



Crl. A. No.232/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.07.2024	23.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.A. NO.232 OF 2021

1. Manikandan
2. Sathyavathy

.. Appellants

- Vs -

State by
The Inspector of Police
H-3, Tondaiyarpur Police Station
Chennai.

.. Respondent

Criminal Appeal filed u/s 372 Cr.P.C. praying this Court to set aside the order passed in S.C. No.359/2017 dated 24.02.2021 by the learned Sessions Judge, Mahila Court, Chennai.

For Appellants : Mr.A.Natarajan, SC, for
Mr. C.P.Palanichamy

For Respondents : Ms. G.V.Kasthuri, APP



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JUDGMENT

The judgment of conviction and sentence passed by the Sessions Judge, Mahila Court, Chennai, in S.C. No.359/2017, against the appellants herein is put in issue before this Court by filing the present appeal.

2. The appellants, who were arrayed as A-1 and A-2 in S.C. No.359/2017, were charged and tried for the offences u/s 498-A and 306 IPC and on being found guilty, A-1 and A-2 were sentenced to rigorous imprisonment for three years together with a fine of Rs.10,000/- (Rupees Ten Thousand only) each, in default to simple imprisonment for a period of one month u/s 498-A IPC and for the offence u/s 306 IPC, A-1 and A-2 were sentenced to rigorous imprisonment for a period of ten years together with a fine of Rs.25,000/- (Rupees Twenty Five Thousand only) each, in default to undergo simple imprisonment for a period of three months. The sentences were directed to run concurrently and the period of incarceration already undergone by the accused was ordered to be set off



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against the sentence imposed. Challenging the aforesaid conviction and sentence, the present appeal has been filed by the appellants/A-1 and A-2.

3. Shorn of unnecessary details, the facts of the present case could be briefly stated as under :-

P.W.s 1 to 4 are the grandfather, mother, father and brother of the deceased and P.W.5 is the uncle of the deceased. A-1 was given in marriage to A-1, which marriage was solemnised at the instance of the elders on 21.08.1996 and after the marriage, A-1 and the deceased were residing with her in-laws at her matrimonial home at Tondiarpet. At the time of marriage, the deceased was gifted 25 sovereigns of jewels and A-1 was given 5 sovereigns of jewels in addition to a Pulsar bike, cot, bureau and cash to the tune of Rs.2 Lakhs towards marriage expenses by the parents of the deceased.

4. It is the case of the prosecution that even on the very date of the marriage, the accused raised a quarrel with regard to the quality of the cot and, thereafter, from the very next day of marriage, there was continuous demand for dowry from the accused. It is the allegation of the prosecution that the deceased



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had repeatedly informed P.W.s 2 and 4 about the constant demand for dowry by the accused.

5. P.W.1 is the grandfather of the deceased. On 19.11.2016, P.W.1 received a call from P.W.4, the brother of the deceased informing P.W.1 that there seems to be some family dispute at the house of the deceased and that the deceased had committed suicide by hanging and requested P.W.1, who was residing in Tiruvotriyur, to go over to the house of the deceased and enquire into the same. Upon receiving the said intimation, P.W.s 1 and 5 along with the wife of P.W.1 went to the house of the deceased and upon reaching there, they saw a large crowd. When P.W.1 went to the 2nd floor of the house, he found the deceased laid on a cot and the deceased was found to be without any semblance of movement. When P.W.1 enquired the accused as to why the deceased has not been taken for treatment immediately, he was informed by the accused that though 108 ambulance came, they were not able to bring down the deceased and, therefore, they left. Thereafter, with the help of people nearby, P.W.1 brought the deceased down and the deceased was taken to Stanley Government Hospital. At the hospital, P.W.1 found an Inspector of Police and when he



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enquired about the status of his granddaughter, the police official informed him that the deceased had already died. Therefore, P.W.1, suspecting some foul play in the death of the deceased gave the complaint, Ex.P-1 by which the criminal machinery was set in motion.

6. P.W.9, the Inspector of Police at Tondaiyarpur Police Station at the relevant point of time, on 19.11.2016, on receipt of the complaint, Ex.P-1 from P.W.1, registered a case in Crime No.1217/2016 u/s 174 (3) Cr.P.C. and prepared FIR, Ex.P-8. Since the death of the deceased had taken place within six months of marriage, to find out whether there was any dowry demand, the printed FIR was placed before Deputy Superintendent of Police.

