



Crl.A(MD)No.154 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 01.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.154 of 2016

1.Karthick
2.Durairah
3.Selvi

... Appellants/Accused No.1 to 3

vs.

State Rep. by
The Inspector of Police,
CBCID, Thanjavur District.
(Crime No.4 of 2010)

... Respondent/Complainant

PRAYER : This Criminal Appeal has been filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed by the Mahilar Neethimandram (Fast Track Mahila Court) Thanjavur, in S.C.No.296 of 2012 dated 28.04.2016 and acquit the appellant.

For Appellants : Mr.A.Arun Prasad

For Respondent : Mr.T.Senthilkumar
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed against the order passed in S.C.No. 296 of 2012 on the file of the Mahilar Neethimandram (Fast Track Mahila Court) Thanjavur, dated 28.04.2016 .



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2.The case of the prosecution is that the first accused got married to the deceased on 04.09.2008. During the marriage, the accused person demanded 10 sovereigns of jewels, a motorcycle and other sridhanas as dowry. All the accused also demanded a sum of Rs.1,50,000/- to dig up a bore-well. The parents of the deceased had agreed the same and sought for 6 months to fulfil their demands and married the deceased to the first accused. However, even after completion of 6 months time from the date of marriage, the parents of the deceased failed to fulfil the demand made by the accused. Therefore, the accused used to quarrel with the deceased very often and she was driven out from the matrimonial home on 13.01.2010. When the deceased and the first accused went to her parents house during Pongal Festival, the accused demanded to fulfil the dowry demand. However, the parents of the deceased did not fulfil the same. On the very same day, at about 11.00 p.m, the accused informed to the parents of the deceased that their daughter namely, the deceased committed suicide by hanging herself. On the complaint, the respondent registered the F.I.R in Crime No.4 of 2010 for the offence under Section 174 of Cr.P.C. After completion of the investigation, the respondent filed a final report for the offence under Section 304(B) of IPC and Section 4(B) of Tamilnadu Prohibition of Women Harassment Act, 1998, and the



same has been taken cognizance in S.C.No.296 of 2012 on the file of the Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur.

3.On the side of the prosecution, they had examined P.W.1 to P.W.26 and marked Exs.P.1 to P.20 and on the side of the accused, D.W.1 and D.W.2 were examined and no exhibits were marked and no materials were produced.

4.On perusal of both the oral and documentary evidence, the trial Court found all the accused persons guilty for the offences punishable under Section 304 (B) of of I.P.C and sentenced them to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 6 months Simple Imprisonment. Aggrieved by the same, present appeal has been filed.

5.The learned counsel appearing for the appellants submitted that the prosecution failed to prove the charges under Section 304(B) of IPC. No one has spoken about that the deceased was harassed or subjected to cruelty in order to demand dowry. The Trial Court convicted the appellants only on the evidence of P.W.1 and P.W.3. P.W.1 is the father and P.W.3 is the brother of the deceased. They did not whisper about the



demand of Rs.1,50,000/- to dig up a bore-well during the time of marriage before the Revenue Divisional Officer or the complaint. Only the first time while deposing before the Trial Court, they deposed that during the marriage, the accused had demanded a sum of Rs.1,50,000/- to dig up a bore-well. In fact, already the accused have a bore-well and they had never demanded a sum of Rs.1,50,000/- to dig up a bore-well.

6.He further submitted that the first accused pledged the jewels of the deceased and given that amount to P.W.1. On the date of occurrence, namely, on 13.01.2010, the first accused went to P.W.1's house and he whitewashed their house. On the same day evening, in order to celebrate Pongal Festival, he had brought the deceased to the matrimonial home with the 8 months old child. Due to tiredness, he slept after having food. While he was woke up for attending natural call, he had seen that the deceased had committed suicide by hanging herself. Therefore, absolutely, there is no evidence to show that there was dowry harassment to instigate or abette the deceased to commit suicide. Insofar as A2 and A3 are concerned, even according to the prosecution, no one has spoken about the demand of dowry or harassment made by them against the deceased. He further submitted that now the male child is studying 9th standard under the care of the first appellant.



7.The learned counsel for the appellants further submitted that the specific case of the prosecution is that after the alleged occurrence, P.W.3 received phone call about the illness of the deceased. As such, she was taken to the hospital. Later, they came to know that the deceased died unnaturally. However, they did not even whisper about the phone call before the Revenue Divisional Officer. Only during their deposition, they improved their version and deposed before the Trial Court. Therefore, the prosecution had failed to prove the charge under Section 304(B) of IPC. Therefore, the entire conviction and sentence imposed by the Courts below are liable to be set aside.

8.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that in order to bring the charge to home, the prosecution had examined P.W.1 to P.W.26 and marked exhibits P1 to P20. The father of the deceased was examined as P.W.1 and the brother of the deceased was examined as P.W.3. They categorically deposed that the accused had demanded dowry during the marriage and the said demand was agreed to be fulfilled with 6 months from the date of marriage. However, P.W.1 failed to fulfil the said demand and as such, the accused persons quarreled with the deceased. Further, all the accused persons harassed the deceased in order to bring



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dowry from P.W.1. It is also corroborated by the other prosecution witnesses. The Doctor, who conducted postmortem was examined as P.W.19. She categorically deposed that the deceased died only because of the harassment made by the accused persons before her death. Therefore, she committed suicide by hanging herself in the matrimonial home. No mother will decide to commit suicide leaving 8 months old baby. P.W.1 and P.W.3 categorically deposed that during the marriage, the accused persons demanded a sum of Rs.1,50,000/- for digging up a bore-well. But, it was not fulfilled by the parents of the deceased and also as such, on the date of occurrence, there was a demand made by the accused person. In fact, when the deceased and the first accused visited P.W.1's house for celebrating Pongal Festival, the first accused made demand and thereafter, again taken the deceased to matrimonial home. On the same day, she committed suicide without having any food. Therefore, the prosecution proved its case beyond any doubt. Hence, the interference of this Court does not warrant and prayed for dismissal of the revision.

