

Reserved on :13-06-2017

Pronounced on :28-06-2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.06.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Criminal Appeal No.876 of 2007

Sekar : Appellant/Accused

Vs.

State: Represented by
Inspector of Police
Ramanatham Police Station,
Cuddalore District.
(Cr.No.158 of 2006)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence imposed in Judgment dated 07.09.2007 made in S.C.No.46 of 2007 on the file of the Sessions Judge, Mahila Court, Cuddalore.

For Appellant : Mr.S.N. Arunkumar

For Respondent : Mr.E. Raja
Additional Public Prosecutor

JUDGMENT

The appeal is preferred against the conviction of the appellant

under Section 498(A) of I.P.C. and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months. by the learned Sessions Judge, Mahila Court, Cuddalore in S.C.No.46 of 2007 dated 07.09.2007. The detention period of the appellant was ordered to set off u/s.428 of Cr.P.C. Originally the accused was charged for the offences under Section 498(A) and 304(B) I.P.C. The learned trial Judge after analysing the entire facts and materials found guilty of the accused under Section 498(A) I.P.C. alone and acquitted him from the charges under Section 304(B) I.P.C.

2. The brief facts of the prosecution case is as follows:

2.(a) Deceased Umaselvi is the wife of the accused. The marriage was performed on 22.10.2001 at Viruthachalam. P.W.1 is the elder brother of deceased. P.W.2 is the mother of P.W.1 and deceased. P.W.3 is the elder sister of the deceased. P.W.4 is the aunt of the deceased. At the time of marriage, there was a demand of 20 sovereign jewels and seer properties. However, P.W.1 and P.W.2 given only 13 sovereigns and seer properties for Rs.30,000/-. After 1 ½ of years of marriage, the accused and the deceased shifted the residence to Thachoor. After that, the accused repeatedly demanded remaining 7 sovereigns as agreed by P.Ws.1 and 2 at time of marriage. In

pursuance of the demand, he repeatedly treated the deceased cruelly. The deceased then and there informed P.Ws.1 to 3 with regard to the cruelty happened to her. One such occasion, the accused demanded Rs.2 lakhs and the deceased informed P.W.1 and other family members. P.W.1 pacified the deceased that they will pay the amount later. At that time P.W.3 gave one sovereign to the deceased.

2.(b) Even after that, the deceased used to demand the remaining 7 sovereigns and Rs.2 lakhs. The deceased informed about the cruelty met out at the hands of the accused to P.W.1 and cried with him. 15 days prior to the death of the deceased, one of the uncles of P.W.1 Rajupillai died in the village. The deceased and the accused came to the village and attended the death ceremony. After the funeral, the accused left the deceased in a relative's house and said that unless she bring the remaining 7 sovereigns and Rs.2 lakhs cash, she will not return to the matrimonial home. Thereafter, P.W.1 consoled the deceased and sent to the accused's house. However, on the day when the deceased went to the accused house, he locked the house and went outside. Thereafter, the neighbors broke open the lock and allowed the deceased to enter the house. Thereafter, next day P.Ws.1 to 3 sent P.W.4 to the accused house. There also the accused in the presence of P.W.4 demanded jewels and money and abused the deceased. After two days, P.W.1 received message that

the deceased consumed poison. He immediately went to the accused house and found the dead body of the deceased.

2.(c) P.W.1 immediately lodged a complaint before the police. P.W.13 Inspector of Police received the complaint Ex.P.1 and registered the case under Section 174 Cr.P.C and forwarded F.I.R. Ex.P.8 to the R.D.O. with a request letter to conduct inquest, since the deceased died within 5 years of marriage and also forwarded a copy of F.I.R to the Deputy Superintendent of Police. P.W.11 R.D.O., after receipt of F.I.R., went to the village and conducted inquest over the dead body of the deceased and recorded statements of the witnesses. Inquest Report is Ex.P.5 and the Enquiry report of R.D.O. with statement of witnesses is Ex.P.6. Thereafter, R.D.O. sent the dead body to Thittakudi Government Hospital for autopsy. P.W.12 conducted autopsy over the dead body and found four burn injuries upon her right thigh and also three old injuries upon her left side and also below the navel. He issued Ex.P.7 Post Mortem Certificate. He sent Hyoid bone and Viscera of the deceased for chemical examination. P.W.10 Scientific Assistant of Forensic Laboratory examined the Viscera sent by the Government Hospital, Thittakudi and found that Organo-phosphorous substance was present in the stomach and intestine and issued Toxicology Report Ex.P.4. After receipt of the Toxicology Report Ex.P.4 with finding that

organophosphorous substance was found in her stomach and intestine, P.W.12 Doctor has given final opinion that the deceased died due to organophosphorous poisoning. He also opined that no fracture was found in the hyoid bone.

