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Cr1.A(MD)No.339 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05/09/2024

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Cr1.A(MD)Nos.339 of 2016

N.Palaniappan

: Appellant/De-facto
Complainant

Vs.

1.Narayanan

2.Annamalai

3.Deivanai @ Vijaya

: Respondents 1 to 3/
A1 to A3

4.The Inspector of Police,
Dindigul Town West Police Station,
Dindigul.

(Crime No.340 of 2006)

: 4th Respondent/
Complainant

Prayer: This Criminal Appeal is filed under Section 378 of Criminal Procedure Code to set aside the judgment of acquittal, dated 03/06/2016 made in SC No.164 of 2010 on the file of the Mahila Fast Track Court/Sessions Judge, Dindigul.

For Appellant : Mr.B.Muruganandam

For R1 to R3 : Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran

For 4th Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



J U D G M E N T

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This Criminal Appeal is filed to set aside the judgment of acquittal, dated 03/06/2016 passed in SC No.164 of 2010 by the Mahila Fast Track Court/Sessions Judge, Dindigul.

2.The case of the prosecution in brief:-

The deceased Uma @ Visalakshi was married to A1 namely Narayanan on 03/06/2003. At the time of marriage, Rs.35,000/- cash and 20 sovereigns of gold jewels were gifted. At the time of marriage, the deceased Uma @ Visalakshi was doing 2nd Year B.Sc. After completing the course, she was staying in her parental home. The first accused used to visit the wife once in 10 days. A male child was born between them. After the birth of the child, both were taken to the matrimonial home at Dindigul. Within two months, the first accused demanded Rs.1,00,000/- for starting a business and harassed the wife stating that unless the money is brought by her, she cannot live in the matrimonial home. That demand was meted out by PW1. Again, the first accused started demanding money, which was supported by other accused and frequent quarrel occurred between them.



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3.PW1 sent PW2 to settle the issue. So, they went to Tirupathi for tonsuring ceremony along with PW2. In Tirupathi itself, demand was made by the accused 2 and 3.

By taking the child, all the accused persons left the deceased and PW2 in Tirupathi itself and returned to Dindigul. When the child was demanded, they refused to give the child. For about 2 days, because of the above said occurrence, the deceased was crying. She called A1 to bring the child through phone, but A1 refused and asked her to bring 20 sovereigns of gold jewels, apart from money for starting business. Later, the deceased went to the matrimonial home and stayed for about 8 days. Again, they created trouble by demanding money. On the 9th day I.e., 21/09/2006, PW1 was told that Uma died. They went to the house of A1. At that time, they found bleeding on the mouth and nose. Suspecting cause of the death, PW1 lodged a complaint. Upon the occurrence, a case in Crime No.340 of 2006 was registered by the respondent police for the offences under sections 498(A), 304-B r/w 109 IPC. After completing 207 Cr.P.C proceedings framed the charges for the offences punishable under section 498(A) and 304-B r/w 109 IPC and it was taken on file in SC No.164 of 2010 by the Mahalir Fast Track Court/Sessions Judge, Dindigul.



4.The following charges were framed against the accused:-

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(i)The deceased Uma @ Visalakshi was married to A1 namely Narayanan on 03/06/2003; At that time of marriage, Rs.35,000/- cash and 20 sovereigns of gold jewels were gifted; A1 used to visit the wife once in 10 days; A male child was born between them; After the birth of the child, both were taken to the matrimonial home at Dindigul; Within two months, A1 demanded Rs.1,00,000/- for starting a business and harassed the wife stating that unless the money is brought by her, she cannot live in the matrimonial home; They went to Tirupathi, where also all the accused persons demanded dowry and thereby the accused committed an offence punishable under section 498(A) IPC.

(ii)In pursuance of the above said occurrence, by taking the child,



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all the accused persons left the deceased and PW2 in Tirupathi itself and returned to Dindigul; When the child was demanded, they refused to give the child; For about 2 days, because of the above said occurrence, the deceased was crying; She called A1 to bring the child through phone, but A1 refused and asked her to bring 20 sovereigns of gold jewels, apart from money for starting business; Later, the deceased went to the matrimonial home and stayed for about 8 days; Again, they created trouble by demanding money; On the 9th day I.e., 21/09/2006, PW1 was told that Uma died; They went to the house of A1; At that time, they found bleeding on the mouth and nose and thereby all the accused persons committed the offence punishable under section 304(B) r/w 109 IPC.

5.To that charges, the accused pleaded not guilty and claimed to be tried.



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6. During trial, on the side of the prosecution, 21 witnesses were examined and 13 documents marked. Apart from that, 4 material objects were marked. On the side of the accused, 4 witnesses were examined, but no document was marked.

