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Crl.A.No.113 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.03.2022

PRONOUNCED ON : 08.07.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.113 of 2014

1.Bharathi Raja

2.Kaveri

... Appellants / Accused 1 &2

Vs.

State rep. by
The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur
(Crime No.4361 of 2011)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the order dated 28.02.2014 made in S.C.No.67 of 2012 on the file of the Fast Track Mahila Court, Tiruppur.

For Appellants : Mr.A.E.Ravichandran

For Respondent : Mr.R.Kishorekumar
Government Advocate



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J U D G M E N T

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This Criminal Appeal arises out of the Judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Tiruppur, in S.C.No.67 of 2012, dated 28.02.2014, whereby, the appellants have been found guilty and convicted for the offence punishable under Section 498-A IPC., and sentenced to undergo RI for 3 years each and to pay a fine of Rs.10,000/- each, in default to under go six months simple imprisonment

2. The gist of the case is that P.W.1 lodged a complaint on 16.09.2021 stating that his elder daughter Shanthi committed suicide, by consuming cow dung powder. Despite best efforts to save her, she passed away in the Government Hospital, Tirupur. The marriage between his daughter Shanthi and first appellant / A1 / Bharathi Raja, was an arranged marriage, held on 29.11.2009. During the marriage, 11 sovereigns of the gold jewels, household articles presented as 'Sridhana'. Two months after the marriage, the 2nd appellant / A2, her sister Tulsi started demanding dowry. For this reason, his daughter was harassed, subjected to cruelty.

3. Thereafter, his daughter and A1 set up a separate home



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and they were living happily for quite some time. Thereto, A1, A2 and the said Tulsi were continuing their harassment. Unable to bear the same, P.W1 along with his daughter went to Mahalingapuram Police Station, Pollachi, lodged a complaint, the police called A1, warned, advised him to behave properly, later A1 let off. Thereafter, A1 and the deceased were living happily, for sometime. A1 demanded gold ring, as dowry, during Pongal festival. Five months before, his daughter was physically, brutally assaulted, she was kicked on the stomach, P.W.1 coming to know about the same, visited his daughter and took her to Tiruppur Government Hospital. Then on, she was staying with her parents, for the past six months.

4. In such circumstances, three months before the occurrence, A1 called his wife in her mobile, threatened, abused and informed either to concur for divorce or end her life and he will soon divorce her. On hearing this, P.W.1's daughter constantly crying out of dejection and frustration. P.W1 consoled her stating that her husband would come one day and take her back. On 15.09.2011, during late hours, again A1 called his wife over phone, abused, and again forced her to concur for divorce or end her life. Thereafter, P.W.1 left to his job. On 16.09.2011, at about 9.30



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a.m., deceased consumed 'cow dung powder'. She was rushed to the Government Hospital, Tiruppur, where she was declared dead. Hence, A1, A2 and Tulsi are reasons for his daughter taking the extreme step. With this, the complaint lodged.

5. P.W.9 registered the complaint in Crime No.4361 of 2011, for the offence under Sections 498(A), 306 and 306 r/w 109 IPC. against A1, A2 and one Tulsi. Thereafter, P.W.10 took over the investigation, visited the scene of occurrence, prepared observation mahazar, rough sketch, examined the witnesses. Finding that the death had occurred within 7 years of marriage, the case was referred to P.W.6 / Revenue Divisional Officer, to conduct enquiry under Section 176 Cr.P.C. P.W.6 conducted inquest and examined P.W.1, P.W.2, P.W.3, A1, A2, A3 and others, and gave his report Ex.P4. Thereafter, A1 and A2 were arrested, confession recorded.

6. Thereafter, the body was sent for postmortem. P.W.7 and P.W.8 are the Doctors, who conducted postmortem. P.W.8 gave Postmortem Report / Ex.P5 and final opinion Ex.P6, giving reasons that the deceased appeared to have died consuming of 'Auramine Basic Dye'. After completion of investigation, charge sheet filed by



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P.W.10 against the accused viz., A1 / Husband, A2 / Mother-in-law and A3 / father-in-law of the deceased.

7. The trial Court during the trial examined P.W.1 to P.W.10, marked Exs.P1 to P.8. On the side of the defence, neither witnesses have been marked nor documents marked.

8. The trial proceeded against three accused viz., A1 to A3. The charges framed against the accused were under Sections 498A, 306 and 306 r/w 109 IPC. For the charges under Section 306 and 306 r/w 109 IPC., all the accused were acquitted. A1 and A2 convicted for the offence under Section 498A. A3 was acquitted of all the charges. Against which, the present appeal.

