

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.391 of 2007

S.Jothi Santhanam

.. Appellant/Complainant

vs.

N.Venkatesh

.. Respondent/Accused

Prayer:Criminal appeal filed under Section 378 Cr.P.C., against the judgment of acquittal dated 26.02.2007 made in S.C.No.360 of 2006 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.IV), Poonamallee.

For Appellant : Mr.N.Thiagarajan
Senior Counsel
for Mr.A.Sheik Pareeth
For Respondent : No appearance

J U D G M E N T

The Criminal appeal arises out of the judgment of acquittal dated 26.02.2007 made in S.C.No.360 of 2006 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.IV), Poonamallee, whereby the accused was acquitted for the offence under Sections 498-A and 306 IPC.

2.The case of the prosecution based on the prosecution witnesses is as follows:

(i)On the side of the prosecution, P.W.1 to P.W.9 were examined, Exs.P1 to P19 were marked.

(ii)P.W.1/Jothi is the mother of the deceased Geetha. The marriage between the deceased Geetha and the accused Venkatesan was performed on 13.12.2000 and they lived in a separate residence at Nandambakkam. Prior to marriage, it was stated that the accused Venkatesan was working at LNT Bank and was earning Rs.18,000/- per month. The deceased Geetha was also working in a private concern. As long as the deceased was earning, they lived happily. The accused Venkatesan was not giving any money to Geetha. When the deceased Geetha questioned the accused, he replied that even his mother never questioned about his earnings, therefore he need not tell her. Therefore, the deceased Geetha informed to her father-in-law, who passified her saying that if she stops going to work, then his

son/the accused Venkatesan would give his earnings to her. Therefore, he daughter resigned her job. But, on knowing these facts, the accused Venkatesan was very angry and scolded her for taking a decision to leave the job without consulting him. Therefore, the deceased Geetha left the house and came to the house of her mother/P.W.1. Then, P.W.1 questioned the accused/Venkatesan about this quarrel, for which, he replied that the deceased Geetha has not given him a child. Therefore, he is not ready to take care of her and asked to keep her daughter/the deceased Geetha. But, meanwhile his mother intervened and patched up the problem.

(iii) Then after two months, on 10.03.2003 at about 11.00p.m., P.W.1/Jothi received a phone call from the mother-in-law of the deceased Geetha that the deceased sustained burn injuries due to gas cylinder burst and was admitted in the hospital. P.W.1 rushed to the hospital, but Geetha was not in a speaking condition. She went to Geetha's house to see the situation. She found the gas cylinder intact. The house owner, namely, P.W.6/Santhi told her that the deceased Geetha sustained injuries in the bed room. The kerosene bottle and the match box were in the kitchen counter. Her younger daughter who stayed in Geetha's house three days prior to the incident has stated that since the gas cylinder became empty, they borrowed the stove from the house owner. Within a day, the gas cylinder was delivered and therefore, they returned the kerosene stove but not the kerosene. P.W.1/Jothi further stated that the accused Venkatesan had the habit of drinking. Even on the date of the incident, he was drunk. He was crazy after cricket matches. He used to take leave on cricket match days to watch. She further stated that her daughter/the deceased Geetha has studied Computer Science and she was not a coward to die or commit suicide. Since the kerosene bottle and the match box were in the kitchen she suspects the accused to have done this. Therefore, P.W.1 lodged complaint/Ex.P.1 against the accused.

(iv) P.W.9/Mohan, Inspector of Police, Nandambakkam Police Station, received the complaint/Ex.P.1 from P.W.1 and prepared the printed FIR/Ex.P.12. Then, P.W.9 went to Ramachandran hospital where Geetha was undergoing treatment. Even though the victim was conscious, she was not in a fit state to talk, therefore her statement could not be recorded. Thereafter, he submitted requisition/Ex.P.13 to the learned Judicial Magistrate No.II, Poonamallee to record dying declaration from the victim Geetha. Even the learned Judicial Magistrate No.II, Poonamallee, who tried to record the dying declaration could not do so and issued the report/Ex.P.14. P.W.9 then went to the place of occurrence, prepared the Observation Mahazar/Ex.P.10 and drew the rough sketch/Ex.P.15. P.W.9 seized the kerosene bottle, match box, petticoat and a kerchief under a Mahazar/Ex.P.11 and sent to the Court for chemical examination. Form 95 is marked as Ex.P.16. P.W.9 also examined the witnesses, P.W.1/Jothi, P.W.6/Santhi, Sasidharan, P.W.4/Livingston, Xavier, Vijayakumar, P.W.7/Balaji and Dr.Ragunath and recorded their statement. In this case both Geetha and the accused Venkatesan

sustained burn injuries and the Accident Register copy was marked as Ex.P17 and Ex.P18.

