

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl. Appeal No.2 of 2016

Nagendhiramani

... Appellant/Petitioner

Vs

1.The State Rep: By its:
Inspector of Police,
(Law & Order) M6, Manali PS,
Chennai - 600 068.

2.Raja,

3.Smt.Girija

4.Smt.Devi

.. Respondents

Criminal Appeal filed under Section 372 of Criminal Procedure Code, to set aside the acquittal order passed by the learned Mahila Court @ Thiruvellore in S.C.No.65/2012 dated 26.09.2014 and direct the lower court to consider and dispose of the case in accordance with law.

For Appellant : Mr.T.Sivagnanasambandan

For Respondents : Mr.K.Madhan for R1
Government Advocate (Crl.Side)

Mr.C.S.Saravanan for R2 to R4

JUDGMENT

This Criminal Appeal has been filed by the mother of the deceased Hemalatha under Section 372 of Criminal Procedure Code challenging the order of acquittal of A1 to A3 in S.C. No.65 of 2012 dated 26.09.2014 by the learned Sessions Judge, (Mahila Fast Track Court) at Thiruvellore.

The case of the prosecution is as follows:

2. Raja (A1) is a distant relative of the deceased Hemalatha. The family of the accused and the family of the deceased were known to each other and with the approval of both

families, betrothal for the marriage of Raja (A1) with the deceased Hemalatha was conducted on 08.05.2009. Thereafter, the marriage between them was solemnized on 02.07.2009. On 02.07.2010, Hemalatha committed suicide, by hanging in the matrimonial home.

3. On the complaint lodged by Mrs. Nagendhiramani, the step-mother of the deceased Hemalatha, the respondent Police registered an FIR in Crime No.181 of 2010 under Section 174(3) Cr.P.C, (marked as Ex-P7) and took up investigation. Since the death was within seven years of marriage, Kandasamy/PW-6-the Revenue Divisional Officer conducted inquest and submitted the inquest report (Ex-P3), wherein he had stated that the death had occurred on account of cruelty meted out to Hemalatha.

4. The Investigating Officer went to the place of occurrence and in the presence of Jerina (P.W.4) and Kala (P.W.5), prepared the Observation Mahazar (Ex-P2). The body of the deceased Hemalatha was sent for postmortem and Dr.Sathiyamoorthy (P.W.9), who conducted autopsy on the body of the deceased Hemalatha gave the postmortem certificate (Ex-P6) wherein he has opined that the deceased would appear to have died due to "Asphyxia" due to hanging. Thereafter, the Investigation Officer filed an alteration report (Ex-P9) on 07.07.2010, altering the case from 174(3) of Cr.P.C. to Sections 498A and 306 IPC. After completing the investigation, Hari-PW (12), the Inspector of Police filed a final report against Raja (A1) (husband of the deceased), Girija (A2-Raja's mother) and Devi (A3-sister of A1) for the offences punishable under Sections 498A and 306 IPC in P.R.C. No.31 of 2011 before the Judicial Magistrate, Thiruvottriyur.

5. On the appearance of the accused, they were furnished with the copies under Section 207 Cr.P.C and the case was committed to the Court of Sessions, Tiruvellore in S.C. No.65 of 2012. The Sessions Court made over the case to the Mahila Court, Tiruvellore, where charges for the offences under Sections 498A and 306 IPC were framed against A1 to A3. When questioned, they pleaded "not guilty".

6. On behalf of the prosecution, twelve witnesses were examined and nine exhibits were marked. On behalf of the accused, one witness DW-1 was examined and Ex-D1 photographs series were marked. The accused were questioned under Section 313 Cr.P.C. on the incriminating materials against them and they denied the same.

7. On behalf of the accused, one witness Kavitha (DW-1) was examined and five photographs (Ex.D1 series) were marked. After hearing both sides, the Trial Court, by Judgment dated 26.09.2014 in SC No.65 of 2012, acquitted all the accused of the

charges. Aggrieved by which, Nagendhiramani/PW-1, the step mother of the deceased Hemalatha, is before this Court.

8. Heard the learned counsel for the appellant, the learned Government Advocate (Criminal Side) for the State and the learned counsel for the respondents 2 to 4/accused and perused the materials available on record.

9. It is trite to state that the appellate Court should be very slow in interfering with the Judgment of the acquittal that has been passed by the Trial Court and that, on the evidence on record, if two views are possible, the appellate Court should accept the view, that had found favour with the trial Court and should not unsettle the order of acquittal routinely. Of course, if it is shown that there has been gross mis-appreciation of evidence by the trial Court, leading to miscarriage of justice, the appellate Court can interfere with the order of acquittal. Suffice it to quote the following passage of the Hon'ble Supreme Court in Arulvelu vs. State [(2009) 10 SCC 206] in this regard.

