



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 7.12.2021

Delivered on : 22.12.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.573 of 2019

and

Crl.M.P.Nos.12743 of 2019

and

Crl.M.P.Nos.12696 of 2021

1. Thirupathi
2. Ramasamy
3. Palaniammal
4. Mayilathal
5. Rasathi

... Appellants /Accused 1 to 5

vs.

State by,
Deputy Superintendent of Police,
Perur Sub-Division,
Perur All Women Police Station,
Coimbatore District.
(Crime No.4 of 2012)

... Respondent /Complainant

Criminal Appeal filed under Section 374(2) of Criminal Code Procedure, to set aside the judgment of conviction passed in Sessions Case No.137 of 2014 dated 28.2.2019 on the file of the Mahalir Neethi Mandram (Mahila Court), Coimbatore and allowing the Appeal throughout by acquitting the Appellants.

For Appellants : Mr.B.M.Subash

For Respondent : Mr.S.Sugendran
Govt. Advocate (Crl.Side)

JUDGMENT

Challenging the judgment of conviction and sentence imposed by the Mahalir Neethi Mandram (Mahila Court), Coimbatore in Sessions Case No.137 of 2014 dated 28.2.2019, the present Criminal Appeal has been filed by the accused.



2. The case of the prosecution, as evinced from the prosecution witnesses and the complaint lodged by the de facto complainant is as under:-

(i) The marriage between her daughter and the accused, who is the son of the cousin of her husband was conducted on 27.8.2010 at Bishop Ambrose Marriage Hall, Pothanur in the presence of elders belonging to both the families. She had come to know that her daughter Gayathri was in love with A1 Thirupathi and that both the families joined together performed the marriage. After the marriage, her daughter was living at Kasthuribai Nagar, Chettipalayam in her husband's house alongwith her father-in-law and mother-in-law.

(ii) During January 2011, the accused had sent her daughter for money to arrange for a nuclear family and she had given some money at that time. Thereafter, they had sent their daughter during January 2012 asking for money to construct a house. PW1 had told her daughter that she would speak to her father.

(iii) Whiles, on 29.1.2012, at 4.30 pm, she had received an information that her daughter was lying dead in her home and that she had suspected that her delay in paying money would be the cause for the death. On the same day, at 11.55 pm, she had given a complaint, Ex.P1 to the respondent police.

(iv) Based on the complaint, PW21, Sub Inspector of Police, All Women Police Station, Perur registered a case in Crime No.4 of 2012 under Section 174 Cr.P.C. and prepared the First Information Report, Ex.P12 and forwarded copy of the FIR to PW16, the Revenue Divisional Officer, Coimbatore and another copy to PW22, the Deputy Inspector of Police/Investigating Officer and to other officials.

(v) On the same day, PW22, received the FIR and on the next day at 11.30 am, PW22 visited the scene of occurrence and prepared rough sketch Ex.P13 and observation mahazar Ex.P3 in the presence of witnesses Velliangiri and Ramachandran. On the same day, he had recovered M.O.1 nylon saree, which was hanging from the ceiling, M.O.2 Nokia black colour mobile phone and M.O.3 Airtel Sim Card under the recovery mahazar, Ex.P14. He had forwarded the same to the court under Form 95, Ex.P15. On the same day, after the inquest was conducted by PW16, he had enquired the witnesses PWs.1, 2, 4, 10 and 11. Thereafter, on 31.1.2012, he had altered the FIR to one under Section 498A and 306 IPC. He, thereafter, sent the alteration report, Ex.P16 to the court. On the same day at 11.30 am, he arrested all the accused near Coimbatore Medical College Hospital. The first accused, thereby had given a voluntary confession and it was recorded in the presence of PW19 and PW14. Thereafter, PW22 had gone to the scene of occurrence alongwith the accused and later took them to Pothanur All Women Police Station and after making entries in the police station, remanded the accused.

(vi) On 2.2.2012, PW22 had enquired P.Ws.3, and 5 and on



WEB COPY

5.2.2012, he had enquired P.Ws.2, 9 and 17. Thereafter, he gave a request to the court to send the M.Os. for chemical analysis. Thereafter, on 19.2.2012, he had enquired PW13 and PW6 and recorded their statement. On 25.2.2012, he received files in respect of Petition No.28 of 2011 from Pothanur All Woman Police Station and thereafter, on 10.3.2012, conducted enquiry in respect of the petition and recorded the statement of PW20, Sub Inspector of Police and PW18 and PW7. On 23.3.2012, he examined PW16, the Revenue Divisional Officer and PW12, Dr.Jayasingh, President of Medico Legal Department, Coimbatore Medical College Hospital and recorded their statement and received the post mortem report Ex.P7 and thereafter, on 25.3.2012, he examined PW21, Sub Inspector of Police, PW8, photographer and thereafter, on completing the investigation, filed the charge sheet against the accused for offence punishable under Section 498A and 306 IPC read with Section 109 IPC before Judicial Magistrate V, Coimbatore on 7.6.2012.

