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CrI.A.No.358 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM :

The Hon'ble MR.JUSTICE D.BHARATHA CHAKRAVARTHY, J.

CrI.A.No.358 of 2016

1. Sivakumar (A-1)
2. Ramachandran (A-4) .. Appellants

-VS-

State Rep. by
The Inspector of Police,
Kuvagam Police Station,
Ariyalur District.
(Crime No.76/2014) .. Respondent

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 20.04.2016 passed in S.C.No.96 of 2015 on the file of Fast Tract Mahila Court, Ariyalur.

For Appellants : Ms.A.Nethra and
Mr.K.Gandhi Kumar

For Respondent : Mr.J.Subbiah
Govt. Advocate (CrI. Side)

* * * * *



Crl.A.No.358 of 2016

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JUDGMENT

On 20.05.2014, when P.W.17, Kala, Sub-Inspector of Police, was on duty at Kuvagam Police Station, P.W.1, Ganesan, appeared before her and lodged a complaint to the effect that his daughter, Sita, was given in marriage to the first accused, Sivakumar and a child was born on account of the wedlock. Right from three months from the date of marriage, her in-laws and other family members repeatedly abused and treated his daughter with cruelty and teased her that she belonged to a poor family. They have also threatened that since she did not bring any dowry, they are making arrangements to get the first accused married again. Unable to bear all these torture and cruelty, his daughter, Sita, came back to his house.

2. While so, on 16.05.2014, the second appellant/A-4, Ramachandran, who is the brother of the first accused along with his wife and others came to the house of P.W.1 and attacked the wife of P.W.1 and snatched away the tender child. On account of the same, his daughter had consumed some poisonous leaves (ஒருவந்தழை) about 1 p.m. and immediately thereof, she was taken to Senthurai hospital and after first aid, she was referred to Ariyalur Government Hospital.



CrI.A.No.358 of 2016

Thereafter, she was taken to a private hospital, namely, Golden Hospital, for specialised treatment and thereafter, she was taken to Apollo Hospital, Trichy. However, not responding to the treatment, she succumbed on 20.05.2014 and therefore, requested for action against all the accused.

3. On the strength of the said complaint, a case in Crime No.76 of 2014 was registered initially under Section 174(iii) of the Code of Criminal Procedure (in short 'Cr.P.C.'). P.W.21, the Investigating Officer, thereafter, upon receipt of the report of the Revenue Divisional Officer, altered the provision of offence to one under Sections 304B and 498A of the Indian Penal Code (in short 'the IPC') and took up the case for investigation and laid the final report proposing totally five persons, namely, one Sivakumar, the first accused/husband of the victim, one Kasinathan, the second accused/father-in-law of the victim, one Rukkumani, the third accused/mother-in-law of the victim, one Ramachandran, the fourth accused/brother-in-law of the victim and one Usha, the fifth accused/sister of the third accused. The case was taken on file in P.R.C.No.21 of 2015 by the learned Judicial Magistrate, Jayamkondan and upon appearance of the accused and furnishing of copies, the case was committed to the learned District and Sessions



Crl.A.No.358 of 2016

Judge, Ariyalur. Upon committal, the case was taken on file as S.C.No.96 of 2015 and was made over to the Trial Court, namely, Fast Track Mahila Court, Ariyalur, for conducting trial.

4. The Trial Court, after considering the materials on record, on 14.12.2015, framed two charges under Section 498A and 304B IPC against all the accused persons. Upon being questioned, all the accused denied the charges and stood trial. Thereafter, in order to prove the charges, the prosecution examined the father of the victim, namely, one Ganesan, as P.W.1. The sister of the victim, one Sanghavi, was examined as P.W.2. Another sister of the victim, one Sathya, was examined as P.W.3. The co-brother of P.W.1, one Selvaraj, was examined as P.W.4. The cousin brother of P.W.1, one Kumar, was examined as P.W.5. The maternal uncle of the victim, one Palanivel, was examined as P.W.6. One Jayaraman, who was a neighbour sought to be examined as independent witness and who was examined as P.W.7, turned hostile. The mother of the victim, namely, Gandhimathi, was examined as P.W.8. One Karunanithi, who was a resident of the village and is the father-in-law of P.W.3, was examined as P.W.9. One Kaliyaperumal, a resident of the village, who was sought to be examined as independent witness and who was examined



