

Bail Slip

That the Appellant herein/Accused viz., R.Sasikumar, was directed to be released on bail as per the Order of this Court dated 22/08/2007 and made in MP.No.1 of 2007 in CrI A No.769 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02-12-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.769 of 2007

R. Sasi Kumar Appellant/Accused

Vs.

State by
The Inspector of Police,
B-10, Selvapuram Police Station
Coimbatore Respondent/Complainant

Criminal Appeal under Section 374(2), Cr.P.C., against the judgment passed in S.C.No.32 of 2006 by the Mahila Court, Coimbatore dated 27-07-2007.

For appellant :: Mr. S. Gunalan

For respondent :: Mr. P. Govindarajan,
Addl. Public Prosecutor

JUDGMENT

Challenge in this criminal appeal is to the conviction and sentence dated 27-07-2007 passed in S.C.No.32 of 2006 by the Mahila Court, Coimbatore.

2. The nub of the case of the prosecution is that the accused has married the deceased viz., Janaki and after their marriage, the accused has used to suspect the fidelity of the deceased and very often trounced her. Since the deceased has not been able to brook the torture committed by the accused, on 14-06-2005, she committed suicide and before her death, she has given a statement and the same has been registered in Crime No.493 of 2005. The statement given by the then injured (deceased) has been marked as Ex-P14.

3. On receipt of Ex-P14, the Investigating Officer, P.W.13 has taken up investigation and also made arrangements to record dying declaration and the same has been marked as Ex-P10. The Investigating Officer has examined connected witnesses and after completing investigation has laid a final report on the file of the Judicial Magistrate No.V, Coimbatore and the same has been taken on file in P.R.C.No.15 of 2005.

4. The Judicial Magistrate No.V, Coimbatore after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court has committed the case to the Court of Sessions, Coimbatore Division and the same has been taken on file in Sessions Case No.32 of 2006 and subsequently, made out to the Trial Court.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed the first charge under Section 498-A, second charge under Section 306, IPC and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 13 have been examined and Exs-P1 to P20 and M.Os.1 to 5 have been marked.

7. When the accused has been questioned under Section 313, Cr.P.C., as respects incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The Trial Court after hearing arguments of both sides and upon perusing the relevant evidence on record has found the accused guilty under Section 498A, IPC and sentenced him to undergo three years' Rigorous Imprisonment and also imposed a fine of Rs.5000/- (Rupees five thousand only) with usual default clause. The Trial Court has acquitted the accused in respect of the charge framed under Section 306, IPC. Against the conviction and sentence passed under Section 498-A, the present criminal appeal has been preferred at the instance of the accused as appellant.

9. The consistent case put forth on the side of the prosecution is that the accused has married the deceased viz., Janaki and after marriage, on many occasions, the accused has trounced her by way of suspecting her fidelity and since she has not been able to thole the torture caused by the accused, on 14-06-2005, the deceased has doused kerosene and set fire on her and subsequently, on 15-06-2005, she passed away.

10. The learned counsel appearing for the appellant/accused has not touched the evidence adduced on the side of the

prosecution so as to substantiate the materials found in the first charge. However, for the sake of completion, this Court would like to look into the evidence given by P.Ws.1 to 3.

11. It is true that P.Ws.1 to 3 are none other than the sister and brothers of the deceased and their consistent evidence is that the accused has tortured the deceased. The specific evidence adduced by P.W.2 is that soon before occurrence, the accused has attacked the deceased and immediately after few minutes, she found smoke from the house of the accused as well as deceased. Apart from the evidence given by P.Ws.1 to 3, the deceased has given a statement to P.W.11 and the same has been registered in Crime No.405 of 2013, wherein also it has been explicitly stated that the accused has caused torture to the deceased. Further, in Ex-P10, dying declaration, it has been clearly stated that only due to colluctation happened in between accused and deceased, she doused kerosene and set fire on her. Therefore, it is clear from the evidence given by the witnesses mentioned supra coupled with Exs-P10 and P14, the Court can easily come to a conclusion that the materials found in the first charge have been clearly established on the side of the prosecution. Further, Ex-P14 can be treated as dying declaration and the same does not require any corroboration.

12. The learned counsel appearing for the appellant/accused has vehemently contended that the appellant/accused has faced two charges under Sections 498-A and 306, IPC and since the accused has been acquitted in respect of the charge framed under Section 306, IPC, he cannot be found guilty under Section 498-A.

13. The learned Additional Public Prosecutor has contended that in the instant case replete evidence is available so as to prove the materials mentioned in the first charge framed under Section 498-A, IPC and the Trial Court after considering the overwhelming evidence available on record has rightly found the accused guilty under the said Section and therefore, the conviction and sentence passed by the Trial Court do not call for any interference.

