



Crl.A.No.149 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.08.2022

Pronounced on :24.08.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.149 of 2014

Ramesh

.. Appellant

/versus/

The Assistant Commissioner of Police,
Washermanpet Circle,
Chennai.
(Crime No.339 of 2010)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., praying to set aside the judgment of the learned Sessions Judge, Mahila Court at Chennai in S.C.No.555 of 2010 dated 27.06.2013 convicting the appellant to under 3 years rigorous imprisonment for offence punishable under Section 498(A) I.P.C and pay fine of Rs.5,000/- in default further undergo 6 months Simple Imprisonment, and 10 years rigorous imprisonment for offence punishable under Section 306 of IPC and pay fine of Rs.10,000/- in default further undergo 6 months Simple Imprisonment.



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For Appellant :Mr.N.A.Nassir Hussain for
Mr.I.Kowser Nissar
Legal-Aid Counsel

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

J U D G M E N T

The appeal by A-1 (Ramesh) being aggrieved by the judgment of conviction and sentence passed by the trial Court in S.C.No.555 of 2010 for offences under Sections 498-A and 306 IPC.

2. The case of the prosecution is that, the appellant is the husband of the deceased Megala. He married her on 25/11/2007 as per Hindu religious rites and customs. At the time of marriage, dowry as cash Rs.50,000/-, gold jewels 15 sovereigns for the bride, 2 sovereigns for the bridegroom were given on demand of the bridegroom family. For six months, they lived without any problem. Thereafter, the appellant became a drunkard and started selling the jewels given to Megala. Further, he used to beat and torture his wife



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demanding money and jewels. He demanded Rs.1,00,000/- from his mother-in-law for his textiles business, when she requested time till her son's marriage, the appellant and his parents (A-2 and A-3) threatened her, if she fail to give money, her daughter will be deserted. Megala was physically attacked by her husband (appellant) and her mother-in-law and father-in-law. When she was three months pregnant, they aborted the foetus on the advice of a soothsayer. Unbearable of the torture, Megala on 21/05/2010 at about 20.00 hrs committed suicide by hanging. Since Megala died within 2 ½ years of her marriage, charges under Section 498 A r/w 306 IPC and 304 B IPC were framed against her husband, her mother-in-law and father-in-law (A-1 to A-3).

3. To prove the charges, the prosecution examined 12 witnesses. 11 Exhibits and 2 Material Objects were marked. When the incriminating evidences were put to the accused as questions under Section 313 Cr.P.C, he pleaded innocent. The trial Court found A-1 guilty of offences under Sections 498A and 306 IPC and found him not guilty of offence under Section 304-B



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IPC. The parents of the first accused, viz A-2 and A-3 were acquitted.

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4. The trial Court sentenced the accused as under:

Under Section	Sentence imposed on A1 by the trial Court
Section 498-A IPC	To undergo 3 years Rigorous Imprisonment and fine of Rs.5,000/-, in default, 6 months Simple Imprisonment.
Section 306 IPC	To undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/- in default, 6 months Simple Imprisonment.

The period of substantive sentence ordered to run concurrently. The period of pre-trial imprisonment ordered to set off.

5. The appellant submitted that the trial Court having rightly acquitted other accused from all charges, ought to have adopted the same reasoning and acquitted this appellant/first accused. The Trial Court, having found him not guilty of offence under Section 304 B IPC for want of evidence to prove dowry harassment or cruelty ought to have acquitted him from the charges under Sections 498A and 306 IPC also.

6. The Trial Court erred in relying the evidence of PW-1 and PW-



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2, who have not said anything against the appellant regarding dowry demand or harassment during the Executive Magistrate enquiry. The only allegation proved against this appellant is that he used to pick quarrel with his wife (Megala-deceased) in drunken state.

7. The inquest report (Ex.P-8) does not support the case of the prosecution. The panchayat members living near the house of the deceased does not know about the deceased family. Whereas the panchayat members living elsewhere are only hearsay through PW-3(Rathi). No proper investigation was done in this case. The alteration of charge even before the Executive Magistrate Report and missing of the statements of PW-1 to PW-3 recorded by PW-10, not strong reasons to reject the case of the prosecution. PW-1 and PW-2 had deposed that before arrival of the police, the body was taken to hospital. Whereas the Police Photographer (PW-7) had deposed that when he went to the spot, he saw the body of Megala hanging and he took 7 photographs (M.O.1 series) of the body.

8. Per contra, the learned Government Advocate (Crl.Side)



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submitted that, the case was first registered under Section 174 Cr.P.C later altered to Sections 304 B, 306 and 498 A IPC, in view of the evidence collected during the course of the investigation. On 21/05/2010 at about 20.30 hours, the mother of the deceased in writing informed the police about the death of her daughter Megala. The said information (Ex.P-1) was registered in Crime No: 339/2010 and taken up for investigation. The body of the deceased was sent for post mortem and the Executive Magistrate was informed about the death and was requested to conduct inquest, since Megala died within 7 years of her marriage.

