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Crl.A.(MD).No.306 of 2015

IN THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :21.09.2023 | PRONOUNCED ON : 17.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

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1. Saravanan @ Elangovan S/o. Samivel

2. Samivel S/o. Manian [died]

3. Chinthamani W/o. Samivel

4. Kumar S/o. Samivel and

5. Loganathan S/o. Rajagopal

... Appellants /accused

Vs.

1. The State represented by:

The Deputy Superintendent of Police,

Papanasam Sub-Division,

Thanjavur District.

2. The Inspector of Police,

Ayyampettai Police Station,

Thanjavur District.

[Cr. No.200 of 2010].

... Respondents / Complainant

PRAYER: Criminal Appeal has been filed under Section 372 of Criminal Procedure Code, praying to call for records and set aside the Judgment and conviction passed in S.C. No.148 of 2012 on the file of the learned Sessions



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Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur dated
08.10.2015.

For Appellants : Mr. K. Balasundaram, Senior Counsel
[for A1, A3 & A4]

Mr. M. Karunanidhi [for A5]

For Respondents : Mr. M. Sakthi Kumar, Government
Advocate (Criminal Side).

ORDER

This Criminal appeal in Crl. A. (MD) No.306 of 2015 has been preferred by the appellant as against the Judgment and conviction passed in S.C. No.148 of 2012 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, dated 08.10.2015, wherein the Trial Court has convicted the accused 1 to 4 for the offences under Sections 498-A, 304(B) and Section 4 of Dowry Prohibition Act 1961 and convicted the 5th accused under Section 409 of IPC.

2. The case of the prosecution in brief is as under:

2.1. For the sake of convenience, the parties are mentioned as per the rank in Trial Court.



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2.2. The defacto complainant is the father of deceased Anitha and the marriage between the 1st accused and the daughter of the defacto complainant was solemnized on 27.01.2017 at Ayyampettai. At the time of marriage, the parent of the deceased Anitha presented 15 sovereigns of gold jewels and other household articles as Sreedhanam. Further the 5th accused was acting as an agent and the father of the deceased, paid a sum of Rs. 35,000/- to the 5th accused for the purchase of motor vehicle to the 1st accused. But the 5th accused did not pay the above said Rs.35,000/- to the 1st accused and thereby, no motor vehicle was given to the 1st accused. After 3 months from the date of marriage i.e., on 10.07.2010, the accused 1 to 4 harrassed the deceased Anitha by insisting her to buy motor cycle and thereby, the said Anitha committed suicide by hanging. Thereafter, the father of the deceased PW1 has lodged a complaint, Ex.P.1, before the Police and the PW12, Sub-Inspector of Police has registered F.I.R., Ex.P.9 and thereafter the case was investigated by PW13 to PW15 and lastly PW15 has filed final report as against the accused 1 to 4 for the offences under Sections 304(B) of IPC and as against the 5th accused under Section 304(B) r/w 109 and 409 of IPC.



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2.3. Thereafter, the documents relied on by the prosecution were furnished to the accused U/s.207 of Cr.P.C. and then the case was committed to the Principal District and Sessions Judge, Thanjavur and in turn, the learned Principal District and Sessions Judge, Thanjavur made over the case to the Fast Track Mahila Court, Thanjavur in Sessions Case No.148 of 2012. Thereafter, the trial Court, after hearing both sides, has framed charges U/s.498-A, 304(B) of IPC and Section 4 of Dowry Prohibition Act as against the accused 1 to 4 and under Section 409 of IPC as against the 5th accused. The charges framed against the accused / appellant, were read over and explained to them and they denied the charges. Thereby, the prosecution examined the witnesses PW1 to PW15 and marked Ex.P.1 to Ex.P.11 series and M.O.1. to M.O.4 were marked. No oral or documentary evidence were submitted on the side of defence. After completion of prosecution side evidences, the accused were examined U/s. 313(1)(b) of Cr.P.C. with regard to the incriminating evidence adduced against them and the same was also denied by the accused.

