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Crl.A.Nos.478 & 199 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.Nos.478 & 199 of 2015

Anandan, M/23 years

...Appellant/A1
(in Crl.A.No.478 of 2015)

Lakshmi, F/46 years

...Appellant/A2
(in Crl.A.No.199 of 2015)

Versus

State by,
Assistant Commissioner of Police,
Ayanavaram Range,
Chennai District.
(Crime No.531 of 2013)

...Respondent
(in both Appeals)

Common Prayer: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside the conviction and sentence rendered in S.C.No.450 of 2013, on the file of the Mahila Court, Chennai and acquit the accused from the offence.

For Appellant(s) : Mr. K. Thenrajan
(in both Appeals)

For Respondent : Mr.R.Kishore Kumar,
(in both Appeals) Government Advocate (Crl.Side)



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COMMON JUDGMENT

WEB COPY On 07.05.2013, when P.W.10/*Karpagavalli*, the Sub-Inspector of Police, was on duty at K2 *Ayanavaram* Police Station, P.W.1 appeared before her and lodged a complaint to the effect that her daughter, namely, *Jagadeeswari* aged about 19 years was married to the first accused nine months before and the couple lived together only for two months. Thereafter, the first accused/*Anandhan* and the second accused/*Lakshmi* treated her with cruelty, demanding jewels and money as dowry. Even though to the best of her ability, the mother of the victim had given 10 sovereigns and articles at worth of Rs.60,000/- at the time of marriage, they continued to torture her. On the fateful day, at about 5.30 A.M., she received a telephone call asking her to come to her daughter's home. When she went to the daughter's house nobody was there and she was directed to go to KMC Hospital, where she saw the dead body of her daughter. Therefore, she is lodging the complaint and prayed to take action against the accused who tortured her daughter by demanding dowry and caused her death.

2.On the strength of the said complaint, a case in Crime No.5 of 2013 was registered by the respondent/Police for the offense punishable under



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Section 304-B of the Indian Penal Code. Thereafter, P.W.11/*Gnanasekaran*, took up the case and made a final report proposing the accused guilty of the offence under Section 304(B) of IPC. The case was taken on file in P.R.C.No.137 of 2013 by the learned Metropolitan Magistrate, Egmore, Chennai, and after the appearance of the accused and furnishing of the copies as per Section 207 of the Criminal Procedure Code, the case was committed to the learned Principal Sessions Judge, Chennai and was taken on file in S.C.No.450 of 2013, and was made over to the Trial Court. The Trial Court after perusing the materials on record and after hearing the submissions on either side, framed charges under Sections 304(B) or in the alternative Section 306 of IPC and 498-A of IPC. Upon being questioned, the accused denied the charges and stood trial.

3. The prosecution, in order to bring home the charges, examined one *Jeeva* as P.W.1, the first informant and mother of the victim; *Pachaiyappan*, brother of the victim as P.W.2; *Shanthi*, aunt of the victim as PW-3; another aunt of the victim *Poun* as P.W.4; *Sumathi*, neighbour as P.W.5; *Srinivasan*, and *Gopal*, who were the witness to the Observation Mahazar as P.W.6 & P.W.7; *Kanthasamy*, the Revenue Divisional Officer, who conducted the enquiry of the victim in this case, as P.W.8;



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Dr.Selvakumar, who conducted the Postmortem as P.W.9; the Sub-Inspector of Police/*Karpagavalli*, who registered the case, as P.W.10; and the Investigation Officer/*Gnanasekarn*, as P.W.11.

