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CRL A No.831 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 09.01.2023**

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

**Criminal Appeal No.831 of 2018 &**  
**Crl.R.C.No.1351 of 2019**

Jayesh Kanna ... Appellant in Crl.A.No.831 of 2018 &  
... Petitioner in Crl.R.C.No.1351 of 2019

Vs.

The Assistant Commissioner  
Law & Order (West)  
Coimbatore City ... Respondent in Crl.A.No.831 of 2018

The Inspector of Police  
B-8, Variety Hall Road Police Station  
Coimbatore ... Respondent in Crl.R.C.No.1351 of 2019

**Prayer in Crl.A.No.831 of 2018** : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence Judgment of the learned IV Additional District Judge/Sessions Judge, Mahalir Neethi Mandram (Mahila Court), Coimbatore in S.C.No.248 of 2015 dated 29.11.2018.

**Prayer in Crl.R.C.No.1351 of 2019**: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the order dated 18.10.2019 made in C.M.P.No.476 of 2019 in S.C.No.248 of 2015, on the file of the Sessions Judge, Mahalir Neethi



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Mandram (Mahila Court), Coimbatore and consequently, directing the return of passport marked as M.O.12, before the trial Court to the petitioner.

For Appellant/ : Mr.G.Rajkumar  
Petitioner

For Respondent : Mr.R.Murthi G.A.(Crl., Side)

### **COMMON JUDGMENT**

This Criminal Appeal has been filed against the judgment of conviction and sentence imposed on the appellant/accused in Session Case No.248 of 2015, dated 29.11.2018, on the file of learned IV Additional District Judge/Sessions Judge, Mahalir Neethi Mandram (Mahila Court), Coimbatore.

2. The Criminal Revision Petition has been filed by the petitioner for setting aside the order of the trial Court and consequently, to direct the respondent for return of passport.

3. The case of the prosecution as put forth before the Trial Court is that on 31.01.2015 between 5.00 and 6.45 pm, the deceased Sangeetha



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committed suicide by hanging using her saree in her parental house. The husband of the deceased is A1; A2 and A3 are father and sister of A1 and A4 is brother of A1 and the Juvenile accused Jeyanthraj is the youngest brother of A1. At the time of marriage between the A1 and the deceased Sangeetha, her parents gave Rs.3 lakhs and 20 sovereign of gold jewels to her and also gave 1 sovereign of chain with 3 gm., dolar, ½ sovereign of ring, 3 gm of kanganam and 2 kg of silver to A1 as Dowry. A1 was working at Muscat as Engineer and the deceased was living with her in-laws as joint family at Coimbatore. A1 often asked the deceased to bring money from her parental house and all the accused persons were always talking about the dowry and harassed the deceased Sangeetha. While the parents of deceased Sangeetha asked A1 to take their daughter with him to Muscat, A2 and A3 scolded her parents stating that if they were in a hurry, they should get a visa for her daughter and buy necessary things for house give Rs.30,000/- for rent and send their daughter to Muscat. A4 also scolded the deceased Sangeetha by pointing out the dark complexion and she does not match his brother; that his brother was magnanimous in marrying her and then his parents would not give the



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money they asked for and the Juvenile accused Jayantharaj scolded and intimidated the deceased Sangeetha and the sangeetha when informed about the torture of A2 to A4 and Juvenile accused Jayantharaj to her husband's phone that they treated her as a servant maid. A1 replied that he married her only for house hold work and and advised Sangeetha to adjust with his parents and brothers and that he would act according to their wishes. When deceased Sangeetha visited her parental house to see her father who was ill with the permission of her in-laws, A1 scolded her over phone stating that disobey his parents since she is disobeying his parents and going to her parental house, she should stay there itself and that he would not talk to her anymore and this caused mental agony to the deceased Sangeetha and A2 vigorously scolded the relations of the deceased Sangeetha, who questioned to them. Hence, the deceased Sangeetha during her stay in her parental house at Door No.111, Sullivan Street, Gandhipark, Coimbatore, committed suicide by hanging herself using her Saree on 31.01.2015 between 5.00 and 6.45 pm and died. Therefore, A1 to A4 have committed an offence punishable under Section 498A and 304B of IPC. The Assistant Commissioner of Police,



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Coimbatore City has filed a charge sheet against A1 to A4 and the Juvenile Accused before the Judicial Magistrate No.V, Coimbatore.

4. The committal Magistrate, after completing the procedures under Section 207 Cr.P.C., committed the case to the Principal Session Court, Coimbatore, as the offences were triable exclusively by the Court of Session. The Principal Session Judge, Coimbatore took the case on file as Session Case No.248 of 2015, and framed charges under Section 498A and 304B IPC against the appellant/A1 and against A2 to A4 who are parents and brother of A1.

