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Crl.A(MD)No.290 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	19/10/2024
Date of Pronounced	22/11/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.290 of 2024

Murugan : Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Aruppukottai Taluk Police Station,
Virudhunagar District.
(Crime No.189 of 2015)

: Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to call for the entire records connected to the judgment in SC No.10 of 2016 dated 29/12/2022 on the file of the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur and set aside the conviction and sentence imposed against the appellant and pass such further or other orders.

For Appellant : Mr.R.Alagumai

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



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J U D G M E N T

This Criminal Appeal is filed against the judgment passed in SC No.10 of 2016, dated 29/12/2022 by the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur.

2.The case of the prosecution in brief:-

The deceased Karthikai Selvi and the accused were married to each other without the consent and knowledge of the parents namely PW1 and PW2. It is a love marriage between them. After some two months of marriage, the de-facto complainant was informed by her aunt that the deceased informed her about the ill-treatment made by the accused in a drunken mood, assault, etc. So, PW2 used to visit the deceased frequently. In the course of time, the deceased became pregnant. Later PW1's brother-in-law arranged for stay in his own house. Even at that time, the accused in a drunken mood, picked up quarrel with the deceased and the brother-in-law also. So, they were sent out of the house and later, settled in Tirupuvanam. During that time also, the deceased used to call PW2 frequently and informed her about the misbehavior, later started telling PW2 that the accused started demanding a vehicle and money. About 8 months of pregnancy, the deceased came to PW1's mother-in-law house namely Pandalkudi. A child was



born. The child and the deceased were not visited by the accused and his relatives. Later shifted their residence to Kanjanaickenpatti in PW1's brother-in-law house, wherein also trouble continued by the accused. On 07/07/2015 at about 05.00 pm, he was informed that the deceased committed suicide. PW1 and PW2 immediately went to the place and found the deceased in a bad condition. On the basis of the complaint lodged by the de-facto complainant, a case in Crime No.189 of 2015 was registered by the respondent police under section 174 of the Criminal Procedure Code and subsequently, altered to sections 498(A) and 304(B)IPC. After completing the investigation, filed a final report and it was taken cognizance in SC No.10 of 2016 by the Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur. After completing 207 Cr.P.C proceedings, framed the charges for the offences punishable under section 498(A) and 304(B) IPC.

3.The following charges were framed against the accused:-

(i)The deceased Karthikai Selvi and the accused were married to each other without the consent and knowledge of the parents; After marriage, in a drunken mood the accused ill-treatment, assaulted and started demanding a vehicle and money and thereby the accused



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committed the offence under section 498(A) IPC; and

(ii) In pursuance of the above said occurrence, on 07/07/2015 at about 07.00 pm, the deceased committed suicide by pouring kerosene on her and set fire, thereby the accused committed the offence under section 304(B) IPC.

4.To that, the accused pleaded not guilty and claimed to be tried.

5.During trial, on the side of the prosecution, 10 witnesses were examined and 11 documents marked. On the side of the accused, no oral and documentary evidence was adduced.

6.**PW1** is the father of the deceased. He has stated that the deceased Karthikai Selvi and the accused were married to each other without the consent and knowledge of the parents. It is a love marriage between them. For about two months after the marriage, there was no contact. After some two months of marriage, he was informed by his aunt that the deceased informed her about the ill-treatment made by the accused in a drunken mood, assault, etc. So, his wife namely PW2 used to visit the deceased frequently. In the course of time, the deceased became pregnant. Later,



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his brother-in-law arranged for stay in his own house. Even at that time, the accused in a drunken mood, picked up quarrel with the deceased and brother-in-law also. So, they were sent out of the house and later settled in Tirupuvanam. During that time also, the deceased used to call his wife namely PW2 frequently and informed her about the misbehavior, later started telling her that the accused started demanding a vehicle and money. About 8 months of pregnancy, the deceased came to his mother-in-law's house namely Pandalkudi. A child was born. The child and the deceased were not visited by the accused and his relatives. Later shifted their residence to Kanjanaickenpatti in his brother-in-law house, wherein also trouble continued by the accused. On 07/07/2015 at about 05.00 pm, he was informed that the deceased committed suicide. So, he along with his wife immediately went to the place and found the deceased in burnt condition. So, he lodged a complaint under Ex.A1.

