



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2022

Pronounced on : 10.06.2022

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Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.595 of 2015

A.Saranya, F/A 26 years,
D/o.K.Ayyasamy,
Mariamman Koil Street,
Othiyathoor, Gingee Taluk,
Villupuram District.

...Appellant/Defacto complainant

/versus/

1.State rep by,
Inspector of Police,
All Women Police Station,
Gingee, Villupuram District,
(Crime No.8 of 2010).

2.K.Vasudevan,
S/o.Krishnamoorthy.

3.Krishnamoorthy,
S/o.Samykannu.

4.Anbazhagi,
W/o.Krishnamoorthi.

5.K.Varadhan,
S/o.Krishnamoorthi.
All are residing at,
Mariamman Koil Street,
V Kothamangalam,
Villupuram Taluk.

...Respondents/Accused

Prayer: Criminal Appeal is filed under Section 372 of Cr.P.C., to call for the records in C.A.No.49 of 2012 on the file of I Additional District and Sessions Judge, Tindivanam and in C.C.No.35 of 2011 on the file of the Judicial Magistrate, Gingee and set aside the judgment of acquittal dated on 26.08.2014.



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For Appellant : Mr.S.Arulandu, for
M/s.P.Wilson Associates

For R1 : Mr.S.Udaya Kumar,
Government Advocate

For R2 to R5 : Mr.S.Sadasharam

J U D G M E N T

The appellant is the defacto complainant. She being aggrieved by an order of acquittal by the Appellate Court reversing the judgment of the conviction passed by the Trial Court is before this Court.

2. The brief facts of the case is that the appellant/A.Saranya got married to the 2nd respondent/K.Vasudevan on 29.04.2007. The marital relationship was cordial only for the initial three months and thereafter, it went into to rough phase. Meanwhile, the defacto complainant got conceived. A female child was born to her on 07.08.2008. After the child birth, her husband did not come to see her. Later the defacto complainant pursuant to the effect of the counselling by the Legal Service Authority, Villupuram, joined her husband along with her girl child. But, she was not treated properly by her husband and in-laws. She and her child were made to stay in the cattle shed. She, therefore, left the matrimonial home. Thereafter, a complaint dated 25.09.2010 to the District Superintendent of Police was sent by the defacto complainant regarding dowry harassment and ill treatment.

3. In her complaint, she has stated that a year back she gave a complaint in All Women Police Station and based on that complaint, enquiry was conducted and counselling was given to her and her husband. Pursuant to that, her husband after forcible getting an undertaking from her, took her back to the matrimonial home. There she was ill-treated by her husband and in-laws. She and her daughter were forced to stay in the cattle shed and her life was under threat. She was not able to live with her husband and left the matrimonial home.

4. This complaint was forwarded to the All Women Police Station, Gingee. A case was registered in crime No.8 of 2010 under Sections 498(A), 294(b), 323, 506(ii) of I.P.C against her husband, mother-in-law, father-in-law and brother-in-law. After investigation, final report was filed and charges were framed for offence under Sections 498(A), 294(b), 323, 506 (ii) and Section 4 of Dowry Prohibition Act.



5. To prove the case, the prosecution has examined five witnesses and marked two exhibits.

6. The Trial Court, on considering the evidence placed on behalf of the prosecution held, the prosecution has proved the charges under Section 498(A) and Section 4 of Dowry Prohibition Act. In so far as, the other charges framed against him under Sections 294(b), 323, 506(ii) of I.P.C has as not proved. All the four accused were sentenced to undergo one year Rigorous Imprisonment and fine of Rs.1000/- in default one week Simple Imprisonment for offence under Section 498(A) of I.P.C and similar sentenced for the offence under Section 4 of Dowry Prohibition Act was imposed and both the sentences were ordered to run concurrently.

7. Aggrieved by the judgment of conviction, the accused persons preferred appeal in Crl.A.No.49 of 2012 and same was heard by the 1st Additional District and Sessions Judge. Before the Appellate Court, P.W.1 was summoned and examined further. The petition filed by the 1st accused seeking restitution of conjugal right and the order allowing the petition were marked as Ex.D.1 and Ex.D.2 respectively.

8. On appreciation of evidence, the Appellate Court reversed the trial Court judgment and acquitted the accused. While reversing the trial Court judgment, the Appellate Court has pointed out the following four incidents as the basis of the prosecution:-

1. She has lived happily for 2 months after marriage. After that whatever the work done by her was found fault with by the family members of the accused and they scolded her.

2. After the birth of the child information was given to the accused through phone and the phone was disconnected by saying that it is a wrong number. Accused came to see the child after 22 days.

3. A1 demanded Rs.50,000/- for establishing a brick kiln for which the victim and her father refused to give the same.

4. After the compromise accorded by the legal aid office she accompanied to her husband's house she was asked to stay in the cattle shed, she stayed for 5 days.



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9. The first Appellate Court held that, the evidence of prosecution is not sufficient to prove these allegations against the accused/appellant. The Appellate Court held that the alleged demand of Rs.50,000/- for establishing brick kiln does not form part of marriage and will not fall under the definition of dowry.