(v) On 13.03.2003, inspite of proper treatment, Geetha died. So, P.W.9 altered the Section to 174(3) Cr.P.C. and sent the report/Ex.P.19 to the Magistrate. He also sent a copy of the FIR for further investigation to Deputy Superintendent of Police.

(vi) P.W.2/Kalyana Sundaram, Revenue Divisional Officer (Incharge) of Nandambakkam was asked to do the preliminary enquiry as to the unnatural death of Geetha within seven years of marriage. He enquired the parents of the deceased and the accused and recorded their statements. He also conducted inquest in the presence of panchayatars. In his Inquest Report, he opined that the death of Geetha was not due to dowry harassment and submitted a report/Ex.P.6.

(vii) P.W.3/Nandagopal, Assistant Director of Forensic Science, on receipt of requisition/Ex.P.7 from the learned Judicial Magistrate No.II, Poonamallee for chemical examination, conduct examination on the material objects. On examination, he found kerosene on the petticoat but not in the match box and kerchief and submitted a report/Ex.P.8.

(viii) P.W.5/Dr.Manoharan conducted autopsy on the body of the deceased and the post-mortem certificate was marked as Ex.P.9. He opined that the deceased would appear to have died due to complication of burns.

(ix) P.W.8/Panneerselvam, Deputy Superintendent of Police took up the case for further investigation. He recheck the investigation already done by the Investigating Officer/P.W.9 and obtained the statements of the Doctor who treated Geetha and who conduct Postmortem. Since the RDO's opinion was that there was no dowry demand, he sent back to P.W.9/Investigating Officer to continue further investigation.

(x) P.W.9/Mohan, Inspector of Police, Nandambakkam Police Station examined the witnesses and recorded their statements and after completing the investigation, he filed a charge sheet against the accused for the offence under Section 498(A) and 306 IPC.

3.The Trial Court placed the incriminating evidence before the accused under Section 313 of Cr.P.C. and the accused denied the same in toto. On the side of the prosecution, P.W.1 to P.W.9 were examined and Exs.P1 to P19 and M.O.1 to M.O.4 were marked. On the side of the defence, no oral evidence was examined and no documentary evidence was marked. After considering the oral and documentary evidence, the trial Court acquitted the accused for the offence under Sections 498A and 306 IPC.

4.Challenging the judgment of acquittal passed by the Trial Court, the learned senior counsel appearing for the appellant would submit that the Trial Court has failed to consider the fact that the deceased Geetha has met out cruelty in the hands of the respondent/accused. He would further submit that the marriage between the deceased Geetha and the accused Venkatesan was performed

on 13.12.2000. she sustained burn injury on 10.03.2003 and died on 13.03.2003. Even though RDO has stated that there is no dowry demand, the death is in suspicious circumstances. So, the accused alone abetted for the commission of offence. That factum has not been considered by the Trial Court. He further submits that the Trial Court has not correctly appreciate the evidence of P.W.1. Hence, he pray for conviction of the respondent/accused.

5.The respondent/accused was represented by a counsel. Even though the matter was posted on several occasion for respondent arguments, neither the respondent nor the counsel on record appeared and advanced the argument. So, no argument has been advanced on the side of the respondent/accused.

6.Considered the submission made by the learned senior counsel appearing for the appellant and perused the typed set of papers.

7.The marriage between the respondent/accused and the deceased Geetha was performed on 13.12.2000 and they are not having any issues. It is the case that the respondent was working in a Private Company and the deceased Geetha was also working in a Company. They lived in a separate residence. Since the respondent has not paid the salary to her, she intimated the same to her father-in-law and he in turn advised her that if she stops going to work, then his son/the accused Venkatesan would give his earnings to her. So, she resigned her job. Then also the respondent has not taken care of the deceased Geetha. There was quarrel between both the deceased Geetha and the respondent/accused every now and then. So, she left the matrimonial home and gone to the house of P.W.1/Jothi, the mother of the deceased. Then, P.W.1 on the instruction of the mother-in-law of the deceased, compromised the matter between the deceased and the respondent/accused and then, the deceased returned to her matrimonial home. After two months, i.e. On 10.03.2003 the alleged occurrence said to have taken place. P.W.6/Santhi, who is the landlord of the house where the deceased and the respondent/accused were residing, has deposed that on the fateful day i.e. On 10.03.2003, at about 9.00 p.m., she heard the noise and immediately she gone to the upstairs and witnessed that both the deceased and the respondent/accused sustained burn injuries. Immediately, she called P.W.4/Livingston, who is an Auto Driver, and both the deceased and the respondent were taken to the hospital. In spite of proper treatment, the deceased Geetha died on 13.03.2003

8.It is pertinent to note that P.W.2/Kalyanasundaram, RDO, in his evidence, has stated that the mother of the deceased also not stated any cruelty or demand of dowry in Ex.P.5/Inquest Report and in the report/Ex.P.6 issued by P.W.2, it was specifically mentioned that there was no demand of dowry. Further, P.W.1/Jothi, herself in the cross-examination has stated that after marriage both are living happily and she visited their house then and there. She further

stated that the deceased is having grievance for not having the child and for not having financial capacity to lead a luxurious life. The evidence of P.W.1 and P.W.3 has clearly proved that the respondent has not committed any cruelty on the deceased and so, there is no evidence to prove that the ingredients of Section 498(A) IPC has been made out. Even though the death is due to the burn injury, but there is no pinch of evidence before this Court to show that the respondent has abetted the deceased Geetha to commit suicide.

