

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.946 of 2007

Gnanasekaran @ Gnanasekar
S/o.Kanakaraj

... Appellant/Accused-1

-Vs-

1.State represented by
Deputy Superintendent of Police,
Jeyankondam Division,
Perambalur District.
(In Jeyankondam Police Station
Crime No.686 of 1999)

2.S.Kaliya Moorthy
(R2-impleaded as per order dated 03.02.2011
in MP No.1 of 2010) ... Respondents

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgement of learned Sessions Judge, Mahila Court, Perambalur, passed in S.C.No.97 of 2003 on 10.10.2007.

For Appellant : Mr.V.Subramanian

For Respondents: Mr.V.Arul
Additional Public Prosecutor [R1]
Ms.Geetha Ramaseshan [R2]

J U D G M E N T

This appeal arises against judgment of learned Sessions Judge, Mahila Court, Perambalur, passed in S.C.No.97 of 2003 on 10.10.2007.

2. The case of the prosecution is that appellant and deceased Kalaivani were married in the year 1994. Appellant/accused committed acts of cruelty by demanding dowry from deceased/wife. Unable to bear the cruelty of

appellant/accused, deceased poured kerosene on herself on 29.10.1999 and set herself ablaze. Owing to injuries, she died on 31.10.1999. A case was registered in Crime No.686 of 1999 on the file of first respondent for offences u/s.498-A and 309 IPC. Upon completion of investigation, a charge sheet was filed before learned Judicial Magistrate, Jeyankondam and on committal, the case was tried in S.C.No.97 of 2003 on the file of learned Sessions Judge, Mahila Court, Perambalur.

3. Before trial Court, prosecution examined 17 witnesses, marked 22 exhibits and 3 material objects. 1 witness was examined on the side of defence and no exhibits were marked. 2 Court exhibits were marked.

4.1. PW-1, a resident at Poovaikulam village, has spoken to knowing appellant/A1 and deceased, of sreedhana not having been given at the time of marriage and that pursuant to conduct of panchayat, 7 sovereigns of jewels were given. PW-1 has also spoken to deceased not being provided food by A2, owing to which she committed suicide.

4.2. PW-2, father of deceased, has spoken to his having gone over to the house of deceased on obtaining information of her setting herself on fire, admitting her in the hospital at Jeyankondam and thereafter, on instructions of Doctors, taking her to Government Hospital, Thanjavur, where she died in a couple of days. PW-2 has also deposed that owing to dowry demands and ill-treatment of accused, deceased had resorted to suicide. PW-3, relative of accused, PWs.4 and 7, brothers of deceased, PW-5, a neighbour and PW-6 mother of deceased, have also spoken on the same lines.

4.3. PW-8, a neighbour, has spoken to attesting Ex.P2, observation mahazar and Ex.P3, seizure mahazar.

4.4. PW-9, Doctor, who initially treated deceased, has spoken to deceased being brought to Government Hospital, Jeyankondam, with 90% burn injuries and of forwarding her to Government Hospital, Thanjavur, for further treatment. PW-9 has deposed that though deceased was conscious she was unable to speak owing to facial swelling. PW-9 has also deposed that he issued Ex.P4, Accident Register, of informing police under Ex.P5, MLC Intimation, of police recording the statement of deceased and of his attesting the same.

4.5. PW-10, Doctor, who conducted post-mortem, has opined that the deceased would appear to have died due to effect and complications of extensive burns.

4.6. PW-11, Head Constable, has spoken to submitting letter for conduct of post-mortem to hospital authorities.

4.7. PW-12, Revenue Divisional Officer, has spoken to conduct of inquest at the hospital, recording of statement of witnesses and of submitting Ex.P8, Report and Ex.P9, inquest report, informing that the deceased had committed suicide owing to demand of dowry.

4.8. PW-13, who conducted initial investigation in the case, has spoken to recording the statement of deceased at the hospital, registration of First Information Report, visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused, seizure of material objects, alteration of First Information Report to reflect offences u/s.498-A and 306 IPC upon obtaining intimation of deceased's death and of obtaining various reports. PW-13 has spoken to handing over the case papers to PW-16, Additional Superintendent of Police, for further investigation.

4.9. PW-14, Head Constable, has spoken to handing over case records to Court and higher officials.

4.10. PW-15, Inspector of Police, has spoken to altering the First Information Report to reflect offences u/s.498-A and 304-B IPC upon receipt of Revenue Divisional Officer's report and forwarding the same to Court and higher officials.