7. PW2 is the mother of the deceased and wife of PW1. She corroborated to some extent with regard to the issue with the evidence of PW1.

8. PW3 is the sister of the deceased. She also corroborated the evidence of PW1 and PW2 with regard to the matrimonial particulars.

9. PW5 is the neighbour. PW8 and PW7 also neighbours. They witnessed the after occurrence and events.

10. PW9 is the brother of PW1, he is also corroborating PW1 with regard to the material particulars.

11. PW10 and PW11 are neighbours. They have stated that the reason for the death was not known to them. PW10 is a witness to the mahazar prepared by the Investigating Officer at the time of investigation.



12.PW13 is the photographer, who took photograph of the deceased body.

13.PW14 is the Doctor who conducted the postmortem and he has given opinion that the because of asphyxia the death occurred.

14.PW16 is the relative of PW1. She also corroborated PW1 with regard to the marriage and other issues.

15.PW18 was working as Inspector of Police on 21/01/2006 in Dindigul Town West Police Station. At that time, he received a complaint from PW1 and registered a case in Crime No.340 of 2006 under section 174 Cr.P.C. He submitted a report to the RDO, since the death occurred within seven years from the date of marriage. Ex.P10 is the FIR registered by him.

16.PW20 on the basis of the FIR, visited to the place of occurrence at about 07.30 pm and sent the body for postmortem. At about 10.30 am, he took up further investigation and recorded the statement of the witnesses and prepared parvai mahazar and rough sketch. He went to the place of occurrence and recovered some saree, lock,



small stone and iron rod through mahazar under Ex.P12. He recorded the statement of others. During the course of the investigation, he found that the death occurrence due to the cruelty committed by the accused demanding dowry. Later, he was transferred and the further investigation was undertaken by PW21. He recorded the statement of the Medical Officer, who conducted postmortem and Revenue Officials and filed a final report on 09/03/2007 alleging that the accused have committed the offences under sections 498(A), 304(B) IPC and 109 IPC.

17.PW14 is the Medical Officer who conducted postmortem on the deceased body. He found ligature mark around the deceased neck measuring about 3 cms. No other external injuries were found. The internal organs were found to be in order. As per the chemical report, she found that the death occurred due to strangulation by hanging some 2 to 4 hours before the postmortem.

18.PW15 assisted PW14 in conducting the postmortem. She also corroborated PW14.

19.PW17 was the RDO, who was working during the relevant time in Dindigul on 22/09/2006 and conducted enquiry. During the course of enquiry, he recorded a finding that there was no dowry demand or cruelty demanding dowry. With that, the prosecution side evidence was closed.



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20.After completing the evidence on the side of the prosecution, the accused was questioned under section 313 of Cr.P.C. They denied the evidences deposited by the prosecution witnesses. On the side of the defence, three witnesses were examined and no document was marked.

21.At the conclusion of the trial process, the trial court came to the conclusion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt. Accordingly, acquitted all the accused.

22.Against which, this criminal appeal is preferred by the de-facto complainant.

23.Heard both sides.

24.Appeal against acquittal.

25.It is the duty of the appellant to establish the fact that the judgment of acquittal passed by the trial court suffers from either perversity or misreading or non-reading of evidence.

26.With this in mind, let us to to the issue.



27.For better appreciation of the issue involved,
we will take up the events chronologically.

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Date of event	Event
07/09/2003	Marriage between the deceased and A1
	The child was taken to Dindigul
12/09/2005	Both the husband and wife living separately in Dindigul
07/09/2006	PW2, accused and deceased went to Tirupathi
07/09/2006	Trouble arose in Tirupathi
07/09/2006	PW2 and the deceased was left in Tirupathi and in laws went to their village
12/09/2006	The deceased was sent to matrimonial house
21/09/2006	A2 informed PW2 about the death.

28.The dates and events shows that for about three years, there was no trouble between the husband and wife. But it is alleged by the appellant that in the meantime, frequent trouble was made by the accused demanding more money. We will deal about that matter later.

29.As mentioned above, on 07/09/2006 trouble arose between them in Tirupathi. On 21/09/2006, the deceased went to the matrimonial home. There after, there was no trouble



between them. So, within 9 days from that date, the death occurred.

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30.What happened in Tirupathi, according to the learned counsel appearing for the respondent/accused, was spoken by PW2. After worshipping God, the deceased served kungumam, but the third accused refused to receive the same and started abusing them in filthy language. So, the deceased was taken to the parental home, but the child was taken by the accused 1 and 3. It is stated by her that they were criminally intimidated. After two days of the occurrence, the deceased demanded the child back, but they refused to give the child stating that PW2 should not come to the house and there should not be any shortage of jewels. So, this event spoken by PW2 shows that there was only a petty issue in Tirupatti and the child was taken by the accused and the deceased was sent to parental home. Later, she joined.