7. P.W.10, the Deputy Superintendent of Police, upon receipt of the FIR in Crime No.1217/2016, took up investigation, as the deceased had died within 7 years of marriage. On 20.11.2016, P.W.10 submitted a request to the RDO to conduct inquest.



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8. P.W.8, the Sub Collector, Tondaiyarpeta, on receipt of the request from the Deputy Superintendent of Police along with the FIR in Crime No.1217/2016, on the body of the deceased being identified by the Inspector of Police, conducted inquest over the dead body of the deceased at mortuary of the Stanley Government Hospital during which time P.W.8 in the presence of the panchayatadars, examined P.W.s 2, 5, A-1 and the father of A-1 and recorded their statements and submitted the inquest report, Ex.P-6, opining that demand of dowry was not the reason for the suicide. P.W.8 further in his report has opined that there were no external injury marks on the body of the deceased. However, while P.W.8 submitted his report stating that there was no dowry demand in the death of the deceased, however, in view of the doubt raised with regard to the death of the deceased by P.W.2, the mother of the deceased, called upon the police authorities to conduct detailed investigation. The inquest report, Ex.P-6, was submitted along with Ex.P-7, the report of P.W.8.

9. As the death of the deceased was not on account of dowry demand, as per the report of P.W.8, P.W.10, the Deputy Superintendent of Police, relegated the investigation back to the Inspector of Police, P.W.11.



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10. On 20.11.2016, P.W.7, the Tutor in forensic Medicine, attached to Government Stanley Hospital, upon receipt of requisition to conduct autopsy on the body of the deceased, commenced post mortem at about 3.10 p.m. on the body of the deceased being identified by the Grade – I Police constable and during post-mortem, the doctor found the following :-

“External examination :

Ill defined reddish brown ligature mark measuring 25 x 1 cm over front and sides of neck with a gap of 11 cm in the nape of neck; starts from a point 2 cm below and 4 cm medial to right ear, runs obliquely forwards, over and above the thyroid prominence lies at 7 cm below chin and 6 cm above sterna notch in midline, runs obliquely downwards towards left where it ends at a point 10 cm below left mastoid process. On dissection, underlying tissues are dry, glistening, pale and parchementised, no subcutaneous hematoma. Laryngeal cartilages, hyoid bone and cervical vertebrae intact. Trachea lumen congested.

Internal examination :

Heart : Valves and great vessels normal. Coronaries patent. All chambers contain fluid blood.



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Lungs : Congested. Multiple sub-pleural petechial haemorrhages seen on the surface of both lungs. Cut section oedematous.

Stomach: Mucosa pale. Cavity contains about 200 ml pale brownish fluid with no specific odour. Small intestine contained bile stained fluid with no specific odour. Mucosa congested. Large intestine distended with gas.

Liver, Spleen & Both Kidneys : Congested, normal in size.

Uterus : Normal in size. Cavity contains product of conception.

Pelvis and Spinal column : Intact.

Brain : Congested and oedematous. Multiple petechial haemorrhages seen in white matter of brain.

Note : Time since death – 16 – 20 hours prior to post-mortem examination.

Provisional Opinion as to cause of death :

(a) The deceased would appear to have died of asphyxia due to hanging.

(b) Viscera sent for chemical analysis to Forensic Science Laboratory.”

The doctor issued Ex.P-4 post –mortem certificate opining that the deceased would appear to have died of asphyxia due to hanging.



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11. P.W.11, the Inspector of Police, taking up investigation on the directions of P.W.10, took up investigation and as already inquest was conducted by the Sub Collector, who had opined that the suicide was not on account of dowry demand, went to the scene of occurrence and prepared observation mahazar, Ex.P-9 and drew rough sketch, Ex.P-10. P.W.11 seized the saree, M.O.1, which was used by the deceased to hang herself, under the seizure mahazar, Ex.P-11. P.W.11 enquired P.W.s 1 to 5 and other witnesses and recorded their statements. After investigation, the section of offence was altered from one u/s 174 (iii) Cr.P.C. to 306 IPC and the alteration report, Ex.P-12 was sent to court. On 21.11.2016, P.W.11 arrested A-1 at about 9.00 a.m., near Maharani theatre and he was brought to the police station and, thereafter, sent to court for judicial remand. P.W.11 also examined P.W.7, the doctor, who conducted post-mortem on the body of the deceased and recorded his statement. Upon his transfer, the investigation was handed over to P.W.12, his successor.

