

ASOKAN

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v

STATE REPRESENTED BY PUBLIC PROSECUTOR, MADRAS

APRIL 5, 2000

[G.B. PATTANAİK AND SHIVARAJ V. PATIL, JJ.]

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Criminal Law :

Penal Code, 1860 :

Sections 302/34 and 201—Evidence—Appreciation of—Deceased died due to manual strangulation in her in-laws' house—A-2 called PWs 3 and 4 who saw the deceased lying down with injuries on her neck—Neither A-2 was present inside the house nor did PWs 3 and 4 state that A-2 had also participated along with A-1 and A-3 in strangulating the deceased—Held : In the circumstances of the case, trial court justified in giving benefit of doubt to A-2 and acquitting him of the offences under Ss. 302/34 and 201—High Court erred in interfering with the order of acquittal—Criminal Procedure Code, 1973, Ss. 176, 378 and 386.

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Sections 302/34 and 498-A—Dowry death—Evidence—Appreciation of—Non-mention of the name of accused in statement by witness—Effect of—Deceased died due to manual strangulation in her in-laws' house—Case against A-1 and A-3 fully established by evidence of PW-4—However, PW-3 in his statement to Tahsildar during his inquiry under S.176 Cr.P.C. did not mention the name of A-3—Held : Non-mention of the name of A-3 cannot be the sole basis for discarding the evidence of PW-3 in toto—In the circumstances of the case, conviction of A-1 and A-3 upheld.

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Section 498-A—Dowry death—Husband (A-4) of deceased convicted—Justification of—PW-2 deposed that the deceased had told him that her mother-in-law and A-4 were beating her for not getting a scooter—PW-7 stated that deceased had told him that A-4 had demanded a scooter and also scolded the deceased for not bringing a cot as dowry—PW 7 also stated that deceased had shown him the injuries and complained that A-4 had inflicted the injuries since he was not presented with a scooter—Held : In the circumstances of the case, conviction of A-4 under S.498-A justified.

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The appellants-accused were charged for offences under Sections

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A 302/34, 201 and 498-A of the Penal Code, 1860 and Section 4 of the Dowry Prohibition Act, 1961. However, the trial court convicted A-1 and A-3 only and sentenced them to undergo imprisonment for life. A-2 and A-4 were acquitted. On appeal, the High Court upheld the conviction of A-1 and A-3 and convicted A-2 under Sections 302/34 and 201 IPC. The High Court set aside the acquittal of A-4 and convicted him under Section 498-A IPC. Hence this appeal.

C According to the prosecution, A-4 was the husband of the deceased, A-1 and A-3 were the parents of A-4 and A-2 was his younger brother. On the fateful day all the accused persons in furtherance of their common intention committed murder of the deceased by manual strangulation and motive behind the strangulation was that the demand of dowry was not satisfied by the parents of the deceased. A-2 went upstairs of the same house to call PWs 3 and 4 and when they came down they saw the deceased lying dead with injuries on her neck.

D On behalf on the accused persons it was contended that PW-3 in his statement to the Tahsildar while he was holding an inquiry under Section 176 of the Criminal Procedure Code, 1973 had not mentioned the name of A-3 and, therefore, the evidence of PW-3 should be entirely discarded.

E Allowing the appeal of A-2 and dismissing the appeals of A-1, A-3 and A-4, this Court

F HELD : 1. There is no prosecution evidence that A-2 was present inside the house when the deceased was strangled nor the evidence of PWs 3 and 4 establishes in any manner that A-2 along with A-1 and A-3 had participated in causing strangulation of the deceased. Therefore, the Session Judge was right in giving the benefit of doubt to A-2. The acquittal of A-2 was fully justified and the same could not have been interfered with by the High Court and that also in a perfunctory manner in which the High Court has re-appreciated the evidence. The conviction of A-2 under Sections 302/34 and 201 of the Penal Code, 1860 is set aside and A-2 is acquitted of all the charges. [956-F; 957-D-F]

H 2. At the outset, it must be stated that Tahsildar in fact was required to hold the inquest, since the investigation had entertained suspicion about the cause of death of the deceased and in that connection was holding an inquiry under Section 176 of the Criminal Procedure

