



Crl.A.No.638 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30.06.2022

Pronounced on :06.07.2022

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.638 of 2014

1.Kandavel

2.Mallika

.. Appellants

/versus/

State Represented by
Inspector of Police,
K.R.P.Dam Police Station,
Krishnagiri District.
(Crime No.58 of 2010)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C.,
to set aside the judgment of the learned Sessions Judge, Fast Track Mahila
Court, Krishnagiri made in S.C.No.64 of 2013 dated 16.10.2014 and acquit
the accused/appellants herein from the charge.



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For Appellants

:Mr.V.Gopinath,
Senior Counsel for
Mr.K.Selvarangan

For Respondent

:Mr.S.Udayakumar
Govt. Advocate (Crl.Side)

JUDGMENT

The appellants are the accused 1 and 2 in S.C.No.64/2013 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri. The appeal is against the judgment of conviction and sentence imposed on them by the trial Court.

2.On 13/04/2010 Madavan aged about 43 years, resident of Senachatiram, Gandhinagar, Hosur within the jurisdiction of the first respondent police station, gave the written information that, his daughter Dhanammal was given marriage to Kandavel, S/o Anumanthan 11 months ago. After marriage she came only twice to the parental home. On 12/04/2010 at about 6.00 pm she called over phone and told that her in-laws are ready to set separate family, they demand Rs.One lakh and a motor cycle. He pacified her to be quite and promised to her that he will come the next day and talk with the members of her husband's family. His daughter

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Dhanammal kept the phone weeping. On 13/04/2010 at about 6.00 pm when he was at his home, his sambandhi (son in law's mother) Malliga called him over phone and informed that his daughter Dhanammal is not well and asked him to rush to Duvarakapuri. When he went to her sambandhi house he found his daughter dead. On enquiry they informed that she hanged herself in the house and died.

3.The above said information was recorded in crime No.58/2010 under Section 174 Cr.P.C and taken up for investigation. Since it was unnatural death of a married woman within 7 years of her marriage, the Investigating Officer arranged for RDO enquiry. The Investigating Officer visited the scene of occurrence and prepared the observation mahazar. Examined witnesses and recorded their statements. Recovered nylon rope (2 pieces) used by the victim to hang herself.

4.In the course of his investigation he came to know that Kandavel (the husband) and Mallika (the mother-in-law) jointly tortured the deceased Dhanammal demanding dowry. Unbearable of the said torture,



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Dhanammal committed suicide. Therefore, he altered the FIR for offences under Section 304 B IPC against Kandavel and Malliga.

5.On considering, the averments made in the final report are related to offences exclusively triable by the Court of sessions, the learned Judicial Magistrate committed the case to the Sessions Court. On committal, after furnishing copy of the final report and the documents to the accused persons, the Assistant Sessions Judge, (Chief Judicial Magistrate, Krishnagiri) framed charges under Sections 304 (B) and 306 IPC and Section 4 B of Tamil Nadu Prohibition of Women Harassment Act, 1998. The charges were denied by both accused. Hence, they were put to trial. Meanwhile, the Mahila Court for exclusive trial of offences against women was constituted at Krishnagiri, therefore the case was made over to Fast Track Mahila Court, Krishnagiri for trial.

6.To prove the charges, the prosecution examined 22 witnesses (PW-1 to PW-22) and marked 12 exhibits (Ex.P-1to Ex.P-12). 13 material objects were produced. In defence, two witnesses were examined.

7.The trial Court held that the evidence placed by the prosecution



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satisfies the ingredients required for Section 304(B) IPC. Observing that the ingredient for offences under Section 4B of the Tamil Nadu Prohibition of Women Harassment Act, 1998 and the ingredients for offence under Section 498 A IPC is covered in Section 304 (B) IPC, the trial Court held that the conviction under Section 304 (B) IPC itself is sufficient for the other offences and sentenced A-1 and A-2 to undergo imprisonment of 7 years RI for the offence under Section 304 (B) IPC.

8.The Appeal under consideration is directed against the above judgement.