31.Now we will go further that after went to the matrimonial home what happened to the deceased. PW2 admits that on 13/06/2006, the deceased contacted her over phone. But she gave evading answer to the question whether any trouble or some induction to the deceased. Later, on 15/06/2006 also she contacted.



32.By pointing out this, the learned Senior counsel appearing for the respondents 1 to 3 would submit that if really, any demand of money either in Tirupathi or after returning to Dindigul, certainly the deceased would have informed the same to PW2. Because, there was a gap of only 5 days from 15/06/2006.

33.Now we will go further. The very same, PW2 has given a statement before the RDO that there was no issue between the husband and the wife and there was no demand of dowry also.

34.As pointed out in the preamble portion of the judgment, PW17 has stated that during the course of enquiry, he found that there was no demand of dowry and the death occurred does not occur due to cruelty met out to the deceased demanding dowry. During the course of evidence before the trial court, PW2 disown her statement. But the statement recorded by PW17 cannot be discarded on any ground.

35.No doubt that the statement recorded by the RDO has no substantial piece of evidence. The evidence which has been given before the court by the witnesses are substantial piece of evidence, but as mentioned above, the dates and event also circumstance, which led the trial



court to record a finding of facts against the appellant's case.

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36.Now in the background of the above said dates and events, we will go to the evidence on record on the particular fact of demand of dowry.

37.The learned Senior counsel appearing for the respondents 1 to 3 would submit that to attract the offence under section 498(A) and 304(B) and 109 IPC, it must be established by the prosecution that soon before the death, the deceased was subjected to cruelty demanding dowry. That is why, I extracted the dates and events. As mentioned above, there is no indication that soon before the death, there was demand of dowry by the accused.

38.Now PW1 the appellant herein would say that within two months from the date of the stay in Dindigul, A1 demanded Rs.1,00,000/- for the purpose of starting a business saying that unless the money is collected, the deceased must stay in her parental home and within two months, the above said money was given. Again, they demanded money stating that Rs.1,00,000/- was given as advance. But how much was demanded is not stated by him. According to PW1, because of that issue, there was frequent quarrel between them. Only to pacify or compromise the



issue, PW2 was sent to Dindigul, from where they were taken to Tirupathi. So, according to him, in Tirupathi also, they demanded money. Again the above said demand continued, when the deceased was sent to the matrimonial home. So, according to PW1, there was continuous demand till the death of the deceased.

39.It is also admitted by the appellant that the deceased was living with her husband namely A1 in Dindigul. There was no joint family. It is also seen that till the death, there was no joint family. How A2 and A3 were implicated is not known. Even if we consider that there was demand of money by A1 for starting business, it cannot be construed that it is a demand of dowry. Seeking financial help from the in-laws, at no stretch of imagination can be termed as dowry. This is the settled proposition of law.

40.Now whatever it may be, whether the financial capacity of PW1 was sufficient circumstances for the appellant to be made. We can find answer from the evidence of PW1 himself. He admitted that to meet out the medical expenses of PW2, he borrowed 5 sovereigns of gold from the deceased, pledged the same and thereafter, redeemed and handed over to the deceased. When that was the financial position of PW1, it is highly improbable for the accused to demand more dowry and money. We can also verify this



statement, with regard to the allegations made soon-before the death of the deceased.

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41.PW1 has stated that on the particular day, the deceased told A1 to bring the child. But A1 refused stating that only she can come and there should not any shortage of 20 sovereigns of jewels. Apart from that, he has also demanded for starting business. So, according to the prosecution, demand was made by the accused soon before the death. But as mentioned above, already Rs.1,00,000/- was paid by PW1 for starting the business. According to him, further amount was demanded, but as mentioned above, on 13/06/2006 and 15/06/2006, the deceased telephoned to PW1 and during that time, nothing was stated by her that the accused demanded money and dowry. This being the position, the statement of PW1 that through telephone, the accused demanded money is highly unbelievable and not supported by any circumstantial evidence. So, the circumstance which was prevailing also supported the evidence of the RDO. The contention on the part of the appellants that PW1 and PW2 refused the demand is sufficient enough to record a finding. But for the reasons stated, I am not convincing that the trial court has committed perversity in recording the finding.



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42.As stated above, in the circumstances of the case, I find absolutely no reason to interfere into the acquittal order passed by the trial court.

43.In the result, this criminal appeal is **dismissed.**

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Index : Yes/No
Internet : Yes/No
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To,

- 1.The Sessions Judge,
Magalir Fast Track Court/
Sessions Court,
Dindigul.
- 2.The Inspector of Police,
Dindigul Town West Police Station,
Dindigul.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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