



Crl.A.No.226 of 2018

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DATED : 22.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.226 of 2018

1. J. Sathishkumar

2. Govindammal

... Appellants

Vs.

State Rep. by

The Assistant Commissioner of Police,

Washermanpet Range,

H-6, Radhakrishnan Nagar Police Station,

Chennai - 600 021.

... Respondent

(Crime No.56/2014)

Prayer : Criminal Appeal filed under Section 374(2) Criminal Procedure Code 1973 to set aside the judgement and orders dated 02.03.2018 passed in S.C.No.30/2015 by the Sessions Judge, Mahila Court, Chennai.

For Appellant : Mr.K.Selvakumaraswamy

For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor.



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JUDGMENT

Challenging the conviction and sentence dated 02.03.2018 passed in S.C No.30/2015 by the learned Sessions Judge, Mahila Court, Chennai, the present Criminal Appeal is filed.

2. The appellants stood charged for the offences punishable under Sections 498(A) and 304(B) IPC in S.C No.30/2015.

3.The learned trial court Judge, after full trial, convicted and sentenced the appellants, vide her judgment dated 02.03.2018, as detailed hereunder.

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1 and A2	Section 498(A) IPC	Simple Imprisonment for two years and to pay a fine of Rs.5,000, (each) in default, to undergo Simple imprisonment for six months.
A1 and A2	Section 304(B) IPC	Simple Imprisonment for seven years.
The aforesaid sentences shall run concurrently.		
The period of sentence already undergone is set off under Section 428 Cr.P.C.		



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4. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

4.1. The deceased Ishwarya is the wife of the first appellant and daughter-in-law of the second appellant. Malini (P.W.1) is the mother of the deceased Ishwarya. Ishwarya and her husband (A1) were in love with each other prior to their marriage and married as per Hindu Rites and Customs on 13.06.2013 with the consent of their respective families. Both of them were living with the second appellant in a joint family and subsequently, they started living separately at K.H.Road, Thiruvottriur.

4.2. The evidence of Malini (P.W.1) is that at the time of marriage of her daughter, the first appellant's mother (A2) demanded dowry of ten sovereigns of gold jewels and an Auto for her son (A1). However, she refused to present the same and gave only two sovereigns of gold jewels to her daughter. According to her, the appellants used to



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abuse her daughter (victim) by mentioning her caste name and the second appellant did not want her daughter-in-law to have a child immediately. At the request of her daughter and son-in-law, PW.1 gave a sum of Rs.10,000/- to them to have a separate establishment at K.H.Road, Thiruvottriyur. It is the contention of P.W.1 that the second appellant used to visit the house of her daughter at K.H.Road, Thiruvottriyur and demand her to repay the loan amount obtained by her (A2).

4.3. On 15.01.2014, P.W.1 went to the house of her daughter and had lunch with her. She left her house by about 1.30 p.m. and at about 3.30 p.m. she received a call from her daughter stating that the second appellant had come down to her house and picked up quarrel with her and also corrupted her husband's mind by telling him some unwanted things as a result of which her husband is also picking up quarrel with her. According to P.W.1, her daughter once again called her over phone and informed her that the issue had gone out of control and wanted to go back to her (P.W.1's) house and that again at about 7.00 p.m. she received another call from her daughter stating that she had sustained



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burn injuries and that she would not survive. On hearing this, P.W.1 rushed to the house of her daughter along with her son Marimuthu (P.W.2). The accused was inside the house and the outer door was locked. The first appellant came out of the house and told P.W.1 that her daughter locked the house and had thrown away the key. Subsequently, P.W.1, P.W.2 and the second appellant went inside the house and saw the victim with burn injuries and immediately took her to a nearby private hospital. Since the doctors in the private hospital advised them to take the victim to K.M.C. Hospital, they took her to K.M.C. Hospital where she was admitted as an in-patient. However, on 16.01.2014 at about 09.15 a.m. the victim succumbed to injuries.

