



Crl.A.No.162 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.162 of 2015

1.Thanajayan

2.Senthilkumar

... Petitioners

Versus

State rep.by

The Inspector of Police,

All Women Police Station,

Palladam.

(Avinashipalayam Police Station Cr.No.243/2005)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records pertaining to the judgment dated 11.03.2015 passed in S.C.No.81 of 2012 by the Mahila Court (Fast Track Mahila Court), Tirupur and set aside the same.

For Appellants : Mr. R.Sankarappan

For Respondent : Mr. L.Baskaran,
Government Advocate (Crl.Side)

* * * * *



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J U D G M E N T

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The appellants A1 and A3 who are convicted for the offence under Section 498(A) IPC, passed by the trial Court in S.C.No.81 of 2012 by the Mahila Court (Fast Track Mahila Court), Tirupur and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.15,000/- in default to pay the fine, three months simple imprisonment for A1 and for A3, three years rigorous imprisonment and to pay a fine of Rs.30,000/- in default to pay the fine, three months simple imprisonment. Aggrieved against the same, the above appeal has been filed.

2. The appellants were charged before the trial Court along with A2 for the offence under Section 498(A) IPC and for the offence under Section 306 IPC. During the trial, P.W.1 to P.W.10 were examined and Exs.P1 to P23 were marked and MO.1 to MO.5 were marked on the side of the prosecution. The appellants / accused have not examined any witness and marked any document on their behalf. On conclusion of the trial, the trial Court acquitted A2 of all charges. A1 and A3 acquitted of charge under Section 306 IPC and convicted them as stated above.



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3. The case of the prosecution is that A1 is the husband of deceased Barathi, A2 is the mother-in-law and A3 is the brother-in-law of A1. P.W.1 is the defacto complainant, she had three children, one son and two daughters. The deceased Barathi is the youngest of three. They were living in Erode District. Her youngest daughter, Barathi was employed in Dyeing Company, wherein A1 was also working. At that time, there was love affair between them and they belong to different community. So, the deceased Barathi told that her family members would not agree for the marriage. Hence, A1 and deceased eloped and got married. Few days thereafter, P.W.1 (mother of the deceased) reconciled to the reality, conducted a reception and approved the marriage. At that time, she had also presented some gold articles. After the marriage, the deceased Barathi was living in the joint family along with mother-in-law, sister-in-law and brother-in-law. After pregnancy, she went to her mother's house. In the Government Hospital, Erode delivery took place and after the birth of the child with customary presentation, the child and the mother were sent back to her in-laws



house. Thereafter, they were living there for sometime. A3 in this case, use to abuse and assault the deceased Barathi and the minor child, Karunya. On several occasions, she had come to the parents house for that reason and thereafter, she use to join her matrimonial home. Finally, unable to withstand torture and with the intervention of the elders, a separate matrimonial home was set up and the deceased, A1 and the child were living separately. A1 was employed in Tirupur and weekly once he use to visit his wife/deceased and the child. A1 insisted that the deceased and the child to again join the joint family along with A2 and A3, which was objected by the deceased.

3.1. Finally, on 21.07.2005 at about 8.30 am, the deceased Barathi self immolated herself with kerosene and setting her on fire along with her two years old daughter. P.W.5, the neighbor, residing next to the house of the deceased who found smoke in the bathroom, informed others who broke open the door, found the deceased Barathi and the child in a burning stage and immediately, they rushed them to the Government Hospital, Erode, where they were declared dead. Thereafter, P.W.1 was informed about the incident, who rushed to the Government Hospital,



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Erode, found daughter and the granddaughter dead. Thereafter, on the same day, P.W.1 lodged a complaint to (P.W.9) the Inspector of Police, Avinashipalayam Police Station under Ex.P1. After receiving the complaint, a case registered in Crime No.243 of 2005 under Section 174 Cr.P.C., Ex.P21 is the First Information Report. Finding that the deceased died within 7 years of marriage, he forwarded the FIR to P.W.8/RDO, Tirupur and P.W.10, Deputy Superintendent of Police, Palladam. The RDO conducted inquest on 22.07.2005 between 8.00 am to 10.30 pm, examined the witnesses and recorded the statement of witnesses, the statements marked as Exs.P8 to P.19. Ex.P20 is the report. P.W.10/DSP, on receipt of the FIR, visited the scene of occurrence, prepared observation mahazar, rough sketch and seized the articles found in the scene of occurrence, which are marked as MO1 to MO5, prepared alteration report Ex.P.23, altering the offence from Section 174 Cr.P.C., to 498(A) and 306 IPC. After examining the witnesses, received the post-mortem report, got opinion from the Doctors and on conclusion of investigation, filed charge sheet before the trial Court. The trial Court on conclusion of trial, convicted the appellants / accused as stated above.



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4. Learned counsel for the appellants submitted that A1 in this case died in the year 2018 and hence, the case against A1 got abated. As far as A3 is concerned, who is the brother-in-law of A1, he submits that since he had conducted the marriage between A1 and the deceased against the wish of the family members of the deceased, he is falsely implicated. He further submitted that in this case, on the same set of facts, the trial Court acquitted the appellants for the offence under Section 306 IPC. The same benefit ought to be given to the appellant and acquitted from all charges. In this case, P.W.1 is the mother, P.W.2 sister and P.W.3 brother of the deceased who are motivated witnesses. The other independent witnesses P.W.4, P.W.5 and P.W.7, not stated anything about the appellants. It is to be seen that in Ex.P1 / complaint, there is no specific overt act attributed to the appellants, P.W.1 admits that she had not lodged complaint against the appellant / A3. Further, she admits that it was only for demand of dowry, and gaining suspicious over the death of her daughter, she lodged the complaint. The RDO/P.W.8 categorically state in his report that there is no demand of any dowry. As



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regards the other allegation against the appellant that he made some advancement seeking sexual pleasure with the deceased, there is no evidence. It is an after thought, improvement made by the family members of the deceased to wreak vengeance and falsely implicate the appellant.

