



Crl.A.No.319 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.11.2022

Pronounced on : 06.12.2022

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.319 of 2015

K.Sivakumar,

... Appellant/Accused

/versus/

State represented by,
Deputy Superintendent of Police,
Kadathur Police Station,
Gopichetipalayam,
Erode District.

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the judgment delivered by the Learned Sessions Judge (Magalir Neethi Mandram), Erode, in S.C.No.51 of 2014 dated 12.03.2015.

For Appellant : Mr.V.Ayyadurai, Senior Counsel,
for Mr.P.Ezhilnilavan.

For Respondent : Mr.R.Kishore Kumar,
Government Advocate (Crl.Side)



Crl.A.No.319 of 2015

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JUDGMENT

Dhanabakkiyam, wife of the appellant died on 03/05/2013 in the Coimbatore Government Medical College Hospital after 5 days of treatment. The case of the prosecution is that, she was subjected to cruelty by her husband demanding dowry. He forced her to sell the land settled by her parents in her name and bring money. Further, her husband had illicit extra marital affair with one married lady by name Revathi, which caused mental torture to her. In addition, when she invited her husband to join her for the temple festival, he refused to go along with her. So, she was mentally depressed. Hence, after leaving a suicide note indicating her husband as the reason for her death, she consumed pesticide on 28/04/2013.

2. Two days later, on 30.04.2013, on the information given by the mother of Dhanabakkiyam that she suspect her daughter has taken the extreme decision to end her life, since she was having severe pain during her menstrual cycle a case was registered for attempt to commit suicide. On 04/05/2013,



CrI.A.No.319 of 2015

Dhanabakkiyam died without responding to the treatment. While in the course of investigation, a suicide note was found in the bedroom indicating the conduct of her husband as reason for her death. Therefore, Sivakumar, the appellant herein, who is the husband of the deceased Dhanabakkiyam was charged for offences under Sections 498-A and 306 of I.P.C.

3. The Trial Court, after considering the oral evidence of P.W-1 to P.W-20 and appreciating documents marked as Ex.P-1 to Ex.P-26, held the prosecution through the handwriting experts had proved Ex.P-5 (suicide note) was written by the deceased. The testimony of the mother, father and sister-in-law of the deceased (P.W-1 to P.W-3) respectively proves that there was harassment by the accused demanding dowry, hence the accused is guilty of offences punishable under Sections 498-A I.P.C and 306 I.P.C. Also observed that there is no evidence to prove that the accused had illicit intimacy with Revathi.

4. The defence document Ex.D-1, is the letter of P.W-1 (the defacto complainant who is the mother of the deceased Dhanabakkiyam) dated 22/05/2013



Crl.A.No.319 of 2015

addressed to DSP, Gopichettipalayam expressing her wish to withdraw her complaint, stating that she has come to know that the conduct of her son-in-law Sivakumar is not the cause for her daughter's death and he has come forward to re- convey the piece of land which was settled to her daughter. This defence exhibit was not considered by the trial Court since, P.W-1, the signatory of the said letter through whom it was marked during the cross examination has deposed that she was called to DSP Office for investigation continuously for 15 days. At DSP Office, the accused handed over the jewels of Dhanabakkiyam to her. He also gave a letter that he will not claim any right in the property of Dhanabakkiyam. In the said circumstances she was asked to give the letter Ex D-1.

5. The Leaned Counsel for the appellant submitted that, P.W-1, the mother of the deceased Dhanabakkiyam, who set the law into motion by informing the police about her daughter's attempt to commit suicide is not a reliable witness at all. She has turned turtle several times after the complaint Ex.P-1 giving clean chit to her son-in-law. She, after informing the Police that Dhanabakkiyam was well taken care by her husband, mother-in-law and father-in-law. She was not



Crl.A.No.319 of 2015

conceived even after 1 ½ years of marriage and she used to suffer pain during her menstrual period, hence she suspect that fearing pain, her daughter has consumed poison. Later, few days after the complaint wrote letter Ex.D-1 addressing the DSP to drop the proceedings. Before the DRO, she and other witnesses in unison had stated that there was no dowry demand by the accused. But due to tutoring subsequently, before the trial Court she has added several allegations such as the accused demanded Four lakhs Rupees to clear the debt and extra marital affair with one Revathi. Three different version of the prosecution for Dhanabakkiyam to commit suicide by itself sufficient to hold that the evidence of P.W-1 and others is a concocted one. Hence, the judgment of conviction has to be set aside.

