

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.1.2005

C O R A M :

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE A.KULASEKARAN

CRL.A.NO.885 of 1995

State rep. by Public Prosecutor
for Pondicherry.

... Appellant

-vs-

1. Masilamani
2. Malarkodi

... Respondents

PRAYER : Appeal against the judgment of the II Additional Sessions Judge, Pondicherry in S.C.No.45 of 1993 dated 10.4.1995.

For appellant :: Mr.A.Suriya Prakasam,
APP (Pondicherry)

For respondents :: Mr.V.Gopinath, S.C. for
Mr.S.Y.Masood

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY N.DHINAKAR, J.)

The State is the appellant. The appeal is against the acquittal of the respondents, who are arrayed as A.1 and A.2 in S.C.No.45 of 1993 before the learned II Additional Sessions Judge, Pondicherry. They were tried under Section 4 of the Dowry Prohibition Act read with Section 34, I.P.C. and Section 498-A read with Section 34, I.P.C. and also under Section 304-B read with Section 34, I.P.C. The allegation against respondents 1 and 2 is that both of them subjected the deceased Malarvizhi to cruelty by demanding dowry, as they asked for jewels and cash and on account of such demand for dowry, she committed suicide between 10 P.M. on 17.10.1992 and 5.00 A.M. on 18.10.1992. The learned trial Judge, on the recorded evidence both oral and documentary, held that the prosecution has not succeeded in establishing the charges against the respondents and, hence, acquitted them. The present appeal challenges the said acquittal.

2. Before we proceed to consider the appeal, we have to remind ourselves of the law laid down by the Supreme Court in various decisions. The law is that the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so.

3. The facts that are necessary to dispose of the appeal can be briefly summarised as follows:-

P.W.1 is the father of the deceased and P.W.2 is the mother of the deceased. The deceased is the wife of the first respondent and the second respondent is the sister-in-law of the first respondent, in that she is the co-sister of the deceased. The deceased was given in marriage to the first respondent on 05.9.1991 and at the time of marriage, she was given 16 sovereigns of gold, household articles including a cot worth Rs.10,000/-, a motor-cycle worth Rs.10,000/-, besides cash of Rs.20,000/-. They were living happily for some time and thereafter the first respondent wanted to sell the jewels of his wife and this fact was brought to the notice of the parents of the deceased by the deceased by writing letters to them. The deceased also wrote a letter two months prior to the date of incident to her parents requesting them to give her Rs.6,000/- so that the house which her husband is putting up could be completed. But her parents, P.Ws.1 and 2, refused to give her any money. The deceased also complained to P.W.3 that her husband, who is the first respondent in the appeal, and his sister-in-law, who is the second respondent, are in illicit relationship with each other and that she is not happy as they are ill-treating her. While the matter stood thus, on 18.10.1992, a wireless message was received by P.W.1 that his daughter is dead. Thereafter, he went to his daughter's house at Kalapet taking along with him his wife, P.W.2. On reaching the house of his daughter, he saw her daughter's body lying on a cot. In the meantime, the first respondent went to the police station and gave a complaint, Ex.P.9 to P.W.6, the Head Contable, Kalapet Police Station at 8.30 A.M on 18.10.1992. On the complaint, Ex.P.9, a case was registered in Crime No.101 of 1992 under section 174, Cr.P.C. Ex.P.10 is a copy of the printed first information report and investigation was taken up by P.W.7, the

Sub-Inspector of Police attached to Kalapet Police station. He went to the scene of occurrence accompanied by women police constables to assist him and also sent a requisition to P.W.5, Tahsildar to go over to the spot to conduct inquest. Accordingly, P.W.5 reached the scene of occurrence and conducted inquest in the presence of panchayatdars, during which the first respondent and P.Ws.2 and 3 were examined. Their statements were recorded. The inquest report is marked as Ex.P.8, which contains the opinion of the the panchayatdars that the deceased died by committing suicide on account of the first respondent not purchasing her a new saree and on account of his refusal to allow her to take up a job. After the inquest, a requisition was sent to the hospital along with the body for conducting autopsy.

4. On receipt of the requisition, P.W.4, the Junior Specialist attached to the Government General Hospital, Pondicherry, conducted autopsy and found the following injuries on the body of Malarvizhi :-

"tongue protruded, wearing green cotton saree, black petticoat, green coloured blouse, incomplete oblique ligature mark 17 cm x 1 cm present over right side and front of neck. On right side of neck, the ligature mark in 8 cm below mastoid prominence and over front of neck, the ligature mark is above thyroid cartilage and ends 7 cms below left mastoid prominence on left side of neck. On dissection over the ligature mark it is pale, parchment like and antemortem in nature".

The doctor issued Ex.P.5, the Post-mortem Certificate and gave his final opinion under Ex.P.7 opining that death was on account of asphyxia due to hanging.

5. P.W.7, in the meantime, altered the crime to one under Section 304-B, 498-A read with Section 341, I.P.C. and sent a requisition to the Sub-divisional Magistrate, Pondicherry requesting him to transfer all the relevant records to the Court of Judicial First Class Magistrate, Pondicherry. Further investigation in the crime was taken up by P.W.8, the Superintendent of Police.