5. In order to prove the prosecution case, 18 witnesses were examined as PW1 to PW18 and 21 documents were marked as Ex.P1 to P21 and M.Os., 1 to 13 were also marked. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused and questioned under Section 313 Cr.P.C., they denied all the incriminating circumstances as false and pleaded not guilty. On the side



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of the defence, A1 was examined as DW-1 and Exs.D.1 to Exs.D14 were marked through him.

6. After considering the evidence on either side and the documents exhibited on both sides, the learned Trial Judge came to the conclusion that A1 is guilty for the offence under Section 498A IPC., and sentenced him to undergo **rigorous imprisonment** for three years and to pay a fine of Rs.10,000/-, in default of payment of fine, to undergo **rigorous imprisonment** for six months. The learned Trial Judge however acquitted the A1 for the offence under Section 304(B), and A2 to A4 were also acquitted of the offences punishable under Section 498(A) and 304(B) IPC and 235(1) Cr.PC. Aggrieved over the judgment, the present appeal has been preferred by the appellant/A1.

7. The learned counsel appearing for the appellant contended that the appellant and his wife Sangeetha got married on 02.11.2014. They lived happily after the wedding. The appellant was employed in Muscat and he asked his wife Sangeetha to arrange for passport and visa to join



him at Muscat. The deceased Sangeetha used to visit her parents house quite often. After 18.01.2015, when the deceased Sangeetha went her parents house to see her ailing father there was a drastic change in her behaviour and the appellant did not have any clue about her changed behaviour. She avoided his phone calls on some reason or the other and on 31.01.2015, the appellant/A1 received a message stating that his wife committed suicide by hanging at the house of her parents and therefore, he rushed back to India. The learned counsel further contended that P.W.1 to PW7 are interested witnesses and the judgment of the Trial Court based on the interested witnesses is erroneous. The Trial Court failed to appreciate the evidence of PW-13 that the Appellant/A1 and the deceased were talking to each other till her death and hence the allegation that the appellant/A1 caused mental agony to the deceased is false. The evidence of PW-13, is also substantiated by the evidence of PW-1 to PW-3, the parents and sister of the deceased who have categorically deposed that the appellant was talking over phone till her death. Hence, the Trial Court has wrongly come to a conclusion that the alleged act of not calling the deceased Sangeetha over phone amounted



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to cruelty as defined under Section 498-A explanation (a) of IPC. The learned counsel also contended that the ingredients of Section 498-A IPC is not attracted to the case on hand and hence, prayed to set aside the judgment of conviction and sentence.

8. On the other hand, the learned Additional Public Prosecutor submitted that the Trial Court has on appreciation of the cogent evidence of the prosecution witnesses came to the conclusion that the appellant/A1 has subjected his wife to cruelty and hence, the judgment of conviction and sentence imposed on the appellant should be confirmed.

9. Heard the learned counsel appearing for the parties and perused the materials placed on record.

10. Admittedly, the marriage between the appellant and the deceased was solemnized on 02.11.2014 and the said marriage was arranged by the elders of both the family and the expenditure for the marriage was incurred by the appellant/A1, but however, some amount



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was also given by the parents of the deceased towards marriage expenses.

At the time of marriage, the appellant was working as an Engineer in Muscat. After the marriage, he left for Muscat and it is also admitted that the victim Sangeetha died on 31.01.2015, which is within 3 months from the date of marriage 02.11.2014. It is also admitted that she committed suicide by hanging herself. The parents of the deceased filed a complaint and the investigation revealed that her death cannot be called to be under normal circumstances. Though a case was initially filed under Section 173 Cr.P.C., subsequently, the case was altered into under Sections 304(B) and 498A IPC. Out of 18 witnesses, PW-1 is the mother of the victim; PW-2 is the father of the victim, PW-3 is the sister of the victim and PWs-1 to 3 have clearly stated that the appellant and the other accused demanded dowry, but however, the Trial Court acquitted all the accused for the offence under Section 304(B) and except appellant the Trial Court also acquitted the other accused for the offence under Section 498A. Neither the prosecution nor the victim side has preferred appeal against the acquittal of the accused, however, the appellant/A1 has filed the present Appeal against the judgment of conviction for the offence



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under Section 498A IPC. Since this Court is an Appellate Court and also a final Court of fact finding, it has to re-appreciate the entire evidence and come to the conclusion independently.

11. Though the learned counsel appearing for the appellant has contended that the witnesses are interested, it is quite natural to have interested witnesses in a case where matrimonial disputes are involved. The evidence of the witnesses is cogent and trustworthy and the Trial Court on appreciation of the evidence and the other materials available on record, has rightly come to the conclusion that the appellant/A1 has subjected his wife to cruelty.

