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CRL.A.(MD).Nos.259 & 371 of 2016



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).Nos.259 & 371 of 2016

1.Crl.A(MD)No.259 of 2016:-

Vasuki @ Vasini

... Appellant/Accused No.2

Vs.

The Deputy Superintendent of Police,
Thuckalay Police Station,
Kanyakumari District.
Thuckalay.

(Crime No.440 of 2009). ... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the Judgment passed in S.C.No.23 of 2010 on the file of the Mahila Fast Track Court, Kanyakumari Division at Nagercoil, dated 02.07.2016.

For Appellant

: Mr.P.T.Ramesh Raja
for Mr.T.Arul

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor



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2.Crl.A(MD)No.371 of 2016:-

M.Ramesh

... Appellant/Accused No.1

Vs.

The Deputy Superintendent of Police,
Thuckalay Police Station,
Kanyakumari District.
Thuckalay.

(Crime No.440 of 2009). ... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the Judgment passed in S.C.No.23 of 2010 on the file of the Mahila Fast Track Court, Kanyakumari Division at Nagercoil, dated 02.07.2016.

For Appellant

: Mr.P.T.Ramesh Raja
for Mr.T.Arul

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

These appeals have been filed to set aside the common Judgment passed in S.C.No.23 of 2010 on the file of the Mahila Fast Track Court, Kanyakumari Division at Nagercoil, dated 02.07.2016.



2.Both the appeals, arising out of the single trial, were taken up together and disposed of by common Judgment.

3.The case of the prosecution is that on 22.06.2009 at about 07.00 a.m., when the deceased was not coming out of the house to purchase milk as usual, P.W.7 searched in and around her house and did not find her. Therefore, she informed to P.W.1, who was the Vice President of the Village Panchayat and they searched her. Thereafter, they found that the deceased committed suicide by hanging herself inside the house. The house was locked inside. Immediately, P.W.1 informed to the police and the respondent registered the F.I.R.

4.On the complaint lodged by P.W.1, the respondent registered the F.I.R in Crime No.440 of 2009 for the offence under Section 174 of Cr.P.C. Thereafter, altered the offence into under Section 406, 498(A) and 304(b)(2) of I.P.C and Section 3 and 4 of Dowry Prohibition Act. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by the trial Court.



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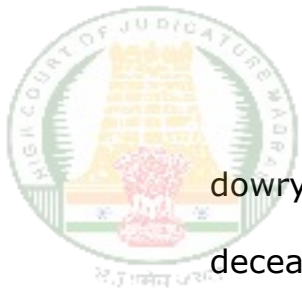
5. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.22 and marked Ex.P.1 to Ex.P.12. The prosecution also produced material objects M.O.1 to M.O.9 and on the side of the accused, no one was examined and no documents were exhibited.

6. On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offences under Sections 406, 498(A) and 304(b)(2) of I.P.C and also under Sections 3 and 4 of the Dowry Prohibition Act. Both the accused were sentenced to undergo five years Rigorous Imprisonment each and to pay a fine of Rs.20,000/- each and in default to undergo six months Simple Imprisonment each for the offence punishable under Section 3 of the Dowry Prohibition Act; the accused were sentenced to undergo two years Simple Imprisonment each and to pay a fine of Rs. 10,000/- each and in default to undergo three months Simple Imprisonment each for the offence punishable under Section 4 of the Dowry Prohibition Act; the accused were sentenced to undergo three years Rigorous Imprisonment each and to pay a fine of Rs. 20,000/- each and in default to undergo three months Simple Imprisonment each for the offence punishable under Section 406 of



I.P.C; the accused were sentenced to undergo three years Rigorous Imprisonment each and to pay a fine of Rs.20,000/- each and in default to undergo three months Simple Imprisonment each for the offence punishable under Section 498(A) of I.P.C and the accused were sentenced to undergo ten years Rigorous Imprisonment each and to pay a fine of Rs.30,000/- each and in default to undergo 1-1/2 years Rigorous Imprisonment each for the offence punishable under Section 304(b) of I.P.C. The sentences shall run concurrently. Aggrieved by the same, the appellants preferred these appeals.