9.The Learned Senior Counsel for the appellants contended that the charges framed against these appellants specifically alleges that, the marriage between Dhanammal and the first appellant Kandavel was solemnised 11 months prior to the date of death on 13/04/2010. A-1 and A-2 received dowry of 10 sovereigns gold jewels and Rs.10,000/- cash during marriage and after marriage, they continue to demand further sum of Rs.10,000/- and a two wheeler causing mental cruelty to Dhanammal.



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Unbearable of the mental cruelty, Dhanammal died committing suicide.

Thus, liable to be tried for offences under Sections 304 (B) IPC, Section 306

IPC and Section 4 B of Tamil Nadu Protection of Woman Harassment Act.

10.To prove these charges, the prosecution examined 22 witnesses to rebut the presumption 2 witnesses were examined. Except PW-1 to PW-4 and the official witnesses, others were treated as hostile witnesses, since they did not support the prosecution case. As far as PW-1 to PW-4 are concerned, they are all related to the deceased as father, mother, brother and wife of the brother respectively. Their depositions are not inconsistent, but contradictory as well as suffers embellishment, consciously improvised stage by stage commencing from the complaint Ex.P-1.

11.The Learned Senior Counsel for the Appellants referring the complaint Ex.P-1 and the FIR registered, based on the FIR, submitted that in the complaint, it is specifically stated that on 12/04/2010, PW-1 received phone call from his daughter Dhanammal and she told that they are going to set separate family, so they demanded Rs.1 lakh and a motor cycle. He



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pacified her and assured to come on the next day. He could not go on that day, at about 6.00 p.m he received call from his sambanthi (A-2) informing that Dhanammal is not well. When he went there, he saw his daughter lying dead. They told him that she hanged herself in the house.

12.In his chief examination, PW-1 has stated that before marriage, the accused demanded 15 sovereigns of jewel and Rs.55,000/- to buy a motorcycle. At the time of marriage, he gave 10 sovereigns of jewel and Rs.10,000/- advance for purchase of two wheeler. After one month, he gave a Videocon Colour TV. For two months the couple were living happily. Two months thereafter, his daughter and son-in-law came and told him that they have decided to buy a second hand two wheeler and asked Rs.10,000/-. He gave Rs.10,000/-. For next three months, they were living happily. Thereafter, one day he received call from his daughter that her husband and mother-in-law torturing her demanding Rs.1 lakh. He went to Duvarakapuri and told the accused/appellants that he had already spent all he had and he can do nothing more. 15 days thereafter, his daughter called him and told that they are beating her. He rushed to Duvarakapuri. The second accused



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threatened if he refused to pay Rs.1 lakh, she will not allow his daughter to live. 1 to 2 months thereafter, one Friday at about 1.00 p.m, he received a phone call from his daughter. She asked him to come to her house and if he don't come, she will commit suicide. He promised her that he will come on Monday. Due to his ill-health, he could not go on Monday. On Tuesday at about 3.30 p.m he received a phone call from A-2, she informed him that his daughter is not well. When he went to her house, he was told that his daughter died hanging herself. Police did not allow him to enter the house.

13. Reading the chief examination of PW-1 extracted above, the deposition of PW-1 is full of embellishments and contrary to his previous statement. Most of the above allegations are not mentioned in the FIR or said to the police while investigation. Embellishment has been elicited in the cross examination of PW-1 as well as PW-21 the Investigating Officer.

14. Reading the depositions of PW-1 to PW-4 , the Learned Senior Counsel submitted that the following contradictions and the after-thought improvised evidence leading to inconsistency in the prosecution case:-



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(i) PW-2 admits that she did not tell the police that on the demand of the accused, they bought the TV and gave to her daughter (or) her daughter asked Rs.1 lakh for construction of house and set up a separate family.

(ii) Both PW-2 and PW-3 had deposed in their chief, that for five months the deceased was living happily with her husband (A-1). PW-2 had further deposed that one Friday, the deceased called PW-1 and asked Rs.1 lakh for construction of house and to set up separate family. There is no indication in PW-2 evidence that the request of her daughter to give Rs.1 lakh for constructing the house was at the behest of the accused persons.

