

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

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THE HONOURABLE MR. JUSTICE C.T.SELVAM

Criminal Appeal Nos.263 and 431 of 2014

Iyyammal
W/o.Karuppai

.... Appellant in Crl.A.No.263 of 2014

Vellaisamy
S/o.Karuppai

.... Appellant in Crl.A.No.431 of 2014

Versus

State represented by
The Assistant Commissioner of Police,
D-2, Anna Salai Police Station Range,
Chennai.

.... Respondent in both appeal

Criminal Appeals filed under Section 374 of the Code of Criminal Procedure against the judgment of learned Mahalir Additional District and Sessions Judge, Chennai, passed in S.C.No.383 of 2010 on 10.04.2014.

For Appellants : Mr.C.M.Gunasekaran
(in both appeals) for Mr.M.Anandraj

For Respondent : Mr.M.Mohammed Riyaz
Government Advocate [crl.side]

COMMON JUDGMENT

These appeals arise against the judgment of learned Mahalir Additional District and Sessions Judge, Chennai, passed in S.C.No.383 of 2010 on 10.04.2014.

2. Prosecution case is that appellant in Crl.A.No.431 of 2014 and deceased, in love, got married without the knowledge of deceased's parents. On coming to know, *de facto* complainant, mother of deceased, took both of them to her house and gave 'sreedhana' articles. The accusation against appellants is that they demanded dowry from the deceased as also cruelly treated her, owing to which, deceased committed suicide by self-immolation on 27.08.2009. PW-1, mother of deceased, preferred Ex.P1 - complaint to PW-15, Sub-Inspector of Police, D2 Anna Salai Police Station. PW-15 registered a case in Crime No.921 of 2009 on the file of respondent u/s.174(3) Cr.P.C. Printed First Information Report is Ex.P7. Since the deceased died within 7 years of marriage, PW-15 forwarded the First Information Report and complaint to PW-18, Assistant Commissioner of Police for further investigation. On 27.08.2009, PW-18 took up investigation in the case. PW-18 visited the place of occurrence and at about 3.15 a.m., prepared Ex.P12 - Observation Mahazar and Ex.P13 - Rough Sketch in the presence of witnesses. PW-18 seized MO-1 - half burnt kerosene can, MO-2 - red colour pump stove, MO-3 - match box, MO-4 - half burnt clothes, MO-5 - piece of kerosene smelling floor and MO-

6 - ordinary floor piece, under Ex.P14 - seizure mahazar in the presence of witnesses. PW-18 examined witnesses and recorded their statements. PW-18 sent Ex.P10 - requisition to Personal Assistant to District Collector towards conduct of inquest. On enquiry, PW-18 found that there was demand for dowry and hence, he altered the First Information Report to reflect offences u/s.498-A and 304-B IPC and forwarded the alteration report to Court. The Alteration Report is Ex.P15. PW-18 examined PW-13, Dr.Suresh Babu, Chief Medical Officer, Royapettah Government Hospital, obtained Ex.P5 - Copy of Accident Register and recorded his statement. PW-18 went to mortuary, saw the body of deceased and instructed PW-10, Head Constable to send the body of deceased for postmortem after inquest and after completion of all formalities, hand over the body of deceased to PW-1, her mother. PW-10, Head Constable forwarded the viscera of deceased for chemical analysis. The Chemical Analysis Report is Ex.P6. PW-18 examined PW-10 and recorded his statement. Ex.P11 - Postmortem report informs that 'The deceased would appear to have died of shock due to extensive mixed burns.' PW-18 forwarded the seized articles to Court through PW-11, Head Constable. PW-18 examined PW-11 and recorded his statement. On 30.08.2009, PW-18 examined PW-11, Doctor, who conducted postmortem and recorded his statement. On 29.08.2009, at about 10.15 a.m., PW-18 arrested accused. PW-18 recorded the voluntary confession of first accused in the presence of witnesses. After conduct of physical search, PW-18 sent the accused for judicial custody. On his transfer, PW-18 handed over investigation to PW-19, Assistant Commissioner, Triplicane. PW-19 examined

Personal Assistant to District Collector, recorded his statement and obtained Ex.P9 - inquest report. On 27.11.2009, upon completion of investigation, a charge sheet has been informing commission of offences u/s.498-A and 304-B IPC before learned XIII Metropolitan Magistrate, Egmore, Chennai and upon committal, the case was tried in S.C.No.383 of 2010 on the file of learned Mahalir Additional District and Sessions Judge, Chennai. Trial Court framed charges u/s.498-A and 304-B IPC against first accused and 498-A and 304-B r/w 34 IPC against second accused.

3. Before trial Court, prosecution examined 19 witnesses and marked 15 exhibits and 6 material objects. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 10.04.2014, convicted first accused for offences u/s.498-A and 304-B IPC and second accused for offence u/s.498-A IPC while acquitting her of offence u/s.304-B r/w 34 IPC and sentenced each of them to 3 years R.I. and fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.498-A IPC and sentenced first accused to 10 years R.I. and fine of Rs.10,000/- i/d 6 months S.I. for offence u/s.304-B IPC. Trial Court directed that sentences run concurrently. Against such finding, present appeals have been preferred.