9. Mr.A.E.Ravichandran, the learned counsel appearing for the appellants / A1 & A2 would submit that in this case, except for the family members of the deceased viz., P.W.1 / father, P.W.2/mother and P.W.3 / brother, none of the neighbors, relatives or any other independent witnesses examined, to speak about the occurrence. P.W.1 had given a exaggerated version with lot of contradictions, the evidence of P.W.1 to P.W.3 are contradictory with each other. P.W.1 to P.W.3 admit that three months after the



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marriage, A1 and the deceased set up separate family and home, they were living happily for quite sometime. In fact, on one occasion, A1, who sustained fracture injuries, he was convalescing from the house of P.W.1 for more than one month. For the earlier complaint, P.W.1's brother a Village Assistant, used his contacts ill treated A1 and his family, who is the reason for trivial family issues blown out of proportion. Even for a small family dispute, he using his acquaintance with the police, frequently lodged the complaints. Likewise, for the family disputes, immediately complaint was lodged, A1 summoned to the Police station, further he was made to give an undertaking that he would not cause any harassment. Further, both the families viz., deceased and A1 would not interfere in their matrimonial life and in case of any disturbance, the same to be reported to the Police Station.

10. Further, during March 2003, without informing A1, deceased left to her parents' house immediately A1 informed the police about his wife missing. Police called the deceased and P.W.1 to Police Station and advised them properly. The only grievance was that there was too much interference by his in-laws, even for trivial issues. On 28.03.2011, when A1 had gone to his in-laws house, to meet his wife, he was chased away by his in-laws and



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relatives, they also assaulted him. Further, a police complaint lodged, a case registered, A1 and A2 arrested and latter they came out on bail and thereafter, whenever A1 attempted to meet his wife, he was chased away and warned that already a case is pending and hence, he cannot meet his wife. In fact, P.W.1, his brother and others, not allowed A1 and deceased to rejoin again.

11. The specific case is that A1 constantly speaking with the deceased over phone. On 20.09.2011, he abused her over phone and that is the reason the deceased taken the extreme steps. If that being so, the mobile phone of the accused as well as the sister of the deceased or the accused not seized, to corroborate and confirm the same. Even in this case, the sister of the deceased not examined as witness. Further, P.W.2 admits that three days before the occurrence, it was the birthday of the deceased, on that day, A1 sent 'Greeting Card' with wishes. P.W.1 admits that he gone to the police station along with one Selvaraj, who had written the complaint. P.W.3, brother of the deceased state that he only gone along with his father P.W.1 to the police station, thereafter his father wrote the complaint. P.W.9 state that P.W.1 came alone, lodged the complaint and none accompanied him.



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12. P.W.3 was keeping away from the affairs of the sister and he is not aware about the actual relationship between A1 and the deceased. During inquest conducted by RDO, none of the witness, except one Regina, stated anything about any dowry demand or harassment. The said Regina not examined as witness. The report of RDO, / Ex.P5 would state that there was no dowry demand. Further, the trial Court having acquitted the appellant for the offence under Section 306 IPC., the reason given for the abatement is that subjecting the deceased to cruelty and hence, she committed suicide. The trial Court having acquitted the accused under Section 306 IPC., ought not to have convicted them for the offence under Section 498A IPC. The facts of the case so intertwined and inseparable, the same benefits to be given to the appellants and ought to have acquitted them from the above charges. Further, the reason for cruelty projected is, though A1 was forcing the deceased for divorce, no document or materials produced in this regard. It is an admitted case that for the past 5 to 6 months, the deceased was residing with her parents and the A1 was in constant touch with the deceased over the phone. That being the case, if there is any cruelty or harassment, the deceased would not encourage A1 to call her and speak to her regularly. These things conveniently suppressed. Further, the trial Court



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failed to consider these aspects and hence, prayed for acquittal.