9.It is also pertinent to note that while conducting inquest P.W.2 not only examined not only P.W.1 and also examined the mother-in-law of the deceased Geetha and also the respondent/accused and recorded their statements, which is marked as Ex.P.2 to Ex.P.4. In Ex.P.4, which is the statement of accused, it was specifically stated that she has committed suicide since she was not having the child and not having the financial status to lead a luxurious life. Even in the Section 313 Cr.P.C. questioning also, the same statement has been given. So, considering the same, I am of the view that there is no evidence to show that the respondent has abetted for commission of offence and the ingredients of Section 306 IPC has also not been made out.

10.Furthermore, it is pertinent to note that as per the dictum of the Hon'ble Apex Court, the Appellate Court is not entitled to set aside the judgment of acquittal, unless the judgment is perverse. Further, if two views are possible, the view favouring the accused to be taken into account. But, here there is no evidence to show that the judgment of acquittal is perverse and the Trial Court has not considered the material evidence and documents even though it was available. Hence, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion and acquitted the accused because the judgment of the Trial Court is not perverse.

11.In fine,

(i)The Criminal Appeal is dismissed.

(ii)The judgment of acquittal dated 26.02.2007 made in S.C.No.360 of 2006 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.IV), Poonamallee is hereby confirmed.

Sd/-

Assistant Registrar

Dated:10.3.15

True Copy

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge
(Fast Track Court No.IV), Poonamallee

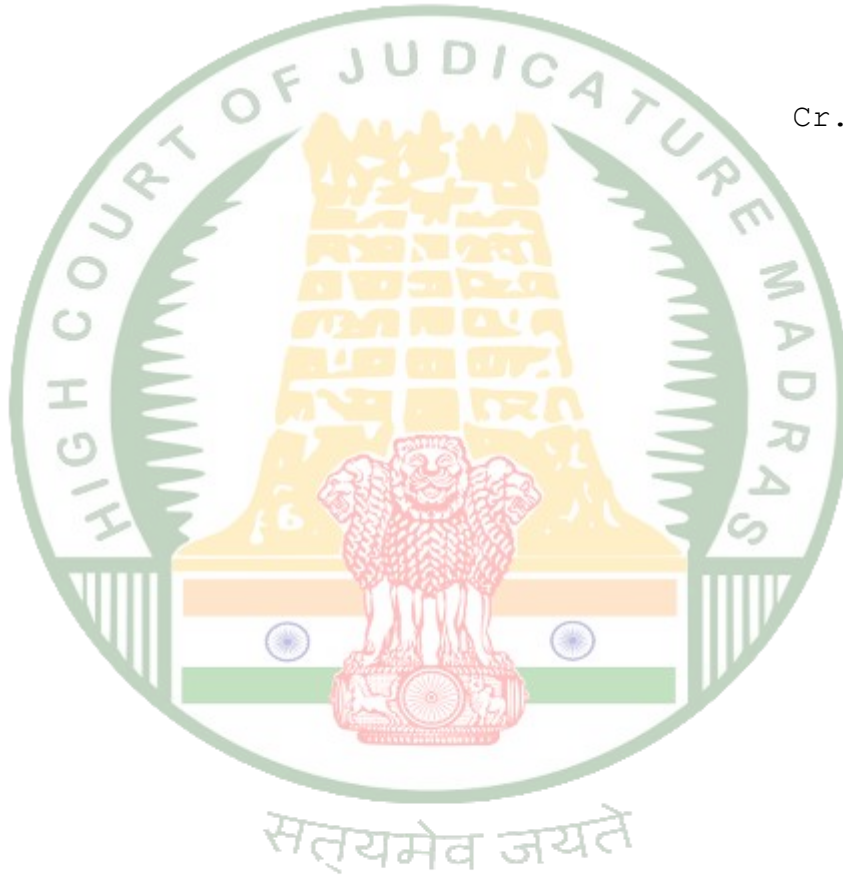
2.do thro' Thro' Principal District and Sessions Judge, Tiruvellore.

3.The Record keeper
High Court, Madras.

+1 cc to Mr.A.Shaik Pareeth, Advocate,SR.7525.

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krd 12/3

Cr.A.No.391 of 2007



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