

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

CRIMINAL APPEAL No.427 OF 2002

Dhandapani

Appellant/1st Accused

v.

STATE:

by The Inspector of Police
Alangiam Police Station
Erode District.

Respondent/Complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C. for the relief as stated therein.

* * *

For appellant : Mr.V.K.Muthusamy,
Senior Counsel
for Mr.M.M.Sundaresh

For respondent : Mr.E.Raja APP.

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JUDGMENT

V.KANAGARAJ, J.

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This Criminal Appeal is directed against the conviction and sentence passed by the Court of Principal Sessions Judge, Erode as per his Judgment dated 19.02.2002 in S.C.No.145 of 2001 thereby convicting the appellant-A1 for the commission of offences under Sections 498-A, 302 & 201 IPC and under Section 4 of Dowry Prohibition Act and sentencing him respectively, to undergo R.I. for three years, life imprisonment, R.I. for five years and R.I. for six months and to pay a fine of Rs.2000/- in default to undergo RI for two months further ordering these sentences to run concurrently.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for the appellant and the learned Additional Public Prosecutor representing the State, it comes to be

known that the appellant is the first accused and he has been charged for the offences punishable under Sections 498-A, 302 & 201 IPC and under section 4 of Dowry Prohibition Act.

3. The case of the prosecution is that A.1 is the son of A.2 and A.3 and they were residing at Kuttupulli Thottam, Aalangayam. The deceased Selvi was the wife of Appellant/A1 and that the accused/appellant joining hands with his parents A.2 and A.3, harassed the deceased Selvi by demanding dowry on various occasions; that one month prior to the date of occurrence, the accused pestered the victim Selvi to bring a sum of Rs.50,000/- from her father for constructing their house and as the victim could not bring the dowry amount demanded by the accused, on 31.10.1999 at about 11.00 am. in their newly constructed house at Kuttupulli Thottam, the accused decided to kill the victim Selvi and had beaten her severely with force, as a result of which, she died; that in order to screen the death of the deceased Selvi, the accused poured kerosene on the victim Selvi and closed the door, tied the same with iron chain and locked the door from outside and lighted a match stick and threw the same through the window which was kept open, and set the victim on fire and hence the charges against all the three accused for commission of offences punishable under Sections 498-A, 302 and 201 IPC and u/sec.4 of the Dowry Prohibition Act.

4. Thereupon, the Court of Principal Sessions Judge, Erode, having framed the above charges against the accused/appellant and two other accused and since they pleaded not guilty of the offences charged, conducted the trial into the charges with due opportunity for the prosecution and defence as well during which, on the part of the prosecution, whose burden it was to prove the charges beyond all reasonable doubts, as warranted under law, 19 witnesses have been examined as P.Ws.1 to 19 for oral evidence and marked 21 documents as Exs.P.1 to P.21 for documentary evidence further exhibiting 20 material objects as M.Os.1 to 20. The defence evidence placed on record is nil.

5. In consideration of the above evidence placed on record, the trial Court found the appellant/A.1 guilty of the offence charged under Sections 498-A, 302 & 201 IPC and under Section 4 of Dowry Prohibition Act and sentenced him respectively, to undergo the punishments as extracted supra further registering an acquittal judgment so far as the second and third accused before the trial Court are concerned. It is only challenging the said conviction and sentences, the appellant/A.1 has come forward to prefer the above criminal Appeal.

6. Heard the learned counsel appearing on behalf of the appellant/convict, and the learned Additional Public Prosecutor appearing contra.

7. During arguments, the learned senior counsel appearing on behalf of the appellant/convict would submit that after holding the inquest, as it is reflected in postmortem requisition Ex.P.3 dated 31.10.1999, the suicidal case was converted into a case of murder; that the post mortem certificate of the deceased Selvi in Ex.P.2, would reveal that the doctor who conducted autopsy offered his opinion under Ex.P.4 to the effect that 'the deceased appeared to have died of asphyxia and the burns looking like post mortem burns'.