4.4. On 15.01.2014, Thiru.Pasubudheen (P.W.12), the then Sub Inspector of Police, R.K.Nagar Police Station, received an intimation from K.M.C. Hospital at about 8.40 p.m. and went to the hospital. Since the victim was unconscious he recorded the complaint statement (Ex.P9) of the victim's mother (P.W.1) and registered FIR (Ex.P10) in Crime No.56/2014 of R.K. Nagar Police Station, under 'accidental fire'.



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4.5. In the complaint (Ex.P9), PW.1 Malini had stated that on 15.01.2014 at about 7.00 p.m, she received a call from her son-in-law (A1) stating that when her daughter was cooking, the stove burst accidentally, as a result of which, she sustained burn injuries. On hearing the same, she immediately went to her daughter's house and rushed her to the K.M.C Hospital with the help of her son-in-law and others. She had further stated that the burn injuries sustained by her daughter was only due to accidental fire and that she does not suspect anyone or any foul play.

4.6. Thiru.Rajkumar (P.W.14), the then Inspector of Police, R.K. Nagar Police Station, took up investigation in Crime No.56/2014. Since the victim died on 16.04.2014, altered the Section to 174(3) Cr.P.C. and placed the records before the Assistant Commissioner of Police for further investigation.

4.7. Thiru.Deivasigamani (P.W.15), the then Assistant



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Commissioner of Police, Washermenpet, took up investigation in Crime No.56/2014 of R.K. Nagar Police Station and gave a requisition to RDO Tmt.Chandra (P.W.11) to enquire into the death of Ishwarya as she died within seven months of her marriage.

4.8. Tmt. Chandra (P.W.11), Personal Assistant to Collector, Chennai, conducted inquest (Ex.P7) on the body of the deceased on 18.01.2014 in the presence of panchayatdhars. She also conducted an enquiry and filed her report (Ex.P8) on 24.01.2014 stating that Ishwarya died on account of dowry harassment.

4.9. In the meanwhile, Dr.Pradeep Anand (P.W.13) conducted autopsy on the body of the deceased on 18.01.2014 and opined that the deceased Ishwarya died out of 'shock due to burns'. She also had a foetus of 11 cm length in her uterus. The postmortem certificate was marked as Ex.P.11.

4.10. Thiru.Deivasigamani (P.W.15), the Investigation Officer



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went to the place of occurrence, prepared an observation mahazar (Ex.P14) and a rough sketch (Ex.P13) in the presence of witnesses Ezhumalai (P.W.7) and Narendran (P.W.8). He examined all the witnesses and recorded their statements under Section 161 (3) Cr.P.C.

4.11. Tmt. Vijaya (P.W.3) is a neighbour of P.W.1 and her evidence was that both the appellants 1 and 2 used to demand dowry from the deceased and P.W.1, and that at the time of death of Ishwarya, she was pregnant.

4.12. P.W.3 to P.W.6 are also neighbours of P.W.1 and their evidence was that they heard that the victim was harassed by the appellants 1 and 2 demanding dowry.

4.13. The appellants, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. However, they did not examine any witness on their side.



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4.14. The learned Sessions Judge, Mahila Court, Chennai, after analysing the oral and documentary evidence on record, convicted and sentenced the appellants 1 and 2 as stated in paragraph No.3, vide her judgment and orders dated 02.03.2018, aggrieved over which, the appellants have preferred the present appeal.