CrI.A.No.358 of 2016

as P.W.10, turned hostile. P.W.11, one Rajendran, a resident of the village, who was sought to be examined as independent witness, turned hostile. Similarly, P.W.12, one Manivannan, sought to be examined as independent witness, turned hostile. One Dr.Sivam was examined as P.W.13 in the place of the doctor who gave treatment to the victim at the Apollo Hospital, Trichy. One Dr.Kanmani, who gave treatment to the victim at Golden Hospital, Trichy, was examined as P.W.14. One Dr.Saravanan, who conducted post-mortem, was examined as P.W.15. One Dr.Anbarasu, who examined the victim at Ariyalur Government Hospital in the casualty ward was examined as P.W.16. The Sub-Inspector of Police, who registered the F.I.R., was examined as P.W.17. The Head Constable, who gave the requisition letter to the Revenue Divisional Officer and who accepted the organs after post-mortem for viscera report and who submitted the same for forensic examination, was examined as P.W.18. The brother of the third accused, one Velusamy, was examined as P.W.19. The Revenue Divisional Officer, who conducted the enquiry, was examined as P.W.20. The Investigating Officer was examined as P.W.21. On behalf of the prosecution, Exs.P.1 to P.17 were also marked.



Crl.A.No.358 of 2016

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5. Upon being questioned about the material evidence and incriminating circumstances on record under Section 313 of the Cr.P.C., the accused denied the same as false. Thereafter, on behalf of the defence, the Superintendent of the District Head Quarters Hospital, one Dr.Krishnamurthy, was examined as D.W.1. One Krishnamurthy, S/o.Kaliyaperumal, who received the telephonic message from Ariyalur Government Hospital about the fact that the victim attempted to commit suicide by consuming poisonous leaves, was examined as D.W.2. One Balamurugan, Grade II Constable, who received information from the Apollo Hospital about the admission of the victim, was examined as D.W.3. One Periyannayagam, who is also related to both sides, was examined as D.W.4. One Umamaheswari, wife of the fourth accused, Ramachandran, was examined as D.W.5. One Dhanalakshmi, a neighbour residing near the house of the accused, was examined as D.W.6. The second accused, Kasinathan, examined himself as D.W.7. On behalf of the defence, Exs.D.1 to D.8 were also marked.

6. After the closure of evidence on the defence side, the Trial Court proceeded to hear the learned Special Public Prosecutor on



Crl.A.No.358 of 2016

behalf of the prosecution and the learned counsel for the accused and by judgment dated 20.04.2016, considered the evidence on record and acquitted all the accused in respect of the offence under Section 304B IPC. The Trial Court also acquitted the second accused, Kasinathan, of the offence under Section 498A IPC. However, the Trial Court found A-1 and A-3 to A-5 guilty of the offence under Section 498A IPC. As far as A-3 is concerned, considering the role played by her and her conduct and age, she was released under Section 360 Cr.P.C. upon executing a bond for a sum of Rs.10,000/- along with two sureties. As far as A-5, Usha, is concerned, she was sentenced to undergo simple imprisonment for a period of 19 days, which she had already undergone and was imposed a fine of Rs.5,000/-. As far as the first accused, Sivakumar, is concerned, he was sentenced to undergo rigorous imprisonment for a period of two years and was ordered to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. Accused No.4, Ramachandran, was sentenced to undergo rigorous imprisonment for a period of three years and was ordered to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. Aggrieved by the findings of guilt and sentence imposed against them, Accused Nos.1 and 4, namely, the



Crl.A.No.358 of 2016

husband of the victim, Sivakumar and his brother, Ramachandran, have filed this appeal.

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7. Heard Mr.K.Gandhikumar and Ms.A.Nethra, learned counsel appearing for the appellants/accused and Mr.J.Subbiah, learned Government Advocate (Crl. Side) on behalf of the prosecution.