12. P.W.12, on taking up with the investigation, received the post-mortem report from P.W.7 and the inquest report and the report of the Sub Collector,



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P.W.9 and after perusing the same, filed the final report against the accused, viz., A-1 and A-2 for the offences u/s 498-A and 306 IPC.

13. To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 12 and marked Exs.P-1 to P-12 and marked M.O.1.

14. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

15. The trial court, on consideration of oral and documentary evidence and other materials, convicted and sentenced the accused/A-1 and A-2 as aforesaid aggrieved by which the present appeal has been filed by the appellants.



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16. Learned senior counsel appearing for the appellants submitted that the reliance placed on the evidence of P.W.s 1 to 5 by the trial court is wholly erroneous, as all their evidence bristles with very many discrepancies and contradictions and the said reliance cannot form the basis for convicting the appellants.

17. It is the further submission of the learned senior counsel that during inquest, P.W.2, who is the mother of the deceased, who was examined had not spoken anything about the demand of dowry by the accused. However, P.W.1, the grandfather of the deceased, who had lodged Ex.P-1 had brought in the alleged dowry demand, mainly stating that he had come to know about the dowry demand from P.W.2. When P.W.2 had not averred anything about the dowry demand by the accused at the time of inquest and even P.W.5, the uncle of the deceased having not spoken anything about the dowry demand, the complaint of P.W.1, cannot form the basis for coming to the conclusion that there was dowry demand and Ex.P-7 negatives the averments in the complaint and, therefore, the trial court was not justified in acting upon the depositions of the witnesses to hold the charges proved.



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18. It is the further submission of the learned senior counsel that there was no whisper about demand for dowry prior to the marriage or at the time of marriage and that it is the specific case of the prosecution that the stridhana given to the deceased was voluntarily given by the parents of the deceased. When there is no material to infer any demand for dowry at any time prior to or during the marriage, the demand, alleged to have been made, all being hearsay testimony and not supported by any independent witnesses, cannot form the basis to hold that the suicide of the deceased was on account of dowry demand.

19. It is the submission of the learned senior counsel that no independent witnesses have been examined to speak about the alleged dowry demand notwithstanding the fact that the residence of the accused and the deceased was in a residential area abutted by very many houses. The 161 statements of the neighbours lean more in favour of the accused, as his activities on the fateful day is more in favour of the presumption that the suicide of the deceased was not due to demand of dowry but for reasons best known to the deceased. However,



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no independent witnesses/neighbours have been examined, which strikes at the root of the prosecution theory.

20. It is the further submission of the learned counsel that the passage of information about the deceased committing suicide is unclear from the evidence of the witnesses, as P.W.s 1 to 4 have given different versions about how they had come to know about the committing of suicide by the deceased and, therefore, it would be very unsafe to rely on their testimony to convict the accused.

21. It is the further submission of the learned senior counsel that the relationship between the parties between the date of marriage and the date of death of the deceased would clearly reveal that there was no friction in the relationship and had the allegations been true and real, definitely the parties would not have moved with such freeness amongst themselves, which clearly shows that the allegations are invented for the purpose of this case.



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22. It is the further submission of the learned senior counsel that to bring the case within the provision of Section 306 IPC, there must be case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of the suicide. Mere harassment without any positive action on the part of the accused, even if alleged, proximate to the occurrence which led to the suicide would not amount to an offence u/s 306 IPC. In this regard, learned senior counsel placed reliance on the following decisions :-

i) *Shabbir Hussain – Vs – State of M.P.*
(MANU/SC/0969/2021);

ii) *Velladurai – Vs – State, rep. By Inspector of Police*
(MANU/SC/0644/2021);

iii) *State of WB – Vs – Indrajit Kundu & Ors.*
(MANU/SC/1442/2019);

iv) *Geo Vargheese – Vs – State of Rajasthan & Ors.*
(MANU/SC/0785/2021);

v) *Nedunchezhiyan – Vs – State of TN (CA 739/2009 – Dated 7.12.2018); and*

vi) *Manikandan – Vs – State (MANU/TN/1144/2016)*



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23. In fine, it is the submission of the learned senior counsel that there are very many discrepancies and contradictions in the evidence of the various witnesses and coupled with the non-examination of any independent witness to prove that there was a demand for dowry from the accused, the findings arrived at by the trial court is wholly perverse and the same deserves to be set aside by acquitting the appellants.