(iii) PW-1 had deposed in the chief that on receiving phone call from A-2, he along with his family members went to Duvarakapuri in a car. The police did not allow them to enter the house. Whereas PW-2 in the chief examination says, when they went to Duvarakapuri, they found the house locked. Contrary to these two witnesses, PW-3 in his chief examination says when they went to Duvarakapuri on 13/04/2010, he saw his sister dead, kept in the house. PW-4 the wife of PW-3 says they reached Duvarakapuri at about 7.15 pm and she saw Dhanammal dead, frothy nose and mouth.



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15.In the absence of evidence to substantiate the charge framed by the trial Court for offence under Section 304 B IPC that the accused demanded Rs.10,000/- and a two wheeler, which caused mental cruelty to the deceased leading to commit suicide, the trial Court erred in convicting the accused.

16.While even the interested witnesses had only spoken about the phone call of the deceased requesting Rs.1 lakh from her father for construction of the house and to separate the family, the accused have been erroneously found guilty ignoring the evidence of the defence witnesses that the deceased was insisting for separate family and she was unhappy over not arranging separate family. Therefore, she committed suicide.

17.The Learned Senior Counsel for the appellants contended that, during the cross examination of PW-9-Manoharan (Hostile) an independent witness residing opposite to the house of the accused, it has been elicited that, when he came to know, Dhanammal is insisting for separate family. Since there are brothers for her husband to get married, he called her and



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advised to wait for few months. Though this was the testimony of an witness for prosecution, turned hostile, the veracity of this part of his deposition cannot be brushed aside, because he turned hostile.

18.Hence, summed up stating, despite probablising the defence through positive evidence that the suicide of Dhanammal was not because of any dowry demand or cruelty connected with dowry demand, the trial Court failed to consider the evidence properly and arrived at an erroneous finding.

19.The learned Government Advocate (Crl.Side) submitted that, the death of Dhanammal was within 11 months of her marriage with the first accused. The demand of Rs.55,000/- and 15 sovereign gold jewels at the time of marriage is consistently spoken by PW-1 to PW-4. The further demand of dowry to purchase two wheeler is also the consistent evidence of the family members of the deceased. There is no contradiction about the call from the deceased on Friday informing the torture of dowry demand and she intent to commit suicide, since she is unbearable of the torture. PW-1 who



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received the phone call has deposed what he stated in the complaint Ex.P-1 which is the contemporaneous document. Wherein the phone call and demand of Rs.1 lakh for establishing separate family is mentioned. Therefore, minor contradictions in the testimony of the prosecution witnesses, who are rustic and from lower strata of society working as labourers in stone crushing units cannot taken seriously to hold the accused are innocent, more particularly when presumption under Section 113 B of the Evidence Act has not been rebutted by any preponderance of probability.

20.The Learned Government Advocate (Crl.Side) relying upon the recent judgment of the Hon'ble Supreme Court reported in **2022 (5) SCC 401 (State of Madhya Pradesh –vs- Jogendra and Another)** submitted that the facts of that case cited above is identical to the facts of the case in hand. The Hon'ble Supreme Court in **Jogendra case** has held that demand of money to construct house will fall under the definition of 'Dowry.'

21.Heard the learned Senior Counsel appearing for the appellants and



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the learned Government Advocate (Crl.Side).

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22.The Courts in India had consistently observed that, in order to hold an accused guilty of an offence under Section 304 B IPC, two facts are to be proved:

(a)The death of the woman otherwise than under normal circumstances ought to have occurred within 7 years of the marriage.

(b)It should be shown that ‘soon before her death’, she was subjected to cruelty or harassment by her husband or relatives of her husband for or in connection with any demand of dowry.

23.In this case, the charge is for demanding Rs.10,000/- and a two wheeler as dowry. Whereas the complaint Ex.P-1 is stated that on 12/04/2010 the deceased informed him over phone that the accused demanded Rs.1 lakh and a two wheeler to set up separate family.