12. The only point that has to be considered in this appeal is that as to whether the conviction and sentence imposed on the appellant by the trial Court under Section 498(A) is correct or not? since the trial Court has acquitted A1 and other accused of all the other offences.

13. It is the case of the prosecution as put forth from the evidence of PWs 1 to 3 that the deceased got the permission of A2 and went to her



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parental house and A1 expressed his anguish that the deceased has gone to her place of parents' inspite of the instructions of A2 & A3 and hence he would not speak to her till she comes back to the matrimonial home and this has caused mental agony to the deceased. It is also evident that the deceased was sad and crying because appellant/A1 did not speak to her. The witnesses PWs 1 to 4, 6 & 7 have also spoken about the deceased state of mind because of her husband not speaking to her.

14. On a combined reading of the evidence of PWs – 1 to 3 and also the evidence of Doctors PWs 14 & 15, who conducted the postmortem would clearly state that death of the deceased was not a normal circumstances/unnatural.

15. Furthermore, after the death of the deceased, the same was informed to appellant/A1, who was on the way to India and he did not come and attend the funeral/last rites of the deceased, even parents of the appellant/A1 also did not attend the funeral of the deceased. Though the learned counsel for the appellant submitted that there was a threat, but



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however, as a husband he ought to have taken part in the funeral ceremonies and also should have been given all this customary rites to the departed soul of the deceased. But in this case admittedly, neither the Appellant/A1 nor his parents attended the funeral of the deceased, which also strength the case of the prosecution.

16. The learned counsel appearing for the appellant contended that Appellant/A1 examined as DW-1 has categorically stated that he contacted his wife through phone of PW-2 and he was informed that the phone of the deceased wife was under repair and that she would talk to him after it is repaired. Further the learned counsel contended that the evidence of PW-13, RDO is also to the effect that the appellant had been talking to the deceased till her death. The prosecution failed to prove that the appellant/A1 did not speak to the deceased over phone, which caused mental agony to the deceased. The alleged act of not calling over phone does not amount to 'cruelty' as defined under Section 498A IPC.

17. The Trial Court, after considering this contention of the learned counsel appearing for the appellant, has rightly concluded that whatsapp chat/Ex.D-13, proves that there was no conversation between



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appellant/A1 and the deceased after 14.01.2015 and there was no initiation on the side of the appellant for talking with the deceased. If he had spoken to the deceased through her father, he would have produced the CDR containing the chat or conversation with the deceased. In the absence of whatsapp chat or call list would show that the appellant was not talking to the deceased as she went to her parents' place without getting permission from A1 to A3 and that has caused severe mental agony to the deceased. In this regard, this Court extracts the provision under Section 498A IPC as follows:-

*Section 498A - "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 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 wilfull conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such*



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*demand”*

18. On consideration of the oral evidence of the prosecution witnesses and the documentary evidence in particular Ex.D-13, I am of the view that the appellant/A1 remained silent and did not talk to his wife after 14.01.2015 and that had caused severe mental agony to the deceased and this act of the appellant comes within the purview of “Cruelty” defined under Section 498A, Explanation (a) of IPC. It is also to be taken into account that the deceased was not happy in her matrimonial life and was disturbed by her in-laws.

19. In view of the discussion made above, the Trial Court has rightly come to the conclusion that the Appellant/A1 was guilt of offence punishable under Section 498A IPC and the sentence imposed on the appellant under Section 498A to undergo **rigorous imprisonment** for three years and to pay a fine of Rs.10,000/-, in default of payment of fine, to undergo **rigorous imprisonment** for six months have to be confirmed and accordingly confirmed. Hence, the trial Court is directed to take appropriate steps to secure the appellant to undergo his remaining period



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of sentence. The appellant is entitled to avail set off under Section 428 of Cr.P.C for the period of custody already undergone by them during investigation, enquiry and trial.

20. In the result, the Criminal Appeal is dismissed.

21. In view of the dismissal of the Criminal Appeal in Crl. A.No.831 of 2018, the Crl.R.C.No.1351 of 2019 which has been filed by the appellant/A1 for return of his passport has also to be dismissed and accordingly, dismissed.

**09.01.2023**

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**P.VELMURUGAN, J**

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To  
IV Additional District Judge/Sessions Judge, Mahalir Neethi Mandram  
(Mahila Court), Coimbatore.

**Pre-Deliver Order in  
Criminal Appeal No.831 of 2018 &  
Crl.R.C.No.1351 of 2019**

**09.01.2023**