



Crl.A.(MD)No.136 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 14.09.2023

Delivered on: . .2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.A.(MD)No.136 of 2018

1.Muthukrishnan

2.Chinnathambi

3.Muthulakshmi

4.Lakshmi

... Appellants

Vs.

State rep by
The Deputy Superintendent of Police,
Ponnamaravathi, Karaiyur Police Station,
Pudukkottai District.
Crime No.3 of 2016

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment and conviction dated 17.03.2018 passed by the learned Sessions Judge, Mahila Neethimandram, Pudukkottai in S.C.No.126 of 2016 and acquit the appellants.

For Appellants : Mr.S.Mahendrapathy

For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor



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JUDGMENT

This criminal appeal has been filed as against the judgment and conviction passed by the learned Sessions Judge, Mahila Neethimandram, Pudukkottai in S.C.No.126 of 2016 dated 17.03.2018, wherein, the trial Court has convicted the accused for the offence under Sections 498(A) and 304(B) IPC and sentenced the accused to undergo two years rigorous imprisonment and to pay fine of Rs.1000/- each in default to undergo six months rigorous imprisonment for the offence under Section 498(A) IPC and sentenced them to undergo 10 years rigorous imprisonment for the offence under Section 304(B) IPC. As against the conviction, the appellants preferred the present appeal.

2.The case of the prosecution is that marriage between the first accused and the deceased was solemnized on 12.06.2014. At the time of marriage, the parents of the deceased presented 2 sovereigns of gold ornaments and motor



cycle to the first accused. After marriage, when the parents of the deceased went to the house of the accused to invite the couple for next day formalities. But the family of the accused refused to send them. After one month, from the date of marriage, the first accused went to abroad for employment. When the deceased resided along with other accused, they not even allowed her to make phone calls to her parents. Very often, the accused used to scold the deceased by demanding dowry. When the matter was informed to the parents of the deceased, they used to pacify her. Since A1 was in abroad, the parents of the deceased asked their daughter to come to their house, for which, A2 and A3 demanded Rs.2.5 Lakhs as dowry. Very often, they scolded deceased by demanding dowry. Therefore, due to the above said harassment made by the accused, the deceased died on 05.01.2016 at about 11.00 am., by consuming poison. Immediately she was taken to the Kariyoor hospital and thereafter, she was taken to the Pudukkottai Government hospital where the Doctor declared that she already died. Therefore, the accused have been charged for the offence under Sections 498(A), 304(B) IPC.



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3.In this case, P.W.1 is the defacto complainant and she had given Ex.P.1/complaint before P.W.15/Sub Inspector of Police and he registered FIR/Ex.P.11 and thereafter, P.W.16 investigated the case and filed final report. After filing final report, the case was committed to the Sessions Court and the Principal Sessions Judge has made over the case to the Mahila Court. The Mahila Court, after hearing the parties, framed charges for the offence under Sections 498(A), 304(B) IPC. The charges were read over and explained to the accused and they denied the same. The prosecution, in order to prove its case, examined P.W.1 to P.W.17 and marked Ex.P.1 to Ex.P.25 and also marked material object in M.O.1 to M.O.3. On the side of the accused no one was examined and marked Ex.D.1 and Ex.D.2. After completion of prosecution side witnesses, the trial Court examined the accused under Section 313(1)(b) Cr.P.C., with regard to the incriminating evidences adduced as against them and they denied the evidences. The trial Court, after evaluating oral and documentary evidences adduced on both sides, convicted the accused for the offence under Sections 498(A) and 304(B) IPC.



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4. Aggrieved over the same, the appellants preferred the present appeal on the following grounds:-

1) The judgment and conviction of the trial Court is contrary to law, weight of evidence and probabilities of the case.

2) The learned Sessions Judge failed to analyze the fact there is enormous delay in preferring complaint and said delay has not been properly explained by the prosecution.

3) The learned Sessions Judge failed to consider that there was no harassment soon before death, hence, there was no prima facie case under Section 304(B) IPC.

4) The learned Sessions Judge failed to consider and to evaluate Ex.D.1 in proper perspective. Though relevant witnesses admitted the signature of the deceased in Ex.D.1. The Ex.D.1 completely falsifies rather collapses the entire prosecution case.

5) The learned Sessions Judge failed to consider the fact that initially the deceased was admitted in Karaiyur Government Hospital and subsequently she was referred to Pudukkottai Government Hospital, the prosecution



purposefully suppressed the Accident Register of both hospitals and failed to examine the doctor, who treated the deceased first.