9. In the inquest, besides the mother and brother of the deceased, 5 persons in the locality were present. From the preliminary enquiry, the Sub-Divisional Executive Magistrate, in his report (Ex.P-9) concluded that Megala was subjected to dowry harassment and due to the mental torture, she had hanged herself and committed suicide. Death of Megala might be due to cruelty caused to the deceased in connection with demand of money. In the post mortem report (Ex.P5), the Doctor opined that Megala died of Asphyxia



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due to hanging. The case of the prosecution is substantially admitted by the appellant during the inquest by the Executive Magistrate. He admits that he used to drink. There was dispute with his in-laws regarding the jewels given to him during marriage. When he and his wife (Megala) went to PW-2 shop to enquiry, PW-2 behaved badly and abused him.

10. The Learned Government Advocate (Crl.side) submitted that the trial Court judgment has to be confirmed, since the learned Trial Judge, after considering the evidence, has held that from the evidence of PW-1(mother of the deceased) , PW-2 (brother of the deceased) and PW-3 (wife of Saravanan a staff working under PW-2), the inquest report (Ex.P-9) and the post mortem report (Ex.P-5), it is proved that the deceased committed suicide by hanging unbearable of cruelty. She died within 7 years of marriage and the suicide, hence it is presumed due to cruelty induced abetment. Therefore, the appellant was convicted for the offences under Sections 498 A and 306 IPC. The evidence of witnesses indicates that the deceased was treated cruelty to get money from her house to start business. The demand



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was not in connection with marriage to term it as dowry demand. Hence, acquitted the accused for offence under Section 304 B IPC. The Trial Court has taken note of the fact that the other accused were living separately and no evidence to prove beyond doubt that they all caused cruelty along with A-1. Hence, the appellant cannot claim parity along with other accused.

11. PW-1[Chellathai] is the mother of the deceased Megala. She is the defacto complainant and her complaint Ex.P1 is the basis for the investigation. In the complaint, Stridhana was given at the time of marriage is stated. The change in the behaviour of the first accused after 6 months of marriage mentioned. The allegation that he demanded Rs.1 lakh for starting business and abortion and physical torture are mentioned. PW-1 in her chief examination reiterated the content of her complaint, besides she has also spoken about the visit of the deceased during midday on the date of occurrence (21.05.2010) and complained about the assault by her husband and his demand of money. PW-2 in the cross examination admits that he do not know, whether his sister (deceased) met his mother (PW-1) at 12.00 noon



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on the date of occurrence. The post-mortem report does not reveal any other external injuries except the ligature mark of abrasions around the neck, which is the sign of hanging. In her testimony, PW-1 suspects that her daughter died due to the physical torture while demanding dowry on the date of occurrence. This allegation found not proved. The trial Court has rightly held that, the prosecution has not proved any demand of dowry. Matrimonial cruelty is held to be proved based on the evidence of the deceased family members (P.W.1 and PW-2) and based on the inquest report (Ex.P9).

12. PW-3 (Radhi) is the friend of the deceased. She in her chief examination has stated that the deceased used to complaint about her husband for quarrelling with her daily, therefore she said her that she is not interested in living. The deceased told her that her parents in-law want her to abort the 3 month foetus. She heard, Megala died committing suicide by hanging. She did not attend her funeral.

13. PW-2 in the cross examination admits that Saravanan, who is the



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husband of Rathi (PW-3) is working under him. He also admits that, PW-3 and the deceased were living in the same compound, next to next house. While so, the testimony of PW-3 is nothing about what she saw directly but only hearsay about the alleged quarrel and the alleged abortion.

14. PW-4(Prabakaran], is one of the signatory to the observation mahazar (Ex.P-4) and rough sketch (Ex.P-11). PW-6[Mr.Mohan] Special Sub Inspector attached to Washermenpet Police Station has escorted the body to hospital for post mortem and Dr.Muthunarayanan [PW-5] is the Doctor, who conducted the Post Mortem. The certificate with his opinion is marked as Ex.P-5. Photographer Mr.Raja, who has taken photos of the deceased is PW-7. The photographs are marked as M.O.1 series and C.D [M.O.2]. According to Pw-7, he went to the house of the deceased at about 9.00 to 9.15 p.m on 21/05/2010 and took photos as per the instructions of the police. Though some doubt raised in the grounds of appeal regarding the time, they are not significant contractions to disbelieve the case of the prosecution.



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15. PW-9 is the Executive Magistrate, who conducted inquest and gave his report which is marked as Ex.P-9. In his report, he has opined that the appellant used to torture physically his wife Megala and frequently demanding money. Unbearable of the torture, the deceased committed suicide. PW-7[Raja] admits that there are other residents in the compound. The portion in which the accused and the deceased lived is a rented house. He did not record the statement of the house owner. It is suggested to this witness that the deceased was suffering with severe head pain and was taking treatment, sofar that reason she committed suicide. The rest of the witnesses for prosecution are from the Police Department who either investigated the case or assisted the investigation.

