

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.402 of 2015
and M.P.No.1 of 2015

R.Vignesh

... Appellant/Accused

vs.

The State
Rep. By Inspector of Police
B-14, Kuniyamuthur Police Station
Kinatthukatavu
Coimbatore

... Respondent/Complainant

Criminal Appeal filed under Section 374(3) of Cr.P.C., against the judgment dated 28.01.2015 passed in Sessions Case No.217/2010 by the Mahila Court, Coimbatore.

For appellant : Mr.S.Nagarajan
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The convictions and sentences dated 28.01.2014 passed in Sessions case No.217/2010 by the Magaleer Needhimandram, Coimbatore are being challenged in the present criminal appeal.

2. The contraction of the case of the prosecution is that in the year 2009, the accused has married the deceased by name Kaveri. After marriage, both of them lived as husband and wife in Pillayarapuram, Coimbatore. After some time, the accused has used to say that the deceased is not beautiful and also asked the deceased that he wants to marry her sister viz., Tulasimani as his second wife. Since the deceased has refused to accede the demand made by the accused, he used to torture her and due to torture made by the accused, the deceased has doused kerosene on her person and set fire and after occurrence, she has been admitted in Government Hospital, wherein, she succumbed to injuries on 30.09.2009. At the time of admission in hospital, the deceased, the then injured has given a statement and the same has been registered in Crime No.85/2009. The statement alleged to have been given by the then injured has been marked as Ex.P.7.

3. On receipt of Ex.P.7, the Investigation Officer viz., P.W.9, has taken up investigation and in the meanwhile, the concerned

Revenue Divisional Officer viz., P.W.7 has conducted an inquest and the inquest report has been marked as Ex.P.5. The Investigating Officer, has conducted the investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, the doctor by name Jayasingh viz., P.W.5 has conducted post mortem and he found the following external and internal injuries:-

"The following ante mortem injuries were noted in the body:-

Dermo epidermal infected burns involving entire body from head to foot with sparing scalp, patchy areas of front and back of lower part of abdomen, perineum, lower ½ of both legs and back of both thigh. Degloving noted on both palm. Partially singeing of both axillary all facial hairs. Total singeing noted to marginal scalp hairs. Base of the burnt area covered with infected yellowish slough material with marginal reddish granulation noted.

Other findings:-

Pleural and peritoneal cavities: empty

Larynx and Trachea cut section congested

Lungs: Cut section congested

Heart: Right side chambers contain a few cc? of fluid blood, left side chambers empty.

Coronaries patent.

Hyoid bone-intact

Stomach contains 100 ml of Green colour fluid. No specific smell, mucosa congested. Small intestine contains 16 ml of bile stained fluid, no specific smell, mucosa congested.

Liver, Spleen, kidneys and brain: cut section congested.

Urinary bladder: empty

Uterus: Normal size cut section empty.

Viscera preserved sent for chemical analysis. "

The Post Mortem Certificate has been marked as Ex.P.2. After transfer of P.W.9, the Investigating Officer, his successor in office, viz., P.W.10, has conducted further investigation and after completing the same, laid a final report before the Judicial Magistrate No.7, Coimbatore and the same has been taken on file in P.R.C.No.30/2010.

4. The Judicial Magistrate No.7, Coimbatore, after considering the facts that the offences alleged to have been made by the accused are triable by sessions court, has committed the case to the trial court and the same has been taken on file in Sessions Case No.217/2010.

5. The trial court, after hearing both sides and upon perusing the relevant records has framed the first charge against the accused

under Section 498-A of the Indian Penal Code (hereinafter called as "IPC"); second charge against him under Section 306 of the 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 11 have been examined and Exhibits P.1 to P.11 and Material Objects 1 to 3 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the 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 available on record has found the accused guilty under Section 498-A of the IPC and sentenced him to undergo one year rigorous imprisonment and also imposed a fine of Rs.5,000/- with usual default clause and he has also been found guilty under Section 306 of the IPC and sentenced him to undergo 7 years rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present criminal appeal has been preferred at the instance of the accused as appellant.

9. The sum and substance of the case of the prosecution is that in the year 2009, the accused has married the deceased by name Kaveri and after their marriage, both of them lived as husband and wife in Pillayarapuram, Coimbatore. The accused has used to deride the deceased by way of saying that she is not beautiful and also told her that he wants to marry her younger sister viz., Tulasimani as his second wife. Since the deceased has failed to concede the demand made by the accused, he used to torture her and due to that, on 23.09.2009, she doused kerosene on her person and set fire and immediately after occurrence, she has been admitted in Government Hospital, where, she has given the complaint in question.

