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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.171 of 2016

1. G.Vijayakumar
2. Sarasu @ Saroja ... Appellants/Accused/Accused

Vs.

The Assistant Commissioner of Police,
Ennore Range,
Chennai – 600 057.
(Manali Police Station
Crime No.27/2010) ...Respondent/Respondent/Respondent

Criminal Appellant filed under Section 374 (2) of Cr.P.C., to set aside the Order of conviction and sentence dated 09.02.2016 made in S.C.No.16/2013 passed by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur.

For Appellants : Mr.V.Balu
For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

ORDER

This Criminal Appeal has been filed to set aside the Order of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in S.C.No.16/2013, dated 09.02.2016.



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2. The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:-

2.1.The first Accused married Amulu @ Samundeeswari, since deceased on 06.06.2004 and lived with her in the house bearing Door No.3, Namakara Mudhali Street, China Sekkadu, Manali, Chennai – 600 068, within the limits of Manali Police Station. The second Accused is the mother of first Accused. On or before 26.01.2010 in the above said house, the first and second Accused subjected Amulu @ Samundeeswari with cruelty and harassed her with a view to coerce her for obtaining more dowry of Rs.30,000/- from her parents house and the willful cruel act of the first and second Accused was in such a nature to drive Amulu @ Samundeeswari to commit suicide in the house by hanging herself and thereby the first and second Accused have committed the offence punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act. During the course of the same transaction, the first and second Accused voluntarily abetted Amulu @ Samundeeswari to commit suicide by subjecting her to cruelty in the above said manner and in pursuance of the above said abetment of the first and second Accused, Amulu @ Samundeeswari has committed suicide in the house on 26.01.2010 by hanging herself and thereby the first and second Accused have committed



the offence punishable under Section 306 of IPC. During the course of the same transaction, the first and second Accused had caused the dowry death of Amulu @ Samundeeswari, soon before her death she was subjected to cruelty in connection with the illegal demand of dowry of Rs.30,000/- by the first and second Accused and the cruel act of the first and second Accused forced Amulu @ Samundeeswari to commit suicide in the house on 26 .01.2010 by hanging herself, within seven years of her marriage with first Accused and thereby the first and second Accused have committed the offence punishable under Section 304 (B) of IPC.

2.2. On taking the case on file as P.R.C.No.43 of 2010 by the learned Judicial Magistrate, Thiruvottiyur, furnished copies of the documents proposed to be relied upon by the prosecution agency under Section 207 of Cr.P.C. to the Accused and thereafter as the offence is triable by the Court of Sessions, the learned Judicial Magistrate, Thiruvottiyur committed the case under Section 209 of Cr.P.C. to the learned Principal Sessions Judge, Tiruvallur, who had taken the case on file as S,.C.No.16 of 2013 and made over the case to the learned I Additional District Judge, Tiruvallur and on jurisdiction point transferred to the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur for trial and



disposal in accordance with law on 14.11.2013 as per order of the learned Principal District Judge, Thiruvallur in its proceedings in D.No.5355/A/2013, dated 14.11.2013. Upon consideration of the records of the case and the documents submitted therewith and after hearing the submissions of the Prosecution and Accused in this behalf, this Court having formed the opinion that there were sufficient grounds for presuming that the Accused have committed the offence and had framed charges against the first and second Accused under Section 498(A) of IPC, Section 4 of Dowry Prohibition Act, 302 and 304B of IPC and when the charges were read over in Tamil, explained and questioned both the Accused, pleaded not guilty and claimed to be tried, and there upon the case was taken up for trial.

2.3. During trial, on appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur, had convicted the Accused 1 and 2 for the offence under Sections 498A of IPC and sentenced to undergo Rigorous Imprisonment for three years each and to pay Rs.1,000/- each, in default, to undergo six months simple imprisonment each; Accused 1 and 2 are convicted and sentenced to undergo Rigorous Imprisonment for two years each and to pay Rs.1,000/- each, in default, to undergo three months



Simple Imprisonment for the offence under Section 4 of the Dowry Prohibition Act, 1961 and also Accused 1 and 2 are convicted and sentenced to undergo Rigorous Imprisonment for ten years each and to pay Rs.10,000/- each, in default, to undergo Simple Imprisonment for six months, for the offence under Section 304(B) of IPC. The sentence imposed for all the three offence shall run concurrently. The period of remand already undergone by the Accused 1 and 2 were set off under Section 428 of Cr.P.C.

2.4. Aggrieved by the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in S.C.No.16 of 2013, dated 09.02.2016, this Appeal had been preferred by the Appellants/Accused 1 and 2.

3. The learned Counsel for the Appellants submitted that the first Appellant/husband of the deceased died. He had produced the death certificate. Therefore, the Appeal against the first Appellant is to be dismissed as abated.