6)The learned Sessions Judge failed to appreciate the fact that to sustain conviction, the necessary ingredients to constitute an offence under Sections 498(A) and 304(B) IPC is total lapse and the prosecution miserably failed to prove its case beyond any reasonable doubt.

7)The learned Sessions Judge failed to appreciate the fact that the alleged demand of dowry, the prosecution must prove the harassment caused by the accused soon before her death for drawing presumption under Section 113 B of the Evidence Act.

8)The learned Sessions Judge failed to appreciate the fact that no independent witnesses had been examined by the prosecution.

5.1.The learned counsel appearing for the appellants would contend that the accused have not committed any offence as alleged by the prosecution and the evidences



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adduced by the prosecution are not sufficient to prove charge under Sections 498(A) and 304(B) IPC. There is no specific allegations with regard to the demand of dowry made by the accused. There is delay in registering FIR and the same has not been properly explained. The evidence of P.W.1, who is the father of the deceased, is highly doubtful and there is no eye witness for the occurrence. All the witnesses have stated vague and general allegations and no specific allegations and there is no evidence for the demand of dowry soon before death of the deceased. After consuming poison, P.W.2 only taken her to the hospital. P.W.14/Revenue Divisional Officer also did not speak about the dowry demand and due to frequent quarrel, the deceased consumed poison. Further, the trial Court failed to consider Ex.D.1/suicide note and no previous complaint either by the deceased or by the parents of the deceased with regard to the demand of dowry.

5.2. There was an allegation as against the deceased that one Tharman frequently made phone call to her and thereby, there was quarrel between them and panchayat was also



conducted between them and the same was also admitted by P.W.3 and P.W.5. Therefore, the deceased might have committed suicide for some other reason and no evidence of demand of dowry. Further, P.W.2 also admitted that the deceased was suffered from stomach pain and she frequently used to go to her parents house, at that time, they were live happily. Therefore, there is no chance of demand of dowry and death was not caused due to the dowry demand. The trial Court has not considered the same. In this case, independent witnesses have not supported the prosecution case and P.W.1 to 3 are blood relatives of the deceased. Even as per the evidence of P.W.1 to 3, there is no specific demand made by the accused and allegations are vague and general allegations. All the independent witnesses turned hostile.

5.3.The Doctor, who conducted postmortem has also stated that there is no external injuries found in the body of the deceased. P.W.14/RDO also in his cross-examination he admitted that due to issuess and there was misunderstanding between the deceased and A1and further, there was



misunderstanding between the deceased and A1 due to the phone call contact of the deceased with another person. The investigation officer failed to investigate the case as to whether any suicidal note was written by the deceased and no search was made in the house of the deceased. Therefore, the investigating officer has not investigated this case in a proper manner. Therefore, this appeal is liable to be allowed by setting aside the judgment and conviction passed by the trial Court and the accused are entitled for acquittal.

6.The learned Additional Public Prosecutor appearing for the respondent would contend that in order to prove the charges, the prosecution examined P.W.1 to P.W.17 and marked Ex.P.1 to Ex.P.25 and also marked material object in M.O.1 to M.O.3. P.W.1 stated about the demand of dowry by the accused and they not even allowed the deceased to speak with her parents over phone. P.W.1/defacto complainant is the father of the deceased, P.W.2 is the mother of the deceased and P.W.3 is the brother of the deceased. They have categorically depose about the demand of dowry and the



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deceased narrated about the incidents to them then and there. P.W.5 is the independent witness and she also deposed about the demand of dowry. P.W.13 has deposed about the postmortem conducted by him. As per postmortem report, the deceased died due to consumption of organo phosphorous. P.W.14, who conducted inquest, has also deposed that the deceased died due to the dowry demand. P.W.15 deposed about the registration of FIR and P.W.16 deposed about the investigation and as per the investigation, the accused have demanded dowry and thereby, he filed final report. Therefore, the prosecution proved its case by examining witness and marking documents. The trial Court also rightly convicted the accused and thereby, the present appeal is liable to be dismissed.

7.Upon hearing both side counsels and on perusing of records, judgment of the trial Court and the grounds, the points for determination the case is whether the prosecution has proved charges levelled as against the accused for the offence under Sections 498(A) and 304(B) IPC, beyond any



reasonable doubt.