2.4. After hearing both sides and considering oral and documentary



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evidence adduced on either side, the Trial Court found the accused 1 to 4 guilty of offences punishable U/s.498(A), 304(B) of IPC and Section 4 of Dowry Prohibition Act and found the 5th accused guilty of offence under Section 409 of IPC and convicted the accused 1 to 4 and sentenced each accused

(a) to undergo one (1) year simple imprisonment and fine amount of Rs.1000/-. In default, 3 months of simple imprisonment for the offence under Section 498(A) of IPC;

(b) to undergo one (1) year simple imprisonment and fine amount of Rs.1000/-. In default, 3 months of simple imprisonment for the offence Section 4 of Dowry Prohibition Act and

(c) to undergo Rigorous imprisonment for 7 years for the offence under Section 304 (B) of IPC

and sentenced the 5th accused

(d) to undergo rigorous imprisonment for 7 years and fine amount of Rs.1,000/-. In default, 3 months of simple imprisonment. The Trial Court directed that the sentences imposed on the accused 1 to 4 shall run concurrently and the imprisonment period already underwent by the accused shall be set off under Section 428 of Cr.P.C.



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3. Aggrieved upon the above said Judgment and conviction, the present appeal has been filed by the accused / appellants on the following grounds:-

3(i) The Judgment of the Trial Court is contrary to law, weight of evidence and probabilities of the case.

3(ii) The trial court judgment is based only on presumption, surmises and conjectures and are not relevant to the facts and circumstances of the case.

3(iii) The Trial Court failed to appreciate the fact that the motive for the alleged occurrence had not been properly proved by the prosecution.

3(iv) The Trial Court failed to appreciate the fact that there are material contradictions and inconsistencies in the evidence of prosecution witnesses and documents.

3(v) The Trial Court failed to appreciate the fact that the appellants 1 to 4 have not demanded dowry soon before the



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occurrence.

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3(vi) The Trial Court failed to consider the evidence of PW13, Revenue Divisional Officer and Ex.P.10, R.D.O. report in proper perspective manner.

3(vii) The Trial Court failed to analyse the fact that there is no evidence either oral or documentary to prove the fact that soon before her death, there was demand of dowry by the appellants.

3(viii) The Trial Court has failed to consider that there is no prima facie case to convict the appellants for the offence under Section 304-B of IPC. Absolutely, there is no evidence that the deceased was subjected to dowry harassment soon before her death.

3(ix) The charge for the offence under Section 409 of IPC as against the 5th accused is groundless as he is stranger to the



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family of the other appellants;

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3(x) The Trial Court has failed to consider that the prosecution has failed to prove the ingredients of Section of 409 of IPC.

3(xi) The Trial Court failed to appreciate the fact that other witnesses have not supported the case of prosecution.

4. Heard Mr. K. Balasundaram, Senior Counsel, appearing for the appellants 1, 3 and 4 and Mr. M. Karunanidhi, learned counsel appearing for A5 and Mr. M. Sakthi Kumar, learned Government Advocate (Criminal Side) appearing for the respondents.

5. The learned counsel appearing for the appellants would contend that the 1st accused is the husband of the deceased Anitha and the accused 2 and 3 are the parents of the 1st accused and the 4th accused is the brother of the 1st accused. The 5th accused is the third-party mediator. The accused 1 to 4 have been charged for the offences punishable under Sections 498(A), 304(B) of IPC and Section 4 of Dowry Prohibition Act, 1961 and the 5th



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accused has been charged for the offence under Section 409 of IPC.

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5.1. In order to prove the charges levelled against the accused, the prosecution has examined PW1 to PW15, marked Ex.P.1 to Ex.P.11 and M.O.1 to M.O.4. On the side of defence, no oral evidence adduced and no documents were marked.

5.2. The prosecution witnesses are highly doubtful and thereby, the charges levelled against the accused have not been proved by the prosecution. There is no reference in the complaint with regard to the charge under Section 409 of IPC. Even according to the complaint, there is no any allegation as against A1. During the pending proceedings, A2 died. Ex.P.10, RDO report also does not reveal anything incriminating against A1. Further in Ex.P.10, the report of the RDO, there is no whisper about the demand of dowry by the accused. Further, the complaint was lodged after consultation with others. The complaint was lodged and FIR was registered only after thought. PW1 also admitted in his evidence that after consultation with his relatives only, he lodged complaint. As per the complaint, the Sister-in-laws also demanded dowry. But they have not been arraigned as



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accused. This shows the malafide intention of the complainant to include the names of the in-laws in this case. There is a delay in lodging the complaint and there is also a delay in sending the FIR to the Court. The said delay has not been properly explained by the prosecution. The main contention of the prosecution is that the accused demanded motor cycle but PW1, PW2 and PW4 have stated that the accused refused to receive old motor cycle and demanded new motor cycle. There is no evidence to show that the accused demanded new motor cycle and dowry.

