

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRIMINAL APPEAL NO.54 OF 2018

P.Mohana @ Sarguna Mary

... Appellant

-Vs-

1.Balaji @ Paul

2.Kaveri @ Lidiya

3.Shanmugam

4.State by

Sub-Inspector of Police,
W-13 All Women Police Station,
Washermenpet,
Chennai-600 021.

... Respondents

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 29.08.2017 passed in Crl.A.No.37 of 2016 by the learned XVIII Additional Sessions Judge, Chennai, by setting aside the order dated 03.02.2016 made C.C.No.1556 of 2010 on the file of the learned III Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.P.T.Geotom

For Respondents : Mr.V.T.Narendiran for R1 to R3
Mr.R.Ravichandran
Govt.Advocate (Crl.Side) for R4

J U D G M E N T

This appeal arises against the judgment dated 29.08.2017 passed in Crl.A.No.37 of 2016 by the learned XVIII Additional Sessions Judge, Chennai, by setting aside the order dated 03.02.2016 made in C.C.No.1556 of 2010 on the file of the learned III Metropolitan Magistrate, George Town, Chennai.

2. The case of the prosecution is that the accused A1 to A3 demanded cot, bureau, washing machine, fridge, T.V and motorcycle as dowry from the appellant and her family. On the date of marriage, due to the delay in arriving the motorcycle at the marriage hall, the accused instead of conducting the

marriage between 4.30.p.m and 6.00 p.m postponed the marriage until the arrival of the dowry articles and only after receiving the articles, the marriage was held between 8.00 p.m to 9.00 p.m. Further after marriage, while the appellant was living together at the matrimonial house, the second respondent/A2 and the third respondent/A3 came there and ridiculed the appellant about the dowry articles and demanded further dowry of Rs.10,000/- and household articles as dowry and harassed her by preventing her from having marital relationship with her husband and they have also treated the appellant as a servant and chased out of her matrimonial home. Based on the complaint filed by the appellant, the fourth respondent police registered a case in Crime No.02 of 2009 against the respondents 1 to 3 herein for the offences under Sections 498A, 420, 313 IPC and Section 4 of Dowry Prohibition Act. After investigation, the fourth respondent police laid charge sheet against the accused informing the commission of offence under Section 498A IPC and Section 4 r/w 6 of The Dowry Prohibition Act, 1961 and the same was taken on file in C.C.No.1556 of 2010.

3. Before trial Court, prosecution examined PWs.1 to 9 and marked Exs.P1 to P3 and one Material Object. On the side of defence, DW1 was examined and 5 exhibits were marked. On appreciation of the oral and documentary evidence, the learned III Metropolitan Magistrate, George Town, Chennai, under judgement dated 03.02.2016, convicted the respondents 1 to 3/ A1 to A3 for offences under Sections 498A IPC and Section 4 of Dowry Prohibition Act, and sentenced them to undergo 6 months Rigorous imprisonment and fine of Rs.1,000/- each, in default one month Simple Imprisonment for the offence under Section 498-A IPC and one year Rigorous Imprisonment and fine of Rs.1,000/- each, in default, one month Simple Imprisonment each for the offence under Section 4 of Dowry Prohibition Act. There against, the accused preferred an appeal in Crl.A.No.37 of 2016 before the learned XVIII Additional Sessions Judge, Chennai. After hearing the arguments on either side, the learned Sessions Judge, under judgment dated 29.08.2017, acquitted the accused and set aside the order passed by the trial Court. As against the said judgment, the present appeal has been preferred by the complainant before this Court.

4. The learned counsel appearing for the appellant would submit that PW-1 is the victim. The marriage was solemnised between the appellant and the first respondent on 20.08.2007. At the time of engagement, no dowry or sridhana was demanded from the appellant/complainant. However, during the marriage, the respondents 2 and 3 demanded TV, Washing machine, cot, refrigerator, two wheeler etc. Since the complainant's family could not able to provide the articles on time, the respondents 2 and 3 have not performed the marriage at the time as

originally fixed by them. After reaching of the sridhana articles to the marriage hall, only the marriage was held between 8.00-9.00 p.m. Subsequent to the marriage, the respondents 1 to 3 caused cruelty by aborting the pregnancy and sent her to the parental home and demanded a sum of Rs.10,000/-. The respondents 1 to 3 have not allowed the appellant to watch TV and they have not allowed her to use washing machine. The learned Magistrate believed the evidence of PWs-1, 2, 3 and 5 and convicted the respondents 1 to 3 for the offence under Section 498-A IPC and Section 4 of the Dowry Prohibition Act and acquitted them for the offence under Section 6 of the Dowry Prohibition Act, since they have not denied the sridhana articles, against which, the respondents 1 to 3 filed the appeal. The learned Sessions Judge failed to consider the evidence of PWs-1 to 3 and 5 and acquitted the accused, which warrants interference.

5. The learned counsel appearing for the respondents 1 to 3 submitted that they have proved their defence and the prosecution admitted that they have not demanded dowry. During the engagement, though the respondents 1 to 3 have not insisted for any sridhana properties, the appellant's family have provided all the sridhana articles on their own volition. There is no demand and no cruelty on the side of the respondents 1 to 3. The learned Magistrate failed to consider the said fact, whereas, the learned Sessions Judge considering the same and set aside the judgment of conviction passed by the learned Magistrate and acquitted the accused. PWs-2 and 3/parents of the appellant also stated that no dowry was demanded by them. Since there is no evidence to show that the respondents 1 to 3/accused demanded dowry and harassed the appellant, the lower Appellate Court rightly set aside the judgment of the learned Magistrate, which does not warrant interference.

