



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Judgment Reserved On 18.04.2022	Judgment Pronounced On 17.06.2022
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Crl.A.No.312 of 2017
and CRL.M.P.No.7250 of 2017

Raja @ Pragash
S/o.Kuppusamy

...Appellant/ A1
Vs.

State rep. by
Inspector of Police,
Mettupalayam Police Station,
Puducherry.
Crime No.172 of 2010

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 of Criminal Procedure Code to set aside the order of conviction passed in S.C.No.95 of 2011 dated 14.03.2016 on the file of the learned II Additional Sessions Judge, Puducherry.

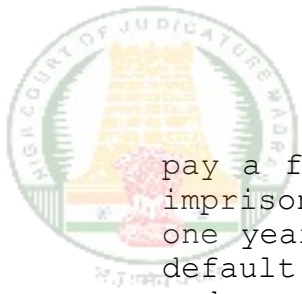
For Appellant : Mr.R.John Sathyan
for Mr.Swami Subramanian

For Respondent : Mr.Balamurugane
Public Prosecutor [Puducherry]

JUDGMENT

The appellant/A1 in S.C.No.95 of 2011 on the file of the learned II Additional Sessions Judge, Puducherry was charged and tried along with another accused for the offence under Sections 302, 498A, 201 IPC, Section 4 of Dowry Prohibition Act and Section 7(1)(d) of Protection of Civil Rights Act, 1955 r/w. Section 34 IPC.

2.The Trial Court on conclusion of the trial acquitted A2 and convicted the appellant/A1 by judgment dated 14.03.2016 and sentenced him to undergo ten years rigorous imprisonment and to



pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment for the offence under Section 304(1) r/w. 34 IPC, one year rigorous imprisonment and to pay a fine of Rs.250/-, in default to undergo one month simple imprisonment for the offence under Section 498A IPC r/w. 34 IPC, one year rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment for the offences under Section 4 of Dowry Prohibition Act r/w. Section 34 IPC, one month rigorous imprisonment and to pay a fine of Rs.100/-, in default to undergo one week simple imprisonment for the offences under Section 7(1)(d) of PCR Act. The appellant was acquitted for the charges under section 201 IPC r/w. 34 IPC. Against which, the present appeal is filed.

3. In the Trial Court, the prosecution examined P.W.1 to P.W.33 and marked Ex.P1 to Ex.P44 and M.O.1 to M.O.6. On the side of the accused, no witnesses examined and no documents marked.

4. The brief facts of the case is that on 30.09.2010, Arumugam/brother-in-law of the defacto complainant informed that the defacto complainant's daughter committed suicide by hanging, the defacto complainant along with her son P.W.2 and relatives rushed to the hospital, initially to Government Hospital, Puducherry and later to JIPMER Hospital, where she found her daughter Ilamathy abandoned lying dead. Thereafter, she went to the respondent police and lodged a complaint. P.W.26/Sub-Inspector of Police registered FIR, visited the scene of occurrence, prepared observation mahazar, rough sketch and examined the witnesses present there. Further, on coming to know that the death took place within 7 years of marriage, he submitted the FIR and other documents to the revenue authorities. P.W.32/Tahsildar conducted inquest, examined the witnesses and submitted his inquest report/Ex.P41. In this case, the deceased belong to Adi Dravidar community and the appellant/A1 belong to Vanniyar Community. The deceased was a Staff Nurse employed in Government Hospital, Puducherry where the appellant/A1 was employed as Assistant who was looking after the disbursement of salary. At that time, the appellant and the deceased fell in love, both their families agreed for the same and their marriage held on 28.06.2007 at Manakula Vinayagar Temple, Puducherry. During the marriage, customary sridhana articles, household articles, cash of Rs.1 lakh and a motor bike was presented. Out of their wedlock, they had a girl child aged 1½ years old. There was always quarrel between the appellant and the deceased. The appellant's mother/A2 on coming to know about the community of the deceased insulted her by calling the deceased by her caste name and harassed her. The appellant did nothing to resolve the issue and on the other hand joined hands with his mother and insulted the deceased. They also demanded



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the deceased to purchase a car and the deceased applied for a loan and purchased a case in her name which was used by the appellant. Immediately after the marriage, the deceased became pregnant which got aborted due to the physical assault by the appellant. After sometime, again she was pregnant the appellant insisted her to abort and when the same was refused by the deceased, the appellant assaulted her. Therefore, the deceased went to her uncle's house and later to her mother's place where she delivered a girl child. During the time of pregnancy and till the delivery of baby, none from the appellant's family visited and enquired about the deceased.