7.The learned counsel appearing for the appellants would submit that the prosecution failed to prove its case beyond any doubt in order to attract any of the charges. P.W.7, who is the neighbour of the deceased, had informed to P.W.1 about the not known of the deceased since the deceased used to come to purchase milk at about 06.00 a.m. On the date of occurrence, she did not come out and as such, she searched for and informed to P.W.1. When P.W.1 inspected the house of the deceased, he found that she had committed suicide by hanging herself. The house was also locked inside. The first accused was not present at that juncture. Both the first accused nor the deceased did not even whisper about any dispute between them with regard to any demand of dowry or cruelty. The deceased never informed any



dowry harassment or cruelty to P.W.7, who is the friend of the deceased. In fact, till the burial of the deceased, the family members of the deceased did not even whisper about any allegation with regard to harassment, cruelty or dowry demand. P.W.1, who was the Vice President of the Village, at the juncture, lodged the complaint and the same was registered under Section 174 of Cr.P.C. Only on receipt of the report submitted by the Revenue Divisional Officer, the respondent altered the offences, as if the deceased committed suicide only because of dowry harassment.

8.The learned counsel appearing for the appellants further submitted that the mother of the deceased was examined as P.W.2. She categorically admitted in the cross-examination that the entire expenditure of the marriage was borne out by the first accused. When the deceased asked for jewels during their marriage, P.W.2 did not present any jewels as presented to the elder sister of the deceased. He further submitted that in the chief examination of P.W.2, she deposed that only after the sale of the immovable property, she presented jewels weighing 15 sovereigns of jewels and cash, whereas the marriage was held on 10.11.2008, whereas the property was sold by her husband only on 05.02.2009. That apart, there was no evidence to the effect that they received an



advance amount for the sale of the property. Therefore, there was absolutely no chance to present any jewels after selling the property from the sale consideration of the selling of the property. He further submitted that the pregnancy of the deceased was aborted only for the reason of no growth of the embryo and no heartbeat in the foetus. Therefore, the Doctor certified the abortion as a 'missed abortion'. It was not happened due to any other reason, such as, the first accused had kicked the deceased on her stomach. The elder sister of the deceased was examined as P.W.3. Her husband used to visit the house of the deceased in a drunken mood and used to show some obscene photographs. Due to the said torture, she committed suicide. In fact, on the date of occurrence, no one was there in the house. The first accused had gone for his daily painting work. The second accused is residing somewhere else and not in the matrimonial house of the deceased. He further submitted that soon before her death, there was absolutely no dowry harassment made by the accused in order to commit suicide of the deceased. The alleged pledging of the jewel also stands in the name of the second accused. It does not mean that the jewels which were presented during the marriage were mortgaged by the first accused. Therefore, the prosecution failed to prove any of the charges and even then, the trial Court mechanically convicted the appellants and hence, prayed for acquittal of the appellants.



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9.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the Revenue Divisional Officer conducted a detailed enquiry and submitted his report, which was marked as Ex.P.8. The Revenue Divisional Officer was examined as P.W.22. Accordingly, he concluded that the deceased committed suicide only for the reason dowry demand and harassment made by the appellants. Initially, the F.I.R was registered under Section 174 of Cr.P.C and on receipt of the report from the Revenue Divisional Officer, the respondent altered the F.I.R into Section 498(A) and 304(b) of I.P.C. After completion of the investigation, the respondent filed a final report for the offences under Sections 406, 498(A) and 304(b)(2) of I.P.C and also under Sections 3 and 4 of the Dowry Prohibition Act. The mother of the deceased was examined as P.W.2. She categorically deposed that the deceased came to the parent's house very often and complained with regard to the harassment of the appellants in order to bring a huge dowry. The private finance officer was also examined as P.W. 14 and P.W.15 and proved the jewels pledged by the appellants herein.



