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Crl.A.No.88 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.A.No.88 of 2020

State represented by
The Deputy Superintendent of Police,
Sub Division,
Chennai Central,
Avadi Railway Police Station,
Cr.No.69 of 2014

... Appellant

Vs

1. Karunamoorthy
S/o.Kannaiyan

2. Maheswari
W/o.Kannaiyan

3. Kannaiyan
S/o.Elumalai

... Respondents

PRAYER : Criminal Appeal has been filed under section 378 (1) (b) of Criminal Procedure Code to allow the Criminal Appeal and set aside the Judgment of acquittal of the respondents / accused (A1 to A3) passed in S.C.No.172 of 2015 dated 30.04.2019 by the Court of Magalir Neethimandram (Fast Track Mahila Court), Tiruvallur, convict them in accordance with law.



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For Appellant : Mr.R.Kishore Kumar
Government Advocate

For Respondents : M/s.K.Ponmani
Legal Aid Counsel

JUDGMENT

This Criminal Appeal has been filed to set aside the Judgment of acquittal of the respondents / accused (A1 to A3) passed in S.C.No.172 of 2015 dated 30.04.2019 by the Court of Magalir Neethimandram (Fast Track Mahila Court), Tiruvallur, convict them in accordance with law.

2. The Trial Court, after considering the evidence let in by the prosecution, has acquitted all the three accused from the charge under Section 498(A), 306 and 304(B) of IPC and Section 4 of the Dowry Prohibition Act.

3. The case of the prosecution is that the deceased Kanchana Devi was married to A1/Karunamoorthy, five years prior to the occurrence. They had a child of 3 ½ years old. On 17.02.2014, she has left the house along with her child and jumped into a moving train near Hindu College, Pattabiram, which caused instant death of Kanchana Devi and her 3½ years old son. A case was registered pursuant to the



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complaint given by the Station Master, on receiving information from the Motor Man, that a female body aged about 25 to 30 with a child, suddenly trespassed, while his train approaching Pattabiram near E2 Signal at Hindu College and got crushed by moving train. The father of the deceased Kanchana Devi has made a request to the Railway Police informing that his daughter has borrowed a sum of Rs.8,000/- from the neighbour without the knowledge of her husband and owing to that there has been difference of opinion between his daughter and son-in-law. Therefore, he suspected that his daughter would have commit suicide, due to mental torture.

4. The police has taken up investigation and filed final report against the husband of the deceased, her father-in-law and mother-in-law, who are the respondents 1 to 3 respectively. On committal, the Sessions Court framed charges under Section 498(A), 306, 304(B) of IPC and Section 4 of Dowry Prohibition Act. To prove the charges, the prosecution has examined 19 witnesses.

5. P.W.1 is the Station Master, who has given the



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complaint-Ex.P1, is not the direct eye witness but he got the information through the Motor Man. P.W.2-Sudalai Muthu is the Sub Inspector of Police, who registered the complaint given by P.W.1, in Crime No.69 of 2014 under Section 174 of Cr.P.C. He removed the body of the lady and her child and sent it for post mortem. He prepared observation Mahazar, Sketch and tried to identify the victim in the presence of independent witnesses. The wearing apparels of the deceased was recovered under Mahazar. The driver of Chennai to Arakkonam Express Train, who was the driver of the train, while the deceased crossed the railway line and met with death was examined as P.W.3. The father of the deceased examined as P.W.4 had deposed about the marriage of his daughter with the first accused, the dowry he gave at the time of marriage and financial help rendered by him periodically. He had deposed that there used to be petty quarrel between them and his daughter used to come to his home. Every time he used to give some article to her and leave her at her matrimonial home. He had deposed that 10 days prior to the occurrence, the first accused, through his daughter, demanded Rs.10,000/- and when he was not able to arrange the money, the first accused had scolded him



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in filthy language. On 07.02.2014, the first accused called him and informed that the deceased has borrowed Rs.8,000/- from third party and that has been paid immediately and therefore, asked him to arrange the money. Thereafter, there was lull for few days but again the torture of the first accused increased. A1 scolded his daughter for borrowing Rs.8,000/- from third party and want to clear the debt. Thereafter, next day night the deceased went missing. He along with the first accused went to Avadi Railway Station and searched his daughter. P.W.4 has deposed that the accused were much worried about the missing jewels rather than missing of his daughter and he was very much upset over the conduct.

6. The substantial portion of his evidence incriminating the first accused regarding harassment and demand of money is spoken for the first time in chief examination and he has no substantial corroboration by any of the above witnesses. The Trial Court, after considering these facts, has held that for dowry harassment or cruelty or abatement to commit suicide the necessary ingredients not been placed by the prosecution to convict the accused persons and therefore acquitted



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them.

7. The learned Government Advocate appearing for the State/appellant would submit that the evidence of P.W.4, the father of the victim lady Kanchana Devi, is sufficient and substantial to hold the accused guilty for abatement and cruelty. The demand of money being repeatedly reiterated in the testimony of P.W.4. Further, the mother of the deceased and brother of the deceased, who were examined as P.W.5 and P.W.7, also corroborated the evidence of P.W.4 regarding dowry given at the time of marriage and subsequent demand of money by A1. Further the Government Advocate also submitted that P.W.8 and P.W.11 are neighbours residing near the house of the deceased and they have also spoken about the jewels given to the deceased at the time of marriage and subsequent to the marriage.