10. Challenging the said finding and the order of acquittal, the present appeal is filed.

11. The Learned Counsel for the appellant submitted that while the demand of dowry has been specifically spoken and proved through witnesses and found in their favour by the Trial Court, the appellate Court highlighted the trivial contradictions in the prosecution witnesses and reversed the trial Court judgment. The complaint regarding dowry harassment was brought to light long back and only on intervention of counsellor, the defacto complainant went back to the matrimonial home. However, she was ill-treated and driven away. This fact not been appreciated by Appellate Court. It was also contended that the demand of Rs.50,000/- consistently been deposed by P.W.1 to P.W.4. While so, the Appellate Court has erroneously held that the said demand was not proved and even if any money demanded for establishing business, it does not form part of the marriage to fall under the ambit of dowry demand.

12. Per contra, the Learned Counsel appearing for the respondents 2 to 5, who are accused 1 to 4, would submit that the contradictions between the prosecution witnesses P.W.1 to P.W.4, who are all interested witnesses, were rightly taken note by the first Appellate Court.

13. Particularly, it was canvassed by the respondents counsel that the fact that this complaint was lodged with frivolous and embellished allegations on receipt of the notice from the Family Court in the proceedings initiated by the husband for restitution of conjugal rights, proved through Ex.D.1 and Ex.D.2. Further, the defacto complainant admitted in her cross examination that she is not inclined to live with her husband. She went away from the matrimonial home and refused to join her husband on same pretext. In spite of the decree for restitution of conjugal rights the defacto complainant refused to join her husband. The alleged demand of dowry and payment of dowry have not been proved by any evidence. Except the complaint dated 07.07.2020, which is marked as Ex.P.1 and the First Information Report marked as Ex.P.2, no documentary evidence or independent oral witness adduced to corroborate about dowry demand, payment of money or harassment claiming dowry. The trial Court has rightly found that the allegations of abuse and causing hurt were not proved, but has erroneously believed the version of the defacto complainant and her family members



regarding cruelty and dowry demand. Even though there were patent contradictions in their evidence and lack of corroborations same was taken note by the Trial Court. But, the said error has been rightly considered by the first appellate Court and reversed the erroneous finding of the trial Court. When two views are possible, the view, which is favourable to the accused, has to be considered. Accordingly, the order of acquittal passed by the Appellate Court has to be confirmed.

14. Heard the rival submissions of the Learned Counsels and the judgment of Courts below perused.

15. The case of the prosecution is that at the time of marriage, stridhana like necklaces, bangles, rings, bracelets, cash for two wheeler and furnitures was given to the 1st accused. Thereafter, Rs.50,000/- was demanded for the brick kiln business. The defacto complainant received Rs.30,000/- from her father and gave it to 1st accused. The jewels of the defacto complainant was pledged by the 1st accused and he raised Rs.20,000/-. In none of these allegations, there is evidence to corroborate the oral evidence of the defacto complainant. In fact, the improvisation of allegations from the commencement of giving complaint till deposing before the Court patently exposed in the cross examination of the witnesses. While alleging that, the 1st accused did not visited her in the hospital when she gave birth, the defacto complainant candidly admits in the cross examination that, she did not informed her husband about the child birth. When she was asked whether she was ready to join her husband, she categorically refused and denied the intention of joining with the husband. In the light of the above circumstances, the Appellate Court taking note of the fact that the complaint has cropped up only after filing of the petition for restitution of conjugal rights, had reversed the finding of the trial Court.

16. The Learned Counsel for the appellant rely upon the judgment of the Hon'ble Supreme Court rendered in V.K.Mishra & Another -vs- State of Uttarakhand and another reported in (2015) 9 SCC 588 would submit that, FIR is not encyclopaedia to contain all the details of the prosecution case and therefore, non-mentioning of certain events of harassment specifically will not be a ground to doubt the prosecution version.

17. The Appellate Court has reversed the conviction not because no allegations were found in the F.I.R but because the allegations made in the oral evidence of P.W.1 not been corroborated by an independent witness. The alleged fact that stridhana given at the time of marriage itself was not proved by the prosecution. The trial Court had erroneously concluded that since receipt of stridhan was not denied by accused, it tantamounts to admission. Such presumption cannot be drawn



against the accused persons when there is no evidence to prove the fundamental facts on demand and payment of dowry. Likewise, when P.W.1 has alleged that jewels were pledged to raise finance of Rs.20,000/- for the brick kiln business, there is no further details furnished by her through evidence regarding the nature of jewels, weight of the jewels and place of pledging.

18. For the said reason, the Appellate Court has rightly reversed the findings of the Trial Court. Considering the reasoning given by the Appellate Court this Court finds the judgment is neither perverse nor contrary to law and evidence. Therefore, the judgment in CrI.A.No.49 of 2012 passed by 1st Additional District and Sessions Judge, Tindivanam is hereby confirmed. The Criminal Appeal No.595 of 2015 is dismissed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To,

1.The I Additional District and Sessions Judge,
Tindivanam.

2.The Judicial Magistrate, Gingee.

3.The Inspector of Police,
All Women Police Station,
Gingee Villupuram District.

4.The Section Officer,
Criminal Section,
High Court, Madras.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sadasharam, Advocate SR. No. 34331

+1cc to Mr.P.Wilson Associates, Advocate SR. No. 33963

Criminal Appeal No.595 of 2015

SMI (CO)

PR (20/06/2022)