5. Heard Mr.K.Selvakumaraswamy, learned counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the respondent.

6. Mr.K.Selvakumaraswamy, learned counsel for the appellant contended that even as per the version of P.W.1, there was only an accidental fire. The marriage between the first appellant and the victim took place six months prior to the date of death of the victim and in fact, the victim and the first appellant were in love with each other for more than five years before their marriage and were residing initially with A2



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and moved down to a separate house at K.H.Road, Thiruvottriyur as per the wishes of the deceased Ishwarya. P.W.1 had given them a sum of Rs.10,000/- to have this separate establishment and in such circumstances there was no reason for A1 and A2 to have set fire on the victim, is his contention. He also drew the attention of this court to the complaint statement of P.W.1 (Ex.P9) and contended that P.W.1 was categorical in stating that her daughter sustained burn injuries on account of accidental fire and that she does not have any suspicion on anyone. His specific contention is that had there been a dowry demand, P.W.1 would have definitely mentioned it in her complaint and therefore, the conviction and sentence passed by the trial court judge cannot be sustained.

7. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court, after analysing the oral/documentary evidence had rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.



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8. The entire case of the prosecution rests on the evidence of P.W.1 and P.W.2 who are the victim's mother and brother respectively. P.W.1 in her complaint statement (Ex.P9) had averred that she received a call from her son-in-law (A1) informing her that on account of accident caused due to bursting of stove, his wife sustained burn injuries. When she went to the house of her daughter, she saw her daughter with burn injuries and rushed her to the hospital with the help of the first appellant and others. She had specifically stated in her complaint statement (Ex.P9) that it was only an accident and that she does not have any suspicion on anyone. However, during RDO enquiry, she had changed her version and had stated that her daughter was harassed by the appellants 1 and 2 demanding dowry. She had also stated that the first appellant was having an extra marital affair and would beat her daughter daily in an inebriated condition. In her deposition before the trial court, she had stated that the second appellant and her family members demanded ten sovereigns of gold jewels and an Auto as dowry at the time



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of marriage of her daughter and that she refused to give the same. Her contention was that she gave her daughter only two sovereigns of gold jewels and the second appellant's demand for another three sovereigns of gold jewels was not accepted by her. According to P.W.1, on account of this, the second appellant used to torture her daughter demanding dowry.

9. It is pertinent to point out that the marriage between the first appellant and the victim took place only on 13.06.2013, i.e. six months prior to the death of the deceased Ishwarya. They were in love with each other prior to their marriage and with the consent of both the families, they got married. Initially, the first appellant and the victim were residing with the second appellant near Pandian Theatre and subsequently, left the second appellant in that home and started living separately. P.W.1 in her evidence had deposed that she gave Rs.10,000/- to her son-in-law and daughter for having a separate establishment at K.H.Road, Thiruvottriyur. She did not state that there was a demand for dowry by the appellants 1 and 2 at that point of time. In fact on 15.01.2014, she visited her daughter's house on account of Pongal festival and had lunch



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with them. She left her daughter's house at about 1.30 p.m. In her complaint statement (Ex.P9), she had stated that she received a call by about 7.00 p.m. from his son-in-law stating that the victim Ishwarya got burn injuries on account of accidental bursting of stove. However, in her deposition she had stated that she received three frantic calls from her daughter between 3.30 p.m. to 7.00 p.m. This has not been stated in her complaint statement (Ex.P9). If really, there were calls from her daughter, P.W.1 would not have kept quiet at the time of giving police complaint. Though she disowned her own complaint statement, it is to be pointed out that the complaint statement (Ex.P9) was reduced into writing by the Sub Inspector of Police, R.K. Nagar Police Station and in that complaint, it was clearly stated that when her daughter was cooking 'crab curry', the stove burst. This detail in the complaint statement (Ex.P9) could not have been written by the Sub Inspector of Police, R.K. Nagar Police Station on his own, unless it was specifically stated by P.W.1. It is also pertinent to point out that P.W.1 during the course of cross examination had stated before the police that her daughter was preparing only 'fish curry' and not 'crab curry' which shows that P.W.1



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had actually narrated the events to the Sub Inspector of Police on the date of occurrence. It is not also her case that her son-in-law somehow maneuvered to get the FIR registered with a statement which is not hers, with the connivance of the Sub Inspector of Police.

