further submitted that the prosecution has stated that the deceased was committed suicide by



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using her saree but the same was not recovered by the prosecution. There is no eye witness in this case. Independent witnesses have not supported the case of the prosecution. The interested witnesses, who are close relatives of the deceased alone supported the case of the prosecution. P.Ws. 7 and 8 have stated that they do not know to read and write Tamil and they have stated everything in Telugu and they do not know what is written in the statement. Therefore, none of the witnesses have spoken about the demand of dowry or the cruelty alleged to have caused by the appellants. The appellants 4 and 5 are strangers and they are no way connected with the incident. First appellant is the husband of the deceased. Second and third appellants are the parents of the first appellant and in-laws of the deceased. The fourth appellant is not related to them. Fifth appellant is the son of the fourth appellant. There is no specific overt act as against the appellants 4 and 5. The only allegation is that the fifth appellant demanded money, since the first appellant and fifth appellant are partners in the business that they are asking their legitimate share, which is not demanding of dowry. Appellants 4 and 5 are only business partners, not family members. The prosecution has not proved that the fourth appellant is the concubine of the



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first appellant. Hence fourth and fifth appellants are no way connected with the family members of the deceased and the first appellant. Therefore, the trial court miserably failed to appreciate the evidence of the prosecution especially against the fourth and fifth appellants.

8. Further, the learned counsel for the appellants would submit that there is no material to show that the appellants 1 to 3 demanded dowry. It is not mentioned in the complaint that on which date they demanded dowry and the specific amount which was demanded by the appellants. In the absence of any specific date and amount which is related to the marriage, the Dowry Prohibition Act would not attract. The trial court miserably failed to appreciate the evidence in the right perspective and wrongly convicted the appellants without any material which is against the proposition of law and the appeal has to be allowed and the conviction and sentence passed by the trial court against the appellants are liable to be set aside.



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9. Learned Additional Public Prosecutor would submit that the deceased was working as Village Assistant and she is a physically challenged woman. Marriage between the first appellant and the deceased was solemnized on 06.12.2015. At the time of marriage, the complainant has provided 3 sovereign bracelet, 1 sovereign ring and Rs.90,000/- cash to the first appellant. After the marriage, the deceased has come to know that the first appellant has intimacy with the fourth appellant and the same was questioned by the deceased, the first appellant demanding Rs.10,00,000/- to leave the relationship with the fourth appellant and also kicked on the stomach of the deceased. At that time, the deceased was pregnant. Since she had stomach ache, she was taken to the hospital and before the doctor the deceased has not revealed the act of the first appellant. Thought other witnesses were turned hostile, P.Ws. 1 and 2 are the parents of the deceased, they have clearly narrated the incident. Ex.P2, earlier complaint reveals that there was a demand of dowry. Since the first appellant had illegal intimacy with the fourth appellant, he demanded money from the deceased. On 30.05.2016 itself, there was a complaint given by the deceased against the appellants. Therefore, from Ex.P2 previous complaint even prior to the



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present complaint, it is proved that the appellants have committed the offence. From the evidence of P.Ws.1 to 3 and the medical evidence clearly shows that the death of the deceased is unnatural and the post-mortem report also proved the same. Prosecution proved its case beyond all reasonable doubt. The Trial Court rightly appreciated the entire evidence and convicted the appellants and there is no merit in the appeal and the same is liable to be dismissed.

10. Heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

11. Admittedly marriage of the first appellant with the deceased was solemnized on 06.12.2015. The deceased died on 09.09.2016. The deceased died within nine months from the date of her marriage. Therefore, there is a presumption under Section 113(B) of Indian Evidence Act. After investigation, the prosecution found that the death is due to dowry harassment and due to cruelty caused by the first appellant. The Executive



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Magistrate conducted an enquiry and the report of the Executive Magistrate was marked as Ex.P10, in which the learned Magistrate has clearly stated that there was a demand of dowry and also physical and mental cruelty has been caused to the deceased.

12. In order to substantiate the charges, on the side of the prosecution, totally 20 witnesses were examined out of which, P.W.1 is the father of the deceased. He has clearly narrated about the marriage between the first appellant and the deceased and also demand made by the appellants during marriage and also subsequent to the marriage. He has also stated about the illegal intimacy of the first appellant with the fourth appellant and when the same was questioned, the first appellant kicked her daughter while she was two months pregnancy. Due to that she was admitted in hospital. Subsequently, he took the deceased to his house and also gave complaint on 30.05.2016 before the respondent police. Thereafter, the deceased strangled herself with saree and died. P.W.1 father of the deceased has stated that the deceased stated through phone to him that if he does not give Rs.10,00,000/- to the appellants, they would kill his daughter. P.W.1



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categorically narrated the entire cruelty caused by the first appellant to the deceased. P.W.2 mother of the deceased has also clearly narrated the entire incident. P.W.3 also spoken about the cruelty caused by the first appellant to the deceased. Mahazar witness and other witnesses were turned hostile. The doctor one who conducted autopsy of the deceased was examined as P.W.17. Evidence of P.W.17 clearly shows that the death of the deceased is unnatural. P.W.16 , the doctor has stated about the mis-carriage of foetus of the deceased. Therefore, from the evidence of P.Ws.1 to 3 and P.Ws.16 and 17 and also documentary evidence Ex.P1-complaint, Ex.P2-previous complaint, Ex.P7-post-mortem report, Ex.P10-report of the Executive Magistrate, it is found that the death of the deceased is unnatural and it was caused within seven years from the date of marriage. From the evidence of Executive Magistrate, it is found that the death of the deceased has caused due to demand of dowry. The prosecution established that within one year from the date of marriage, there was a demand of dowry and also there was cruelty and harassment on her even soon before the death of the deceased.



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13. Since this Court is the appellate court, it is a final court of fact finding, it has to re-appreciate the entire evidence and give finding independently. Accordingly this Court also carefully perused the entire materials finds that there was a demand of dowry made by the appellants 1 to 3 and also the appellants caused cruelty on the deceased and the appellants 4 and 5 have also along with other appellants demanded money and threatened the deceased. Due to their demand, and also mental and physical cruelty caused by them, the deceased died. Though other witnesses were turned hostile, the parents and brother of the deceased have clearly spoken about the demand of dowry and cruelty made by the first appellant. The death of the deceased is unnatural and it occurred within seven years from the date of marriage, especially in this case, within one year. On a reading of the entire materials, this Court finds that the prosecution proved its case. The presumption under Section 113(B) of Evidence Act is a rebuttable presumption. It is the duty of the defence to rebut the presumption, when the prosecution has established or proved that death was within seven years from the date of marriage due to demand of dowry, the law presumes that it is dowry death, then onus has been shifted to the



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defence to rebut the presumption. Cases of this nature, no independent eye witness can be expected and family members alone are the best witnesses to speak about the dispute between the family members or in-laws or between husband and wife.

14. This Court do not find any perversity in the appreciation of the evidence and there is no merit in the appeal and the same is liable to be dismissed. Accordingly the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed. The conviction and sentence of imprisonment imposed on the appellants are confirmed. Trial Court is directed to secure the custody of the fifth appellant/A5 to undergo the remaining period of sentence. The period of imprisonment already undergone by the fifth appellant shall be set off under Section 428 Cr.P.C.,

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Index:yes/No
Internet:yes/No

12/14



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To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri District.
2. The Inspector of Police,
Shoolagiri Police Station,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Chennai.



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P.VELMURUGAN, J.

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