



Crl.A.No.188 of 2015

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.A.No.188 of 2015

1.N.Manimaran

2.N.Rajeswari

... Appellants

-Vs.-

The State rep by,
The Assistant Commissioner of Police,
Sembium Range,
K5, Peravallur Police Station,
Chennai.

.. Respondent

Criminal Appeal filed under Section 374 of Code of Criminal Procedure to set aside the conviction and sentence imposed in S.C.No.453 of 2013 on the file of the learned Magalir Thaninithimandram Court at Chennai.

For Appellants : Mr.L.V.Rohith,
for Mr.V.Krishnakumar

For Respondent : Mr.R.Kishore Kumar,
Government Advocate (Criminal side)



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J U D G M E N T

This Criminal Appeal has been filed against the judgment of conviction and sentence passed by the trial Court in S.C.No.453 of 2013, holding the accused/appellants guilty of offences under Sections 498A and 304B IPC.

2. These two appellants are arrayed as A1 and A3, who are husband and mother-in-law of the deceased respectively. The case of the prosecution is that on 15.06.2011, A1 and the deceased eloped and got married at Swamimalai. Thereafter, the deceased was living with her husband/A1 and his family members. Since the deceased was Muslim and A1 was Hindu, the family members of the deceased did not accept the marriage initially, but later they started visiting the house of the deceased. The deceased was conceived and for delivery she was taken to maternal home. However, though mother of the deceased/PW1 was resident of Avadi, the delivery of the child was at Ranipet and for the same, some reasons were also attributed by the prosecution.



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3. According to the prosecution, the trigger occurred on 24.11.2011, when the PW1 visited the house of the deceased and four days thereafter, the deceased had committed suicide by hanging. She was first noticed by her husband/A1 and then the family members were informed. Suspecting death, the complaint was given by the mother of the deceased alleging that the deceased died due to dowry harassment. Since the death occurred within seven years of the marriage, the Investigating Officer has arranged for RDO enquiry. The RDO has conducted enquiry and submitted report suspecting dowry harassment as a cause for the death. On completion of the investigation, the final report filed against the husband of the deceased/A1, father-in-law of the deceased/A2, mother-in-law of the deceased/A3 and sister-in-law of the deceased/A4. The trial Court framed charges against all the four accused under Sections 498A and 304B IPC in alternate 306 IPC.

4. To prove the charges, the prosecution has examined 11 witnesses, marked 13 documents and 1 material objects (dhupatta used by the deceased for hanging). In defense, the prosecution has examined a classmate of A1 and the deceased and marked one exhibit.



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5. Considering the evidences, the trial Court had acquitted A2/father-in-law of the deceased and A4/sister-in-law of the deceased from both the charges and convicted A1/husband of the deceased and A3/mother-in-law of the deceased as follows:

(i) for the offences under Section 498A IPC, A1 and A3 are sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment;

(ii) for the offences under Section 304B IPC, A1 was sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment.

(iii) for the offences under Section 304B IPC, A3 was sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment. Considering her age and gender, lesser sentence of 7 years was imposed on A3 for offences under Section 304B.

The said judgment is under challenge in this Criminal Appeal.



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6. The learned counsel for the appellants would submit that the prosecution has examined 11 witnesses, out of which PW1 to PW5 are relatives of the deceased and the rest are not connected with the occurrence. To disbelieve the testimony of witnesses, he would submit that A1 and deceased were in love while pursuing their studies and though deceased belonged to Islamic religion and A1 belong to Hindu religion, they both eloped and got married in a temple. They were living peacefully till the deceased got conceived. In the pretext of visiting her daughter, PW1 used to visit her daughter and pressuring her to convert her husband/A1 to Islamic religion. Unbearable of the torture, deceased had committed suicide. The Investigating Officer in his cross examination had admitted that there was no evidence for dowry harassment and the RDO, who has submitted the report, has concluded that there is *prima facie* case of dowry harassment without any basis.

7. Further it is contended by the learned counsel for the appellants that in the absence of the independent witnesses to prove the demand of dowry or cruelty to the deceased, the ingredients of Section 498A IPC has not made out. Similarly, to attract the offences under Section 304B IPC,



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the prosecution ought to have prove that the deceased was subjected to cruelty either mentally or physically. As far as evidence let in by the prosecution, the evidence of PW1 to PW5 ought to be rejected for its inconsistency and self contradiction. There is no other evidence to presume that there was cruelty to the deceased.

