

Rajendran and ors. Vs. State

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Court : Chennai

Decided On : Apr-16-1996

Reported in : II(1996)DMC358

Judge : M. Karpagavinayagam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 498A

Appeal No. : Crl. Appeal No. 600 of 1989

Appellant : Rajendran and ors.

Respondent : State

Advocate for Def. : B. Sriramulu, Public Prosecutor

Advocate for Pet/Ap. : K.V. Sridharan, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. This appeal is directed against the judgment dated 30.6.1989 in S.C. No. 43 of 1989, on the file of Second Additional Sessions Judge, Tiruchirapalli, convicting the appellants under Section 498-A, I.P.C, and sentencing them to undergo R.I. for two years and to pay a fine of Rs. 100/- each, in default to undergo S.I. for one

month. Originally, the appellants were charged for the offences under Sections 302, 302 read with Sections 34 and 498-A, I.P.C. After trial, they were acquitted in respect of the charges under Section 302, I.P.C, and Section 302 r/w Section 34, I.P.C.

2. The case of the prosecution is as follows:

On the side of prosecution P.Ws. 1 to 12 were examined, Exs. PI to P14 were marked. P.W. 1 Kandasamy is a resident of Udayarpalayam. P.W. 5 Ramalingam is the uncle of P.W. 1 (P.W. 1's sister's husband). Deceased Kasthuri is the sister of P.W. 1 and wife of A-1 Rajendran. A-2 and A-3 are the parents of A-1.

3. Four years back, marriage between A-1 Rajendran and the deceased Kasthuri was held. Subsequent to the marriage, the appellants 1 to 3 demanded Sreedhana articles from the parents of the deceased Kasthuri. Two months later, as demanded, the Sreedhana articles were given to the accused/appellants. A few days later, the deceased Kasthuri came back to the house of P.W. 1 Kandasamy and informed him that A-2 Natarajan and A-3 Anjali demanded more jewels and cash as sreedhana. This was informed to P.W. 5 Ramalingam. Thereafter P.W. 1 arranged to give some more articles. Even then, the accused were not satisfied. As and when the deceased Kasthuri comes to the house of P.W. 1, who used to say that she was sent by the accused only for getting cash and jewels.

4. Following the regular demand of dowry, a panchayat was convened. P.W. 8 Sriramulu, was one of the panchayatars and both the parties were warned in the panchayat. The deceased Kasthuri was asked not to go to her parents' house frequently. The accused were also warned that they should not demand any more sreedhana articles from the deceased.

5. On 29.4.1987 at about 7 or 8 a.m., P.W. 7 Govindaraj, the brother of A- 2 Natarajan, heard the sound from the house of A-2. When he went there, he found the house locked inside. When he peeped through window, he saw a ball of fire inside the house P. W. 7 Govindaraj made an alarm. Then, people in the surrounding area came and broke open the door and entered inside. There, they found the deceased Kasthuri with full of burn injuries and then she was taken to

hospital.

6. At about 7.30 a.m., P.W. 1 Kandasamy, on information, rushed to the house of his sister and from there he went to the hospital, where the victim Kasthuri told him that since the sreedhana articles of four sovereign of gold jewels and cash of Rs. 2,000/- were not given, A-1 to A-3 poured kerosene on her.

7. P.W. 5 Ramalingam also went to the hospital and saw the deceased and as per the advice of P.W. 2 Doctor Jayaraman, the victim Kasthuri was taken to Tanjore Government Hospital. On 29.4.1987 at 11.30 a.m., P.W. 3 Doctor Sukumar examined the victim, who was found conscious. He found injuries all over her body. He issued Ex. P2 accident register extract. To the Doctor P.W. 3 also, the victim gave the details, how the fire incident had taken place in her house. She implicated A-1 to A-3 stating that they were responsible for the incident.

8. P.W. 1, at about 7.00 p.m., came to the Tanjore Government Hospital and came to know that she died. Then at 11.45 p.m., P.W. 1 came to Udayarpalayam Police Station and gave Ex. P1 complaint. P.W. 10 Manickam, Sub-Inspector of Police, on receipt of Ex. P1 complaint registered a case in Cr. No. 45 of 1987 under Sections 302 and 498-A, I.P.C. Ex. P7 is the printed F.I.R. Then, he sent the documents to the Court as well as to the higher officials.

9. P.W. 11, Kannusami, Revenue Divisional Officer, on receipt of copy of F.I.R., sent intimation to Thanjavur Revenue Divisional Officer, who in turn on 30.4.1987 at about 11.30 a.m., conducted inquest on the body of the deceased Kasthuri. Ex. P8 is the inquest report. He also examined the witnesses and recorded their statements.

10. P.W. 4 Doctor Gopalakrishna Reddy, on 30.4.1987 at 2.00 p.m., conducted post-mortem over the dead body of the deceased, on receipt of Ex. P3 requisition sent by R.D.O. and found the following injuries :-

'1st degree burns seen over the front of neck and sides of neck, upper part of chest, lower side of the abdomen, back of abdomen and chest. 2nd degree burns seen over front of chest 27 x 16 cms., over the left axilla 13 x 6 cms., over the

rights axilla 11x9 cms. Right knee 18 x 8 cms. Outer aspect of right thigh 43 x 12 cms. Infection noticed over the left axilla.