10. P.W.1 in her deposition had also stated that when she went to the house of the first appellant, the outer door of the house was locked and both the first appellant and her daughter were inside the house and that her son-in-law (A1) came out of the house and informed her that the victim Ishwarya locked the door and thrown the key out. In such circumstances, it is not known as to how she gained entry in the house with her son and others. When this question was posed to her during the course of cross examination she had deposed that her son-in-law broke the lock. This again does not find a place either in the complaint or in her statement before the police. In fact, both the appellants were there with P.W.1 at the time of admitting the victim in the hospital. PW.1 had also deposed that ink was sprinkled all over the body of the deceased.



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11. Marimuthu (P.W.2) who went to the house of his sister along with her mother P.W.1 did not state that the outer door of her sister's house was locked and that ink was found sprinkled on the victim. P.W.2 in his deposition had stated that the second appellant demanded ten sovereigns of gold jewels and an Auto at the time of marriage of her sister and the same was not accepted by P.W.1. Subsequently, both the appellants 1 and 2 started giving trouble to his sister. According to him, the first appellant used to consume alcohol and beat his sister. He also averred that his mother (P.W.1) used to visit his sister's house and pacify her and the first appellant. He did not speak about the demand of dowry after the marriage of his sister with the first appellant. Thus, the evidence of P.W.2 does not fit in with the evidence of P.W.1.

12. The other witnesses P.W.3 to P.W.6 are neighbours of P.W.1 and they are only hearsay witnesses. It is also to be pointed out that all these witnesses are not residing near the house of the appellants 1



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13. It is quite unfortunate that a young pregnant woman died due to burn injuries. Initially, the mother of the victim had claimed it due to fire accident caused when the victim was cooking in her house and the stove burst. This was what she believed when she saw the victim with burn injuries. However, subsequent to the complaint she had taken a u-turn and alleged bride burning due to dowry harassment. The prosecution also has come out with a case supporting this theory. The deep anguish within her (P.W.1) after seeing her daughter and being with her during treatment for burn injuries could have made her to react in a vengeful mode had the contents of her subsequent statement before RDO and the trial court were true. As already discussed, there were many missing links in the version of the prosecution. Conviction in such cases requires credible evidence and unassailable witnesses. It is not the number of witnesses which would decide the fate of a criminal case but the reliability and the conviction in which they depose matters. P.W.1 having reached her daughter's house in an agitated mood did not have an easy



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entry into the house because of the missing key which reportedly was thrown out by the victim herself. However, this aspect does not find place in the complaint and even if it is to be believed, P.W.1 would have blamed A1 and A2 for the death of her daughter in the complaint itself. In fact, as already observed, initially P.W.1 did not suspect any foul play. It is not clear as to how she proceeded with the allegation of demand for dowry. Both P.W.1 and P.W.2 have not been able to convince this court that there was a demand for dowry except for the averment that at the time of marriage a demand was there which was negated by P.W.1. There had been no incidents reported by them of the victim returning to her mother's place due to such demand. In fact, it is seen that the couple had moved out of A2's house to establish a nuclear family.

14. With so many 'if' and 'buts' in the case of the prosecution the presumption under Section 304(B) IPC gets diluted. The trial court had convicted A1 and A2 solely based on this presumption without going into the glaring inconsistencies and contradictions of the key witnesses of the prosecution. In such a scenario confirming the conviction is



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against the basic tenets of criminal jurisprudence. Therefore, the conviction and sentence passed by the trial court is set aside.

15. In the result,

- i. The Criminal Appeal is allowed.
- ii. The judgment and orders dated 02.03.2018 passed in S.C.No.30/2015 by the Sessions Judge, Mahila Court, Chennai, is set aside.
- iii. The appellants (accused in S.C.No.30 of 2015) are acquitted from all the offences, of which they are charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Sessions Judge, Mahila Court, Chennai.
2. The Assistant Commissioner of Police, Washermanpet Range, H-6, Radhakrishnan Nagar Police Station, Chennai - 600 021.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R. HEMALATHA, J.

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