5.3. The learned counsel for the appellants further submitted that PW1 admitted in his cross examination that when they went to see her daughter after occurrence, the third accused alone was present there and the accused 1 and 4 were not present and there are major contradictions between the prosecution witnesses with regard to the manner of occurrence. Therefore, the prosecution witnesses have not witnessed about the entire prosecution story and thereby, the case of the prosecution is highly doubtful and as far as the 5th accused is concerned, there is no evidence to attract the provisions of Section 409 of IPC, but the Trial Court failed to consider the above said aspects and wrongly convicted the accused.



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6. On the other hand, the learned Government Advocate counsel (Criminal side) would contend that, charges were framed as against the accused 1 to 4 for the offences punishable under Sections 498(A), 304(B) of IPC and Section 4 of Dowry Prohibition Act, 1961 and the 5th accused has been charged for the offence under Section 409 of IPC. In order to prove the charges levelled against the accused, the prosecution have examined PW1 to PW15, marked Ex.P.1 to Ex.P.11 and M.O.1 to M.O.4. No oral evidence adduced and no documents were marked on the side of defence. PW1, who is the defacto complainant, has categorically deposed about the demand of dowry by the accused and the amount of Rs.35,000/- for purchasing the motor vehicle, was given to the 5th accused and PW7 has also deposed about the demand of vehicle. Thereby, the prosecution witnesses have categorically deposed about the demand of dowry and about the harassment made by the accused. Therefore, the prosecution has proved the charges levelled as against the accused beyond all reasonable doubts and the Trial Court, after analysing all the evidences adduced on either side, has correctly convicted the accused and therefore, the present appeal is liable to be dismissed.



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7. Heard both sides and perused the entire materials available on record, the Judgment passed by the Trial Court and the grounds of appeal.

8. Upon hearing both sides and perusing the entire available records, now the point for determination in this appeal is:

8(i) whether the prosecution has proved the charges levelled against the accused 1 to 4 for the offences punishable u/S.498(A), 304(B) of IPC and Section 4 of Dowry Prohibition Act 1961 and charge against 5th accused for the offence punishable u/S.409 of IPC beyond all reasonable doubts.

8(ii) whether the judgment and conviction passed by the Trial Court is sustainable in law and on facts.

9. **Points:-** The case of the prosecution is that the defacto complainant is the father of deceased Anitha and the marriage between the 1st accused and the daughter of the defacto complainant was solemnized on 27.01.2017 at Ayyampettai. At the time of marriage, the parent of the



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deceased Anitha presented 15 sovereigns of gold jewels and other household articles as Sreedhanam. Further the 5th accused was acting as an agent and the father of the deceased, paid a sum of Rs.35,000/- to the 5th accused for the purchase of motor vehicle to the 1st accused. But the 5th accused did not pay the above said Rs.35,000/- to the 1st accused and thereby, no motor vehicle was given to the 1st accused. After 3 months from the date of marriage i.e., on 10.07.2010, the accused 1 to 4 harrassed the deceased Anitha by insisting her to buy motor cycle and thereby, the said Anitha committed suicide by hanging. Thereafter, the father of the deceased PW1 has lodged a complaint, Ex.P.1, before the Police and the PW11 and PW12, Sub-Inspector of Police has registered F.I.R., Ex.P.9 and thereafter the case was investigated by PW13 to PW15 and lastly PW15 has filed final report as against the accused 1 to 4 for the offences under Sections 304(B) of IPC and as against the 5th accused under Section 304(B) r/w 109 and 409 of IPC.

10. In order to prove the prosecution case, they have examined PW1 to PW15 and Ex.P.1-Ex.P.11 and M.O.1-M.O.4 were marked. On the side



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of accused, there is no oral or documentary evidence.