8. The learned senior counsel would further submit that on the strength of extra judicial confession, the trial Court has arrived at the conclusion that the commission of offence is one punishable under Section 302 IPC but, the case is purely a suicidal one. Learned senior counsel would also submit that the extra judicial confession is an after-thought, given belatedly.

9. In support of his arguments, the learned senior counsel appearing for the appellant would rely on the following extracts from the text books:

(i) Page 322 of the H.W.V.Cox, Medical Jurisprudence and Toxicology, wherein the Burns Inflicted Before or after Death is dealt with.

(ii) Page 212 (a) of the Modi's Medical Jurisprudence and Toxicology ;

(iii) Police: The Investigation of Violence : (relevant portions are at pages 158, 160 and 162)

10. From H.W.V.Cox Medical Jurisprudence and Toxicology, the relevant portion relied on by the learned senior counsel for the appellant is as under:

"Were the Burns Inflicted Before or after Death? -- This primary decision is of great forensic importance, because of the possibility of the disposal of a criminal death in a fire. The differentiation between ante-mortem and post-mortem burns must be attempted in every examination of a fatal burning. Although this may be difficult or even impossible in some cases, it must be uppermost in the mind of the medical examiner.

The most important criterion is the presence or absence of a vital reaction at the margin of the burns. Where part of the body surface is burnt during life, there will almost inevitably be a zone of hyperaemia at the edge of the burn area, except when death follows very soon afterwards. While the person is still alive, there may be reddening of the skin even beyond this zone, but this may fade after death leaving only the marginal zone of erythema at the edge of the burn. This may vary in width but is usually a centimetre or so

unless death supervened very soon. It is due to oedema of the tissues and capillary dilatation and merges with the edge of the burn which may show blistering or charring. Unfortunately, where death occurs very rapidly (within a few moments) then the erythematous margin of an ante-mortem burn may be indistinct or even absent. However, wherever survival persists for more than a few moments it is almost invariably found.

The presence of a vital reaction is absolute proof that the person was alive during the fire as this cannot be simulated in a postmortem burn. Blistering and reddening of the actual burned area can occur in a postmortem burn but not the peripheral zone of vital reaction.

Difficulty arises where the body is completely covered with burns so that no unburnt skin remains to display a vital reaction. Where the body is actually charred or incinerated then naturally this aspect of determining the time of the burn is impossible."

"The next important matter is the presence of carbon monoxide in the body, which may be obvious even externally by the pinkness of the post-mortem hypostasis. In many fire victims, the first incision at autopsy reveals a cherry-pink colour of the blood and muscles which can be confirmed by simple spectroscopic examination to be due to carboxyhaemoglobin. Even in rapid fires such as in automobiles, considerable quantities of carbon monoxide may be released and be respired even though life only survives for a moment or two.

However, great caution must be used in interpreting carboxyhaemoglobin in fire victims. The following two rules are of first importance:-

(a) If the tissues of a deceased victim contain a significant quantity of carbon monoxide (say more than 10% saturation) then the victim must have been alive during the fire.

(b) However, if the tissues contain no carbon monoxide, this does not mean that he must have been dead during the fire.

This latter statement is of great importance, as several cases have occurred in which false accusations of murder have been made against persons where alleged victims have been found dead in a fire with no carbon monoxide in their body. It is a confirmed fact that undoubted cases of ante-mortem fatal burns have no carbon monoxide in their blood-streams, due to a variety of reasons such as low production of carbon monoxide, convection currents, rapid death, and another

factors which make it quite unsafe to use the absence of carbon monoxide as a criterion of death before the fire occurred. However, the converse can be accepted with confidence, that is, the presence of carbon monoxide means that the person was alive during the fire".

11. From MODI's Medical Jurisprudence and Toxicology, the relevant portion pointed out is extracted:

"Clinical Features:

Clinical features are divided into three stages:
the stage of inspiratory dyspnoea;
the stage of expiratory dyspnoea and
the stage of exhaustion and respiratory failure.