24. Per contra, learned Addl. Public Prosecutor appearing for the respondent submitted that the mere fact that no independent witnesses were examined cannot be the basis to doubt the version projected by the prosecution. When the evidence of the various witnesses are cogent and convincing the mere fact that there are certain minor contradictions cannot be the basis to hold that the findings rendered by the trial court are perverse. It is the further submission of the learned Addl. Public Prosecutor that the prosecution witnesses, more especially, P.W.s 1 to 5 have no axe to grind against the appellants and the prosecution witnesses would be more interested in finding the real culprit rather than framing the appellants. Such being the case, the evidence placed by the prosecution clearly implicates the appellants in the commission of the crime and,



therefore, no interference is warranted with conviction and sentence recorded by the trial court.

25. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

26. The manner of death of the deceased is not disputed, in that the deceased had committed suicide by hanging, which has been established through the evidence of the doctor, P.W.7 coupled with the post-mortem report, Ex.P4.

27. The whole case is woven on the demand for dowry alleged to have been made by the appellants to the deceased, which had driven the deceased to end her life, for which the appellants have been charged under the aforesaid provision of law.

28. No independent witnesses have been examined to prove the demand of dowry on the part of the appellants. The crucial evidence in this regard is



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predicated on the deposition of P.W.s 1 to 5, who are related to the deceased.

Therefore, it becomes necessary for this Court to scan through their evidence to find out whether their evidence corroborates each other so as to exclude the necessity of examining independent witnesses.

29. Even at the very outset, this Court could very safely and without any hesitation conclude that the offence u/s 306 IPC has not been made out. It is to be pointed out, in the words of the Apex Court, that *“Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide”*. In the present case, the whole case lingers on the allegation of harassment for dowry. It is to be stated that mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence u/s 306 IPC. In the absence of any positive material clearly pointing a finger on the accused that the accused had abetted the commission of suicide and played an active role by instigating the deceased to do a certain act and facilitated in the commission of suicide, no case is made out as against the



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appellants u/s 306 IPC. However, even advertg to the basic principle, the trial court has misguided itself on mere sympathies and convicted the appellants u/s 306 IPC, which cannot be sustained.

30. P.W.1 is the grandfather of the deceased, who is the author of the complaint, Ex.P-1. In his deposition in chief, P.W.1 has spoken about the manner in which the marriage was performed between the deceased and A-1. There is no whisper in the evidence of P.W.1 that either before the marriage or at the time of marriage there was any dowry demand from the accused. In fact, it is the specific deposition of P.W.1 that whatever was given was given as stridhana to the deceased and not on account of any demand made by the accused. **In fact, this portion of the evidence of P.W.1 finds corroboration from the evidence of P.W.s 2 to 5.**

31. It is the further deposition of P.W.1 that P.W.2 had informed him that the deceased used to call her daily and inform her that the accused are making demand for more dowry from her parents. However, it is not the case of P.W.1 that the deceased had informed him directly about any demand for dowry made



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by the accused. Therefore, the testimony insofar as demand of dowry by the accused is hearsay and not on the basis of any personal knowledge of P.W.1.

32. It is the further evidence of P.W.1 that as there was some sour relationship between the family of the accused and the family of the deceased, P.W.1 did not go to meet his granddaughter, inspite of the fact that it is his specific allegation that his granddaughter was constantly harassed for dowry by the accused. The deceased was living with the accused at Tondaiyarpur, while P.W.1 was living at Tiruvotriyur. Nothing prevented P.W.1 from going over to the house of the deceased and ascertaining the true facts, if really the harassment meted out to the deceased, as divulged by the deceased to P.W.2 was passed on to P.W.1. As a caring grandfather, P.W.1 would have visited his granddaughter to ascertain about the manner in which she is treated at her matrimonial house. However, for reasons best known, P.W.1 has not taken any such steps to ascertain the true position of the deceased at her in-laws house, which would have been the course adopted by any normal person.