8. The embellishment of prosecution version in the Court, which does not form part of the previous statement given to Investigating Officer, has been highlighted in the cross examination of Investigating Officer and pointing out those contradictions, the learned counsel appearing for the appellants submits that when the prosecution is unable to prove that there was any element of dowry demand or harassment, the presumption against the accused for convicting them against 304B IPC could not be drawn. However, the trial Court has erred in drawing presumption though there is no foundational facts to prove the dowry harassment.

9. Per contra, the learned Government Advocate (Criminal side) would submit that A1 and the deceased got married in the month of June 2011 and a male child was born to them in the month of April 2012. The



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deceased died on 29.11.2012 committing suicide. Except dowry harassment and torture, there is no other reason or explanation adduced by the accused for the deceased to commit suicide. Contrarily, the prosecution, through PW1/mother of the deceased, PW2 and PW3/aunty of the deceased, PW4/cousin of the deceased and PW5/wife of PW4, who were in contact with the deceased, during her life time, had deposed that whenever they visited the deceased, she complain about the dowry harassment and she was very weak and lean due to improper feeding. In addition, the panchayathar has also given statement to the RDO that the deceased was subjected to cruelty. Hence the trial Court has rightly convicted the appellants for the offences under Sections 498A and 304B IPC.

10. The criminal law was set into motion by PW1/Zarina Elias/mother of the deceased. In her testimony PW1 has stated about the demand of Rs.1 Crore as dowry, when she went to meet her daughter after child birth and she further stated that the demand of dowry was the immediate cause for triggering the deceased to commit suicide. More than one occasions, PW1 had stated that there was threaten to commit suicide



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either by her daughter or by her son-in-law, when their demand was not met. So the tendency to commit suicide has been implanted knowingly or unknowingly in the mind of the deceased. It is alleged that there was demand of dowry in the pretext that if they had solemnized marriage with consent they would have given dowry and therefore, the same should be given to A1. Though it is alleged as above, except the self-serving statement of PW1 and PW2, there is no element of proof to substantiate their evidence regarding demand of dowry.

11. In this case, the conduct of the deceased as well as accused persons has to be noted. Both the PW1 and PW2 had categorically stated that when they asked the deceased to come along with them, she refused and it has been also elucidated during the cross examination of witnesses that there was element of friction between both the families regarding the conversion and it is accepted by the prosecution witnesses particularly PW1 and PW2 that due to inter-religion marriage, the marriage of the son of PW1 getting delayed. However, PW1 was not residing in Chennai and most of the time, she was at Mumbai and only on her visit to the deceased house under pretext of seeing her daughter, the disharmony and pressure



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on the deceased has mounted. This could be understood from the evidence of PW2, who had admitted in the chief examination itself that when she went to the house of the deceased, A1 was present and when she saw the deceased with "Thaali" and "Pottu", she was shocked because it is unbecoming of Muslim girl. It is alleged that when PW2 enquired the deceased about why is she looking weak, the accused retarded saying "give Rs.1 Crore for feeding her". This statement even if assumed to be true, it is only a retarding statement of A1 being offended by the query of PW2. This has been repeatedly spoken by PW1 also. Except this incriminating statement of A1, there is no evidence for dowry demand or harassment demanding dowry.

12. A strong doubt has been established by the defence that the deceased was mentally tortured and put under pressure to convert her husband into Islamic religion. Unable to bear the torture, she has committed suicide. The probability of the above theory cannot be ruled out in the light of the admission made by PW1 saying that the A1 voluntarily come forward to convert himself to Islam and she did not pressurize him to convert. PW2 in chief examination had expressed her anguish saying the



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deceased was wearing "thaali" and "thilak" and she has enquired about that to the deceased. One could visualize a girl, who had loved a man of other faith and voluntarily left maternal home to marry him to live with him, if she was enquired by her kith and kin about the new practice and adopting the customs of in-laws naturally the pressure on her causing mental disturbance cannot be ruled out. PW3/Aunty of the deceased also in the cross examination states that she suggested to the deceased to make her husband convert to Islam but she did not pressurized her. Likewise, PW4 also in the cross examination admits that they were interested in making A1 converting to Islam but they did not pressurized him.

13. Therefore, the element of conversion being the reason for causing mental torture to the deceased, this Court is of the view that convicting the appellants for demand of dowry or abating deceased to commit suicide is ill-found.

14. In view of the above this Criminal Appeal is allowed. The judgment of conviction and sentences passed by the trial Court in



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S.C.No.453 of 2013 is set aside. The fine amount paid by the appellants, if any, shall be refunded. The bail bond of the appellants is also cancelled.

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Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
nsa

To

- 1.The Magalir Thaninithimandram,
Chennai
- 2.The Assistant Commissioner of Police,
Sembium Range,
K5, Peravallur Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN.J.,

nsa

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