24.The deceased committed suicide on 13/04/2010 in the house



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locked inside. Evidence indicates all the other family members of the accused where gone out for work on 13/04/2010 when the deceased alleged to have committed suicide. They opened the roof of the room and saw Dhanammal at about 5.30 p.m. The specific case of the prosecution as found in the complaint Ex.P-1 and the depositions of PW-1 and PW-2, is that, when the deceased called PW-1 on Friday and informed about the demand, he pacified her to wait for three days and promised her to come to Duvarakapuri on Monday. He did not go on Monday due to ill health. On Tuesday the deceased committed suicide. The inconsistency about the date of phone call and the date of death causes doubt about the reliability of PW-1 to PW-4.

25.Further, in the testimony of the prosecution witnesses, the second ingredient that the deceased was put to cruelty demanding dowry soon before her death is found missing. Whether one lakh rupees sought to construct a house to set up a separate house and the demand of two wheeler emanated from the accused or it was the wish of the deceased, which could not be met by her parents also not made clear through the prosecution



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witnesses. P.W-1 in the cross examination admits that he never gave any complaint about dowry harassment to the police prior to this incident. D.W-1 and D.W-2 had deposed about the panchayat convened regarding setting up of separate family for A-1 and the deceased. Their evidence corroborates the testimony of PW-1 and PW-3 about panchayat held few months prior to the incident. So, from the evidence placed, the immediate reason for the deceased to commit suicide was probable the failure of PW-1 to meet her on the day, he promised to meet her. The disappointment of the deceased, who expected her father to come and arrange for separate family by giving money and two wheeler had triggered her to commit suicide.

26. In this contest, this Court finds appropriate to quote the Hon'ble Supreme Court in *Satvir Singh –vs- State of Punjab (2002 SCC (cri) 48)*, wherein it is aptly said, “it is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304 B IPC is to be invoked. But it should have happened “soon before her death”. The said phrase, no doubt is an elastic expression and can refer to a period either immediately before her death or within a few days or even a



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few weeks before it. But the proximity to her death is the pivot indicated by that expression”.

27.In *State of Madhya Pradesh –vs- Jogendra (cited supra)*, the Hon’ble Supreme Court has observed that, strict interpretation of statute should not defeat the very object of the provision. An expansive meaning to the expression ‘dowry’ must be assigned. It summed up stating, “interpretation of a provision of law that will defeat the very intention of the legislation must be shunned in favour of an interpretation that will promote the object sought to be achieved through the legislation meant to uproot a social evil like dowry demand.”

28.In the said background, the Hon'ble Apex Court, after considering the deposition of prosecution witnesses, held that the accused family pressurised the deceased and her family to contribute for constructing house and therefore, it falls within the meaning of dowry.



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29. In the instant case, this Court is not able to find any evidence that the deceased or her family were pressurising the deceased family to give money for the construction of a house. In fact, it was the pressure exerted by the deceased on the members on her matrimonial home and the parental home to set up independent nucleus home. Even assuming that there was demand of dowry in some form, the interval which elapsed between the infliction of alleged harassment or cruelty and her death is wide. Therefore, this Court has no hesitation to hold that in all probabilities the harassment or cruelty alleged would not have been the cause of her death.

30. In the light of evidence that the deceased was unhappy over the delay in setting up separate house and establish a nucleus family of her own, which goes contra to the charge for which the accused found guilty. Hence, this Court holds that it may not be in the interest of justice to convict the appellants based on weak piece of evidence for the offence under Section 304 (B) IPC.



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31.In the light of the above discussions, the trial Court judgment of conviction and sentence are set aside. ***This Criminal Appeal is allowed.*** The appellants are set at liberty. Bail bond, if any executed by the appellants shall stand cancelled. The appellants/accused are directed to be released forthwith, unless they are required in connection with any other case. The fine amounts, if paid by the appellants/accused, shall be refunded.

06.07.2022

Index:yes/no

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To:

1.The Sessions Judge, Fast Track Mahila Court,
Krishnagiri, Krishnagiri District.

2.The Inspector of Police, K.R.P.Dam Police Station,
Krishnagiri District.

3.The Central Prison, Vellore.

4.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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