

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

CRL.A.No. 1319 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN SC 292/2010 of ADDL. DIST. COURT
(ADHOC)-II, KALPETTA DATED 27-04-2012, CRIME NO. 777/2010 OF S.BATTERY
POLICE STATION , WAYANAD)

APPELLANT(S) :

NABEESA, W/O. ITHALU,
FEMALE C.NO.72,
WOMEN'S PRISON, KANNUR.

BY ADV. SRI.G.SANTHOSH KUMAR (P).

RESPONDENT(S) :

STATE OF KERALA

R1 BY ADV. PUBLIC PROSECUTOR SMT.MG LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.Appeal. No. 1319 of 2014

Dated this the 11th day of November, 2015

JUDGMENT

The second accused, a 51 year old woman, who stands convicted in S.C.No.292/2010 of the Additional Sessions Judge (Adhoc)II, Kalpetta along with the first accused,her son, for offences punishable under Sections 304(B),306 read with Section 34 IPC, is the appellant herein.

2. According to the prosecution, the first accused had married one Sameena on 25/4/2010 according to the religious rites and thereafter have been living together along with the second accused in their house. It was alleged that at the time of marriage, she was offered a dowry of Rupees one and half lakhs and ten sovereigns. Alleging that only one lakh rupees was paid and that there was a further payment of Rs.50,000/- to be made by the in-laws, both the accused physically and mentally harassed her at the matrimonial house. It was alleged that when the torture became unbearable, she left the matrimonial home on 6/9/2010. In the evening, the first

accused took her back to the matrimonial home and thereafter on the next day, while both the accused were sitting in the house of a neighbour, they found Sameena on flames rushing outside from the house. By the time, flames were doused, she had suffered extensive burn injuries. She was rushed to a nearby hospital, from where she was referred to the Medical College Hospital for expert management. Having sustained 99% burn injuries, she succumbed on 8/9/2010. FI statement was lodged on 8/9/2010 by PW1 which was registered by PW20. After the investigation, final report was laid for offences punishable under Sections 304(B) and 306 read with Section 34 IPC. Both the accused denied the charges, pleaded innocence and faced the trial. On the side of the prosecution, PWs 1 to PW21 were examined and Ext.P1 to P15 were marked. Mos 1 to 5 were identified. No defence evidence was adduced. Accused relied exclusively on the cross examination of the prosecution witnesses and Exts.D1 contradiction marked in the course of cross examination.

3. The court below, on an appreciation of the entire evidence, found both the accused guilty, convicted and sentenced the first accused to undergo SI for seven years each

for offence punishable under Sections 304(B) and 306 read with Section 34 IPC and to pay fine of Rs.25,000/- for offence punishable under Section 306 IPC with default sentence of two years simple imprisonment. The second accused was sentenced to undergo SI for ten years for offence punishable under Section 304(B) IPC and to suffer SI for seven years for offence punishable under Section 306 IPC. She was further imposed with a fine of Rs.50,000/- in default of which she was to undergo Si for two more years for offence under Section 306 IPC.

4. Aggrieved by the above conviction and sentence, the second accused alone has preferred this appeal from jail. Since she is not represented by a counsel of her own, Adv.Santhosh Kumar G. was appointed as the counsel on State brief. Learned counsel marshelled all available points in favour of the accused and effectively defended the appellant. Heard the learned Public Prosecutor Smt. M.G.Lisha also. Examined the records.

5. The marriage between the first accused and the deceased Sameena is not in dispute. This is proved by the evidence of PW9, who was the Secretary of the concerned Mahal. He marked Ext.P4, extract of the marriage register. Ext.P5 is the marriage certificate. PW10 was the person, who

solemnised the marriage. The evidence of both the witnesses indicate that the accused married Sameena on 25/4/2010 as per the religious rites.

6. Ext.P1 FI statement was laid by PW1 on 8/9/2010, whereupon PW20 registered Ext.P20 FIR. The eye witnesses have tendered evidence asserting that on 7/9/2010, an incident occurred in which Sameena sustained severe burn injuries. The version of PW1 as well as his wife PW15 indicates that while both the accused were at their home, they heard a loud noise and saw one person on flames rushing towards court yard. Flames were doused and they found that it was Sameena. She was rushed to the hospital. The fact that she sustained burn injuries on the relevant day is spoken by other witnesses who had either taken her to the hospital or seen at the hospital. It is not seriously disputed that Sameena has sustained severe burn injuries on 7/9/2010. Ext.P2 is the inquest report which also shows that said Sameena died of burn injuries. PW14 is the Professor of Forensic Science and the police Surgeon attached to the Medical College Hospital. He conducted autopsy on the body of Sameena and prepared Ext.P7 postmortem report. He had referred to severe burn injuries. According to him, the death

was due to burn injuries and its inhalation effects. Hence, the entire materials on record prove beyond any doubt that Sameena died of burn injuries which was sustained on her body on 7/9/2010 as alleged by the prosecution.