Code, 1973. Non-mentioning of the name of A-3 by PW-3 cannot be the sole basis for discarding the evidence of PW-3 in toto. That apart, PW-4 has fully established the prosecution case so far as A-2 and A-3 are concerned. [957-B-C]

3. PW-1 had categorically stated that the deceased had told him that her husband and mother-in-law are beating her for not getting a scooter. PW-7 had stated that the deceased had told her that A-4 had demanded a scooter and had scolded the deceased for not bringing a cot as dowry. PW-7 had also deposed that the deceased had shown her the injuries and complained that A-4 had inflicted the injuries since he was not presented with a scooter. The Sessions Judge had lost sight of the aforesaid material evidence on record. Therefore, the High Court was fully justified in interfering with the order of acquittal and convicting A-4 under Section 498-A IPC. [958-B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 597 of 1992.

From the Judgment and Order dated 3.8.92 of the Madras High Court in CrI.A. No. 800 of 1989.

with

Criminal Appeal No. 568 of 1992

From the Judgment and Order dated 3.8.92 of the Madras High Court in CrI.R.C. No. 246 of 1987.

and

Criminal Appeal No. 256 of 1994.

From the Judgment and Order dated 28.7.86 of the Madras High Court in CrI.A. No. 729 of 1986.

N. Natarajan, V.G. Pragasam, V. Balachandran, S. Aravindh, Senthil Jagadeesan, K.V. Ventataraman, K.V. Viswanathan, V. Krishnamurthy and V. Ramasubramanian for the appearing parties.

The Judgment of the Court was delivered by

PATTANAİK, J. These three appeals arise out of one Sessions Trial,

A wherein the four accused persons viz. Rajammal Accused No. 1, Balasubramaniam Accused No. 2, Murugesan accused No. 3 and Asokan Accused No. 4 stood charged for different offences. Accused Nos. 1 to 3, Rajammal, Balasubramaniam and Murugesan were charged under Sections 302/34 IPC, 498A IPC and 201 IPC. Accused Nos. 1 and 3 stood further charged under Section 4 of the Dowry Prohibition Act and Accused No. 4 was charged under Section 498A IPC alone. Prosecution case in nutshell is that

B Accused No. 4 Asokan is the husband of deceased Porkodi and they were married on 24th of March, 1985. A1 and A3 are the parents of Asokan and A2 is his younger brother. It was alleged that on 18.6.1985 at 10 A.M. in furtherance of their common intention, they committed murder of deceased

C Porkodi by manual strangulation and the motive behind the strangulation was that the demand of dowry was not satisfied by the parents of the deceased. It was also alleged that the deceased had been subjected to cruelty and harassment by making unlawful demand and further after causing the murder of the deceased Porkodi, the accused persons attempted to cause disappearance of the evidence by setting up a case that Porkodi had committed suicide. The

D defence is one of denial. Prosecution examined several persons to establish the charges against the accused persons. PWs 3 and 4 are the two witnesses, who were residing upstairs of the house, where the accused persons were residing and the incident itself occurred. According to the evidence of PWs 3 and 4 at 10.30 A.M., on the date of occurrence the noise of deceased

E Porkodi was heard and soon thereafter accused Balasubramaniam (A2) came upstairs and wanted them to come down since his mother wanted so. When they went downstairs, they found accused Rajammal, Balasubramaniam and Murugesan were in the room, next to the hall and Porkodi was lying on the ground with the face upward and there were injuries on her neck. While

F Rajammal, initially told that her daughter-in-law had committed suicide by hanging but on being further questioned, the accused persons told that they had committed mistake unknowingly but if any people ask PWs 3 and 4, then they should tell that she has committed suicide by hanging and they were pleading to save them. Soon thereafter, PW4 left the house for office. PW14, who is the neighbour, also heard the death news of Porkodi and came out of

G his house, when Balasubramaniam conveyed him that she died on account of heart attack. In the meanwhile, PW11 had come to the house of the accused to meet Murugesan, but he found the house to be locked from inside and when he knocked the door, it is the Balasubramaniam, who opened it. A1 Rajammal was also standing near him and Murugesan asked PW11 to come

