



Crl.A.No.453 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 453 OF 2021

V.P.K.Perumal

.. Appellant

- Vs -

1. Ravi @ Kanagaraj

2. The State, rep. by
Deputy Superintendent of Police
North Police Station
Erode District.

.. Respondents

Criminal Appeal filed u/s 372 Cr.P.C. praying this Court to set aside the order of acquittal dated 9.4.2021 for the charges u/s 304 (B) IPC, made in S.C. No.23 of 2016 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode.

For Appellant : Mr. M.Guruprasad

For Respondent : Mrs. G.V.Kasthuri,

APP for R-1



Crl.A.No.453 of 2021

JUDGMENT

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The acquittal of the 2nd respondent of the offence u/s 304 (B) IPC by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Erode, while convicting the accused of the offence u/s 498-A is put to challenge before this Court by the defacto complainant/appellant by filing the present appeal.

2. The accused was charged for the offences u/s 498 (A) and 304 (B) IPC and after trial, the trial court found the accused guilty of the offence u/s 498 (A) IPC and sentenced him to undergo rigorous imprisonment for a period of three years together with a fine of Rs.2,00,000/- (Rupees Two Lakhs only) and in default to undergo three months simple imprisonment, but acquitted the accused of the charge u/s 304 (B) IPC. Aggrieved by the said acquittal u/s 304 (B) IPC, while the defacto complainant, viz., the father of the deceased, has filed the present appeal, however, the 2nd respondent has not preferred any appeal against the said acquittal.

3. However, insofar as the conviction of the accused u/s 498 (A) IPC is concerned, the accused has not filed any appeal against the said conviction and sentence and the same has attained finality and, therefore, there is no necessity for this Court to consider the conviction and sentence u/s 498 (A) IPC.



Crl.A.No.453 of 2021

4. The facts in brief, necessary for the disposal of this appeal are as

under :-

P.W.s 1 and 2 are the parents of the deceased while P.W.3 is the younger sister of the deceased. The marriage between the deceased and the accused/1st respondent was solemnized on 6.3.2011 and since their marriage, both the accused and the deceased were living together, initially at the in-laws place of the deceased and, thereafter, at Ganapathy, Coimbatore. The accused and the deceased went to Singapore to purchase a CNC machine for the purpose of starting their own company and to meet out the difference in the expenditure of the machine, the accused had sent back the deceased to Coimbatore to obtain Rs.5,00,000/- from P.W.1. Accordingly, the deceased requested P.W.1 to arrange the requisite funds, which was acceded to by P.W.1 and, accordingly, he arranged a sum of Rs.2.5 Lakhs initially and thereafter a sum of another Rs.2.5 Lakhs gave it one Veeramani and Karthik. After receipt of the money, the accused returned back from Singapore.

5. It is the further case of the prosecution that as the deceased was pregnant at the relevant point of time, “Valaikappu” was conducted by the parents of the deceased and, thereafter, the deceased gave birth to a bay girl. During the naming ceremony of the new born child, the deceased created a ruckus and assaulted the deceased physically. Thereafter, the accused left for

<https://www.mhc.tn.gov.in/> Singapore and, thereafter, over phone, asked the deceased to once again obtain



Crl.A.No.453 of 2021

a sum of Rs.5 Lakhs from her father and without getting the amount, the deceased was prevented from going to her parental home or to speak with her parents. Since the deceased was not able to get the amount of Rs.5 Lakhs from P.W.1, on return from Singapore, the accused assaulted her. Unable to bear the torture of the accused, the deceased hanged herself with the Dhuppatta on 4.11.2012 at about 7.00 p.m.

6. P.W.2, the mother of the deceased, along with the sister of the deceased had gone over to the place of the deceased, which is situate at about 10 minute distance from their house, had brought the baby girl to their home in the evening around 5 p.m., for the purpose of bathing the child. Thereafter, P.W.3, along with her brother, had taken the child back to the house of the deceased and upon reaching the place, they found the door locked and they rang the bell, but there was no response and even for the call, there was no response and, therefore, with the help of the neighbours, they broke open the door to find the deceased hanging from the ceiling. P.W.1 was informed about the occurrence and the deceased was taken in the car of P.W.4, who is a relative of P.W.1 and upon the deceased taken to the Government Hospital, Erode, where upon examination, the Doctor pronounced her dead. P.W.1 proceeded to the Erode North Police Station and lodged the complaint, Ex.P-1.