In the first stage, the face wears an anxious look and the patient complains of heaviness in the head and ringing in the ears. The lips are livid, and the eyes prominent. The respiration becomes deep, hurried and laboured, the extraordinary muscles of respiration being called into play. The blood pressure rises and the pulse becomes slow. The consciousness is usually lost at the end of this stage, which lasts for one minute.

In the second stage, because of retention of carbon dioxide, which falls as the blood lactate content increases and lack of oxygen, the respiration is more laboured and spasmodic and there may be clouding of consciousness, convulsions, and even relaxation of sphincters. Owing to the venous and capillary stagnation, the face and the hands are deeply congested and cyanosed and there is considerable exudation of fluid in the mouth and the lungs due to increased capillary permeability. The fluid may even be blood tinged in the terminal stage. Tongue injured by the teeth is seen protruding. During this stage, which lasts one to two minutes, effects of sympathetic and para sympathetic stimulation manifest, for example, increased secretion of saliva, increased heart rate and increased gastrointestinal mobility, incontinence of bowels and bladder etc.

In the third stage, (of two to three minutes duration), the respiratory and the other nervous centres are paralysed, due to cerebral anoxia, which damages the brain permanently. The muscles become flaccid, there is complete insensibility, the reflexes are lost and the pupils are widely dilated. The blood pressure falls. Prolonged sighing inspirations occur at longer and longer intervals until they cease altogether and death ensues. The pulse is scarcely

perceptible but the heart may continue to beat for ten to fifteen minutes after respiration have quite ceased.

The three stages last for about three to five minutes before death takes place. They may be prolonged for two or three times as long. Occasionally, asphyxia may bring about death almost instantly. Artificial respiration, if applied immediately, may revive the heart and reverse the vicious symptoms.

(a) External

The face is either calm and pale in slow asphyxia or distorted, congested and cyanosed in cases of sudden asphyxia. The lips and nails are livid. Cadaveric lividity is more marked and best seen within few hours of death. The tongue is protruded in most cases and the frothy and bloody mucus comes from the mouth and nostrils. Rigor mortis is usually slow to commence, but may be rapid in some cases.

(b) Internal.

The mucous membrane of the trachea and the larynx is cinnabar-red due to its injection and contains froth. The lungs are dark and purple in colour and gorged with dark venous blood. On being cut, they exude frothy, dark, blood stained fluid. The air-cells are distended or even ruptured due to emphysema. The right cavity of the heart is full containing dark coloured, imperfectly clotted blood, and so are the pulmonary artery and the venae cavae. The left cavity, the aorta and the pulmonary veins are empty. In many cases, both sides of the heart are found to be full. If examined soon after death but after rigor mortis has set in, the heart is found contracted and empty or the tension in the abdomen presses on the inferior vena cava and drives blood up into the heart. Similarly, the lungs are found heavier with the blood collected in the dependent parts if examined sometime after death, or the tension in the abdomen or contraction of the heart muscle will drive more blood into the lungs, irrespective of the cause of death.

The brain is congested, but not so much as in death from coma. The abdominal organs are found congested. Numerous small petechial haemorrhages or ecchymoses known as Tardieu Spots are seen under the serous membranes of various organs due to rupture of the capillaries caused by increased pressure in them. These are usually round, dark and well-defined, varying in size from a pin's head to a small lentil. They are found under the visceral pleurae, pericardium,

endocardium, thymus, meninges of the brain and the cord, conjunctivae, epiglottis and even under the skin of the face, neck and eyelids. They are sometimes seen in deaths occurring from scurvy, pupura, haemophilia, bacterial endocarditis or coronary thrombosis. These must be distinguished from small postmortem haemorrhages in the conjunctivae or the skin of dependent parts due to gravity; usually they are more diffuse and even larger".