8. Commencing the arguments on behalf of the appellants, Ms.A.Nethra, learned counsel, taking this Court to the evidence on record, would submit that as far as the fourth accused is concerned, the allegation against him is that on 16.05.2014, he had come along with D.W.5, to the victim's mother house and snatched away the child by physically assaulting the victim as well as P.W.8, mother. In this regard, she would submit that even as per P.W.8, the persons in the locality were resisting such illegal forceful attempt made by A-4. But, however, all the independent witnesses, namely, P.Ws.7 and 10 to 12, who were examined for the said purpose, turned hostile and did not support the case of the prosecution. This apart, while the allegation in the complaint was as if the child was taken away forcefully, P.W.8 herself, in her cross-examination, had stated that even the victim had told A-4 that the child is sleeping in the cradle and that he himself can



CrI.A.No.358 of 2016

take the child if he wants and therefore, there is a major contradiction regarding the said vital aspect of the matter. Secondly, by examination of all the witnesses, it is established by the defence that from the beginning, P.W.8, the mother of the victim, was not inclined to give her daughter in marriage to A-1, who was the sister's son of P.W.1 and on the other hand, it was her intention to get her daughter married to her own brother, who is P.W.6. As a matter of fact, the admissions made by all the relative witnesses, which the learned counsel took the Court to, would prove the said allegation on behalf of the defence. Therefore, the version of the defence is that already when P.W.8 was not in favour of the marriage and when the victim had come home complaining about her in-laws, she had started picking up quarrel with her own daughter admonishing her not to send the child for the birthday function of A-4. In order to prove that there is a birthday function, even the birth certificate of the child of A-4 is also marked as a defence document, namely, Ex.D.2. Only because of the quarrel picked up by P.W.8, unable to withstand the pressure, the victim had committed suicide. Only because of the said fact, even when the victim was alive and conscious for a period of four days and in spite of Ex.D.1 and intimation by all the hospitals to the police station and in spite of the visits of the police personnel, no statement



CrI.A.No.358 of 2016

has been recorded from the victim. Had any statement was recorded from the victim, she would have come out with the truth as to for what reason she had consumed the poisonous leaves (ஒருவந்தழை). Therefore, the non-examination of the victim when she was alive and conscious for four days clearly raises a grave suspicion on the case of the prosecution.

9. Secondly, only after the death of the victim, as an after-thought, the complaint was given. When P.W.20, the Revenue Divisional Officer, conducted the enquiry, even though all the family members and the accused were very much present, none were examined and their statements were recorded by the Revenue Divisional Officer leading to a unilateral and biased conclusion that there was demand of dowry by the in-laws and that the suicide happened only because of demand of dowry. Therefore, the case of the prosecution was rightly disbelieved by the Trial Court as far as the offence under Section 304B is concerned.

10. As far as the allegation of cruelty is concerned, since the incident dated 16.05.2014 relating to the snatching away of the child has been disproved and since there is no other allegation relating to



Crl.A.No.358 of 2016

cruelty, the Trial Court ought not to have convicted the appellants for the offence under Section 498A IPC also and hence, pleaded acquittal.

Learned counsel, Ms.Nethra, would also submit that the entire claim was an after-thought and when the victim being hyper-sensitive in nature had committed suicide on account of the pressure meted out to her by everyone in her family including her own mother, the conviction of the appellants for the offence under Section 498A IPC is uncalled for.

11. Per contra, Mr.J.Subbiah, learned Government Advocate (Crl. Side), opposing the said allegations, would submit that in this case, P.W.1, the father and the first informant, P.Ws.2 and 3, the sisters, P.W.8, the mother, all of them have clearly and categorically deposed about the acts committed by the accused, who are the husband and other in-laws of the victim. They had clearly and categorically stated that the accused had tortured her for not bringing enough jewels. Even though the aspect as to the dowry demand being the reason for torture soon before the death has been disbelieved by the Trial Court, still the verbal abuses that she was hailing from a poor family and her parents are not rich enough, which became the cause for mental harassment and agony of the victim, cannot be overlooked and the



Crl.A.No.358 of 2016

Trial Court has rightly taken the said allegations into consideration while convicting the accused including the appellants.