6. Heard Mr.Ayyadurai Learned Senior Counsel for the appellant and Mr.K.Kishore Kumar, Learned Government Advocate for the Respondent/State. The evidence scrutinised and the reasoning given by the trial Court to convict the accused examined.



Crl.A.No.319 of 2015

WEB COPY

7. Initially, case was registered on the complaint of P.W-1, Saraswathi, the mother of the deceased stating that her daughter not conceived even after 1½ years of marriage. She was having gynaecological problem and used to suffer during her menstrual cycle and was taking native treatment. Therefore, she attempt to commit suicide taking pesticide. At this juncture, it is to be recorded that the prosecution has not made any attempt from where Dhanabakkiyam got the pesticide, what is the nature of pesticide she consumed. None of the doctors who treated her or the post-mortem doctor had identified the nature of poison Dhanabakkiyam consumed.

8. A day after the death of Dhanabakkiyam, the suicide note Ex.P-5 alleged to have been found by P.W-3 in the bed room of the deceased under the cot. Thereafter, the investigation took turn towards dowry harassment and abetment to commit suicide pointing the needle of suspicion towards the husband of the deceased Dhanabakkiyam. Accordingly the charges were altered to Sections 498 A IPC and 306 IPC against the accused/appellant herein. The DRO, who conducted the inquest in his report Ex.P-26 dated 04/05/2013, has ended by



Crl.A.No.319 of 2015

concluding that, the suicide was not due to dowry demand or cruelty in connection with demand of dowry. The deceased had committed suicide since she had suspicion that her husband had developed intimacy with another lady. RDO in his report after inquest has specifically opined that there is no evidence for demand of dowry by the accused, but the deceased was subjected to mental cruelty by the conduct of her husband, who had intimate relationship with one Revathi. However, the Investigating Officer on completion of investigation had come to a *prima facie* conclusion that the suicide was due to cruelty in connection with demand of dowry and also by the conduct of the accused viz illegal intimacy with one Revathi. The charges were framed accordingly and the accused was tried.

9. Before the trial Court, P.W-1, the mother of the deceased deposed that, her daughter Dhanabakkiyam got married to the accused Sivakumar 1½ years prior to the occurrence. At the time of marriage she gave 11 sovereigns of jewels and seer articles. For 3 months her daughter and the accused were living happily and her daughter used to frequently come in her Scooty to visit her. At that time she told that her husband has incurred loss in his cellphone business, so he asked



Crl.A.No.319 of 2015

to get Rs 4 lakhs from her parents. P.W-1, told her to sell her share of land settled by her father and raise money. A week prior to the incident, her daughter called her over phone and told that she is harassed by her husband demanding money and she is unable to tolerate it. Next day, she came to the parental home and stayed with them for a week. On 28/04/2013 she left the home informing P.W-1 that she is going to meet her friends Eswari and Thenmozhi at Annanur. After some time she got a phone call from the accused. He informed her that her daughter Dhanabakkiyam has consumed poison so taken to the hospital. PW1 first went to the private hospital at Kacherimedu (Gopichettipalayam). She saw her daughter in critical stage and not in the position to talk. The next day her daughter was shifted to Coimbatore Medical College Hospital 4 days thereafter, her daughter died.