12. So far as the book 'Police : The Investigation of Violence' is concerned, the relevant portions are extracted below:

"Suspecious injuries: Persons who are alive at the time of exposure to fire are certain to inhale fumes that endanger life, for not only is the vital oxygen that is needed to maintain life being consumed in the course of combustion, but a dangerous gas, carbon monoxide, is being generated -- whatever is burning. Occasionally, as when celluloid or X-ray films burn, fumes of nitric oxide are also generated. Most charred victims of fire die of asphyxia (from lack of well -oxy-generated air) and a high blood concentration of the fire-fume gas carbon monoxide--and it is comforting to know that, since a state of unconsciousness occurs at any saturation of 40% or over, they are unlikely to have experienced the excruciating pain of the burns that follow.

Detection of carbon monoxide in the blood is absolute proof that life was present at the time of the fire--that the victim was breathing. Indeed, if the fire was a slow smouldering or smoky one, soot particles are also found in the nostrils, the throat and the air passages, giving proof visible to even the tyro at autopsy. To these accustomed to carbon monoxide inhalation deaths, one other change is equally obvious. The blood in which carbon monoxide has accumulated is a characteristic cherry pink--a colour which shows in the livid stains in the skin and in samples of blood from any part of the body, especially when it is diluted. A drop of blood, so diluted, can be compared with a similar specimen taken by pricking the finger of any member of the investigating team.

When a fire is fierce from the start, the rapid lowering of the oxygen is the more important factor in causing asphyxia, but a smouldering fire will cause more smoke and the incomplete combustion will create more carbon monoxide. The blood saturation may rise as high as 60% or more at death when a long period of exposure to a slow fire is responsible.

It is sometimes suggested also that burns to the live body can be easily distinguished from those to the dead tissues, but this is not so. The live skin reddens and blisters on scorching, and the hairs shrivel and curl on burning. But so does the dead skin, and so do the hairs. Heat causes the cuticle to wrinkle and blister, for the temperature can be high enough to "boil" the dead fluid in the skin; and adjacent blood vessels may expand from the heat, to give a very similar appearance to that when the tissues are living. When charring follows from more severe burning, of course, the only proof life lies in the finding of inhaled soot or absorbed carbon monoxide. Either is sounder proof than the skin changes.

Contraction: Penetrating heat may cook the muscles and cause them to shrink: the bulkier the muscle the greater the shrinkage, so that the stronger flexors of the arms and thighs exercise the greater "pull". The arms may flex, the hands clench and the thighs bend at the hip and the knee causing the well-known "pugilistic" attitude--suggesting that the victim might have been putting up a fight at the time of death.

To make such an assumption can only reflect a lack of experience of fire injuries. This change can, of course, take place whether the body is dead or alive, but in either case it must not be made a cause for suspicion".

13. Learned Senior Counsel would then cite Section 113-B of the Indian Evidence Act wherein the presumption as to dowry death is defined and it is relevant to extract the section:

"Presumption as to Dowry Death: When the question is whether a person has committed dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harrasment for; or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation: For the purpose of this Section "dowry death' shall have the same meaning as in Section 304B IPC.

14. Learned Senior Counsel would then cite three judgments reported in

- (i) 2004 SCC Criminal 1306 ()
- (ii) 1947 MWN CrI.45 (PULUKUIRI KOTTAYA AND OTHERS v. THE KING EMPEROR) and
- (iii) ((2001) MLJ (CrI.) 422);

in the first judgment cited above, it is held as follows:

"... one of the essential ingredients, amongst others, in both the provisions i.e. Sections 304-B (IPC) and 113-B (Evidence Act) is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry". There must be material to show that soon before her death, the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case, the aforesaid presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

15. In the Second Judgment cited above, the Honourable Privy Council has held:

" S.27 Evidence Act provides an exception to the prohibition imposed by the preceding section and enables certain statements made by a person in police custody to be proved. The condition necessary to bring

the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be depoted to and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. On normal principles of construction, the proviso to S.26 added by S.27 should not be held to nullify the substance of the section. It is fallacious to treat the fact discovered within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this; and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Any information which serves to connect the object discovered with the offence charged is not admissible under S.27. The difficulty however great of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification, for reading into S.27 something which is not there and admitting in evidence a confession barred by S.26. Except in cases in which the possession or concealment of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law."