6. The learned Government Advocate (Cr1.Side) appearing for the fourth respondent would submit that the prosecution has proved its case beyond reasonable doubts. Though the learned Magistrate rightly appreciated the evidence and convicted the accused, the learned Sessions Judge set aside the said judgment.

7. Heard the learned counsel for the appellant, the learned counsel for the respondents 1 to 3 and the learned Government Advocate(Cr1.Side) appearing for the fourth respondent. Perused the materials on record.

8. The case of the prosecution is that the respondents 1 to 3 demanded dowry from the appellant and her family. On the date of marriage, due to the delay in arriving the motorcycle at the marriage hall, the accused postponed the marriage until the arrival of the dowry articles and only after receiving the same,

the marriage was held between 8.00 p.m to 9.00 p.m. Further, after marriage while the appellant and the first respondent/A1 were living together at the matrimonial house, the second respondent/A2 and the third respondent/A3 came there and ridiculed the appellant about the dowry articles and demanded further dowry of Rs.10,000/- and household articles and also harassed her by preventing her from having marital relationship with her husband and they have also treated the appellant as a servant and chased out of her matrimonial home.

9. On reading of the evidence of PW-1, she has clearly narrated that it is an arranged marriage and at that time of engagement, the respondents 1 to 3/accused have not demanded any dowry. After engagement, the respondents 2 and 3 demanded TV, Refrigerator, Washing Machine and two wheeler. The marriage was fixed on 20.08.2007 between 4.30 to 6.30. Since there was a delay in bringing the sridhana properties, the groom has not come to the marriage hall till the arrival of the dowry articles. The accused performed the marriage between 8.00 and 9.00.p.m only after receiving the said sridhana properties. PW-7-Assistant Paster also corroborated the same. PWs-2 and 3 have also admitted that at the time of engagement, the respondents 1 to 3/accused have not demanded any dowry. After engagement, the respondents 2 and 3 went to the parent's house of the appellant and demanded all those things, which are higher value. Due to some financial difficulties, the appellant's parents could not bring the articles on time. Hence, the groom's family have not come to the marriage hall. PW-7, who is the common man, has spoken that the marriage was fixed on 20.08.2007 between 4.30 to 6.30.p.m, but the groom's family did not come to the marriage hall because the sridhana properties did not reach the marriage hall. The evidence of all the witnesses and also the Church records show that the marriage was performed between 8.00 to 9.00 p.m only. The main defence taken by the accused is that the groom had gone for make up and therefore, there was a delay in arriving to the marriage hall. But the defence has not been substantiated by examining where he had done the make up. PW-7-Assistant Paster, whose name was also printed in the invitation card, has clearly spoken that the groom has not come to the marriage hall on time, for which, they have stated that the sridhana properties have not come. After verifying the sridhana articles, the respondents 1 to 3/accused have agreed to perform the marriage between 8.00 to 9.00 pm. PW-1 has clearly stated that the accused caused cruelty and harassed her. From the evidence of PWs-1, 2, 3, 6 and 7, it is seen that the prosecution has proved its case beyond reasonable doubts. Though the first respondent has taken the defence that he went for make up, which caused delay in reaching the marriage hall, the same was not established and also not acceptable.

10. The learned Magistrate rightly convicted the accused by giving sufficient reason for conviction, whereas, the reason given by the lower Appellate Court for setting aside the judgment of the learned Magistrate is not sound. The lower Appellate Court failed to consider the prosecution evidence.

11. This Court finds that the prosecution has proved its case beyond reasonable doubts for the offence under Section 498 A IPC and Section 4 of Dowry Prohibition Act. The defence taken by respondents 2 and 3 is that they are not residing with first respondent, whereas, the documents filed by them are not supporting the same. At the time of occurrence, they were also living with first respondent and caused cruelty to the defacto complainant. This Court finds that the respondents 1 to 3/accused have committed the offence under Section 498-A IPC and Section 4 of Dowry Prohibition Act.

12. Accordingly, this Criminal Appeal shall stand allowed. The judgment dated 29.08.2017 passed by the learned XVIII Additional Sessions Judge, Chennai, in Crl.A.37 of 2016, shall stand set aside. The order dated 03.02.2016 made in C.C.No.1566 of 2010 passed by the learned III Metropolitan Magistrate, George Town, Chennai, is restored. The learned Magistrate is directed to take effective steps to secure the respondents 1 to 3 to undergo remaining period of sentences, if any.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The XVIII Additional Sessions Judge,
Chennai.

2. The III Metropolitan Magistrate,
George Town, Chennai.

3. The Sub-Inspector of Police,
W-13 All Women Police Station,
Washermenpet,
Chennai-600 021.

4. The Public Prosecutor,
High Court, Madras -104.

+2cc to Mr.S.Sathia Chandran, Advocate, S.R.No.33090

Criminal Appeal No.54 of 2018

MP(CO)
CS/09/12/2019



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