

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2016

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.A.No.420 of 2015

And

M.P.No.1 of 2015

B.Raja ... Appellant/Sole Accused

Vs.

State by

Inspector of Police,

E3, Teynampet Police Station,

Chennai.

[Crime No.185 of 2009]

... Respondent/Complainant

Prayer :

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, seeking to call for the entire records connected with the Judgement in S.C.No.189 of 2010 dated 26.02.2015 passed by the learned Mahila Sessions Judge, Chennai and set aside the same.

For Appellant : Mr.V.Sathish

For Respondent : Mr.P.Govindarajan

Additional Public Prosecutor

JUDGMENT

The sole accused on the file of the learned Additional Sessions Judge, (Mahila Court), Chennai in S.C.No.189 of 2010 challenges his conviction and sentence.

2.The said Judge while acquitting him from a charge under Section 4 of Tamil Nadu Women Harassment Act convicted and sentenced him as under:

Conviction	Sentence
(i) 498(A) I.P.C.	3 years R.I.
(ii) 306 I.P.C.	7 years R.I.

Both the sentences were directed to run concurrently.

3.The prosecution case runs as under:

(i)The accused/ appellant and the deceased Shenbagavalli were lovers. They have become life partners. They have set up their separate family. They have children.

(ii)On 06.03.2009, at about 8 p.m., Shenbagavalli was brought to the Government Royapettah Hospital with extensive burn injuries. P.W.8 - Doctor noticed several burn injuries on her. (Ex.P4 - Accident Register Copy). She was admitted an in-patient. P.W.10 - Sub-Inspector of Police, received intimation from the said Hospital. He went to the hospital and received Ex.P8 - complaint from the accused. Registered a case for an offence under Section 309 I.P.C. (Ex.P9 - F.I.R.). He took up his investigation. He went to the scene of occurrence. Prepared Ex.P10 - Observation Mahazer in the presence of witnesses. Drew Ex.P11 - Rough Sketch. In the presence of witnesses, he also recovered plastic can - (M.O.1) and match box - (M.O.2) under Ex.P12 - Mahazer. He examined the witnesses and recorded their statement. On 12.03.2009, he received death intimation from the hospital that Shenbagavalli had passed away.

(iii)P.W.11 - Inspector Ramalingam took up further investigation. He changed the Section of Law to Section 306 of I.P.C. (Ex.P13 - Alteration Memo). On 20.03.2009, he arrested the accused. P.W.9 - Kaja Mohideen, P.A.(General) to Collector, Chennai conducted enquiry. He recorded the statement of witnesses. His report is Ex.P7. The post-mortem Doctor conducted post-mortem. P.W.11 obtained Ex.P14 - Post-Mortem Certificate. Concluding his investigation, P.W.11 filed the final report for offences under Section 306 of I.P.C. and under Section 4 of Tamil Nadu Women Harassment Act before the concerned Court.

4.After all the formalities were complied with, the appellant was charged for offences under Section 498 - A, Section 4 of Tamil Nadu Women Harassment Act and under Section 306 of I.P.C. The accused pleaded not guilty.

5.To substantiate the charges, prosecution examined P.Ws.1 to 11, marked Ex.P1 to Ex.P14 and exhibited M.Os.1 and 2.

6.On the incriminating aspects in the prosecution evidence, when the accused was examined under Section 313 of Cr.P.C., he denied the offences. He did not examine any witness nor produce any document on his side.

7.Appreciating the above evidence and considering the submissions of both sides, the Trial Court while acquitting the accused from the charge under Section 4 of the Tamil Nadu Women

Harassment Act convicted and sentenced him under two counts as stated in para 2 supra.

8.The learned counsel for the appellant would submit that absolutely there is nill incriminating evidence as against the accused. The evidence of P.W.1 or P.W.2 or other witnesses does not substantiate the charges. The RDO ruled out any dowry harassment.

9.On the other hand, the learned Additional Public Prosecutor would submit that the evidence of P.Ws.1, 2, 5 and 9 establishes the charges framed against the accused. P.W.5 is very categorical that the accused had instigated his wife to commit suicide. The suspicion of the accused caused the death of his wife. P.W.9 - RDO also recorded the statement of P.Ws.1 and 2, which contains many incriminating evidence against the accused. Thus, the learned Judge has rightly convicted and appropriately sentenced him.