14. The learned counsel appearing for the accused has drawn the attention of this Court to the following decisions:

(i) In CDJ 2007 SC 1384 (Onkar Nath Mishra Vs. State (NCT of Delhi), wherein in Paragraph No.19, it is observed as follows:

"19. As regards the applicability of Section 498A I.P.C., in the complaint dated 8.11.1994 there is not even a whisper of a wilful conduct of appellants No. 1 and 2 of harassment of the complainant at their hands with a view to coercing her to meet any unlawful demand by them so as to attract the provisions of Section 498A read with Explanation thereto. The

complaint refers to the talk the complainant purports to have had with her husband, appellant No. 3, who is alleged to have told her to come to Bijnore if she apologizes to his father; keeps him happy; obeys his sister and talks to her father (complainants) to give her Rs. 50,000/- and V.C.R. and brings these articles to Bijnore. We are convinced that the allegation of misbehaviour on the part of appellant Nos.1 and 2 and the demand of Rs. 50,000/- and V.C.R. by them made by the complainant in her subsequent statement, dated 4.4.1995, was an after thought and not bona fide. Section 498A I.P.C. was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives. Having carefully glanced through the complaint, the F.I.R. and the charge-sheet, we find that charge under Section 498A I.P.C. is not brought home insofar as appellant Nos. 1 and 2 are concerned. "

(ii) In CDJ 2002 SC 338 (Giridhar Shankar Tawade Vs. State of Maharashtra), wherein in Paragraph No.3, it is held thus:

"The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A. "

15. The entire arguments advanced on the side of the appellant/accused is based upon the explanation given in (a) and the same reads as follows:

"any wilful 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; "

16. The sum and substance of the contention put forth on the side of the appellant/accused is that since he has been acquitted in respect of charge framed under Section 306,IPC, he cannot be mulcted with liability under Section 498-A, IPC.

17. At this juncture, a nice legal question arises as to whether "cruelty" itself can be construed as an offence. At this juncture, it would be appropos to look into the decision reported in 2008 SCW AIR 816 (Rajendran Vs. State, Assistant Commissioner of Police (L&O)) and also the facts available therein. In the said decision, two charges have been framed against the accused under Sections 498-A and 304(b),IPC. The specific contention of the prosecution is that only due to demand of dowry the deceased has committed suicide. The Trial Court has acquitted the accused under Section 304(b), IPC and found him guilty under Section 498-A, IPC. The High Court also confirmed the conviction and sentence passed by the Trial Court under Section 498-A, IPC. Before the Honourable Supreme Court, the same question of law has been raised and it is held that even if a person is charged and acquitted under Section 304B, he can be convicted under Section 498-A, IPC. In Paragraph No.8, the Honourable Supreme Court has observed as follows:

"8. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman are required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the Explanation for the purpose of Section 498A. Substantive Section 498A IPC and presumptive Section 113B of the Indian Evidence Act, 1872 (in short 'Evidence Act') have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983. It is to be noted that Sections 304B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The Explanation to Section 498A gives the meaning of 'cruelty'. In Section 304B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence."

18. Even a mere reading of the decision rendered by the Honourable Supreme Court would go to show that mere "cruelty" itself is sufficient for invoking Section 498-A, IPC.

19. In the instant case, abundant evidence is available so as to prove that after marriage, accused has caused innumerable cruelty to the deceased and he has also attacked her. Since in the instant case, on the side of the prosecution enormous evidence is available with regard to cruelty caused by the accused, the cruelty caused by the accused itself is an offence as per the dictum given by the Honourable Supreme Court. Therefore, the contention put forth on the side of the appellant/accused is not legally permissible.

20. The Trial Court after considering the cruelty caused by the accused to the deceased has rightly found him guilty under Section 498-A, IPC. In view of the foregoing narration of both factual and legal aspects, this Court has not found any acceptable force in the contention put forth on the side of the appellant/accused and therefore, the present criminal appeal is liable to be dismissed.

In fine, the criminal appeal is dismissed. The conviction and sentence passed in Sessions Case No.32 of 2006 by the Mahila Court, Coimbatore dated 27-07-2007 are confirmed.

Sd/-
Assistant Registrar(CS-VII)

True Copy

Sub Assistant Registrar

To

1.The Inspector Of Police,
B-10 Selvapuram Police Station,
Coimbatore.(Crime No.493 of 2005)

2.The Sessions Judge,
The Mahila Court,
Coimbatore.

3.-Do- Thro The Principal Sessions Judge,
Coimbatore.

4.The Judicial Magistrate,
No.V- Coimbatore.

5.-Do- Thro The Chief Judicial Magistrate,
Coimbatore.

6.The Public Prosecutor,
High Court,
Madras.

Criminal Appeal No.769 of 2007

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