



Crl.A.No.418 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2022

Pronounced on : 14.07.2022

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

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1.Karthikeyan
2.Pachaiammal
3.Kandasamy
4.Pachaiammal(alias) Selvi .. Appellants

/versus/

State: rep.by
The Assistant Commissioner of Police,
Pulianthope Range,
Chennai-12.
Cr.No.191 of 2008. .. Respondent

Criminal Appeal has been filed under Section 374(2) of Cr.P.C., praying to set aside the judgment and sentence passed by the Hon'ble Sessions Judge, (Magaliar Neethimandaram)Chennai-104 in S.C.No.73 of 2013 dated 17.07.2014 by convicting the appellants to undergo imprisonment for three years, and imposing a fine of Rs.5,000/- for each appellants, for alleged offence under Section 498A of IPC.



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For Appellants :Mr.K.Kannan

For Respondent :Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

J U D G M E N T

On 27.04.2008, on receipt of the memo from KMC Hospital, the Sub Inspector of Police attached to P2 Otteri Police Station went to KMC Hospital, Chennai, recorded the statement of one Sagana Devi, aged 20 years admitted, wife of Karthikeyan, admitted in the Burn Ward and registered case in Crime No.191 of 2008 for offence under Section 309 of IPC.

2. According to the statement of Sagana Devi leading to registration of the First Information Report, she and her husband along with 6 months old son Sakthivel presently residing at D.No.43, Ponniamman Koil Street, Purasaivakkam, Chennai. Their marriage took place 1 ½ years ago. At the time of marriage, her parents gave 15 sovereign of jewels to her as strithana and 3 sovereign of jewels to her husband. The marriage expenses were met out by her family. After marriage, they were living with her mother-in-law



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at Sachithanantham Street. At that time, her mother-in-law used to demand fridge and washing machine from her parents and pick up quarrel. 15 days prior to the incident, they set up separate residence at Ponniamman Koil Street. On 27.04.2008, her husband came home with salary and told, out of his salary, Rs.3000/- to be given to his mother. The deceased Sagana Devi refused, since she has to meet out the house rent and brokerage. There was wordy quarrel between husband and wife in this connection. Due to the mental torture, she doused herself with kerosene and set fire. Her husband, hearing her scream, put out the fire and took her to KMC Hospital for treatment. After registration of the case, the Sub Inspector of Police gave a request to the Metropolitan Magistrate for recording her statement.

3. Accordingly, the Metropolitan Magistrate, after ensuring that she is in fit state of mind to give statement, recorded her statement. The deceased Sagana Devi succumbed to injury on the next day at 07.15 a.m. Receiving said information, charge was altered and alteration report was forwarded to the Court. RDO enquiry was arranged since the death was within 7 years of her marriage. After completion of investigation, final report filed. The



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Mahila Court, on committal, framed charges against A1 to A4, who are husband, mother-in-law, father-in-law and sister-in-law of the deceased Sagana Devi for the offence under (i) Sections 498A and (ii) 304((B) in alteration Section 306 IPC.

4.The prosecution to prove the charges, examined 14 witnesses, marked 20 exhibits and 2 material objects. In defence, 4 witnesses were examined and one exhibit was marked.

5.The trial Court on appreciation of evidence, acquitted the accused from the charge under Section 304(B) of IPC in alteration Section 306 of IPC. Convicted the accused A1 to A4 for the offence under Section 498A and sentenced each of them to undergo three years RI and to pay a fine of Rs.5,000/-, in default to undergo, three months SI.

6. Plea of the appellants:-

The learned counsel appearing for the appellants submitted that the trial Court having found no material to convict the accused under Section



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304(B) @ 306 IPC ought to have acquitted them for offence under Section

498A of IPC since the ingredient and necessary material for proof of these

two offences are one and the same. The learned counsel appearing for the appellants also contended that PW-1, PW-2 and PW-3 are closely related to the deceased by blood. They are interested witnesses and their allegation regarding demand of dowry on the earlier occasion are highly doubtful, in the absence of any documentary or corroboratory evidence. The evidence of PW-4 (Kousalya), who is the owner of the house, in which the deceased and her husband (A-1) along with her son were residing in a portion of her house had deposed that on the date of occurrence seeing smoke from that portion, she went there and found the deceased under fire and her husband was sleeping. She woke up her husband Karthikeyan(A1) and he set out the fire and laid his wife on sofa. When she has positively deposed that there was no quarrel between the husband and wife, the case of the prosecution is disproved by the evidence of PW-4, who is an independent witness, having no personal interest in the out come of the case. Hence, the trial Court ought to have acquitted the accused of charge under 498A IPC.



