



Crl.A.Nos.94 of 2019 & 102 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2022

Pronounced on : 18.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.Nos.94 of 2019 & 102 of 2021

Crl.A.No.94 of 2019

M.Balaraman

...Appellant

Versus

1.State of Tamil Nadu represented by
The Inspector of Police
SIPCOT Police Station
Hosur
Krishnagiri District
In FIR No.554/2015)

2.Gopinath

.. Respondents

Crl.A.No.102 of 2021

The State represented by
The Deputy Superintendent of Police
Hosur Sub Division
Krishnagiri District
(Hosur SIPCOT P.S
Crime No.554/2015)

...Appellant

Versus

Gopinath

...Respondent



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Crl.A.No.94 of 2019: The Criminal Appeal is filed under Section 372 of Code of Criminal Procedure against the judgment of acquittal passed by the Learned Sessions Judge, Fast Track Mahila Court, Krishnagiri made in S.C.No.40 of 2017 by a judgment dated 19.11.2018.

Crl.A.No.102 of 2021: The Criminal Appeal is filed under Section 378 of Code of Criminal Procedure against the acquittal judgment of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.40 of 2017 dated 19.11.2018.

Crl.A.No.94 of 2019

For Appellant : Mr.M.R.Thangavel

For Respondents : Mr.S.Sugendran for R1
Additional Public Prosectuor
Mr.R.Bharath Kumar for R2

Crl.A.No.102 of 2021

For Appellant : Mr.R.Bharath Kumar

For Respondent : Mr.S.Sugendran
Additional Public Prosectuor

COMMON JUDGMENT

These Criminal Appeals are filed by the defacto complainant and the State respectively challenging the judgment of acquittal in respect of the



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respondent/accused passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri made in S.C.No.40 of 2017 by a Judgment dated 19.11.2018.

2. The Police had registered the FIR in Crime No.554 of 2015 as against the accused based on a complaint given by the defacto complainant for the offences under Sections 498A and 304B of IPC. After investigation, the police laid down charge sheet before the learned Judicial Magistrate No.2, Hosur. The learned Judicial Magistrate No.2, Hosur took cognisance of the charge sheet in PRC.No.75 of 2015. Since, the offences are triable by the Court of Session, the learned Judicial Magistrate committed the case to the Court of Session and the same was numbered in S.C.No.40 of 2017, since offences are against the woman and made open to the Sessions Judge, Fast Track Mahila Court, Krishnagiri.

3. The said Court after completing formalities framed the charges as against the respondent/accused for the offences under Sections 498A and 304B of IPC and after trial, acquitted the accused/respondent from both the



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charges, extending benefit of doubts. Challenging such judgment of acquittal passed vide Judgment dated 19.11.2018 by learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.40 of 2017, these Criminal Appeals have been filed by the State in Crl.A.No.102 of 2021 and the defacto complainant in Crl.A.No.94 of 2019.

4. Since, both the appeals arises out of the same acquittal judgment, both are heard together and delivered by way of this Common Judgment.

5. The case of the prosecution is that the respondent/accused married the victim namely Lakshmi alias Dimple. Pursuant to the marriage, they begotten two female children and further demanded dowry from the victim and subsequently, she died unnaturally. Hence, the case was registered under Sections 498A and 304B of IPC, since, she died within seven years from the date of marriage. In order to substantiate the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined as PW1 to PW17 and 24 documents were marked as Ex.P1 to P24, no material object was exhibited.



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6. Upon examination of evidences by the prosecution witnesses, when incriminating circumstances culled out from the evidences of the prosecution witnesses, which was put before the respondent/accused under Section 313 Cr.P.C., the respondent/accused denied the same as false. On the side of the defence, no oral evidences was let in and no document was produced. On completion of trial and hearing the arguments advanced by both the counsel, the Trial Court held that prosecution has not proved the charges beyond reasonable doubt and therefore, extended the benefits of doubts and acquitted the respondent/accused . Therefore, aggrieved by acquittal Judgment dated 19.11.2018 passed by learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.40 of 2017, these Criminal Appeals have been filed by the State in Crl.A.No.102 of 2021 and the defacto complainant in Crl.A.No.94 of 2019.

