



Crl.A.No.565 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

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1. Velayutham
2. Babyammal

...Appellants

Vs.

The State represented by
The Assistant Commissioner of Police,
Pulianthope Range,
Chennai-600 012.
(Crime No.1202/2014 in
P-2 Otteri Police Station)

...Respondent

This Criminal Appeal is filed under Section 374 of Cr.P.C. to set aside the judgment made in S.C.No.157 of 2015 dated 21.10.2021 passed by the learned Sessions Judge, Mahalir Neethimandram, Chennai.

For Appellants : Mr.K.Kannan

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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JUDGMENT

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The criminal appeal has been filed against the judgment of conviction and sentence made in S.C.No.157 of 2015 dated 21.10.2021 passed by the learned Sessions Judge, Mahalir Neethimandram, Chennai.

2 The respondent police laid a charge sheet in Cr.No.1202/2014 before the learned X Metropolitan Magistrate, Egmore, Chennai, stating that the accused A1 and A2 being the husband and mother-in-law of the deceased have caused cruelty and harassment demanding more jewels and thereby abetted the deceased to commit suicide and thereby committed offence under Sections 498A and 306 of IPC. The learned X Magistrate, Egmore, Chennai, since the offences are triable only by the Court of Session, committed the case to the learned Principal Sessions Judge, Chennai, who in turn made over the case to the learned Sessions Judge, Mahalir Neethimandram, Chennai. The case was taken on file in S.C.No.157 of 2015.



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Before the trial Court, in order to prove the case of the prosecution, as many as 15 witnesses were examined as P.Ws.1 to 15 and Exs.P1 to P15 were marked. After completing examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., they denied the same as false and pleaded not guilty. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and two documents were marked as Ex.D1 and D2.

4 The learned Sessions Judge, Mahalir Neethimandram, Chennai, on completion of trial and hearing arguments advanced on either side, by judgment dated 21.10.2021 found the accused guilty for the offence under Sections 498A IPC and not found the accused guilty for the offence under Section 306 IPC, but, found both the accused guilty for the alternate charge under Section 304B IPC and convicted the appellants/A1 & A2 and sentenced them to undergo rigorous imprisonment for a period of three years with fine of Rs.5000/- each, in default, to undergo simple imprisonment for a



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further period of three months for the offence under Section 498A, to undergo rigorous imprisonment for a period of seven years with fine of Rs.10,000/- each , in default, to undergo simple imprisonment for a period of four months for the offence under Section 304B of IPC. Further the learned Judge ordered to pay Rs.10,000/- each out of the total fine amount of Rs.30,000/- to P.W.1 and P.W.2 father and mother of the deceased. Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present criminal appeal before this Court.

5 The learned counsel appearing for the appellants would submit that there is no demand of dowry as alleged by the prosecution. As per the evidence of P.W.2 mother of the deceased, the deceased was living in their home for six months and hence there is no occasion for the accused to demand dowry as alleged by the prosecution. In fact the deceased forced the first appellant to live in her native and he refused the same. Further the deceased completed Teacher training, but the first appellant is Auto Driver and hence due to superiority complex and refusal of the first appellant to live with the deceased in her native, the deceased got frustrated.



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5.1 Ex.D2 is the suicide note written by the deceased, in which the victim stated that “என் கணவர் நல்லவர்”, which clearly shows that the first appellant/A1 did not make any demand of dowry and there is no quarrel between the deceased and the first appellant. If really any quarrel between them or the first appellant caused any cruelty as alleged by the prosecution, the deceased would have filed complaint against the first appellant on the earlier occasion itself, but the deceased has not filed any complaint against the first appellant, which shows that they have lived happy matrimonial life.

5.2 It is alleged that the appellants have pledged the jewels of the deceased, but, to prove the same no document such as receipt or bills have been produced by the prosecution. The girl may have many reasons for committing suicide and she would not reveal the same to anyone. Since the deceased committed suicide within a period of seven years from the date of marriage, only based on the presumption, the Court cannot convict the accused.