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7.Three statements regarding the cause of suicide recorded. The statement found in Accident Register (Ex.P7), statement found in the dying declaration (Ex.P9) and the statement given to the Sub Inspector of Police are inconsistent to each other and therefore, none of them are reliable. However, the trial Court had ignored the inconsistency and convicted the accused 1 to 4.

8.Even according to the prosecution, 15 days prior to the occurrence, the deceased and her husband along with their son had gone separately and established a separate house. A2 to A4 were not residing with them at the time of occurrence. Further, there is evidence to show that on the date of occurrence, the family members of the deceased PW-1 and PW-3 came to the house of the deceased and they had demanded necklace from the deceased. While so, when the cause for committing suicide is entirely different, the trial Court, without considering the deposition of the defence witnesses, has erroneously convicted them for the offence under Section 498A of IPC.



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9. Plea of the State/Respondent:-

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The learned Government Advocate (Crl.Side) per contra submitted that the necessary ingredient to punish the accused for offence under Section 498A of IPC is subjecting woman to cruelty by husband or relative of husband which likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). The prosecution has established the required ingredient through the statement of the deceased as well as from the depositions of PW-1 to PW-3 and PW-5.

10. Regarding the alleged contradiction in the previous statement of the deceased, the learned Government Advocate (Crl.Side) submitted that in the First Information Report, the deceased has informed the Sub Inspector of Police (PW-12) that her mother-in-law daily used to pick up quarrel with her daily demanding fridge and washing machine as dowry from her parents and on the date of occurrence, there was dispute between the deceased and her husband (A1) regarding sharing the salary with A1's mother. The Accident Register, which is marked as Ex.P7, the Doctor has recorded that



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the injured alleged, she was harassed by her mother-in-law, father-in-law and sister-in-law. Due to that, she has set herself under fire.

11.To the Judicial Magistrate (PW-9), the deceased Sagana Devi has stated that her husband gave Rs.3000/- from his salary to his mother and with the remaining Rs.2,000/- she was unable to pay the house rent and meet out the family expenses. Therefore, on 27.04.2008 at about 04.00 p.m, there was quarrel between her and her husband. Due to that, she set fire on herself dousing kerosene.

12. The learned Government Advocate (Crl.Side) submitted that there is no inconsistency in these statements. The cruelty caused is expressed in three different ways. He also submitted that under Section 32 of the Indian Evidence Act, statement of the death person becomes relevant and admissible, if it relates to the cause of death, when the cause of that person death comes into question. Therefore, the deceased statements given to the police and Doctor has to be read harmoniously.



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13. In this case, on 27.04.2008 at about 04.00 p.m., the deceased has set fire to herself dousing kerosene. She died on the next day at 07.15 a.m. due to the burn injury sustained. In her statement as found in the Accident Register (Ex.P7), her oral complaint duly reduced into writing as (Ex.P14) and dying declaration (Ex.P5) which were recorded on 27.04.2008 at 06.15 p.m, 07.30 p.m and 09.30 p.m respectively, she has disclosed the reason for committing suicide and the fight, which took place between the deceased and her husband on the date of occurrence. Therefore, the learned Government Advocate (Crl.Side) submitted that having proved that the deceased was subjected to cruelty by her husband and in-laws of the deceased, who are arrayed as A1 to A4, the finding of the Court below has to be confirmed.

14. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for State.

