

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2019

PRONOUNCED ON : 14.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.58 of 2012 and
M.P.No.1 of 2012

R.Palanisamy

..

Petitioner

Vs

The State of Tamil Nadu,
Rep. By the Inspector of Police,
Panamarathupatty Police Station.

..

Respondent

Prayer:- This Criminal Revision is filed under Section 397 r/w 401 Cr.P.C., against the conviction and sentence passed by the learned Additional District and Sessions Judge, Salem (Fast track Court, Salem) in C.A.No.32 of 2011 dated 21.11.2011 confirming the conviction and sentence passed by the learned Judicial Magistrate 1, Salem in C.C.No.213 of 2010 dated 09.03.2011, convicting the petitioner for the offence said to have been committed under Section 498A & 323 I.P.C., and sentenced to undergo 6 months simple imprisonment and a fine of Rs.500/- in default to undergo simple imprisonment for one month under Section 498A I.P.C., and simple

imprisonment for one month under Section 323 I.P.C., and reverse the same.

For Petitioner : Mr.A.Thiagarajan, Senior Counsel for
Mr.S.Ramesh Kumar

For Respondent : Mr.T.Shanmuga Rajeswaran,
Additional Public Prosecutor

ORDER

The first accused who is the husband of the defacto complainant, is the revision petitioner. The marriage between the petitioner and the defacto complainant was solemnized three months prior to the date of occurrence. First information report came to be registered by the respondent Police based on the complaint given by Nithya (the defacto complainant) alleging that she was subjected to cruelty demanding motor cycle and jewel by her husband. On 08.09.2010, her husband (first accused) and father-in-law (second accused) assaulted her with wooden stick for not getting dowry from her parents. They both abused her in a filthy language. The husband of the defacto complainant (first accused) tried to strangle her with his hand and by pressing his leg on her neck.

2.After investigation, a final report against the first accused - Palanisamy (husband) and the second accused - Rajkumar (father-in-law)

was laid for offences under sections 498A, 294(b), 324 and 506(ii) I.P.C., against the first accused and under Section 324 I.P.C., against the second accused.

3.Before the trial Court, Nithya, the defacto complainant was examined as P.W.1. Her mother (P.W.3) and father (P.W.4) had corroborated the evidence of P.W.1 regarding subsistence of marriage between the first accused and their daughter; dowry demand by the accused and visit to the hospital on hearing their daughter Nithya was admitted in the hospital for treatment. Murugesan (P.W.5) and Appavu (P.W.7) are the prosecution witnesses who have admitted Nithya (P.W.1) in the hospital. They have deposed that, Mani (P.W.2) informed that Nithya (P.W.1) was assaulted by the first accused. So, they went to P.W.2 house and took her to hospital. However, P.W.2 has not supported the above version. Hence, P.W.2 was treated as hostile witness.

4.P.W.6 – Murugesan has deposed that as Village leader, the parents of Nithya informed him that the first accused is harassing their daughter, demanding dowry. So, he and other elders in the Village enquired the first accused about it. On 08.09.2010, he and P.W. 2 saw the first accused assaulting P.W.1.

5.Dr.Nirmala (P.W.9), who treated Nithya (P.W.1) at Salem Government General Hospital had deposed that, P.W.1 was brought to the hospital by Appavu (P.W.7). On physical examination, she noted abrasions on the back and right wrist and a injury on her left earlobe. P.W.9 has issued certificate that, all the three injuries are simple in nature. The trial Court, based on the above evidence, held the first accused guilty of offence under Sections 498 A and 323 I.P.C., and acquitted the second accused of all the charges.

6.On appeal, the learned Additional District and Sessions Judge after re-appreciating the evidence and the grounds of appeal, had found no error in the trial Court judgment. Hence, confirmed the conviction and sentence imposed on the first accused.

7.In this revision petition, the learned Senior Counsel appearing for the appellant/first accused submitted that, the Courts below failed to consider the fact that P.W.2 - Mani who lives near the scene of occurrence has not supported the prosecution. He turned hostile to the prosecution case. The other witnesses are, P.Ws.3 to 7. They are interested witnesses and closely related to the defacto complainant. Further, they are not eye witness to the occurrence. Therefore, the conviction relying upon their evidence not corroborated by independent witness is liable to be set aside.