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4. It is the further submission of the learned Counsel for the Appellants that the second Appellant is the mother of A-1 and there are no incriminating materials through the deposition of witnesses. Particularly, the genesis of the occurrence itself is doubtful. He placed reliance on the evidence of P.W-8-Constable, who had accompanied the Investigation Officer. In his evidence, he had stated that on hearing about the occurrence, he went to the place of occurrence and accompanied the body of the deceased to the Government Stanely Hospital, till the postmortem procedures are completed. There is a difference between the time of occurrence and the time of reporting to the Police. Therefore, it affects the evidence of the death.

5. He further submitted that the demand of money for starting a business or any other requirement cannot be treated as dowry as per the rulings of the Hon'ble Supreme Court. In this case, there is a clear evidence through the Investigation Officer/P.W-11 that during the life time of the deceased, she had not preferred any Complaint attracting the Provision of Dowry Prohibition Act to the Police. Further, incriminating evidence of other witnesses P.W-1 to P.W-17 were put as suggestion to the Investigation Officer/P.W-11 wherein he had clearly stated that those



witnesses had not given any incriminating statement under Section 161 Cr.P.C., to the Investigation Officer when he examined them as witnesses.

Therefore, it is the submission of the learned Counsel for the Appellants that the conviction recorded by the learned Sessions Judge for the offence under Sections 498 A, 306, 304 (B) of IPC and Section 4 of Dowry Prohibition Act, 1961 is perverse. It is the further submission that invariably in cases of death of newly married women within seven years, mandatory Magisterial enquiry is conducted. Here also, the Executive Magistrate/Revenue Divisional Officer had conducted enquiry and the report of the Revenue Divisional Officer was marked not through him/her, but by the Investigation Officer/P.W-11. It was an error on the part of the Prosecution which had prejudiced the valuable defence of the Accused. If the same was marked through the Executive Magistrate, who conducted enquiry, who had examined the Witnesses and who had recorded the statement of witnesses, had given a finding that there was a dowry harassment. Under such circumstances, he ought to have been examined as a witness. If he had been examined as a witness, the valuable defence of the Accused would have been protected by the learned Counsel for the Defence by cross-examining the Executive Magistrate regarding the incriminating report and could have elicited, but it was not done so.



Therefore, the valuable defence of the Accused had been prejudiced.

Therefore, recording of conviction against the Accused by the learned Sessions Judge is unwarranted and perverse. Therefore, it is to be set aside.

6. It is the submission of the learned Counsel for the Appellants that P.W-4 is a neighbour to the family of the Accused. He is only a hearsay witness. P.W-5 is hostile, who is none other than related to the Accused. Therefore, he seeks to set aside the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in S.C.No.16/2013 dated 09.02.2016 as perverse. There are sufficient materials through cross-examination of the witnesses, but the learned Sessions Judge failed to appreciate those materials instead convicted the Accused for the offence under Sections 498 A, 306, 304 (B) of IPC and Section 4 of Dowry Prohibition Act, 1961. Therefore, the same is to be set aside.

7. The learned Counsel for the Appellants submitted that all the Prosecution Witnesses are related to each other and they are interested witnesses. The father of the deceased, who is the Complainant, was examined as P.W-1. In his cross-examination, he had clearly admitted that



he had not preferred any Complaint against the Accused for dowry harassment till the date of death of his daughter.

8. The learned Additional Public Prosecutor vehemently objected to the submission of the learned Counsel for the Appellants stating that there are sufficient materials to incriminate the Accused. She invited the attention of this Court to the Prosecution Witnesses viz., P.W-2 to P.W-4 who are neighbour of the Accused.

9. Also, the learned Additional Public Prosecutor invited the attention of this Court to the postmortem report under Ex.P-5 and the evidence of the Doctor who conducted autopsy on the body of the deceased who was examined as P.W-9. The Revenue Divisional Officer's report marked as Ex.P-11 through P.W-7 also mentions about the injury on the body of the deceased. Therefore, there is no merit in this Appeal and is to be dismissed.

Point for Consideration:

Whether the Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in S.C.No.16/2013 dated 09.02.2016 is to be set aside as perverse?



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10. Heard the learned Counsel for the Appellants, the learned Additional Public Prosecutor for the State. Perused the deposition of the witnesses viz., P.W-1 to P.W-11 and the documents under Ex.P-1 to Ex.P-13 and the evidence of D.W-1 and the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in S.C.No.16/2013 dated 09.02.2016 .

11. As rightly pointed out by the learned Counsel for the Appellants, the incriminating materials, whatever is available, is only against the first Accused. Still, P.W-1 as father of the deceased had in his cross-examination clearly deposed that he had not preferred any Complaint against his son-in-law during the life time of his daughter for dowry harassment with the Police.

12. The Hon'ble Supreme Court in **(2007) 9 SCC 721** in the case of ***Appasaheb and Another Vs. State of Maharashtra*** had observed as follows:

“A. Penal Code, 1860 Section 304-B r/w Section 34 – Demand for dowry - Requisites for Demand made by accused-appellants from parents of deceased to meet domestic expenses and for purchasing manure - Held, cannot be said to be a demand for dowry - Hence, since an essential ingredient of Section 304-8 IPC viz demand for



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dowry is not established, the conviction of the appellants cannot be sustained - Dowry Prohibition Act, 1961, S. 2.”

