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Crl.A.No.26 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.26 of 2020

Ramachandran

... Appellant

Vs.

The Inspector of Police,
Kunnam Police Station,
Kunnam, Perambalur District.
(Crime No.317 of 2016)

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the conviction and sentence imposed on the appellant under section 498(A) I.P.C. in S.C.No.41 of 2018 dated 18.12.2019 by the learned Mahila Judge, Perambalur by the judgment dated 18.12.2019.

For Appellant : Mr.K.Selvarrangam

For Respondent : Mr.R.Murthi
Government Advocate (Crl.side)

ORDER

This Appeal has been filed by the appellant as against the order of



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conviction in S.C.No.41 of 2018 on the file of the learned Mahila Judge, Perambalur by judgment dated 18.12.2019.

2.The respondent/ Police registered a case in Crime No.317 of 2016 based on the complaint given by the mother of the deceased, PW-1 against the appellant under Section 174(3) Cr.P.C. (initially a case) and under 4(c) of Dowry Prohibition Act, 1961. Subsequently, after the inquest, during the investigation, the offence was altered under Sections 498 A and 306 I.P.C. After investigation, the Investigation Officer laid the charge sheet before the Judicial Magistrate, Perambalur for the offences under Section 498A, 306 and 304B I.P.C.

3.The learned Judicial Magistrate took the charge sheet on the file in P.R.C.No.5/ 2018 and committed the case to the Principal District and Sessions Judge, Perambalur. The learned Principal District and Sessions Judge had taken the case on file in S.C.No.41 of 2018 and made over the case to the Mahila Court, Perambalur, since, the offences are against a woman.

4.Learned Mahila Judge, after completing the formalities framed the



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charges against the appellant and other accused for the offences under Sections 498A, 306 and also 304 B I.P.C.

5. On conclusion of the trial, the learned Judge of Mahila Court acquitted 2nd and 3rd accused from all the charges and the appellant/ A1 was also acquitted of the charges under Section 306 and 304B. However, the appellant was found guilty for the offence under Section 498 A I.P.C. alone and convicted and sentenced A1 to undergo 3 years Rigorous Imprisonment. Challenging the said judgment of conviction and sentence, the first accused has filed the present Appeal before this Court.

6. The case of the prosecution is that the deceased was married to the appellant. Their marriage was solemnized on 02.11.2014. The said marriage was an arranged marriage and at the time of marriage, 20 sovereigns of gold and house hold articles worth about Rs.2,00,000/- (Rupees Two Lakhs only) have been provided. According to the prosecution, at the time of marriage, the parents of the deceased agreed to provide 30 sovereigns of gold. But they were able to provide only 20 sovereigns and agreed to provide the remaining 10 sovereigns of gold subsequently. The sister-in-law of the



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deceased had a dispute with her husband and was staying in her parental house. The appellant, in order to set-up a poultry farm, insisted the deceased to get a sum of Rs.2,00,000/- (Rupees Two Lakhs only) from her parents and all the accused also insisted to get the money and also provide further jewels and caused cruelty on her. Due to the demand of the remaining gold and also the money all the accused caused physical as well as the mental cruelty to the deceased. Therefore, on 12.05.2016 at about 5.00 p.m., the deceased consumed a pesticide of insects and she was admitted in the Government Hospital, Ariyalur and since she did not respond to the treatment, she died at about 6.00 p.m. Therefore, a case was initially registered under Section 174(3) Cr.P.C. The Inquest Report of the Revenue Divisional Officer reveals that the death of the deceased was a suicide due to demand of dowry and cruelty. Since the deceased died within 7 years from the date of marriage, the case was registered under Section 304-B I.P.C which is dowry death.

7.After completing the formalities, the respondent/ Police laid the charge sheet before the concerned Judicial Magistrate and after completing the formalities under Section 207 C.r.P.C., committed the case to the



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learned Principal Sessions Judge, Ariyalur, since the offences are exclusively triable by the Court of Session. The learned Principal Sessions Judge, Perambalur, took the case on file in S.C.No.41 of 2018. After completing the formalities under Section 309 Cr.P.C., he made over the case to the Mahila Court, since, the offence is against woman.

8.The learned Judge of Mahila Court framed the charges for the above said offences. In order to substantiate the above said charges, during the trial, on the side of the prosecution, as many as 17 witnesses were examined as PW1 to PW17 and 15 documents were marked as Ex-P1 to Ex.P15. No material object was produced.

9.On completion of the examination of the evidence of the above said prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put to all the accused under Section 313 Cr.P.C. However, they have denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was let in.