10. The above testimony is contrary to her contemporaneous complaint statement dated 30/04/2013 which is marked as Ex.P-1. In the court, she retracted and resailed her earlier statement as found in Ex.P-1 by saying when she gave Ex.P-1 statement to the police, her son-in-law (the accused/appellant) was



sitting beside her and insisted her to say that Dhanabakkiyam used to suffer acute abdomen pain during her menstrual cycle, so unbearable of the pain, she took poison. 4 days after the death of Dhanabakkiyam, her daughter-in-law while cleaning the bedroom stumbled upon the paper slip under the bed kept inside a note book. Her daughter-in-law read it and told that Dhanabakkiyam has written a note indicting her husband Sivakumar as reason for her death. Then again she went to the police station and gave a fresh complaint saying Sivakumar was cause for her daughter to commit suicide. After a month, the police seized a Big size ruled note book Ex.P-2 and a small size ruled note book Ex.P-3 for comparison of hand writing.

11. It is appropriate to record the fact that Ex.P-2 and Ex.P-3 were not part of the documents furnished to the accused along with the Final Report. It was produced while P.W-1 was in the witness box. Hence, marking of these two exhibits were objected. The Learned Trial Judge overruled the objection, after affording the defence counsel to peruse the documents in the Open Court, these two note books and selected writings in it were marked.



Crl.A.No.319 of 2015

WEB COPY

12. P.W-2, Chinnasamy, the father of the deceased Dhanabakkiyam had deposed that prior to the marriage he settled 13 cents land to his daughter. After marriage, when his daughter came and told him that the accused in torturing her demanding Rs.4 lakhs to clear his debt, he said, he cannot afford to give Rs.4 lakhs cash at present, so if necessary, she can sell the 13 cents land settled to her. 7 days prior to the incident, his daughter came from her marital home Kasipalayam, where she was living with her husband to Kanjappalli Pudur, her parental village. She told that her husband has given 7 days time to bring Rs.4 lakhs. If she could not get the money from her parents, she need not come back. His daughter stayed with them for 7 days. On the 7th day she told that she is going to Annanur. But went to Kasipalayam consumed poison and fell near the house of the accused.

13. P.W-3, Maheswari, is the brother's wife of the deceased. She has deposed about the loss incurred by the accused in his cellphone business and demand of Rs.4 lakhs through his wife (the deceased Dhanabakkiyam) to clear his



Crl.A.No.319 of 2015

debt. Also about the suggestion by P.W-2, to sell the land settled in her name and meet out the debt. She had deposed about her stumbling upon the chit Ex.P-5 containing suicide note when she was cleaning the bed room a day after Dhanabakkiyam death. She after reading it, gave it to her brother-in-law Rajan. Who in turn read it to P.W-1 and P.W-2. She later gave Ex.P-5 chit to the DSP who came to enquire them. She also deposed that for the recovery of Ex.P-5, mahazar was drawn and in the said mahazar Ex.P-6 she and Rajan signed as witnesses. The mahazar (Ex.P-6) is prepared at the house of P.W-1 and P.W-2 on 04/05/2013 at 14.00 hrs. In the said mahazar Maheswari P.W-3 and Rajan (not examined) has affixed their signature. Rajan, the brother of the deceased could have been the best witness to speak about the recovery of Ex.P-5 and about his sister's handwriting. For reasons not known, the prosecution has not attempted to summon Rajan and examined him on oath.

14. P.W-4, Balusamy is the cousin brother of the deceased Dhanabakkiyam. He is the first witness who had deposed about the alleged illegal intimacy of the accused with one Revathi in the chief examination. Also he is the



Crl.A.No.319 of 2015

first witness to depose about the Panchayat held in the Village regarding demand of dowry and the extra marital affair of the accused with one Revathi. He had further deposed that P.W-3 Maheswari shown him Ex.P-5 suicide note of Dhanbakkiyam and read it.

15. The testimony of this witness is an improvised version of the prosecution case carrying facts which the witnesses deposed prior to him not said. This is not only contrary to the evidence of P.W-3 who had deposed that she showed the suicide note to one Rajan and not even whispered about the presence of P.W-4 at that time when she found Ex.P-5 in the bed room. Further, in the cross examination, P.W-4 has deposed that he saw the suicide note at 11.30 am on the day (03/05/2013) when Dhanabakkiyam died in the Hospital. He had deposed that he is not aware from where the suicide note was recovered. The embellishments found in the testimony of P.W-4 with no corroboration but contradiction put him under the category of wholly unreliable witness.

