

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.319 of 2017

1.Senthilkumar
2.Mani
3.Ponnuthai

... Petitioners/
Appellants/Accused Nos.1 to 3

Vs.

The Inspector of Police,
Kujiliyamparai Police Station,
Dindigul District.
Crime No.132 of 2005.

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records from the learned Additional District and Sessions Judge, Dindigul in C.A.No.24 of 2011, dated 02.03.2017, confirming the Judgment made in S.C.No.23 of 2007, dated 08.07.2011 on the file of the learned Additional Assistant Sessions Judge, Dindigul and set aside the same.

For Petitioners : Mr.Andiraj

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

This revision has been filed to set aside the order passed by the learned Additional District and Sessions Judge, Dindigul in C.A.No.24 of 2011, dated 02.03.2017, confirming the Judgment made in S.C.No.23 of 2007, dated 08.07.2011 on the file of the learned Additional Assistant Sessions Judge, Dindigul.

2.The case of the prosecution is that the deceased got married the first accused on 28.06.2004. During the marriage, they were presented one sovereign of earring, three sovereigns of chain, ½ sovereign of coin and ½ sovereign ring to the first accused and household articles were presented as dowry. During the marriage, the parents of the deceased also assured to present a two-wheeler in favour of the first accused. After the marriage, all the accused persons always used to scold her that she did not know house-made work, cultivation and not even grazing the cattle. They also demanded more dowry by cash from her parents. Due to the said dowry demand, they harassed her. Even the next day of their marriage, the accused harassed the deceased to make a demand for a motorcycle for the first accused and also demanded 50% from the

marriage presentation. Thereafter, the parents of the deceased presented a sum of Rs.1,000/- to the deceased and advised her to live with the first accused. Again the first accused demanded a two-wheeler, and he also had beaten her, due to which, she sustained an injury on her thigh. He also threatened her not to disclose the quarrel and the injuries sustained by her to her parents and had driven out from the matrimonial home on 13.05.2005. Thereafter, the parents of the deceased consoled her and promised to purchase a two-wheeler and send her back to the matrimonial home. Again the first accused quarrelled with her and, as such, she was instigated to commit suicide. Therefore, on the same day night, namely on 13.05.2005 at about 10.30 p.m., she herself set ablaze on her own and succumbed to injuries. Hence, the complaint. On receipt of the complaint, the respondent registered the F.I.R in Crime No.132 of 2005 for the offences under Sections 498(A), 304(b) and 306 of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by the trial Court.

3.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.21 and marked Exs.P.1 to P.12 and on

the side of the accused, D.W.1 was examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the trial Court found the first accused guilty for the offences under Sections 498(A) and 304(b) of I.P.C and sentenced him to undergo imprisonment for three years Rigorous Imprisonment and imposed a fine of Rs.1,000/- and in default, to undergo one month Simple Imprisonment for the offence punishable under Section 498(A) of I.P.C and sentenced him to undergo imprisonment for seven years Rigorous Imprisonment for the offence punishable under Section 304(b) of I.P.C and found accused Nos.2 and 3 guilty for the offence under Section 498(A) of I.P.C him and sentenced them to undergo imprisonment for three years Rigorous Imprisonment each and imposed a fine of Rs.1,000/- each and in default, to undergo one month Simple Imprisonment each for the offence punishable under Section 498(A) of I.P.C and acquitted Accused Nos.1 to 3 for the offence under Section 306 of I.P.C. Aggrieved by the same, the petitioners preferred an appeal and the same was also dismissed confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present Revision.

5.The learned counsel appearing for the petitioners would submit that the prosecution though examined independent witnesses turned hostile and not supported the case of the prosecution. Therefore, the prosecution failed to prove its case beyond any doubt. P.W.1 to P.W.3 are none other than the mother, brother and sister-in-law of the deceased and they are interested witnesses. Therefore, the prosecution cannot rely upon their testimony. There is absolutely no evidence to show that soon before the death of the deceased, the deceased was subjected to cruelty and harassment by the first accused. Even according to the case of the prosecution, at the time of occurrence, the first accused was not present, and he had gone to watch drama. After the occurrence, all three accused persons were present in the Police Station. If at all the accused subjected the deceased to cruelty or any harassment, they would not have been present in the Police Station. Accused Nos.2 and 3 were residing next to the house of the first accused. Therefore, Accused No.1 and the deceased were living in a separate house. Accused Nos.2 and 3 were not committed any offence, since all the allegations are bald, vague and general in nature. No specific allegation was made as against the petitioners herein in order to prove the charge under Section 498(A) of I.P.C. Therefore, the

offence under Section 304(b) of I.P.C is not at all attracted as against the first accused. Now, the first accused got married and gave birth to two children. That apart, if there was any cruelty or harassment, definitely the deceased or her family members would have lodged a complaint, but so far no complaint was lodged as against the petitioners for any demand of dowry or cruelty committed by them. Further, P.W.5, P.W.6, P.W.7, P.W.13 and P.W.17 were turned hostile. In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in ***Vipin Jaiswal Vs. State of Andhra Pradesh*** reported in **(2013) 3 SCC 684**.