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10. On conclusion of the trial, hearing of the arguments was advanced on either side and considering the material facts, the appellant/ A1 was found guilty of the offence under Section 498-A I.P.C and was convicted for the said offence and to undergo rigorous imprisonment of 3 years. However, the appellant was acquitted of the other two charges and the other accused were also not found guilty of any of the charges and were acquitted from the above charges. Aggrieved by the same, the appellant is before this Court.

11. The learned counsel for the appellant submitted that the occurrence was alleged to have taken place on 12.05.2016 and the report was given to PW11, the Head Constable, Kunnam Police Station on 13.05.2016 at about 11.30a.m. The evidence of PW11 shows that there is no explanation for the delay in giving the complaint Ex.P1. Therefore, the unexplained delay is fatal to the case of the prosecution.

12. Further, he submitted that there is no mentioning about demand of dowry in Ex.P1 complaint and there is also no mentioning about the Panchayat held prior to the occurrence and therefore, the genesis of the complaint itself is doubtful. Further, he submitted that there is no Panchayat



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prior to the occurrence as per the evidence of PW6 and PW7 and the deceased was taken to the appellant's house and there was no evidence that there was fresh demand of dowry after the Panchayat was alleged to have taken place.

13.He further, submitted that the case of the prosecution as per the evidence of PW1 and PW2 is that two days prior to the occurrence, deceased contacted their parents through cellphone and informed that, if they did not give the additional dowry of gold jewels, she will be killed by the appellant. But, there is no mentioning about the same in Ex.P1, complaint. Therefore, the evidence of PW1 and PW2, is not believable and further, the Investigating Officer also did not seize the cell phone of PW2 to prove that there was a call from the deceased to her parents. Further, he submitted that as per the evidence of PW1, they prepared a slip before the marriage containing “Shreethana” articles provided and the same were not seized by the prosecution.

14.Further, he submitted that PW1 did not mention in the slip about the demand of 30 sovereigns gold jewels by the accused and only 20



sovereign gold jewels were given and they promised to give 10 sovereigns of gold jewels later. The non-seizure of the said slip is fatal to the case of the prosecution. Further, he submitted that it is seen from the evidence of the witnesses that instead of providing 10 sovereign gold jewels, they gave Rs.1,50,000/-(Rupees One Lakh Fifty Thousand only) by the parents of the deceased to the appellant. The same was not reflected during investigation or even in Ex.P1 complaint.

15.Further, he submitted that, it is seen that PW14, Revenue Divisional Officer, Ariyalur is not competent to hold the inquest over the body of the deceased and only the Revenue Divisional Officer, Perambalur alone is competent person to hold the Inquest, since the respondent/ Police is within the jurisdiction of the Perambalur Police Station. The explanation offered by PW16 that the body of the deceased was at the Government Hospital, Ariyalur and hence, PW14 conducted inquest over the body of the deceased, cannot be accepted and the Inquest Report filed by PW1 is without authority or territorial jurisdiction. Therefore, the same is not valid and the trial Court ought not to have given any importance to Ex.P6 in the Inquest Report.



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16.Further, he submitted that the prosecution witnesses PW1 and PW2 told that they have got Rs.1.50,000/- from PW5, who is the brother of PW1, who is the maternal uncle of the deceased, to give to the appellant and the same was not stated by PW5 during the investigation in his statement recorded under Section 161(3) of Cr.P.C. and therefore, only for the first time during the evidence, he has stated the same, which is nothing but the improvisation. Further, he would submit that even the PW14 did not put his initial in the Ex.P3 report and sent the Inquest Report only on 05.10.2016, after 5 months. The delay in sending the Inquest Report/ Ex.P6 is highly doubtful and therefore, the same is not acceptable.

17.Further, he submitted that Exs.P1 and P3 were sent to Court only on 17.05.2016 and the prosecution has not given proper explanation for the delay in submitting the same to the Court belatedly. Therefore, it is only an after-deliberation to suit their convenience and Ex.P1 was given subsequently and based on Ex.P1, Ex.P3/ F.I.R. was registered. Therefore, PW14, without any jurisdiction, conducted inquest and filed the report, Ex.P6, which all creates a doubt and the prosecution failed to prove its case



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beyond all reasonable doubt. Further, he submitted that the trial Court, from the very same materials and evidence, acquitted the 2nd and 3rd respondent and acquitted the appellant also from the charged offences under Sections 306 and 304-A I.P.C. as the demand of dowry was not proved and the suicide of the deceased was not due to demand of dowry. However, erroneously, the appellant was convicted from the very same materials only for the charged offence under Section 498-A I.P.C., which is perverse. Therefore, the judgment of conviction and sentence passed by the trial Court for the offence under Section 498-A I.P.C. is also liable to be set aside and appeal may be allowed and the accused may be acquitted of the said charge also.