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5.3 P.W.4 is the brother of the deceased who married the sister of the first appellant. Hence the deceased and her family members knows about the family of the appellants very well prior to the marriage of the deceased with the first appellant. P.W.4 is living happily with the sister of the first appellant and like wise the deceased was also living with the first appellant happily and there is no demand of dowry as alleged by the prosecution.

5.4 There are contradictions between the evidence of the prosecution witnesses and the trial Court has failed to consider the same and also has not properly appreciated the evidence of D.W.1 and D.W.2 and erroneously recorded conviction against the appellants.

5.5 The trial Court has miserably failed to consider the above facts and erroneously convicted the appellants/accused, which warrants serious interference of this Court and the learned counsel prays to allow the appeal by setting aside the conviction recorded against the appellants.



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Mr.S.Sugendran, learned Additional Public Prosecutor

appearing for the respondent police would submit that the deceased was given into marriage with the first appellant. The appellants demanded more dowry and caused cruelty on the deceased. The second appellant/A2 picked up quarrel with the deceased stating that the jewels given by the parents of the deceased at the time of marriage are not gold and it is covering and also demanded more jewels. The deceased had conveyed the harassment and cruelty caused by the appellant to P.W.1 and P.W.2 parents of the deceased and when it was questioned by P.W.2, the second appellant/A2 told that if P.W.2 would not take the deceased back to their home, she would kill her. Even the deceased prior to committing suicide went to the Police Station to lodge the complaint against the appellants due to unbearable act of the appellants. The evidence of D.W.2 clearly shows that the deceased prior to committing suicide on the same day went to All Woman Police Station and lodged complaint against the appellants stating that she was harassed by her husband and his family members. Thereafter, after returning home, the deceased committed suicide and P.W.4 informed the same to P.W.1 and



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P.W.2. P.W.2 lodged the complaint against the appellants and hence the present case was registered.

6.1 Trial Court has also considered all the defence taken by the accused and found the appellants/accused guilty and recorded conviction giving well founded reasons, which does not call for any interference of this Court and the appeal is liable to be dismissed.

7 Heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for respondent police and perused the materials available on record.

8 Case of the prosecution is that the deceased was given into marriage to the first appellant/A1 on 15.03.2015 and at the time of marriage, parents of the deceased given 12 sovereigns of gold jewel and sridhana properties as dowry. Even before the marriage, at the time of performing bride invitation, the second appellant/A2 insulted the family members of the deceased by throwing away the 2 sovereigns given to the deceased. After the



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marriage also the second appellant picked up quarrel with the deceased stating that the jewels given at the time marriage are not gold and it is covering and also demanded more jewels. Further the appellants pledged the jewels given to the deceased and when the deceased asked to redeem the same, the appellants demanded more jewels and harassed and also assaulted her. Hence the deceased went to her parent's house and after conciliation, she returned back to the matrimonial home. Thereafter also the appellants caused cruelty on the deceased and due to unbearable acts of the appellants, the deceased on 06.09.2014 at about 16.00 hours went to the All Woman Police Station and lodged complaint against the appellants. Thereafter on the same day i.e. on 06.09.2014 the deceased committed suicide by hanging in the ceiling fan.

9 Even though, initially the case was registered under Section 174 Cr.P.C. after receiving the report from the RDO, the offence was altered into Section 498(A) and 306 of IPC. Ex.P13 is Section Alteration report.



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WEB COPY 10 This Court, being an Appellate Court, is a final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court.

11 The deceased is the wife of the first appellant and daughter-in-law of the second appellant. Their marriage took place on 15.03.2015. P.W.1 is father, P.W.2 is mother, P.Ws.3 and 4 are brothers of the deceased. Sister of the first appellant was given into marriage to the brother of the deceased i.e. P.W.4.

