

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.149 of 2008
and Crl.M.P.No.8736 of 2016

Jeyavel

.. Appellant

Vs.

The State rep. by Inspector of Police,
Kambai Nallur Police Station,
Dharmapuri District.
Crime No.260 of 2004.

.. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 13.02.2008 passed in S.C.No.23 of 2005 on the file of the Additional Sessions-cum-Fast Track Court, Dharmapuri.

For appellant : Mr.C.Munusamy

For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 13.02.2008 passed in S.C.No.23 of 2005 on the file of the Additional Sessions-cum-Fast Track Court, Dharmapuri, in and by which, the appellant/accused was convicted and sentenced as tabulated hereunder :

Sl.No.	Conviction under Section	Sentence of imprisonment	fine
1	Section 498-A IPC	Two years rigorous imprisonment	Rs.1,000/- , in default, to undergo three months rigorous imprisonment
2	Section 4 of the Dowry Prohibition	one year rigorous	Rs.1,000/-, in default to undergo three months

Sl.No.	Conviction under Section	Sentence of imprisonment	fine
	Act	imprisonment	rigorous imprisonment

He was acquitted of the charge under Section 307 IPC. The trial Court ordered the sentences imposed on the accused to run consecutively.

2. The gist of the prosecution case leading to conviction of the appellant/accused is that the marriage between the appellant/accused and the de-facto complainant/P.W.1/Kamsala, held about two years prior to 01.08.2004, which is the date of occurrence and the marriage between them was a love marriage. After marriage, they lived peacefully for a period of one and half years. At the time of her (P.W.1) marriage with the appellant/accused, she was given about five sovereign of jewels by her parents. After one and half year, the appellant/accused started harassing her by demanding dowry and very often, he used to go to the house after consuming alcohol and beat her. On the date of occurrence, the appellant harassed P.W.1/de-facto complainant (wife) to get Rs.10,000/- from her parents, but P.W.1 refused to accede to the request of the appellant. Enraged over the same, the appellant poured hot gruel (porridge) on her by uttering "go and die" and if he kills her, nobody would question him. Since the hot gruel spilt all over the body, she raised an alarm and on hearing the alarm, P.W.8 Amsaa came there and removed the dress of P.W.1, trenched with the hot porridge and thereafter, P.W.8 intimated the same to the relative of P.W.1. Immediately, P.W.2, namely the brother of P.W.1, came there and P.W.3 (mother of P.W.1) also came to know about the occurrence. Immediately, P.W.1 was admitted in a private hospital, where P.W.4 Doctor, on seeing the blisters on her

body, gave first-aid to her and thereafter, she was sent to Dharmapuri Government Hospital. P.W.5 Doctor of Dharmapuri Government Hospital, admitted P.W.1/de-facto complainant as an in-patient and sent intimation to the jurisdictional Police. Ex.P-2 is the O.P. chit of the hospital. Ex.P-3 is the accident register issued by P.W.5. P.W.7 Head Constable, who received the intimation from the Government Hospital, proceeded to Government Hospital and recorded the statement of P.W.1/victim and handed over the same to P.W.9 Inspector of Police, who on receipt of the same, registered the case in Crime No.260 of 2004 for the offences under Sections 307 and 498-A IPC on 03.08.2004; thereafter, he proceeded to the place of occurrence at about 6.15 p.m., and prepared Ex.P-6 observation mahazar and recorded the statements of witnesses in that regard. He also drew Ex.P-7 rough sketch and recorded the statements of the witnesses. He arrested the accused on 04.08.2004 at about 3.30 p.m.; thereafter, he went to the place of occurrence and recovered the material objects, namely M.Os.1 and 2 (aluminium vessels). On 05.08.2004, he recorded the statements of the other witnesses. After completing all formalities/investigation, he filed charge-sheet against the appellant/accused for the offences under Sections 307 and 498-A IPC. The case was taken on file in S.C.No.23 of 2005 by the trial Court. During the course of trial, on the side of prosecution, P.Ws.1 to 9 were examined, Exs.P-1 to P-11 were marked and M.Os.1 and 2 were produced. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness nor marked any document. Upon hearing the submissions of either side and considering the oral

and documentary evidence available on record, the trial Court convicted and sentenced the appellant/accused as tabulated above. Challenging the said judgment of conviction and sentence, the appellant/accused has filed this appeal.

