



Crl.A.No. 482 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :21.11.2022

Pronounced on :25.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

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- 1.Somu (died on 02.03.2020)
- 2.Pandiyammal
- 3.Muthuraj
- 4.Balamurugan

.. Appellants

/versus/

State represented by
the Inspector of Police,
Kallavi Police Station
in Crime No.204/2007
Krishnagiri District.

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to set aside the order of conviction and sentence passed in S.C.No.11 of 2014 dated 14.07.2015 on the file of the learned Sessions Judge, Mahila Court, Krishnagiri and allow this appeal and acquit the appellants/accused from the charge levelled against them.



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For Appellants :Mr.T.Padmanabhan
For Respondent :MrR.Kishore Kumar
Govt. Advocate (Crl.Side)

J U D G M E N T

The appellants herein are the accused in S.C.No.11 of 2014 on the file of the Sessions Judge, Mahila Court, Krishnagiri District. They were found guilty of offence under Sections 498-A of IPC, 304(B) of IPC and Section 4 of the Dowry Prohibition Act, 1961. The trial Court sentenced them to undergo imprisonment as below:-

Charge framed under Section	Sentence imposed by the trial Court
Section 498(A) of IPC	To undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- each
Section 304(B) of IPC	To undergo 10 years Rigorous Imprisonment
Section 4 of Dowry Prohibition Act	To undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.5000/-each (Totally fine amount Rs.15,000/- each) Default to payment of fine, 6 months Simple Imprisonment.



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2. The gist of the prosecution case:

On 25.05.2007 at about 06.30 p.m., the deceased Chitra with an intention to commit suicide doused herself with kerosene and set fire to herself. She was taken to the Government Mohanakumaramangalam Medical College Hospital, Salem. After taking inpatient treatment for nearly 25 days, she died on 21.06.2007 due to septicemia.

3. The Investigation reveal that, the deceased Chitra and the first accused got married on 15.05.2005 at Tirupathy. It was a love marriage. After 1 1/2 years, they returned to their native place at Madurai, then the parents of the first accused along with the first accused started demanding dowry and caused cruelty to he deceased Chitra. In continuation of the act of cruelty, the accused 1, 3 and 5 demanded 12 sovereign of jewels and the second accused warned her if she fails to bring jewels she cannot live her husband. Therefore, being offended and depressed, Chitra droused herself with kerosene in her house and set fire by self immolation with intention to commit suicide.



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4. To prove the charges, the prosecution examined 14 witnesses and marked 18 exhibits. The trial Court held that the deceased Chitra has been subjected to cruelty demanding dowry; the statement of the deceased Chitra marked as Ex.P3, which is the basis for registering the First Information Report (Ex.P4); relied upon by the trial Court and the evidence of PW-1 and PW-2 taken for corroborating the statement of the deceased. All the four accused were found guilty and sentenced as mentioned above.

5. The appeal is filed by all the four accused. When the appeal came up for final hearing, it was reported that the first accused the husband of the deceased died on 02.03.2020 and to that effect the death certificate of the first accused/1st appellant filed and the same is taken on record.

6. The learned counsel appearing for the appellants submitted that the Court below failed to consider the enormous delay in registering the First Information Report. Pointing that the case of the prosecution is that the incident occurred on 25.05.2007 at about 06.30 p.m. Whereas the First



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Information Report was registered only on 05.06.2007 allegedly based on the statement given by Chitra (since deceased) in the hospital, while taking treatment. The reason for registering the First Information Report belatedly is improbable and contrary to the evidence of PW-1.

7. According to the prosecution, the First Information Report was registered after Chitra regained conscious. Whereas her mother the defacto complainant was examined as PW-1. She admits that her daughter was conscious and trying to conduct her husband (the first accused) over phone but the first accused did not attend the call or turn up to see her in the hospital. Further, PW-1 also deposed that when they shifted her daughter from Uthangarai hospital to Dharmapuri hospital after the 5th day of the occurrence, the Police from Kallavi Police Station came and recorded the statement of the victim. While so, the First Information Report marked as Ex.P4 which has been registered after 12 days from the date of the incident, cannot be the First information and the reason for burking the earlier information goes to show that the prosecution case is not based on true



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facts. The fact that the deceased Chitra was conscious while taking treatment is spoken by PW-1 and PW-2. So the delay in lodging the complaint as explained by the prosecution is proved to be a false explanation.

8. Learned counsel appearing for the appellants submitted that according to PW-1 (mother of the deceased), her daughter Chitra was first taken to Uthangarai Government Hospital, then shifted to Dharmapuri Government Hospital, and finally to Salem Government Mohanakumaramangalam Medical College Hospital. The prosecution has not examined Doctor at Uthangarai, who first saw the deceased Chitra and gave treatment to her. The Accident Register maintained by the Hospital at Uthangarai and Dharmapuri were not produced by the prosecution, since the production of those records will falsify the case of the prosecution. Alleging that Ex.P3 statement of the deceased is a concocted document and does not carry the characteristic of dying declaration, since it is not attested by the Doctor.



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9. PW-9 Head Constable admits that, prior to recording of Ex.P3, on 05.06.2007, he received intimation from the Hospital between 25.05.2007 and 04.06.2007 and he has also admitted that, there is a correction of date and time in Ex.P3. So, contending that there is no evidence to show that the deceased Chitra was unconscious from the date of occurrence till 05.06.2007. The content of Ex.P3-the statement of Chitra cannot be relied upon, since it is not certified by the Doctor that she has given the statement in good state of mind and clear conscious. Further relying upon the admission of PW-2, evidence of the Investigating Officer and PW-7-Revenue Divisional Officer, who conducted inquest that no one gave statement to them alleging A3 and A4 demanded dowry. The learned counsel submitted that in the absence of evidence that the deceased Chitra committed suicide due to cruelty in connection with dowry demand and the said cruelty was caused by the appellants herein, the trial Court on surmises had held them guilty and therefore, the same has to be set aside.