(vii) The final report was taken in P.R.C.No.204 of 2012. Summons were issued to the accused on their appearance. The learned Judicial Magistrate furnished copies of the relevant documents to the accused under Section 207 Cr.P.C. and finding that the offences alleged are exclusively triable by the court of Sessions, had committed the accused to the Principal Sessions, Coimbatore.

(viii) The case was taken on file in S.C.No.137 of 2014 and was made over to the Mahalir Neethimandram, Coimbatore for trial.

(ix) On appearance of the accused and after hearing both sides, finding that prima facie case is made out, the Trial Court had framed the charges against A1 to A3 for offence punishable under Sections 498A IPC and as against A4 and A5 and for offence punishable under Section 498A read with 109 IPC and as against all the accused for offence punishable under Section 306 IPC. The charges were read over and explained to the accused and when they were questioned, the accused pleaded not guilty and sought to be tried.

(x) In order to prove the case of the prosecution, the prosecution has examined P.Ws.1 to 22 and marked Exs.P1 to P16 and M.Os. 1 to 3. When the accused were questioned with regard to the incriminating circumstances against them under Section 313 Cr.P.C. they have denied the charges and when questioned, the accused had stated that they have got evidence in defence and on the side of the defence, the first examined himself as DW1 and one Dr.Mathumathi, Chief Medical Officer, Mathukkarai Government Hospital as DW2 and Dr.Kaleeswari, Medical Officer, Myleripalayam Primary Health Centre as DW3 and marked Exs.D1 to D3.

(xi) The Trial Court, after hearing the learned counsel for both sides, found A1 to A3 guilty for offence punishable under Section 498A IPC and A4 and A5 guilty for offence punishable



WEB COPY

under Section 498A read with 109 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for six months and acquitted the accused for offence punishable under Section 306 IPC. Aggrieved against the judgment of conviction and sentence, the Criminal Appeal has been filed by the accused.

3. The sum and substance of the submissions made by the learned counsel for the appellant is as under:-

(i) The Trial Court failed to take into consideration the exaggeration, contradictions and the embellishments in the evidence of the prosecution. Admittedly, the appellants and the family of the de facto complainant are relatives and the marriage was a love marriage with the concurrence of the members and elders of both families and there had been no demand of dowry at the time of marriage and after the marriage, the deceased and the first accused were living separately away from their in-laws. The victim was depressed for being unable to conceive and that the first appellant had been taking her for treatment for conception even as per the case of the prosecution. There was an earlier complaint dated 24.1.2011 on account of misunderstanding and difference of opinion within the family and thereby A1 and the victim had been living in a separate home and based on such complaint, enquiry was conducted and the victim herself had given a written reply Ex.P2 to All Women Police Station that there was difference of opinion between her and her husband and that her in-laws had agreed not to interfere in their problem and that she had also given an undertaking that she would not attempt to commit suicide in any circumstance. It would show that the victim was sensitive for even small things and difference of opinion within a family on everyday mundane matters.

(ii) The case of the prosecution is that the accused had demanded Rs.2,00,000/- for repairing a house and that he had made the victim to do the household chores. The allegation of demanding of Rs.2,00,000/- is vague and bald and it is only an improvement made during the trial and the same is not reflected in the RDO Report, Ex.P10 dated 30.1.2012.

(iii) Even assuming the case of the prosecution without admitting, taken to be true that the victim had informed her mother that the first accused had asked her to give Rs.2,00,000/- for repairing the house, the demand of Rs.2,00,000/- for repairing a house would not fall within the meaning of 'dowry' or unlawful demand.

(iv) The prosecution has failed to prove cruelty within the meaning of of explanation (a) and (b) of Section 498A IPC. The normal wear and tear in a family life is not sufficient to bring the charge of Section 498A IPC and isolated incidents of misunderstanding is not sufficient to establish the charge of Section 498A IPC. Further, excepting the interested witnesses,



no independent evidence has been let by the prosecution to prove the charges. When the prosecution has failed to establish prima facie case of cruelty, presumption cannot be drawn against the accused under Section 113-A of the Evidence Act.

(v) A perusal of the oral evidence of the parents of the deceased would indicate that only minor allegations are made against the first appellant and vague and cryptic allegations are made against the other accused with no specific allegation in respect of demand of dowry or harassment in any manner and in the absence of any definite evidence against the appellants, the Trial Court is not justified in convicting the appellants even for the offence punishable under Section 498A IPC.