6. P.W.8, on taking up investigation in the crime, on 02.11.1992 examined P.Ws.1 and 2. Ex.P.1, a letter written by the deceased was handed over to him by P.W.1. The same was seized. At about 2.00 P.M. on the same day, the respondents were produced and they were arrested. He conducted the house search of the first respondent and seized three pawn tickets, Ex.P.14 series, indicating the pledging of jewels. He also seized Ex.P.15, a notebook containing 15 written pages and Ex.P.16, a member card issued in favour of the first respondent by the Pondicherry Co-

operative Union Bank. They were seized under a mahazar Ex.P.17, the search list. On 11.11.1992, he examined P.W.2 and other witnesses. On that day, Ex.P.3 was handed over by P.W.2, which was seized under a mahazar Ex.P.4 in the presence of witnesses. On 12.11.1992, he examined P.W.3 and his statement was recorded. He gave a requisition to the Judicial First Class Magistrate, Pondicherry on 17.11.1992 to send Exs.P.1 and P.15 to the handwriting expert at Hyderabad. P.W.9, the handwriting expert, after examining the two documents, Exs.P.1 and P.15 and comparing them with the admitted signatures of the deceased, gave his opinion that they were written by one and the same person. Ex.P.19 is the report of the handwriting expert. On 03.3.1993, the investigation was taken up by the successor of P.W.8 after his transfer, and the final report was filed against the respondents on 19.4.1993.

7. The respondents were questioned under Section 313, Cr.P.C. on the incriminating circumstances appearing against them. They denied all the incriminating circumstances and marked Ex.D.1, the letter dated 22.5.1992 written by P.W.1 to the first respondent as well as to his daughter, who is the deceased.

8. Now we have to consider whether the reasons given by the trial Judge while acquitting the accused are justified and whether those reasons are so perverse for this Court to interfere with the acquittal. As we have already stated the law on the subject, this Court is expected to consider the evidence and if this Court finds that two views are possible one in favour of the respondent-accused and the other in favour of the prosecution and if the trial Court had taken the view in favour of the respondent-accused, then this court should not interfere with the order of acquittal.

9. The learned trial Judge acquitted the respondents on the ground that the witnesses who were examined during inquest by P.W.5 did not mention that the respondents were demanding dowry either from them directly or through their daughter and that they had come out with the present version for the first time in Court. We have perused the inquest report, Ex.P.8 containing the opinion expressed by the panchayatdars and it shows that the deceased Malarvizhi committed suicide on account of the first respondent not purchasing her a new saree and not allowing her to take a job. In the report it is nowhere mentioned that both the parents complained to Tahsildar that the first respondent was demanding dowry and subjecting her to cruelty. This could be seen from column 16 of the inquest report, Ex.P.8. Similarly when we perused Ex.P.15, the diary written by the deceased, which when compared with the admitted signatures and the handwriting of the deceased by P.W.9, it could be seen that the first respondent was only asking his wife to get back the jewels which were retained by her parents and that she was not happy with the conduct of her husband in taking drinks and further she was also unhappy because she was abused by her

husband calling her as 'a woman who could not conceive'. In the final portion of Ex.P.15, she has stated that on account of her unhappy life, the best way for her is to die. It does not show as to when she wrote the contents of Ex.P.15. A perusal of Ex.P.1, the letter written by the deceased to her mother, P.W.2 also shows that since the house which she and her husband are constructing could not be completed for want of funds, she needs a sum of Rs.2000/- and, therefore, they must give Rs.2000/- to them, so that the construction of the house could be completed. Before concluding the letter, she has stated that she is living happily with her husband. Though she has stated in one paragraph of the letter that her husband is a short-tempered person, she has stated that she is living happily with her husband. A perusal of the entire letter, Ex.P.1 clearly indicates that the deceased was in dire need of a sum of Rs.2000/- to complete the construction of the house and, hence, wrote a letter to her mother seeking her help. It is, therefore, clear that neither Ex.P.1 written by the deceased to her mother, P.W.2 nor Ex.P.15, which was written by the deceased in a diary, shows that there was a demand of dowry either by the first respondent or by the second respondent. The learned trial Judge also took into consideration the evidence of P.W.1 and came to the conclusion that though P.W.1 had given evidence in Court that a sum of Rs.5,000/- was demanded by the first respondent and, therefore, the deceased wrote a letter, he did not say so, when he was examined and his statement was recorded under Section 161, Cr.P.C. and that the prosecution also did not produce the letter alleged to have been written by the deceased to P.W.1. The learned trial Judge also found that the deceased when found without any jewels by P.W.1 and on being questioned by him he was informed by her that she has pledged the jewels in order to construct a house and that she also wanted from P.W.1 a further sum of Rs.6000/-, which made P.W.1 angry who refused to give any amount to the deceased. The evidence of P.W.2 was also rejected by the trial Court on the ground that though in her evidence she has stated that she gave 17 sovereigns of gold besides cash and household articles and the first respondent was asking for the balance four sovereigns, she did not mention anything about the demand of four sovereigns by the first respondent in her statement recorded under section 161, Cr.P.C. and that both P.Ws.1 and 2 have been developing the case from stage to stage in order to bring the respondents within the ambit of Section 304-B, I.P.C. The learned trial Judge also adverted to the evidence of P.W.2 and stated that though the deceased had written several letters, she did not mention in any of the letters that the first respondent or the second respondent has been demanding dowry and, therefore, their evidence cannot be taken on their face value. The learned trial Judge, relying upon the letter Ex.D.1, dated 22.5.1992 had come to the conclusion that the deceased who went to the house of her parents returned to her husband's house on 08.10.1992 and died on 17.10.1992 and there is no material as to what happened between 22.5.1992, the date on which Ex.D.1 was

