

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Criminal Appeal No.1195 of 2003

1. Moorthy @ Eswaramoorthy
2. Palanisamy Asari
3. Rathinam @ Thangammal

... Appellants

- Vs -

State by Deputy Superintendent of Police
Paramathi Velur Taluk
(Crime No.31/2000)

... Respondent

Prayer : Appeal under Section 374 of Criminal Procedure Code against the judgment of the learned Additional Sessions Judge (Fast Track Court), Namakkal District in S.C.No.18 of 2003 by judgment dated 21.07.2003, convicting them under Section 498 IPC and sentencing them to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months.

For Appellants
For Respondents

:
:

No appearance
M/s.T.P.Savitha,
Government Advocate (Criminal Side)

J U D G M E N T

This appeal has been preferred by Accused No.1 to 3, challenging the conviction and sentence under Section 498A I.P.C. Originally there were four accused and A4 has been acquitted by the trial court under Section 304(b) and 498A of IPC and Section (4) of the Dowry Prohibition Act. Accused Nos.1 to 3, who are the husband, father-in-law and mother-in-law of the deceased, were found guilty under Section 498A IPC and each of them have been convicted and sentenced to undergo rigorous imprisonment for a period of two years,

to pay a fine of Rs.1000/- and in default, to undergo rigorous imprisonment for a period of six months. Challenging the said conviction and sentence, the Accused Nos.1 to 3 have preferred this appeal.

2. The deceased Kavitha is the wife of the first accused and daughter in law of second and third accused. The marriage between the deceased and the first accused took place on 16.02.1997. At the time of marriage, there was negotiation between both the parties and the parents of the deceased Kavitha agreed to give 20 sovereigns of gold, household articles and cash of Rs.10,000/-. The parents of Kavitha were not able to give the cash ie., Rs.10,000/-. However, they had looked after the delivery expenses of Kavitha (deceased). About three months prior to the death of Kavitha, she was in the house of her parents for her second delivery and the expenses were borne by the parents of the deceased Kavitha. At the time when A1 was in custody in connection with a theft case, the responsibility of maintaining the deceased and her children were taken care of only by the parents of the deceased. As the parents of Kavitha were not able to pay the sum of Rs.10,000/- , A1 started harassing the deceased. When the deceased returned to the matrimonial home along with the second child, A1 along with the other accused removed the saree of the deceased and threw it away. Aggrieved over the same, the deceased was driven to the extent of drowning herself in the well belonging to one Palanisamy, in respect of which the village administrative officer has preferred the complaint.

3. After the investigation, final report was filed alleging that A1 to A4 was responsible for the death of the deceased, and the final report was under Sections 304(b) and 498 IPC;

11 witnesses were examined, 14 documents were marked and 8 material objects were exhibited. Only one witness has been examined on the side of the defence. The defence witness stated that the accused were not guilty of tonsuring the head of the deceased; and it was the voluntary act on the part of the deceased during the tonsuring function, as she felt that the tonsure should be done for odd number of persons and she volunteered herself to make the number of persons to three.

4. With regard to the cause of death, the post mortem report states that the death was due to suffocation on account of drowning. So far as the RDO report is concerned, he would state that it was a case of demand for dowry and based on that further enquiry has been held by the police officials. The trial court has examined the case in proper perspective and has given a finding that the offence under Sections 304(b) has not been proved and offence under Section 498A has been proved.

