



Crl.A.No.681 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

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J. Prabakaran

S/o. Jayakodi Nadar

... Appellant

Vs.

State by Deputy Superintendent of Police,

Gobichettipalayam,

(Crime No.24/2014 Nambiyur Police Station)

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code 1973 to set aside the judgement and orders dated 29.07.2015 passed in S.C.No.86/2014 by the learned Sessions Judge (Mahalir Needhi Mandram), Erode.

For Appellant : Mr.A.K. Kumaraswamy, Senior Counsel

Assisted by Mr.S.Kaithamalai Kumaran

For Respondent : Mr.S.Rajakumar,

Additional Public Prosecutor.

JUDGMENT

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This criminal appeal is filed against the judgment and orders dated 29.07.2015 passed in S.C.No.86/2014 by the learned Sessions Judge (Mahalir Needhi Mandram), Erode.

2. The appellant is the accused in S.C.No.86/2014 and is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
498-A IPC	Rigorous Imprisonment for three years and a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months.
306 IPC	Rigorous Imprisonment for ten years and a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for six months.
The period of sentence already undergone shall be set off under Section 428 Cr.P.C. The sentences shall run concurrently.	

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

3.1. The deceased victim Uma Mary is the daughter of Nelson



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Manoharan (P.W.1) and Tmt. Jaba Rani (P.W.2). The

appellant was the husband of the victim. The marriage between the appellant and the victim was solemnised during 2010.

3.2. On 09.02.2014, the victim Uma Mary committed suicide by hanging in her matrimonial home. The evidence of Nelson Manoharan (P.W.1) was that he gave her daughter (deceased) in marriage to the appellant during 2010 and at the time of marriage he presented 30 sovereigns of gold jewels and Rs.50,000/- in cash. He also gave several Stridhana items worth Rs.1,00,000/-.

3.3. The appellant was addicted to alcohol and actually running a grocery shop along with his brother Baskar (P.W.5). Since he sustained loss in his business, he insisted his wife (deceased) to get a sum of Rs.5,00,000/- from P.W.1. Since P.W.1 did not have Rs.5,00,000/-, he gave a sum of Rs.1,50,000/- through his daughter. According to P.W.1, the appellant sold all the jewels presented to her daughter (victim) at the time of marriage by him and also used to pick up quarrel with his



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daughter in an inebriated condition. The victim used to inform him over phone about the torture meted out to her in the hands of the appellant and she also informed him that the appellant is demanding her to bring more dowry from his house. While so, on 09.02.2014, at about 4 p.m., the victim called P.W.1 over phone and informed him that the appellant in an inebriated condition is abusing her and also asked him (P.W.1) to take her back to his (P.W.1's) home. He started immediately and at about 9.30 p.m., he received another call from his daughter to know his location. P.W.1 in turn informed his daughter that he was on the way to her house and that he would be reaching by about 5 or 6 a.m. the next day morning. When he reached his daughter's house, he was shocked to see the dead body of her daughter in the house. The victim was actually rushed to nearby hospital on the night of 09.02.2014 itself where Dr. Rukmangathan (P.W.10), Bala Karthika Hospital, Nambiyur, examined the victim and declared that she was brought dead to the hospital. The victim was thereafter taken back home.

3.4. The sister of the appellant Jacqueline (P.W.3) informed



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P.W.1 that since the victim committed suicide there was no need to conduct postmortem. However, P.W.1 went to Nambiyur Police Station and lodged a complaint (Ex.P1) with Thiru. Subramaniam (P.W.14), Station House Officer, at about 9 a.m on 10.02.2014 stating that he gave his daughter in marriage to the appellant on 17.06.2010; that during her marriage 30 sovereigns of gold, Rs.50,000/- in cash were given as dowry; that the appellant was running a grocery shop in the name and style of 'Nellai Stores'; that since the appellant sustained loss in his business, P.W.1 lent a sum of Rs.1,50,000/- as a hand loan to him; that on 09.02.2014 he received a call from his daughter that there is a difference of opinion between her and her husband (appellant) and therefore he (P.W.1) left for Nambiyur; on 10.02.2014 at about 7 a.m, when he went to the house of his daughter, her daughter was lying down on the floor and he was informed that his daughter had committed suicide.

3.5. Thiru.Subramaniam (P.W.14) received the complaint (Ex.P1) from P.W.1 on 10.02.20214 and registered an FIR (Ex.P6) in Crime No.24/2014 of Nambiyur Police Station under Section 174 Cr.P.C.