7. The specific allegation of the prosecution is that the accused have harassed Sameena during her life time, in furtherance of their demand for more dowry. The allegation was that the entire dowry, as agreed upon, was not paid and a sum of Rs.50,000/- remained to be paid. Demanding this, it is alleged that both the accused harassed her, physically and mentally.

8. The above specific allegation of the prosecution is sought to be established through the various witnesses. The crucial witnesses, who were relied on by the prosecution to establish the above allegation, were PW2, PW3, PW4, PW6, PW8, PW11 and PW15. Among them PW1 and PW15 are the husband and wife who were the immediate neighbours of the accused. It is admitted by both of them that the incident occurred while both the accused were at their residence. However, PW1 remained hostile and was cross examined in detail by the prosecution. PW1 had stated that on the relevant day, he and his wife were talking to the accused at their house. At that time, the incident

happened. He deposed that the quarrel and bickering in the house of the accused was stated to be the cause for the incident. Beyond this, PW1 did not support the prosecution allegation in any manner. He denied the allegations of physical and mental harassment and denied his statement given to the police as well as the statement given by him under Section 164 Cr.P.C. Though he admitted his signature in FIS, he stated that he had not gone to the police station and the contents of Ext.P1 were not read over to him. PW3 is the brother of deceased Sameena. He deposed that sister used to complain about the accused harassing her, for not bringing the balance amount of Rs.50,000/-. She was not given the food. On 6/9/2010 she called PW3 on telephone and informed about the harassment. PW3 further stated that, the victim had stated that if the harassment continued, she will have to commit suicide. Thereupon, PW3 is stated to have consoled her and called the first accused. The first accused replied that the second accused was responsible for the harassment and assured not to repeat it. PW3 further stated that on the next day Sameena sustained burn injuries and was taken to the Medical College Hospital, Kozhikode. He had gone there and met Sameena. She stated that they should not have

sent her to that house, since they were not giving her peace of mind. He deposed that the next day she died and death was due to dowry harassment.

9. PW4 was a neighbour of the accused. He stated that he had participated in the marriage. The in-laws had demanded a sum of Rs.1,50,000/- and ten sovereigns. She stated that she knew about the harassment. She deposed that the accused was not given food and was not even given bucket for carrying water for bathing. On the previous day, she had come to the house of PW4 stayed there and thereafter went to her own house. The first accused brought her back. At 11.a.m., she heard the accused quarreling with Sameena. Thereafter, they saw the first and the second accused going to the house of PW1. After some time, she heard the sound and found a body in flames. It was doused with water and the injured was taken to the hospital. The first and the second accused were standing near the house at the time of the incident. She reiterated that Sameena was harassed for not bringing Rs.50,000/- and hence, she set herself on fire. In the cross examination she asserted that she knew about the harassment.

10. PW6 was the aunt of the deceased. She deposed that

Sameena was offered one and half lakhs of rupees and ten sovereigns of gold. However, the family could not give the whole amount. On the previous day of the incident, she came to the house of PW6 and stated that she cannot live in the house of the in-laws and that she had been thrown out. She has stated that she was sent out for not bringing the balance amount of Rs.50,000/-. Sameena wanted to stay there during night. But the first accused came there, took her with an assurance not to repeat the incident. Subsequently, she got information that Sameena was taken to the hospital and later died in the hospital. She stated that injured had told her that the harassment had become unbearable and hence she set herself on fire. She reiterated that she was harassed for not bringing Rs.50,000/-.

11. PW7 was the auto rickshaw driver who took the injured to the hospital. PW6 had accompanied her. PW8 was a relative of the deceased who deposed that he had gone to the Medical College Hospital, met Sameena and she revealed that she did it herself, since the harassment became unbearable. PW11 is the brother of Sameena who deposed that the accused had demanded one and half Lakhs of rupees and ten sovereigns. He could pay only Rs.One Lakh and ten sovereigns. Sameena

used to complain that the accused had harassed her for the balance amount. He has further stated that he had gone to the Medical College Hospital and met her. At that time, Sameena told that she did it since the harassment became unbearable. PW15 was the wife of PW1. She stated that the accused used to quarrel with Sameena for not bringing Rs.50,000/-. Sameena used to take bucket from her house for bathing. On the previous day, she had come to her house and revealed about the harassment. On the day of the incident, she saw her in flames, which was doused. When asked about the reason for such an act, Sameena is stated to have revealed that she did it due to the problems that existed at the house. She further added that if she had not done that, the accused would have done it.