5. The trial court has analysed the evidence given by the prosecution witnesses. The village administrative officer (P.W.1) has given evidence stating that on 03.02.2000, there was wordy quarrel between the accused and the deceased and thereafter the deceased was found missing; and that on 04.02.2000, her dead body was found in the well belonging to one Palanisami. PWs.2 and 3 are the parents of the deceased. They have given evidence that there was demand for dowry. Their case is that the death is only on account of demand for dowry. The stand of non examination of independent witness also cannot be taken in cases of this nature, as it is futile to rely on independent witness in matters relating to family disputes. So far as the demand of Rs.10,000/- is concerned, the trial court has given a

finding that after the marriage, for two deliveries, Kavitha has come to the house of the parents and on each occasion after the delivery, A1 had come to the house of his in-laws to take the deceased back to his home and therefore the demand for dowry has not been proved by the prosecution. With regard to the tonsure of the head of the deceased, P.W.1 the father of the deceased stated that on telephonic information that the accused have tonsured the head of the deceased, he went to the house of A1 and asked A1 regarding the same. A1 responded to him saying that Kavitha / the deceased should act only in accordance with the instructions of his parents / A2 and A3 and he would not interfere in the affairs. Thereafter, A1 is stated to have been in confinement with respect to the theft case for a period of three months. *About two days prior to Deepavali, Kavitha had been left at her matrimonial home by P.W.1 and at that time, A3 removed the saree of the deceased, placed the same over her head and poured water, and yelled at her saying that if she wants to go with her parents she can go back and only if she decides to leave her parents, she can come inside. Thereafter, the deceased told P.W.1 that whatever happens is her fate and went inside the matrimonial home.*

6. The trial court has given a finding that the acts of cruelty are not done publicly and hence the non examination of the neighbours of the accused will not save the accused from their acts of guilty. That apart, no daughter in law would prefer a complaint against her inlaws unless there is a real cruelty. Therefore, the trial court has come to the conclusion that there was physical as well as mental cruelty caused to the deceased by the accused 1 to 3, which is proved by both oral and documentary evidence.

7. Explaining the problem of examining independent witness in matrimonial matters, the Honourable Supreme Court has held that

" When harassment and cruelty is meted out to a woman within the four walls of the matrimonial home, it is difficult to get independent witnesses to depose about it. Only the inmates of the house and the relatives of the husband, who cause the cruelty, witness it. Their servants, being under their obligation, would never depose against them. Proverbially, neighbours are slippery witnesses. Moreover, witnesses have a tendency to stay away from courts. This is more so with neighbours. In bride burning cases who else will, therefore, depose about the misery of the deceased bride except her parents or her relatives? It is time we accept this reality. We, therefore, reject this submission."

8. With regard to the applicability of presumption under Section 113(b) of the Evidence Act, there is no discussion at all in the trial court judgment.

8.1. There is no appeal filed by the State, challenging the acquittal of the accused under Section 304(b) IPC and only the conviction of the Accused 1 to 3 under Section 498A IPC is under challenge. The trial court has believed the evidence of the parents of the deceased Kavitha considering the facts and circumstances, and has found that A1 to A3 are guilty of the offence under Section 498A IPC.

9. In *Shobha Rani vs Madhukar Reddi* reported in AIR 1988 AIR 121, the Supreme Court has held as follows.

" Explanation to Sec. 498 A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty."

10. Section 113B of the Indian Evidence Act, 1872 states that when the question is whether a person has committed the dowry death of a woman, and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. Section 304B of the IPC states that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

11. The Honourable Supreme Court in *Surinder Singh Vs. State of Haryana*, held as follows.

" The words 'soon before' appear in Section 113B of the Indian Evidence Act, 1872 and also in Section 304B of the IPC. For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words 'soon before' is, therefore, important. The question is how 'soon before'? This would obviously depend on facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for along time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death."

12. Pointing out these decisions, it is contended by the learned Additional Public Prosecutor that if Section 113B of Evidence Act is applied to the facts of this case, then, the offence under Section 304(b) would be made out and even assuming that the offence under

