

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2021

DELIVERED ON: 01.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRIMINAL APPEAL NO.601 OF 2014

AND

CRL.MP.NO.5788 OF 2020

1.Anandh @ Anandhan
2.Govindharaj

... Appellants

-Vs-

State by
Inspector of Police,
Needamangalam Police Station,
Tiruvarur District.
(Cr.No.285 of 2011)

... Respondent

Prayer:-

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, praying to set aside the judgment of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahalir Court), Tiruvarur, Tiruvarur District in S.C.No.54 of 2012 dated 29.10.2014 and acquit the accused/appellants herein from all the charges.

For Appellants : Mr.Swami Subramanian

For Respondent : Mr.Charles C.Premkumar
Government Advocate (Crl.Side)

J U D G M E N T

Assailing the conviction and sentence imposed in SC.No.54 of 2012 on the file of the Magalir Neethimandram [Fast Track Mahalir Court], Tiruvarur for the offence under Section 498A of IPC, the accused/appellants have filed this appeal.

2. The respondent police filed a final report against the appellants alleging that the marriage between the first appellant and the deceased Geetha was a kind of love cum

arranged marriage, which was solemnized on 06.04.2011. After marriage, the second appellant demanded 10 sovereigns gold jewels and motor cycle from the deceased. Unable to bear the repeated dowry demand and harassment, the deceased had gone to her parents house. On 01.08.2011, when the deceased came to the house of the accused to take her saree, she was told by the first appellant that if she did not bring 10 sovereigns of gold and motor cycle, the second appellant will scold and cursed her to die. Hurt by his words, the deceased had gone to her parents house, poured kerosene over her and set fire. As a consequence thereof, she suffered burn injuries and died on 10.08.2011. Therefore, the appellants were charged for the offence under Section 304B IPC.

3. During the trial, on the side of the prosecution PWs-1 to 20 were examined, Exs.P1 to P9 and M.O.1 were marked. No witness was examined on the side of the appellants and Ex.D1 was marked.

4. The case of the prosecution as seen from the evidence of prosecution witnesses, in brief, is as follows:

4.1. PWs-1 and 2 are the parents of the deceased Geetha, PW-3 is her brother. It is seen from the evidence that their residence and the residence of the appellants situate in the same street. The first appellant and the deceased were in love with each other. With the consent of both the families, their marriage was celebrated. After the marriage, the deceased informed them that the appellants demanded 10 sovereigns of gold jewels and motor cycle. Therefore she came to her parents' house. Then the first appellant asked the deceased to come and live with him, else he would consume poison and commit suicide. Then deceased had gone to her matrimonial home and lived there for some time. Again, the second appellant repeated the same demand. The first appellant also asked her to get 10 sovereigns of gold and motor cycle, else die. Therefore, the deceased self immolated her.

4.2. Immediately, thereafter PW-2 took her daughter to Mannargudi Government Hospital, where she was examined by PW-9 Doctor Govindaraj. PW-2 informed the doctor that the lamp accidentally fell on the saree of Geetha and the saree caught fire, resulting in burn injuries to Geetha. On examination, doctor found that Geetha suffered 80% burn injuries and she was conscious. He gave first aid treatment and sent her to Tanjore Medical College Hospital for further treatment. The accident register is Ex.P3.

4.3. PW-18 was working as Special Sub Inspector in Needamangalam Police Station on 01.08.2011. He received

intimation from Tanjore Medical College Hospital through wireless about the admission of Geetha with burn injuries. He visited the hospital at 5.00.p.m and recorded her statement (Ex.P7) and registered it in general dairy as 155/2011.

4.4. PW-14-the Judicial Magistrate received the intimation from the Tanjore Medical College Hospital for recording the dying declaration of Geetha at 5.40.p.m on 01.08.2011. Immediately, he proceeded to the hospital. After making preliminary enquiries and finding that the deponent Geetha was in a fit and conscious state of mind to give statement, he recorded her dying declaration and the dying declaration is Ex.P6.

4.5. PW-19 was the Sub Inspector of Police at the relevant point of time. He registered Ex.P8-First Information Report in Crime No.285 of 2011 under Section 498A r/w 116 IPC on 05.08.2011. He visited the scene of occurrence and recorded the statement of witnesses, prepared Ex.P9-rough sketch.

4.6. PW-20, the Deputy Superintendent of Police took charge of the investigation in this case on 11.08.2011, Geetha died on 10.08.2011 and therefore, the FIR was altered for the offence under Section 304B IPC and he sent the FIR to the Enquiry of Revenue Divisional Officer.