3. Learned counsel for the appellant/accused submitted that the trial Court disbelieved the evidence of P.W.1 that the appellant/accused poured the hot porridge on her, based on the evidence of P.W.4 Doctor who treated her in the private hospital, and who had also stated that when P.W.1 was brought for treatment, he was told that while she was cooking food, the hot porridge from cooking got sprinkled on her from the vessel, but curiously, P.W.5 Government Hospital Doctor stated in chief-examination that the accused told him that a known person poured hot porridge on her. Since there is contradiction of the version of P.W.4 Doctor and subsequently, in the evidence of P.W.5 Government Hospital Doctor, with regard to the nature of the injury sustained by P.W.1, the trial Court disbelieved the evidence of P.W.1 and thereby, acquitted the accused of the charge under Section 307 IPC, resultantly, he ought to have been acquitted of the charges under Sections 498-A IPC and Section 4 of the Dowry Prohibition Act. But the trial Court, by relying upon the evidence of P.Ws.2, 3 and 8, convicted the appellant under Section 498-A IPC and Section 4 of the Dowry Prohibition Act. Learned counsel further submitted that P.Ws.2 and 3 are related witnesses, namely, brother and father of the victim and P.W.8 is an independent witness who is not residing near the place of either the accused or P.W.1/de-facto complainant. No other independent witness except P.W.8, was examined. In such circumstances, the trial Court ought to have disbelieved the evidence of P.W.8,

but without doing so, the trial Court convicted the appellant by wrongly placing reliance on the evidence of P.Ws.1 to 3 and 8. Hence, he sought for setting aside the impugned judgment of conviction and sentence and prayed that the appellant/accused may be acquitted of the charges levelled against him.

4. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police, submitted that the prosecution has adduced cogent, convincing and clinching evidence to prove their case and in a case of this nature, mostly only the evidence of relatives will usually be available and the same will have to be believed, and therefore, merely for want of independent witness, the acquittal cannot be interfered with. Hence, he submitted that there is no infirmity in the impugned judgment of conviction and sentence passed by the trial Court and prayed to dismiss this appeal.

5. While keeping in mind the above submissions made on either side, I have anxiously considered the same and perused the materials available on record.

6. Though the charges were framed by the trial Court against the accused for the offences punishable under Sections 498-A and 307 IPC and also under Section 4 of the Dowry Prohibition Act, ultimately the appellant was acquitted of the charge under Section 307 IPC for the reason that when the injured-victim/P.W.1 was taken to hospital, she told P.W.4 Doctor that while she was cooking food, she sustained injury, but subsequently, at the time of chief-examination, P.W.5 Government Hospital Doctor adduced that he was informed that the victim's husband poured hot porridge on her. Since there is material

contradiction in the evidence of P.W.4 Doctor and P.W.5 Government Hospital Doctor, the trial Court rightly disbelieved the evidence of P.W.4 Doctor and thereby, acquitted the appellant of the charge under Section 307 IPC.

7. So far as the conviction imposed on the appellant in respect of the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, is concerned, it is seen that P.Ws.2, 3 and 8 have tendered evidence to the effect that harassment was meted out to her by the accused-husband. On a careful reading of the evidence of P.Ws.2 and 3, namely the related witnesses, I find that they have categorically stated in their evidence that the appellant/accused was harassing the victim demanding money from her parents. This evidence of P.Ws.2 and 3 is cogent and convincing and the same has also not been shattered in the cross-examination by the accused. P.W.8 has also stated in her evidence during cross-examination about the factum of demand of dowry by the appellant-husband. Therefore, in my considered opinion, the evidence of P.Ws.2 and 3 and 8 strongly corroborates with each other and their evidence having not been disturbed on cross-examination by the accused, I do not find any valid reason to disbelieve their evidence.

8. However, I am of the view that since almost 12 years have lapsed from the date of occurrence being 01.08.2004, this Court, taking into consideration the peculiar facts and circumstance of the case, while confirming the conviction under Section 498-A IPC, feels it appropriate to reduce the period of sentence from two years imprisonment imposed under Section 498-A IPC to one year imprisonment.

9. Thus, considering the oral and documentary evidence and also taking

into account all aspects of the matter, while taking a lenient view and while confirming the conviction imposed on the appellant/accused for both the offences, this Court modifies the period of sentences of imprisonment imposed on the appellant/accused for the offence under Section 498-A IPC, reduces the same from two years to one year and confirms the conviction and sentence imposed on the appellant/accused under Section 4 of the Dowry Prohibition Act and the above modified sentence shall run concurrently in respect of both the offences.

10. With the above modification in the period of sentence of imprisonment, the Criminal Appeal is partly allowed. In the above view taken by this Court, no orders are necessary to be passed in CrI.M.P.No.8736 of 2016, as the appellant/accused is in jail and he will have to undergo the remaining period of sentence, if any.

19.08.2016

Index : Yes / no

Internet: Yes / no

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Copy to

1. The Additional Sessions Judge/Fast Track Court, Dharmapuri.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, Kambai Nallur Police Station, Dharmapuri District.

(Crime No.260 of 2004).

4. The Record Keeper, Criminal Section, High Court, Madras.
5. The Superintendent, Central Prison, Vellore.

R.SUBBIAH,J

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