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Since the death occurred within seven years of marriage, he sent the FIR and other connected records to Thiru.Chandrasekar Sakhamuri (P.W.17), Sub Divisional Magistrate & Sub Collector, Gopichettipalayam. P.W.17 went to the place of occurrence and conducted inquest on the body of the deceased in the presence of panchayatdars and recorded the statements of the witnesses (Ex.P11). In his opinion the death of the victim was not due to dowry harassment. The Inquest Report was marked as Ex.P9. He then sent the body of the deceased for post-mortem through Tmt.Valarmathi, (P.W.16), Grade - I constable attached to Nambiyur Police Station.

3.6. Dr. Rajendran ((P.W.11) conducted autopsy on the body of the deceased on 11.02.2014 and recorded the following:

A single female body, kept in mortuary, Gobi GH, RM not present, moderately nutritious body, dry clothes, distended abdomen. Eyes were closed. Blood stained frothy discharge from mouth & nose, towards left side early maggots present mouth. Tongue inside the mouth teeth 8/8/8/8. External injuries: ligature mark. blackish, 2cm breadth, (n.c.) depth extending from (R) side nape at neck



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crossing of front of neck, to left side nape or neck (length-18cm) while opening Thorax, No fractured ribs, Heart (R) chamber-blood, (L)-empty. Weight-27 gm. Lungs-congested, brownish, (R)-400g, (L)-350gm. Hyoid bone skin preserved. Stomach empty. Liver-1100gm, congested. Spleen-100gm, congested. Each Kidney - 130 gm, Intestine distended with gas Bladder-empty. Uterus-Normal in size. Opening of head No fracture skull bone. Brain-1100gm, normal.

He found ligature mark around the skin of the victim's neck and sent internal organs for chemical analysis. The Postmortem Report was marked as Ex.P2. After getting all the reports, P.W.11 opined (Ex.P3) that " the death due to asphyxia. cause - Hanging".

3.7. Thiru.Ramasamy (P.W.18), the then Deputy Superintendent of Police, Gopichettipalayam, took up investigation in Crime No.24/2014, went to the scene of occurrence, prepared an observation mahazar (Ex.P4) and a rough sketch (Ex.P12), in the presence of the witnesses Thiru. Nawab John (P.W.12), Village Administrative Officer and his assistant Rajathi (not examined). He



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examined the witnesses and recorded their statements individually under Section 161(3) Cr.P.C. He discovered the white dhoti used by the victim to hang herself under the cover of a mahazar (Ex.P5) in the presence of the same witnesses. After getting the report of the Sub Collector, he altered the sections of law to 498-A and 306 IPC and sent an Alteration Report (Ex.P13) to Court on 14.02.2014. On 15.02.2024, he arrested the appellant near Andiyur bus stand and produced him before the jurisdictional Magistrate for remand.

3.8. Since P.W.18, the Investigation Officer was transferred to some other place, he handed over the entire file to his successor Thiru.Murugan (P.W.19). P.W.19 continued the investigation and obtained the call records between the victim and his father and mother (Ex.P14 to Ex.P26 series).

3.9. After completing investigation, P.W.18 laid a final report before the Judicial Magistrate No.II, Gopichettipalayam in P.R.C. No.12/2014 against the appellant for the offences punishable under



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Sections 498-A and 306 IPC.

3.10. The learned Judicial Magistrate No.II, Gopichettipalayam, after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Sessions, Erode. The Principal Sessions Judge, Erode, took the case on file in S.C.No.86/2014 and made over the same to the court of Sessions, (Mahalir Needhi Mandram), Erode.

3.11. The learned Sessions Judge, framed charges under Sections 498-A and 306 IPC against the appellant and the appellant pleaded not guilty.

3.12. In order to bring home the guilt of the accused the prosecution examined 20 witnesses, marked 27 documents and 4 Material Objects.



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3.13. The accused, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not examine any witness on his side.

3.14. The learned Sessions Judge, (Mahalir Needhi Mandram), Erode, after analysing the oral and documentary evidence on record, convicted and sentenced the appellant/accused as stated in paragraph No.2.

3.15. Aggrieved over the judgment and orders passed by the trial Court, the appellant/accused has preferred the present appeal.

4. Heard Mr.A.K. Kumaraswamy, learned Senior Counsel assisted by Mr.S.Kaithamalai Kumaran, learned counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor appearing for the respondent State.