4. On behalf of the prosecution, the complaint given by P.W.1 was marked as **Ex.P-1**. The statements given before the RDO were marked as **Ex.P-2**. The signature of P.W.2 contained in *Ex.P-2*, was marked as **Ex.P-3**. The Observation Mahazar was marked as **Ex.P-4**. The signature of P.W.6 in the Seizure Mahazar was marked as **Ex.P-5**. The signature of P.W.7 in the Seizure Mahazar was marked as **Ex.P-6**. The Postmortem report was marked as **Ex.P-7**. The report of the RDO/P.W.8 was marked as **Ex.P-8**. The final opinion as to the cause of death was marked as **Ex.P-9**. The Viscera report was marked as **Ex.P-10**. The printed First Information Report was marked as **Ex.P-11**. The rough sketch was marked as **Ex.P-12** and the Seizure Mahazar was marked as **Ex.P-13**. The Saree which was used by the victim for committing suicide was produced as **M.O.1**.

5. Upon being questioned about the materials and incriminating circumstances on record, both the accused denied the same as false.

Thereafter, no evidence was let in on behalf of the accused.



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6. The Trial Court proceeded to hear the arguments of the learned Special Public Prosecutor and the learned Counsel for the accused and by a judgment dated 19.03.2015 found that the evidence of P.W.1 to P.W.4, the mother, brother and two aunts of the victim girl pointed out towards the demand of dowry. The Trial Court found that the victim was subjected to cruelty by demand of dowry and also otherwise driving her to commit suicide. The Trial Court convicted the first and second accused for the offence under Section 498A of IPC, and sentenced them to undergo 3 years Rigorous Imprisonment and to pay fine of Rs.5,000/- each and in default to undergo 3 months Simple Imprisonment. As far as the first accused is concerned, the Trial Court convicted him for the offence punishable under Section 304(B) of IPC and imposed sentence to undergo 10 years of Rigorous Imprisonment and to pay fine amount of Rs.10,000/- and in default to undergo 6 months Simple Imprisonment. As far as the second accused is concerned, the offence under Section 304(B) of IPC held to be not proved and she was acquitted. In view of the conviction for the offence under Section 304(B) of IPC., the Trial Court acquitted the first accused for the charge under 306 of IPC. Aggrieved by the same, the first accused/*Anandan*, has preferred Crl.A.No.478 of 2015 and the second accused/*Lakshmi* has preferred Crl.A.No.199 of 2015 before this Court.



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Since both the appeals arise out of the same judgment and same are taken up for disposal by this common judgment.

7. *Mr.K.Thenrajan*, learned Counsel for the appellants taking this Court through the charge framed by the Trial Court and evidence on record, more specifically on the evidence of P.W.1 to P.W.4, the complaint given at the earliest point of time and the statement given by the first accused in the course of enquiry before the Revenue Divisional Officer, would submit that it can be seen from the evidence on record that there was a love affair and both the families arranged the marriage and 9 sovereigns were voluntarily given on behalf of the family of the victim and there was no demand of dowry was made at the time of marriage. Even though, the statement of P.W.1, which is corroborated by P.W.4, the aunt of the victim, that they gave a sum of Rs.10,000/-, it can be seen that the said incident had no connection with the commission of suicide. From the statement made by the first accused at the earliest point of time before the Revenue Divisional Officer, it is very clear that the father of the first accused passed away, soon after the marriage. But, however, the victim did not allow the accused to take care of his mother as well as the brother, as she did not want to live as a joint family and insisted to set up a separate family. Even then the first



accused gave in to the request and was living with her as a separate family.

Even while living as a separate family, feeling the pinching need to join his mother, the second accused and also his brother were insisting the victim that they will join together to live as a joint family and on that account, the quarrel arose on the fateful day. During night time when the accused suddenly woke up and he found that the victim committed suicide by hanging. Immediately, the first accused brought the dead body down and called her mother/P.W.1 and mother-in-law. Thereafter, the victim was taken to the Hospital and it was declared that she was brought dead. Therefore, there is absolutely no evidence whatsoever is on record that the proximate cause of the suicide of the victim was due to dowry demand. Secondly, her suicide on account of her extreme emotional conduct and it cannot be said that as if she was driven to commit suicide on account of the action of the accused. In this regard, the learned Counsel would also draw attention of this Court to the answer given by P.W.2 in the cross-examination that her sister was always short tempered and behaved in that manner. Therefore, it is also partly on account of the character of the victim herself, the quarrel arose. The quarrel arose during night time was a regular wear and tear in the matrimonial relationship, however, she was unable to control herself, and she committed suicide. Therefore, the first accused did



not commit any offence whatsoever.

