



CRL A No.221 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	10.10.2022
Pronounced on	:	31.10.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.221 of 2021

Ashok @ Ashok Kumar

... Appellant

Vs.

The State, represented by
Inspector of Police,
J4, Kottupuram Police Station,
Chennai.
(Crime No-1329 of 2012)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court, Chennai in S.C.No.120 of 2015 dated 12.03.2021 by allowing this appeal.

For Appellant : Mr.C.Munusamy

For Respondent : Mrs.Saradha
Government Advocate



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J U D G M E N T

This Criminal Appeal has been filed to set aside the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court, Chennai in S.C.No.120 of 2015 dated 12.03.2021 by allowing this appeal.

2. The respondent registered the case in Crime No.1329 of 2012 for the offences under Sections 498 A and 304 B or in alternate charge under sections 306 of IPC. After completing the investigation police have filed the charge sheet before IX Metropolitan Magistrate, Chennai. The learned IX Metropolitan Magistrate, Saidapet, Chennai taken the charge sheet on file in PRC No.145 of 2014 on 31.10.2014 after completing the formalities, the learned Magistrate committed the case to learned Principle Sessions Judge, Chennai, since the offences are exclusively triable by the Court of Session. The learned Principle Sessions Judge taken the case on file in SC No.120 of 2015 on 10.04.2015 and madeover to the learned Sessions Judge, Mahila Court, Chennai, since the offences are against woman.



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3. The learned Special Judge after completing the formalities framed the charges against the appellant for the offences under Section 498 A and also Section 304 B or in alternative charge under sections 306 of IPC.

4. After framing the charges in order to substantiate the charges framed against the appellant during the trial on the side of the prosecution as many as 8 witnesses were examined as PW 1 to PW 8 and 10 documents were marked as Ex. P1 to P10. No material object was marked on the side of the prosecution.

5. After completing the examination of prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellant by questioning under Section 313 of CrPc, wherein he denied the same as false and pleaded not guilty. On the side of the defense, no oral and documentary evidence was produced.



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6. Hearing the arguments advanced on either side and considering the materials, the trial court found not guilty for the offence under Section 304 B of IPC or in alternative charge under Section 306 of IPC and acquitted from the said charge. However the trial court found guilt of the accused for the offence under Section 498 A of IPC and the accused was convicted and sentenced to undergo 2 years of rigorous imprisonment and pay fine of Rs.1000/- in default to undergo further period of one month simple imprisonment for the offence under Section 498 A.

7. Challenging the said judgment of conviction and sentence passed by the trial court, the accused has filed the present appeal. However, neither the victim nor the prosecution has filed any appeal challenging the Judgment of the trial court for offence under Section 304 B of IPC or in alternative charge under Section 306 of IPC

8. The learned counsel for the appellant would submit that there is a delay in filing the complaint. The death of the deceased was only an



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accidental death and not an suspicious death. In the original complaint and the FIR, there is no allegation against the appellant and the subsequent information was given by the complainant cannot be given effect. There is no evidence to speak about the death of the victim was due to demand of dowry and there is any cruelty. If at all, there was a cruelty, the defacto complainant should have given a complaint in earlier occasion. Though the trial court rightly appreciated the evidence of the prosecution and found that the prosecution has not substantiated the charge for offence under Section 304 B of IPC or in alternative charge under Section 306 of IPC and since there was no demand of dowry and the death of victim is only an accidental death and acquitted the accused for the said charge. When that being the case from very same evidence and there is no material to show that there was a cruelty, the trial court could have appreciated on the same perspective and on the other hand, it wrongly convicted the appellant for the offence under Section 498 A of IPC. There is no evidence to show that soon before the death, there was a cruelty and due to that the deceased died unnaturally. In this case, there is no suspicious death and neither demand of dowry or unbearable cruelty



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caused by the appellant. Before the finding of the trial court regarding the offence under Sections 498 A, the PW1 and PW2 are the brother and mother of the deceased and they are the interested witnesses. Even prior to the incident there was no complaint regarding the cruelty and soon after death also, the first information given by the PW1, denied the allegation of cruelty. Only after the death of the deceased, the PW1 first time informed the act of cruelty before the executive Magistrate at the time of conducting inquest and therefore the statement is contra to the earlier information given by the PW1 before the police. Therefore, the judgment of the trial court is not correct.