4.11. PW-16, Additional Superintendent of Police, has spoken to examining witnesses, recording their statements and upon completion of investigation filing of charge sheet informing commission of offences u/s.498-A and 304-B IPC.

4.12. PW-17, Sub-Inspector of Police, has spoken to complaint preferred by deceased on 24.11.1997, of conducting enquiry and that deceased and accused were reconciled.

5. Third accused in the case died pending trial. On appreciation of materials before it, trial Court, under judgment dated 10.10.2007, has convicted A1 for offences u/s.498-A and 304-B IPC and sentenced him to 7 years R.I. for offence u/s.304-B IPC and 30 months R.I. and fine of Rs.8,000/- i/d 4 months R.I. for offence u/s.498-A IPC. Out of fine amount, a sum of Rs.7,000/- was ordered to be paid to PW-2 as compensation. A1 was further directed to return 7 sovereigns of jewels received by him under Ex.P1 or a sum of Rs.45,000/- in lieu of the said jewels to PW-2. A2 was convicted for offence u/s.498-A IPC and sentenced to 50 days R.I. and fine of Rs.1,000/- i/d 30 days R.I. Trial Court directed that sentences run concurrently.

6. It is informed that A2 has undergone the substantive sentence as also paid the fine imposed upon her. This leaves A1, the appellant. It is the consistent stand of PW-2, father of deceased, PW-3, brother-in-law of deceased, PW-4, sister of

deceased and PW-6 - mother of deceased that angered over A2, mother-in-law of deceased preventing deceased from cooking and abusing her over not having brought anything as merited her being fed that deceased set herself ablaze. Ex.C1 is the dying declaration recorded by DW-1, Judicial Magistrate I, Thanjavur, on 30.10.1999 at 04.45 a.m. Therein, the deceased had stated that accused had not treated her well. According to prosecution, on intimation had from Government Hospital, Jeyankondam, PW-13, Inspector of Police, had proceeded to hospital and recorded the statement of deceased on 30.10.1999 at 0.30 hours. Ex.P4, Accident Register, relating to deceased informs her admission into hospital on 29.10.1999 at 11.30 p.m. and that though conscious she was not able to communicate due to facial swelling, she having suffered 90% burns to the head, neck, chest, abdomen, thighs and legs. PW-9, the then Duty Medical Officer, Government Hospital, Jeyankondam, has been examined as PW-9 and he has spoken to deceased not being able to speak and of referring her to the Thanjavur Medical College Hospital. Prosecution has marked Ex.P20, a typed complaint preferred by deceased to All Women Police Station, Ariyalur, Perambalur Taluk. The same is of date 24.11.1997 and therein, she had stated that her parents-in-law and brother-in-law made demands of dowry and ill-treated her. She, hence, had attempted suicide and had been saved by her relatives. After holding of a panchayat at the instance of her father, she returned with fond hope to her husband's house but she was not allowed to join him. She was treated very poorly and her husband did not share any relationship with her. She had informed that after her husband joined Government service, demand for Rs.1,00,000/- and 10 sovereigns were made under threat of being sent to her parental home. Deceased had resorted to suicide on 29.10.1999.

7. Learned counsel for appellant/A1 referred to the evidence of PW-17, Sub-Inspector of Police, who had caused enquiry on the complaint dated 24.11.1997. She has deposed to having brought the couple back together at the instance of deceased and that her enquiry revealed that appellant/A1 had not made any demands for jewellery or money. On consideration of the evidence on record, this Court finds that the immediate provocation for the deceased resorting to self-immolation was the act of A2/mother-in-law preventing her from cooking and abusing her. It is difficult to place reliance on Ex.C1, dying declaration, which is the basis of First Information Report registered in the case when PW-9, the then Duty Medical Officer, Government Hospital, Jeyankondam, who claims to have attested the same and through whom the same has been marked admits to the deceased who was admitted on 29.10.1999 at 11.30 p.m. being unable to speak having suffered facial swelling. The prosecution has failed to produce but through DW-1, Judicial Magistrate I, Thanjavur, the statement of deceased recorded on 30.10.1999 at 04.45 a.m. has been marked as Court Exhibit 1. Though therein, deceased has

spoken to accused not having maintained a congenial relationship with her despite her having been sufficiently provided jewellery by her family, she has spoken to appellant/A1 working elsewhere and of her having been made to work for food at his parents home and, importantly, of having resorted to self-immolation owing to having suffered disenchantment in life. It is seen that while a poor relationship between appellant and his wife, the deceased, might be a remote cause, the probable and proximate cause for her resorting to self-immolation is the act of A2 in preventing her from cooking and abusing her, an act consistently spoken to by prosecution witnesses.