12. The learned Government Advocate would further submit that P.W.8 is the eye witness to the incident of snatching of the baby. It can be seen that the baby was four months old and it cannot be taken away by the second appellant/Accused No.4 on his own without the mother for the birthday function. He would further submit that the Accused No.2, being the Sub-Inspector of Police, and his family members, behaved in a high-handed manner abusing the victim and her family, as they were economically poorer than them and unable to bear the said torture only, the victim had committed suicide. As a matter of fact, like every other parent, when the victim had consumed the poisonous leaves (ஒடுவந்தழை) and was battling for her life, even though was conscious and when she was referred from one hospital to the other informing them that the condition is serious and has been referring the victim for treatment to the higher institution, their entire concentration will only be in saving the life of the victim and they will not merely run to the police station to give the complaint. It is only in this context that the complaint was not given and once the victim died, immediately they lodged the complaint and therefore, this explains the



Crl.A.No.358 of 2016

non-examination of the victim as well as the delay in lodging the complaint and that factor should not come in the view of this Court to doubt the case of the prosecution. Therefore, he would submit that the Trial Court has rightly considered the case from all perspectives and had rightly imposed the lenient sentences on Accused No.5 and even released A-3 on probation of good conduct considering the allegations against her. Upon considering the seriousness of the allegations against these two appellants, appropriate sentences have been imposed, which do not require any interference whatsoever by this Court.

13. In reply, Mr.Gandhikumar, learned counsel appearing for the appellants, while summarising and reiterating the arguments made by the other learned counsel, Ms.Nethra, would draw the attention of this Court to the cross-examination of P.W.1, the father and P.W.8, the mother which would clearly demonstrate the equations in the family. He would once again submit that when there is discrepancy between the evidence on record and the original complaint regarding the manner in which the child was alleged to have been snatched away, the second appellant is entitled for benefit of doubt. He would submit that the child is now ten years old and is now being brought up only by



Crl.A.No.358 of 2016

the first accused and is currently studying 4th standard in Sabarmathi Vidhyalaya Public School, Ariyalur. He would submit that as a matter of fact, on the day of the said incident, i.e., 16.05.2014, admittedly the first accused was in Chennai and is no way in any manner directly or indirectly responsible for the victim committing suicide. He would further submit that even the other allegations of cruelty of verbal abuse is not substantiated by the prosecution and would, therefore, submit that the first accused also is entitled for the benefit of doubt.

14. I have considered the rival submissions made on either side and perused the material records of the case. Firstly, as far as the offence under Section 304B IPC is concerned, the Trial Court itself had acquitted all the accused. Therefore, we are now concerned in respect of the appeals filed by Accused Nos.1 and 4 in respect of their conviction and sentence imposed for the offence under Section 498A IPC.

15. On a cumulative reading of the entire evidence on record, it can be seen that there are three sets of allegations, which would amount to cruelty within the definition of Section 498A IPC. The first set of allegation is the demand of dowry as such. The second set of



Crl.A.No.358 of 2016

allegation is that the victim was constantly ill-treated and abused by the family members of the accused and was constantly made to go back to her parental home. She was also even physically tortured and verbally abused and was very much unable to withstand the said behaviour on the part of her in-laws and especially, when the first accused being the husband did nothing to protect her and give comfort to her in the house. The third set of allegation is that on the day of occurrence, i.e., 16.05.2014, for the purpose of celebrating the birthday function or otherwise, the child was forcefully taken away by A-4 in the company of D.W.5 which triggered the victim to consume poisonous leaves.

16. As far as the first set of allegation is concerned, it can be seen that the family of the victim was financially lesser than her in-laws' house. As a matter of fact, the evidence on record being the evidence of the relatives clearly adumbrates that it was the intention of A-3, Rukkumani, that she will make her own own brother's daughter as her daughter-in-law so that she will be taken good care of. This apart, either in connection with the marriage or thereafter, there is no evidence clearly bringing on record that there was any demand for dowry and as a matter of fact, the Trial Court itself had disbelieved the



Crl.A.No.358 of 2016

said allegations and consequently, had acquitted the accused in respect of the offence under Section 304B IPC. Therefore, the first set of allegations has no legs to stand.