H after two or three days. Asokan was working in Ashok Leyland Workshop

and was not available in the house and he was only informed by Murugesan about the death of Porkodi. He, therefore, left the factory and came back to his house. Balasubramaniam in the meanwhile came to the house of PW7 and told him that Porkodi had a heart attack and her condition was serious. On getting such information, PWs 1, 2 and 7 left for the house of the deceased and found Porkodi lying dead. They also found contusions on both sides of her neck and when PW1 asked the accused persons as to what had happened, the reply was that Porkodi had committed suicide by hanging. PW1 however entertained some doubt as to the cause of death and, therefore, went to Tiruvottiyur Police Station along with PW2 and lodged a report, which was recorded by the Sub Inspector PW22 and the said Sub Inspector registered a case of suspicious death. The Police Officer then sent information to the Tahsildar and then left for the scene of occurrence and on reaching the place of occurrence, prepared a sketch map and also made some seizure. The Tahsildar PW21, arrived at the place of occurrence at 4 p.m. and held inquest over the dead body and made some inquiry. In course of such inquiry, he examined PWs 2, 3 and 8 and then after making Inquest Report as per Exh. P.16, he sent the dead body for post mortem examination. PW22, thereafter made some seizure and then PW23 the Inspector of Police arrived at the scene of occurrence. He examined PWs 1 and 7, who were present. He also made some seizure. PW4 who had left for his house, soon after the occurrence, came back at 11.30 p.m. and the accused 1, 2 and 3 informed PW4 that they have informed Tahsildar about the fact that Porkodi has committed suicide by hanging. Doctor PW5, who conducted the post mortem examination, found two injuries and there was no evidence of any ligature mark around the neck. He gave the opinion that the deceased died of asphyxia due to manual strangulation (throttling) and death must have been almost instantaneous. After receipt of the post mortem report, Exh. P4 and on completion of investigation, the Investigating Agency altered the case to one under Section 498A and 302 IPC. The materials during investigation having revealed that the death has occurred on account of non-payment of dowry, the District Registrar accorded sanction to prosecute the accused persons under Section 4 of the Dowry Prohibition Act, as per Exh. P.20. The Deputy Superintendent of Police, realising the seriousness of the crime, took up the investigation and re-examined many of the witnesses, already examined and finally charge-sheet was filed under Sections 302/34, 201, 498A of the IPC and Sec. 4 of the Dowry Prohibition Act.

The learned Sessions Judge, after a thorough scanning of the entire

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A evidence, came to hold that the prosecution has been able to establish the charges for the offences under Sections 302 read with 34 and 498A as well as Section 201 of the IPC and Section 4 of the Dowry Prohibition Act against the accused No. 1 Rajammal and Accused No. 3 Murugesan and sentenced them to life imprisonment under Section 302/34, R.I. for 6 months under B Section 4 of the Dowry Prohibition Act, R.I. for three years for the offence under Section 498A and three years' R.I. for the offence under Section 201 IPC with the further direction that the sentences would run con-currently. C Accused No. 2 Balasubramaniam, however was given benefit of doubt and was acquitted of all the charges. The only charge under Section 498A to A4 Asokan was held not to have been established and A4 was also acquitted accordingly. While the two convicted accused persons namely A1 and A3 D preferred appeals, assailing their conviction and sentence, the State also preferred an appeal against the order of acquittal of A2 and A4. The informant also had preferred a revision against the order of acquittal, recorded by the Sessions Judge as against A2 and A4 and all these appeals and the E revision were heard together and disposed of by a common Judgment of the High Court. The conviction of accused Nos. 1 and 3 was upheld and their appeal stood dismissed. The acquittal of Balasubramaniam A2 was set aside so far as the charges under Sections 302/34 and 201 is concerned and he was sentenced to imprisonment for life for the conviction under Section 302/34 and three years' R.I. for the offence under Section 201 IPC. The order of acquittal under Section 498A however was upheld, so far as accused A2 Balasubramaniam is concerned. So far as Accused A4 is concerned, the High Court set aside the order of acquittal and convicted him under Section 498A IPC and sentenced him to R.I. for three years' and thus all the four accused persons are in this Court in three different appeals.