18.Learned Government Advocate (Crl. side) appearing for the respondent/ Police submitted that the marriage between the appellant and the deceased was said to have taken place on 02.11.2014 and the occurrence was alleged to have taken place on 12.05.2016. Therefore, the death was within 7 years from the date of the marriage and if a woman dies unnaturally within 7 years from the date of marriage, the law presumes that the death is “dowry death”. Further, the medical evidence shows the cause of the death

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of the deceased as unnatural. Further, the complaint and evidence of PW1, the mother of the deceased, PW2 the father of the deceased, PW3; the brother of the deceased, PW5, the maternal uncle of the deceased as well as the brother of PW.1 and PW6 is the President of the Village, PW.7 and 8, are all the witnesses to the Panchayat and PW14 is the Revenue Divisional Officer who conducted Inquest over the body of the victim, which clearly proves that there was a demand of dowry. Since the parents of the deceased could not meet out the demand of the accused, they caused cruelty, due to which, the victim committed suicide and the occurrence took place in the house of the appellant and immediately she was taken to the hospital and only later, the parents of the deceased came to know about the said fact and they went to the hospital. Since the deceased was struggling for life, the parents of the deceased could not be expected to rush to the Police Station. Since the deceased informed to the parents, just prior to the occurrence that the appellant and his family members were demanding for the balance jewels and also the money, they got suspect and subsequently, the complaint was filed on the next day after the death of the deceased and initially F.I.R was filed under Section 174 Cr.P.C. Subsequently, after conducting the Inquest and based on the Inquest Report, the offence was altered from

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Section 174 Cr.P.C. to Sections 306 and 498-A I.P.C. Subsequently, after the investigation, since the parents of the victim and Panchayadar told that the appellant/ A1 and family members demanded dowry and also in order to meet out the same, the parents of the deceased provided Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) for 10 sovereign of jewels, but still they demanded for money, the deceased committed suicide and the Inquest Report and Post mortem report show that death was unnatural and since the death of the deceased was within 7 years from the date of marriage, a case was registered and after the investigation it was found that there was a demand of dowry and cruelty.

19.Mere delay in filing the complaint is not a sole ground to suspect the veracity of the complaint. As far as the delay in sending the complaint and the Inquest Report to the Court, are concerned, it is the bounden duty of the Investigating Officer to do the needful in accordance with the law and the delay in sending the reports may not be the sole ground to reject the evidence of the victim and the de-facto complainant. Though the trial Court failed to appreciate the materials and acquitted A1 for the offences under Section 306 and 304-B I.P.C., however, the trial Court found that the charge against the appellant for the offence under Section 498A I.P.C. was proved

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from the prosecution witnesses and he was convicted for the same.

Therefore, there is no merit in the appeal and the same is liable to be dismissed.

20. Heard the arguments advanced on either side and perused the materials available before this Court.

21. Admittedly, the marriage between the appellant and the deceased was not in dispute and the fact that within 7 years from the date of marriage, the deceased died unnaturally, is also not in dispute. The occurrence was said to have taken place on 12.05.2016 and a complaint was lodged on 13.05.2016 and the case was registered on the same day and the Inquest was also conducted by PW14.

22. Though the learned counsel for the appellant submitted that the Revenue Divisional Officer, Perambalur alone has got the jurisdiction and not the RDO Ariyalur, admittedly, the deceased was admitted in the Government Hospital, Ariyalur and after death the body was kept in the Government Hospital Ariyalur. It is a settled proposition that if any death has occurred suspiciously, the body has to be subjected to autopsy, unless

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the post-mortem is conducted, the hospital will not release the body and once it is admitted that death is suspicious one and the case is registered under Section 174 Cr.P.C., naturally, the Inquest has to be conducted and therefore, the RDO Ariyalur was requested to make Inquest, who also conducted the inquest and who was examined as PW14 and the inquest report was marked as Ex.P6. Therefore, merely because the residence of the deceased was in Perambalur District, the evidence of PW14 and Ex.P6 cannot be thrown away. Though the occurrence was said to have taken place on 12.05.2016 and the victim was alleged to have consumed the insecticide poison at about 5.00 p.m and she was brought to the hospital at about 6.30 p.m, then she was given treatment. Subsequently, her parents were informed and they went there and later she died. Thereafter, a complaint was given on the next day at about 11.30 a.m. Therefore, considering the facts and circumstances of the case, the said delay is not inordinate and the said delay is not fatal to the case of the prosecution. In all the cases, mere delay will not be fatal to the prosecution. If the delay in filing the complaint is inordinate due to deliberation or embellishment, then only it will be fatal to the prosecution. The parents came to know about the death of the deceased all of sudden only during the night hours and it is a suspicious/unexpected