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10. The learned Government Advocate (Crl.Side) for the State submitted that Ex.P3 statement of the deceased Chitra, which speaks about cause for the death stands un-impeached and the same is corroborated by the evidence of PW-1 and PW-2. Therefore, he submitted that the death of Chitra within two years of her marriage with the first accused leads to the statutory presumption that she was subjected to cruelty in connection with dowry demand.

11. The prosecution witnesses have spoken about the marriage between the first accused and the deceased Chitra against the wish of the first accused's parents and after living together for nearly 1 1/2 years at Tirupathy, they returned to Madurai and they went to Kallavi, where the parents of the first accused were living. Thereafter, the first accused along with his brother (A4) and husband of the sister (A3) had come down to Kallavi to take Chitra to Madurai and at that time, they have demanded 12 sovereign of jewels and Rs.50,000/- in cash to recognize the marriage and this fact has been spoken by the witnesses during the Revenue Divisional



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Officer enquiry. Therefore, the learned Government Advocate (Crl.Side) appearing for the State sought for confirmation of the trial Court judgment.

12. Heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl.Side) appearing for the State.

13. The prosecution primarily harp on the statement of Chitra alleged to have been recorded by the police on 05.06.2007. This has been recorded while Chitra was taking treatment at Dharmapuri Government Hospital for her burn injury. In the statement, it is stated that from 25.05.2007 she was in the semi-conscious stage and not able to talk and therefore, she was not able to give statement. In the said statement, left thumb impression of Chitra has been affixed. As pointed out by the learned counsel appearing for the appellants, there is no endorsement by the duty Doctor to vouch the mental state and health condition of the maker of the statement namely, Chitra.



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14. Though the prosecution takes excuse for not registering the case as early as 25.05.2007 immediately after the incident took place, but waited for 12 days and acted upon after recording the statement of Chitra, the statement so recorded has also not been done to *prima facie* believe that, it was given by Chitra. More particularly, when PW-1 and PW-2 at more than one places had deposed that Chitra was conscious, while taking treatment at Dharmapuri Hospital and she tried to talk with her husband over phone on several occasions, but her husband did not respond. When the police received information about the cognizance offence, it is supposed to register the First Information Report. PW-9 Head Constable admits that he received information about the incident much prior to 05.06.2007 the date on which the First Information Report came to be registered. But, that information was not recorded and taken up for investigation. It is pertinent to note that the deceased Chitra succumbed to burn injury on 21.06.2007 nearly 26 days after the incident. The Post-Mortem Report indicates that she died due to Septicemia.



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15. The incident has happened at her maternal home. In Ex.P3-statement of the deceased, she has stated that after returning from Tirupathy to Kallavi, the first appellant left to Madurai. He along with A3 and A4 came to Kallavi one week after and demanded 12 sovereign of jewels and cash. They took her to Madurai. The second accused/mother of A1 sent her back to Kallavi on condition that she should come back with jewels and cash. In such circumstances, being depressed she self-immolation herself on 25.05.2007 at her maternal home, when no one was in the house. Hearing her cry, one Vijaya, W/o Selvam and Velu, her brother came and tried to set off the fire. The prosecution has neither examined Velu nor Vijaya. There is no evidence to prove that A3 and A4 came to Kallavi and demanded dowry. There is no evidence to show that A2 mother of A1 refused to allow the deceased inside the house without dowry. These are all facts which are found only in the statement of the deceased marked as Ex.P3, but, the veracity of the statement Ex.P3 is highly doubtful, since it is not been certified by the Doctor, who was in duty in the hospital, when her statement



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was recorded. Based on the uncorroborated so called statement of the deceased person creates serious doubt about the case of the prosecution.

16. As pointed out by the learned counsel appearing for the appellants, when there is no material to show that these appellants had caused cruelty to the deceased soon before her death, the trial Court has erred in presuming that the death has happened due to cruelty. The presumption that the daughter Chitra died due to cruelty in connection with dowry demand, does not arise in this case, since there is no direct evidence. Except the statement of PW-1 and PW-2, the other witnesses do not implicate A3 and A4.

17. As far as A2 is concerned, she was at Madurai. She has never came to Kallavi and any allegation for demand of dowry could be seen only in the statement of Chitra marked as Ex.P3. However, the veracity of the statement itself is highly doubtful, since there is no medical certificate annexed to it to ensure that it was given by Chitra, when she was in fit state



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of mind and conscious.

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18. For the said reasons, this Court finds that the trial Court's judgment is liable to be set aside, since it is based on the uncorroborated and untested evidence.

19. Accordingly, **this Criminal Appeal is allowed**. The judgment of conviction and sentence passed in S.C.No.11 of 2014 dated 14.07.2015 on the file of the Sessions Judge, Mahila Court, Krishnagiri is set aside. Fine amount, if any paid by the accused shall be refunded to them. Bail bond if any executed by them stands cancelled.

25.11.2022

Index:yes
speaking order/non speaking order
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To :

- 1.The Sessions Judge, Mahila Court, Krishnagiri.
- 2.The Inspector of Police, Kallavi Police Station, Krishnagiri District.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Delivery Judgment made in
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