F Mr. Natarajan, the learned senior counsel, appearing for the appellants contended that the High Court committed serious error in interfering with the order of acquittal recorded by the Sessions Judge, so far as Accused Nos. 2 and Accused No. 4 are concerned inasmuch as the sound and convincing reasons given by the learned Sessions Judge in acquitting them have not been G adverted to and this has vitiated the impugned order of conviction. According to Mr. Natarajan, there is no evidence of cruelty and harassment, so far as husband Asokan is concerned, and therefore, his conviction is wholly unwarranted in law. The learned counsel further contended so far as the conviction of A1 and A3 are concerned, though the High Court affirmed the same, yet H in view of the earlier statement of the witnesses before the Tahsildar, accused

No. 3 undoubtedly, deserves separate consideration and it must be held that the subsequent version is an exaggerated version by roping in accused No.3 also, and consequently the conviction of accused No. 3 is liable to be interfered with. The learned counsel also further urged that the delayed examination of the witnesses by the Police affect their substantive evidence in Court and the entire case must be viewed with suspicion. The learned counsel also contended that an undue interest has been shown by CB.C.I.D. and it is only thereafter, witnesses have made improvement in their version and prosecution case must fail on that score.

The learned counsel appearing for the respondent, on the other hand contended that the High Court in its Appellate Jurisdiction, while dealing with an appeal at the instance of the convicted accused persons as well as an appeal at the instance of the Government against the order of acquittal of two of the accused persons having scrutinized and re-appreciated the entire evidence and having recorded its conclusion that the accused persons are guilty of different offences, there has been no error in the matter of exercising jurisdiction nor has there been any error in appreciation of the evidence and, therefore, the impugned judgment remains un-assailable and cannot be interfered with.

Since two of the accused persons were acquitted by the Sessions Judge and their acquittal was set aside by the High Court, we thought it appropriate to re-examine the evidence on record to find out whether there has been any miscarriage of justice by erroneous appreciation of evidence by the High Court. In this context, it may be stated that in view of the provisions contained in Section 176 of the Code of Criminal Procedure and the Investigating Officer, entertaining reasonable suspicion as to the cause of death of deceased Porkodi, having intimated the Executive Magistrate, as required under Section 174 of the Code of Criminal Procedure, the Tahsildar who was duly empowered, held an inquiry against the cause of death and while holding such inquiry had also recorded the evidence of witnesses, including PW3, which statement of PW3 has been exhibited as Exh. D1. Coming to the question as to whether High Court was justified in interfering with the order of acquittal of accused No. 2, it may be noticed, the role ascribed by the two star witnesses PWs 3 and 4 to the accused No. 2 is that it is he, who went upstairs, called them downstairs and it is he, who opened the door when PWs 3 and 4 knocked the door. The learned Sessions Judge examined the evidence pertaining to the demand of dowry and came to the conclusion that there has not been an iota of evidence that A2 demanded dowry at any time directly or indirectly

A nor is their any evidence that he ill treated the deceased at any point of time. The only evidence of ill treatment established by the prosecution through the evidence of PW7 is that when deceased had given coffee to Balasubramaniam once, he threw it at her and such act would not amount to cruelty or harassment. So far as charge under Section 302/34 is concerned, the Sessions Judge found that evidence of PWs 3 and 4 is merely to the effect that they have seen accused No. 2 along with his parents and according to the learned Sessions Judge, that cannot be held to be establishing the charge of murder so far as accused No. 2 is concerned. The High Court however relying upon the evidence of PWs 3 and 4 came to the conclusion that since accused Nos. 1, 2 and 3 were present inside the house when the deceased was killed and accused No. 2 is not coming forward with any explanation as required under Section 106 of the Evidence Act, it must be held that all three of them had caused the murder of deceased Porkodi and, therefore all three of them must be convicted under Section 302/34 IPC. According to the High Court since Balasubramaniam accused No. 2 was present, who went upstairs and called PWs 3 and 4 to come down and it is he, who had given prevaricated version regarding the death of Porkodi, he cannot be absolved of his liability and there is no reason to hold that he did not participate in the crime. That the deceased Porkodi died of manual strangulation, is established through the evidence of doctor who had conducted the post mortem examination and that conclusion has not been assailed before us. Apart from the fact that the prosecution evidence does not establish anything further than the fact that the accused Balasubramaniam went and called PWs 3 and 4 and when they came down, they found that the deceased was lying dead, with injuries on her neck. There is no prosecution evidence that Balasubramaniam was present inside the house when the deceased was strangled nor the evidence of PWs 3 and 4 on whose evidence the prosecution relies upon to establish the charges of murder as against Balasubramaniam, establishes in any manner that Balasubramaniam participated in causing the strangulation of the deceased. In this view of the matter and having examined the reasons and grounds advanced by the Sessions Judge in acquitting Balasubramaniam of the charge under Section 302/34, we have no hesitation to come to the conclusion that the High Court was in error in interfering with the said order of acquittal. In our opinion, the charge of murder as against A2 Balasubramaniam cannot be said to have been established beyond reasonable doubt and therefore, Sessions Judge had rightly given him the benefit of doubt.