16. In the third judgment cited by the learned senior counsel for the appellant, the honourable Apex Court has held:

"The postulates needed to establish an offence under Sec.304-B IPC are: (1) Death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading Sec.113-B of the Evidence Act, as a part of the said offence, the position is this: if the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances "the Court shall presume that such person

had caused dowry death". However, it is open to the accused to adduce such evidence for disproving the said compulsory presumption. If an accused was only asked to defend a charge under Sec.302 IPC and was alternatively convicted under Sec.304-B IPC without any notice to him, he is deprived of the opportunity to discharge the burden cast on him by law. In such a situation, if the trial Court finds that the prosecution has failed to make out the case under Sec.302 IPC, but the offence under Section 304-B IPC has been made out, the Court has to call upon the accused to enter on his defence in respect of the said offence. Without affording such an opportunity to the accused, the conviction under Sec.304-B, IPC would lead to real and serious miscarriage of justice."

17. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State would submit that both the accused and the deceased Selvi had got married on their own accord, that is, without the consent of their parents which created some problems among herself and her in-laws; that soon after the receipt of information about the murder, that had happened at the residence of the in-laws of the deceased Selvi, the kith and kin had rushed to the spot where the accused/appellant and his parents were not available; P.W.5, the father of the deceased, P.W.6, her younger sister, P.Ws.7 and 8 some distant relatives of the deceased, are all residing in and around the area where the occurrence took place; that with regard to Dowry harassment, the witnesses P.Ws.5 to 8 adduced evidence about the prolonged torture meted out to the deceased by the accused and his parents; P.W.8 would submit that P.W.5, the father of the deceased borrowed a sum of Rs.10,000/- from him, specifically stating that the said sum was required for his son-in-law for constructing a house; that with regard to dowry harassment, the witnesses spoke about the prolonged torture by the accused and his parents. One month prior to the date of occurrence, the victim Selvi wrote a letter in Ex.P.6 to her father which itself discloses the fact and circumstances of the case regarding the conditions that prevailed at the residence of her husband and the dowry torture given to her.

18. In consideration of the facts pleaded, having regard to the materials made available on record and upon hearing learned counsel Senior Counsel for the appellant and the learned Additional Public Prosecutor contra, what this Court is able to assess from the whole affair connected to the case projected by the prosecution before the lower Court to the effect of charging not only the appellant herein who was the first accused before the Court of Principal Sessions Judge, Erode, but also two others who were none others than the parents of this appellant who were accused No.2 and 3 and they were charged under Section 498-A and Section 4 of the

Dowry Prohibition Act respectively and since the same did not come to be proved, they both were acquitted by the trial Court and only this appellant/A.1 came to be held guilty of the offences charged under Section 498-A, 302, 201 IPC and under Section 4 of the Dowry Prohibition Act and convicted and sentenced him respectively to undergo RI for three years, imprisonment for life; Rigorous Imprisonment for five years and Rigorous Imprisonment for six months and a fine of Rs.2000/- in default to undergo a further R.I. of two months further ordering the above sentences to run concurrently.

19. It is only challenging the above conviction and sentence ordered by the trial Court, the Court of Principal Sessions Judge, Erode as per its judgment dated 19.02.2002 made in S.C.No.145 of 2001, the appellant has come forward to prefer the above criminal appeal on such grounds that the trial Court below has failed to appreciate that the deceased and appellant married against the wishes of their parents and they lived separately and hence, the demand of dowry cannot be true; that the trial Judge failed to note from the evidence of P.W.5 that he paid Rs.30,000/- as dowry on two occasions being falsified by the evidence of P.W.6, that his father was heavily indebted; that Ex.P.6 was not signed by the deceased and there is no allegation that the appellant demanded dowry; that no neighbours were examined to ascertain the relationship between the deceased and the appellant which the lower Court has failed to note; that the circumstantial evidence relied on by the prosecution is not cogent but led to the conclusion that the appellant was not guilty; that the learned Judge erred in relying on the extra judicial confession of the appellant through P.W.12 without any independent corroboration in material particulars; that the learned Judge failed to note that there is an entrance on the western side of the kitchen and another kitchen to the hall and hence locking of the door of the kitchen has no significance; that only Vijayalatha a neighbour hearing the cry of the deceased went near the scene of occurrence immediately and she was examined; that the learned Judge failed to note that the medical evidence did not support the prosecution; that the appellant did not go away from the scene and was very much available at the inquest and in such event the arrest and conviction which led to the recovery of M.Os.10 to 12 cannot be believed.

