



Crl.A.No.255 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2023

PRONOUNCED ON: 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.255 of 2021

Ravi @ Kanagaraj

...
Vs.

Appellant

State Rep.by
The Deputy Superintendent of Police
Erode (North Police Station)
Erode.

Crime No.1355/2012.

...

Respondent

PRAYER: This Criminal Appeal has been filed under Section 374(2) of Code of Criminal Procedure to allow the appeal, set aside the conviction and sentence passed under section 498A IPC against the appellant on 09.04.2021 in S.C.No.23 of 2016 on the file of the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and acquit him from the charge under Section 498-A IPC.

For Appellant : Mr.A.Thiyagarajan

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.side)



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JUDGMENT

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This criminal appeal has been filed to set aside the conviction and sentence passed under section 498A IPC against the appellant on 09.04.2021 in S.C.No.23 of 2016 on the file of the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and acquit him from the charge under Section 498-A IPC.

2. The fact of the case:

The accused married the deceased Nisha on 06.03.2011 at Thuraiyur. After marriage, they lived at the accused house Velayudhampalayam, thereafter, went to Coimbatore and lived separately. On 11.04.2011 the accused and the deceased Nisha went to Singapore to purchase machineries for the purpose of their business. For that, the accused demanded money and sent the deceased to get Rs.5,00,000/- from her father viz., Perumal and the father of the deceased Perumal gave that amount. After some time, since he was not able to get any job and to start business, the accused again demanded a further amount of Rs.5,00,000/- for business purposes and he again went to Singapore and treated her



cruelty over phone. Thereafter, he had again tortured Nisha suspecting relationship with her sister's husband. Due to the humiliation caused by the accused, she committed suicide on 04.11.2012 at her residence by hanging herself. Thereafter, her father Perumal gave the complaint Ex.P1. After that, Revenue Divisional Officer conducted enquiry and on receipt of the complaint, the respondent police registered a complaint in Crime No.1355 of 2012 under Section 174 Cr.P.C. and Section 498(A) IPC. After completion of investigation, filed a final report and prosecuted the accused for the offence punishable under Sections 498(A) & 304(B) IPC.

3.Before the trial Court, the prosecution examined twenty one witnesses and marked twenty three documents besides produced two material objects.

4.When the incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false, he did not choose to examine any witness nor mark any documents.



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5. After considering the evidence, the trial Court found not guilty for the offence under Section 304(B) IPC but convicted for the offence under Section 498A IPC and sentenced to undergo rigorous imprisonment for three years besides imposed a fine of Rs.2,00,000/- in default to undergo three months simple imprisonment and ordered to pay a fine amount to the girl child of the deceased after appeal time is over. Aggrieved by this judgment of conviction, the accused filed this criminal appeal.

6. The learned counsel for the appellant would submit that the finding of the trial Court is unsustainable either in law and on facts and contrary to the evidence on record. The trial Court recorded its finding that the prosecution had failed to let in positive and cogent evidence with regard to the cruelty for commission of suicide by the deceased and acquitted the accused for the charge under Section 304 B IPC but erroneously convicted for the offence under Section 498 A IPC in the absence of any evidence for demanding of dowry. Further, the learned counsel contended that the accused demanded dowry through phone from



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Singapore and thereby caused cruelty to his wife but the investigating officer had not seized the mobile phone of the deceased wife Nisha in order to establish the fact that through phone from Singapore, he demanded Rs.5,00,000/- from the deceased wife. The investigating officer during his cross examination admitted this fact that he had not seized the mobile phone of the deceased wife Nisha. The trial Court failed to consider this fact and evidence of the investigating officer and failed to consider the non-production of best evidence by the prosecution. The trial Court erroneously relied upon the family quarrel at the naming ceremony of their child Anjana, which was not mentioned in the FIR but only later during the course of trial, the father deposed about the family quarrel which is unconnected with the demanding of dowry as alleged by the prosecution. Further, the trial Court failed to consider the evidence PW18 Dhanalakshmi, a neighbour to the deceased. Further, in this case, the complaint was given belatedly on the next day on 05.11.2012 at about 8.00 a.m. but PW17 in his evidence stated that the death initiation had been prepared by 10.00p.m. on 04.11.2012. While so, the trial Court has failed



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to appreciate the evidence of PW18 that the police arrived at the house of the deceased in the night. In such circumstances, the complaint of PW1 alleged to have been given next day at 8.00 a.m. without any explanation for the delay becomes unbelievable, highly doubtful. Further, the learned counsel contended that PW18 the RDO, who conducted the inquest has deposed that the sister of the deceased Subalatha and her brother first saw the deceased in her house. They were not examined by the RDO. Therefore, the presence of PW3 becomes doubtful. Further, the trial Court failed to consider the fact that at the time of the alleged occurrence, the accused was at Singapore and he came to the native place immediately on the receipt of the information about the death of his wife and attended the further enquiries and the trial Court failed to consider the fact and the report of RDO that in inquest report column 15, the death has not been mentioned due to dowry demand. In such circumstances, the finding of guilt for the offence under Section 498A IPC is unsustainable and reiterated other grounds raised in the grounds of appeal.



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7.To support his argument, the learned counsel for the appellant relied upon the judgments (i). *Mangat Ram vs State Of Haryana* reported in *2014 (12) SCC 595*, (ii).*Harbeer Singh Vs. Shheshpal & Ors*, reported in *2016 (16) SCC 418* and (iii) *Amish Devgan vs Union Of India* reported in *2020 7 SCC 637*.