H So far as the two other accused persons are concerned viz. Accused

Nos. 1 and 3, the learned Sessions Judge convicted them of the said charges, essentially relying upon the evidence of PWs 3 and 4 and the High Court has affirmed the said conviction. But one important item of evidence which has been lost sight of, is the statement of PW3 made to the Tahsildar, while Tahsildar was holding an inquiry as required under Section 176 of the Code of Criminal Procedure and in the said statement the name of Accused No. 3 had not been mentioned. At the outset, it must be stated that Tahsildar in fact was required to hold the inquest, since the investigation had entertained suspicion about the cause of death of the deceased and in that connection, was holding an inquiry. Non-mentioning of the name of Accused No. 3 by PW3, in our opinion, cannot be the sole basis for discarding the evidence of PW3 in toto. That apart, PW4 has fully established the prosecution case, so far as accused Nos. 1 and 3 are concerned and we see no infirmity with the impugned Judgment of the High Court, affirming the conviction of accused Nos. 1 and 3 of the charge under Section 302/34 IPC. So far as the charge under Section 201 is concerned, as regards Accused No. 2, we also entirely agree with the submission made by Mr. Natarajan that the order of acquittal recorded by the learned Sessions Judge has been erroneously interfered with by the High Court without proper discussion of evidence on record and without discussions on the reasons advanced by the Sessions Judge in giving benefit of doubt. In our view the acquittal of accused No. 2 Balasubramaniam recorded by the Sessions Judge on the evidence on record was fully justified and the same could not have been interfered with by the High Court and that also in a perfunctory manner in which the High Court has re-appreciated the evidence. We accordingly set aside the conviction of Accused No.2 Balasubramaniam of the charge under Sections 302/34 and 201 IPC and acquit him of all the charges. Needless to mention that order of acquittal, so far as Sec. 498A is concerned, the same has been upheld by the High Court in appeal.

So far as the order of acquittal of Asokan is concerned, the learned Sessions Judge considered materials against him in paragraph 13 of his Judgment and came to hold that excepting the evidence of PW7 that Porkodi had told him that Asokan had demanded a scooter, there is no other evidence, establishing the demand of dowry by accused Asokan. PWs 3 and 4 have not in any way implicated Asokan with regard to demand of dowry and in the absence of any such evidence, on the oral statement of PW7 that Porkodi had told him about the so called demand of Asokan about the scooter, the Sessions Judge has acquitted him of the charge under Section 498A IPC, which was the

- A only charge against him. We have also examined the evidence of PWs 3, 4 and 7. The High Court however interfered with the same on the evidence of PWs 3 and 4 to the effect that it was a regular feature of the house where in-laws would be finding fault with the deceased for not bringing adequate dowry. Further, the High Court has relied upon the evidence of PW2, who
- B categorically stated that Porkodi had told him that her husband and mother-in-law are beating her for not getting a scooter. The evidence of PW7 is also relied upon, who had stated that Asokan has scolded his wife for not bringing a cot as dowry. The evidence of PW7 is to the effect that Porkodi had shown her the injuries and complained that accused No. 4 had inflicted the injuries on the ground that scooter had not been given to him as present. The learned
- C Sessions Judge had lost sight of the aforesaid material evidence on record. In our view, therefore, the High Court was fully justified in interfering with the order of acquittal and convicting the accused Asokan under Section 498A IPC. So far as conviction under Section 498A of Accused Nos. 1 and 3 are concerned, the evidence is rather clinching and both the Sessions Judge as well as the High Court have upheld the conviction and sentence and no
- D justified ground has been shown for our interference with the same.

In the net result, therefore, the appeal of accused No. 2 Balasubramaniam is allowed and he is acquitted of all the charges and be set at liberty forthwith. The appeals of other three accused persons against their conviction and

E sentences respectively fail and are dismissed.

V.S.S.

Appeals allowed/dismissed.