17. As far as the third set of allegations regarding the incident of forcefully taking away the child by even throwing a stone on P.W.8 is concerned, except P.W.8, the other independent witnesses who are supposed to have witnessed the incident and were examined as witnesses by the prosecution, namely, P.Ws.7 and 10 to 12, all turned hostile and did not support the case of the prosecution. Even otherwise, from the very evidence of P.W.8 herself that her daughter told Accused No.4 to take the child by himself from the cradle would also throw a considerable doubt on the version of P.W.8. This apart, a cumulative reading of the defence witnesses and that of the prosecution, raises a suspicion whether the theory of the prosecution that the victim never wanted the child to be taken for the birthday function is correct or not or whether she also wanted to go but was admonished from her parents side. There is a needle of doubt in this regard and therefore, once there is a slightest suspicion with regard to the manner in which the incident happened, especially when all the independent witnesses have turned hostile, as far as this set of



Crl.A.No.358 of 2016

allegations is concerned, this Court has no other option than to give the benefit of doubt to the accused. But, however, as regards the other set of allegations that the victim was constantly subjected to verbal abuse and that she used to go to her parents' house unable to bear the verbal abuses, those allegations are fortified by the statement of P.Ws.1 to 3 who are the family members of the victim. As a matter of fact, even from the evidence of D.W.5, the fact that the victim was in her parents house even as on the date of her consuming poisonous leaves is fortified. Therefore, as a husband, it is incumbent upon A-1 not to have indulged in those kinds of mental torture and cruelty and also the failure to protect the victim who had come to live in his family only believing him, the allegation regarding the abuse and mental torture stands proved as far as Accused No.1 is concerned. However, as far as Accused No.4 is concerned, except for snatching away the child, there is no other allegation regarding the abuse on his part.

18. In view of my above findings, the finding of guilt in respect of the offence under Section 498A IPC in respect of the first accused, Sivakumar, is upheld with reference to the allegation of verbal abuse and ill-treatment. The finding of guilt in respect of the offence under Section 498A IPC in respect of the fourth accused, Ramachandran, is



Crl.A.No.358 of 2016

reversed and he is acquitted of the offence under Section 498A IPC also.

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19. Now, coming to the quantum of sentence, even though in this case unfortunately the victim had died, this Court is able to see that the first accused Sivakumar was arrested and was in jail for a period of 65 days. He is also now bringing up the child born out of the wedlock who is now studying 4th standard in a private school as narrated above. This Court also takes into consideration that the death had happened four months after the delivery of the child and that the victim was sensitive and on the day of the incident, the first accused was away in Chennai. Further, there is also evidence on record that after hearing about the committing of suicide by the victim, all visited the victim while she was undergoing treatment in the hospitals. Under such peculiar circumstances and conspectus of facts, I am inclined to reduce the substantive sentence imposed by the Trial Court against the first accused from rigorous imprisonment for a period of two years to that of the period already undergone. The fine amount shall remain the same.



Crl.A.No.358 of 2016

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20. In the result, the Criminal Appeal is partly allowed, acquitting Ramachandran, the second appellant/A-4 of the offence under Section 498A IPC and while confirming the conviction of Sivakumar, the first appellant/A-1 for the offence under Section 498A IPC, the substantive sentence of rigorous imprisonment for a period of two years is reduced to the period already undergone by the first appellant/A-1. The fine amount imposed on the first appellant is confirmed. The second Appellant/Accused No.4, shall be entitled for refund of fine amount, if any, paid by him.

26.04.2023

Index : Yes

Speaking

sra

To

1. The Judge, Fast Track Mahila Court, Ariyalur.
2. The Public Prosecutor, Madras High Court, Chennai.



WEB COPY



Crl.A.No.358 of 2016

D.Bharatha Chakravarthy, J.

(sra)

Crl.A.No.358 of 2016

26.04.2023