7.Ex.A1 was received by **PW9** who was working as Sub Inspector of Police attached to Aruppukkottai Town Police Station, on 07/07/2015 at about 08.30 pm in the night and registered a case in Crime No.189 of 2015 under section 174 Cr.P.C.



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8.**PW10** received the case bundle, started investigation, visited the place of occurrence and prepared the observation mahazar, rough sketch in the presence of the witnesses; no evidence was able to recover and seize in the place of occurrence. When he visited the place of occurrence, everything was cleaned and moved. After that, recorded the statement of the other witnesses and finding that the offence under sections 498(A) and 304-B IPC are *prima facie* made out, filed alternation memo under Ex.P10. On 05/08/2015 at about 02.30 pm, arrested the accused, remanded him to custody and on 07/08/2015, he examined and recorded the statement of the Scientific Officer and Medical Officer. After getting, FSL report filed a final report charge sheeting the accused for the offences punishable under sections 498(A) and 304(B) IPC.

9.**PW2** is the mother of the deceased. As mentioned above, she corroborated PW1 regarding the material particulars, with regard to the love marriage of the deceased and the accused and their place of residence, shifting of residence, continuous torture made by the accused, demanding money and the vehicle.

10.**PW3** was the neighbour of the accused and the deceased. He knew about the issue between the husband and



wife. On 07/07/2015, on hearing the noise, he went to that place and found the deceased burning. The accused brought a bucket of water to extinguish the fire, later shifted to the hospital.

11.**PW4** is the brother of the deceased. He corroborated about the alleged torture and cruelty made by the accused to the deceased.

12.**PW7** is the RDO who conducted inquest and enquiry on the death of the deceased. According to the enquiry, he came to the finding that because of the torture made by the accused, demanding money, the deceased committed suicide. His report is marked as Ex.P3.

13.**PW8** conducted postmortem on the body of the deceased. At that time, the body was found burnt completely, collected viscera and submitted to the lab for chemical examination. The report received from the chemical examination shows that there was no trace of poison. He concluded that the death occurred due to burning. With that, the prosecution side evidence was closed.



14.The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against him. He denied the evidence of the witnesses as false and stated that a false case has been foisted. No witness was examined on the defence side.

15.At the conclusion of the trial process, the trial court convicted the accused and sentenced to undergo **two years rigorous imprisonment** and to pay a fine of Rs.1,000/-, in default to undergo 3 months rigorous imprisonment for the offence under section 498(A) IPC; and sentenced to undergo **10 years rigorous imprisonment** and to pay a fine of Rs.3,000/-, in default to undergo 6 months rigorous imprisonment and directed to run the sentences concurrently.

16.Against which, this criminal appeal is preferred by the accused as appellant.

17.Heard both sides.

18.The background facts are required to be kept in mind. It is a love marriage between the deceased and the accused without the consent and knowledge of PW1 and PW2



the parents. PW1 is a Mason by profession. PW2 is the house wife. After the marriage, there was no contact between them and the deceased for sometime. Later, slowly had contact. In the course of time, the deceased become pregnant and delivered a male child. During that time, they were shifting the residence frequently. Even at one point of time, the brother-in-law of PW2 arranged a stay in his own house. But in spite of the help rendered by the brother-in-law of PW2 and in fact by PW2 herself, frequent trouble between the husband and wife continued.

19.Now according to the prosecution, the accused in the course of time, demanded vehicle and money, started harassing and ill-treated the deceased. As a result of which only, she committed suicide unable to bear the harassment and cruelty. That is why the accused was charged under section 304(B) IPC.