15. In the instant case, the criminal law has been set into motion, based on the oral statement of the deceased Sagana Devi, which was



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reduced into writing and marked as Ex.P14. In that complaint, she has stated about the demand of fridge and washing machine by her mother-in-law on the earlier occasions and her husband sharing part of his salary to her mother-in-law. The family members of the deceased namely, PW-1 to PW-3 had deposed about the earlier demands made by the accused persons leading to cruelty. PW-5 (Mr.Rajan) who is running a grocery shop near the deceased parental home at Arumbakkam had deposed about attending the marriage of the deceased and her visit to the grandmother's home four months prior to the death complaining harassment by father-in-law and mother-in-law. Followed by the visit of the accused persons one week thereafter and quarrel between both the families regarding sending back Sagana Devi to her marital home. He has also deposed that thereafter, the family members of Sagana Devi took Sagana Devi to her matrimonial home and left her at her matrimonial home advising A1 not to behave rudely with Sagana Devi since she is at her advanced stage of pregnancy. To impeach its credibility certain questions put in the cross examination of PW-5, however, his evidence substantially corroborate the evidence of PW-1 and PW-3.

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16. The learned counsel appearing for the appellants strongly rely upon the deposition of PW-4 (Kousalya,) who had stated that on seeing smoke coming out from the portion where the deceased was living, she went and found the deceased burning and A1 sleeping. Only she woke up A-1 and he put out fire on the deceased. Ex.D1 medical certificate given by DW-4 proves A1 sustained burn injuries. PW-4 stated that both the deceased and A1 stayed 15 days in portion of her house as tenant and there was no quarrel between them. On the date of occurrence, the grandmother of the deceased visited her.

17. It is very hard to believe a person, who was in the other portion of the house was able to see the smoke and rushed to the place, but, A1, who was in the same room sleeping and PW-4 woke him up. Whether he was really sleeping or pretending as if sleeping, is a question left open.

18. To prove their innocence, the accused have chosen to examine four witnesses. A1 himself mounted the witness box and examined as DW1



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and subjected himself to cross examination. DW-2 is the wife of A2's brother. DW-3 is husband of A2's sister. DW-4 is the private clinic doctor, who treated A1's burn injuries on 28.04.2008.

19. A1, who was examined as DW1 in the cross examination denies the quarrel on 27.04.2008 between him and the deceased regarding sharing his salary with his mother. In fact, all the incriminating evidence spoken by the prosecution witnesses were specifically put to DW1 in the cross examination and he has denied everything. He in his chief examination admits that he was in the house, when the deceased set fire to herself. According to him, on 27.04.2008 at between 11.00 and 11.30 a.m., PW-1 and PW-3 came to his house and he went out to purchase vegetables. When he came back, he heard his wife, PW-1 and PW-3 were loudly discussing and his wife was very dull. When he enquired her, she stated that PW-3 demands necklace from her (deceased). Thereafter, he went to his room and slept. He woke up only when the house owner knocked the door of his room. He had further deposed that he put out the fire by pouring water and covering her with bedspread. When he enquired his wife, why she had done



this, his wife said that since PW-3 scolded her, she has committed suicide.

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20. If what DW-1 deposed is true, then PW-4 (house owner), who was present at that time and knocked the door to wake up the accused (DW-1) would have deposed about what the deceased said to DW1. But, PW-4 has said nothing about the visit of PW-1. Neither she has said anything about quarrel of PW-3 with the deceased. Thus, the accused has chosen to mount the witness box to establish that neither on the date of occurrence nor any day earlier there was quarrel between him and his wife, contrarily on 27.04.2008 there was wordy quarrel only between PW-3 and the deceased, when PW-3 came along with PW-1 to visit the deceased. His evidence is not corroborated by the house owner (PW-4), who was present in her house, except the fact that on that day the grandmother of the deceased (PW-7) visited the house, PW-4 has not said anything about the visit of PW-3 and she had quarrel with the deceased during the mid day. Therefore, DW-1 deposition to discredit the evidence of the prosecution witnesses has to fail for lack of corroboration.



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21. From the evidence available, it is clearly proved beyond doubt that the deceased Sagana Devi, who got married on 22.02.2007 was driven to commit suicide by dousing herself with kerosene on 27.04.2008 at 4.00 p.m and succumbed to injury on 28.04.2008 at 07.15 a.m. As far as the person caused cruelty, in her statement to the police, she has mentioned her mother-in-law (A2) and sister-in-law (A4), but in the Accident Register (Ex.P7) she has named all the four accused as persons caused cruelty. In dying declaration recorded by the Metropolitan Magistrate, the fight with her husband regarding sharing the salary with mother-in-law alone mentioned. In the Accident Register mentioning the names of the accused is something unusual. Probably, the Doctor would have thought on seeing the health condition of the injured better to record the names specifically instead of recording as 'known persons'. These names and relationship with the injured disclosed by the injured and exclusively within her knowledge. No other persons except A1 were with the injured at that time to suspect that the injured was tutored to implicate A1 to A4.



