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Crl.A.No.115 of 2016

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED: 10.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE M. NIRMAL KUMAR

Crl.A.No.115 of 2016

Ravi Kumar

... Appellant/2nd Accused

versus

State rep. by

The Inspector of Police,

Thalaivasal Police Station,

Salem District.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in S.C.No.58 of 2012, on the file of Session Judge, Mahila Court, Salem and set aside the judgment dated 05.01.2016 passed by the learned Session Judge, Mahila Court, Salem and allow the Criminal Appeal.

For Appellant : Ms.P.Kavitha Balakrishnan

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



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J U D G M E N T

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The present Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence passed by the learned Session Judge, Mahila Court, Salem dated 05.01.2016 in S.C.No.58 of 2012.

2. The appellant/A2 along with his mother/A1 were convicted by the trial Court in S.C.No.58 of 2012 by judgment dated 05.01.2016. The appellant and his mother were convicted and sentenced to undergo three years Rigorous Imprisonment for offence under Section 498-A and to pay a fine of Rs.2,000/-, in default, to undergo three months Simple Imprisonment and seven years Rigorous Imprisonment for offence under Section 304(b) of I.P.C. and both sentences directed to be run concurrently. Aggrieved against the same, the above appeal has been filed.

3. During trial on the side of the prosecution 19 witnesses examined as P.W.1 to P.W.19 and marked Exs.P1 to P13. No material objects Marked. On



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the side of the defence no witnesses examined but Exs.D1 to D3 marked. No material objects marked.

4. The gist of the case is that the appellant had married one Gowri, D/o.Shanmugam (P.W.1) on 11.06.2009 which was an arranged marriage. For the marriage there was a demand of 30 sovereigns of gold jewels, car and house hold articles. The family of the bride agreed to give 25 sovereigns of gold, Hero Splendor motor bike and house hold articles during marriage and assured to present a car later. After marriage, only for two months they were happy and thereafter both appellant and his mother demanded for dowry and continuously Gowri was harassed. Further she was abused for not bearing any child. The appellant and his mother regularly used to abuse her stating that if the appellant married anybody else he would have got more dowry and led a happy married life. Unable to bear any further abuse, 20 days prior to 02.01.2011 she left the matrimonial home and went to her parents house.



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4.1. When she was staying there, on 02.01.2011 at about 1.30 p.m. she went to the field and consumed pesticide, namely, Monocrotophos. Thereafter she returned home with tears, which was noticed by P.W.8. When P.W.8 enquired her, she disclosed that due to the harassment and cruelty subjected to by the appellant and her mother she had taken extreme step and consumed poison. Immediately P.W.8 called P.W.7, his cousin. Both went to P.W.1's house, took a bike, in the meanwhile, called an ambulance. Thereafter P.W.7 and P.W.8 brought the bike and took Gowri in the bike to Attur Government Hospital. In the meanwhile, ambulance came, she was taken to the hospital where she was declared as brought dead. P.W.8 informed P.W.1, who had gone with his wife to meet his elder daughter at Namakkal. Thereafter he rushed back to the Attur Government hospital and found his daughter laid in the mortuary. Thereafter he went to the Thalaivasal Police Station, lodged a complaint and a case in Crime No.4 of 2011 under Section 174 Cr.P.C. was registered by P.W.17.



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4.2. P.W.17 finding that the death occurred within a period of 7 years

from the date of marriage, he forwarded the F.I.R. to Revenue Divisional Officer, Attur/P.W.13 and to the Deputy Superintendent of Police/P.W.18.

P.W.13 conducted inquest, recorded the statement of witnesses and submitted his inquest report/Ex.P6 and final report/Ex.P7. P.W.18/Deputy Superintendent

of Police on receipt of the complaint visited the scene of occurrence, prepared observation mahazar, rough sketch and seized 50 mgs. of pesticide

Monocrotophos bottle. Thereafter altered the section from 174 Cr.P.C. to 498-A and 304(b) I.P.C. In the meanwhile, he was transferred. On his transfer P.W.19

took up investigation, examined the witnesses. He found no change in the statement by the witnesses, hence no further statements were recorded.

Thereafter on collecting the Forensic report, Medical report and Post-mortem report filed the charge sheet. In the meanwhile, both the accused obtained

anticipatory bail in this case. They were enquired and finally charge sheet filed in this case for offence under Section 498A, 304(b) and Section 4 of the Dowry

Prohibition Act. The trial Court framed charges against the appellant and other



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accused under Section 498A and 304(b) I.P.C. During trial, on the side of the prosecution, P.W.1 to P.W.19 examined, Exs.P1 to P13 marked and on the side of the defence Exs.D1 to D3 marked. On the evidence and materials, the trial Court convicted the appellant and his mother as stated above.