10.I have anxiously considered the rival submissions, perused the Trial Court's judgment and also the evidence and other connected materials on record.

11.Now the question is whether the charges under Sections 498 - A I.P.C. and 306 I.P.C., have been proved by the prosecution beyond all reasonable doubts.

12.Both the accused and the deceased were lovers. Precisely, the case of the prosecution is that suspecting the character of his wife, the accused had continuously tortured her and on 06.03.2009 also he had harassed her, his conduct was so unbearable that she had committed suicide. For a charge under Section 306 I.P.C., two ingredients must be established. One is suicide. The other one is abetment to commit suicide.

13.In this case, the Criminal law was set in motion by the accused himself. P.W.1 - Devi, the mother-in-law of the accused had stated that her son-in-law used to entertain doubt on her daughter and harassed her, thus on the fateful day her daughter attempted suicide. In her cross-examination, P.W.1 admits that she has not witnessed any such occurrence.

14.P.W.2 - Manjula is the sister of the deceased. Her evidence also would not disclose any incriminating evidence as against the accused. She had also started improving her evidence. There is complete variance in her evidence before the Court and in her statement to police under Section 161 of Cr.P.C. She had also stated that the accused had harassed her sister on suspicion. But she says that it was told by her sister's daughter. However, that girl was not examined.

15.P.W.9 is a Revenue Divisional Officer (R.D.O.). He has recorded the statement from P.Ws.1 and 2. Entire prosecution version of the case is available in their statement to P.W.9. R.D.O. Enquiry is to find out apparent cause of death when a married woman dies within seven years of her marriage. It is a previous statement. Such a statement is like a statement recorded by the police under Section 161 of Cr.P.C. Such statements are not recorded in the presence of the accused. Such statements are not subjected to cross - examination. It is a statement recorded outside the Court. They cannot be substantive evidence. What is substantive evidence is evidence adduced before the Trial Court. The statements given to R.D.O. can be used by the defence to test the veracity of the evidence of a witness. It cannot be used to record a conviction. Now, in this case, we have already seen the substantive evidence of P.Ws.1 and 2.

16.P.W.3 - Govindasamy is a neighbour of the deceased. He is an after occurrence witness. His evidence is not useful to the prosecution to establish the charge against the accused. His evidence is complete hearsay evidence. P.W.4 - Viswanathan is the brother of the deceased. His evidence is also like the evidence of P.W.3.

17.P.W.5 - Mani is residing in the house opposite to the house of the accused. He stated that there used to be quarrel between the accused and his wife. He used to hear daily lot of sounds from their house. He used to pacify them. He did not know the reasons for their such quarrel. It is a matter of common knowledge that spouses quarrels for so many reasons. P.W.5's evidence is vague. It is general. It does not pin the accused to the charge under Section 306 of I.P.C.

18.P.W.8 - Dr.Senthil first seen the deceased on 06.03.2009, when she was brought to the hospital. When enquired she told him that she had self-immolated on that day and her husband tried to save her. P.W.8 had also recorded her said statement in Ex.P4 Accident Register. P.W.8's such evidence remains unchallenged.

19.Thus, the prosecution evidence does not goes to establish the charges framed against the accused. What remains is suspicion and surmises. Suspicion and surmises, however, strong may not take the place of legal proof. No legal and acceptable evidence is available to record a conviction against the accused. Prosecution has thoroughly failed to establish both the charges framed against the accused.

20.Thus, this Criminal Appeal is allowed. The conviction under Sections 498 - A and 306 of IPC and the sentences imposed on the accused by the learned Additional Sessions Judge (Mahila

Court), Chennai in S.C.No.189 of 2010 on 26.02.2015 are set aside. He is acquitted from both the charges. The Superintendent, Central Prison - I, Puzhal, Chennai is directed to set him at liberty, if he is no longer required in connection with any other case or proceedings. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Sessions Judge,
(Mahila Court),
Chennai.
- 2.-Do-Thro the Principal Session Judge,
Chennai.
- 3.The Additional Public Prosecutor
High Court, Madras.
- 4.The Inspector of Police,
E3, Teynampet Police Station,
Chennai.
- 5.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 6.The District Collection,
Chennai.
- 7.The Director General of Police,
Mylapore,
Chennai-4.

1cc to M/S.V.Sathish, Advocate sr.7987

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ug(CO)
srg(19/02/2016)