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33. It is the further deposition of P.W.1 that on 19.11.06, at about 6.30 p.m., P.W.4, the brother of the deceased, viz., his grandson, had called him from Pune and informed him that all is not well at his sister's place and that it seems that she has committed suicide and, therefore, had asked him to go over to his sister's place and ascertain the situation and to inform him. It is thereafter, P.W.1 is said to have gone to the house of the deceased along with his wife and P.W.5. On going to the house of the deceased, P.W.1 found the deceased to be lying motionless in the 2nd floor and as he was informed that the persons from 108 Ambulance were not able to move the dead body of the deceased from the 2nd floor, they left the place, whereinafter, P.W.1, with the help of the persons who were living nearby, had removed the deceased and had taken her to Stanley Government Hospital.

34. It is the further deposition of P.W.1 that in the hospital, he came to know about the death of the deceased through an Inspector of Police. It is to be pointed out that at this point of time, the law enforcing agency was not even aware of an unnatural death. In such a scenario, the death of the deceased being



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informed by a police officer to P.W.1 and not by a doctor, is beyond the comprehension of this court.

35. When a police officer had informed about the death of the deceased to P.W.1, P.W.1 had gone to the police station to lodge the complaint in which dowry demand and information of the suicide as given to him by P.W.4 have been stated.

36. However, at the time of inquest by P.W.8, P.W.1 was not examined. But what is more important to be noted from the report of the inquest is that P.W.2, the mother of the deceased, who was examined at the time of inquest has never raised a finger against the accused citing dowry demand. In fact, there is no whisper by P.W.2 in the inquest about any dowry demand made by the accused. The only issue that was stressed by P.W.2 at the inquest is that there is suspicion in the death of the deceased and, therefore, a thorough investigation has to be taken up, which has been recorded in the inquest. Equally, P.W.5, the uncle of the deceased has also not raised any allegations regarding dowry demand by the accused at the time of inquest. However, curiously for the first



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time, when the investigation was transferred to P.W.11, there appears to be a change in the heart of the prosecution witnesses by bringing in an element of dowry demand.

37. On the heels of the evidence of P.W.1, a perusal of the evidence of P.W.s 2 to 4 reveals that in sum and substance, the evidence is on the same lines as spoken to by P.W.1, thereby, an element of corroboration can be said to have been made. However, the evidence of P.W.2 also does not inspire the confidence of this Court for the reason aforesaid. Added to that, while P.W.2 has deposed that she came to know about the suicide committed by her daughter from P.W.1, however, the deposition of P.W.3 is otherwise and P.W.3 had deposed that P.W.4 had contacted him and informed that the deceased was being ill-treated at her in-laws place and had asked P.W.3 to inform P.W.1 to go over to their house and enquire into the matter. P.W.3 had further deposed that at about 7.30 p.m. on 19.11.2016, he contacted P.W.1, who informed him that he was at his daughter's and also informed about the suicide committed by his daughter and about the steps taken by them to take her to the hospital. Thereafter, P.W.3 had contacted P.W.1 at about 8.30 p.m., when there was no response and, thereafter, P.W.1



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had called and informed him that the deceased had died. Thereafter, P.W.s 2 to 4 rushed to the place of the deceased.

38. While the evidence of P.W.s 2 and 3 stand as such, the evidence of P.W.4 is contrary to the evidence of P.W.s 2 and 3. P.W.4 had deposed that his sister was pestered by the accused for dowry and that his sister used to call him everyday and inform him about the continuous torture meted out by the accused to her, including doing away with her pregnancy as she is not able to bring proper dowry from her parental home. It is the specific deposition of P.W.4 that on 19.11.2016 at about 3.00 p.m., the deceased had called him and informed him about the continuance of the dowry demand and after consoling her, P.W.4 had deposed that he called P.W.1 and asked him to go over to the deceased house and enquire about her welfare. This deposition of P.W.4 is in contradiction with P.W.s 2 and 3 and does not find support from their evidence, though P.W.1 has spoken on the same lines as P.W.4 regarding the receipt of the call. It is the specific deposition of P.W.4 that immediately after the deceased called him, he had called P.W.1 and asked him to go and see, whereas, the said piece of deposition is not spoken to by P.W.1. However, P.W.1 had spoken only about the



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call made by P.W.4 at about 6.30 p.m., with regard to the alleged committing of suicide by the deceased. In fact, it is the specific deposition of P.W.4 that he had tried to call the deceased at about 6.30 p.m., and as she did not pick the call, he had tried calling A-1 and as there was no response from A-1, P.W.4 had called P.W.1 and asked him to go over to the deceased place and enquire. However, the deposition of P.W.1 is not in consonance with P.W.4 on this aspect, as P.W.1 has stated in his deposition that P.W.4 had informed him that the deceased had committed suicide and had asked P.W.1 to go and see as to what had happened and to update him.

