

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 19.12.2018****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****Crl.A.No.640 of 2008**

R.Chandrasekar

... Appellant

Vs.

Inspector of Police,
Sathankadu Police Station,
Chennai.

... Respondent

Prayer:

Appeal filed under Section 374(2) of Cr.P.C. seeking to set aside the order passed in S.C.No.28 of 2002 by the learned Assistant Sessions Judge, Ponneri, Chennai on 22.07.2008.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. Side)

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment in S.C.No.28 of 2002 passed by the learned Assistant Sessions Judge, Ponneri, Chennai on 22.07.2008.

2.The appellant is the accused in the case in S.C.No.28 of 2002.

The brief facts of the case are as follows: P.W.1 is the father of the

deceased. He is ex-employee of metro water. He performed his daughter's marriage with the accused on 09.02.2008. After marriage, they started their matrimonial life at Thiruvotriyur. For the purpose of completing the Nerthikadan (Kappukattu Thiruvizha) on 05.03.2000, P.W.1's daughter/ deceased went along with her husband to her mother-in-law's house. The appellant/ accused entered into quarrel with one bullock cart man. Thereafter, the deceased left the mother-in-law's house and reached the matrimonial house.

3. On 16.03.2000, one of P.W.1's son Deivasigamani/ P.W.5 went to his sister's/ deceased house as a routine visit and found the appellant in a drunken mood. The appellant entered into quarrel with him and the deceased. Thereafter P.W.5 left the house. While he was standing near the backyard of the house, he came to know that his sister had committed suicide by burning herself by pouring kerosene all over her body. After hearing the news, he immediately rushed to the scene of occurrence. At that time the accused came out of the house. Accordingly, he filed Ex.P7/ Complaint before the Sub Inspector of Police/ P.W.10.

4. P.W.10/ Sub Inspector of Police received the report from P.W.1 and registered a case in Crime No.58 of 2000 under Section 174 of

Cr.P.C. under exhibit Ex.P8/ FIR. The Investigating Officer took up the case for investigation, went to the scene of occurrence and prepared Ex.P2/ Observation Mahazer, Ex.P9/ Rough Sketch and recovered plastic can and photographs of the deceased/ Material Objects. He also conducted inquest over the body of the deceased and prepared Ex.P10/ Inquest Report and also examined Medical Officer and other witnesses.

5. Thereafter, the case was altered to one under Sections 498 (A) and 306 of IPC. The Alteration Report has been marked as Ex.P11. P.W.11 took up the case for further investigation and during investigation he found that the accused tortured the deceased in the matrimonial house at Thiruvotriyur. Due to the torture given by the accused, the deceased committed suicide by self immolation on 16.03.2000. Accordingly, he laid final report as against the accused for the offence under Sections 498 (A) and 306 of IPC.

6. The Trial Court framed charges against the accused under Sections 498 (A) and 306 of IPC. When the ingredients of the charges were explained to the accused in Tamil and questioned, the accused pleaded not guilty. Hence, trial was proceeded as against him.

7. On the side of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11 and 11 documents were marked as exhibits Ex.P.1 to Ex.P.11. Two material objects were also marked as M.O.1 and M.O.2. On the side of the appellant/ accused no witness was examined and no document was marked as exhibit.

8. After elaborate trial, the Trial Court convicted the accused for the offence under Sections 498 (A) and 306 of IPC and sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo 2 months rigorous imprisonment for the offence under Section 498 (A) of IPC and to undergo 9-1/2 years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo 1 year rigorous imprisonment for the offence under Section 306 of IPC and ordered the sentences to run concurrently. Aggrieved by the said conviction and sentence, the appellant / accused has filed this appeal before this Court.

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9. The learned counsel appearing for the appellant would submit that the evidence of P.W.1 itself clearly shows that they were happily living together in the matrimonial home. Admittedly, the appellant

was addicted to alcohol, however, it does not amount to instigate the deceased to commit suicide. He would further submit that no other incriminating document or evidence is available for convicting the accused. However, the Trial Court based on the evidence of P.W.6 convicted the accused. Accordingly, he prayed for allowing the appeal.