Crl.A.No.453 of 2021

7. P.W.17, the Inspector of Police, who was then the Sub Inspector of Police, Erode North Police Station, upon receiving the complaint, Ex.P-1 from P.W.1, registered a case in Crime No.1355/2012 for the offences u/s 498 (A) and 306 IPC and prepared printed FIR, Ex.P-13 and sent a copy of the printed FIR to the Judicial Magistrate No.1, Erode and forwarded the copies to the higher officials.

8. On information of the report in Crime No.1355/2012, P.W.19, the Revenue Divisional Officer, conducted inquest over the dead body of the deceased, as the same had happened within a period of seven years from the date of marriage. During inquest, P.W.19 examined P.W.s 1 to 4 and other witnesses and recorded their statements. After inquest, P.W.19 submitted his report, Ex.P-14 opining that the death of the deceased was account of dowry demand.

9. In the meantime, P.W.s 13 and 14, the doctors, attached to the Government Hospital, Erode, upon production of the body of the deceased through the police authorities, performed autopsy on the body of the deceased and issued post-mortem certificate, Ex.P-5, giving their final opinion under Ex.P-6 opining that the deceased would appear to have died of asphyxia due to hanging.



Crl.A.No.453 of 2021

10. P.W.20, the Deputy Superintendent of Police, Erode City, on receipt of the FIR in Crime No.1355/2012 took up investigation and went to the scene of occurrence at 9.30 .m. on 5.11.2012 and examined the witnesses and in their presence prepared the observation mahazar, Ex.P-2 and drew the rough sketch, Ex.P-19. In the presence of the very same witnesses, P.W.20 seized a dhuppataa under seizure mahazar, Ex.P-3 attested by witnesses. The case properties were sent to court under Form-95, Ex.P-20. On the same day, P.W.20 examined P.W.s 1 to 4 and other witnesses and recorded their statements. On 6.11.2012, at about 3.00 p.m., near Choolai bus stand, the P.W.20 arrested the accused and the accused was brought to the police station and was produced before the Court and remanded to judicial custody.

11. Continuing with the investigation, P.W.20 examined the further witnesses and upon receiving the remains of the body of the deceased taken from post-mortem, the same were forwarded by P.W.20 to the Judicial Magistrate No.1 with a request, Ex.P-11 to send the same for chemical analysis. During the course of investigation, P.W.20 examined further witnesses and already examined witnesses and recorded their statements. On 22.11.2012, P.W.20 examined P.W.s 13 and 14, the doctors, who performed the post-mortem on the body of the deceased and recorded their statements.



Crl.A.No.453 of 2021

12. On the transfer of P.W.20, P.W.21, the succeeding Deputy Superintendent of Police took up investigation and after perusing the investigation done by his predecessor and after examining further witnesses, filed the final report against the accused before the Court for the offence u/s 498 (A) and 304 (B) IPC.

13. To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 21 and marked Exs.P-1 to P-23 and marked M.O.s 1 & 2.

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

15. The trial court, on consideration of oral and documentary evidence and other materials, while convicted and sentenced the accused for the offence u/s 498-A IPC as above, however, acquitted the accused for the offence u/s 304 (B) IPC. Aggrieved by the acquittal of the accused u/s 304 (B) IPC, the defacto complainant, viz., the father of the deceased, has filed the present appeal.



Crl.A.No.453 of 2021

16. Learned counsel appearing for the appellant submitted that the continuous torture which had driven the deceased to commit suicide is the act of the accused in demanding money from the father of the deceased, which has been continuing since the marriage of the deceased with the accused. The same has been spoken to by P.W.s 1 to 3 as well as P.W.s 5, 6 and 7. This clearly shows that there was demand from the accused for money, which is dowry in relation to marriage, but without properly appreciating the said evidence, the court below had acquitted the accused u/s 304 (B) IPC, which is erroneous.

17. It is the further submission of the learned counsel that the P.W.s 5 6 and 7 are independent witnesses, though P.W.s 6 and 7 are employed under P.W.1, however, they had no axe to grind against the accused and, therefore, their evidence clearly clinches the case that there was demand of money by the accused from the deceased to be obtained from her father. It is the further submission of the learned counsel that P.W.s 1 to 3 have clearly spoken that there were frequent calls to the deceased from the accused asking her to get money from her father, which has been spoken to by the deceased to P.W.s 1 to 3. However, the Court below had not properly considered all the said evidence and has erroneously acquitted the accused for the offence u/s 304 (B) IPC, which is grossly unsustainable. Accordingly, he prays for interference with the said portion of the order and to convict the accused for the offence u/s 304 (B)



Crl.A.No.453 of 2021

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18. Though notice has been issued to the 1st respondent/accused, however, there is no representation on his behalf.