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5. This is a case of suicide by hanging. The victim's father Nelson Manoharan is the complainant and P.W.1. The victim Uma Mary got married to the appellant J. Prabakaran on 17.06.2010 and the death of the victim happened on 09.02.2014 late in the night. The evidence of the close relatives of the victim i.e., P.W.1 (father), Jabarani (P.W.2) (mother) and some of the neighbours like Ganesh kumar (P.W.4) and Karthikeyaraja (P.W.8) were all relied upon by the trial court to implicate the appellant and find him guilty. It cannot be denied that the couple used to have petty quarrels and that due to financial loss incurred by the appellant the parents of the victim P.W.1 and P.W.2 extended a helping hand by arranging for funds to the tune of Rs.1,50,000/- to bring the appellant out of the rut. It can also be understood that the appellant used to drink alcohol. The death which occurred before the lapse of seven years of the marriage had to be probed into independently by the Sub Divisional Magistrate and Sub Collector (P.W.17) who submitted a Report (Ex.P11) in which he concluded that it was not a dowry death and further stated that the police has to find out the real cause for the death of



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6. Mr.A.K. Kumaraswamy, learned Senior Counsel would contend that petty quarrels in a family were not uncommon and it has been blown out of proportion to make it appear that the appellant abetted the suicide of his wife. He also emphasized that even a bare reading of depositions of the parents of the victim would reveal that there was no demand for dowry nor any reason for the victim to go into depression leading to her suicide.

7. Mr.S. Raja Kumar, learned Additional Public Prosecutor relied on the depositions of the prosecution witnesses P.W.1 to P.W.9 in order to point out that all was not well between the couple and that the drinking habit of the appellant had cost the life of the victim. It was also argued that the frantic calls (Ex.P14 series to Ex.P26 series) from the deceased victim before her final act clearly go to the extent of proving the role of the appellant in her death.



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8. It is pertinent to mention at this juncture that the couple were about to move into a new house in a couple of days. There was a suggestion by the learned counsel for the defence in the trial court that the victim was against the very idea of moving out to a new house and that it could have also made her to take the extreme step. But the deposition of Karthikeyaraja (P.W.8) who is one of the neighbours was categorical in stating that the purpose of their shifting to a new house was intended to facilitate the appellant's wife to take care of the shop run by the appellant. It is already mentioned earlier that the appellant was having a provision shop along with his brother Baskar (P.W.5) and due to certain set back they had to get separated and since then the appellant was looking after the shop. It is also learnt from the deposition of P.W.8 that the loss incurred earlier by the appellant was adjusted with the financial assistance by P.W.1. Even in the complaint (Ex.P1), the P.W.1 had stated that he lent a sum of Rs.1,50,000/- to the appellant to tide over his financial crisis. Nowhere in the complaint P.W.1 has stated that it was a demand for dowry. It is also notable that P.W.2, the mother of the victim during the course of cross examination deposed that it was the appellant



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who used to take his wife (the victim) to the hospital during her pregnancy and for delivery. In such circumstances it is very difficult to believe the version of P.W.2 that the appellant doubted her (victim's) fidelity and also questioned his wife with regard to the paternity of the child.

9. In order to substantiate that the victim was in extreme distress due to the appellant's rude behaviour, the prosecution totally relied on the call records (Ex.P14 series to Ex.P16 series). The contents of the conversation are not known. It has to be kept in mind that even as per the deposition of Ganesh Kumar (P.W.4), the noise of banging of the main door by the appellant started as early as 10.45 p.m on 09.02.2014 and not much attention was given by the neighbours as the petty quarrels between the couple was a regular feature. It was taken seriously after midnight when the noise became louder.

10. Some of the major aspects of the prosecution case like harassment and torture of the victim by the appellant, demand for dowry



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and distress calls from the victim to her parents P.W.1 and P.W.2 are all not clearly proved by the prosecution. All the prosecution witness barring P.W.3 (who turned hostile) have vouched for the petty quarrels which used to occur between the appellant and the victim. None of the depositions could be inferred to go beyond this point merely because the depositions of P.W.1 and P.W.2 allege that the appellant had abetted the suicide of the victim. It can at the most be considered only as a suspicion based on surmises and conjectures and cannot be a conclusive proof. The prosecution has not brought in any clinching evidence against the accused.

11. The normal human behaviour in such circumstances would not force anyone to take an extreme step. In the instant case, even as per the deposition of P.W.1, he had reassured his daughter that he would go to her place and bring her back. He also requested her not to be unduly perturbed. There seems to be no compelling circumstances for the victim to have taken such an extreme step especially when her father had understood her problem and assured instant help.



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12. In view of the foregoing discussions, I hold that the judgment of the trial court is erroneous and has no legal strength.

13. In the result,

- i. The Criminal Appeal is allowed.
- ii. The judgment and orders dated 29.07.2015 passed in S.C.No.86/2014 by the learned Sessions Judge (Mahalir Needhi Mandram), Erode, is set aside.
- iii. The appellant (accused in S.C. No.86/2014) is acquitted from all the offences, of which he is 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 (Mahalir Needhi Mandram), Erode.
2. State by Deputy Superintendent of Police, Gobichettipalayam, (Crime No.24/2014 Nambiyur Police Station)
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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