



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Criminal Appeal No.790 of 2015

Kalaimurthy

..

Appellant / Accused

Vs.

State rep by its
The Inspector of Police,
Harur Police station,
Dharmapuri District

..Respondent /Complainant

Appeal filed under section 372(2) of Code of Criminal Procedure, to
set aside the conviction and sentence imposed in S.C.No.152 of 2014
dated 04.12.2015 on the file of Fast Track Mahila Court, Sessions
Judge, Dharmapuri.

For Appellant	:	Mr.R.Sankara Subbu
For Respondent	:	Mr.L.Baskaran
		Government Advocate
		[Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the



judgement and order passed by the Fast Track Mahila Court, Sessions Judge, Dharmapuri in SC No.152 of 2014 dated 04.12.2015, convicting the appellant in following manner:

<i>Sl.No.</i>	<i>Offence for which convicted</i>	<i>Sentence</i>
1.	Section 498 A	<i>3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default to undergo one month Rigorous imprisonment.</i>
2.	Section 304 B	<i>10 years Rigorous Imprisonment.</i> <i>[The above sentences were ordered to run concurrently and the period already undergone is directed to be set off u/s. 428 of Cr.P.C.]</i>

2. The case of prosecution is that the deceased Vasanthi is the daughter of PW1. She was married to the appellant two years prior to the date of occurrence. It is alleged that even at the time of marriage, there was a demand for dowry and certain gold jewels were given at the time of marriage and even thereafter, there was a demand for a sum of Rs.20,000/-. That apart, the appellant was



having an illegal intimacy with one Naveena. The mobile phone belonging to the deceased Vasanthi was taken away and was given to said Naveena. On 10/01/2010, during the night hours, there was wordy quarrel in this regard. Thereby, it is alleged that the deceased was treated with physical and mental cruelty by the Appellant.

3. The deceased not being able to take it anymore, on 11/01/2010 at about 9.30 am, went inside the house and poured kerosene on herself and set herself ablaze. This was informed to the father of the deceased (PW1) and he found his daughter lying dead. PW1 thereafter gave a complaint (Ex.P1) to the Aroor police station, Dharmapuri and PW11 registered the FIR in Crime No. 18 of 2010 under Section 174 of Cr.P.C on 11/01/2010 at about 1.00 pm.

4. The information regarding the registration of FIR was informed to the RDO (PW15). The RDO received the information on 11/01/2010 at about 4.50 pm. He started the inquiry on 12/01/2010 and recorded the statements of all the parties concerned and also



the people belonging to the locality. He prepared a report and he came to the conclusion that it was only because of the demand for dowry and continuous harassment in that regard, which had forced the deceased to take the extreme step of committing suicide. The report of the RDO was marked as Exhibit P8. PW15 also conducted the inquest over the dead body of the deceased on 10.01.2013 between 8.45 a.m to 10.10 a.m and prepared the inquest report, which was marked as Ex.P8.

5. PW16 took up the investigation and he received the report of the RDO and also recorded his statement. PW16 went to the scene of crime and prepared the observation mahazar marked as Ex.P2 and the rough sketch marked as Ex.P9. PW16 also recovered the plastic can [MO1] from the scene of crime under Seizure mahazar marked as Ex.P3. PW16 recorded the statement of the witnesses under Section 161 (3) of Cr.P.C. He prepared an alteration report marked as Ex.P10 and the offence was altered to section 304 B of IPC.



WEB COPY

6. The body of the deceased was sent for post mortem and the post mortem was conducted by PW12 and PW13 and the post mortem report was marked as Ex.P5. The appearances found at the post mortem was recorded as hereunder:

A body of a female lying on its back. Eyes closed and sunken. Mouth open. Blood oozing from mouth. Tongue inside the mouth. Blood Oozing from nostrils. Genitalia burnt. External injury 100% closed wound all over the body. Skin peeled off all over the body. Scalp peeled off. Internal examination hyoid bone intact. Ribs intact. Heart chambers c/s.pale. Lungs c/s congested. Liver, Kidney c/s. Congested and sunken. Stomach 100 ml of liquid uterus empty and intact. Skull bones intact. Brain intact. Viscera prepared. Stomach with intestine, hip, kidney 4. Perservative Nacl. The above four items were examined but poison was not detected in any of item.



WEB COPY

7. A final opinion was given by the post mortem doctors to the effect that the death was caused due to shock and burns 100%.

8. The investigation officer after the completion of recording the statements of all the witnesses and after collecting all the reports, filed the final report before the Judicial Magistrate Aaroor. The learned Judicial Magistrate served the copies to the appellant under Section 207 of Cr.P.C and the case was committed under Section 209 of Cr.P.C to the file of District and Sessions Court, Dharmapuri and it was made over to the Court below.

9. The Trial Court framed charges against the appellant for offence under Section 498A and 304B of IPC. When the appellant was questioned on the charges framed against him, he denied the same.

10. The prosecution examined PW1 to PW16 and marked Ex.P1 to P10 and identified and marked MO1. The incriminating evidence that was collected during the course of trial was put to the



appellant, when he was questioned under Section 313 (1) (b) of Cr.P.C and he denied the same as false.

11. The Trial Court, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution had proved the case beyond reasonable doubts and accordingly, convicted and sentenced the appellant in the manner stated supra. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.

12. Heard Mr.R.Sankara Subbu, learned counsel for the petitioner and Mr.L.Baskaran, learned Government Advocate, [Crl. Side] for the respondent.