Section 304(b) is not made out, the lesser offence of Section 498A is certainly made out. As already pointed out, there is no appeal, challenging acquittal of the accused under Section 304(b). The evidence on record indicates that on two occasions, delivery expenses have been borne out by the parents of the deceased, even though it is customary to bear the expenses only once. When they are able to bear delivery expenses two times, the contention that they were not able to pay Rs.10,000/- is unbelievable. Therefore, it is clear that the dispute was not on account of demand for dowry, but it was on account of some other maladjustment. Immediately prior to the occurrence, the dispute has been with reference to the deceased Kavitha visiting her parents frequently. There was an express instruction that she should not visit her parents' house, and only then, she can be in the matrimonial home. The condition imposed that she should not visit her parents' house, but she would go only at the time of deliveries, would have certainly caused mental cruelty to the deceased. Coupled with this evidence, and the other part of evidence of parents of the deceased, even though do not establish dowry death, would establish the offence of cruelty, and thus, the deceased having been driven to the extent of committing suicide, the accused 1 to 3 are responsible for the offence under Section 498A IPC.

13. Accordingly, considering the facts and circumstances of the case, this court is of the view that the prosecution has successfully proved its case against the appellants under Section 498A IPC. The trial court has rightly held the appellants guilty of offences punishable under Sections 498A of the IPC. However, the occurrence had taken place in the year 2000. The accused 2 and 3 would have become senior citizens. Therefore, sentence already undergone by them would be sufficient towards answering the sentence under Section 498A

IPC. A1 shall serve out the remaining sentence. The bail bonds executed by A2 and A3 shall stand discharged. The bail bonds of A1 shall stand cancelled and trial court shall secure A1 to serve out the remaining sentence. The appeal is dismissed with the above modification.

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Index : Yes/No
Internet : Yes/No

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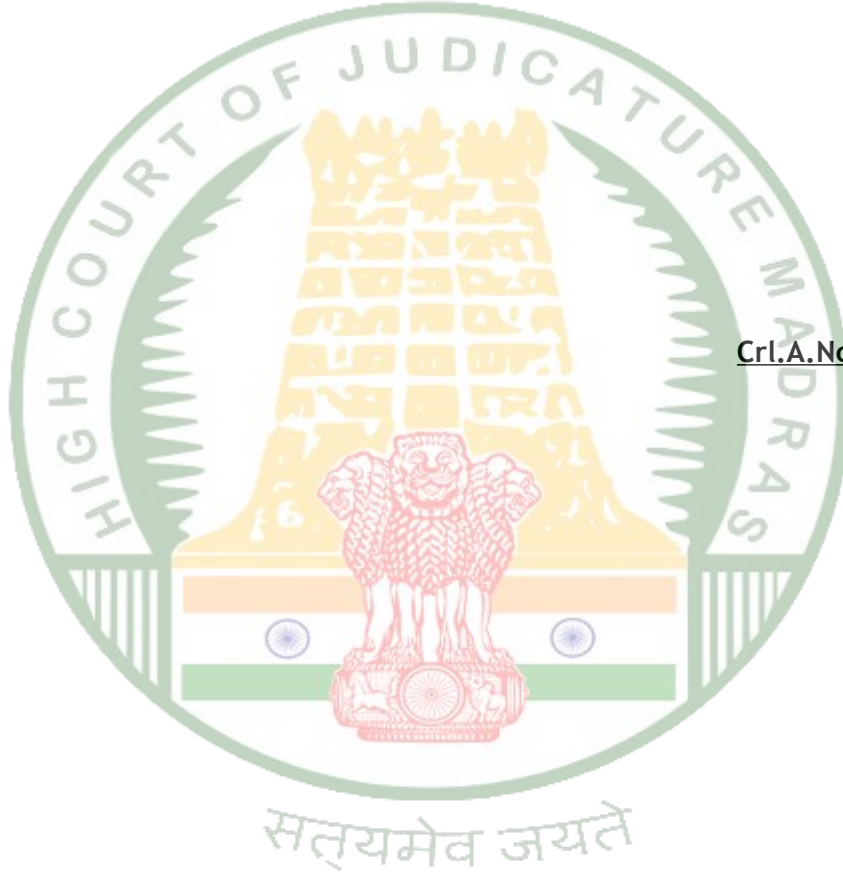
Deputy Superintendent of Police
Paramathi Velur Taluk
(Crime No.31/2000)



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DR.S.VIMALA, J.

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