7. It is the specific case of the prosecution that the respondent married one of the daughter of PW1 namely Lakshmi @ Dimple in the year 2009



and after the marriage, the respondent demanded money and dowry .

Further, as much as possible, they have met out the demands of the respondent/accused, however, the respondent was not satisfied with the demands. Since, PW1 has begotten six daughters, the deceased is the fifth daughter and they also have to perform the marriage of the sixth daughter, they could not meet the exorbitant demands made by the respondent. Out of the wedlock of the fifth daughter of the PW1 and the respondent, two female children were born. Subsequently, she died unnaturally within seven years from the date of her marriage. Hence, this complaint. In order to substantiate the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined as PW1 to PW17 and 24 documents were marked as Ex.P1 to P24.

8. PW1 is the father of the deceased Lakshmi who has clearly spoken that he gave her daughter in marriage to the respondent/accused and the accused had demanded dowry. PW2 is the mother of the deceased who has also stated that the respondent/accused had married the victim and demanded dowry and subsequently, she died unnaturally, and her two



daughters were also given poison and died. PWs 3 and 4 are sisters of the deceased Lakshmi. PWs 5, 6 & 8 had turned hostile. PW16 is the Sub Collector. PW17 is the Assistant Superintendent of Police.

9. The learned respective counsel for the appellants would submit that though the Mahazar Witnesses PWs 5 and 6 have turned hostile, from the evidences of PW1 to PW4 in the chief examination, it would indicate that there was a demand of dowry and the report of the RDO also shows that the death was due to the demand of dowry. The Postmortem Report also shows that the victim Lakshmi and her daughters died unnaturally, whereas, she died due to hanging and her daughters due to consuming poison. Therefore, once, if the prosecution proves that the deceased died within seven years unnaturally, the Law presumes that if the death of a married woman occurs within seven years from the date of marriage, the cause of death is demand of dowry and therefore, they would submit in the Inquest Report of the Executive Magistrate Ex.P14 it has been clearly stated that the death of daughter of the defacto complainant was a suspicious death and was due to demand of dowry, whereas, the learned Sessions Judge observed that the



report of the Executive Magistrate has not revealed that the death is due to demand of dowry and it is unfortunate that the learned Sessions Judge failed to look into the Inquest Report Ex.P14 submitted by the Executive Magistrate.

10. Further, submitted that the deceased Lakshmi had not died in a normal circumstances and died unnaturally which had occurred within seven years from the date of marriage and the deceased was subjected to cruelty in connection with the demand of dowry so as to nail the accused. Therefore, the respondent is liable to be punished and ought to have been convicted under Sections 498A and 304B of IPC. Therefore, they would submit that the accused had not rebutted the presumption under Section 113B of the Indian Evidence Act, 1872.

11. Further, they would submit that the deceased Lakshmi was assaulted by the respondent/accused demanding dowry and she was admitted in the hospital and his demand continued for his unreasonable desires till the death of the victim and as such the prosecution had



established that the victim was subjected to harassment in connection with the dowry demand by the respondent/accused. It is further submitted that unfortunately, the Trial Court failed to consider and acquitted the accused. Hence, seeks interference of this Court.

12. The learned counsel for the respondent/accused would submit that there was no demand of dowry as they have not provided the jewels. Since, the deceased Lakshmi could not give a birth to a male child and as she begotten only two female children, she tried to commit suicide for not having given birth to a male child and she was saved at the first instance. However, she continued to be in the same state of mind, which was also admitted by the PW1 and further submitted that even the earpiercing ceremony of his children was performed only by the respondent. The respondent never demanded any money and the victim's father never provided with 30 sovereign gold to the deceased Lakshmi and 5 sovereign to the respondent at the time of marriage, they only provided with 18 sovereign of jewels and therefore, he submitted that there is material contradictions in the statements of PW1 to PW4 regarding the demand of



dowry.