39. On a careful scrutiny of the evidence of P.W.s 1 to 4, it is seen that their deposition is not inspiring. The demand of dowry, which is said to be continuing from the day after the marriage, does not find reflection in the acts of the witnesses. If really their daughter was not taken care of properly and tortured for dowry, definitely, as parents, P.W.s 2 and 3 would definitely not have good relations with the accused. However, in cross, P.W.2 had deposed that after the marriage of their daughter, the marriage of A-1 sister's brother-in-law took place for which the parents of the deceased went even one day in advance. In



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fact, it is the deposition of P.W.2 that P.W.s 2 and 3 accompanied by A-1 and their daughter went to Trichy and participated in the marriage. It is the further deposition of P.W.2 that after marriage, while P.W.s 2 and 3 went to Madurai to participate in another marriage, A-1 and the deceased went to Kodaikanal. Thereafter, on 14.10.2016, P.W.s 2 and 3 came to the house of the deceased for a function for their daughter related to marriage and thereafter, for the first Diwali, A-1 and the deceased came to the house of P.W.s 2 and 3. From the aforesaid deposition of P.W.2 in cross, it is evident that the relationship between the accused and the parents of the deceased and the movement of A-1 with the deceased was cordial and there was no friction between the family of the deceased and the accused. If really there was bitterness in the life of the deceased with A-1 on account of dowry demand, definitely, the parents of the deceased would not have had cordial relations with the accused. But the manner in which the parents of the deceased and the accused had moved does not reveal any bad blood between the two families on account of the alleged dowry demand.



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40. One other aspect which also is of relevance is the deposition of P.W.4 in cross, where P.W.4 has stated that the brother-in-law of A-1 was residing along with P.W.4 on account of official works at Pune. If really the deceased was in constant touch with P.W.4, as claimed by P.W.4 and had informed him daily about the continual torture meted out to her towards demand of dowry, the bitterness of P.W.4 would have been of such a magnitude that he would not have allowed the brother-in-law of A-1 to reside along with him, as it would intrude upon P.W.4 in having conversations with the deceased. In fact, a suggestion was put to P.W.4 with regard to cordial relations existing between the two families, which alone allowed P.W.4 to allow the brother-in-law of A-1 to reside with him for which P.W.4 had deposed that he was informed within two days of marriage that the brother-in-law of A-1 would stay along with him.

41. It is the specific deposition of P.W.4 that even on the very day of marriage and even thereafter, there was continuous demand of dowry and if that be the case, definitely there would have been strained relations between the parties. In fact, it is the specific deposition of P.W.1 that he refrained from going to the house of the deceased for addressing any problem as they used to create



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more problems. If there had been strained relationship between the family of the accused and the deceased, definitely, P.W.4 would not have accepted to have the brother-in-law of A-1 as his roommate.

42. Further, even if the complaint, Ex.P-1 is to be acted upon, the said complaint of P.W.1 is based on hearsay testimony, which had not been corroborated to by P.W.2. Further, P.W.2, the mother of the deceased, at the time of inquest, had spoken contra to what she had deposed before the court at the time of trial. Therefore, basing the complaint on some statement, which is alleged to have been made by P.W.2 to P.W.1 in the absence of any substantive material, which proves that there was demand for dowry, the statement of P.W.1 in the complaint that there was demand for dowry cannot be acted upon to convict the accused.

43. Further, it is evident from the inquest report, Ex.P-7 coupled with Exs.P-2 and P-3, the statements of P.W.2 and P.W.5 given before the Revenue Divisional Officer at the time of inquest, that there was no whisper about the demand for dowry at the instance of the accused. In fact, it is the specific



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statement of P.W.2 that there is mystery shrouded in the death of the deceased, which should be properly investigated. Had there been dowry demand right from day one by the accused, definitely P.W.s 2 and 5 would have spoken about the same in the inquest report. The earliest document, viz., the inquest report, Ex.P-7 clearly shows that there is no allegation of dowry demand, either before the marriage or at the time of marriage or after the marriage. Such being the case, the only conclusion that could be arrived at by this Court is that the complaint, Ex.P-1, given by P.W.1 could only be termed to be an interpolation of his idea that his granddaughter, viz., the deceased was subjected to cruelty at the house of the accused by demanding dowry. When P.W.1 has stated in unequivocal terms that he had not gone to the house of the deceased any time prior to the date on which the deceased committed suicide, he would not have been within personal knowledge about the alleged demand for dowry and in the said backdrop, the allegations made in the complaint, Ex.P-1 had not been corroborated in Exs.P-2 and P-3, the statements of P.W.s 2 and 5 recorded during inquest, which are the earliest documents when the witnesses had not conversed with each other.