9. The learned Additional Public Prosecutor appearing for the respondent would submit that though the trial court found that there is no demand of dowry and the death was not due to dowry, therefore the acquitted for the offence under Section 304 B of IPC or in alternative charge under Section 306 of IPC. The trial court found that it is an accidental death. However, the trial court found that there was a material to convict the appellant for the offence under Section 408 of IPC. The



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evidence of PW1 and PW2 who are none other than the brother and mother of the deceased, they have categorically stated that the appellant had purchased a vehicle on loan and for repayment of EMI, he used to demand the money and caused mental and physical cruelty on the deceased and the deceased used to come to the house PW1 and PW2 seeking money to pay his EMIs. Two days prior to the occurrence also, the deceased came to the house of the PW1 and PW2 and stated that the appellant is demanding money for his dues on the said month. They pacified the deceased and sent her to the house of the appellant. The appellant in a drunken mode threatened and tried to attack the deceased with a vegetable cutter and the PW1 pacified them and came back to his house. Thereafter, PW1 was informed that the victim sustained injuries to due fire accident. When PW1 went there, the appellant threatened them that he kept his 8 months baby in the beauro, if PW1 is not giving the statement as he liked then he will take away the life of the child. Therefore, PW1 having no other option except to accept that. Therefore, he has not informed the actual scenario and thereafter, he took his sister to the hospital and admitted her. However, his sister died. Neither the



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appellant nor his parents came to the funeral of the deceased. Thereafter, PW1 subsequently filed a complaint for the death of the victim. Since the deceased died within 7 years from their marriage, a complaint was filed and registered under Section 174 of CrPc. There was an inquest made by the Executive Magistrate and during that time, the PW1 reported the cruelty. The PW2, who is the mother of the deceased also spoke about the cruelty caused by the appellant soon before her death. Therefore the prosecution has proved the case and mere non mentioning of the actual fact in the earlier occasion cannot not be a sole ground to reject the evidence. Further PW1 explained under what circumstance he did not inform the cruelty in the first information and also explained, why he informed the actual fact on demand of dowry later. It is settled proposition that FIR is not an encyclopedia. Though, the trial Court had not found the accused guilty for offence under Section 304 B of IPC or in alternative charge under Section 306 of IPC, however rightly appreciated the evidence and found guilt of accused for the offence under Section 498 A and rightly convicted the accused for the said offence.



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10. Heard the learned counsel on either side and perused the materials placed on record.

11. Admittedly the deceased and the appellant are husband and wife. Their marriage took place on 27.05.2010 and gave birth to a child. On 05.09.2012, while the PW1 was working, he received a telephone call that there was a problem in his sister's house and he went to the house of the sister. The deceased was rolled in a bedsheet in a burnt stage. The appellant informed that the child was in the beauro, only if PW1 and PW2 ready to say as per the wish of the accused, he will give the child to them. Accepting to that, PW1 opened the beauro and taken out the 8 months old child from the beauro. Thereafter, the PW1 took the deceased to private hospital in TATA ACE vehicle. After giving first aid, the deceased was referred to Kilpauk Medical hospital. When the police examined PW1, he gave the first information as directed by the accused. However, his sister died. Thereafter he gave the complaint and subsequently an investigation was conducted and a charge sheet was filed . The case was tried by the Sessions Court. The accused was



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acquitted for the offence under Section 304 B of IPC or in alternative charge under Section 306 of IPC. However, he was convicted for the offence under Section 498 A of IPC.

12. In this case in order to substantiate the charges framed against the appellant and on the side of the prosecution 8 witnesses were examined and 10 documents were marked. Out of the 8 witnesses, PW1 is the brother of the deceased and PW2 is the mother of the deceased. In the evidence, they have clearly spoken that there was a demand of money by appellant for clearing his EMI's and even before the death, two days prior to the incident, the deceased came to the house of the PW1 narrated the demands made by the appellant. Thereafter, PW1 went to the house. Even in front of the PW1, the appellant in a drunken mode attempted to attack the deceased by a vegetable cutter. However, PW1 pacified her. PW2 also submitted the cruelty and harrasment made by the appellant to the deceased even soon before the death. Therefore in this case in hand, the death of the deceased was not established that the death was due to the demand of dowry. Eventhough they have not stated anything about