(vi) The Trial Court, having found that the accused are not guilty for offence punishable under Section 306 IPC, has erred in finding the accused guilty for offence under Sections 498A and 498A read with Section 109 IPC. Admittedly, A4 and A5 are the sisters of A1 and they were married and living separately and none of the witnesses has made specific allegation against them for having abetted A1 to A3 to commit cruelty on the victim.

(vii) The appellants, by letting in evidence in defence, have proved that even few days prior to the occurrence, the first appellant had been taking the victim for treatment for conception and therefore, it is a case, where the victim had committed suicide on account of depression for not having able to conceive and not on account of cruelty, however, the Trial Court, without there being any legal evidence, had erred in convicting the accused.

4. In support of his contention the learned counsel for the appellants would rely on the following decisions:-

(i) Appasaheb and another vs. State of Maharashtra ((2007) 9 SCC 721)

(ii) Vipin Jaiswal vs. State of Andhra Pradesh ((2013) 3 SCC 684)

5. Per contra, Mr.S.Sugendran, learned Government Advocate (Criminal Side) would submit that it is a case where the victim had committed suicide in her matrimonial home within seven years of marriage and though the Trial Court had acquitted the accused for offence punishable under Section 306 IPC, there is ample evidence to prove that the accused had committed cruelty on the victim girl and that acquittal of charge under Section 306 IPC cannot be taken as a ground for acquittal under Section 498A IPC when the prosecution has brought in cogent evidence to bring home the charge under Section 498A IPC and that in this case, there is specific allegation against A1 that the first accused was not going out and he had been in the habit of drinking harassing he victim in the nights and he had demanded Rs.2,00,000/-. He would further submit that it is the case of PW1 and PW2 that A1 had demanded a sum of Rs.2,00,000/- for



repairing the house, however, he would fairly concede that there is no specific evidence as against the other accused for having committed cruelty on the victim and that they were living elsewhere.

WEB COPY

6. Heard the learned counsel for the parties.

7. The case of the prosecution as revealed from the witnesses viz., PW1-Pappathi, mother of the deceased, PW2-Kalimuthu, father of the deceased, PW4-Kalaiselvan, brother of the deceased, PW3-Thirumurthy, paternal uncle of the deceased and PW5-Sakunthala and PW6-Mani are the relatives of the deceased. The first appellant is the husband of the deceased, appellants 2 and 3 are the parents of the first appellant and appellants 4 and 5 are the sisters of the first appellant.

8. Admittedly, the deceased and the appellants are relatives and the deceased and the first appellant were in love with each other and it was approved by the elders in both the family and the marriage had been conducted by both the families on 27.8.2010 at Ambrose Hall. At the time of marriage, the parents of the deceased had voluntarily given 10 sovereigns of jewels to her. After the marriage, the deceased was living with the first appellant and his parents, the second and third appellants at Kasthuribai Nagar as joint family. It is the further case that A1 and his family members often demanded the deceased to bring more jewels and money and a sum of Rs.2,00,000/- from her parental home for repairing and constructing of their house and that they had harassed the deceased to do household chores.

9. It is the further case that they have not even provided food to her regularly and treated her as a servant maid. Earlier, there was a difference of opinion between the deceased and A1 and she had gone back to her parents home and gave a complaint before the Perur All Women Police Station on 24.1.2011 with regard to the harassment made by the accused for which CSR No.28/11 was given. PW20, Sub Inspector of Police had summoned them and compromised them and on her advice, a separate home was established for the deceased and A1. The statement of the deceased recorded through compromise is marked as Ex.P2 series. It appears that the separate home is a old house belonging to A2, father of A1. It is the further evidence that subsequently, in the year 2012, one month prior to Pongal festival, the deceased had come to the house of PW1 and PW2 and had stated that her husband A1 had demanded Rs.2,00,000/- repairing a house and that she had told them that if she does not comply with the demand, he would do away with her life and that she is not able to bear the harassment of her drunkard husband, who was not going for work and was wandering in the nights.



10. PW2 the father of the deceased had also deposed that the deceased had come to their house one month prior to Pongal and had told him that A1 had demanded Rs.2,00,000/- for repairing their house which is in a dilapidated condition for which, P.Ws.1 and 2 had expressed their inability and had promised to give the same on PW2's business becomes better and sent her back to the house of the accused. P.Ws.1 and 2 had further deposed that on 29.1.2012, at 5.00 pm, while PW2 was going near Madukarrai for business, some one called him through phone and come to Alagesan Hospital and further PW6 Mani had informed PW1 that her daughter was ill and that when PW1 had gone to the house of A1, she had seen the first accused sitting naked over the body of the victim and was biting on her lips and PW1 had shouted and when the neighbours came and all of them took the victim to Alagesan Hospital, from where, she was taken to the Government Hospital where the Doctors examined and declared that the victim was dead.