19. On the above contentions, this Court heard the learned Addl. Public Prosecutor appearing for the 2nd respondent and perused the materials available on record.

20. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in ***Babu Sahebagouda Rudragoudqr & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)***, the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

*37. This Court in the case of **Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471)** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*

*“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (**Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]***



view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is



further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581)** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”



39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- (a) That the judgment of acquittal suffers from patent perversity;
- (b) That the same is based on a misreading/omission to consider material evidence on record;
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

21. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the



Crl.A.No.453 of 2021

interfere with the acquittal on the ground that another view is possible.

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22. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court with regard to the offence u/s 304 (B) IPC is sustainable.

23. There is no quarrel with the death of the deceased, which, according to P.W.s 13 and 14, the Doctors, who conducted post-mortem on the body of the deceased, who have opined that the deceased died due to asphyxia on account of hanging, which has not been disputed by the parties. The only issue is whether the committal of suicide by the deceased could be attributable to the demand for dowry made by the accused.

24. P.W.s 1, 2 and 3 are the father, mother and sister of the deceased. They have spoken in unison about the demand made by the accused to the deceased for getting money from her father. It is their allegation, that initially after about three months of marriage, the deceased and accused went to Singapore in connection with purchase of a machine for their business venture. It is the allegation of the prosecution that from Singapore, the deceased had called P.W.1 and asked him to make a sum of Rs.5 Lakhs ready for the purpose of purchase of the machine, as asked for by the accused. Thereafter, it is



Crl.A.No.453 of 2021

alleged that the deceased was sent back from Singapore alone and she was received by P.W.1 and taken home and, thereafter, P.W.1 made arrangements for a sum of Rs.2.5 Lakhs, in two phases and the sum was handed over to the person, who were pointed out by the accused.

25. Thereafter, it is the allegation of the prosecution that the business venture of the accused failed and once again the accused demanded Rs.5 Lakhs from P.W.1 and asked the deceased to get the amount from P.W.1. It is alleged that the deceased also called her father to arrange for the said sum, however, the delay in arranging the sum and the constant pestering of the accused for the amount with the deceased, according to the prosecution, had driven the deceased to take the extreme step of ending her life and the above, according to the prosecution is a continuation of the demand for dowry from the deceased and her parents and, therefore, squarely attracts the offence u/s 304 (B) IPC.

26. Barring the evidence of P.W.s 1 to 3, no other witnesses, who have been examined on behalf of the prosecution have spoken about the demand for dowry by the accused. It is only the evidence of P.W.19, the Revenue Divisional Officer, who had conducted inquest over the dead body of the deceased and Ex.P-14, the inquest report, wherein he has opined that the deceased had died on account of demand of dowry concides with the evidence of P.W.1. But coincidence cannot be taken to mean corroboration and,



Crl.A.No.453 of 2021

therefore, this Court has to go through the evidence in its entirety to find out whether there is necessary corroboration to the evidence of P.W.s 1 to 3. In fact, it is not the case of the prosecution, through the evidence of P.W.s 1 to 3 that there was any demand for dowry at the time of marriage. In fact, it is the evidence of P.W.1 that during the marriage between the accused and the deceased, the deceased was given 30 sovereigns of jewels along with all other stridhana. There is no whisper from P.W.1 that any demand was made with regard to money or materials from the accused or his family members. Equally, the evidence of P.W.s 2 and 3 is also silent on this aspect. From the above, it is clear that at the initial point of time, there was no demand for dowry from the accused.

27. All through the evidence of P.W.s 1 to 3, it is only seen that whatever they have deposed about the demand made for money was only through the deceased. One other evidence that stares writ large on the prosecution is the fact that even the day prior to the death of the deceased, P.W.3 claims to have been staying with the deceased and that the deceased is alleged to have informed her that the accused is continuously compelling her to get Rs.5 Lakhs from P.W.1. In fact, the entire evidence of the prosecution is premised on the phone calls made by the accused to the deceased compelling her to get Rs.5 Lakhs from her father, yet neither P.W.19 nor P.W.20 had taken any steps to retrieve the call records to establish that there were frequent calls



Crl.A.No.453 of 2021

between the accused and the deceased. Even if there were frequent calls, that could not be taken to be for the purpose of making demand for Rs.5 Lakhs, as between husband and wife, all calls cannot be taken to be for the purpose of demand. Even if it is to be inferred otherwise, call records are mandatory to even infer such a possibility of demand over phone.