4.7. PW-13 was the Revenue Divisional Officer at Tanjore. On receiving the FIR at about 12.00 noon on 11.08.2011, he conducted the inquest in the presence of witnesses. The enquiry revealed that the deceased Geetha died of dowry harassment. His report is Ex.P5.

4.8. PW-10 was working as Assistant Surgeon in the Tanjore Medical College Hospital in Medico Legal department. As per the requisition of the Revenue Divisional Officer, he conducted the post mortem on the body of the deceased on 11.08.2011. On examination, he found that the deceased suffered 86% burn injuries and died of its consequences.

4.9. In continuation of the investigation, PW-20 recorded the statement of witnesses and after completing the investigation, he filed final report against the accused/appellants for the offence under Section 304B IPC.

4.10. After hearing the Public Prosecutor and accused, the learned Trial Judge found that the prosecution had failed to prove that the deceased was subjected to harassment and cruelty demanding dowry by the appellants soon before her death and therefore, found that the charge under Section 304B IPC was not proved. However, the learned Trial Judge found that the evidence

proved that the appellants committed cruelty against the deceased and they are liable to be convicted and punished under Section 498A IPC. Accordingly, the learned Trial Judge convicted the appellants for the offence under Section 498A IPC and sentenced them to undergo one and half year rigorous imprisonment and fine of Rs.1,000/-, in default, three months rigorous imprisonment. Against the said judgment, the appellants have filed this appeal.

5. The learned counsel for the appellants submitted that the prosecution has miserably failed to prove the allegation of the demand of dowry and cruelty on account of non payment of dowry. There are lot of material lapses, omissions and contradictions in the case of the prosecution and in the evidence of prosecution witnesses. There are different versions about the manner in which and the place where the deceased said to have self immolated herself. Though a cognizable offence was made out from the allegations stated in the complaint given on 01.08.2011, FIR was registered only on 05.08.2011 and it reached the Court only on 08.08.2011. The Revenue Divisional Officer has not independently recorded the statement of witnesses and he submitted his report without filling the necessary details. The Magistrate recorded the dying declaration with his own handwriting, but foot note certificate was computer print out. It creates suspicion in the genuineness of the dying declaration. Even in the dying declaration, there is no allegation of cruelty against the appellant. It is profoundly clear from the evidence of prosecution witnesses that the charge against the accused that they demanded dowry and committed cruelty was not proved. On the other hand, there are bundle of material contradictions in the evidence of material witnesses and material lapses entitling the accused to benefit of doubt. Without considering the aforesaid aspects, the learned Trial Judge wrongly convicted the appellants under Section 498A IPC. Therefore, he prays for setting aside the conviction and sentence against the appellants under Section 498A IPC and acquittal of the appellants/accused.

6. In response, the learned Government Advocate (Crl.Side) submitted that of course there is a delay in registering the FIR. However, the delay will not create any doubt in the case of the prosecution. The FIR was registered on the basis of the complaint given by the deceased. It clearly proved that the accused had demanded dowry and committed cruelty against the deceased. The learned Trial Judge rightly appreciated the evidence and convicted the appellants under Section 498A IPC. Therefore, he prays for confirming the judgment of the learned Trial Judge and dismissal of the appeal.

7. The point for consideration in this appeal is whether the conviction of the appellants under Section 489 of IPC and the sentence imposed thereon can be sustained?

8. There is no dispute with regard to the marriage between the first appellant and the deceased and that the residence of the appellants and the parental home of the deceased situate in the same street. It is the admitted case that the self immolation of the deceased happened on 01.08.2011. However, the FIR was registered only on 05.08.2011. It is seen from the Ex.P7-statement of the deceased, on the basis of which the FIR was registered that after the marriage, the second appellant tortured the deceased to get 10 sovereigns of gold and motor cycle and harassed her. Therefore, she came to her parents house. After some months, her husband came to her and told her that if she did not come back to his house, he would consume poison and commit suicide. Therefore, she went to her matrimonial home. Again, her father-in-law/second appellant repeated the demand and scolded her that neither she knows cooking nor she brings gold jewels. Angered at this, she came to her parental house. On 01.08.2011, she went to her matrimonial home and asked her husband/the first appellant as to how long they have to continue like this. For that, the first appellant asked her to die. Infuriated over this, she came to her house, poured kerosene over her and set fire.