5. The contention of the learned counsel for the appellant is that in this case the marriage between the appellant and deceased Gowri took place on 11.06.2009. It was an arranged marriage. Both the families knew to each other for quite some time and they were aware about the financial and social status of each other. In such circumstances the demand of dowry does not arise. From the complaint as well as from the statement of P.W.1 it is seen that the articles which were presented during the marriage were all by way of Sreedhana and not as a dowry. Further submitted that the deceased Gowri consumed pesticide poison when she was staying at her parents house which is more than 10 kms from her matrimonial home. It is the admitted case of the prosecution that 20 days prior to 02.01.2011 the deceased left the matrimonial home on her own and



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she was staying with her parents. The deceased leaving matrimonial home was witnessed by P.W.6., and he states that the deceased Gowri along with her aunt Jeyam came to the bus stand, on enquiry, he was informed that due to some misunderstanding said Gowri is taken to her parental home. P.W.6 confirms that there was no demand of any dowry during engagement, marriage or after the marriage. This witness was examined and cross examined on 25.06.2013 more than one and half years and later he was recalled by the prosecution for the purpose of treating him as hostile is impermissible. Before treating a person as hostile the prior statement attention to be drawn and put to the witness thereafter only after getting permission, witnesses can be treated hostile and cross examined. In this case it is not done so. Hence, evidence recorded on 25.06.2013 alone to be considered. Further submitted that in this case P.W.1 is the father of the deceased. P.W.2 is the junior father of the deceased. P.W.3 is the brother of the deceased and P.W.4 is the wife of P.W.3. All these witnesses are from the same family gave bald and omnibus version that there was demand of dowry, harassment and cruelty due to which Gowri consumed poison and



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ended her life.

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6. P.W.8 was informed about harassment and cruelty only through his mother Jeyam. In this case, the said Jeyam not examined as witness. Hence, PW8's statement is in the nature of hearsay, which cannot be considered. The other witness P.W.12/Post-mortem Doctor confirms that the death is due to poisoning by pesticide and the presence of Monocrotophos has been proved. P.W.13/R.D.O's inquest report/Ex.P6 and his final report/Ex.P7 confirm that Gowri consumed poison and she committed suicide. PW13/RDO examined P.W.1, father of Gowri and his statement alone recorded, the report is comprehensive one. No other relatives of Gowri or from the appellant's examined. P.W.13 in his report/Ex.P7 confirms that Gowri consumed pesticide and committed suicide. In his report he further records all jewels, motor bike and other house hold articles which was presented during the marriage have been returned to Gowri's family but strangely gives a finding that there was demand of dowry.



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managed by the appellant's mother by employing agricultural coolies. There was some altercation and dispute due to which the said Jeyam had taken Gowri to her parental house. 20 days thereafter what happened the appellant was not aware. Hence, the appellant is falsely implicated in this case and he prayed for acquittal.

8. Learned Additional Public Prosecutor submitted that in this case on the complaint of P.W.1/father of the deceased Gowri, a case under Section 174 Cr.P.C. was registered. Thereafter during investigation the case was altered to offence under Sections 498A, 304(b) I.P.C. Finding that the death has taken place within 7 years of the marriage, complaint, F.I.R. were forwarded to R.D.O. as well as to the Deputy Superintendent of Police for investigation. P.W.13 is the R.D.O. and P.W.18 and P.W.19 are the Deputy Superintendents of Police, who conducted investigation in this case. The marriage between the appellant and said Gowri had taken place on 11.06.2009 which is an arranged marriage. After marriage, only for two months they were happy thereafter there



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have been constant demand for dowry and she was harassed and subjected to cruelty. Due to which, Gowri frequently visited her parents house, she was

pacified and advised to join her husband. 20 days prior to 02.01.2011 unable to bear any further harassment she left the matrimonial home and came to her parents house and was staying with them. She was constantly abused for not bearing any child. This lead Gowri to consume pesticide poison and end her life.

The cause and reason for her harassment by the appellant and his mother are clearly spoken by P.W.1, P.W.2, P.W.3, P.W.4, P.W.7, P.W.8 and P.W.10. She complained about the demand of dowry and harassment to her family members periodically. The family members decided that during Pongal when family members get together the issue could be resolved but unable to bear any further harassment and cruelty she consumed pesticide which is confirmed by the Forensic Report/Ex.P5.

8.1. The post-mortem Doctor/P.W.12 in his report/Ex.P4 has given opinion that the deceased appeared to have died due to poisoning



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(Monocrotophos pesticide). The presence of Monocrotophos is found in the stomach, intestine, liver, kidney. Further the intestine has been damaged and there is a seepage of blood. P.W.13/R.D.O. conducted inquest, examined the witnesses, recorded their statement and submitted his reports/Exs.P6 and P7. From the reports it is confirmed that there was demand of dowry and the death was due to drinking of poison. He further submitted that Ex.D1 is a created document as an afterthought for the purpose to shield the misdeeds of the appellant. As regards Exs.D2 and D3 there is no correlation between Exs.D2 and D3. In any event in this case the death occurred within 7 years of marriage and it was only due to the harassment and cruelty at the hands of the appellant and his mother. The prosecution proved the case. The appellant has neither given reasonable explanation by way of cross examination nor produced any witnesses or materials to probabalize his defence. The appellant failed to dislodge the statutory presumption. The trial Court rightly convicted the appellant and other accused. In this case, the appellant's mother/A1 passed away during the pendency of appeal in Crl.A.No.31 of 2016. Hence, prayed for



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dismissal of the appeal.