13. The Hon'ble Supreme Court in the case of ***Mariano Anto Bruno & Anr. Vs. The Inspector of Police*** reported in ***2022 LiveLaw (SC) 834***.

“Indian Penal Code, 1860; Section 306 – In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the Accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

Indian Penal Code, 1860; Section 306 – Each suicide is a personal tragedy that prematurely takes the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the Court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record.”

14. In the reported decision of the Hon'ble Supreme Court in ***(2001) 9 SCC 618 [Ramesh Kumar v. State of Chhattisgarh]***, a three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered “you are free to do whatever you wish and go wherever you like”. Thereafter, the wife of the appellant, Ramesh Kumar committed suicide. The Court in para 20 has examined different shades of the meaning of “instigation”. Para 20 reads as under: (SCC p. 629)



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“20. Instigation is to goad, urge forward, provoke, incite or encourage to do ‘an act’. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.” In this case, the Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema may necessarily be drawn.”

15. In yet another ruling of the Hon'ble Supreme Court in ***State of W.B. v. Orilal Jaiswal [(1994) 1 SCC 73: 1994 SCC (Cri) 107]*** this Court has cautioned that:

“17. ... The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”.

16. The Hon'ble Supreme Court in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605: (2010) 3 SCC (Cri) 367]***



had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goadings". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

17. As per the reported decisions of the Hon'ble Supreme Court, there are very many reasons for a young woman to commit suicide. May be due to financial difficulties, social pressure and unable to cope with the relatives. The death of young woman after marriage need not always be on the part of the husband for mental and physical cruelty or for dowry harassment.

18. In the light of the above reported decisions, if the facts and circumstances is analysed, the clear evidence in cross-examination of P.W-1, who had lost his daughter, had stated that he had never given a Complaint against his son-in-law and his mother or other relatives for dowry harassment with the Police. Under those circumstances, the report



of the Executive Magistrate under Ex.P-11 stating that there are reasons to believe that the deceased committed suicide due to the dowry harassment is found not acceptable, particularly, when the Executive Magistrate was not examined as a witness by the Prosecution. The report of the Executive Magistrate was marked through the Investigation Officer/P.W-11. As rightly pointed out by the learned Counsel for the Appellants, the marking of the very important document i.e., magisterial enquiry report regarding the cause of the death of the newly married women as though it was a dowry harassment case had caused prejudice to the valuable right of the defence of the Accused, in the absence of the Executive Magistrate having not been examined as a witness. Had he been examined as a witness, there were points for the learned Counsel for the defence before the trial Court to put suggestion and get appropriate answers and clarification during the examination of the Executive Magistrate. That right had been denied to the Accused. Therefore, the consideration of the said material by the learned Sessions Judge in the course of discussion is found to be perverse. Also, as rightly pointed out by the learned Counsel for the Appellants that the very genesis of the occurrence as stated by P.W-8-Constable who accompanied the Investigation Officer coupled with the answers in the cross-examination of P.W-11 regarding statement of witnesses who had given the



fact regarding the death to the Investigation Officer while collecting materials in course of the investigation clearly found to be no incriminating material against the Accused. In the light of the above facts and in the light of the death of A-1, since the charges against A-1 is abated, the conviction against A-2, just because, she is the mother of A-1 cannot be sustained. Particularly, P.W-1 had never given a Complaint against his son-in-law and his mother during the life time of his daughter. Particularly, in all the reported ruling regarding very many reasons for the newly married women to commit suicide attracts the offences under Sections 302 and 304 (B) of IPC but the same cannot be considered as incriminating evidence against the in-laws of the deceased. Considering those factors, the conviction of the learned Sessions Judge against the sole Appellant/A-2/mother of A-1/mother-in-law of the deceased is set aside.

19. In the light of the above discussion, the Point for consideration is answered in favour of the second Appellant and against the Respondent. The Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in S.C.No.16/2013 dated 09.02.2016 is found perverse and the same is to be set aside.



In the result, **this Criminal Appeal against the first Appellant is dismissed as abated and the Criminal Appeal is allowed insofar as the second Appellant/second Accused is concerned.** The Order of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur in S.C.No.16/2013 dated 09.02.2016 is set aside. The bail bond already executed by the second Appellant/Accused before the learned Sessions Judge, Fast Track Mahila Court, Tiruvallur shall stand cancelled. The fine amount, if any, already collected from the Accused is to be refunded to the Accused.

13.12.2023

dh/srm

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



To
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1. The Sessions Judge,
Fast Track Mahila Court,
Tiruvallur.
2. The Judicial Magistrate,
Tiruvottriyur.
3. The Assistant Commissioner of Police,
Ennore Range,
Chennai – 600 057.
4. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh/srm

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