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44. In the light of the above, the only inference that could be drawn from the deposition of the witnesses is that after inquest, the conversation between the various witnesses had resulted in the interpolated evidence given by P.W.s 2 to 5 during their evidence before the Court. There are no materials in the form of independent witnesses to speak about the demand for dowry, though it is the specific case of the prosecution that the marriage between the deceased and A-1 was an arranged marriage. In fact, it is the specific deposition of P.W.s 1 to 5 in unison that during marriage, stridhana was given by the parents of the deceased and it is not their deposition that upon demand, the gold, silver and other articles were given to the deceased.

45. Further, it is the specific case of the prosecution, as spoken to by P.W.s 1, 3 and 5 that the deceased had spoken about the demand of dowry by the accused to P.W.s 2 and 4. However, as aforesaid, P.W.2 has not spoken anything about the demand for dowry at the time of inquest. In fact, there is no whisper that the death was anyway related to demand for dowry. Only on that pretext, it led P.W.8 to conclude that the death was not on account of dowry demand. When such a report had been filed, this Court is at a loss to understand as to the



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basis on which the case had been mulcted on the accused u/s 498-A and 306 IPC.

Though 498-A and 306 IPC are distinct offences, however, the same should be proved in the manner known to law which alone could result in convicting the culprits. However, as aforesaid, though materials are placed, there is no corroboration of the same by the witnesses. In fact, the statement of P.W.s 2 and 5 during inquest resulting in Exs.P-2 and P-3 runs against their own testimony during trial and placing reliance on such a testimony would be against all canons of criminal jurisprudence. Prosecution cannot rely on two different materials, which run counter to each other to prove the case against the accused.

46. True it is that the death of the deceased had happened within a very short span of three months from the date of her marriage with A-1. Only to erase any doubt with regard to dowry demand, Parliament, in its wisdom, had formulated law directing inquest by the officer apart from the police authority to rule out any possibility of manipulation. In the case on hand, the deceased is a girl educated in Mumbai and even according to the prosecution witnesses, she was a courageous girl. There is specific deposition to this effect in the evidence tendered by the prosecution witnesses. Further, it is the specific case of the



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prosecution that the deceased was pregnant at the time of her death. Therefore, it cannot be held that the relation between the deceased and A-1 was not cordial. Merely because the deceased had committed suicide within a period of three months of marriage cannot alone by itself be termed that the suicide was on account of dowry demand. There may have been very many factors which could have led the deceased to commit suicide.

47. Of late, the courts have come across cases where suicide committed by women within 7 years of marriage, the husband and in-laws are targeted much by the law enforcing agency by implicating them u/s 498-A and 306 IPC so that the investigation could be closed earlier. Only to safeguard the interests of all the parties connected with the untimely death of the women, inquest is ordered to be conducted by the Executive Magistrate so that tutoring and false implications can be avoided. What had gone through the mind of the Parliament while enacting the said law, had fructified in the present case as In the present case, after the Executive Magistrate had conducted the inquest and held that the death was not on account of dowry, yet, the law enforcing agency has directed the investigation on the lines of Section 498-A and 306 IPC and fastened the guilt on



the accused, thereby, nullifying the report of inquest submitted by P.W.8. What the Parliament was afraid of had really happened in the present case and in fact, in almost all deaths of a married women within 7 years, it has become the practice of the law enforcing agency to implicate the husband and in-laws without conducting proper investigation, which practice requires to be deprecated, as it is the ardent duty of the police authorities to conduct proper investigation and find out the truth behind the death, rather than trying to close the file by implicating some individual for the offence.

48. The trial court, while appreciating the materials placed before, has lost sight of the aforesaid factors, while considering the case on hand. In the absence of any demand for dowry either at the time of marriage or thereafter, having been established in a proper manner, which is established through Ex.P-7 and the deposition of P.W.8, the trial court has totally misguided itself, based on the deposition of P.W.s 1 to 5 by holding that the discrepancies are not material, which affect the substratum of the case. The court below has totally lost sight of Exs.P-2 and P-3, which are the earliest documents to come into existence in



which P.W.s 2 and 5 have not spoken about the demand for dowry by the accused.