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11. In this case, PW1 is the father of the deceased Anitha and he deposed about the marriage, presentation of Sreedhana jewels and household articles. The accused have not denied about the said presentation of jewels and the main contention of the prosecution is that at the time of marriage, the parents of the deceased agreed to present motor cycle to the 1st accused and for that, they have given Rs.35,000/- to the 5th accused, who is the mediator. But he neither purchased motor cycle for the 1st accused nor given money to the 1st accused and thereby, all the accused demanded dowry from the parents of the deceased and the 5th accused committed criminal breach of trust. In this context, PW1 has deposed that the 5th accused, after receipt of Rs.35,000/-, failed to purchase motor vehicle to the 1st accused, thereby they demanded the deceased Anitha to get dowry from her parents and the same was intimated to him over phone by the deceased. After few days, the deceased died by hanging. Thereafter he gave a complaint, Ex.P.1., and on perusal of Ex.P.1., it reveals that the accused 1 to 4 harassed the deceased by demanding big motor cycle, money and jewels



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and thereby, the deceased died and further in the complaint, the complainant has stated that he suspected that the entire village suppressed the real facts and there is suspicious over the death of his daughter. Further, the PW1 during his cross examination stated that during the enquiry of RDO, he has stated that his daughter, 15 days prior to the date of her death stayed in his house for two days and further he stated that every time, when he used to come to the house of his daughter's in-laws, they used to talk about the dowry. But there was no any complaint given by the defacto complainant with regard to the previous demand of dowry and he admitted that the 1st accused had two wheeler and there is no mention in the complaint about the above said amount of Rs.35,000/- given to the 5th accused to purchase the motor cycle. This is the main reason for demanding dowry, but in the complaint, the said fact has not been mentioned and therefore, a reasonable doubt would arise about the complaint. Further, PW1 in his evidence admitted that after death of his daughter, he, along with his relatives and one Ramalingam, had delebrated and as per the instruction of his relatives, he gave the complaint and further he admitted that he did not give complaint as against the 5th accused. Therefore, reasonable doubt would arise with regard to receipt of alleged money for purchase of vehicle.



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12. PW2 is the mother of the victim / deceased and she also stated about the marriage between the deceased and the 1st accused and about the marriage presentations and also deposed about the demands of money made by the accused for purchase of motor vehicle. She stated that her daughter was insisted to purchase two wheeler for the 1st accused. Thereafter, her daughter died by hanging. But at the same time, PW2 in her cross examination stated that, during the investigation by the police, she did not state anything about the harassment made by the accused from one month after the marriage and her daughter left the house of accused due to the harassment.

13. PW3, who is the brother of the deceased also stated about the marriage between the 1st accused and the deceased and about the presentations at the time of marriage. He also stated about the demand of motor cycle by the accused. From the above said evidences, they revealed that the accused demanded dowry from the deceased, but at the same time, there is no evidence about the date and the period, on which the accused demanded dowry. There is no specific evidence adduced by the prosecution



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witnesses with regard to the dowry demanded by the accused soon before the death of the deceased.

14. PW4 has deposed about the marriage between the 1st accused and the deceased. At the time, one month prior to the marriage, the 1st and the 5th accused demanded motor bike and the father of the deceased also agreed to purchase bike for the 1st accused. One month prior to the marriage, A1 and A5, came to the house of PW1 and obtained a sum of Rs.35,000/- towards purchase of motor cycle and thereafter, bike was not purchased and then the 1st accused demanded old two wheeler. For that, the brother of the deceased declined to purchase old vehicle. Further, the father of the deceased, decided to purchase old bike but the 1st accused refused for the same. The above said evidence has not been spoken by the other prosecution witnesses particularly by the parents of the deceased. Further the above said evidence is totally contrary to the prosecution case. Therefore the evidence of PW4 is no way helpful to decide the case in favour of the prosecution. PW5 and PW6 have not supported the prosecution case and they turned hostile. PW7, is a hear-say witness and he



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is not an eye witness. PW8 has deposed about the post mortum of the deceased. As per this evidence. The deceased died of 'asphyxia' due to hanging. PW12 has deposed about the registration of F.I.R. and PW13 to PW15 have deposed about the investigation done by them.

15. In this case, there is no dispute that the deceased died due to hanging and there is no evidence adduced on the side of prosecution that the deceased committed suicide due to harassment made by the accused by way of demanding dowry by the accused. The evidence of PW1, PW2 and PW3 are not specific and particular with regard to the demand of dowry and they are very vague and general. No any complaint was lodged prior to the death of deceased with regard to the demand of dowry. Therefore, the prosecution evidence are not sufficient to prove the guilt of the accused for the offences charged against them.

16. As far as the offence under Section 498(A) IPC is concerned, in order to attract the ingredients of Section 498(A), there is no sufficient evidence that the accused caused cruelty to the deceased. As far as the offence under Section 304(B) of IPC is concerned, there is no evidence that



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the accused harassed the deceased by demanding dowry soon before the her death. In this regard, the evidence of prosecution witnesses are not specific as to when the accused demanded dowry and whether the said demand was soon before the death of the deceased, have to be proved by the prosecution. But no sufficient evidence is adduced on the side of prosecution. There is no evidence on the side of prosecution, that the accused had abetted the deceased to commit suicide and they have actively participated in relation to the death of the deceased. Even according to the evidence of PW1, the deceased told about the harassment over phone. But the prosecution failed to seize the call records.