20.So, the question which arises for consideration is whether the prosecution established the offence under section 304(B) IPC. For establishing that charge, the prosecution must establish the following facts as detailed in number of judgments and more particularly, in a recent judgment reported in **Paranagouda and another Vs. The State of Karnataka and another [2023(14) SCALE 642]**. The relevant para is extracted hereunder:-



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"14.The incidental question that would also arise for our consideration is: whether the conviction of the accused under Section 304B would be sustainable? The ingredients to be satisfied for convicting an accused for the offence punishable under Section 304B are:

(i)The death of a woman should be caused by burns of bodily injury or otherwise than under a normal circumstance.

(ii)Such a death should have occurred within seven years of her marriage.

(iii)Such must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv)Such cruelty or harassment should be for or in connection with demand of dowry.

(v)Such cruelty or harassment is shown to have been meted out to the woman soon before her death."

21.The second ingredient is that the death might have been caused within 7 years of the marriage. There is



no dispute on that point by the accused. The death occurred within 7 years of marriage.

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22.Regarding the first condition is also satisfied, which is not disputed by the accused that because of self-immolation, she burnt herself, which is also supported by the medical evidence. Since, this issue is not disputed and the first condition is satisfied. The third condition is that cruelty or harassment should be for and in connection with the demand of dowry. Before that, it must be established by the prosecution that the deceased was subjected to cruelty or harassment either by her husband or by any relatives.

23.Now we are not concerning the relatives, only the husband is before this court. The other important ingredient is that cruelty or harassment might have occurred soon-before her death. So, these three ingredients must be established by the prosecution beyond all reasonable doubt.

24.Here comes the important aspect of love marriage between the deceased and the accused. When there is a love marriage, the question of demanding dowry may not arise at all. In-fact, it is not the case of the prosecution that even after the marriage, the accused demanded dowry, either from the deceased or from PW1 and PW2.



25. Reading of the evidence of PW2 does indicate that there was frequent quarrel between the husband and the wife, when the accused was coming daily in a drunken mood and demanded money from the deceased.

26. It is stated by PW2, at one point of time that the accused started demanding vehicle and money from them. But mere demanding vehicle and money will not come under the category of dowry.

27. It is no doubt that the accused was doing occasional work, but addicted to liquor. PW2 rendered all possible help in the form of giving some frequent money whenever she visited the deceased. Even RDO, during the course of enquiry has found that the accused was in the habit of demanding money from the deceased. But from the evidence of the neighbours, it stands established that the accused was not giving proper money to the family and because of that only, there were frequent trouble between them. So, combined reading of the evidence of PW1, PW2 and the neighbour namely PW3 clearly indicates that problem arose between them because of the drinking habit of the accused and not giving money for the family expenses. This is corroborated by the evidence of PW4, the brother of the deceased. On the particular date of the occurrence namely 07/07/2015, PW2 visited the deceased at about 05.00 pm. At



that time, the deceased informed PW2 that the accused is not giving money for family expenses and even, she is not able to pay the rent. The deceased requested PW2 to give some money. This is the evidence of PW4.

28.Now, we will go to the evidence of PW2 leaving the earlier occurrence. According to her, on 07/07/2015 at about 05.00 pm, she visited the deceased, at that time, it was told that for about 3 days, there was trouble between them. The deceased told her that the accused demanded money from her. She returned to the house after pacifying the deceased. At about 07.00 pm, they received the information about the self-immolation. So, the conjoint reading of PW2 and PW4, it stands established that what was demanded by the accused is not related to dowry, but for his expenses. Seeking financial help from the in-laws will not come under the category of demand of dowry and this is the proposition of law. If we look into the factual circumstances in the light of the conduct of the accused, having drinking habit, unable to bear the family expenses, it appears that there was frequent trouble between the husband and wife. At one point of time, on 07/07/2015, the situation become unbearable and this caused the deceased to commit self-immolation, when the accused was present in the house.