2.(d) P.W.5 and P.W.6 are the residents of the village. At the time of occurrence they seen the accused taking the deceased to hospital. P.W.9 doctor by profession. On 21.8.2006 when the deceased was brought to his hospital he examined the deceased and sent her to the Government Hospital after given first aid. P.W.14 Deputy Superintendent of Police after receipt of F.I.R. forwarded by P.W.13, went to the place of occurrence and prepared Observation Mahazar Ex.P.10 in the present of public and drawn rough sketch Ex.P.11 and also went to the accused house and prepared Exs.P.12 and 13, Observation Mahazar and Rough Sketch. He examined the witnesses and recorded their statements. He instructed P.W.13 to give requisition to the Court for sending the Viscera and Hyoid Bone for Chemical examination and arrested the accused on 27.8.2006. Then he altered the section from 174 (3) Cr.P.C. to 498(A) and 304(B) I.P.C. Section Alteration Report is Ex.P.14. Thereafter, he handed over the case file to P.W.15 Deputy Superintendent of Police who conducted further investigation. After the receipt of Forensic Laboratory Report he filed charge sheet against the accused under

Section 498(A) and 304(B) I.P.C. Based on the evidence and materials available on the record, the learned trial Judge convicted the accused under Section 498(A) and sentenced as stated above. The learned trial judge found not guilty of the accused under section 304(B) and acquitted him from the charge. Aggrieved over the conviction under Section 498(A) I.P.C., the accused challenged the same by way of this appeal. State has not filed any appeal for the acquittal of the accused under Section 304(B) I.P.C.

3. In order to establish the case, the prosecution examined P.Ws.1 to 15; marked Exs.P.1 to P.14. No material object marked. After the examination of prosecution witnesses, the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which he denied the complicity. Two witnesses (D.Ws.1 and 2) were examined on the side of the accused. He has no document on his side. The Trial Court, after analyzing the evidence on record, convicted the appellant/accused under section 498(A) I.P.C. and imposed sentence as stated above and acquitted from the charges under section 304(B) I.P.C. Challenging the conviction appellant/accused is before this Court by way of this appeal.

4. The learned counsel for the Appellant would contend that the

learned trial Judge did not believe the evidence of P.Ws.1 to 4 and rightly acquitted the accused from the charges under Section 304(B) I.P.C. and only based upon the burn injuries on the right thigh of the deceased, he has arrived at a conclusion that there was no proper explanation by the accused for the burn injuries and convicted him under section 498(A) I.P.C. The contention of the learned counsel for the appellant is that absolutely there was no evidence to prove the complicity of the crime u/s 498 (A) I.P.C. It is his further contention that P.Ws.1 to 4 are highly interested witnesses and the evidence of P.W.1 could not be believed because there was money dispute between P.W.1 and the accused, and in a land dispute, P.W.1 acted in favour of the other party. The learned counsel submitted that when the independent witnesses have clearly spoken that there was no cruelty by the accused on the deceased, the conviction of learned trial Judge is not proper. He further submitted that the prosecution has not proved the case beyond all reasonable doubts and he prayed for the acquittal of the accused. Further, the learned counsel also submitted that in the event, the court coming to the conclusion that the accused committed offence, leniency may be shown, since 2 children are living with the accused.

5. It is the contention of the learned Additional Public Prosecutor

that P.Ws.1 to 4 have clearly spoken about the demand of money and the cruelty caused on the deceased by the accused. He further submitted that there is abundant evidence available on record to show that the accused demanded jewels and cash and cruelly treated the deceased and caused physical injuries. The learned Additional Public Prosecutor further submitted that since the burn injuries on the thighs of the deceased were not properly explained by the accused as to how it had happened, the learned trial judge has rightly come to the conclusion and convicted the accused. The learned Additional Public Prosecutor also submitted that the conviction and sentence of the trial court does not require any interference and the appeal is liable to be dismissed.

6. In the light of the above submissions of both the learned counsel, now the point for consideration is whether the prosecution has established the charges framed under Section 498(A) against the accused beyond all reasonable doubt?"

7. The marriage between the deceased and accused was solemnised on 22.10.2001 which is not disputed. Similarly, it is not disputed that the deceased and the accused were living together for a period of 1 ½ years in different places. Thereafter they moved to the

village called Thachoor and it is also clearly established by the prosecution that the deceased died within the period of 5 years from the date of marriage and died due to consuming of poison. The Medical evidence, Post Mortem Report and Forensic Lab Report filed by the prosecution clearly show the fact that the deceased died due to consuming poison organophosphorous. In the light of the above facts brought before this Court, it has to be analysed whether the deceased was subjected to cruelty as charged by the prosecution.