8.The prosecution evidence does not provide cogent and reliable material to hold the first accused demanded dowry or harassed his wife Nithya. The nature of injuries noted by the Doctor (P.W.9) does not tally with the version of P.W.1. The wooden stick alleged to have been used to cause injuries to P.W.1 not recovered. The injuries found on P.W.1 are not likely to be caused by wooden stick. Therefore, the falsity on the complaint is well found. The contradiction in F.I.R., and the evidence of P.W.9 is fatal to the prosecution. The learned Senior Counsel appearing for the revision petitioner also pointing out the delay in registering the F.I.R., sought for interference on the conviction.

9.Per contra, the learned Additional Public Prosecutor appearing for the State would submit that, the content of the complaint, deposition of the defacto complainant and the wound certificate of the defacto complainant substantially tally with each other. The non recovery of *corpus delicti* is not fatal to the prosecution. Since, the injured victim and the doctor who treated P.W.1 were testified before the Court. P.W.6 Village leader has corroborated the evidence of P.W.1, his evidence stands un-impeached in respect of dowry demand, cruelty and cause of injuries on P.W.1. Therefore, the learned Additional Public prosecutors submitted that the finding of the Courts below has to be upheld.

10. In revisional jurisdiction, the scope of the Court is very limited. The analysis of the materials placed before the Court and the submissions of the learned counsel for the revision petitioner does not reveal any illegality, perversity or error of law. Normally, crime arising in the course of matrimonial dispute will not be brought to public, unless, the crime is very grave in nature or, the victim of the crime decide to set the criminal law in motion at the cost of her cordiality with the spouse. In all such cases, there will be delay in giving complaint and registering F.I.R. This delay is natural and cannot be doubted, for the sake of doubt, unless, the delay is extraordinary and manipulation of facts seen apparently.

11. In this case, the occurrence has taken place on 08.09.2010 at 8.30 am. The victim was taken to the hospital on the same day at 8.20 pm and F.I.R., was registered on 09.09.2010 at 9.30 am, after recording the statement of the victim admitted in the hospital. The delay in F.I.R., is explained by the prosecution, the delay is not extraordinary nor it contains any manipulated facts.

12. The evidence of the parents and relatives of the defacto complainant cannot be brushed aside when they are the natural witnesses to

speaking about the strained relationship between the spouse and demand of dowry. Therefore, reliance on these witnesses by the Courts below is legal and correct. P.W.2 who turned hostile though not support the case of the prosecution, the evidence of the other witnesses like P.Ws.5,6 and 7 sufficient to prove the guilty of the accused. Therefore, the conviction of the petitioner for offences under Sections 498A and 323 I.P.C., needs to be confirmed.

13.Regarding the term of sentence, the learned Senior Counsel appearing for the revision petitioner would submit that the petitioner/first accused is sentenced to undergo 6 months rigorous imprisonment for the offence under Section 498 A I.P.C., and one month simple imprisonment for offence under Section 323 I.P.C., besides fine of Rs.500/-. He was arrested on the next day of the occurrence and later released on bail. Having paid the fine amount and suffered imprisonment for few days, the sentence of imprisonment may be reduced to the period of sentence already undergone.

14.The punishment for offence under section 498 A I.P.C., is for a term which may extend to three years and shall also be liable to fine. In this case, the Court has imposed six months rigorous imprisonment and fine of Rs.500/- . Considering the facts of the case and age of the petitioner, it will

be adequate if the sentence for offence under Section 498A I.P.C., alone is modified as 3 months rigorous imprisonment with fine of Rs.500/- and the sentence for offence under Section 323 I.P.C., left unchanged. The period of sentence shall run concurrently.

15. With the above modifications, the Criminal Revision Case is partly allowed. The trial Court shall secure the first accused/petitioner herein and commit him to prison to undergo the remaining period of sentence, if any.

jbm

Index: Yes/No
Speaking order/non speaking order

To

1. The Additional District and Sessions Judge,
Salem (Fast track Court, Salem).

2. The Judicial Magistrate 1,
Salem.

3. The Public Prosecutor,
High Court, Madras.

14.02.2019

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G.JAYACHANDRAN.J.,

jbm



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