10.The learned Additional Public Prosecutor further submitted that even from the date of marriage, there was harassment and cruelty committed by the appellants and as such, the offence under Section 498(A) of I.P.C is categorically proved by the prosecution. The jewels which were entrusted to the appellants were pledged by them and thereby committed the offence under Section 406 of I.P.C. On the date of occurrence, only because of dowry harassment, the deceased committed suicide by hanging herself and as such, the offence under Section 304(b) of I.P.C is also clearly attracted against the appellants. Even before marriage and after marriage, there was a demand of dowry by the appellants. Therefore, the trial Court rightly convicted the appellants and it does not warrant any interference.

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

12.The marriage was held between the first accused and the deceased on 10.11.2008. The first accused was a painter at the time of marriage, and the second accused was the elder sister of the first accused. She got married and she is living separately. On 22.06.2009, when P.W.7, who is none other than the neighbour of



the deceased, found that the deceased did not come out from the house to purchase milk, since the deceased used to come out of the house at about 06.00 a.m., to purchase milk, therefore, P.W.7 informed about the same to P.W.1, who was the Vice President of the Village at that time. Immediately, P.W.1 visited the house of the deceased and found that she was hanging inside the house. The house was locked inside and, thereafter, found that she committed suicide by hanging herself. Admittedly, the appellants were not in the house. The first accused went for his painting work. Thereafter, post-mortem was conducted and buried the body of the deceased by both the family members. Till the burial of the body, there was no complaint by the deceased family members. Only after receipt of the report from the Revenue Divisional Officer, the respondent altered the offence that too only for the offence under Section 498(A) and 304(b) of I.P.C. However, after investigation, the respondent filed a final report for the offences under Sections 406, 498(A) and 304(b)(2) of I.P.C and also under Sections 3 and 4 of the Dowry Prohibition Act.

13.The report of the Revenue Divisional Officer was marked as Ex.P.8. It revealed that the reason for committing suicide by the deceased is dowry harassment. Further, concluded that the first accused, under the influence of alcohol, demanded to give Thali



chain and as such, she might have committed suicide. Therefore, there is no conclusive proof that the first accused demanded Thali chain soon before she committed suicide. The mother of the deceased was examined as P.W.2 and the elder sister of the deceased was examined as P.W.3. P.W.2 deposed that during the marriage, her daughter was presented 15 sovereigns of jewels and Rs.75,000/- cash along with household articles through selling 10 cents of land. Immediately, after one week from the date of marriage, the jewels were sold out by the appellants. Thereafter, they had beaten the deceased in order to bring more dowry. It was informed by the deceased to P.W.2 and she was consoled by P.W.2 and sent back to her matrimonial home. Thereafter, she also got pregnant and due to dowry demand and kicked by the first accused on her stomach, she had got aborted her pregnancy. Due to continuous humiliation and demand of dowry, she committed suicide by hanging herself. Whereas, during the cross-examination, she categorically deposed that the deceased asked for jewels during her marriage, as the jewels presented to P.W.3 weighing 20 sovereigns. However, P.W.2 said that, that much of the jewel is not possible to present her marriage. Thereafter, the deceased also did not compel P.W.2 to present the jewels. There is absolutely no whisper about the demand made by the appellants before marriage or even after marriage. P.W.7, who is the neighbour of the deceased, also



deposed that the deceased was never informed of any cruelty or dowry harassment made by the appellants till her suicide. P.W.1 and P.W.7 categorically deposed that the first accused and deceased were living happily without any issues. There is absolutely no evidence to show that soon before her death, there was dowry harassment made by the appellants. In order to prove the charge under Section 304-B of I.P.C there must be dowry harassment soon before her death. It is relevant to extract the provision under Section 304-B of I.P.C hereunder:-

"[304B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is 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, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation. —For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).



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(2) 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.]”

14.The postulates needed to establish the offence under Section 304-B of I.P.C are:

“(i) The death of a wife should have occurred within 7 years of her marriage.

(ii) soon before her death, she should have been subjected to cruelty or harassment by the accused in connection with the demand of dowry.”

15.It is the duty of the prosecution to discharge the initial burden to satisfy these two ingredients to attract the offence under Section 304-B of I.P.C. If the prosecution proved the discharged initial burden, then the burden shifts onto the shoulder of the accused to rebut the evidence to prove his innocence.