9. The reading of Ex.P7 complaint shows that the allegations of demand of dowry was specifically made only against the second appellant. The next important document in this case is the Ex.P6-dying declaration and the same was recorded by the learned Judicial Magistrate on 01.08.2011 at about 6.00.p.m. After satisfying about the fitness of the deponent to give declaration, the learned Judicial Magistrate asked the deceased about the injuries found on her. She stated that she poured kerosene on her and set fire at her home for the reason that there was a dispute with her husband on Friday. She told that her uncle i.e., second appellant harassed her. She has not specifically stated what sort of harassment meted out to her by her uncle. There is no specific allegation of any kind of harassment against the second appellant in the dying declaration. The reading of evidence of PWs-1 to 3 shows that they said in unison that the appellants demanded 10 sovereigns of gold and motor cycle. However, as found in Ex.P7-complaint that there is no specific allegation against the first appellant with regard to the demand of dowry and in the dying declaration, there is no specific allegation of demand of dowry against the both the appellants.

10. It is pertinent to note here that PW-1 contradicts his evidence with regard to the place where the deceased set fire on

her. At one place, PW-1 stated that the deceased set fire to herself when she was at the house of the accused and later, he said that he gave a statement before the police that his daughter set fire to herself when she was at his house. PW-2 informed the doctor that her daughter suffered burn injuries when the lamp accidentally fell on saree and caught fire. She admitted saying so during her cross examination, but continued to say that since she was advised to say like that. Otherwise her daughter would not be given treatment and therefore, she said like that. PW-2 stated that she informed the Revenue Divisional Officer that the accused tried to pour kerosene over her daughter and set fire and her daughter plucked the match box and thrown in water and came to her house. PW-3 stated that the deceased brought kerosene from the house of the accused and set fire to herself. But the admitted case of the prosecution is that the deceased poured kerosene on her and set fire at the parental house. Therefore, it is clear that PWs-1 to 3 had given contradictory and false evidence with regard to the place where the deceased had poured kerosene on her and set fire. This false evidence, creates serious doubt and dented the case of the prosecution with regard to the charge of demand of dowry raised by the appellants.

11. PW-2 admitted that the first appellant told the deceased that if she did not come to live with him, he would consume poison and commit suicide. PW-3 also stated on similar lines. This evidence of PWs-2 and 3 shows that the first appellant was madly in love with the deceased and therefore, the allegation is that he also demanded 10 sovereigns of gold and motor cycle could not be true.

12. Something has to be said about the role of the official witnesses in this case. The learned Judicial Magistrate, who recorded the dying declaration in his handwriting, typed the certificate of dying declaration in a computer making it clear that the certificate was not given at the time of recording the statement and subsequently, annexed with the dying declaration. It is not the proper procedure. Certificate should also have been written in hand. It shows the lack of sensitivity and lackadaisical attitude of the learned Judicial Magistrate in recording the dying declaration. The inquest report-Ex.P5 shows that the Revenue Divisional Officer has not filled the necessary details in the annexure in column nos.1 to 16, which shows the non application of mind. This is a cognizable offence. PW-18 has not registered the FIR, but only taken the case as a petition enquiry. Apparently, there is a delay in registering the FIR and sending the FIR to the Court. FIR was sent to Court only on 08.08.2011. The cross examination of PW-19 shows that he admitted that the evidence of PW-2 is a exaggerated one and there is no mention about the demand of jewelery and dowry by

the first appellant in her statement.

13. The overall analysis of oral and documentary evidence in this case shows that the prosecution case, apart from unusual delay on the part of police to register the case, suffers from material contradictions in the evidences, which are not properly explained. When the Trial Court found that there was no evidence to prove that soon before the date of death, the deceased was subjected to harassment or cruelty and therefore, the accused/appellants cannot be convicted under Section 304B IPC, they can not also be convicted under Section 498A IPC for the same reason.

14. In this view of the matter, this Court finds that the conviction of the appellants under Section 498A IPC and sentence imposed on them are not legally correct and therefore, the conviction recorded under Section 498A IPC and the sentence imposed against the appellants are liable to be set aside.

15. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed against the appellants under Section 498A IPC are hereby set aside and the appellants/accused are acquitted from the charge. Fine amount, if any, paid shall be refunded. Bail bonds, if any, already executed shall stand cancelled.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kmi

To

The Sessions Judge,
Magalir Neethimandram,
(Fast Track Mahalir Court),
Tiruvarur, Tiruvarur District.

+1cc to Mr.Swami Subramanian, Advocate, S.R.No.21845

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JP-II(CO)
CS/01/07/2021