

Bail Slip.

The Accused viz., Kumar S/o. Arumugham, was enlarged on bail vide M.P. No. 1/2008 in Crl.A.164 of 2008, dated 15.04.2008 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Criminal Appeal Nos.164 and 170 of 2008

Kumar ... Appellant in Crl.A.No.164 of 2008
Bhuvaneshwari ... Appellant in Crl.A.No.170 of 2008

.. Vs ..

State rep. by
The Inspector of Police
Malliagari Police Station
Thammampatti Taluk
Salem District.

.. Respondent in both
Criminal Appeals

COMMON PRAYER: Criminal Appeals filed under Section 374(2) Cr.P.C., to set aside the Judgment of conviction and sentence of the District and Sessions Judge, Maghila Court at Salem District dated 06.02.2008 made in S.C.No.336/2006 against the appellants from all charges.

For Appellants: Mr.B.Kumar, Senior Counsel
for Mr.T.Murugan(Crl.A.164/2008)
for M/s.P.A. Chitramani(in Crl.A.170/08)

For Respondents: Mrs.T.P.Savitha
Government Advocate (Crl. Side)

COMMON JUDGMENT

These Criminal Appeals have been filed under Section 374(2) Cr.P.C., by the appellants to set aside the Judgment of conviction and sentence passed by the learned District and Sessions Judge, Maghila Court, Salem District, dated 06.02.2008, made in S.C.No.336/2006.

2.Case of the prosecution is as follows:-

The appellants are A.1 and A.2 respectively. Marriage between the 1st appellant and the deceased was performed prior to

10 years of the occurrence. After marriage, they were blessed with two female children and one male child. The deceased was living with A.1, in the matrimonial home. After three years of marriage, A.1 had developed illegal intimacy with A.2. As the illegal intimacy was known, they started torturing the deceased. Hence, the children were left with the parents of the deceased. Even thereafter, the deceased continued to live in her matrimonial home. Further, as per the complaint, the entire money earned by A.1 was spent by A.2 and her husband, for which, there was a continuous quarrel between the deceased and A.1.

3. On a fateful day, A.1 scolded the deceased and directed her to die before he return from work by pouring kerosene or else jump into the well. Thereby due to continuous torture and cruelty caused by A.1 and A.2, the deceased poured kerosene on her and set fire. Immediately, thereafter, in order to save her life, A.1 poured water on her and taken her to the Government Hospital, Salem, for further treatment. After 5 days of treatment, the deceased lost her life in the hospital. P.W.1, who is the mother of the victim filed a complaint before the respondent police.

4. After receipt of the complaint, the Investigating Officer, P.W.13, took up the case for investigation and went to the place of occurrence. He prepared an Observation Mahazar (Ex.P.4), Rough Sketch (Ex.P.16) and Seizer Mahazar (Ex.P.5) and he also conducted inquest over the dead body of the deceased, in the presence of the witnesses and issued Inquest Report (Ex.P.18). After examination of the Medical Officer (P.W.8) and other witnesses, the Investigating Officer filed a charge sheet. Thereafter, the case was committed to the Court of Sessions for trial. The Sessions Court framed charges against both the accused and proceeded with the trial since, the accused pleaded not guilty.

5. In order to prove the case of the prosecution, the prosecution has examined P.Ws.1 to 17 and marked exhibits Exs.P.1 to 18. On the side of the defence, no witness has been examined and none of the document was marked.

6. The trial Court, after considering the oral and documentary evidence, found that the 1st accused guilty under Sections 498 (A) and 306 IPC and accordingly convicted the 1st accused and sentenced him to undergo three years Rigorous Imprisonment with fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment for the offence under Section 498-A IPC and to undergo ten years Rigorous Imprisonment with fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment for the offence under Section 306 IPC. As far as the 2nd accused is concerned, she was found guilty under Section 306 IPC and sentenced to undergo five years Rigorous

Imprisonment with fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment.

7.Challenging the said order of conviction and sentence, the appellants/A.1 and A.2 have come up with these appeals respectively.

8.Heard the learned counsel appearing for the appellants and the learned Government Advocate (Criminal Side) appearing for the respondent.

9.The learned counsel for the appellants would submit that there is no material whatsoever available on record, to prove the charges under Section 306 IPC against the accused. Ex.P.15, FIR is totally contradictory to the evidences of P.Ws.1 and 2, who is the mother and father of the deceased respectively. Admittedly, the deceased committed suicide on her husband's house, whereas the witnesses examined in this case were residing in a different area. P.Ws.1 and 2 were also residing in somewhere else. Therefore, the statements, to the effect, cannot be relied upon by the prosecution. Further, there is no eye witness to the occurrence.

10.The allegation against the 1st appellant is that, he demanded dowry and attacked the deceased in a cruel manner. This statement to the effect that the 1st accused abused the deceased is an unproved version and cannot be believed. Hence, the learned counsel prays for acquittal of the accused.

11.Per contra, the learned Government Advocate (Criminal Side) would submit that P.Ws.1 and 2, the mother and father respectively of the deceased have clearly spoken about the frequent quarrel held between the 1st accused and the deceased, for the past ten years and the 1st accused had illegal intimacy with the 2nd accused. The 2nd accused residing opposite to the house of the 1st accused and along with the 1st accused, continuously tortured the deceased, which lead to commit suicide of the deceased. In the light of the above, the prosecution has proved the guilt beyond all reasonable doubts.

12.The statement of P.W.1, the mother of the deceased, clearly indicates that the deceased was residing in the matrimonial home of 1st accused and the 2nd accused residing in the opposite house of 1st accused and frequently attacked the deceased and driven away from the matrimonial home to the P.W.1's house for collecting money for maintaining his family. In an earlier occasion, P.Ws.1 and 2 gave Rs.7,000/- for purchasing house to the 1st accused and the deceased.