20. Learned Senior counsel would then read the relevant portions of the evidence of P.W.5, the father of the deceased who would depose to the effect of marriage of the deceased with the first accused, the demand of dowry and the torture meted out by the second and third accused; and thereafter he got news through a third party that his daughter died of burn injuries and when he rushed up to the place of residence of the accused, it was locked with the iron chain and when he peeped through the windows, his daughter was seen dead with burn injuries; learned Senior counsel would then cite

the evidence of P.W.17 the Executive Magistrate who conducted the inquest in order to contradict the version of P.W.5 he would point from the inquest report showing the presence of, a kerosene can at the scene of occurrence, the capacity of which is 3 litres and it contained one litre kerosene; that nearby the deceased, there was a match box, on such arguments, learned Senior Counsel would point out that it is a clear case of suicide by self-immolation and not a murder by setting her on fire much less by the act of the appellant/A1, for which there is no evidence.

21. Per contra, the learned Additional Public Prosecutor would argue to the effect that it is a case of dowry harassment and torture resulting in the commission of the offence by the appellant in which the deceased is none other than his own wife; that the marriage took place according to their own wishes and understanding which was unliked by the appellant; that the inquest report Ex.P.17 speaks about the history of the case; that the conduct of the appellant was not at all good; that the evidence of P.Ws.5 to 8 have been taken into consideration by the trial Court; that P.W.5 is the father of the deceased, P.W.6 is the younger sister and P.Ws.7 and 8 are the neighbours of the deceased; that the learned counsel would read out from the evidence of these witnesses to show that all these witnesses would speak to the demand of dowry and torture meted out by all the accused.

22. In the wake of these evidence and further in consideration of the medical and police evidence made available, the trial Court has ultimately arrived at the conclusion to hold the appellant guilty of the offence further holding that the Accused Nos.2 and 3, the father and mother of the appellant not guilty thus convicting and sentencing the appellant in the manner extracted supra and acquitting A.2 and A.3.

23. In the above scenario, it has become necessary on the part of this Court to assess as to 'whether the convicting judgment rendered against the appellant punishing him in the manner the trial Court has done, as extracted supra, has been arrived at in the manner required under law or the lower Court has arrived at such conclusions so as to convict and sentence the appellant erroneously or in an unreasonable or arbitrary manner?'

24. On the part of the learned senior counsel appearing on behalf of the appellant/convict, he would quote from H.W.V.Cox Medical Jurisprudence and Toxicology, the tests to find out 'whether the burns were inflicted before or after the death' and Modi's Medical Jurisprudence and Toxicology giving the 'clinical features' at three stages (i) the stage of inspiratory dyspnoea; (ii) the stage of expiratory dyspnoea and (iii) the stage of exhaustion and respiratory failure. The learned senior counsel would also cite from the book 'Police: the investigation of violence' wherein also

the symptoms of suspicious injuries have been explained. At this juncture it is worth mentioning of the views of the Doctor who performed the Post Mortem on the dead body of the deceased Selvi, in his deposition and report giving the symptoms both external and internal as in the following manner which is direct to the point:

"Body of a moderately nourished female lies on its back with pugilistic aptitude. Tongue bitten. Mouth opened. No frothy discharge from nose and mouth. Extensive burns all over the body. Scalp: hair not burnt except a few hair on the forehead. Burnt area shows all are inflicted simultaneously. Skin dull white appearance. II & III burns present. Rt. sole skin completely detached and hanged outside.