5. Thereafter, on the intervention of the family members, the deceased joined her husband and she was living with the appellant and his mother. On 29.09.2010, at the late hours P.W.28/maternal uncle of A1 informed P.W.4 that the deceased committed suicide by hanging. P.W.4 informed the same to P.W.1 who along with her son P.W.2 and some of her family members rushed to the hospital where she found her daughter with injuries on her right earlobe, back of the head and marks on the neck, further blood was oozing from her nose and ears and she was left abandoned. Having suspicion on the manner of death of her daughter, P.W.1 lodged a complaint. On receipt of the complaint, P.W.26 registered FIR, conducted investigation and submitted the documents to P.W.32, who conducted inquest and thereafter, P.W.33 took up the investigation, examined the witnesses, made arrangements for taking photographs and sent the body for postmortem. P.W.22/Postmortem Doctor given his postmortem report/Ex.P16 and final report/Ex.P17, stating that the death was due to Asphyxia due to hanging, however, the possibility of strangulation cannot be ruled out. A2/mother of A1 was immediately arrested, A1 absconded and thereafter, on 22.10.2010, A2 was arrested in the presence of P.W.18 and P.W.29, gave a confession and recoveries were made. Thereafter, P.W.13 to P.W.15 were examined who witnesses the deceased being assaulted on the previous day night and she was dragged from her Scooty into the house and later, it was informed that she is dead. Further P.W.1 to P.W.4 have categorically stated about the demand of dowry harassment, humiliation and cruelty to the deceased both physical and mental and further, referring to her caste the deceased was insulted. Thereafter, the Investigating Officer recording the statements and collecting the documents and materials, filed the charge sheet before the Trial Court. The Trial Court on examination of witnesses and marking of documents finding that the appellant had committed the offence, convicted him as stated above.

6. The contention of the learned counsel for the appellant is that the appellant and the deceased fell in love with each other, it was an inter-caste marriage, both were employed in



Government, both the families accepted their love and marriage was arranged. During the marriage, customary sridhana articles were presented. Thereafter they were living happily for sometime, out of the wedlock a girl child was born to them and the girl baby is now with the appellant who is taking care of her with all comfort. He further submitted that in this case except P.W.1 to P.W.4 being the mother, brother and uncle of the deceased, none have stated anything against the appellant and no materials were found against the appellant. The Trial Court having acquitted the appellant's mother/A2 from the case, on the same set of evidence convicting the appellant is not proper. The evidence of P.W.1 to P.W.4 are with exaggeration, improvement and contradiction. The Investigating Officer/P.W.33 admits the same. Initially, complaint was lodged on the doubt that there was some nail marks found on the chest of the deceased, blood was oozing out from the nose and ears and there was injury on the back of the head. P.W.22/Postmortem Doctor in this report, Ex.P16 and Ex.P17, categorically stated that the death was due to hanging. P.W.32/Tahsildar, who conducted inquest gave his report/Ex.P32 wherein the Panchayatars have opined that for difference of opinion and small fight between the deceased and the appellant, the deceased would go to her mother's place, stay there for some time and come back and the death is by hanging. Postmortem Doctor also confirm that it is only a death by suicide. In this case, the neighbour to the appellant and the deceased, namely, P.W.5 to P.W.12 have not supported the case of the prosecution and none have spoken about the cruelty or harassment meted out by the deceased. The Investigating Officer admits that in the final report of the Postmortem Doctor and on the statement of P.W.13 to P.W.15, the case was altered from Section 306 to Section 302 IPC. He further submitted that the evidence of P.W.13 to P.W.15 are highly artificial, they have been implanted, Section 164 statement is also contradictory, it is a weak piece of evidence and the Trial Court ought to have rejected the same. Further, there have been inter se contradictions between the evidence of P.W.12 to P.W.15.

7.The learned counsel further submitted that P.W.17/Doctor of Government Hospital, Puducherry and P.W.19/Head Clerk from the Hospital were examined, through whom Ex.P6 and Ex.P7/salary particulars of the deceased were marked, from which it is seen that the deceased nominated her husband/appellant as nominee after her marriage, now P.W.1/mother of the deceased had given a letter seeking terminal benefits of the deceased which would go to show that for what purpose the above case was initiated against the appellant. P.W.33/Investigating Officer admits that all the gold jewels, sridhana articles, motor bike and the car were handed over to the family of the deceased. He further submitted that P.W.1 to P.W.4 have not stated about the caste



humiliation to the deceased since she belongs to Adi Dravidar community, demand for dowry, forced abortion, retention of ATM card and no other complaint prior to the present one. The contention of the appellant is that the deceased was suffering from acute stomach pain which might be the reason for her extreme step of committing suicide. Further, the appellant broke open the door of the bedroom, brought down his wife from the hook, took her to the Government Hospital, Puducherry and thereafter to JIPMER Hospital to save his wife. The breaking of the door is recorded in the observation mahazar/Ex.P28. The Trial Court failed to consider the above aspects and wrongly convicted the appellant. Hence, he prayed for acquittal.