16. P.W-5 Eswari and P.W-6 Thenmozhi both are from Annanur



Crl.A.No.319 of 2015

Village. They are known to the deceased Dhanabakiyyam. They both had turned hostile and not supported the prosecution case. P.W-7, Revathi with whom the accused alleged to have developed illegal intimacy, denied any such intimacy and turned hostile. Thus, the prosecution case that the deceased was put to mental torture by the conduct of the accused having illicit intimacy with Revathi has failed for want of proof. The other charge of cruelty in connection with dowry demand also against the DRO inquest report and lack corroboration.

17. That apart, P.W-7, Dr. Kulandaivelu who done the autopsy of Dhanakkiyam, had opined that the deceased Dhanabakkiyam might have died due to poison. The nature of the poison could not be ascertained in the lab. No external injuries found on her body. The fingers tip found bluish. Thus, it is evident that the deceased was not put to any physical violence soon before her death. From the evidence of the prosecution witnesses, it is clear that the accused was not within the proximity of the deceased atleast for 7 days prior to the incident. P.W-1 and P.W-2 both candidly admits that the accused never demanded money directly from them. It was the deceased their daughter who asked the



money. To her request for financial help she was advised to sell her share in the land and raise money. It is pertinent to note that P.W-2, the father of the deceased has admitted that to sell the share in the property settled in favour of the deceased, there was some misunderstanding with his daughter and she had taken away all the documents with her. He has initiated suit that his settlement deed in favour of his deceased daughter is not valid.

18. Thus, the prosecution has neither proved the demand of dowry nor the alleged extra marital affair with Revathi through the prosecution witnesses. Contrarily, the defence has proved that there was misunderstanding between the deceased and her parents regarding 13 cents of land settled in her name.

19. Interestingly, Revathi was summoned and examined as P.W-7. She has denied any illicit relationship with the accused. The other witnesses examined to prove the extra marital affair turned hostile. Even P.W-1, P.W-2 and P.W-3 who are the mother, father and sister-in-law of the deceased had not stated anything about the illegal intimacy in their examination in chief. It is also to be



Crl.A.No.319 of 2015

noted that the prosecution, except the interested witness P.W-1 to P.W-4 not worthy relying wholly due to their contradictory evidence, has not produced any independent witnesses to prove the accused incurred loss in his business and so demanded money through his wife.

20. Coming to the suicide note Ex.P-5, which is alleged to have surfaced the day next to the death of Dhanabakkiyam, the plain reading of it indicates it was written after the death of Dhanabakkiyam. It does not indicate anything specific about dowry demand or the alleged extra marital affair, except to say 'my husband Sivakumar is not loyal to me. Every day I suffer torture'. This note Ex.P-5 not been proved to have been written by Dhanabakkiyam. The selective writings found in the note books Ex.P-19 and Ex.P-20 taken for comparison not been proved through persons acquainted with the writing of the deceased to identify and say they are the writing of the deceased Dhanabakkiyam to ensure it is fit to compare with the questioned document Ex.P-5.

21. In the absence of proof that the writings found in Ex.P-19 and



Crl.A.No.319 of 2015

Ex.P-20 are by the deceased Dhanabakkiyam and the signature in Ex.P-21 is made by Dhanabakkiyam, the opinion of the hand writing expert that the selective writing found in Ex.P-19 and Ex.P-20 and the writing in Ex.P-5 was written by one and the same person, is of no use. The prosecution has miserably failed to prove that the selective writings found in Ex.P-19 and Ex.P-20 taken for comparison is the standard hand writing of the deceased. Without ascertaining the standard writing, the trial Court has wrongly concluded that the Ex.P-5 (the questioned document) is written by Dhanabakkiyam.