Cut down wound noticed on the right ankle. Finger nails-cyanosed. Heart-all chambers contains dark fluid blood. Coronaries normal. Both lungs congested. Larynx: cut section of larynx and trachea sooty particles noticed. Hyoid bone intact. Stomach contains 300 ml. of brown coloured fluid. Mucosa showed haemorrhagic patches. Liver, spleen, kidneys were congested. Bladder empty. Brain-surface vessels congested. Uterus small'.

He issued Ex. P4 post-mortem certificate. He opined that the deceased would appear to have died of burns sustained by her.

11. Ex. P5 is the report of Chemical Analyst and according to which, on examination of stomach and content, intestine and content, and liver and kidney of the deceased Kasthuri, no poison was detected in any of them. P.W. 11, the Revenue Divisional Officer, Ariyalur sent a report Ex. P13 to the Deputy Superintendent of Police on 16.2.1988.

12. P.W. 12, Marappan, Deputy Superintendent of Police, took up further investigation and went to the spot, prepared Ex. P6 observation mahazar and Ex. P14 scene sketch and examined all the witnesses. On 23.2.1988, the accused were arrested and they were sent for remand. On 27.3.1988, on completion of investigation, P.W. 12, filed charge-sheet against the appellants under Section 302 and Section 498-A, I.P.C.

13. After the evidence of the prosecution witnesses was over, the accused were questioned under Section 313, Cr. P.C., to which they pleaded innocence.

14. On termination of trial, the learned Second Additional Sessions Judge, Trichy, acquitted the appellants of the charges under Section 302 read with Section 34 I.P.C, but, however, convicted them under Section 498-A, I.P.C, and dealt with them as referred to earlier. Aggrieved over this judgment, the present appeal has been preferred before this Court by the appellants.

15. Mr. K.V. Sridharan, learned Counsel for the appellants took me through the entire evidence and contended that the Trial Court, having disbelieved the main evidence relating to the offence under Section 302, I.P.C, ought to have acquitted the appellants of the charges under Section 498-A. I.P.C, also. He further contended that the oral dying declaration given by the deceased Kasthuri to P.W. 5 Ramalingam cannot be taken into consideration, because the other portions in the same oral dying declaration, stated to have been made by the deceased have been disbelieved.

16. I have heard Mr. B. Sriramulu, learned Public Prosecutor, appearing on behalf of the respondent/State.

17. Though the evidence relating to pouring of kerosene and causing burn injuries on the deceased by A-1 to A-3 has been disbelieved, the reasons given by the learned trial Judge, for believing the evidence relating to the offence against the appellants under Section 498-A, I.P.C. are quite clear. There is evidence of P.W. 1 Kandasamy, who is none other than the borther of the deceased Kasthuri, to the effect, that the deceased was ill-treated and she was often demanded more jewels and cash as sreedhana. According to P.W. 1, whenever demand was made by the appellants, they used to give some cash. Without satisfying with them, the deceased was beaten and ill-treated and driven-away. That was why, the deceased frequently used to come to the house of P.W. 1 which necessitates to convene a panchayat. According to P.W. 1, in the panchayat, both the parties were warned, not to quarrel with each other and that the appellants were asked not to demand any more sreedhana articles from the deceased. As such, the evidence relating to ill-treatment and the dowry demand and failure to meet such demand which resulted in torture, were brought on record through the evidence of P.W.I.

18. It has also been established, that the deceased died of suicide. Section 498-A, I.P.C., provides that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punishable. 'Cruelty' is also defined in explanation to this section, that 'any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or 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 demand'. So, the definition of 'cruelty', as provided in Sec-498-A, I.P.C., would clearly show that if the ingredients are proved, then the accused are liable to be punished under Section 498-A, I.P.C.

19. I have gone through the depositions and judgment of the Trial Court. I am of the view, that the reasonings given by the Court below, as referred to earlier, are correct and are in accordance with law. So, I do not propose to take a different view from that of the view taken by the Court below. As such, the appeal, which has no merit is liable to be dismissed.

20. At this stage, learned Counsel for the appellants represents that as per G.O. Ms. No. 781, Home (PR.C) Deptt., dated 11.4.1990, the entire period of sentence of imprisonment imposed upon the 3rd appellant has been wiped out and the appellants 1 and 2 are entitled to the benefit of remission for a period of two years as per G.O. Ms. Nos. 781, dated 11.4.1990, 279, dated 23.2.1992, 296 dated 20.2.1993 and 205 dated 23.2.1994. Learned Public Prosecutor does not dispute this.

21. In view of the above, the conviction and sentence imposed upon the appellants under Section 498-A, I.P.C, to undergo R.I. for two years and to pay a fine of Rs. 100/- each, in default to undergo S.I. for one month are confirmed. As it is represented that the appellants have paid the fine and as they are entitled to the benefit of remission for a period of two years as per the above said four G.Os. the appellants need not surrender before the prison authorities. With this observation, the appeal is dismissed.