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8. Arguing further, the learned Counsel would submit that this is the case, when even in the third month, they went for a separate residence, and absolutely there is no evidence that the second accused has committed any harassment or cruelty on the victim. As a matter of fact, except for the general statement of P.W.1 and P.W.2, no any specific overt act is attributed to P.W.2. Therefore, barring the bald allegations, there is absolutely no materials on record, so as to convict second accused. Therefore, he would pray that both the appeals should be allowed by this Court.

9. Opposing the above submissions, *Mr. R. Kishore Kumar*, the learned Government Advocate (Criminal side) appearing for the respondent would submit that in this case, there is clear and categorical evidence as to the demand of dowry. Even though at the time of marriage the jewels were given voluntarily by the parents of the victim, subsequently, it can be seen that for the debt which accrued to the accused, the both accused have been constantly insisting, nagging and torturing the victim to bring some money from her mother/P.W.1. As a matter of fact, her mother did her best to contribute by borrowing a sum of Rs.10,000/- from her own sister, namely,



P.W.4. Even that was not enough and therefore, she was subjected to torture. On and off torture of the victim was clearly and vividly spoken by

P.W.1 to P.W.4. At the earliest point of time, in the RDO report itself, it was *prima facie* concluded that there was dowry harassment. In that view of the matter, he would submit that there is overwhelming material on record that this is a case of dowry death. The death of the victim happened within 9 months of the marital life, the prosecution has proved the date of marriage, the date of death and coupled with the evidence of P.W.1 to P.W.4, the prosecution has discharged its initial burden, therefore, in view of the presumption under Section 113B of the Evidence Act, it was the burden of the accused to disprove that the unnatural death of the victim did not happen due to dowry demand and in this case, the accused has not done anything. Therefore, the Trial Court rightly convicted the accused for the offence punishable under Section 304(B) of IPC.

10. *Mr. R. Kishore Kumar*, would submit that the harassment meted out to the victim is very well on record and the prosecution has proved the offence under Section 498A of IPC to the hilt. Therefore, continuous harassment, including nagging of the victim girl that she was not good looking, the physical cruelty committed to her, habit of drinking and even



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on the date of the occurrence even on as per the own statement of the first accused before the RDO/P.W.8, all clearly prove the cruel behaviour on the part of the first accused. Therefore, the victim was tortured with both physically and mentally. In this regard, even the second accused also insisted the victim to ask money from her mother, which would also amount to cruelty. Therefore, the Trial Court rightly convicted both the accused and imposed appropriate sentence and it does not require any interference of this Court.

11. I have heard the rival submissions made on both sides and perused the material records of this case. Considering the charge under Section 304(B) of IPC., the prosecution has to discharge its initial burden that soon before her death, the victim was subjected to cruelty or harassment in connection with any demand or dowry, so as to bring home the offence of dowry death. In this regard, it is useful to extract the Judgment of the Hon'ble Supreme Court of India, in ***Parvati Devi Vs. State of Bihar Now State of Jharkhand & Ors.***¹, more specifically in paragraph Nos.12 to 18, which reads hereunder:

“12. For examining the case of the prosecution and the evidence adduced by the accused, we may extract below the relevant provision of Section 304B



IPC that relates to “dowry death”:—

“304B Dowry Death - (1) *Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.*

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”*

13. *As can be seen from the aforesaid provision, for convicting the accused for an offence punishable under Section 304B IPC, the following pre-requisites must be met:*

(i) *that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;*

(ii) *that such a death must have occurred within a period of seven years of her marriage;*

(iii) *that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and*

(iv) *that such a cruelty or harassment must have been for or related to any demand for dowry.*

14. *Coming next to Section 113B of the Evidence Act, 1872, the same refers to a presumption relating to a dowry death and is phrased as below:—*



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“113B. Presumption as to dowry death - *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*

Explanation - For the purposes of this section, “dowry death” shall have the same meaning as in section 304B of the Penal Code, 1860.”