10. On the side of the prosecution, the mother of the deceased has been examined as P.W.1. The doctor, who conducted autopsy has been examined as P.W.5 and he marked the Post Mortem Certificate as Ex.P.2. The Judicial Magistrate who recorded Dying Declaration has been examined as P.W.7 and he marked Ex.P.4. The Revenue Divisional Officer, who conducted inquest has been examined as P.W.7 and he marked inquest report as Ex.P.5.

11. The trial court, after considering the fact that the deceased herself has given the complaint in question, wherein, it is stated about the overtacts alleged to have been committed by the accused, has come to the conclusion that the statement alleged to have been given by the deceased can be treated as a dying declaration under

Section 32(1) of the Indian Evidence Act, 1872 and ultimately found the accused guilty under Section 498-A and 306 of the IPC and imposed sentences as mentioned in the judgment.

12. The learned counsel appearing for the appellant/accused has meticulously contended that before giving statement viz., Ex.P.7, the then injured (deceased) has given a dying declaration to P.W.6, the Judicial Magistrate on 23.09.2009, wherein, it is stated that at the time of cooking, she got fire, but Ex.P.7, statement has been given on 24.09.2009 and the trial court, without considering the first and foremost statement given by the deceased has erroneously found the accused guilty under Section 498-A and 306 of the IPC and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

13. The learned Additional Public Prosecutor has contended that in the instant case, two dying declarations are available, wherein, necessary incriminating materials are available against the accused and the trial court, after considering the overall evidence available on record, has rightly invited the convictions and sentences under Section 498-A and 306 of the IPC and therefore, the convictions and sentences passed by the trial court are not liable to be set aside.

14. Basing upon the diverging submissions made on either side, the court has to analyse as to whether the prosecution has proved the alleged guilt of the accused punishable under Section 498-A and 306 of the IPC.

15. The entire case of the prosecution hinges upon Ex.P.7, statement alleged to have been given by the then injured (deceased), wherein, it has been clearly stated that after marriage, both the accused and deceased have been living as husband and wife in Coimbatore and the accused has used to deride her by way of saying that she is not beautiful and also told her that he wants to marry her younger sister viz., Tulasimani as second wife and due to his torture, she doused kerosene on her and set fire.

16. The trial court has solely invited the convictions and sentences against the accused only on the basis of Ex.P.7.

17. Before Ex.P.7 has come into existence, on 23.09.2009, P.W.6-Judicial Magistrate, has recorded a dying declaration from the then injured (deceased) and the same has been marked as Ex.P.4, wherein, it has been clinchingly stated that at the time of cooking, she got fire and her grand mother has admitted her in hospital. If really the deceased herself has doused kerosene on her person and set fire due to the alleged torture made by the accused, definitely, she would have stated everything in her first dying declaration viz., Ex.P.4. But in Ex.P.4, no incriminating materials available against the accused. As taunted earlier, in Ex.P.4, it has been simply stated that at the time of cooking, she got fire and her grand mother saved

her and subsequently admitted her in hospital.

18. It is an admitted fact that Ex.P.7 statement has been given by the then injured (deceased) on 24.09.2009, wherein, the necessary incriminating materials are available against the accused. Since in Ex.P.4 - dying declaration, no mention has been made about the role alleged to have been played by the accused, the court cannot give much adherence to Ex.P.7-statement, given by the deceased. Therefore, it is quite clear that only after getting some instigation, Ex.P.7 has been given by the then injured (deceased) and the same cannot be considered as a dying declaration. Since Ex.P.7 is an unbelievable document, the entire case of the prosecution is liable to be jettisoned.

19. The trial court, without considering Ex.P.4, dying declaration and its contents has erroneously believed Ex.P.7 and invited convictions and sentences against the accused. In view of the discussion made earlier, this court has found that the trial court has committed illegality in passing the impugned judgment and the same is liable to be set aside.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed in Sessions Case No.217/2010 by Magaleer Needhimandram, Coimbatore, are set aside. The accused/appellant is acquitted. Fine amounts, if any paid by the appellant/accused are ordered to be refunded forthwith. Consequently, connected MP is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

nvsri

To :

1.The Inspector of Police
B-14, Kuniyamuthur Police Station
Kinatthukataavu
Coimbatore

2.The Mahila Court, Coimbatore.

3.The Sessions Judge, Coimbatore.

4.The Public Prosecutor, High Court, Madras

5.The Superintendent, Central Prison, Coimbatore

1 cc to Mr.S.Nagarajan , Advocate Sr.No.49049

Cr1.A.No.402 of 2015

scd(Co)pmk.15.9.2015