11. Thus, the evidence of PW1 with respect to cruelty inflicted upon the victim has been corroborated by PW2, father of the deceased. Apart from the evidence of PW2, PW3, who is the paternal uncle of the deceased and neighbour of the accused has spoken to about the cruelty inflicted by the accused on the deceased and in line with the evidence of P.Ws.1 and 2. Thus, P.Ws.1 to 3 have spoken with regard to the harassment of the first appellant by demanding Rs.2,00,000/- for repairing of their house and not providing food to her and not going to work and living a wayward life by drinking everyday.

12. Further, the evidence of P.Ws.1 to 3 has also been corroborated by the evidence of P.Ws.4 and 5. Thus, the witnesses have pin pointedly spoken about the overtact of the first appellant with regard to harassment and cruelty. The evidence shows that the averments against the accused who were living separately is vague and not specific.

13. It was contended by the learned counsel for the appellant that assuming that an amount of Rs.2,00,000/- was demanded for repairing the old house, it would not amount to demand of dowry. He would submit that a demand for money on account of some financial stringency or for meeting some urgent domestic expenses cannot be termed as a demand for dowry and in support of his contention, the learned counsel has relied on the decision of the Apex Court.

14. In Appasaheb and another vs. State of Maharashtra ((2007) 9 SCC 721), it has been held by the Apex Court as under:-

"11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either



WEB COPY

directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. [(1996) 10 SCC 413 : AIR 1996 SC 3509] and Chemical and Fibres of India Ltd. v. Union of India [(1997) 2 SCC 664 : AIR 1997 SC 558] .) A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

15. In Vipin Jaiswal vs. State of Andhra Pradesh, the Apex Court, relying the decision in Appa Saheb's case (supra) has held as under:-

"9. We have perused the evidence of PW1 and PW4, the father and mother of the deceased respectively. We find that PW1 has stated that at the time of marriage, gold, silver articles, ornaments, TV, fridge and several other household articles worth more than Rs 2,50,000 were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a xerox-cum-typing



WEB COPY

rejected by a later judgment of a three-Judge Bench of this Court in *Rajinder Singh v. State of Punjab* [*Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] . Upon considering *Appasaheb* [*Appasaheb v. State of Maharashtra*, (2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] and certain other authorities, it was held in *Rajinder Singh* [*Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] : (*Rajinder Singh* case [*Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225] , SCC p. 491, para 20)

"20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfil the object sought to be achieved by Parliament, we feel that the judgment in *Appasaheb* case [*Appasaheb v. State of Maharashtra*, (2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] followed by the judgment of *Vipin Jaiswal* [*Vipin Jaiswal v. State of A.P.*, (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.""

17. Coming to the case on hand, the witnesses have, in unequivocal terms, spoken about the victim having informed them about the demand of money made by the first appellant for repairing the house and further, harassing the victim. Even prior to one month to the death, the victim had informed her parents, P.Ws.1 and 2 that if the demand of A1 is not met out by her, she would be done to death.

18. It is to be noted that even in the complaint dated 29.1.2012, the de facto complainant has stated that the victim had informed her that the accused had demanded Rs.2,00,000/- from her and she doubts whether her daughter, the victim would have died due to non payment of the said amount. The complaint cannot be an encyclopedia to state everything in detail, however, in this case, a specific mention has been made about the demand.



19. Though a vague attempt has been made by the accused by letting in defence witnesses to prove the fact that she was depressed on account of not being able to conceive and he had taken the victim for treatment to D.Ws.2 and 3 and by marking Ex.D1, the Trial Court had disbelieved his evidence. This court comes to the conclusion that the prosecution has proved its case beyond reasonable doubts against the first appellant. The evidence against the other accused are not specific and they are vague.

20. In view of the above, the appeal stands partly allowed. The conviction and sentence in respect of appellants 2 to 4 stand set aside. The conviction and sentence of fine in respect of A1 for offence under Section 498A stands confirmed, however, the sentence of imprisonment is modified to that of two years rigorous imprisonment. The sentence already undergone by the first appellant shall be set off under Section 428 Cr.P.C. If the first appellant has not surrendered, the Trial Court is directed to secure him and commit him to judicial custody. The other accused need not surrender. Fine amount, if any, paid by the other accused are directed to be returned. The connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssk
To

- 1.The IV Additional Judge/Sessions Judge,
Mahalir Neethimandram,
(Mahila Court) Coimbatore (FAC).
- 2.The Deputy Superintendent of Police,
Perur Sub-Division,
Perur All Women Police Station, Coimbatore District.
- 3.The Public Prosecutor,
High Court of Madras.

Copy to

The Section Officer,
Criminal Section, High Court, Madras.

Cr1.A.No.573/2019

ak[co]
srg 22/12/2021