12 It is the main contention of the learned counsel appearing for the appellants that the second accused was not residing with the deceased and hence there was no demand of dowry by the second appellant. Further it is contended that since the first appellant was the Auto Driver and the deceased has completed Teacher Training and due to superiority complex and refusal by the first appellant to live with the deceased in her native as



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requested by her, the deceased got frustrated and committed suicide. But, from the evidence of P.Ws. 1 to 4 it is seen that brother of the deceased P.W.4 married sister of the first appellant and hence the deceased knows about the family background of the appellants even prior to the marriage. Hence the reason of superiority complex stated by the learned counsel for the appellants is not acceptable.

13 The other main defence is that the deceased herself in Ex.D2 suicide note, stated that her husband i.e. first appellant is not the reason for her death and he is good person. But, the fact remains that the trial Court exercising power under Section 73 of the Indian Evidence Act, perused Ex.D2, where the deceased written cooking notes for about 24 pages and in the last page it was written that her husband is not the reason for her death and he is good person, and it is found that the hand writing in the suicide note which was said to have written by the deceased and the cooking notes are patently different. Further P.W.4 brother of the deceased has also not specifically stated anything about suicide note. This Court also perused Ex.D2 and finds that the hand writing of the suicide note and the cooking



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notes are different. Further the accused has not taken any defence relying on Ex.D2 and has not even put any suggestion before the prosecution witnesses during cross examination. Hence Ex.D2 has not been proved by the defence that it was written by the deceased.

14 As far as the defence regarding production of receipts for pledging of jewels is concerned, P.W.8 who is the Pawn Shop Owner has clearly deposed that the appellants pledged the jewels for Rs.70,000/-. Further from the evidence of P.Ws.1 to 4, it is clear that there was dispute between the family of the accused and the deceased. Even prior to the marriage the second appellant suspected the jewel given to the deceased by P.Ws.1 & 2 and picked up quarrel with the family members of the deceased and also degraded them. P.W.7, who is a known person to both P.W.1 as well as the appellants, has spoken about the happenings before and during the marriage of the deceased, which proved the fact that the second appellant picked up quarrel with the deceased regarding the quality of the jewels given to the deceased. After the marriage also the appellants demanded more jewels and due to unbearable harassment and cruelty, the



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deceased on 06.09.2014 went to All Woman Police Station and lodged complaint against the appellants and on the same day committed suicide by hanging.

15 To attract offence under Sections 304(B) and 498A IPC, main ingredients are that soon before the death there must be cruelty caused by the husband or their relatives and when the death is unnatural within 7 years from the date of marriage. Once the said ingredients are proved, there is presumption under Section 113(B) of the Indian Evidence Act that the death of the deceased is dowry death, which offence falls under Section 304(B) of IPC. The accused has to rebut the presumption in the manner known to law that there was no demand of dowry and the death is not due to demand of dowry. In this case, the deceased died unnaturally within seven years from the date of marriage by committing suicide and soon before the death there was cruelty by way of demanding dowry by the appellants. The appellants have not rebutted the presumption in the manner known to law. Therefore this Court has come to the conclusion that from the evidence of P.Ws.1 to 4, 7, 8, 10, 13 and Exs.P1 to 5, 10, 11, 14, 15 prosecution has proved the



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offence under Sections 498(A) and 304(B) IPC and also as concluded by the trial Court prosecution has not proved the offence under Section 306 IPC.

16 For the foregoing reasons, this Court does not find any perversity in appreciation of evidence by the trial Court. Accordingly, this criminal appeal is dismissed. The trial Court is directed to secure the appellants to serve remaining period of imprisonment, if any.

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1. The Sessions Judge, Mahalir Neethimandram, Chennai.
2. The Assistant Commissioner of Police, Pulianthope Range,
Chennai-600 012.
3. The Public Prosecutor, High Court of Madras.



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P.VELMURUGAN, J.,

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