16.In the case on hand, the prosecution failed to discharge its initial burden that soon before the death of the deceased, she was subjected to cruelty or harassment in connection



with any demand of dowry by the accused persons. Thus, it is clear that there is absolutely no evidence produced by the prosecution in order to prove the charge under Section 304-B of I.P.C as against the appellants.

17. Insofar as the offences under Sections 3 and 4 of the Dowry Prohibition Act, the prosecution did not produce any evidence to attract those offences. P.W.1 and P.W.7 did not even whisper about the dowry demand even before marriage or after marriage, who are closely associated with the deceased. In fact, P.W.2 deposed that the entire marriage expenditure was borne out by the first accused and did not even whisper about any dowry demand even before marriage or after marriage. If at all, there was demand before marriage or after marriage and any cruelty made to the deceased, they would have lodged a complaint. Even according to P.W.2 only because of the kicking of the first accused, the pregnancy of the deceased got aborted. If so, definitely, P.W.2 would have lodged the complaint. Admittedly, there was no complaint till the deceased committed suicide. In fact, even till the burial of the deceased body, there was no complaint, and they did not even whisper before any police officer or to the general public. The deceased body was also buried inside the house of the first accused. If at all any dowry harassment or other cruelty, definitely they



would not have permitted to bury the deceased body inside the house of the first accused. Thus, it is clear that the entire evidence deposited by P.W.2 and P.W.3 is nothing but after thought in order to put the appellants behind the bar. Further, perusal of the Post Mortem report revealed that except the neck injury due to hanging, no other external injury was found on the body of the deceased. The cause of the death opined only due to hanging. The examination of viscera for poison is also negatived. Therefore, the prosecution failed to prove the charges under Sections 3 and 4 of the Dowry Prohibition Act.

18.Insofar as pledging the jewels are concerned, the prosecution had examined P.W.14 and P.W.15. They deposed that some jewels were pledged in the name of the second accused by the first accused. It does not mean that the jewels which were allegedly presented at the time of marriage were pledged by the first accused. In fact, according to P.W.2, the jewels which were presented during the marriage was sold out by the first accused. Therefore, there is no evidence to prove that during the marriage of the deceased, the jewels were presented by P.W.2. Therefore, the prosecution failed to prove the charge under Section 406 of I.P.C.



19.Further, the deceased got pregnant after their marriage. Unfortunately, her pregnancy was aborted due to missed abortion. It had happened due to no growth of the embryo and no heartbeat found in the foetus. The Doctor who treated the deceased advised her to abort her pregnancy and was examined as P.W.16. She had given a certificate which was marked as Ex.P.6 and revealed that the deceased was admitted in the hospital on 09.03.2009 with the complaint of amenorrhea and bleeding per vagina. During the ultrasound scan, it showed features of missed abortion. Therefore, there is no evidence to show that only on the kicking by the first accused, the pregnancy of the deceased got aborted. That apart, there was no complaint even till her death about any cruelty committed by the appellants. Therefore, the prosecution also failed to prove the charge under Section 498A of I.P.C.

20.In view of the above, the entire conviction under Sections 406, 498(A) and 304(b)(2) of I.P.C and also under Sections 3 and 4 of the Dowry Prohibition Act as against the appellants cannot be sustained and they are liable to be acquitted from all the charges. Hence, the conviction and sentence imposed by the Courts below are liable to be set aside.



21. Accordingly, the Judgment made in S.C.No.23 of 2010 dated 02.07.2016, on the file of the Mahila Fast Track Court, Kanyakumari Division at Nagercoil, is set aside and the Criminal Appeals are allowed. The appellants are acquitted. Bail bond if any executed by the appellants shall stand cancelled and a fine amount if paid is ordered to be refunded to the appellants forthwith.

08.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

1. The Mahila Fast Track Court,
Kanyakumari Division at Nagercoil.
2. The Deputy Superintendent of Police,
Thuckalay Police Station,
Kanyakumari District.
Thuckalay.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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