



Crl.A.No.484 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.484 of 2021

Aandiyappan

... Appellant

..VS..

The State Rep. By its
The Inspector of Police,
Thiyagadurugam Police Station,
Villupuram District.
Crime No.249 of 2015.

... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C to set aside the conviction and sentence against the appellant in S.C.No.223 of 2016 passed by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram dated 13.09.2021 and allow this appeal.

For Appellant : Mr.S.Saravanakumar

For Respondent : Mr.S.Sugendran,
Additional Public Prosecutor

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J U D G M E N T

This appeal is filed against the judgment of the trial Court dated 13.09.2021 in S.C.No.223 of 2016 on the file of the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram and allow this appeal.

2. The case of the prosecution is that A2/appellant herein, and A3 are the father-in-law and mother-in-law of the deceased and the parents of the first accused. The marriage between the deceased viz., Kavitha and the first accused was solemnised on 25.05.2015. At the time of performing marriage, the parents of the deceased had given 25 sovereigns of gold jewels to the victim and 3 sovereigns of jewels to the first accused and also a Honda Twister Two-wheeler. In addition to that, household articles were also provided as Sridhana. After marriage, the first accused by demanding a sum of Rs.5,00,000/- as dowry ill-treated, harassed and humiliated the deceased. A2 also insulted her



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with filthy language. When A1 and A2 ill-treated and harassed the deceased, A3 instead of preventing them stood only as a mute spectator.

3. In one such occasion, when A1 was not in the house and the appellant/A2 was taking food, the appellant told the deceased that the food prepared by her is not good and there is no salt and chilly in the food. When the husband/A1 came in late night, the deceased informed the same to her husband/A1 and he replied, leave that matter and don't bother about it. However, on the next day i.e., on 09.10.2015, when A1 left for his work, the deceased committed suicide by hanging herself. Hence, PW1/father of the deceased made a complaint against all the accused.

4. The respondent Police registered a case in Crime No.249 of 2015 against the appellant/A2 and other 2 accused for the offence under Section 174 (iii) Cr.P.C. After investigation, the respondent Police filed a charge sheet before the Judicial Magistrate, Kallakurichi and the same was taken on file in PRC.No.25 of 2016.



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5. The learned Magistrate after considering the fact that the offences alleged to have been committed by the accused are triable by the Court of Session, committed the case to the Principal Sessions Judge, Villupuram. Subsequently, the case was made over to the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram by the Principal District Judge, Villupuram. The Mahila Court taken the case on file in S.C.No.223 of 2016 and after completing the formalities, framed charges against all the accused for the offences under Sections 498 (A), 304 (B) IPC.

6. In order to prove the case of the prosecution, during trial, on the side of the prosecution as many as 18 witnesses were examined as PW1 to PW18 and 12 documents were marked as Exs.P1 to P12 and no Material Objects were marked. After completion of the prosecution side evidence, the incriminating circumstances culled out from the prosecution witnesses were put against the appellant/accused under Section 313 Cr.P.C., wherein he denied all the incriminating



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circumstances as false and pleaded not guilty. On the side of the defence, 3 witnesses were examined as DWs.1 to 3 and no document was exhibited.

7. The Trial Court, after hearing the arguments advanced on either side and also considering the materials available on record, acquitted A1 to A3 for the offence under Sections 304(B) IPC and 498(A)(b) IPC; acquitted A1 and A3 for the offence under Sections 498(A)(a) IPC and; and convicted the appellant/A2 for the offence under Sections 498(A)(a) IPC and sentenced to undergo one year simple imprisonment and to pay a sum of Rs.20,000/- in default to undergo simple imprisonment for one month. Aggrieved over the judgment of conviction and sentence, the appellant/A2, has filed the present appeal before this Court.

8. The learned counsel appearing for the appellant would submit that the Sessions Judge framed charges against the accused persons under Sections 498 (A), 304(B) IPC. All the accused were acquitted for the



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offences under 304(B) IPC. However, from the very same evidence and material, the Trial Court, acquitted A1 and A3 for the offence under Section 498(A)(a) IPC, but erroneously convicted the appellant for the said offence.

9. There is no independent eyewitnesses to the said occurrence. There is no materials to show that soon before the death, the appellant humiliated the victim, which led to her commit suicide. Even though the RDO/PW17, who conducted the inquest, has filed the report stating that the death was due to dowry and cruelty, but the same was not substantiated by any evidence by the prosecution. Hence, the Trial Court acquitted all the charges against 2 of the accused, viz., A1 and A3.

10. The only allegation against the appellant is that on the previous night of the occurrence, he commented about the preparation of food and except that no other allegation was made against him. The Trial Court found guilty of the appellant only for the said statement, but it is not an



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ingredient for punishing him under Section 498(A)(a) IPC. On the very same oral and documentary evidence, the Trial Court found that the offence under Section 304(B) IPC was not made out even against the appellant also. The Trial Court further held that the offence under Section 498(A)(a) IPC is also not made out against A1 and A3. However, wrongfully convicted the appellant under Section 498(A)(a) IPC without any sufficient evidence. Except the defence side witnesses A1 to A3 before the RDO that on the previous night of the occurrence date, when A1 was not in the house and while the appellant was taking food, he had stated that he is a sugar patient and preparation of food is not at all good. When A1 came to the house at late night, she informed the same and A1 asked her to ignore the same. Except this no other materials are available to convict the appellant under Section 498(A)(a) IPC. The Trial Court not properly appreciated the evidence and also not understood the object of Section 498(A)(a) IPC and only on the sympathy ground as the wife of A1 died in the matrimonial home, convicted the appellant, which warrants interference of this Court.