8.The learned Government Advocate (Crl.side) for the respondent supported the judgment of the trial Court and pleaded to dismiss the criminal appeal as it has no merit.

9.I have considered the matter in the light of the submissions made by the learned counsel for the appellant as well as the learned counsel for the respondent.

10.This is a case of dowry death. Nisha is the wife of the appellant /accused. The marriage took place on 06.03.2011 at Thuraiyur. They have a daughter named Anjana. The wife of the appellant namely Nisha



committed suicide on 04.11.2012. Dr.Jayakavitha PW13 and Dr.Rasiq Pareeth conducted post mortem upon the body of the deceased Nisha and gave post mortem certificate Ex.P5. They deposed that the deceased, who appears to have died of asphyxia due to hanging. Thus, it is established that she committed suicide.

11.I have gone through the impugned judgment of the prosecution evidence. Though PW1 Perumal father of the deceased deposed that he had given Rs.5,00,000/- to the accused in the presence of PW8 Veeramani and PW9 Kumaran @ Ganankumaran, they have not subjected for cross examination, hence, the trial Court had not taken into consideration of their evidence. Further, with regard to the second demand of Rs.5,00,000/-, it is alleged that the accused asked for that amount, while he was in Singapore through phone. Further, the evidence of PW1 Perumal, PW2 Madheswari and PW3 Selvi Subalatha reveals the fact that the accused was in Singapore at the time of occurrence. Further, it is alleged that he demanded the amount of Rs.5,00,000/- from his wife Nisha only by phone. The investigating officer has not recovered the mobile phone used by the



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deceased and took the call details to find out whether there was a continuous phone calls from the accused soon before the commission of the suicide but the investigating officer failed to secure the phone and obtained the details from the phone. It is not evidenced before the trial Court to establish the allegation that the accused demanded Rs.5,00,000/- to the deceased wife before the occurrence from Singapore through phone.

12.Further, on perusal of the report of Revenue Divisional Officer, Sugumar Ex.P19, it is noticed in that the column 15 of the report, the commission of suicide was not mentioned due to demand of dowry. The words run as follows:

”குற்றவியல் நடைமுறைச்சட்டம் பிரிவு
174-ன் கீழ் வரதட்சணை கொடுமை
காரணமாக திருமதி.நிஜா என்பவரது
மரணம் ஏற்படவிலலை என்பதை
ஏகோபித்தும் தனித்தனியாகவும்
தெரிவித்துக்கொள்கிறோம்.”



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13.Further, the trial Court in the impugned judgment in para – 18, it is noticed that the trial Judge recorded the vast contradiction between the final report and the evidence of PW1 to PW3 as to the demand of dowry by the accused to the deceased in spite of this observation and contradiction, with the evidence of PW1 to PW3 found guilty for the offence under Section 498A is unacceptable one. The relevant portion of the judgment runs as follows:

“The investigating officer had not seized the deceased phone and made efforts to collect the call details to find out whether there was a call from the accused the previous night as stated by the PW1 to PW3. Further more there seems to be vast contradiction between the final report and the evidence of PW1 to PW3 as to the demand of dowry by the accused to the deceased. The primary evidence required for proving 304 B Indian Penal Code is the demand of dowry and the cruelty in continuation to demand of dowry.



But this Court finds that the prosecution had failed to let in positive and cogent evidence that there was a demand of dowry by the accused through deceased before the date of death.”

14.It is a cardinal rule in law of evidence that the best available evidence should be brought before the Court under Sections 60, 64 and 91 of the Indian Evidence Act, 1872, are based on this rule. In this case, in weighing the prosecution evidence, the court takes note of the fact that the best available evidence of the mobile phone of the deceased Nisha has not been secured in order to establish the demand of dowry by the accused from Singapore. The main allegation is, from Singapore, he demanded dowry of Rs.5,00,000/- from the deceased wife, it is not established by the prosecution.

15.In this case, there is absolutely no evidence of dowry demand and the conviction recorded under Section 498A IPC is without any material.



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16.Explanation to Section 498A IPC gives the meaning of “cruelty“ which consists of two clauses. To attract Section 498A IPC, the prosecution has to establish the willful conduct on the part of the accused and that the conduct is of such a nature as is likely to drive the wife to commit suicide.

17.The trial Court failed to take note of the fact that the accused was in Singapore at the relevant period. The allegation is attributed that he insisted on the demand of Rs.5,00,000/- only through a phone that was not established by the prosecution. Further, the trial Court has found no offence under Section 304 B IPC but convicted under Section 498A IPC without any material to establish the demand of dowry. Therefore, the judgment of the trial Court is unsustainable and the same has to be set aside. The accused is entitled for acquittal.



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WEB COPY 18. In the result, the criminal appeal is allowed and the conviction and sentence passed by the Trial Court is hereby set aside and the appellant/accused is acquitted from all the charges. Fine amount, if any, paid by the appellant/accused to be refunded to him.

Index: Yes/No
Internet: Yes/No
sms

25.04.2023

To

1. The Deputy Superintendent of Police
Erode (North Police Station)
Erode.
Crime No.1355/2012.
2. The Sessions Judge,
Magalir Neethi Mandram
(Fast Track Mahila Court),
Erode.
3. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM, J.

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Pre-delivery Judgement in
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