death and therefore, the parents of the deceased cannot be blamed and therefore, under these circumstances, the delay in this case is not fatal to the case of the prosecution. The only question is as to whether there is any demand of dowry and harassment, due to which the deceased committed suicide. Considering the complaint and the materials and also the medical report, the trial Court found that the prosecution has not proved its case on the charged offences under Sections 304-B and also under Section 306 I.P.C. But, however, there are materials to prove the cruelty caused by the appellant and therefore, he was convicted under Section 498-A I.P.C. alone. Since, either the prosecution or victim has filed an appeal against the acquittal of the charges under Sections 304-B and 306 I.P.C., this Court cannot traverse beyond the scope of the appeal and now the appeal filed by A1 against the judgment of conviction and sentence for the offence under Section 498-A I.P.C. Therefore, this Court has to see as to whether at all there was any cruelty caused by the husband of the deceased due to the demand of dowry. A reading of the evidence of PW1, mother of the Victim, PW2, father of the victim, PW3 brother of the victim and PW5, is the maternal uncle of the deceased, clearly shows that the appellant demanded dowry. They provided 20 sovereigns of jewels during marriage



and house-hold articles worth about Rs.2,00,000/- (Rupees Two Lakhs only) were also given and though initially provided they were not able to provide 30 sovereigns of gold at the time of marriage, they agreed and promised to give it subsequently. Therefore, the appellant felt that 10 sovereigns were due and the parents of the deceased could not provide and therefore, he demanded and caused cruelty to the deceased and the evidence of PW1 to 4 clearly proved the same and the evidence of PW5, who is the maternal uncle, corroborated the evidence of PW1. Since, they continuously caused cruelty to provide the balance jewels as agreed by them, PW5 gave 1,50,000/- to PW1 and in turn, PW1 gave the same to the accused. Therefore, the evidence of PW1 to Pw4 has clearly established the demand of dowry and cruelty.

23.Further, PW6, 7 and 8 are independent witnesses. PW6 is the village Panchayadar and PW7 and PW8 are villagers who conducted the Panchayat to show that the appellant left the victim in her parents' house at that time, PW6 to PW8 conducted the Panchayat and advised the accused to take her back and her parents also promised to give the additional jewels. Accordingly, the evidence of PW5 clearly shows that they subsequently



gave Rs.1,50,000/- equivalent to the worth of 10 sovereigns jewels.

Therefore, the evidence of PW1 and PW2 clearly shows that even then, there was cruelty made by the accused and therefore, she committed suicide.

The evidence of PW1 also shows that the appellant also informed the parents of the victim that their daughter consumed the insecticide poison and immediately they rushed to the hospital and subsequently, they came to know that their daughter died. Further, PW14, Ex.P6 inquest report conducted also clearly shows that the death of the deceased was unnatural and there was a demand of dowry. The evidence of PW15, the Doctor who made entry in the Accident Register (AR), has clearly stated that she consumed the insecticide poison. It is not the case of the appellant that the victim was in the parental house and consumed poison or the parents of the victim admitted her in the hospital. Only the family of the appellant admitted the victim in the hospital and from the entry made in AR, it shows that the deceased consumed insect poison. Though in the autopsy report, the poison was not detected, however, the evidence of PW13 and PW14 clearly shows that they gave treatment at that time and made the victim to vomit and other things may be the reason that the poison could not be detected in the Forensic Lab Report, the evidence of PW 13 also clearly shows the



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same. Therefore, the evidence of PW15 clearly shows that the death of the deceased was unnatural. Since the victim died within 7 years from the date of marriage, the law presumes under Section 113 B of the Indian Evidence Act, 1872 that the death of the deceased was dowry death. However, the trial Court acquitted the appellants of the said offences and there is no appeal against the same. However, from the evidence of PW1 to 3, 5, 8, 14 and 15, this Court as the Appellate Court, and as a final court of fact finding, while re-appreciating the above evidence, finds that the prosecution has proved its case beyond all reasonable doubt as against the appellant for the offence under Section 498A I.P.C. and therefore the trial Court had rightly appreciated the evidence accordingly and convicted the accused. This Court does not find any merit in the appeal and the appeal is liable to be dismissed.

24. Accordingly, this Appeal is dismissed. The conviction and sentence imposed on the appellant/ A1 are confirmed. Since, the appellant/ A1 is on bail pending this appeal, the trial Court is directed to take steps to

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secure the custody of A1 to undergo the remaining period of sentence, if any. The period of imprisonment already undergone by A1 shall be set-off under Section 428 Cr.P.C.

20.12.2022

Index: Yes/ No

Speaking Order : Yes/ No

Neutral Citation: Yes/ No

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To

1.The learned Mahila Judge, Perambalur

2.The Inspector of Police,
Kunnam Police Station,
Kunnam, Perambalur District.
(Crime No.317 of 2016)

P.VELMURUGAN,J.

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