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the cruelty in the earlier statement, PW1 explained the reason for not stating the actual facts at the time of giving first information. Once the inmate died, the inmate of the deceased, the appellant has to explain the actual fact. However in this case the prosecution failed to substantiate that whether the death was due to demand of dowry, however, prosecution established from the evidence of PW1 and PW2 that soon before the death of the appellant caused cruelty to the deceased and the post-mortem report and the evidence of the Doctor also shows that the death was caused due to burnt injury. Whether the injury was accidental or the appellant voluntarily caused the injury to the deceased that has not been established. Therefore, the trial court acquitted the appellant for the offence under Section 304 B of IPC or in alternative charge under Section 306 of IPC, whether it is a suicide or accidental or the appellant caused injury. Further the prosecution has also not filed any appeal. However this appeal has been filed by the appellant challenging the conviction and sentence passed against the appellant for the offence under Section 498 A. Therefore, as a final Court of fact finding, this Court has to re-appreciate the entire evidences, as to whether the



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prosecution has proved the charge as framed against the appellant for the offence under Section 498 A of IPC.

13. This Court while appreciating the evidence of PW1 and PW2, though they did not say that the death of the victim was accidental or suicidal or it is caused by the appellant, however, the evidence of PW1 and PW2 were very clear that soon before the death and even prior to two days before the occurrence, there was a quarrel and appellant caused cruelty on the victim and demanded money to clear the EMI's for the vehicle loan and the evidence of PW1 shows even in front of him, the accused attempted to attack the deceased with a vegetable cutter. Though the defense side would submit that there was no previous complaint, the cases of this nature since a dispute within four walls of the family, no independent witness could be expected, if at all the witnesses would be the family members. However, if the evidence of the family of the victim is cogent, natural and consistent and if the same inspires the confidence of the Court, the Court can record the conviction based on the relative witnesses. Since the witnesses are relatives and since the witnesses are



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the interested witnesses, the Court cannot reject their evidences on this sole ground that they are the relative witnesses.

14. In the cases of this nature, the relatives only could be aware of the demand of dowry or the cruelty. Normally either the girl or the parents or brothers of the girl will not approach the Police immediately after one or two incidents, since they would think about the future of the girl and also they should lead their family life with husband and in-laws and therefore many incidents will not come out of family, unless the cruelty is unbearable or the girl try to attempt suicide or any injuries caused due to cruelty or the life of the girl was taken away. Therefore, mere non preferring of any complaint prior to the death of the deceased may not be a sole ground to reject the evidence of PW1 and PW2. The deceased, who is the wife of the appellant died unnaturally and even though the appellant has stated that while lighting the lamp using kerosene, it got spread and eventually the deceased sustained injuries, but, a careful perusal of the rough sketch does not show that there was a flammable items available and therefore the appellant has to explain as to



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how the fire got spread and in the absence of such explanation, suspicious would arise that it might have been caused by the appellant. However such suspicious will not be a sole ground to convict the appellant/accused. Therefore, the trial court acquitted the accused for the offence under Section 304 (B) or in alternative charge under Section 306 of IPC. Further from the evidence of the PW1 and PW2, it is clear that the victim sustained injuries and even soon before the death there was a cruelty and the trial court has rightly appreciated the evidence and given a finding that there was a cruelty made by the appellant and whether the death is due to demand of dowry or not is not necessary to convict the accused for the offence under Section 498A IPC, since Section 498 A IPC is very clear that even if the death is immaterial, if the prosecution is able to substantiate that there was a cruelty, the Court can record conviction. The evidence of PW1 and PW2 clearly shows that the appellant caused cruelty on the deceased soon before the death, therefore the trial court rightly appreciated the evidence and even though acquitted the appellant/accused from the offence under Section 304 B or in alternative charge under Section 306 of IPC, however rightly appreciated



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the evidences and convicted for the offence under Section 498 A of IPC.

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15. Therefore, this Court does not find any perversity, infirmity or illegality in the Judgment passed by the learned Sessions Judge, Mahila Court, Chennai and there is no merit in the appeal and therefore, the appeal is liable to be dismissed.

16. Accordingly, the Criminal Appeal is dismissed.

31.10.2022

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Index:Yes/No



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To

1. The Sessions Judge, Mahila Court, Chennai.
2. The Inspector of Police,
J4, Kottupuram Police Station,
Chennai.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.221 of 2021**

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