29. So the cruelty in the form of drinking, failure to take care of the family expenditure, even demanding money from the deceased, who was workless will amount to clear cruelty and harassment and the accused created circumstances, as mentioned above, which became unbearable and at one point of time, driven the deceased to commit suicide.

30. Even the learned counsel appearing for the appellant would submit that the conduct of the accused has shown that he really did not intend the deceased to commit suicide, since he brought a bucket of water to extinguish the fire, bringing the Ambulance. But his conduct indicated above will clearly amount to cruelty. Cruelty need not be mere physical, but also mental cruelty in the form of failure to meet out the demand of daily expenses. Drinking habit will also amount to mental cruelty to the wife. Even though, the suicide occurred not because of the demand of dowry, but because of the cruelty.

31. The next question which arises for consideration the offence made out against the appellant/accused. For that purpose also, we can profitably cite **Paranagouda's case**. In that case, similarly the accused also charged for the offences under sections 304B and 498A IPC apart from



the other Penal offence under the Special Act, which are not concerning here. In that case, there was no evidence on record to show that the accused has committed the offence under section 304(B)IPC. But there was no charge for the offence under section 306 IPC. Evidence was let in. Offence under section 498(A) IPC was found to be made out and confirmed. By referring various authorities, the Hon'ble Supreme Court has pointed out that even though specific charge of 306 IPC if it is made out on the basis of the evidence available and if it is so, no prejudice will cause to the accused, then conviction can be made under section 306 IPC. The relevant observation of the Hon'ble Supreme Court is made in para 29 as follows:-

"...In the instant case the dying declaration of the deceased would clearly indicate that deceased was mentally traumatized and she was unable to tolerate the torture and harassment meted out by the accused person on account of which she committed suicide. It is this taunting or mental torture which she could not withstand and forced her to commit suicide by self-immolation. In that view of the matter, we are of the considered opinion that accused persons are liable to be convicted for the offence punishable under [Section 306](#) IPC though charge was



not framed.

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and this judgment was rendered on the principle elucidated in para 21 and 22 which read as under:-

"21. Section 498A having a wider scope, it will have to be examined as to whether the accused is to be convicted for the offence punishable under Section 498A or in other words, the order of conviction passed by Sessions Court and affirmed by High Court deserves to be affirmed, notwithstanding the conviction under Section 304B having been set aside. Irrespective of the fact that accused have been acquitted for the offence punishable under Section 304B, Section 498A would cover the cases in which the wife is subjected to cruelty by husband or relatives of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical). In the light of dying declaration (Ex.P-45) having been accepted to have been made by the deceased and the contents of the same disclosing that



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she was unable to withstand the torture meted out, which resulted in her committing suicide would suffice to convict the accused for the offence punishable under Section 498A.

22.This takes us to the next question as to whether the accused can be convicted for the offence punishable under [Section 306IPC](#) though not charged for said offence. Similar situation arose before this Court in [Dalbir Singh vs State of U.P.](#) (2004) 5 SCC 334 where a charge for the offence under Section 306 had not been framed against the accused though accused had faced trial in respect of the charges under [Section 302,498A](#) and [304B IPC](#) as has happened in the instant case where the accused have been tried for the offences punishable under [Section 498A, 304B IPC](#) and [Section 3 and 4 of DP Act](#) and this Court had answered in the affirmative in [Dalbir Singh's](#) case by arriving at the following conclusion:

"17. There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of [Section 464 CrPC](#), it is possible for the appellate or revisional court to convict an accused for an offence



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for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that Sangaraboina Sreenu [(1997) 5 SCC 348 : 1997 SCC (Cri) 690] was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under [Section 302 IPC](#), he cannot be convicted for the offence under [Section 306 IPC](#).