4.1. He further submitted that the deceased was adamant not to live in a joint family, insisted for a separate family which was also agreed one month prior to the occurrence, separate house was found, thereafter, deceased and A1 were living separately along with their child. P.W.7, independent witness residing nearby to the house of the family members of the deceased confirms the same. The Report of RDO is not certain, it is only an assumption the report is given. The trial Court failed to consider these aspects and without any material and evidence wrongly convicted the appellants for the offence under Section 498(A) IPC. Hence, prayed for acquittal.

5. Learned Government Advocate (Crl.Side) appearing for the State would submit that in this case, the complaint was received from



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P.W.1, the mother of the victim. On her complaint, Ex.P21 / FIR under Section 174 Cr.P.C., was registered by P.W.9. On registration of the case, P.W.10 visited the scene of occurrence in the presence of P.W.5 and another witness, observation mahazar, rough sketch and seizure mahazar prepared. MO.1 to MO.4 seized from the scene of occurrence. P.W.8/RDO conducted inquest, examined parents and family members of the deceased as well as her in-laws, accused herein. The statement of mother of the deceased recorded which is marked as Ex.P8, the statement of father is marked as Ex.P9, sister is marked as Ex.P.10. The statement of mother-in-law(A2) is marked as Ex.P.11, the statement of A1, husband of the deceased is marked as Ex.P12(A1), the statement of brother-in-law of the deceased is marked as Ex.P13(A3). Neighbors, Thilagavathi, Ambiga, Ramasami, Mani and Easwaran were examined, there statement is marked as Exs.P14 to P18. After recording the statements, RDO given his report, which is marked as Ex.P20. The finding of the report is that the deceased Barathi committed suicide due to the sexual advancement made by A3. Further, A1 and A2 forced the deceased to seek apology to A3, further, to join as a joint family. For that reason, the deceased



committed suicide along with her two year old daughter. The trial Court considering all these aspects, rightly convicted the appellants and hence, prayed for dismissal of the appeal.

6. Considering the submissions and perusal of the materials, it is seen that in this case, the deceased Barathi is an unfortunate girl who out of her love and passion with A1 had left her family, eloped with him. Thereafter, family members of A1 approved their marriage. Few days thereafter, P.W.1(mother of the deceased) reconciled to the reality, conducted a reception and presented her daughter with gold and other articles. Thereafter, deceased was living as joint family with A1 to A3 and her sister-in-law. After normalization of the relationship, A2 started demanding more dowry. A3, taking advantage of the situation, made some sexual advancement which was resisted by the deceased Barathi. Due to which, there were frequent quarrel, and A3 also beaten the minor daughter, Karunya which was objected by the deceased. Unable to bear further, deceased along with her daughter went to her parents house. On the intervention of the family members and others, she again joined the



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matrimonial home. This happened on 2 or 3 occasions. Thus, the deceased was under continuous harassment.

6.1. Finally, she had come to her parents house not willing to join the joint family, later, it was decided that a separate matrimonial home would be set up and A1/husband and deceased/wife were living in the separate home, near to her in-laws house. A1 was employed in Tirupur, and was staying in Tirupur, use to visit his wife/deceased and daughter once in a week. He had also taken objection for independent separate matrimonial home. In protest, refused to talk with the deceased, started growing long beard and was living in isolation. The absence of her husband was taken advantage by her brother-in-law/A3 who made some sexual advancement which was not questioned by anyone, deceased was helpless. Hence, self immolated with her child, unable to bear the continuous sexual harassment. The constant harassment of sexual advancement by A3, clearly spoken by the mother of the deceased. A3, taking advantage of the joint family, had made advancement and also caused harassment, for which, there cannot be any independent witness. The entire act took place within four walls, it is quite natural that the



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deceased complaint to her mother about the harassment caused by A3.

She had no support from her mother-in-law or from her husband, which emboldened A3 to further continue his harassment, which finally led to self immolation of Barathi along with her daughter. The self immolation took place inside the bathroom, doors were broke open and thereafter, they were rescued and sent to the Hospital. The observation mahazar records the same and the articles MO1 to MO4, seized from the scene of occurrence, confirm the same. P.W.6, the post-mortem Doctor confirm the death of the deceased by burning, the reports Exs.P4 to P7 confirm the same. P.W.8/RDO had given his report, which is marked as Ex.P20, his finding confirms that A3 had made advancement and caused harassment, A1 and A2 took no steps to protect the deceased from the harassment. On the other hand, A1 took objection for setting up a separate family, stopped normal relationship with the deceased and he was leading a secluded life of his own, which infuriated and triggered the deceased to take extreme step. The trial Court, on the evidence and materials, rightly convicted A1 and A3 in this case.



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7. This Court finds no reason to interfere with the finding of the Court below and hence, the judgment of the trial Court in S.C.No.81 of 2012 is hereby confirmed and the Criminal Appeal is dismissed.

8. The suspension of sentence granted in M.P.No.1 of 2015 dated 06.04.2020 stands cancelled. The trial Court is directed to secure the appellant/A3 and commit him to prison to undergo the remaining period of sentence. The bail bonds executed by the appellant/A3, if any, shall stand cancelled.

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M.NIRMAL KUMAR, J.

AT

To

1.The Mahila Court (Fast Track Mahila Court),
Tiruppur.

2.The Inspector of Police,
All Women Police Station,
Palladam.

3.The Public Prosecutor,
High Court of Madras.

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