8. P.W.1 is the brother of the deceased; P.W.2 is mother; P.W.3 is sister and P.W.4 is aunt of the deceased. In their evidence, they have clearly stated that at the time of marriage, there was demand of 20 sovereigns of jewels and seer amount. However, P.Ws.1 and 2 have given only 13 sovereigns and after 1 ½ years, when the accused shifted his residence to the village he demanded the balance 7 sovereigns and also demanded Rs.2 lakhs repeatedly from the deceased and treated her cruelly. The deceased used to contact P.Ws.1 to 3 and informed about the cruelty met out by her. On one occasion, the deceased cried with P.Ws.1 and 3 and thereafter, P.W.3 has given one sovereign. Thereafter also the accused demanded Rs.2 lakhs frequently. 15 days prior to the death of the deceased, when the accused and deceased came to the funeral of one Rajupillai, the

accused left the deceased in her parental home and said that unless she would get the remaining dowry cash, he would not take her back to his house. However, P.Ws.1 to 3 pacified the deceased and sent the deceased to the house of the accused. But, the accused locked the house and went outside and kept the deceased to stand outside the house. Thereafter, the neighbors broke open the lock and the deceased was allowed to go inside the house. The next day, P.W.4 went to the deceased house and at that time also the accused abused the deceased and demanded cash. The evidence of P.Ws.1 to 4 clearly established the fact that soon before her death, just 15 days prior to death, the deceased was subjected to cruelty and was left in the village. Even when she returned, the house was locked and the accused went away. These facts clearly established that there was continuous cruelty from the beginning of the marriage by demanding of dowry.

9.Considering the minor contradictions found in the statement of witness statement before the R.D.O., the accused was acquitted from the charges u/s 304(B) I.P.C. But, the State has not filed any appeal against the acquittal. It is to be noted that the evidence of P.Ws.1 to 4 clearly proved the fact that the accused cruelly treated the deceased from the beginning. Merely because P.Ws.1 to 4 are close relatives of the deceased, based on that fact alone, the genuineness of their

evidence cannot be ignored totally. Though the trial court has taken undue advantage of the injuries found on the deceased and come to the conclusion that the accused has not discharged its initial burden as per Section 106 of the Evidence Act, this court is of the view that the trial court has not properly appreciated the available evidence on record. On a perusal of the evidence of P.Ws.1 to 4, it is clear that they have spoken not only the demand of remaining dowry, but also the conduct of the accused in treating the deceased in such a manner, viz., leaving the deceased in her parental home and when the deceased went to accused house, he locked the house and went outside and made her to stand outside the house on the street itself is nothing but cruel conduct, which drove the deceased to commit suicide. Further the evidence of P.Ws.1 to 4 also clearly proves the fact that the accused in connection with the remaining dowry, has ill-treated the deceased from the very beginning. Their evidence clearly makes out the offence which falls within the ambit of 498(A) I.P.C. Therefore the trial court conclusion under Section 106 of Indian Evidence Act is not warranted.

10. Though independent witnesses have spoken about the happy relationship between the deceased and accused, that itself cannot be a ground to disbelieve the entire prosecution evidence. Only family members will know the problems which are happening

inside the family. It is natural for a women to tell the family members about the good or bad situation in her family life. Therefore, this Court is not in a position to discard the evidence of P.Ws.1 to 4. It is the case of the accused that P.W.1 owed Rs.2 lakhs cash to the accused and since he failed to pay the amount, there was a dispute between him and hence a false case has been lodged against him, whereas it is the evidence of D.W.1 and D.W.2 as if they have advanced some amount to the accused. Their evidence is totally contradictory to the case of the accused. Therefore the defence projected by the accused is highly doubtful in this case. The R.D.O. also conducted Inquest and Examined witnesses immediately after the death of the deceased. His evidence established that the deceased was subjected to cruelty in connection with the dowry. So, merely because of some minor contradictions with regard to demand of Rs.2 lakh for construction of the house as stated by the witnesses before the R.D.O., this court cannot disbelieve the entire prosecution case. The evidence of P.Ws.1 to 4 read together which makes it clear that the accused had demanded money from the deceased, as a result of which she was subjected to cruelty. Therefore, this Court does not find any infirmity in the findings of the court below to convict the accused under Section 498(A) I.P.C. Though the evidence adduced by the prosecution clearly proves that the deceased was subjected to be

cruelty in connection with dowry, the trial Court having taken into consideration the minor contradictions, acquitted the accused under Section 304(B) I.P.C.. The prosecution has not filed any appeal challenging the acquittal and satisfied with the conviction of accused under Section 498(A) I.P.C. Therefore this Court is of the view that three years imprisonment to the accused under Section 498(A) I.P.C. imposed by the learned trial judge does not warrant any interference.

11. As the learned counsel for the appellant during his argument prays this Court that some leniency to be shown, which cannot be considered in view of the fact that the accused was already shown the leniency by trial Court for acquitting him u/s 304(B) I.P.C. Hence the appeal is liable to be dismissed. The point is answered accordingly.

12. In fine, the Criminal Appeal is dismissed confirming the findings of the trial Court. The Trial Court is directed to issue warrant to commit the accused to prison to suffer the remaining portion of sentence. The disposal of the material objects shall be in accordance with the directions of the trial Court.

28.06.2017

Index : Yes / No
Internet : Yes

Speaking order/Non-speaking order
ggs

N. SATHISH KUMAR, J.

ggs

To

1. The Sessions Judge, Mahila Court, Cuddalore.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, Ramanatham Police Station,
Cuddalore District.

Pre-delivery Judgment in:
Crl. A.No.876 of 2007

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