6.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the marriage itself was solemnized on 28.06.2004. Immediately, before completion of one year ie., on 13.05.2005, the wife of the first accused committed suicide, due to cruelty and harassment committed by the accused persons. There was demand of dowry and cruelty committed by the petitioners immediately after the marriage between the first accused and the deceased. Therefore, she was driven out from the matrimonial home on the date of occurrence, namely on

13.05.2005. She was advised by her parents who send her back to matrimonial home to adjust with the first accused with a fond hope of a happy life. However, the first accused was subjected to cruelty and as such, she committed suicide by setting ablaze on her own. He further submitted that neighbour of the first accused was examined as P.W.9. He categorically deposed that the first accused was also present at the time of occurrence, and he cried, saying that she left him and committed suicide. Therefore, soon before her death, the first accused subjected the deceased to cruelty and harassment. Therefore, she committed suicide. Hence, the prosecution categorically proved the offences under Sections 498(A) and 304(b) of I.P.C.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

8.There are totally three accused, in which the petitioners are arraigned as Accused Nos.1 to 3. The first accused got married the deceased on 28.06.2004. During their marriage, the parents of the deceased presented jewels and household articles. According to the prosecution, immediately after marriage, the

accused persons demanded dowry to purchase a two-wheeler in favour of the first accused. They also used to complain that the deceased did not know about house-made work, cultivation and even grazing the cattle. 4 or 5 days before the date of occurrence, the accused persons had beaten her to get money from her parents to purchase a two-wheeler in favour of the first accused. P.W.1 and P.W.3 advised her to go to the matrimonial house and assured her that they will arrange for two-wheeler. While being so, again on the date of occurrence, namely on 13.05.2005, again she was driven out from the matrimonial home to her parent's house to get money to purchase two-wheeler. On that day, she came to her matrimonial home at about 05.00 p.m., on 13.05.2005. Again she was advised to go to the matrimonial home and assured that they will get a two-wheeler. Unfortunately, on the same day, at about 10.00 p.m., she committed suicide setting ablaze on her own and succumbed to injuries. It is also corroborated by P.W.2, who is the brother of the deceased and P.W.3, who is the sister-in-law of the deceased. In fact, the first accused had beaten her and due to which she sustained an injury on her thigh. It was shown to P.W.1. Though they did not lodge any complaint, the victim was deposed to live with P.W.1 since the marriage itself was solemnized on 28.06.2004.

9. Admittedly, Accused Nos.2 and 3 were residing next to the house of the first accused at the time of occurrence. On the date of occurrence, Accused Nos.2 and 3 were not present. The first accused was also not there, since he had gone to see the drama in a nearby Village. There was also no evidence to attract the offence under Section 304(b) of I.P.C, since the prosecution failed to prove that the first accused subjected the deceased to cruelty or harassment soon before her death. However, there was cruelty committed by all the accused persons in order to bring money to purchase a two-wheeler in favour of the first accused immediately after marriage. Therefore, the prosecution proved its case for the offence under Section 498(A) of I.P.C against all the accused persons. Hence, the conviction under Section 498(A) of I.P.C against all the accused persons is hereby confirmed.

10. In so far as the offence under Section 304(b) of I.P.C as against the first accused is concerned, as stated supra, there was no evidence to show that the deceased was subjected to cruelty or harassment by the first accused soon before her death. However, the trial Court framed the charge for the offence under Section 306 of I.P.C also. Since the first accused was convicted and sentenced

under Section 304(b) of I.P.C, the trial Court had not convicted and sentenced him for the offence under Section 306 of I.P.C. When the prosecution failed to prove the charge under Section 304(b) of I.P.C., the prosecution proved its case for the offence under Section 306 of I.P.C.

11.On perusal of the testimony and the circumstances, the prosecution proved its case for the charge under Section 306 of I.P.C and as such, the first accused is liable to be convicted under Section 306 of I.P.C instead of 304(b) of I.P.C. Hence, the conviction and sentence imposed under Section 304(b) of I.P.C against the first accused is hereby set aside, but the first accused is convicted for the offence under Section 306 of I.P.C and he is sentenced to undergo three years Rigorous Imprisonment. The conviction under Section 498(A) of I.P.C against the first accused is hereby confirmed.

12.In so far as the sentence under Section 498(A) of I.P.C against Accused Nos.2 and 3 are concerned, considering the age of the petitioners 2 and 3/Accused Nos.2 and 3 and all the allegations made against them are general in nature and no specific

allegation against them, this Court is inclined to reduce the sentence to the period which already undergone by them.

13.Accordingly, the conviction under Section 498(A) of I.P.C against Accused Nos.2 and 3 is hereby confirmed and the sentence imposed by the Courts below is hereby modified to the period which was already undergone by the petitioners 2 and 3.

14.In fine, this Criminal Revision Case is partly allowed. The respondent is directed to secure the first accused to serve the remaining period of sentence for the offence under Sections 498(A) and 306 of I.P.C. Both the sentences shall run concurrently.

03.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

- 1.The Additional District and Sessions Judge,
Dindigul.
- 2.The Additional Assistant Sessions Judge,
Dindigul.
- 3.The Inspector of Police,
Kujiliyamparai Police Station,
Dindigul District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C(MD)No.319 of 2017

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.319 of 2017

03.04.2023