15. *The explanation appended to Section 304B IPC states that the word “dowry” shall have the same meaning as provided in Section 2 of the Dowry Prohibition Act, 1961 which reads as follows:*

“2. Definition of ‘dowry’ - *In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies.”

16. *The import of the aforesaid provisions has been explained in several decisions of this Court. In Bansi Lal v. State of Haryana¹, it has been held that:*

“17. *While considering the case under Section 498-A (Sic. Section 304-B), cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide.”*



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17. In *Maya Devi v. State of Haryana*², it was held that:

“23. To attract the provisions of Section 304-B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304-IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned Senior Counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the women concerned, it would be of no consequence.”

*[Also refer to *G.V. Siddaramesh v. State of Karnataka*³ and *Ashok Kumar v. State of Haryana*⁴]*

18. Section 304B IPC read in conjunction with Section 113B of the Evidence Act leaves no manner of doubt that once the prosecution has been able to demonstrate that a woman has been subjected to cruelty or harassment for or in connection with any



demand for dowry, soon before her death, the Court shall proceed on a presumption that the persons who have subjected her to cruelty or harassment in connection with the demand for dowry, have caused a dowry death within the meaning of Section 304B IPC. The said presumption is, however, rebuttable and can be dispelled on the accused being able to demonstrate through cogent evidence that all the ingredients of Section 304B IPC have not been satisfied.”

12. Thus, it can be seen that the mere death of the victim within seven years will not automatically rise the presumption of guilt on the accused, but, on the other hand, only if the prosecution discharged its burden of bringing home the elements/ingredients of the offence under Section 304(B) of IPC, and the presumption under Section 113B of the Evidence Act, would come into play. In this regard, even on a plain and cumulative reading of the evidence of P.W.1/the mother, P.W.2/the brother and P.W.3 & P.W.4/the aunt of the victim girl, read with the report of P.W.8/RDO, it is clear that the marriage was only 9 months old. Even during nine months, it was conflict ridden. (i) There were conflicts between the husband and wife regarding the setting up of separate residence; (ii) There were conflicts between the husband and wife, owing to the alcoholism of the husband; (iii) There were conflicts between the husband and wife, on account of the fact that the wife was little short tempered; (iv) There was also conflicts between the husband and the wife, on account of the fact that the husband used to



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torture her stating that she was not good looking.

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13. Therefore, it can be seen that there were multiple factors for conflicts between the husband and wife. P.W.2, the brother of the victim himself has admitted in the cross-examination that his sister was little short tempered. In that view of the matter, on a reading of explanation given at the earliest point of time before the RDO enquiry, this Court could visualize that there was a quarrel between the husband and wife, on the date of occurrence, during that time, the husband was also in an inebriated condition, thereafter, the husband slept off, but, however, unable to bear the situation, sadly, the wife committed suicide. Therefore, the evidence on record does not clearly and categorically point out that the harassment was in connection to demand of dowry or any demand for dowry which was proximate cause of the death of the victim. Therefore, I am unable to agree with the Trial Court that the first accused is guilty of the offence under Section 304(B) of IPC.

14. In the same way, it can be seen that even to punish the accused for abetment of suicide, either the accused should have been involved in some acts, cajoling, enticing or forcing the victim to commit suicide or the



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victim should have been driven to commit suicide, with no other alternative available to her. In the instant case, there is certainly no evidence for the first accused to have enticed her or forced her in any manner to commit suicide. On closure scrutiny of the evidence, this cannot be a case where the victim was driven and had no other option to commit suicide. As a matter of fact, P.W.1 has categorically deposed that she was advising the victim to come home, if she could not bear the circumstances in her in-law's house. As a matter of fact, the evidence on record is that due to quarrels and unable to withstand the situation, the victim used to go to her mother's house. In that view of the matter, this Court notes that this is not a situation where the victim girl had no other option or was driven to the only possible decision of committing suicide. It cannot be held that the accused had committed the offence punishable under Section 306 of IPC., also.