16. The incriminating evidence against the appellant:

(i) On 25/11/2007, the deceased and the appellant got married. On 21/05/2010, the deceased died committing suicide. The death within 7 years of marriage gives raise to a presumption of abetment against the appellant.

(ii) PW-1and PW-2 had deposed that the deceased was subjected to



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cruelty. The appellant was a drunkard and was in frequent quarrel with his wife demanding money and jewels from the deceased family. The Executive Magistrate (PW-9) had opined that the death was in connection with dowry demand.

17. The points in favour of the appellant are:-

(i) The deceased got conceived is an undisputed fact. Whether, the abortion of foetus was natural or was due to force by the appellant and his parents, is a fact in dispute. No medical evidence placed by the prosecution to confirm that Megala was forced to abort her foetus. Detail about the hospital where she underwent termination of her pregnancy is not spelt by the prosecution witnesses. Therefore, the possibility of abortion when she was lifting water as suggested to the witnesses is also probable.

(ii) The appellant had denied the alleged demand of Rs. One lakh. Even otherwise, as per the witnesses for prosecution, the said demand of Rs. 1 lakh was to start textile business. Therefore, it is not in the course of marriage or in connection with marriage. It should be termed as demand for a



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financial assistance and not dowry demand. Further, even according to PW-1, she did not refuse to give this money but only asked the appellant to wait till the marriage of PW-2. Therefore, the inducement to commit suicide may be from a source other than the appellant.

(iii) There is no sign of violent injury found on the body of the deceased except the ligature marks around her neck, confirming her death was due to hanging. PW-1 testimony that on the date of occurrence the deceased met her at 12.00 noon and informed that the appellant physically attacked her demanding money is not corroborated by any other witness or through the medical record. PW-2 had specifically stated that he is not aware whether his sister (Megala-deceased) met his mother PW-1 at 12.00 noon on the date of occurrence. This is a new fact introduced in the chief examination of PW-1 for the first time. This fact is not found either in the complaint Ex.P-1 or in the statement Ex.P-2 given to the Executive Magistrate, which are earliest document in this case.

18. According to the learned counsel for the appellant, the appellant



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before the Executive Magistrate had stated that, he refused to attend the betrothal of PW-2, due to the misunderstanding with him, who took back the about 8 sovereigns jewels under the pretext, that it is not safe to keep the jewels with the appellant. Against his wish, the deceased attended the betrothal of her brother (PW-2) held on 10/05/2010. After returning home, she was found depressed. When he enquired her, the deceased informed that while others attended the function wearing jewels, her brother refused to give back her jewels. Therefore, the cause which instigated the deceased to commit suicide is not the appellant, but the refusal of PW-2 to return back the jewels given as stridhana to the deceased during her marriage.

19. In Ex.P-1, the mother of the deceased had stated that from the date of marriage, the appellant used to torture her daughter in inebriation. Whereas in her deposition before the Court, she has stated that for the first 6 months from her marriage, there was no complaint and their life was getting on well. In her complaint Ex.P-1, she has alleged that when her daughter got conceived, she was forcible taken to the hospital and terminated the



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pregnancy against her wish. Whereas, in the Court she has deposed that, A-1 to A-3 assaulted her daughter when she was 3 months pregnant and due to assault the foetus got aborted.

20. The first three witnesses for the prosecution are the mother, brother and wife of the staff working under the brother. The fact that the deceased met PW1 at 12.00 noon of 21/05/2010 and the complaint about physical assault by the appellant demanding money was introduced for the first time during the trial indicates it is an afterthought to implicate the appellant that soon before the death, the deceased was subjected to cruelty or harassment. However, this newly introduced fact not corroborated by PW-2 or PW-3. Neither, the post mortem certificate indicates any external injuries on the body of Megala to infer she was subjected to physical cruelty before she hanged herself. It is also to be noted that, the prosecution has not examined the neighbouring residents or the owner of the house, who are the best witnesses to speak about the domestic affairs of the appellant and the deceased who came to that portion about 4 months prior to the incident. In



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view of these lapses, this Court is of the view that it is not safe to hold the appellant guilty, when the contradictions and embellishments in the testimony of the interested witnesses is patent and the non-examination of any other independent witnesses who could speak about the facts renders the evidence of PW-1 to PW-4 unreliable.

21. For the above said reasons, this Criminal Appeal is allowed. The conviction and sentence passed by the trial Court viz., the Sessions Judge, Mahila Court, Chennai made in S.C.No.555 of 2010 dated 27.06.2013 is set aside. Fine amount, if any paid by the accused, shall be refunded to him. Bail bond if any executed by the accused shall stand cancelled. If his custody is not required in any other case, the accused/appellant shall be set at liberty forthwith.

22. This Court records its appreciation to Mr.Nassir Hussain and Mr. Kowser Nissar, the Legal Aid Counsels appointed by the Legal Services Authority, who ably assisted this Court for arriving at the above conclusion.



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Delivery Judgement made in
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24.08.2022