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13. The main allegation is that for purchasing a property, the respondent demanded money from the defacto complainant, whereas, the respondent is a well of man and has sufficient means to purchase such plots. The defacto complainant is only an agriculturist, who is having six daughters who is not in a position to provide 30 sovereign gold to the deceased Lakshmi and 5 sovereign to the respondent at the time of marriage. It is further submitted that the Mahazar Witnesses PWs 5 and 6 turned hostile and the Inquest Report of the Executive Magistrate has not revealed the fact that the death is due to demand of dowry and in the postmortem report also it has been stated that no other injury found on the body of the deceased except hangings.

14. Since, the deceased Lakshmi could not give birth to a male child and she begotten only two female children, she herself hanged and poisoned her two daughters and the respondent has not demanded dowry from the defacto complainant. Therefore, prosecution failed to establish the case



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beyond the reasonable doubt and hence the Trial Court rightly acquitted the respondent/accused, which is reasonable.

15. Further, he would submit that in order to convict the accused under Section 498A, there should be a cruelty and it would be continuous from the date of marriage till the date of death and further he would submit that in order to convict the respondent under Section 304B of IPC, the prosecution must establish that soon before her death, the victim was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

16. In the present case, prosecution has not established the same and further submitted that the defacto complainant approached the police and made the complaint as against the respondent unofficially and based on the said complaint, the police registered the case under Sec.174 of Cr.P.C, since the case was registered under Section 174 of Cr.P.C, the RDO enquiry was



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ordered to conduct the inquest under Section 174(3) of CrPC and the same was sent to the Court. Subsequently, they developed their case as the death was due to demand of dowry. Subsequently, altered the FIR under Section 304B of IPC. However, the prosecution has not established the charges as against the respondent/accused. Therefore, the Trial Court rightly disbelieved the case of the prosecution and acquitted the respondent/accused.

17. Heard both sides and perused the materials placed on record.

18. It is the specific case of the prosecution that the respondent married one of the daughters of PW1 namely Lakshmi @ Dimple in the year 2009 and after the marriage, the respondent demanded money and dowry and further as much as possible, they have met out the demands, however, the respondent was not satisfied with the same. Since PW1 has begotten six daughters, the deceased was the fifth daughter and they ought to marry the sixth daughter, they could not meet the exorbitant demands made by the respondent. Out of their wedlock, two female children were born.

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Subsequently, she died unnaturally, since she was subject to cruelty.

Though the respondent/accused tried to establish that since the deceased who had begotten female children and was not having male child, disheartened and attempted to commit suicide herself and subsequently died for the same reasons. However, PW1 to PW4 deposed that there was demand of dowry by the respondent/accused from the date of marriage and till the death of the victim and had physically assaulted her and further they have stated that on the earlier occasion, no complaint was given.

19. In the cases of matrimonial issues, the police or the victim would always be reluctant to file or register the complaint, since it is a family dispute and as it would cause detriment to the reputation of their family. They will not approach the police station or the Court till there will be a loss at their end, only if there is any loss, or loss of lives occurs, they will approach the police station.

20. More particularly, when the report of the Executive Magistrate clearly shows that there was a demand of dowry and the death was due to



dowry demand, but, in the impugned Judgment, the Trial Court observed that the report of the Executive Magistrate has not stated that the death is due to demand of dowry, which itself shows that the Trial Court has not appreciated the evidence properly. On chief examination, though PW1 to PW4 had admitted and established that the deceased had no male child and begotten two female children that may not be a sole ground that a person would end their life.

21. Even though, if she was upset with non blessing of a male child, it is for the respondent/accused to console and comfort her with soothing words which would certainly not provoked her to end up her life. Further, the evidences of PW1 to PW4 and also the Inquest Report of the Executive Magistrate/Ex.P14 clearly shows that there was a demand of dowry and there was a physical assault and cruelty made by the accused. Even, the postmortem report, Ex.P11 clearly shows that the death is unnatural and the daughters of the victim died by consuming poison.



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22. Therefore, this Court finds that from the evidences of PW1 to PW4, PW15 and PW16 the prosecution have established the case undoubtedly that the cruelty has been put forth on the victim soon before the death which would also shows that the respondent has not only caused physical assault but also demanded dowry. Further, when the wife died within seven years from the date of marriage unnaturally or suspiciously, the Court has to presume that the death was due to demand of dowry, since Section 113B of the Indian Evidence Act would clearly contemplate the presumption as to dowry death which would invite the statutory presumption that if it was a death due to demand of dowry and it is for the accused who has to rebut the presumption.