10. Per contra, the learned Government Advocate (Crl. Side) would submit that P.W.1 and P.W.2 are parents of the deceased. Though they may not be available in the scene of occurrence, P.W.4 and P.W.5 categorically stated that while the deceased was committing suicide, the appellant/ accused was available in the scene of occurrence. When P.W.4 opened the door, the appellant urgently came out of the house and no burn injury was sustained by the appellant and the appellant was completely in drunken mood. The appellant harassed the deceased and instigated her to commit suicide. The unbearable torture given by the appellant/ accused forced the deceased to commit suicide. He would further submit that the evidences of P.W.3, P.W.4 and P.W.5 is sufficient to convict the accused. Hence, the well considered judgment of the Trial Court need not be interfered with. Accordingly, he prayed for dismissal of the appeal.

11.Heard the arguments advanced on either side and perused the materials placed on record.

12.In the light of the above submissions, now it has to be analyzed whether the prosecution has proved the guilt on the accused beyond all reasonable doubt.

13.Though P.W.1 and P.W.2 are parents of the deceased, both of them appears to be hearsay witnesses. The evidence of P.W.3/ neighbour of the deceased and appellant discloses that on 16.03.2000 at around 9.30 a.m., P.W.3 went to the house of the appellant. At that time, he found smoke coming from inside the house of the appellant. Thereafter, he shouted and called for help of other persons. When he knocked the door of the house, the appellant/ accused came out of the house and P.W.3 went inside the house and found the deceased laid on the floor with burn injuries. Though P.W.3 turned hostile, some portion of his evidence support the prosecution case. His evidence reveal the presence of the accused in the place of occurrence.

14.The evidence of P.W.4 support the evidence of P.W.5. Her

evidence clearly indicate that P.W.5 was available prior to the occurrence in the house and he was abused by the appellant. Thereafter, P.W.5 left the house and thereafter, she found smoke coming from inside the house of the appellant. Thereafter, she knocked the door along with P.W.3. At that time, the appellant came out of the house and they found the body of the deceased.

15.Perusal of records also disclose that prior to the occurrence, the appellant entered into quarrel with P.W.5/ deceased's brother in a drunken mood and P.W.5 warned the appellant and thereafter, left the place. However, on hearing the news, he rushed to the scene of occurrence and found the neighbours assembled before the house and the body of his sister laid on the floor with burn injuries.

16.The evidences also disclose that there was frequent quarrel inbetween the deceased and the appellant and that the appellant is an alcohol addict and he continuously tortured his wife/ deceased due to which, the deceased took the extreme step of committing suicide by pouring kerosene all over her body and set fire.

17.It is relevant to note here that the appellant has not sustained any burn injuries. Though he was present at the scene of

occurrence, he has not taken any steps to save his wife. All the above clearly indicate that due to the harassment given by the appellant to the deceased and since the appellant is an alcohol addict, the deceased took the extreme step of committing suicide by self immolation.

18. On perusal of the entire records, this Court is of the view that prosecution has proved the guilt on the accused beyond all reasonable doubt and there is no positive evidence available to acquit the accused. Hence, this Court is of the opinion that the judgment in S.C.No.28 of 2002 passed by the learned Assistant Sessions Judge, Ponneri, Chennai dated 22.07.2008 need not be interfered with.

19. At this juncture, the learned counsel appearing for the appellant submits that though the evidence adduced by the witnesses establish that the appellant is an alcohol addict and it forced the deceased to take extreme step of committing suicide, the sentence imposed on the appellant by the Trial Court is on higher side. Hence, this Court may consider for reducing the sentence imposed on them.

20. Considering the request now made by the learned counsel appearing for the appellant and considering the facts and circumstances of the case, this Court is inclined to reduce the sentence

of imprisonment imposed on the appellant.

21. In the result, the criminal appeal is partly allowed. The conviction imposed by the learned Assistant Sessions Judge, Ponneri, Chennai, in S.C.No.28 of 2002 under judgment dated 22.07.2008 as against the appellant is confirmed, however, the sentence imposed on the appellant is modified. The sentence of imprisonment imposed against the appellant/ accused is reduced from 9-1/2 years rigorous imprisonment to 3 years rigorous imprisonment. The fine amount is confirmed. The appellant shall pay the fine amount of Rs.3,000/- in default, he shall undergo 3 months rigorous imprisonment. The Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellant/ accused to undergo the remaining part of sentence.

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19.12.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1. The Assistant Sessions Judge,
Ponneri, Chennai.

M.DHANDAPANI,J.
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