28. It is further to be pointed out that there is no evidence placed by the prosecution to show that any demand for dowry was made at the time of marriage by the accused or his family members. Though the marriage is an arranged marriage, as spoken to by P.W.1, P.W.1 has nowhere stated that any demand was made at the time of marriage. In fact, one other evidence, which negates the demand for dowry is the evidence of P.W.9, an independent witness, who had worked along with the accused at Singapore. It is the evidence of P.W.9 that initially for the purpose of starting a business and purchase of machine for the said purpose, the accused and P.W.1 had initially gone to Singapore. When P.W.1 had also been a party to the accused to start a business, which as any other father-in-law would expect of his son-in-law, the help that was given by the father-in-law cannot be made to partake the character of a demand for dowry. If really the accused was demanding dowry, definitely P.W.1 would not have accompanied the accused to Singapore on the look out for purchase of the machine. No father, whose daughter is suffering a demand of dowry at the hands of his son-in-law would accompany his son-in-



Crl.A.No.453 of 2021

law for the purpose of starting a business, as he would be more concerned with his daughter's welfare and would be arranging the necessary funds for the purchase of the machine. However, in the case on hand, P.W.1 had gone with the accused for identifying and purchasing the machine for the business venture of the accused and, thereafter, the accused and the deceased had gone to Singapore for the same purpose. Therefore, inferring that the demand for money was of the character of dowry demand made by the accused would be an erroneous conclusion, as it would be unsafe to infer such a finding from the evidence that is available on record.

29. As stated above, though the marriage was an arranged marriage, there is no evidence to infer, through any independent witness, that there was any demand for dowry and even P.W.s 1 to 3 have not spoken that there was any demand for dowry at the time of marriage. Though not taking any dowry at the time of marriage, but demands made later also would partake the character of dowry is the ratio laid down on the aspect of dowry, however, considering all the evidence which has been discussed above, the later alleged demands cannot be brought within the ambit of dowry, but could only be inferred to be help sought for by the son-in-law from the father-in-law.

30. Further, one other aspect, which also strengthens the above said view



Crl.A.No.453 of 2021

of this Court is that during the 'Valaikappu' of the deceased, it is the evidence of P.W.1 that demand was made by the accused for 10 sovereigns of stone studded ornaments, which was provided for by the brother of the deceased, however, even on this aspect, there is no corroboration by P.W.s 2 and 3 with regard to the demand made by the accused for ornaments. The evidence of P.W.s 2 and 3 is silent on this aspect. Further, no independent witnesses have also been examined to establish that such a demand was made, though it is the categorical case of the prosecution that the said function was celebrated at the house of P.W.s 1 and 2, who would definitely have called their family members. In such a backdrop, it would be wholly unsafe to rely upon the evidence of P.W.s 1 to 3 alone to hold that there was demand for dowry by the accused, which would attract the offence u/s 304 (B) IPC. All other witnesses, who have spoken about the alleged demand for dowry are all hearsay evidences, who have got the information from P.W.s 1 to 3 and the said hearsay evidence cannot be made the basis to convict the accused for the offence u/s 304 (B) IPC. Appreciating all the aforesaid evidences in proper perspective, the court below had rightly acquitted the accused of the offence u/s 304 (B) IPC, while convicting the accused of the offence u/s 498 (A) IPC, which does not warrant any interference at the hands of this Court.



Crl.A.No.453 of 2021

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31. For the reasons, the appeal fails and, accordingly, the same is dismissed confirming the judgment in S.C. No.23 of 2016 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode.

06.06.2024

Index : Yes / No

ASI/GLN

To

1. The Sessions Judge
Magalir Neethimandram (Fast Track Mahila Court)
Erode.
2. The Deputy Superintendent of Police
North Police Station
Erode District.
3. The Public Prosecutor
High Court, Madras.



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Crl.A.No.453 of 2021

M.DHANDAPANI, J.

ASI/GLN

CRL. A. NO. 453 OF 2021

06.06.2024