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11. The learned Additional Public Prosecutor appearing for the respondent Police submitted that the death of the deceased was within 7 years from the date of marriage and the accused A1 to A3 by demanding dowry humiliated her and caused cruelty. Since there was no evidence to show that soon before the death, A1 and A3 caused cruelty and demanded dowry, the Trial Court acquitted them. However, the appellant alone is convicted since on previous night of the occurrence day, the appellant caused mental cruelty to the deceased, which led to her to commit suicide. The Trial Court on proper appreciation of the evidence found that soon before the death there was a humiliation by the appellant towards the victim. Therefore, the Trial Court rightly convicted the appellant and hence, there is no perversity in the judgment.

12. Heard the learned counsel appearing for both sides and perused the materials available on record.

13. Admittedly A1 is the husband and A2 and A3 are the in-laws of the deceased. The marriage between A1 and the deceased was



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solemnised on 25.05.2015. The deceased strangled herself with her saree on 09.10.2015. As the death was within 7 years from the date of the marriage, there was some presumption under Section 113 (B) of the Indian Evidence Act and therefore it was suspected as a dowry death. Though the parents of the deceased also spoken before the RDO in inquest that there was a demand of dowry and cruelty from the accused viz., A1 to A3, as the said allegation was not substantiated beyond reasonable doubt, the Trial Court acquitted all the accused for the offence under Section 304(B) IPC. The Trial Court also found that soon before the death, there was no cruelty caused by A1 and A3, therefore they were found not guilty for the offence under Section 498(A)(a) IPC. Hence, A1 and A3 were acquitted for the said offences, but the appellant alone was convicted for the offences under Section 498(A)(a) IPC. Neither the defacto complainant nor the prosecution has filed appeal against the said findings. This appeal is filed only by A2 against the findings of the Trial Court for convicting him for the offence under Section 498(A)(a) IPC.



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14. On a careful perusal of the entire materials and the findings given by the Trial Court, it is seen that there are no materials to show against A1 and A3. Even for convicting the appellant for the offence under Section 498(A)(a) IPC, the only reason assigned was that soon before the death of the deceased, i.e., on the previous night of the occurrence day, the appellant while taking food made a comment that he was not satisfied with the food prepared by the victim. For the above said comment, the Trial Court found guilty of the appellant and convicted him, and no other material was substantiated by the prosecution against the appellant.

15. A reading of Section 498(A)(a) IPC makes it very clear that there is no ingredients against the appellant to punish him under the said Section. For better understanding 498(A)(a) IPC is extracted hereunder:

"498-A. Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a



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term which may extend to three years and shall also be liable to fine.

Explanation.-- *For the purposes of this section, 'cruelty' means--*

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman."

16. Section 498(A) IPC clearly shows that only if cruelty leads a person to commit suicide, then the person who caused cruelty can be convicted under this Section. The reason assigned for convicting the appellant under Section 498(A)(a) IPC, is that on the previous night of the occurrence day, he made a comment that the preparation of food by the deceased was not good. The deceased informed the same to her husband and he asked her to ignore the same. Therefore it leads to commit suicide. A1/husband was acquitted for the said offence, but simply convicted the appellant alone for the above said allegation, which is not proper.

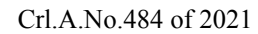


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17. This Court finds that the allegations does not meets the ingredients of Section 498(A)(a) IPC. A mere tear and wear of the day to day affairs in the family may not be a ground for a woman to commit suicide. For that purpose if she commits suicide, that may not be a ground for convict the appellant under Section 498(A)(a) IPC. Therefore, this Court is of the view that the Trial Court does not properly appreciated the evidence and erroneously convicted the appellant under Section 498(A)(a) IPC.

18. As the first appellate Court is a final Court of fact finding, while reappreciating the entire evidence, this Court finds that the prosecution failed to prove the charges against the appellant beyond reasonable doubt for the offence under Section 498(A)(a) IPC. Therefore, this Court finds that the judgment of conviction rendered by the Trial Court against the appellant for the offence under Section 498(A)(a) IPC warrants interference and hence, the judgment and conviction sentenced by the Trial Court as against the appellant is liable to be set aside. Resultantly,



20.10.2022

To

1. Sessions Judge, Magalir Neethi Mandram,
(Fast Track Mahila Court), Villupuram
 2. The Inspector of Police,
Thiyagadurugam Police Station,
Villupuram District.
 3. The Public Prosecutor,
High Court, Madras.
 4. The Deputy Registrar (Criminal Section),
High Court, Madras.
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| | | with a direction to send back the
original records, if any, to the
trial Court |
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P.VELMURUGAN, J.

pvs

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