49. The court below has considered the improvements and interpolations as normal errors of memory due to lapse of time forgetting the fact that when the main reason for inquest by the Executive Magistrate is to establish dowry demand, making no allegation of dowry demand, but thereafter making allegations at the time of trial could be branded only to be improvements. May be *exaggerations per se do not render the evidence brittle, but it can be one of the factors to test the credibility of the prosecution version when the entire evidence is put in a crucible for being tested on the touchstone of credibility* (See : *Bihari Nath Goswami – Shiv KumarSingh & Ors. (2004 (9) SCC 186)*).

50. In the present case, the improvements are not marginal improvements, but material improvements, which totally alter the substratum of the entire case. The omissions amount to contradictions in material particulars, which go to the root of the case materially affecting the core of the prosecution



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case and thus rendering the testimony of the witnesses to be put under a still tighter scrutiny.

51. Though the court below had dwelled into the attitude of the accused as spoken to by P.W.s 1 and 5 with regard to their act in not taking the deceased to the hospital, however, it is to be pointed out that it is the specific deposition of P.W.5 that when he was informed that the deceased could not be brought down by 108 Ambulance and, therefore, it left, which prompted P.W.5 to go down and solicit the help of people who had gathered around the house on seeing the commotion and who had helped in bringing the deceased down to be taken to the hospital, necessarily, the act of the accused would have been more clearly seen through the eyes of independent witnesses rather than P.W.5, who had, at the time of inquest, deposed nothing about demand for dowry. Therefore, in the absence of examination of any independent witnesses, though they were very much available at the scene of the occurrence, the interpolations and improvements in the deposition of P.W.s 2 and 5 from their statement in Exs.P-2 and P-3 before P.W.8 cannot be said to be marginal improvements but could only



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be termed to be material contradictions affecting the root of the prosecution case.

52. As pointed out above, though independent witnesses were very much available, however, for reasons best known to the prosecution, no independent witness has been examined. In fact, the residence of the accused was in a thickly populated locality. If really torture in the form of demand for dowry was meted out by the accused to the deceased, really, in a densely populated residential locality, the persons residing around the house of the accused would definitely have been aware of such an act meted out to the deceased. However, no persons have been examined to prove such a harassment was meted out to the deceased by the accused.

53. When P.W.s 2 and 5 have not initially spoken about the dowry demand made by the accused, it clearly shows that even they were not sailing in line with the prosecution with regard to dowry demand, as there was no whisper from any person with regard to the harassment meted out to the deceased by the accused by demanding dowry. Had there been dowry demand, which was the proximate



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cause of suicide, definitely the persons in the locality would have gossiped the issue, which would have reached the ears of the prosecution necessitating the examination of independent witnesses. As the prosecution could not lay hands on independent witnesses to further its case, the prosecution fell back on the improved version of P.W.s 1 to 5, more particularly a tutored version, as could be seen from the manner in which evidence has been given, to implicate the accused. Therefore, in the absence of proving harassment by demanding dowry, which is the proximate cause of death, the prosecution has miserably failed to establish the offence u/s 498-A IPC as well and the conviction for the said offence also cannot be sustained. From the materials available on record, as discussed above, this Court is of the considered view that it would be wholly unsafe to affirm the conviction and sentence recorded by the trial court as it would be nothing but travesty of and necessarily the conviction and sentence imposed on the accused warrant interference at the hands of this Court.

54. Accordingly, for the reasons aforesaid, this criminal appeal is allowed. The conviction and sentence imposed on the appellants are set aside and they are acquitted of all the charges framed against them. Since the sentence



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imposed on the appellants were suspended pending consideration of the appeal, bail bonds executed by the appellants shall stand cancelled. Fine amounts, if any, paid by the appellants, shall be refunded to the appellants.

23.07.2024

Index : Yes / No

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Crl. A. No.232/2021

To

1. The Sessions Judge
Mahila Court, Chennai
2. The Inspector of Police
H-3, Tondaiyarpur Police Station
Chennai.
3. The Public Prosecutor
High Court, Madras.



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Crl. A. No.232/2021

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
CRL. A. NO. 232 OF 2021**

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Crl. A. No.232/2021

23.07.2024