Internal Injuries:

Thorax - No fracture ribs.

Heart chamber 220 gms. - empty.

Lung respondent. 320 gms. Lt. 300 gms. - congested.

Hyoid bone intact.

Liver 900 gms. - congested.

Stomach contains 500 gms. of undigested rice

Spleen 90 gms. - congested.

Bladder empty and Uterus 18-20 weeks size with dead male foetus seen.

Kidneys : each 120 gms. - congested.

Skull bone normal and pelvis normal

Larynx, Trachea & Bronchi.

No sooty particles

Trachea & Larynx congested.

Viscera preserved.

Death would have occurred about 24-28 hours prior to autopsy.

Opinion as to cause of death:

Reserved pending report of Chemical analysis on viscera."

25. So far as the Post Mortem Examination held on the part of P.W.2, the Medical Officer who attended on the body of the deceased, having given the external and internal symptoms noted by this Medical witness at the time of her post mortem examination and having sent the vital parts for chemical examination, she would offer her opinion to the effect that the deceased would appear to have died due to asphyxia; that the hyoid bone is intact; that the deceased would have died of suffocation which had not happened due to the burn injuries and that the burn injuries found on the body of the deceased were post-mortem injuries. Further, no poisonous substances were found in the viscera in the chemical analysis and therefore the lower Court has every reason to arrive at its conclusion holding that it was not a suicide by self-immolation

since it has been definitely held on the part of the medical findings that the death was not due to the burn injuries and the burn injuries found on the body of the deceased were post-mortem injuries and that the deceased had died of asphyxia.

26. The case of the prosecution is that all the three accused including the appellant were harassing the deceased by demand of dowry on various occasions even a month prior to the date of occurrence ultimately compelling her to bring Rs.50,000/= from her father and since the deceased did not bring the dowry amount demanded by the accused, the appellant, with the intention to commit murder of the deceased, had beaten her severely with force as a result of which the victim, who was pregnant by five months had fallen down at the kitchen, sustained hurt and started bleeding and died; that in order to screen the death of the victim, the appellant poured kerosene on her dead body and closing the door and locking it from outside lighted match stick and threw the same through the open window of the kitchen and set fire to the dead body of the victim and ran-off from the scene.

27. The medical witness who is an expert witness knowing the medical science having studied and practised in the field, not only on her findings at the time of post mortem examination but also from out of the findings of the chemical analysis report was definitely able to arrive at the conclusion confirming the case of the prosecution that the deceased did not die of self-immolation committing suicide but it was a death due to asphyxia and after the death, pouring the kerosene, the burnt injuries found on the body of the deceased and therefore they could not have been caused by the deceased and all the circumstances leading to the death to have been caused and then for the burn injuries which were found on the body of the deceased to occur, all the evidences suggest only the appellant to have committed the offence and in these circumstances, the trial Court was able to arrive at the conclusion to hold that it is the appellant/convict who committed the murder and the other acts of burning the body pouring kerosene and torching the same through the window standing from outside in order to make it appear that it was a suicide and hence would find him guilty under Sections 302 and 201 IPC and Section 4 of the Dowry Prohibition Act thus convicting and sentencing him to undergo the imprisonment and fine mentioned supra.

28. Yet another strong circumstance is the recovery of M.Os.10 to 12 under Ex.P.9, the admissible portion of the confession statement given by the appellant/accused particularly M.O.11 lungi with kerosene odour worn by the accused at the time that he performed the operation which have guided the lower Court in no smaller measure to consolidate the conclusions already arrived at pointing to the appellant that it is he who caused the death of the deceased by physical torture and causing the disappearance of the

evidence by burning the body of the deceased pouring kerosene after the death. Therefore, this Court is not able to find any patent error or perversity in approach or other serious infirmity or inconsistency not only in the conclusion arrived at by the Court of Sessions but also the manner in which the same has been arrived at to hold that the prosecution has proved its case beyond all reasonable doubts and to convict the accused under Sections 302 and 201 IPC and under Section 4 of the Dowry Prohibition Act and respectively sentencing him to undergo imprisonment for life, rigorous imprisonment for five years and to undergo rigorous imprisonment for six months and to pay a fine of Rs.2,000/= in default to undergo further period of two months rigorous imprisonment and the said conviction and sentence being quite legal and reasonable, this Court does not find any reason to cause its interference into the well considered and merited judgment of the trial Court and hence the following judgment:

In result,

(i) the above Criminal Appeal does not merit acceptance but becomes liable only to be dismissed and is dismissed accordingly.

(ii) The judgment dated 19.2.2002 rendered in S.C.No.145 of 2001 by the Court of Principal Sessions Judge, Erode is confirmed.

kvsg/Rao

Sd/
Asst.Registrar

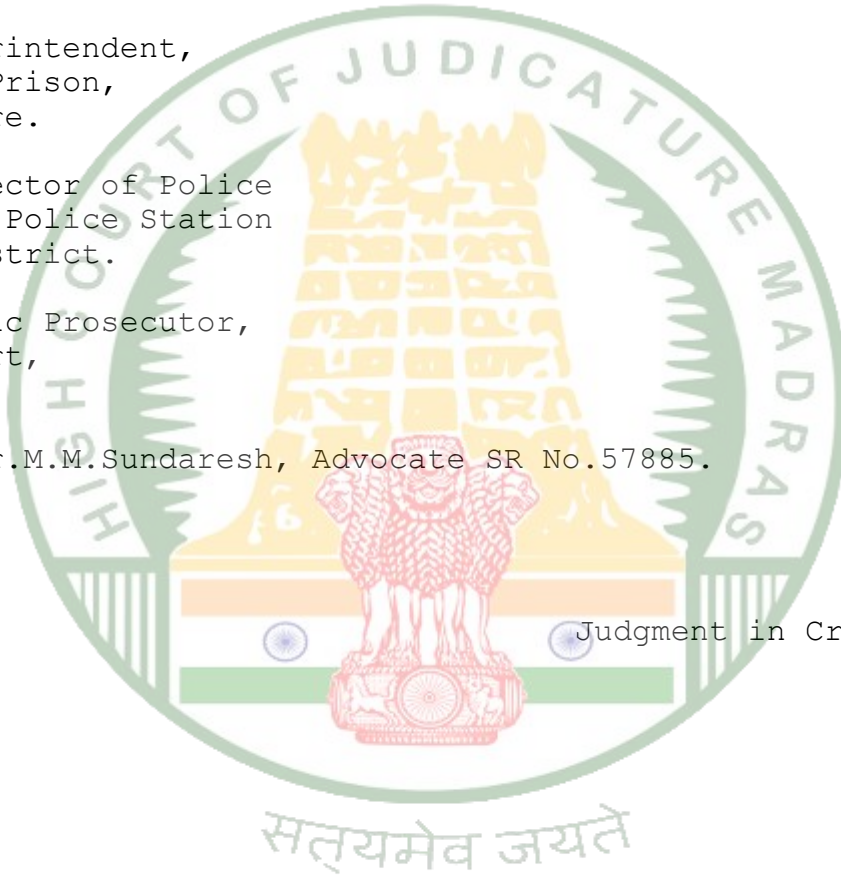
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सत्यमेव जयते
Sub Asst.Registrar

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To

1. The Principal Sessions Judge,
Erode.
 2. The District Collector,
Erode.
 3. The Director General of Police,
Chennai.
 4. The Superintendent,
Central Prison,
Coimbatore.
 5. The Inspector of Police
Alangiam Police Station
Erode District.
 6. The Public Prosecutor,
High Court,
Madras.
- + 1 CC to Mr.M.M.Sundaresh, Advocate SR No.57885.



Judgment in Cr1.A.427/2002.

28.12.2004.

RA (CO)
EJ

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