8.The learned Public Prosecutor [Puducherry] submitted that P.W.1 lodged a complaint to P.W.26 on 29.09.2010 at late hours. P.W.4 informed P.W.1 that her daughter committed suicide as informed to him by P.W.28/maternal uncle of the appellant. Thereafter, P.W.1 rushed to the hospital along with P.W.2 and other family members, found her daughter Ilamathy lying dead with injuries and blood was oozing out from her nose and ears. The deceased was abandoned and nobody was there around the body, became suspicious about the appellant and his mother, P.W.1 lodged a complaint. P.W.26 on registration of FIR, visited the scene of occurrence, prepared observation mahazar, rough sketch, examined the witnesses and finding that the deceased died within seven years of marriage, placed all the records to the revenue authorities. P.W.32/ Tahsildar conducted inquest and gave his report. After inquest, the body was sent for postmortem. The Postmortem Doctor/P.W.22 conducted postmortem, gave his opinion and final report Ex.P16 and Ex.P17, which confirms that the death was due to Asphyxia due to hanging and he also clarified stated that it could be due to strangulation. Thereafter, the case was altered from Section 306 to Section 302 IPC. The Investigating Officer conducted further investigation and arrested the accused on 22.10.2010. On his arrest, the appellant given a confession which was recorded in the presence of P.W.18 and P.W.29, Village Administrative Officers and on his confession, material objects were seized. He further submitted that P.W.13 and P.W.14 stated that they had seen the victim being assaulted by the appellant on the previous day night and the appellant pulled the deceased by her hair into the house and their statement was recorded. Further, on recording of the statements and collecting all the documents, the Investigating Officer filed a final report before the concerned Court and thereafter, the Trial Court on examination of witnesses P.W.1 to P.W.33 and going through the documents Ex.P1 to Ex.P34, M.O.1 to M.O.6 acquitted the appellant's mother/A2 and convicted the appellant/A1. He further submitted that the Trial Court analysed the evidence in right perspective and convicted the appellant. Further, the grounds now raised by the appellant



9. Considering the submissions made and on perusal of the documents placed before this Court, it is not in dispute that the marriage between the deceased and the appellant is an inter-caste marriage, both the families agreed for the same and their marriage was held on 28.06.2007 at Manakula Vinayagar Temple, Puducherry. During their marriage, customary sridhana articles were presented, after the marriage the deceased was living with her husband/appellant and his mother, out of the wedlock they were blessed with a girl child and at the time of occurrence, their daughter was 1½ years old. It is seen now the baby was under care and custody of the appellant. Except for P.W.1 to P.W.4, no other witnesses stated about any cruelty, demand of dowry and harassment for the reason that the deceased belong to Adi Dravidar community. P.W.17 and P.W.19 are the Doctor and Head Clerk of Government Hospital, Puducherry where the deceased was working, through whom Ex.P6 and Ex.P7/pay particulars of the deceased was marked. It is further seen that after marriage the deceased made her husband/appellant as nominee, now P.W.1/mother of the deceased given a letter seeking the terminal benefits of Ilamathy to be handed over to her. The purchase of Maruti car as dowry demand is falsified as it is seen that the car was purchased in the name of the deceased Ilamathy. It is also to be seen that all the sridhana articles, gold jewels, motor bike, car presented during marriage were all handed over to P.W.1. The statement of P.W.1 to P.W.4 are with exaggeration, improvement and contradiction which is confirmed by the Investigating Officer/P.W.33. Their evidences are contradictory to their previous statement as well as with each other and their evidence does not inspire confidence, highly doubtful and motivated one.

<https://hcservices.ecourts.gov.in/hcservices/>



case, no complaint was lodged against the appellant for harassment, cruelty or demand of dowry. The reason for lodging a complaint is that the appellant was not found near the body of the deceased. P.W.28 who informed the family of the deceased about the incident clearly states that the appellant was in a sober state, crying, took his wife in an Auto to save her to the Government Hospital, Puducherry and later to JIPMER Hospital where she was declared dead and he was very much available in the hospital. P.W.4 admits that the appellant's mother/A2 was present in the hospital. Thus, P.W.28 and P.W.4 confirm that the appellant and his mother were in the hospital making all efforts to provide medical aid to the victim. The breaking of the door and entering into the bedroom is recorded in the observation mahazar. It is not in dispute that the appellant took the victim to the hospital. From the evidence of Postmortem Doctor/P.W.22 and the Postmortem report/Ex.P16 and final report/Ex.P17, it is seen that it is a death by hanging. Further, all the sridhana articles returned to the family of the deceased and the girl baby, by name Jovitha is under the care and custody of the appellant. Apart from the evidence of P.W.1 to P.W.4, no other materials against the appellant. The evidence of P.W.1 to P.W.4 are with exaggeration, improvement, highly contradictory and unbelievable.

11.In view of the above, this Court finds that the prosecution had miserably failed to prove the case against the appellant beyond all reasonable doubts. Accordingly, the conviction and sentence imposed on the appellant in S.C.No.95 of 2011 dated 14.03.2016 by the learned II Additional Sessions Judge, Puducherry is hereby set aside. The appellant is acquitted from all the charges levelled against them.

12.In the result, the Criminal Appeal stands allowed. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The II Additional Sessions Judge,
Puducherry



2.The Principal Sessions Judge,
Puducherry.

3.The Judicial Magistrate II,
Puducherry.

4.Do Through the Chief Judicial Magistrate,
Puducherry.

5.The Superintendent,
Central Prison, Puducherry.

6.The Inspector of Police,
Mettupalayam Police Station,
Puducherry.

7.The Public Prosecutor,
Puducherry.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.Swami Subramanian, Advocate, S.R.No.36866

Crl.A.No.312 of 2017

SV(CO)
SB(21/06/2022)