written and 17.10.1992, the date on which she died. In the absence of any material as to what transpired between 22.5.1992 and 17.10.1992, the learned trial Judge considered that for the respondents to be found guilty under Section 304-B, I.P.C. the prosecution should establish that soon before her death, the deceased was subjected to cruelty and the prosecution not having succeeded in establishing that soon before her death she was subjected to cruelty, the prosecution has to fail. The Supreme Court, while considering the provisions of Section 304-B, I.P.C. held that there should be perceptible nexus between her death and harassment or cruelty inflicted on her and that it is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened 'soon before her death' and the said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression and the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasize the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. The Supreme Court went on to add that if the interval elapsed between the infliction of such harassment or cruelty and her death is wide, the Court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. In any event, the evidence which have been let in by the prosecution, which we have discussed above, show that for the first time, the witnesses in Court have stated that there was a demand of dowry and had no case either before the Magistrate or during investigation stating that either the first respondent or the second respondent was demanding dowry and subjecting the deceased to cruelty.

10. On a perusal of the evidence recorded by the trial Court and the reasons given by the learned trial Judge, we find that it is not a case where this Court can interfere with the order of acquittal since the reasons given by the trial Judge are not perverse requiring interference. The appeal deserves to be dismissed and it is accordingly dismissed.

js

Sd/
Asst.Registrar

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Sub Asst.Registrar

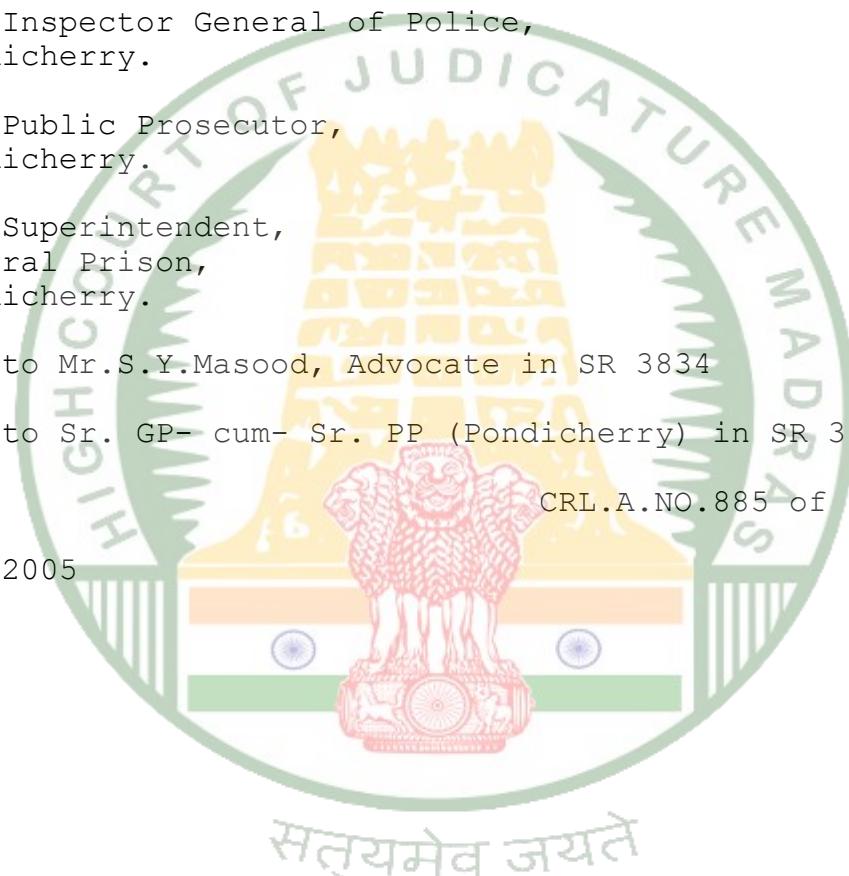
To

1. The II Additional Sessions Judge,
Pondicherry.
2. -do- through the Principal Sessions
Judge, Pondicherry.
3. The District Collector,
Pondicherry.
4. The Inspector General of Police,
Pondicherry.
5. The Public Prosecutor,
Pondicherry.
6. The Superintendent,
Central Prison,
Pondicherry.

+ 1 cc to Mr.S.Y.Masood, Advocate in SR 3834
+ 1 cc to Sr. GP- cum- Sr. PP (Pondicherry) in SR 3798.

KSJ(CO)
SR/9.2.2005

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