13.Prior to one month of the occurrence, the deceased lodged a complaint before the Athur Police Station, against the 1st

accused and 2nd accused and the Law Enforcing Agency issued summons and pacified the matter between the 1st accused and deceased. Based on the undertaken given by the 1st accused and 2nd accused, they were released. However, thereafter, P.Ws.1 and 2 heard the news from the relatives of 1st accused and they reached the hospital to see the deceased. However, after four days, she became unconscious and on the fifth day, she lost her life. During treatment, a statement under Section 164 Cr.P.C., was recorded from P.W.1 and also marked as Ex.P.12. Further, in this case, P.W.3 and other witnesses who are relatives of P.W.1 are hearsay witnesses and it is relevant to know that P.W.10, who is the Sub-Inspector of Police, Athur Police Station has deposed and confirmed the earlier complaint given by the deceased against the 1st accused and the 2nd accused. Further, P.W.1 deposed that there was an illegal relationship between 1st accused and 2nd accused and the entire money earned by the 1st accused was spent by the husband of the 2nd accused, in order to continue his relationship with the 2nd accused.

14. It is evident from the records that earlier, accused 1 and 2 had given an undertaken before P.W.10 and the said undertaken was marked as Ex.P.9. Even on perusal of Ex.P.9, it is clearly proved that there was illegal intimacy between 1st and 2nd accused and it is also the admitted fact that the children were maintained by the parents of the deceased.

15. At this juncture, it is relevant to cite here the Judgment of the Hon'ble Supreme Court in the case of Siddaling Vs. The State of Karnataka. Para 8 is extracted hereunder:-

"(8) As held in Randhir Singh Vs. State of Punjab, (2004) 13 SCC 129 vide para 12, abetment involves a mental process of instigating a person or in any manner aiding that person in doing of the thing. Courts should carefully assess the facts of each case before deciding whether the cruelty meted out to the victim which induces her to commit suicide. (9) In the case in hand, the witnesses - P.W.1, P.W.6, P.W.10 and P.W.22 have clearly in their statement stated that the appellant continued his relation with another woman. The appellants illicit relation with another woman would have definitely created the psychological imbalance to the deceased which lead her to take the extreme step of committing suicide. It cannot be said that the appellants act of having illicit relationship with another woman would not have affected to negate the ingredients of Sections 306 IPC (10). In our considered view, based upon the evidence and also Agreement dated 22nd June 2002, the High Court has rightly maintained the conviction of the appellant under Sections 498 (A) and 306 IPC."

It is squarely applied to the present case on hand.

16. Even on close perusal of statement recorded under Section 164 Cr.P.C, by the learned Judicial Magistrate - P.W.12, revealed the illegal relationship between the 1st and 2nd accused. Hence, the prosecution proved the case beyond reasonable doubt and no contra evidence available, in order to disprove the prosecution case. Under these circumstances, this Court have no hesitation to arrive at a conclusion, that the prosecution has proved the case beyond reasonable doubt.

17. Now, it has to be considered, whether the sentence imposed by the trial Court on the appellants/accused 1 and 2 can be reduced in the background of the above case. The trial Court, has imposed a punishment of ten years Rigorous Imprisonment against 1st accused and five years Rigorous Imprisonment against 2nd accused for offence under Section 306 and also imposed three years Rigorous Imprisonment with fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment for the offence under Section 498A I.P.C against 1st accused alone.

18. The learned counsel for the appellants/A.1 and A.2 submit that after the incident, the 1st accused was mentally affected and he became sick and continuously taking treatment for the same. He would further submit that if ten years of sentence is confirmed, he may die in the prison hospital itself. The learned counsel would further submit that A.2, being a lady, and having three children, some leniency may be shown by this Court regarding the quantum of punishment. He would further submit that, now there is no relationship between A.2 and A.1.

19. Considering the request made by the learned Counsel appearing for the appellants and considering the passage of time and the facts and circumstances of the case, this Court is inclined to reduce the sentence of imprisonment imposed on the appellants.

20. In the result, the criminal appeals are partly allowed. The conviction imposed by the learned District and Sessions Judge, Mahila Court at Salem District in S.C.No.336 of 2006 dated 06.02.2008 as against the appellants is confirmed, however, the sentence imposed on the appellants is modified. The sentence of imprisonment imposed against the appellant in CrI.A.No.164 of 2008 / A1 for the offence under Section 306 IPC is reduced from 10 years Rigorous Imprisonment to 4 years Rigorous Imprisonment and the sentence imposed for the offence under Section 498A is confirmed. The sentence of imprisonment imposed against the appellant in CrI.A.No.170 of 2008 / A2 for the offence under Section 306 IPC is reduced from 5 years Rigorous Imprisonment to 1 year Rigorous Imprisonment. The fine amount is confirmed. The Trial Court as well as the

Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellants / accused to undergo the remaining period of sentence, if any.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The District and Sessions Judge, Maghila Court, Salem District.

2. The Judicial Magistrate II, Attur.

3. The Chief Judicial Magistrate, Salem.

4. The Superintendent of Police, Salem.

5. The Superintendent, Central Prison, Coimbatore.

6. The Inspector of Police, Malliagari Police Station
Thammampatti Taluk, Salem District.

7.The Public Prosecutor, High Court of Madras.

8.The Section Officer, Criminal Section, High Court of Madras.

+1 Cc to Mr.B.Kumar, Advocate sr 82362.

सत्यमेव जयते

Criminal Appeal Nos.164
and 170 of 2008

CP(CO)
SP(11/01/2019)

WEB COPY