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13. The learned Government Advocate would submit that in this case, on the complaint of P.W.1, P.W.9, registered the case in Crime No.4361 of 2011. Thereafter, P.W.10, Investigation Officer, took up investigation, visited the scene of occurrence, prepared observation mahazar, rough sketch, and examined the witnesses. Since the deceased died within seven years of marriage, from the date of her marriage, the case was referred to the Revenue Divisional Officer, who conducted inquest, filed Ex.P4 / Report. From his report it is seen that he recorded the statement of P.W.1 / Raj; P.W.2 / Murugammal; P.W.3 / Saravanan; A1/Bharathi Raja; A2 / Kavery; A3 / Tulsi, one K.Gopal, Sheela and others. They all clearly stated about the marriage of A1 with the deceased, dispute arose, physical assault by A1 on his wife. Further, they produced the earlier police complaint, thereafter, the deceased was residing with her parents, alleged incident of harassment and cruelly suffered by the deceased at the hands of the appellants / accused, finally she took the extreme steps of committing suicide by consuming 'Cow Dung Powder'. One Sheela, her close friend, has clearly stated that there was constant dowry demand and harassment, the victim was subjected. Thereafter, postmortem



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confirmed that the victim consumed poisonous substance. Thus, the report is also in conformity with the same. On completion of investigation, charge sheet filed.

14. It is further contended that P.W.1 to P.W.10 examined. Ex.P1 to P8 marked. The trial Court though acquitted A3 completely, and A1 and A2 for the offence under Sections 306 and 306 r/w 109 IPC., convicted A1 and A2 for the offence under Section 498A IPC. The trial Court had given a detailed reasons, which need not be interfered. The grounds raised by the appellants herein were earlier raised before the trial Court, which considered the same, by a well reasoned Judgment and convicted the appellants, which needs no interference.

15. I have heard the learned counsels appearing on either side and perused the materials on record.

16. Considering the submissions and on perusal of the materials this Court finds in this case, apart from father, mother and brother of the deceased viz., P.W.1 to P.W.3, no other witness, even the neighbours, not examined. P.W.1 gives exaggerated version. He admits that the marriage was arranged marriage,



during the marriage, 11 sovereigns of gold jewels along with household articles were presented as 'Sridhana'. Thereafter, three months after the marriage, there was some dispute arose between the deceased and in-laws, thereafter, a separate house was set up and they were living separately, two streets away. It is admitted by P.W.1 to P.W.3 that after setting up of separate family, they were living happily. Though it is stated that there was demand of some Pongal gift, as dowry, nothing more. Further, A1, A2 and one Tulsi, younger sister of A2, used to pass comments that no proper dowry has been given. It is seen that the relationship between the deceased and A1 were cordial for some time. Thereafter, on the interference of both the family members, there has been some disturbance. They have also gone to the Police Station, undertaking given. On one occasion, A1 found his wife missing, he immediately informs the police, thereafter found that his wife was with her parents house.

17. Further, though it is projected that due to kicking of A1, the deceased sustained stomach pain, took treatment at Tiruppur Hospital, in the medical records, there is no such recording, which is admitted by P.W.1, her father, who accompanied her. P.W.2 / mother admits that three days before the occurrence, it was the



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birthday of the deceased, on that day, A1 sent a 'Greeting Card' with wishes, on seeing the same, his daughter got emotional and cried. P.W.3 on his own admits that on one occasion, he along with his father, uncle and relatives went to the house of A1, and assaulted A1. It is also seen that there was a police complaint against A1 and A2, they were arrested, later let out on bail and a case is pending against them. Citing this assault case, A1 was not allowed to meet his wife, the deceased, which is admitted by P.W.1. It is also seen that by using P.W.1's younger sister's mobile phone, the deceased and A1 were talking to each other continuously for four days, prior to the occurrence and therefore, the allegation of demand for divorce is not sustainable. Due to compulsion of the family members, the deceased could not join her husband.

18. In fact, in the RDO enquiry it is seen that A1 was in a senseless state after coming to know about his wife's death. In fact, he made an attempt to end his life, but he was saved and he was shown arrest and thereafter remanded. Had there been any cruelty as projected, the conduct of A1 would have been otherwise. The lower Court, on coming to a conclusion that there was no cruelty and abatement by the accused for suicide, ought to have acquitted the appellants. Thus, the offence of cruelty under



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Section 498A would also fall. Thus, from the above materials this Court finds that there is no case made out against the appellants / accused and the conviction passed by the trial Court is not sustainable.

19.In the result, the Criminal Appeal is allowed and the conviction and sentence passed by the Fast Track Mahila Court, Tiruppur, in S.C.No.67 of 2012 dated 28.02.2014 are set aside and the accused are acquitted. Bail Bond, if any, executed shall stand cancelled.

08.07.2022

Index: Yes/No
Internet: Yes/No

MPKJ/ vv2

To

- 1.The Fast Track Mahila Court,
Tiruppur.
- 2.The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

vv2/MPK

Pre-Delivery Judgment made in

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