

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.588 of 2006

State Rep. By
The Inspector of Police
Sathyamangalam Police Station
Erode District
Crime No.498/2004

...Appellant/Complainant

vs.

Prakash

...Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment dated 06.12.2005 in S.C.No.128 of 2005 on the file of First Additional Assistant Sessions Court, Gobichettipalayam, Erode District.

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

For Respondent : Mr.S.S.Jothivani

JUDGMENT

Challenge in this Criminal Appeal is to the order of acquittal dated 06.12.2005 passed in Sessions Case No.128 of 2005 by the First Additional Assistant Sessions Court, Gobichettipalayam, Erode.

2. The case of the prosecution is that the accused is the husband of the deceased Amudha. The accused has married her on 13.11.1997 and after marriage, both of them lived happily for a short span. The accused has used to say that the deceased has had illicit intimacy with one Palanisamy. On 05.09.2004, in the house of the accused and that too in the presence of senior paternal uncle of the deceased by name Pachiannan, the accused has told that the deceased is having illicit intimacy with the said Palanisamy and due to overtacts alleged to have been committed by the accused, on 06.09.2004, during night hours, in the house of the parents of the deceased, the deceased consumed poison and passed away. After occurrence, the father of the deceased by name Nagappan, as defacto complainant has given a complaint and the same has been registered in Crime No.498/04. The complaint given by the defacto complainant has been marked as Ex.P.2.

3. On receipt of Ex.P.2, the Investigating Officer (P.W.24) has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, doctor by name Murugesan (P.W.16) has conducted autopsy and he has found the following external and internal injuries:-

"Eyelids closed. Nose & mouth frothy discharge present. Tongue inside. Teeth ⁸⁸88. No external injuries seen. Abdomen: Distended with gas. Genetic organs Normal. Thorax: No fractured ribs. Heart Wt 220 gms Pale chambers empty. Lungs. 380 gms with 380 gms. Congested. Hyoid Bone: Preserved for HBE. Stomach contains 50 ml of yellowish brown colour stool present. Liver 1000 gm congested. Spleen Wt 180 gm congested Kidneys each 110 gms ... intestines: Distended with gas. Bladder empty. Uterus normal. Skull No fractured bones.intact. Membranes intact. Brain wt 1100 gms pale. "

The Post Mortem Certificate has been marked as Ex.P.13. After completing investigation, the Investigating Officer, has laid a final report on the file of the Judicial Magistrate Court, Sathyamangalam and the same has been taken on file in P.R.C.No.7/2005.

4. The Judicial Magistrate, Sathyamangalam, after considering the fact 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, Erode Division and taken on file in Sessions Case No.128/2005 and subsequently transferred to the file of the trial court.

5. The trial court, after hearing arguments of 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 have denied the charge and claimed to be tried.

6. On the side of the prosecution, Prosecution Witnesses 1 to 24 have been examined and Exhibits P.1 to P.23, M.Os.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 let in on the side of the accused.

8. The trial court, after hearing arguments of both sides and also after contemplating the available evidence on record has found the accused not guilty under Sections 498(A) and 306 of the IPC and thereby, acquitted him. Against the order of acquittal, the present criminal appeal has been filed at the instance of the complainant as as appellant.

9. The learned Additional Public Prosecutor has vehemently contended that in the instant case, the accused has married the deceased on 13.11.1997 and after marriage, both of them have lived happily for a short period and subsequently in sozzle mood very often, the accused has tortured the deceased and further he used to say that she has had illicit intimacy with one Palanisamy; further on 05.09.2004, in the house of the accused, he treated the deceased as an accused and that too in the presence of her senior paternal uncle by name Pachiannan and since the accused has tortured the deceased, she consumed poison on 06.09.2004 in the house of her parents and subsequently passed away and in order to prove the case of the prosecution, the father of the deceased has been examined as P.W.1 and her

sisters have been examined as P.Ws.2 and 3 and some of their neighbours have been examined as P.Ws.7 to 9 and all of them have clearly spoken about the relationship that existed in between the accused and the deceased and they have also spoken about the torture made by the accused towards the deceased and the trial court, without considering the overwhelming evidence available on the side of the prosecution has erroneously acquitted the accused and therefore, the order of acquittal passed by the trial court is liable to be set aside and the accused is liable to be punished under Section 498(A) and 306 of the IPC.