8. The learned Legal Aid Counsel appearing for the respondents submitted that the alleged suicide had occurred on the night of 17.02.2014. The driver of the train, which caused the death, was examined as P.W.3. He had deposed that suddenly a lady along with a child crossed the line and met with the accident. The evidence of P.W.4



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goes to show that A1 came to know that Kanchana Devi is missing along with child, and had meticulously went to search of Kanchana Devi and returned unsuccessful. Before the incident, there has been no quarrel or no evidence to infer any abatement which was sufficient to force Kanchana Devi to commit suicide. Admittedly, the said Kanchana Devi has borrowed Rs.8,000/- from one Rajasekar, a neighbour, who was examined as P.W.12. According to P.W.12, while borrowing the money, she has not informed her husband. P.W.12 had further deposed that the deceased Kanchana Devi borrowed Rs.8,000/- during the last week of January to purchase a washing machine. Later, when he informed her husband, he said that he is not aware of the borrowing. This witness has been treated as hostile by the prosecution indicating that the case of the prosecution that the deceased Kanchana Devi was subjected to cruelty forcing her to commit suicide gets weakened. Therefore, learned counsel contended that the acquittal of the accused persons to be confirmed and the appeal to be dismissed.



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9. Heard, Mr.R.Kishore Kumar, learned Government Advocate appearing for the appellant and M/s.K.Ponmani, learned Legal Aid Counsel appearing for the respondents and perused the materials available on record.

10. The marriage between the deceased Kanchana Devi and the first accused took place 5 years prior to the incident. A child was born to them and at the time of occurrence, the child was about 3 ½ years old. From the evidence of the train driver, who was examined as P.W.3, she met with the death while crossing the line with her child. Before this incident, there is no evidence to show that why she went to railway station at that point of time,. There is no evidence to show that before she left the house, there was any quarrel or on the previous day i.e., on 17.02.2014, there was any incident which could have provoked Kanchana Devi to take the extreme decision of ending her life. Much was said by P.W.4, the father of the deceased, and to some extent his wife-P.W.5 and son-P.W.7. The neighbours were examined as P.W.8 to P.W.11. They have also spoken about the marriage and dowry given at the time of marriage. But evidence regarding the dowry presented at the



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time of marriage and petty quarrel which is common, there is no substantial material to show that there was torture which forced the deceased commit suicide. The trigger, according to the prosecution witness, is borrowing of Rs.8,000/- by Kanchana Devi without informing her husband/A1. For that it is stated that A1 scolded the deceased with filthy language and also informed her father about it. Borrowing money without the knowledge of her husband under the protest of buying washing machine as spoken to by P.W.12 also has not been corroborated by any other prosecution witnesses. When there is no material to show that by borrowing of Rs.8,000/-, the deceased purchased a washing machine, the case of the prosecution regarding the quarrel allegedly occurred stand unproved.

11. The fact as such revealed through evidence A1 got married to the deceased five years before the incident and the deceased along with her child died while crossing the railway line. These two proven facts is not sufficient to hold that the cause of her death is cruelty met out the at hands of the respondents 1 to 3. Further, it is seen from the evidence that nothing incriminating has been spoken about A2 and A3,



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the facts except certain negotiation at the time of marriage regarding dowry. Even against A1, if really they had a suspicion of the prevailing cruelty, P.W.4 would not have joined the search of Kanchana Devi and her child along with A1. It is also to be noted that when the deceased has left the home she has taken some jewels along with her as the almirah doors were left open. The police has also recovered some jewels in which few were covering.

12. The allegation that A1 to A3 subjected the deceased to cruelty by demanding dowry and suspecting her fertility are uncorroborated version of the interested witnesses viz., P.W.4, P.W.5 and P.W.7. RDO, who conducted enquiry has prima-faciely concluded that the death of Kanchana Devi was due to dowry harassment. However, the statements of Panchanama witnesses relied by RDO and produced a report Ex.P7 not been corroborated before the Court by those persons. When other neighbours were called to give evidence, P.W.12-Rajasekar and P.W.13-Karthick did not support the prosecution and they were treated hostile. P.W.11-Rajendran has not spoken anything adverse or incriminating the accused persons. The allegation that the jewels i.e.,



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Sridhana property given to Kanchana Devi was pledged by the accused has not been proved by any other substantial evidence except the oral allegation of the father, P.W.4, and the ear say evidence of the neighbours.

13. For the above said reasons, this Court finds that when the prosecution has not placed evidence to presume that there was dowry harassment, cruelty before the deceased Kanchana Devi committed suicide or there was abatement on the part of the respondents forcing the deceased to commit suicide, the Trial Court has rightly acquitted them for lack of evidence. When the view taken by the Trial Court is possible, on appeal, the Court need not substitute its view and reverse the appeal, which is otherwise reasonable and possible.

14. Therefore, the order of acquittal passed in S.C.No.172 of 2015 is confirmed and the Criminal Appeal in Crl.A.No.88 of 2020 is dismissed.

06.04.2023

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Dr.G.JAYACHANDRAN, J.

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To

1. The Executive Magistrate/Tahsildar,
Thirupathur Taluk,
Thirupathur District.

2. The Public Prosecutor,
High Court, Madras.

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