17. As far as the offence under Section 4 of Dowry Prohibition Act is concerned, the evidence of prosecution witnesses PW1, PW2 and PW3 are not specific and they are vague and in one place, they have stated that the accused demanded motor cycle, but in the complaint lodged by PW1, there is no reference about the purchase of motor cycle. Per contra, the complaint reveals that the accused demanded jewels, money and two-wheeler. But there is no specific evidence with regard to the quantum of money and



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jewels demanded by the accused.

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18. As far as the offence under Section 409 of IPC is concerned, as per the prosecution, A5 received money for the purchase of motor vehicle to the 1st accused, but the 5th accused has not purchased the vehicle and gave it to the 1st accused. But in the complaint, there is no whisper about the receipt of Rs.35,000/- by the 5th accused from the defacto complainant / PW1 and about the purchase of motor cycle. There is no independent witness examined with regard to the alleged receipt of money by the 5th accused. Further, in order to prove the harassment made by the accused, the prosecution failed to examine any independent witness in and around the house of the accused, where the deceased alleged to have harassed.

19. Further, the inquiry report of RDO also does not reveal about the dowry demanded by the accused 1 to 4. But it reveals that the 5th accused obtained money from PW1 for purchase of vehicle but neither the motor vehicle was purchased nor the money was given to the 1st accused. While so, it is the duty of the prosecution to prove the above said entrustment of money to the 5th accused and the same was misused by him. But there is no evidence adduced on the side of prosecution to prove the same. Therefore,



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the prosecution has failed to prove the charges as against the accused and the accused are entitled for acquittal. The Trial Court has convicted the accused 1 to 4 for the offences punishable U/s.498(A), 304(B) of IPC and Section 4 of Dowry Prohibition Act and convicted the 5th accused for the offence under Section 409 of IPC without considering the above said discrepancies and thereby, the judgment and conviction are not sustainable and hence liable to be set aside.

20. The learned counsel appearing for the appellants has relied upon the following judgments:-

20(i) ***Debashis Daw and others v. State of West Bengal reported in (2010) 3 Supreme Court Cases (Cri) 1158***

- wherein, the Hon'ble Supreme Court, in para 5, has held that:

“We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly in a case of a dowry death under Section 304-B, a presumption of Section 113-B does arise against the accused. However, the presumption is relateable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case



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we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredient that any demand for dowry had been made soon before the death”.

20(ii) *Biswajit Halder Alias Babu Halder and others v. State of West Bengal reported in (2008) 1 Supreme Court Cases (Cri) 172.*

–wherein, the Hon'ble Supreme Court, in Para 14, has held that:

—

“In this case there is practically no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. There is also no finding in that regard. This deficiency in evidence proves fatal for the prosecution case. Even otherwise mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand for dowry. Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained”.

20(iii) *Durga Prasad and another v. State of Madhya Pradesh reported in (2010) 3 Supreme Court Cases (Cri) 1154 -*

wherein the Hon'ble Supreme Court has, in para 16, 17 and 18, held that:

“16. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to allow the benefit of doubt to the appellants having particular regard to the fact that except for certain bald statements made by P.W.s 1 and 3 alleging that the victim had been subjected



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to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are ingredients of the evidence to be led in respect of Section 113-B of the Evidence Act, 1872, in order to bring home the guilt against an accused under Section 304-B IPC.

17. As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Only then would such death be called “dowry death” and such husband or relative shall be deemed to have caused the death of the woman concerned.

18. In this case, one other aspect has to be kept in mind, namely, that no charges were framed against the appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B IPC was related to a demand for a fan only”.

On careful perusal of the above said judgments, it is clear that in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of



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burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

In the case on hand also, there is no evidence to prove that the accused have caused cruelty or harassment in connection with demand of dowry soon before the death of the deceased. Therefore, the above said case laws are squarely applicable to the present facts of the case.