8. Today, Mr.Mariappan, Sub Inspector of Police, Jeyankondam Police Station, present along with Mr.Gurunathan, S/o.Kaliyamoorthi, informed that the person before this Court is brother of the deceased and also produced his Aadhar Card. Copy of the same is taken on file.

9. Mr.Gnanasekaran, first accused/husband of deceased is present and through his counsel, he forwards the following items:

- | | | |
|------------------|---|-------|
| 1. Silver Kolusu | - | 1 Set |
| 2. Ear ring | - | 1 Set |
| 3. Thali | - | 1 No. |
| 4. Double Chain | - | 1 No. |
| 5. Single Chain | - | 1 No. |

and informs the same to be of approximately 7 sovereigns. The same has been received by Mr.Gurunathan in the presence of this Court.

Recording the same, Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge, Mahila Court, Perambalur, in S.C.No.97 of 2003 on 10.10.2007, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand cancelled.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

kmi/gm

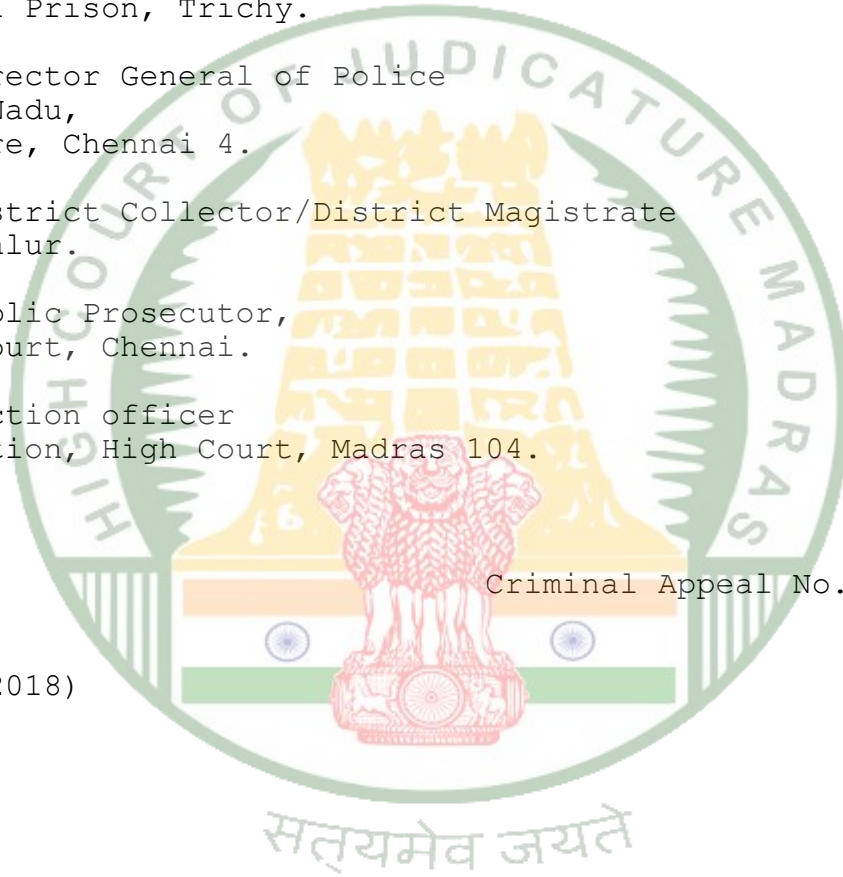
To

1. The Sessions Judge,
Mahila Court,
Perambalur.

2. The Deputy Superintendent of Police,
Jeyankondam Division,
Perambalur District.
3. The Judicial Magistrate
Jayankondam.
4. The Chief Judicial Magistrate
Perambalur.
5. The Superintendent
Central Prison, Trichy.
6. The Director General of Police
Tamil Nadu,
Mylapore, Chennai 4.
7. The District Collector/District Magistrate
Perambalur.
8. The Public Prosecutor,
High Court, Chennai.
9. The Section officer
VR Section, High Court, Madras 104.

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