10. In order to substantiate the judgment passed by the trial court, the learned counsel appearing for the respondent/accused has also equally contended that in the instant case, no specific evidence is available either to substantiate the charge framed under Section 498(A) of the IPC or the charge framed under Section 306 of the IPC and the trial court, after considering the lack of evidence on the side of the prosecution has rightly acquitted the accused and therefore, the order of acquittal passed by the trial court does not warrant interference.

11. The specific case put forth by the prosecution is that the accused has married the deceased on 13.11.1997 and both of them lived happily for a short period and subsequently with an intention to conduct second marriage, the accused has used to torture the deceased and especially on 05.09.2004, in the house of the accused, he treated the deceased as an accused and that too in the presence of her senior paternal uncle by name Pachiannan and only due to torture of the accused, the deceased has consumed poison and passed away.

12. On the side of the prosecution, the father and sisters of the deceased have been examined as P.Ws.1 to 3, the senior paternal uncle of the deceased by name Pachiannan has been examined as P.W.4; the neighbours have been examined as P.Ws 7 to 9. In fact all of them have spoken about some skirmishes that existed in between the accused and deceased.

13. The specific case of the prosecution is that on 05.09.2004, in the house of the accused, he treated the deceased as an accused that too in the presence of P.W.4 viz., Pachiannan. But P.W.4 does not speak about the occurrence alleged to have taken place on 05.09.2004. From the charge

framed against the accused, the court can easily come to a conclusion that immediate cause for consuming poison is nothing but occurrence alleged to have taken place on 05.09.2004. But as pointed out earlier, even P.W.4 has not spoken anything about the occurrence alleged to have taken place on 05.09.2004.

14. It is an admitted fact that Ex.P.2-complaint has been given by P.W.1, father of the deceased wherein, it has been clearly stated that one year from the date of occurrence, the deceased has lived in his house. If that be the case, it is needless to state that the materials found in the second charge are totally baseless. Since materials found in the second charge are totally baseless, the court cannot come to a conclusion that only due to overtacts committed by the accused, the deceased has consumed poison and thereby, committed suicide.

15. The learned Additional Public Prosecutor has made an abortive attempt to the effect that for invoking Section 498(A) of the IPC, sufficient evidence is available.

16. The specific case of the prosecution is that on 05.09.2004, in the house of the accused, he treated the deceased as an accused and that too in the presence of P.W.4. Since the occurrence alleged to have taken place on 05.09.2004 has not been proved on the side of the prosecution, the court cannot automatically come to a conclusion that the accused has committed an offence punishable under Section 498(A) of the IPC merely on the evidence given by P.Ws. 1 to 4 and 7 to 9. It is no exaggeration to say that in the instant case, no evidence is available on the side of the prosecution either to attract penal provision of Section 498(A) of the IPC or Section 306 of the IPC.

17. The trial court, after considering the fact that the prosecution has not adduced requisite evidence so as to attract penal provisions of Sections 498(A) and 306 of the IPC has rightly acquitted the accused. In view of the discussion made earlier, this court has not found any acceptable force in the contentions put forth on the side of the appellant/complainant and altogether, the present criminal appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The judgment passed in Sessions Case No.128 of 2005 by the trial court is confirmed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police
Sathyamangalam Police Station
Erode District
Crime No.498/2004
2. The I Additional Assistant Sessions Court,
Gobichettipalayam,
Erode District.
3. The Public Prosecutor,
High Court, Madras.
4. The Secretary,
Legal Services Authority,
Chennai.
5. The Judicial Magistrate,
Sathyanmangalam.
6. -Do- Through The Chief Judicial Magistrate,
Erode.
7. The Principal Sessions Judge,
Erode.

1 CC to Mr.S.S.Jothivani, Advocate SR.No. 57880
Crl.A.No.588 of 2006

SKV (CO)
PSI (05.11.2015)