21. The learned counsel appearing for the appellants has brought to the knowledge of this Court that in this case, examination of accused under Section 313(1)(b) of Cr.P.C. has not been properly done and the entire evidence of the witness have been framed as a single question and thereby, the prejudice caused to the accused. In support of his contention, the learned counsel for the appellants has relied upon the following judgment:

Raj Kumar @ Suman v. State (NCT of Delhi) reported in 2023 LiveLaw (SC) 434 – wherein, the Hon'ble Supreme Court, in Para 16, has held that:



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16. The law consistently laid down by this Court can be summarized as under:

- (i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;
- (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;
- (iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;
- (iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;
- (v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;
- (vi) In case such irregularity is curable, even the appellate Court can question the accused on the material circumstance which is not put to him; and
- (vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the



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supplementary statement of the concerned accused under Section 313 of Cr.P.C.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered”.

On careful perusal of the above judgment, it is clear that the failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused.

In the case on hand also, the Trial Court has not framed proper questions with regard to the incriminating circumstances and entire evidence of each witness has been framed as a single question and thereby the above said case law is squarely applicable to the present facts of the case.

22. The learned Government Advocate (Criminal Side) has relied upon the following judgment:

Maya Devi & Another vs. State of Haryana reported in Criminal Appeal No.1263 of 2011

- Wherein the Hon'ble Supreme Court, in Para No.22, has held as



follows:

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22. The key words under Section 113B of the Evidence Act, 1872 are shall presume leaving no option with a Court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her. In the case on hand, accused persons failed to prove beyond reasonable doubt that the deceased died a natural death. When Kavita allegedly committed suicide, her husband-appellant No.2, though he was not present in the house, was present in his office at M.D. University, Rohtak at the relevant time but he did not make any sincere effort to take her to the hospital which was very near to the place of the incident. Similarly, appellant No.2 got the deceased examined by DW2 in order to create an impression that she was struggling with chronic depression but the truth floated upon the surface when the deceased reveals that the accused persons were maltreating her and she had started picking up the ideas of suicide. Lastly, appellant no.2 falsely informed the Court that having learnt about the death of his wife Kavita, he left for Delhi to inform her family members. In fact, the accused never went to Delhi and the complainant received a telephonic message from an unknown person regarding the death of his daughter. So far as Maya Devi – appellant No.1 herein is concerned, there is no denying the fact that she was working as a teacher in a government school and she was not present at the relevant time at the place of incident but it is very much clear from the evidence on record that both the accused persons had a dominating role in the entire episode and she had always accompanied her son-



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appellant No.2 herein to the house of the complainant (PW3) for the dowry demands. The presumption under Section 113B of the Act is mandatory may be contrasted with Section 113A of the Act which was introduced contemporaneously. Section 113A of the Act, dealing with abetment of suicide, uses the expression may presume. This being the position, a two-stage process is required to be followed in respect of an offence punishable under Section 304-B IPC; it is necessary to first ascertain whether the ingredients of the Section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death. From the evidence on record, we are of the opinion that in the present case Kavita died an unnatural death by committing suicide as she was subjected to cruelty / harassment by her husband and in-laws in connection with the demand for dowry which started from the time of her marriage and continued till she committed suicide. Thus, the provisions of Sections 304B and 498A of the IPC will be fully attracted”.

On careful perusal and reading of the above said judgment, it will not be applicable to the present facts of the case. Because, in this case the prosecution has failed to prove the foundational fact with regard to the commission of demand of dowry soon before the death.

23. In view of the above discussions and the judgements relied upon by the appellants, this Court is of the opinion that the prosecution has failed



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to prove the charges levelled against the accused and the accused are entitled for acquittal.

24. IN THE RESULT, this Criminal Appeal is allowed and the judgement and conviction passed by the Trial Court in S.C. No.148 of 2012 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur dated 08.10.2015, are hereby set aside and the accused/appellants 1, 3 and 4 are acquitted from the charges under Sections 498-A, 304(B) of IPC and Section 4 of Dowry Prohibition Act 1961 and the 5th accused is acquitted from the charge under Section 409 of IPC. The 2nd accused died and hence the charges abated against him. The appellants/accused be set at liberty subject to other cases, if any. The bail bonds executed by the accused shall stand cancelled. The fine amount, if any paid by the accused, shall be refunded.

17.11.2023

Index : Yes / No

Internet : Yes / No

Neutral Citation Case :Yes/No

mjs

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To

1. The Deputy Superintendent of Police,
Papanasam Sub-Division,
Thanjavur District.
2. The Inspector of Police,
Ayyampettai Police Station,
Thanjavur District.



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