15. Now coming to the offence under Section 498A of IPC., firstly the statement of the first accused himself before the RDO is there on record, that he was drunk at the time of the quarrel on a fateful day. Secondly, there is overwhelming evidence of P.W.1, P.W.2, P.W.3, & P.W.4 as to the various forms of cruelty which were committed by the first accused/husband, on the victim. As a matter of fact, P.W.1 has categorically



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stated on several days, her daughter was hit by the first accused that she was subjected to physical torture. Even going by the version of the first accused is correct that the victim was short tempered and quarrelsome, yet the act of hitting her physically would be an offence under Section 498A of the Indian Penal Code. Therefore, even for a moment accepting the argument of the learned Counsel for the appellants, I am of the view that still there is overwhelming evidence on record that the first accused had committed the offence punishable under Section 498A of IPC.

16. On a cumulative reading of the evidence, except for the bald statement of P.W.1 and P.W.2 that both the first accused/husband and second accused/mother had committed cruelty on the victim, I agree with the learned Counsel for the appellants that there is no specific overt act in what particular manner the second accused, namely, the mother-in-law committed cruelty. In this regard, it should also be seen that even within nine months, already mother in-law of the victim had agreed for setting up of a separate residence and on the date of occurrence and on the earlier occasions, she was not living with the first accused as well as the victim. In that view of the matter, the evidence of the prosecution does not rule out the possibility that there was an embellishment in roping the second accused,



especially when the daughter of P.W.1 has committed suicide and died and therefore, the second accused, namely, *Lakshmi*, is entitled for the benefit of doubt for the offence punishable under Section 498A of IPC., and the appeal filed by her deserves to be allowed.

17. Now coming to the sentence, the learned Counsel for the appellants would fervently argue before this Court that considering the nature of the offence under Section 498A of IPC., the sentence to be reduced. But, I am unable to agree with the learned Counsel. The sentence which was imposed on the first accused should be commensurate the seriousness of the crime and the victim has died and the evidence on record would show that even within nine months of the marriage, the first accused had come home with fully drunk even as on the date of the occurrence and he slept off in an inebriated condition, without even realising the victim girl's action of committing suicide by hanging herself, and in that view of the matter, I am of the view of the matter, this case deserves maximum punishment and the Trial Court has sentenced and imposed the maximum punishment of three years and I unable to interfere with the same.



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(i) The Crl.A.No.478 of 2015, filed by the first accused/*Anandan*, is partly allowed;

(ii) The first accused in this case, namely, *Anandan*, is acquitted of the charge under Section 304(B) or in the alternative 306 of IPC., and conviction and the sentence in respect thereof imposed by the Trial Court by Judgment dated 19.03.2015 is set aside and fine amount if any paid in respect therefore is ordered to be refunded;

(iii) The conviction and sentence of the first accused in respect of the offence under Section 498A of IPC., by the Trial Court are confirmed;

(iv) The first accused *Anandan*, is entitled to set off the period of imprisonment already undergone by him;

(v) Two weeks time from the date of this Judgment is granted for the first accused *Anandan*, to surrender before the Trial Court and undergo the rest of



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the sentence;

(vi) The Crl.A.No.199 of 2015, filed by the second accused/*Lakshmi* is allowed;

(vii) The second accused, namely, *Lakshmi*, is acquitted in respect of all the charges, and the fine amount, if any paid by her, is ordered to be refunded to her.

02.03.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

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To

1.The Mahila Court, Chennai.

2.The Assistant Commissioner of Police,
Ayanavaram Range,
Chennai District.

3.The Public Prosecutor,
Madras High Court.



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D.BHARATHA CHAKRAVARTHY, J.

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