"40. Unquestionably, the appellate court has power to review and reappraise the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be a perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallised by the aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

10. It is the specific case of the prosecution that the deceased Hemalatha was subjected to 'cruelty' on the ground that she did not conceive after the marriage. It is also alleged that A1 to A3 demanded Rs.50,000/- cash, as dowry and also gold jewellery from Hemalatha.

11. Thus, it is the case of the prosecution that it was only on account of the cruelty meted out to Hemalatha, she committed suicide. It may be relevant to state here that neither the police nor the trial Court had indicted A1 to A3 for the offence punishable under Section 304 B IPC. The charges framed against A1 to A3 were for the offences under Sections 498A and

306 IPC Nagendhiramani/PW-1, step-mother of the deceased Hemalatha, Rangabashiyam/PW-2 father of the deceased and Krishnamoorthy/PW-3, uncle of the deceased gave evidence to the effect that the deceased was subjected to criticism by A1 to A3 for not conceiving immediately after the marriage and that A1 to A3 also demanded Rs.50,000/- cash and gold jewellery as dowry and on account of that Hemalatha committed suicide. However, in the Cross-examination of these witnesses, it is shown that Nagendhiramani/PW-1 was the step-mother of the deceased and knowing fully well that A1 was a distant relative, the marriage was solemnized between A.1 and the deceased.

12.It was further elucidated in the Cross-examination that A1 had taken the deceased to a Gynecologist and on medical advice, both A1 and Hemalatha underwent various tests, the outcome of which showed that the deceased was capable of bearing child, but A1 suffered impotency. P.W.1 to P.W.3, in their evidence also admitted that A1 to A3 knew this aspect well. DW-1, Kavitha, who is the sister of A1, was examined in order to show that D.W.1 also conceived only four years after her marriage.

13.A1 to A3 are close relatives of the deceased and one can understand their anxiety to fix the responsibility on the family of the accused for the demise of Hemalatha.

14.In the course of cross-examination of PW1 and PW2, they have clearly admitted that A1 and the deceased would come frequently to their house and they will not stay in the night, but, would return back to their house. In this regard, it may be necessary to analyse the evidence of Jerina/PW-4 and Kala/PW-5. These two witnesses are the independent witness, who were examined by the prosecution in order to prove the Observation Mahazar and the rough sketch that was prepared by the Police at the scene of occurrence. Admittedly, these two witnesses had worked as servants in the house of accused. In their evidence, they have clearly stated that there was no matrimonial discord between A1 and the deceased Hemalatha and that both of them were living happily. However, Jerina/PW-4 has stated that Hemalatha used to complain about her step-mother Nagendhiramani/PW-1 and recount the sufferings undergone at her hands.

15.During investigation, the police photographer, who took photographs of the place of occurrence, found a note book near the body of the deceased. Strangely this note book was not seized by the Police for the reasons best known to them. That apart, the prosecution did not come forward to examine the Police photographer. Therefore, the five photographs were marked as defence exhibits through the prosecution witnesses. The trial Court has found fault with the conduct of the prosecution in trying to burk the five photographs, which showed

the presence of a note book left by the deceased, a seizure of which would have thrown light on her mental makeup at the time of committing suicide.

16.Yet another legal issue requires to be referred to here. For mulcting criminal liability under Section 306 IPC, the prosecution should prove that the accused had committed any one of the acts adumbrated in Section 107 IPC. In the absence of any evidence to show that the accused had committed the overt acts set out in Section 107 IPC, the accused cannot be convicted for the offence under Section 306 IPC.

17.The trial Court had taken all these factors into consideration for acquitting the accused. Hence, the judgment passed by the learned Sessions Judge, (Mahila Fast Track Court) at Thiruvellore in S.C.No.65/2012 dated 26.09.2014, acquitting the accused is confirmed and this Court does not find any error or irregularity, warranting interference. Therefore, the criminal appeal is dismissed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

pam/kal
To

1. The sessions Judge
The Mahila Court,
Thiruvellore.
2. The Judicial Magistrate
Thiruvettriur
3. The Inspector of Police
M6, Manali Police station
Chennai 68.
4. The Public Prosecutor
High Court, Madras.

+1 cC to Mr.C.S. Saravanan, Advocate sr 72357.

Cr1. Appeal No.2 of 2016

GJII (CO)
SP(15/11/2017)