12. The defence set up by the accused was that they are totally innocent and had not harassed her. It was contended that she had a growth in her ovaries which was treated by the first accused and she might have committed suicide because of that desperation. It is true that the post mortem report revealed the existence of a cyst. However, there is absolutely nothing to show that Sameena was desperate due to that medical reason.

13. The prosecution heavily relied on the oral testimony of

the above witnesses to corroborate the dying declaration given by Sameena in the hospital. PW13 was the Judicial First Class Magistrate who recorded Ext.P6 dying declaration on 7/9/2010 at 4.50p.m. In Ext.P6, the doctor had certified about her ability to give statement. He had certified that patient was conscious and had sound mind. PW13 had deposed that he was satisfied that Sameena was conscious and was of sound mind. Doctor had certified in Ext.P6 that the patient, though had sustained 99% burns, was oriented. She had given a detailed dying declaration. She stated that she did it herself at the outside of the house of her husband. She poured kerosene on her and lighted herself. The mother-in-law had been harassing her, which became unbearable. She used to attempt to beat her, always pick up quarrel and even on the day of the incident there was a quarrel at about 10 a.m. She further stated that at that time, the first and the second accused had gone to the home of neighbour. The second accused had threatened to finish her, if she attempted to shift the house along with the first accused.

14. The evidence on record confirm that the incident happened on 7/9/2010 and Sameena died on 8/9/2010. FIS was laid on 8/9/2010. It gives the details of the incident and about the

specific allegation that she committed suicide due to the alleged harassment. The prosecution heavily relied on the oral testimony of PWs.3, 4, 6, 8, 11 & 15 to establish the case. Though PW1 turned hostile, he had admitted the laying of FIS statement and vaguely indicated that the cause for death was family bickering. Version of the witnesses PW3, 4, 6, 8, 11 and 15 are consistent and they specifically refer to the various instances of harassment. They also directly attributed to the unbearable instances of harassment as the cause for committing suicide. There is absolutely no major contradiction in the versions spoken by them. It is true that few of the witnesses have given minor embellished version and some parts of the version were hearsay, but on the substratum of the case to the extent of implicating the appellant, their version were consistent. The contradiction that have been brought out were only minor and not material. However, all the witnesses consistently deposed out that the cause of the incident was harassment meted out by the accused, specifically the second accused.

15. Ext.P6 dying declaration indicates that she has given consistent, cogent and categoric version in clear terms incriminating the second accused. She had even stated with

reference to the exact time when the accused had gone to the neighbour's house, the exact place where she committed act and the details of the incident. It clearly shows that she was capable of tendering dying declaration and which was beyond any shadow of doubt.

16. The evidences of the witnesses indicate that they got the information either directly from Sameena herself or had knowledge regarding certain instances. In spite of lengthy cross examination of the witnesses, no doubtful circumstances were brought out. Further Ext.P6 dying declaration is categoric, clear and there is nothing to doubt its veracity to the extent of incriminating the second accused in the allegation. The fact that, Sameena had left the home on one occasion due to unbearable nature of harassment, is spoken to by PWs 3,4 and 6. The dying declaration further indicates that even on the date of incident, there was a quarrel with the second accused. PWs 3, 6, 8, 11 and 15 have deposed that they have met the injured in the hospital and had individually received information from her that she committed the above act due to the mental and physical harassment. In the absence of anything to show that the witnesses had no specific reason to tell falsehood against the

accused, their version incriminating appellant herein is only to be relied. The evidence on record clearly shows that the prosecution has succeeded in proving that the conduct of the second accused amounted to an offence punishable under Section 304(B). I find no reason to take a different view and there is no merit in the appeal.

17. The learned counsel for the appellant contended that appellant is an old lady and a lenient view is liable to be taken. It is pertinent to note that though she is old, all the witnesses have uniformly stated that she is responsible for the whole incident. The specific allegations of the witnesses directly point to her complicity. Even the injured in her dying declaration has specifically spoken about the second accused alone. It is pertinent to note that the victim was around 20years at the time of her death. She has lived with her husband only for just four months. The greed of the second accused for money had led to the death of her daughter-in-law and has resulted in spoiling the life of her son, who is also undergoing imprisonment. In the above circumstances, the conviction imposed on him should have an element of deterrence also. However, the substantive sentence of ten years RI imposed on her coupled with a fine of

Rs.50,000/- with a default sentence of two years for offence punishable under Section 304(B) IPC and seven years imposed for offence proved under Section 306 IPC, appear to be slightly on the higher side. Considering her age, a substantive sentence of 8 years for offence punishable under Section 304(B) of the IPC while retaining all other sentences would serve the interest of justice.

In the result, the appeal is allowed in part. The substantive sentence for offence punishable under Section 304(B) of the IPC is reduced to 8 years. All other sentences are confirmed.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.