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9. Considering the submissions and on a perusal of material it is not in dispute that the marriage between the appellant and Gowri took place on 11.06.2009. It is an arranged marriage. Both the families knew each other and aware about the financial and social status of both families. The appellant's brothers are well placed. The appellant is the 4th son, who is less educated in the family. Prior to marriage, he was employed in his brother's nursing home. After the marriage he along with his mother and his wife Gowri settled in Kattukottai on the compulsion of his in-laws, where appellant's family were holding around 4 acres of land of which 2 acres of land was exclusively given to the appellant to have his agricultural activities which was managed by both appellant and his wife, the marriage life was smooth for some months and thereafter there have been constant misunderstanding. Gowri's parents house is 10 km away from her matrimonial home and she used to visit her parents house often and stay there and later come back and join the appellant. Likewise 20 days prior to



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02.01.2011 she left the matrimonial home, which happened during this period in the parental house, is not known.

10. P.W.6 confirms that Gowri along with her aunt Jeyam were standing in the bus stop, when he enquired, they informed about misunderstanding and fight in the matrimonial home of Gowri. Thereafter Gowri started to live with her parents. Gowri living with her parents is not disputed. P.W.7 and P.W.8, cousin brothers of Gowri confirm that on 02.01.2011 at about 1.30 p.m. they saw Gowri crying and coming from the field. When enquired, Gowri informed that due to the constant dowry demand by the appellant and his mother she left the matrimonial home, unable to bear any further abuse she consumed poison. Immediately they rushed Gowri to the hospital but unfortunately she passed away even before reaching the hospital. P.W.12/Post-mortem Doctor confirms that death was due to drinking of pesticide and poisoning. Ex.P4 is the Post-mortem certificate. P.W.16-Scientific Officer attached to the Forensic Lab in his report/Ex.P5 confirms the



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presence of Monocrotophos poisonous pesticide. In this case admittedly the occurrence had taken place in the parental house of the deceased Gowri and that too 20 days after she left the matrimonial home. There is no evidence in any manner to show that during this period, the appellant or his mother had abused, caused harassment or had contacted Gowri, which aggravated the situation thereby abetting the Gowri to take the extreme step of consuming poison.

11. P.W.7 and P.W.8 are projected as witnesses, who last spoke to the deceased after Gowri consumed poison and to whom the deceased gave reason for consuming poison. Their statements are with contradictions. P.W.8 admits that he was informed about the earlier demand and harassment only through his mother Jeyam. In this case admittedly neither the statement of Jeyam recorded during investigation nor examined as witness. P.W.18/Investigating Officer confirms the same. Ex.D1 marked through P.W.13/R.D.O. P.W.17/Investigating Officer admits about Exs.D2 and D3. Strangely prosecution not disputed these documents/Exs.D1 to D3 in any manner. Though D1 is in the nature of



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explanation for not participating in the R.D.O. Enquiry and Ex.D2 is dated 18.12.2010, which is well before the occurrence. These two documents gives explanation by the appellant.

12. In this case, there is no evidence to show soon before the death, there was any demand, harassment or any contact in any manner by the appellant. Admittedly, Gowri consumed poison in her parental house twenty days after she left the matrimonial home. Thus, looking the case from any angle the prosecution had failed to prove the case for charges under Section 304(b) I.P.C. As regards 498-A I.P.C. subjecting the deceased Gowri to cruelty is spoken by the father of the deceased, P.W.1 and other family members of the deceased namely P.W.2, P.W.3, P.W.4, P.W.7, P.W.8 and P.W.10. During the RDO inquest, the Panchayatars have clearly gave an opinion that deceased Gowri used to come to her parental house at regular intervals, mostly due to misunderstanding at her matrimonial home. The R.D.O. report confirms that the said Gowri subjected to cruelty.



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13. In view of the same, this Court confirms the conviction of the appellant for offence under Section 498-A I.P.C. but modifies the sentence of conviction to the period already undergone. The appellant was in confinement from 05.01.2016 to 24.02.2016 (51 days).

14. In the result, this Criminal Appeal is partly allowed.

10.03.2023

(2/2)

Speaking / Non-speaking order

Index : Yes / No

Internet : Yes

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M. NIRMAL KUMAR, J.

rsi

To:

- 1.The Session Judge,
Mahila Court, Salem
- 2.The Inspector of Police,
Thalaivasal Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.

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