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22. Therefore, on cumulative assessment of the evidence, this Court finds that the demand of house hold articles and sharing the salary with A2 by A1 and A1 had caused cruelty. It was the last straw on the camel's back, giving substantial portion out of his meagre salary to his mother and forcing the deceased to run the family with hardly Rs.2000/- and meet out the family expenses and the house rent.

23. If setting up separate family was the issue between the spouse as contended by the learned counsel appearing for the appellants, there is no need for the deceased to commit suicide, 15 days after setting up a separate family. If there was any quarrel with PW-3 regarding the necklace on the date of occurrence, that would have been spoken by PW-4 the house owner in her evidence.

24. One of the contention made in this appeal is when the trial Court found the accused not guilty of charge under Section 304 (B) @ 306 IPC, the same reasoning applies for the charge under Section 498 A IPC also.



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25. This submission is not sustainable in view of the fact that offences under Section 304 (B) IPC and Section 498A IPC are distinct offences. The required ingredients are different, though the common ingredient is 'cruelty'. This point is no more *res integra*, in view of the judgment of the Hon'ble Apex Court in ***Gurmeet Singh -vs- State of Punjab reported in [(2021)6 SCC 108]***, which has given a quietus to the controversy. This observation has been made in tune with the earlier judgment of the Hon'ble Supreme Court rendered in ***Kamesh Panjiyar -vs- State of Bihar reported in [(2005) 2 SC 388]*** wherein the Hon'ble Supreme Court has held as below:-

“20. Therefore, the argument raised by the counsel on behalf of the appellant cannot be accepted as the offences under Section 498A and Section 304B IPC are distinct in nature. Although cruelty is a common thread existing in both the offences, however, the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections.”

26. Hence, for the aforesaid reasons, this Court hold that A1 and A2 had caused cruelty which has driven Sagana Devi to commit suicide. The



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conviction and sentence passed by the trial Court against A1 and A2 is confirmed.

27. Since there is no evidence reliable evidence against A3 and A4 for any act of cruelty to the deceased Sagana Devi, the conviction and sentence passed by the trial Court on A3 and A4 is set aside.

28. As far as the sentence of A1 and A2 concerned, for the offence of Section 498A IPC, the trial Court imposed the maximum sentence of 3 years RI and fine of Rs.5,000/-, in default to undergo 3 months SI. Taking note of the fact that the second appellant is now a senior citizen and the first appellant has to upbringing his motherless son, the period of sentence is reduced from 3 years RI into 1 year RI with fine of Rs.5,000/-, in default 3 months SI.

29. In the result, ***this Criminal Appeal is allowed in respect of appellants 3 and 4/accused 3 and 4.*** The judgment of conviction and sentence passed against the appellants 3 and 4/accused 3 and 4 is set aside.



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The appellants 3 and 4/accused 3 and 4 are set at liberty. Bail bond, if any executed by the appellants 3 and 4/accused 3 and 4 shall stand cancelled.

The fine amounts paid, if any, by the appellants 3 and 4/accused 3 and 4, shall be refunded.

30. *In respect of the appellants 1 and 2/accused 1 and 2, this Criminal Appeal is partly allowed.* The sentence imposed on A1 and A2 by the trial Court viz., the Sessions Judge, (Magaliar Neethimandaram), Chennai in S.C.No.73 of 2013 dated 17.07.2014 is hereby modified. The suspension of sentence already granted to the appellants 1 and 2/accused 1 and 2 by this Court is cancelled. The sentence of 3 years RI with fine of Rs.5,000/- stands modified as one year RI with fine of Rs.5,000/- in default, 3 months SI. The trial Court is directed to secure the appellants 1 and 2/accused 1 and 2 to undergo the remaining period of sentence imposed on them.

14.07.2022

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speaking order/non speaking order
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To:

- 1.The Sessions Judge(Magaliar Neethimandaram) Chennai-104.
- 2.The Assistant Commissioner of Police, Pulianthope Range, Chennai.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Delivery Judgment made in
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14.07.2022