4. Heard learned counsel for appellants and learned Government Advocate [crl.side] for State. Perused the materials on record.

5. These appeals are to be allowed for the following reasons:

- (i) The evidence of PW-1, mother of deceased, PW-2, her brother and PW-3, her father, in chief and in cross-examination, are at total variance. While in their evidence in chief they would inform ill-treatment on demands of dowry an examination of their evidence in cross reveals that they had no relationship with the deceased and that they had no qualms over deposing falsely against the accused.
- (ii) Deceased has married the first accused against the wishes of her family. Their estrangement is admitted by PWs.1 and 3, mother and brother of deceased. In such circumstances, the evidence of PWs.1, 2 and 3, mother, father and brother, regards wrongful conduct of the accused is totally unacceptable. The neighbours, who alone, if at all, could have spoken to offending acts of the accused, have not been examined.
- (iii) Inquest report: Exs.P9 and P10 - Ex.P9 was marked on 07.08.2012 in Court. Ex.P10 is a copy of Ex.P9, which has been forwarded to Sub-Inspector of Police, Triplicane, on 21.08.2012. In Ex.P10, it has been found that there was demand of dowry by A1 owing to which the deceased committed suicide by self-immolation. However, in such report, the Revenue Divisional Officer has exonerated A2, mother-in-law, as there was no proof of demand of dowry by her.
- (iv) PW-18, Investigation Officer, who conducted investigation in the case, in cross, deposed to having prepared the F.I.R Alteration Report even before perusing the Revenue Divisional Officer's Report. He further deposed that

the witnesses viz., Devaki, Sivakumar and Durairaj, spoke to injuries sustained by first accused and his seeking help from others to save the deceased. However, none of the above named or others have been examined. Further, there are discrepancies between Ex.9 and Ex.P10. From the above, it is clear that PW-16, Revenue Divisional Officer, was forced to subscribe to PW-18's version.

(v) Ex.P2 is the statement of PW-3, father of the deceased, given to PW-16, Revenue Divisional Officer and the same was objected to since only the xerox copy was marked. However, in such statement, no allegation of demand of bike has been made. Further, in Ex.P2, besides thumb impression, PW-3 has also affixed his signature. However, in Ex.P9 - inquest report, a copy of Ex.P2 has been annexed, which does not bear the signature of PW-3. Therefore, it is clear that Ex.P2 has been prepared after filing of charge sheet. The defence statement of PW-16, Revenue Divisional Officer, having filed the inquest report in keeping with the prosecution case merits acceptance.

(vi) The demand for dowry from PW-3 is highly unlikely since the father of deceased admits that he was a coolie and was earning only Rs.50 per day.

(vii) While in Ex.P1-complaint and in her deposition, PW-1 has spoken about both demand of Rs.30,000/- and of deceased asking Rs.1,000/-, in Ex.P9-Inquest Report, nothing has been stated regards demand of Rs.30,000/-. It was the evidence of PW-2 that they have given Rs.15,000/- for accused and deceased setting up a home. The deceased was the daughter of PW-3's first

wife, PW-1. Though it was the evidence of PW-3 that the deceased informed his second wife about demand of money and a bike, prosecution has failed to examine second wife of PW-3 as a witness.

(viii) In statements before PW-16, Revenue Divisional Officer, none of the witnesses, viz., PWs.1 to 3, have spoken about dowry demand. While in Ex.P1-complaint, PW-1 informed of demand of Rs.30,000/- and of not paying the same, before PW-16, Revenue Divisional Officer, she has informed of having given a sum of Rs.20,000/- for setting up house.

(ix) A perusal of Ex.P5, Accident Register, reveals that the deceased was taken to hospital by first accused, who also suffered burn injuries to one hand. The defence case of his having suffered such injury in trying to save his wife's life also is to be considered. PW-16, Revenue Divisional Officer, in Ex.P10-inquest report, informed that there was a quarrel between deceased and first accused on the date of occurrence owing to which the deceased committed suicide and the first accused has sustained burn injuries on one hand while attempting to save her.

In the aforestated circumstances, this Court is of the view that the prosecution has failed to prove its case beyond reasonable doubt.

In the result,

The Criminal Appeals are allowed. The conviction and sentence passed by learned Mahalir District and Sessions Judge, Chennai, in S.C.No.383 of 2010 on 10.04.2014, are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand cancelled. Appellant in CrI.A.No.431 of 2014, who is in custody, is directed to be released forthwith, if his detention is not required in any other case.

20.04.2017

Index:yes/no

Internet:yes

gm

To

1.The Mahalir Additional District and Sessions Judge,
Chennai.

2.The Assistant Commissioner of Police,
D-2, Anna Salai Police Station Range,
Chennai.

3.The Public Prosecutor,
High Court,
Madras - 600 104.

4.The Superintendent,
Central Prison, Puzhal,
Chennai.

C.T.SELVAM, J

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