9.Heard the learned counsel appearing on either side and perused the materials available on record.



10.The first accused got married to the deceased on 04.01.2008.

They gave birth to a male child. Within a period of 1 ½ years, the deceased committed suicide by hanging herself in the matrimonial home. Initially, the case was registered for the offence under Section 174 of Cr.P.C. P.W.1 approached this Court for transfer of investigation and the investigation was transferred to the file of the respondent. After completion of investigation, the respondent filed final report for the offence under Section 304(B) of IPC and Section 4(B) of Tamilnadu Prohibition of Women Harassment Act, 1998. The father of the deceased was examined as P.W.1 and brother was examined as P.W.3. The P.W.1 deposed that during the marriage, the first accused demanded a sum of Rs.1,50,000/- to dig up a bore-well which was agreed by P.W.1 to fulfil the said demand within a period of 6 months from the date of marriage. However, P.W.1 failed to fulfil the said demand. As such, there was quarrel between the first accused and the deceased very often. Every month, she was driven out from the matrimonial home to her parents house. Before the date of occurrence, the deceased was presented with cow by P.W.1. However, there was no milk in the said cow, the same was sold out for Rs.5,000/- and that amount was handed over to the first accused. Even then the first accused harassed the deceased and demanded huge dowry. It is also corroborated by P.W.3. He further



deposed that he received phone call at about 07.00 p.m from the deceased. He was informed that the deceased was harassed by the accused after giving a sum of Rs.5,000/- which was given by P.W.1 by selling the said Cow. Thereafter, he was informed that the deceased got chest pain and admitted in the hospital. However, she was not taken to the hospital. He was informed that she died by committing suicide. Since the deceased committed suicide within 7 years from the date of marriage, the Revenue Divisional Officer conducted enquiry. During enquiry, all the witnesses categorically deposed that there was dowry demand and very often the first accused used to beat the deceased and driven out her from the matrimonial home. Therefore, the Revenue Divisional Officer was examined as P.W.23 and deposed that there was dowry demand, due to which, she committed suicide.

11.Thus it is clear that within a period of 1 ½ years from the date of marriage, the deceased committed suicide by hanging herself. The only point for consideration is that whether it was a dowry death. It is relevant to extract the provision under Section 304(B) is here under:-

“Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. ”



12. Accordingly, the death must have been occurred on account of cruelty or harassment in any connection with the dowry. Further, dowry means property given or agreed to be given at any point of time after the marriage. On perusal of deposition of all the prosecution witnesses did not attract the offence under Section 304(B) of IPC.

13. Though P.W.1 deposed that his brother received phone call from the deceased at about 07.00 p.m on the date of occurrence i.e., on 13.01.2010 and the same was informed to P.W.1, he did not whisper about the same before the Revenue Divisional Officer or statement recorded under Section 161 Cr.P.C. P.W.3 also did not whisper about the said phone call received from the deceased at about 07.00 p.m, on the date of occurrence before the Revenue Divisional Officer or before the Investigation Officer. First time both have deposed before the Trial Court that P.W.3 received phone call at about 07.00 p.m on the date of occurrence. The mother of the deceased was examined as P.W.2. She deposed that P.W.3 received phone call from the deceased to fulfil the demand made by the accused during the marriage. However, she also did not even whisper before the Revenue Divisional Officer about the said phone call from the deceased. No other witnesses had spoken about the said phone call received from the deceased. Therefore, the prosecution



failed to prove that soon before the death of the deceased, there was dowry demand or harassment by the accused person. There is no evidence to show that soon before her death, the appellants had subjected the deceased to cruelty in connection with the demand of dowry.

14.In this case, there is no iota of evidence to show that the accused demanded money in connection with the marriage on the date of occurrence. Therefore, the conviction under Section 304(B) of IPC cannot be sustained against the appellants herein.

15.However, there is evidence to show that the first accused had committed cruelty on the deceased. Very often, he used to quarrel with the deceased and had sent her to her parents house. The other prosecution witnesses categorically deposed that the first accused used to quarrel with the deceased in order to bring money. However, there is absolutely no iota of evidence to bring any charge to home against the accused No.2 and 3 herein. Therefore, it would be appropriate to punish the first accused alone for the offence under Section 498(A) of IPC.

16.Accordingly, the conviction under Section 304(B) of IPC against the appellants is set aside. The first appellant alone is convicted



for the offence punishable under Section 498(A) of IPC. Considering the fact that, the minor son is under the care of the first accused, this Court is sentenced him to undergo 1 year Simple Imprisonment. The respondent is directed to secure the first accused to serve the sentence for the offence punishable under Section 498(A) of IPC.

17.With the above modification, the Criminal Appeal is partly allowed.

01.06.2023

dss

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

- 1.The Mahilar Neethimandram (Fast Track Mahila Court),
Thanjavur.
- 2.The Inspector of Police,
CBCID, Thanjavur District.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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