23. Admittedly, the death of Lakshmi and her daughters are unnatural, both was within seven years from the date of marriage and the witnesses have also spoken about the demand of dowry. So, there is no independent witnesses regarding demand of dowry, but the case of this nature, normally,



the third parties will not switch as witnesses for family disputes and no other third party will interfere with it, because the family issues such as cruelty or demand of dowry will not be shared to the third parties considering their future.

24. It is the case that PW1 has got six daughters and the deceased Lakshmi was only the fifth daughter, naturally they could not have met out all the demands of the respondents and the death is within seven years from the date of marriage and also the witnesses have spoken about the demand of dowry. The Inquest Report of the Executive Magistrate/E.P14 also shows that there was a demand of dowry and therefore the death occurred due to demand of dowry and it is for the respondent to rebut the presumption in the manner known to law. Further, it is to be noted that both the mother and the daughters have died unnaturally and it happened in the house of the respondent only. Therefore, it is for the respondent to establish that the death was neither due to demand of dowry nor due to cruelty.



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25. Therefore, at this circumstances, this Court finds from the oral and documentary evidences that the prosecution has proved its case beyond all reasonable doubt. The Trial Court, unfortunately has not properly appreciated the evidences and drawn the statutory presumptions. However, normally in an appeal against acquittal, the Appellate Court will not interfere unless compelled circumstances warrants. Since, the Appellate Court is the final Court of fact finding, it has to re-appreciate the entire evidence and give independent findings.

26. This Court has gone through the entire material and re-appreciated the evidence and finds that the death was due to demand of dowry and cruelty and prosecution has proved its case beyond reasonable doubts. Further, there is materials to show that the respondent/accused caused mental and physical cruelty as well as demanded dowry. Therefore, in this circumstances, this Court finds that it is in a compelled circumstances to reverse the findings of the trial Court. Hence, this Court has to interfere



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with the Judgment of the Trial Court and the appeal is allowed. Since, these appeals are against the acquittal of the respondent/accused, before awarding sentence, the accused has to be heard. Therefore, the respondent/accused is directed to appear before this Court on 28.10.2022 for 'question of sentence'.

18.10.2022

Index : Yes/No
Speaking order/non speaking order
dhk/cgi

To
1. The Inspector of Police
SIPCOT Police Station
Hosur
Krishnagiri District.

2. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri

3. The Public Prosecutor,
High Court of Madras.



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P.VELMURUGAN, J.,

dhk

Pre-Delivery Judgment in
Crl.A.Nos.94 of 2019
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WEB CO **P.VELMURUGAN, J.**

Charges were framed against the respondent/accused for the offences under Sections 498A and 304B IPC and after trial, the trial Court acquitted the respondent/accused from the above charges. Challenging the said acquittal, the *de facto* complainant and the State have filed these appeals.

2. When the matter was taken up for hearing, this Court after hearing the arguments advanced on either side found the respondent/accused guilty for the above said charges. Since these appeals are against acquittal, this Court as an Appellate Court reversed the judgment of acquittal and therefore, this matter was directed to be listed today “for questioning of sentence”.

3. Today, when the matter is taken up for hearing the appellant/State secured the accused and produced before this Court. On questioning, the respondent/accused has stated that he has not committed any offence as stated by the prosecution and has also stated that he got two female children and his family depends upon him and no one will take care of them, if he



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would be in prison. Hence, he request this Court to award lesser punishment.

4. Heard the respondent/accused and the learned counsel on either side.

5. Considering the facts and also considering the mitigating circumstances, the respondent/accused is convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default, to undergo further period of six months rigorous imprisonment for the offence under Section 498A IPC and also for the offence under Section 304B IPC he is convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default, to undergo further period of six months rigorous imprisonment. Both the sentences are ordered to be run concurrently.

28.10.2022

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Note :

- (i) Registry is directed to issue copy of the judgment by today itself (i.e, on 28.10.2022).
- (ii) Appellant/Police is directed to secure the custody of the first

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respondent/first accused to execute the period of imprisonment.

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Copy to: The Superintendent, Central Prison,Vellore.



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