22. The trial Court failed to consider that the prosecution witnesses had not confirmed through any of its witnesses that the writings in Ex.P-19 , Ex.P-20 and Ex.P-21 were written by Dhanabakkiyam while she was alive. Particularly, P.W-1 has deposed that she is an illiterate and could not read or identify the writings found in Ex.P-5. Maheswari P.W-3 who stumbled upon Ex.P-5 and handed over it to the Investigating Officer has deposed that she is not sure whether the writings in the note books marked as Ex.P-19 and Ex.P-20 were written by the deceased Dhanabakkiyam. The brother of the deceased who is likely to be



Crl.A.No.319 of 2015

acquainted with the writings of his sister not examined. No witness who is acquainted with the signature of the deceased examined by the prosecution. Thus, when the prosecution has not proved through persons well acquainted with the handwriting of the deceased, it is unsafe to hold that the suicide note was written by the deceased.

23. Particularly, in Ex.P-19 and Ex.P-20 on scrutiny this Court finds it had been written by many persons and in different handwritings at different pages at different period from the year 2004 to 2011 indicating it was not exclusively kept and maintained by the deceased. As far as Ex.P-21 the membership card, where the deceased has signed in Tamil with her initial as 'C' in English, it is of the year 2010 prior to her marriage. It is not a contemporaneous document to compare Ex.P5 which says about the death of Dhanabakkiam on May,2013.

24. To attract offence under Section 498-A IPC, the prosecution has to prove that there was cruelty which may be a wilful conduct drive the woman to



Crl.A.No.319 of 2015

commit suicide or cause grave injury or damage to life or harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property. To attract offence under section 306 IPC, if a person commits suicide on the incitement or inducement or abatement or provocation of another person. Whoever abets the commission of such suicide, is punishable under this section.

25. The uncontroverted facts of the case as spoken through the prosecution witnesses, reveals that a week before Dhanabakkiyam consumed pesticide, she left her matrimonial home and came to her parental home in her two wheeler. She was staying with her parents for 7 days. On 29/04/2013 she left the parental home informing them that she is going to Annanur to meet her friends Eswari (P.W-5) and Thenmozhi (P.W-6). However, she has not gone to Annanur. Instead, she has consumed pesticide and went to the matrimonial home at Kasipalayam in her two wheeler, near her matrimonial home she fell down. She was taken to the private hospital at Katcherimedu (Gopichettipalayam) by her husband (Accused). Next day, she was shifted to Coimbatore Government General



Crl.A.No.319 of 2015

Hospital. PW-10 Dr.Chinnasamy who treated her at MRS Hospital, Gopichettipalayam deposed that Dhanabakkiyam brought to the hospital by her husband and informed that she has consumed pesticide. She was found in semi conscious stage and she was not able to breath on her own. Hence, she was kept in ventilator. Next day, he referred the patient to Coimbatore Government Hospital for better treatment. The Accident Register Ex.P-12 supports the ocular evidence of PW-10.

26. P.W-5 and P.W-6, the friends of the deceased living in Annanur had turned hostile and does not support the case of the prosecution. P.W-1 and P.W-2 admits that the demand of Rs.4 lakhs was not from the accused directly but through his wife. In this context, assuming the Ex.P-5 suicide note was written by the deceased implicating the accused, she would have mentioned about the harassment or cruelty of demanding money in that note. What she has alleged against the accused is that, he is not loyal to her. Every day it is an harassment for her and she is not able to withstand it. So, she has committed suicide. (emphasis added).



Crl.A.No.319 of 2015

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27. As pointed out by the Learned Counsel for the appellant, the prosecution has not proved what was the harassment the deceased could not tolerate. The expression “not loyal to me”, not proved through witnesses or explained the context, which it refers. If it is inferred that the author of this note has referred the alleged illicit affair with Revathi, it is to be noted that, except P.W-4 none of the prosecution witnesses have said about it in their chief examination. The said Revathi was summoned and examined. She has denied any such illicit relationship with the accused and hence, she was treated as hostile witness by the prosecution.