13. This Court has carefully considered the submissions made on either side and the materials available on record.



14. PW1 is the father of the deceased. He has stated in his evidence that even before the marriage, the appellant was having a relationship with one Naveena, who is also a distant relative of PW1. Naveena's family was not willing to give her on marriage to the appellant. The elders requested PW1 to give his daughter in marriage to the appellant. It was under these circumstances, the deceased Vasanthi was married to the appellant. PW1 makes certain statements to the effect that he had given 1.5 pounds of jewellery and 0.5 pound of ring to the deceased. That apart, he also promised to pay a sum of Rs. 20,000/-. The deceased also conceived and gave birth to a girl child. Even according to PW1, there were regular quarrels between his daughter and the appellant and most of the time it touched upon the relationship of the appellant with the said Naveena. Ultimately, the mobile phone belonging to the deceased was handed over to Naveena and there was a quarrel between the appellant and the deceased on 10/01/2010 during night hours. This ultimately led to the deceased taking the extreme step of committing self-immolation on 11.01.2010 inside the house.

Unfortunately, the deceased sustained 100% burns and died on the



WEB COPY

15. On carefully, reading the evidence of PW1, it is clear that the main reason for the repeated quarrels between the appellant and deceased was with regard to the relationship of the appellant with the above said naveena. To add insult to injury, the appellant had taken away the mobile phone of the deceased and handed over it to Naveena. This also ended in a quarrel and the extreme step taken by the deceased of self-immolating herself. The allegations regarding the demand for dowry was made only to further improve upon the case and the demand for dowry was not the reason for the regular quarrels between the appellant and the deceased.

16. PW2 is the mother of the deceased and her evidence is also in line with the evidence of PW1. PW3 is the brother of PW1 and he has also spoken on the demand of a sum of Rs. 20,000/- made by the appellant. PW4 and PW5 who were also examined by the prosecution on the same lines, did not support the case of the prosecution.



WEB COPY

17. A cumulative reading of the evidence of all the witness clearly point out to the fact that the deceased was subjected to cruelty due to the relationship of the appellant with the above said Naveena, which led to frequent quarrels between them. The relationship of the appellant with Naveena was known to everyone even before marriage and inspite of the same, the deceased was married to the appellant and the situation only got worse. The allegation with regard to dowry is more an embellishment to add more force to the case of prosecution. The suicide committed by deceased is not relatable to demand for dowry and it is directly related to the intimacy between the appellant and the above said Naveena.

18. The Court below repeatedly took note of the demand for dowry of a sum of Rs.20,000/- from the depositions of PW1 and PW2 and had come to a conclusion that there was a demand for dowry which led to the deceased committing suicide. However, the Court failed to take note of the fact that the *causa casusens* for the suicide



committed by the deceased was not dowry demand and it was directly related to the relationship of the appellant with the above said Naveena. In view of the same, the charge under Section 304 B of IPC is unsustainable. The appellant cannot be convicted and sentenced for the alternate charge under Section 306 of IPC by taking it as a minor offence, since, there is no material to show that the appellant had instigated the deceased to commit suicide. When the suicide was committed, the appellant was not even present in the house.

19. The facts of the present case can be brought within explanation (a) to Section 498A of IPC. The conduct of the appellant was of such a nature that it has driven the deceased to commit suicide. The cruelty faced by the deceased has also been clearly spoken by PW1 and PW2. In view of the same, the conviction of the appellant for offence under 498A of IPC has to be sustained.

20. The next issue is with regard to the sentence that was imposed against the appellant while he was convicted for offence



under Section 498A of IPC. The Court below has sentenced the accused to undergo three years rigorous imprisonment and to pay a fine of Rs. 1000/- and in default to undergo 1 month simple imprisonment.

21. It is brought to the notice of this Court that the child which was born through the wedlock is now taken care by the uncle of the deceased. The appellant has already undergone incarceration for a period of 909 days. The Court below has merely ordered for payment of fine of Rs. 1000/-. Taking into consideration the facts and circumstances of the case, this Court is inclined to modify the sentence. Accordingly, the sentence of imprisonment is confined to the period already undergone by the appellant. The appellant is directed to pay compensation of a sum of Rs. 2.5 lakhs to his daughter. The amount shall be deposited in a fixed deposit and after the daughter attains majority, she will be entitled to withdraw the entire amount with accrued interest. Till the fixed deposit is closed by the daughter of the appellant, it shall be renewed from time to time. The fixed deposit for the amount of Rs. 2,50,000/- shall be



taken by the appellant on or before 02/06/2023 and the original fixed deposit receipt shall be handed over to the daughter of the appellant, who is now taken care by the uncle of the deceased. If the appellant defaults in taking the Fixed deposit within the time stipulated by this Court, the appellant shall undergo default sentence of 1 year Rigorous Imprisonment.

22. In the result, the judgement and order passed by Fast Track Mahila Court, Sessions Judge, Dharmapuri in SC No.152 of 2014 dated 04.12.2015, is modified to the extent indicated herein above and this Criminal Appeal is partly allowed.

23. Post this case under the caption for “reporting compliance” on 05.06.2023.

31.03.2023

Internet : Yes/No

Index : Yes / No

rka



To

1. The Sessions Judge, Fast Track Mahila Court, Dharmapuri

2. The Public Prosecutor
High Court, Madras.



WEB COPY



15

N.ANAND VENKATESH.,J

rka

Crl.A.No.790 of 2015

31.03.2023