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8.The case of the prosecution is that A1 to A4 have demanded dowry on several occasions and thereby, the deceased died by consuming poison. In this case, P.W.1, who is the father of the deceased, deposed before the trial Court that on 12.06.2014, marriage between the first accused and his daughter was solemnized. At the time of marriage, they presented five sovereigns of gold ornaments and motor cycle to the first accused. After three days from the date of marriage, when they went to the house of the accused to take them for next day formalities, the accused refused to send them. The accused also not allowed the deceased to speak over the phone. After one month from the date of marriage, A1 went to abroad for employment. The other accused frequently scolded the deceased by demanding dowry. When the parents of the deceased attempted to take the deceased to their house, the second accused asked them to settle the marriage expenses, then, they can take their daughter. Thereafter, surgery was done to the deceased for appendix. On 05.01.2016, one Muthukrishnan called them and they went



to the house of the accused, at that time, he saw his daughter died. Thereafter, he gave complaint/Ex.P.1. At the time of death of the deceased, A1 was in Singapore and A2 to A4 are the responsible for the death of the deceased. On perusal of Ex.P.1 it shows that P.W.1 narrated all the incidents and he also stated that A1, his son-in-law and his parents are responsible for the death of his daughter. There is no specific names mentioned in FIR. As per evidence of P.W.1, on the date of occurrence, A1 was not present and he was in Singapore and as per FIR, there is no reference about A4. In this case, A1 is the husband of the deceased, A2 and A3 are the parents of the deceased and A4 is the sister of A1. There is no specific allegations as to when and how much amount demanded by the accused. Further, P.W.1 in his cross examination stated that A4 was residing separately. Therefore, the evidence of P.W.1 reveals that at the time of occurrence A1 was not in the country and A4 was also residing separately. There is no specific allegations as against A2 and A3. All the allegations are vague and general.



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9.P.W.2, who is the mother of the deceased, in her evidence, she has stated that marriage was solemnized between A1 and the deceased on 12.06.2014. After marriage, the accused refused to send the couple for next day formalities. Thereafter, A1 went to Singapore and thereafter, she heard about the death of the deceased and they went to the house of the accused. At that time, A2 and A3 were present and she heard that over night they have quarrel with the deceased. But there is no reference in the evidence of P.W. 2 in respect of the presence of A4 and none of the witnesses stated about the alleged quarrel on the night of the previous day. Further during cross examination, P.W.2 stated as follows:-

அடிக்கடி என் மகளை சென்று நான் பார்ப்பேன். பிரச்சனை இல்லை என்றும் நன்றாகத்தான் இருக்கிறேன் என்றும் என் மகள் சொல்லும். வயிற்று வலியால் என் மகள் சிரமப்பட்டது.

Therefore, it reveals that she frequently went to the house of her daughter and she was living happily and further, her daughter was suffering from stomach pain. Therefore, the



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evidence of P.W.2 reveals that on the dated of occurrence A4 was no present. A2 and A3 alone were in the house of the deceased and she herself admitted that her daughter was living happily. While so, there is no sufficient evidence to hold that the deceased was subjected for cruelty due to demand of dowry.

10.P.W.3, who is the brother of the deceased, in his evidence he has also narrated about the marriage of the deceased. Further he admitted that his sister was suffering from stomach pain and surgery was also done for appendix. He also has not stated about the presence of A1 and A4 on the date of occurrence.

11.All other witnesses are hearsay witnesses. P.W.4 is neighbour of the deceased and she has not supported the case of the prosecution and turned hostile. P.W.5 also hearsay witness. P.W.6, P.W.7, P.W.8, P.W.9, P.W.11 have not supported the case of the prosecution and turned hostile. P.W.10 deposed that in the year 2015 the deceased told him that A1



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arranged second marriage, since she has not given much dowry. But none of the witnesses have spoken about the same and hence, the evidence of P.W.10 is highly doubtful. P.W.13 is Doctor, who conducted postmortem and as per Ex.P. 8/postmortem report, the deceased died due to consumption of poison Organo Phosphorous. P.W.14, who conducted inquest, has deposed on chief examination that due to dowry demand the deceased died to that effect he submitted Ex.P.9 and Ex.P. 10. But during cross examination he stated that the police has not enquired him and he admitted during cross examination that when he enquired P.W.1, he stated that the accused family have not demanded dowry and they can present whatever, they want as sreethana. Therefore, from the evidence of P.W. 14 it reveals that at the time of enquiry, P.W.1 has stated that the accused family have not demanded dowry.