28. P.W-4 Balusamy, who is the cousin brother of the deceased has said there was Panchayat few days before the occurrence regarding the said illicit affair and demand of dowry. P.W-4 has specifically deposed that the accused promised not to create any problem in future and took his wife (deceased Dhanabakkiyam) to his home. The next day Dhanabakkiyam again came back to



Crl.A.No.319 of 2015

the maternal home after quarrelling with the accused. This uncorroborated averments made by P.W-4 in his testimony before the Court is not supported by any of the other prosecution witnesses including the parents of the deceased. The factum of panchayat introduced by the prosecution through PW4 for the first time after examination three witnesses who are closely related to the deceased stands in isolation and uncorroborated, hence only worth to be ignored.

29. That apart, as discussed earlier, the prosecution has not proved that the suicide note Ex.P-5 was compared with the admitted writings of the deceased. The evidence on the side of the prosecution has only prove that the person who has written in some of the pages in Ex.P-19 and Ex.P-20 has written Ex.P-5. There is no evidence to link that those writings found in Ex.P-19 and Ex.P-20 taken for comparison was actually written by the deceased. No person who is acquainted with the handwriting and signature of the deceased examined to ascertain what was compared with the questioned document (Ex.P-5) was the contemporaneous writing of the deceased.



Crl.A.No.319 of 2015

WEB COPY

30. On going through the depositions and the exhibits, this Court finds no evidence worth to hold beyond doubt that the accused caused cruelty to the deceased either mentally or physically. No evidence to show that he incurred loss in his business so he forced his wife to ask money from her parents. No evidence to show that he had intimacy with Revathi, a married lady. No evidence to prove that he refused to join the deceased for the temple festival when she invited him. None of the witnesses for the prosecution whispered about such temple festival and invitation to the accused by the deceased. Above all, from 29/04/2013 till 04/05/2013, none of the witnesses has said anything about dowry demand or any act of cruelty against the accused to the Police or to DRO who conducted inquest. All of the sudden, the Ex.P-5 the note had come out of blue, but the place from where it was taken is not certain. The prosecution witnesses are inconsistent about the date and place from where it was taken or found. The note written in past perfect tense (தற்கொலை செய்து கொண்டேன்) causes doubt whether it was written by the deceased when she was alive and before she left the



parental home on 29/04/2013.

31. The prosecution has miserably failed to prove either dowry demand or cruelty by conduct viz the alleged extra marital affair with Revathi. The trial Court has erroneously relied upon Ex.P-5 to hold the accused guilty of abetting his wife to commit suicide, but Ex.P-5 not been proved to be written by the deceased. The plain reading of Ex.P-5 appears as if it was written after the death of Dhanabakkiyam. The handwriting experts opinion comparing certain writing in Ex.P-19 and Ex.P-20 without ascertaining beyond doubt that those writings in Ex.P-19 and Ex.P-20 was written by the deceased cannot be relied upon to fix the accused, since admittedly several persons have handled these two note books and written on it in different pages. It was not a note book exclusively used by the deceased. **The entire writings found in these two note books are not by one and the same person.**

32. As a result, for the above said reasons, this Court holds that the prosecution failed to prove the charges and hence, this ***Criminal Appeal is***



Crl.A.No.319 of 2015

allowed. The judgment of conviction and sentence passed by the Court below in S.C.No.51/2014 is set aside. Fine amount paid if any is directed to be returned to the appellant/accused. Bail bond if any executed by the accused shall be cancelled.

06.12.2022

Index :Yes
Speaking order/Non-speaking order
bsm

To:-

1. The Sessions Judge (Magalir Neethi Mandram), Erode.
2. The Deputy Superintendent of Police, Kadathur Police Station, Gopichettipalayam, Erode District.
3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.A.No.319 of 2015

DR.G.JAYACHANDRAN,J.

bsm

delivery judgment made in
Crl.A.No.319 of 2015

06.12.2022