18.The facts and circumstances of the present case may now be examined in the light of the principle discussed above. The trial court and also the High Court have recorded a clear finding and with which we are in complete agreement, that the accused had started making a demand of dowry soon after marriage. Even after his father-in-law had given him a colour TV, a scooter and money for purchasing the flat, he did not feel satisfied and continued to harass his wife. He used to frequently taunt her that some of the items given by way of gift at the time of marriage were of poor quality and were not of his standard. He had also assaulted his wife and even his



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seven-year-old daughter on several occasions. It was in such circumstances that Vimla took the extreme step of not only setting herself on fire, but also her two daughters, one of whom was only one-year old. The letter written by Vimla just before taking such an extreme step speaks volumes about the treatment meted out to her by the accused. Therefore, the basic ingredients of the offence under [Section 306](#) IPC have been established by the prosecution. These features of the prosecution case were sought to be established by the prosecution in order to substantiate the charge under [Section 498-A](#) IPC and also for showing that the accused had a motive to commit the crime of murder for which he was actually charged. The cross-examination of the witnesses shows that every effort was made to demolish the aforesaid aspect of the prosecution case, namely, that neither was any demand of dowry made nor were any gifts or presents or money received by the accused at a subsequent stage and that Vimla had not been subjected to any kind of harassment or ill-treatment. The next question to be seen is whether the accused was confronted with the aforesaid features of the prosecution case in his statement under [Section 313](#) CrPC. His statement runs into six pages where every aspect of the prosecution case [referred to above](#) was put to him. He also gave a long written statement in accordance with [Section 233\(2\)](#) CrPC wherein he admitted that Vimla committed suicide.



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He also admitted that the scooter and colour TV were subsequently given to him by his in-laws but came out with a plea that he had paid money and purchased the same from his in-laws. There is no aspect of the prosecution which may not have been put to him. We are, therefore, of the opinion that in view of the material on record, the conviction under [Section 306](#) IPC can safely be recorded and the same would not result in failure of justice in any manner. The record shows that the accused was taken into custody on 29-3-1991 and was released from jail after the decision of the High Court on 20-3-1997 and thus he has undergone nearly six years of imprisonment. In our opinion, the period already undergone (as undertrial and after conviction) would meet the ends of justice."

22. In Dinesh Seth's case (supra) it has been held that in certain situations, an accused can be convicted for an offence with which he may not have been specifically charged and an error, omission or irregularity in framing of charge is, by itself not sufficient for upsetting the conviction. The only exception to this general rule as can be noticed from [Section 464](#) of Cr.P.C. is, unless the accused is able to demonstrate a failure of justice has in fact been occasioned thereby. It has been held thereunder as:



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"21.The ratio of the abovenoted judgments is that in certain situations an accused can be convicted for an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. The appellate, confirming or revisional court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned."

32.In the light of the above said facts and circumstances, I am of the considered view that the very same principle can also be adopted here. As mentioned above, except stray sentence in the evidence of PW1 that the accused demanded vehicle and money, no other circumstance or specific overtact was brought on record that the accused demanded dowry.

33.In view of the above said discussion, I am of the considered view that the judgement of conviction and sentence passed by the trial court under section 498(A)IPC requires no interference. But whereas the offence under section 304(B)IPC is not made out and the accused is entitled for acquittal in that. But for the reasons stated above, he is liable to be punished under section 306 IPC and sentenced to imprisonment already undergone.



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34.In the result, this criminal appeal is **partly allowed**. The judgment of conviction and sentence imposed upon the appellant for the offence under section 304(B) IPC is set aside, instead the appellant is found guilty under section 306 IPC and sentenced to imprisonment for the period already undergone. The judgment of conviction and sentence imposed under section 498(A) IPC are confirmed. Both the sentences are ordered to run concurrently. The appellant is ordered to be set at liberty forthwith if not required in any other case.

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To,

- 1.The Sessions Judge,
Fast Track Mahila Court,
Virudhunagar District.
- 2.The Inspector of Police,
Aruppukottai Taluk Police,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison,
Madurai.



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G. ILANGO VAN, J

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