12.P.W.1 to P.W.4 have not specifically stated as to what type of demand made by the accused. Further, the evidence of P.W.14 shows that there is no demand of dowry by the accused. P.W.15 has deposed about the registration of FIR and



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investigation done by him. As per his evidence, he went to the place of occurrence and prepared observation mahazar and rough sketch and seized articles. But he did not make search on the house. Further, he arrested A1 on 10.01.2016 at about 09.30 pm., near bus stop. But P.W.1 himself in his evidence stated that A1 was not in the country on the date of occurrence and there is no any piece of evidence adduced as against the first accused with regard to the demand of dowry. Further, P.W.16, in his evidence admitted as follows:-

இறந்துபோன ஹீலாராணி ஏதாவது கடிதம் எழுதி வைத்திருக்கிறாரா என்பதை அறிவதற்கு எதிரிகளின் வீட்டை நான் சோதனை எதுவும் செய்து பார்க்கவில்லை.

Further allegation as against the accused is that they wont allow the deceased to speak with her parents. While so, when the deceased used to speak over phone, the accused used to switch on the speaker and they also heard what she was speaking with her parents. If so, it is the duty of the investigating officer to search the cell phone and obtain CDR particulars. But the investigating officer has not done the same.



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13.The specific case of the prosecution is that the accused demanded dowry and also caused cruelty to the deceased and thereby, she consumed poison. But P.W.1 himself admitted that A1 was not in country on the date of occurrence and P.W.2 also in her evidence stated that A1 and A3 were alone present in the house of the accused. No evidence as to prove that soon before death of the deceased, the accused have caused cruelty by demanding dowry. In order to attract offence under Section 304(B) IPC, cruelty must be caused soon before death of the deceased. As far as Section 498(A) IPC is concerned, the allegations are general and no specific allegations as against the accused. Further the deceased had a habit of talking with another person and the same was also admitted by P.W.3, P.W.5 and P.W.16. Therefore, reasonable doubt would arise about the prosecution case as to whether the deceased died due to the harassment made by the accused or for some other reasons. Available evidences are not sufficient to prove the charges under Sections 498(A), 304(B) IPC. Further, P.W.1 during the



course of enquiry by the Revenue Divisional Officer, he has stated that there is no demand of dowry by the accused. If at all the accused demanded dowry and harassed the deceased, she would have stated about the same to her parents. But the parents of the deceased have not spoken anything about the specific incident happened prior to the death of the deceased.

14.Though they have stated some allegations as against the accused, the same are vague and bald allegations and there is no specific occurrence witnessed by the prosecution witnesses. Further the defence have projected that they of suicide note and they marked Ex.D1 suicide note and Ex.D.2 ID card of the deceased, but no sufficient evidence adduced to prove the said Ex.D.1. However, the burden is on the side of the prosecution to prove the charges levelled against the accused beyond reasonable doubt, but in this case the available evidences are not sufficient to sustain the conviction under Sections 498(A) and 304(B) IPC. Therefore, the prosecution has failed to prove the charges levelled as against the appellants beyond any reasonable doubts.



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15. Apart from that, the trial Court has framed charges under Sections 498(A) and 304(B) IPC. The contention of the charge contained in 1 ½ pages for 498(A) IPC and 1/3 page for 304(B) IPC. Charges has to be framed in concise manner. But unfortunately, the trial Court framed 2 and ½ pages charges and further, the trial Court framed questions under Section 313 (1)(b) Cr.P.C. But those questions are not in a proper manner and entire evidence of the witnesses was framed as single question and incriminating circumstances have not been properly explained to the accused. The right of the accused is defeated through framing questions under Section 313(1)(b) Cr.P.C. The trial Court failed to consider the above said aspects and wrongly convicted the accused by holding that the prosecution has proved the charges levelled against the accused under Sections 498(A) and 304(b) IPC. No doubt in this case, a young lady died by consuming poison, but no evidence to prove the charges. Therefore, considering the above said procedural irregularities and considering the fact that the prosecution side evidences are not sufficient to prove



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the case, this Court is of the opinion that the conviction of the accused is un-sustainable in law and facts. Therefore, the judgment and conviction passed by the trial Court are liable to be set aside.

16.In the result, this criminal appeal is allowed and the conviction and judgment passed by the learned Sessions Judge, Mahila Neethimandram, Pudukkottai in S.C.No.126 of 2016 dated 17.03.2018 is hereby set aside and the appellants are acquitted from the charges under Sections 498(A) and 304(B) IPC and they be set at liberty subject to other cases if any. Fine amount if any paid by the appellants, the same shall be refunded to them. Bail bond if any executed by the appellants, the same shall stand cancelled.

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Index :yes/No
Internet:yes/No
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To
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- 1.The Sessions Judge, Mahila Neethimandram,
Pudukkottai.
- 2.The Deputy Superintendent of Police,
Ponnamaravathi, Karaiyur Police Station,
Pudukkottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J

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Pre-Delivery Order
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