

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.638/2017

Saravanan

..

Appellant / Sole
Accused

Vs.

State rep. by,
The Inspector of Police
P6 Kodungaiyur Police Station
Chennai 600 118.

..

Respondent/Complainant

Criminal Appeal filed under Section 374[2] of the Criminal Procedure Code to set aside the judgment and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Chennai in SC.No.148/2014 dated 06.05.2016.

For Appellant : Mr.J.C.Durairaj

For Respondent : Mr.M.Prabhavathi Ganesh Ram
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant, sole accused in the case in SC.No.148/2014 on the file of the Court of the learned Sessions Judge, Mahalir Neethimandram, Chennai. The appellant/accused stood charged and tried for offences u/s.498-A, 302 and 201 IPC. The Trial Court, under judgment 06.05.2016, had acquitted the appellant/accused for the offence u/s.201 IPC ; and however, convicted him for offences 302 and 498-A IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- with a default sentence of six months rigorous imprisonment for the offence u/s.302 IPC and also sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs.5000/- with a

default sentence of 3 months rigorous imprisonment. The sentences were ordered to run concurrently. Aggrieved over the said conviction and sentences, the present appeal came to be filed by the appellant/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] Deceased Anjali is the wife of the accused Saravanan. P.W.6-Munusamy and P.W.7-Adhilakshmi are parents of deceased and P.W.8-Arul is her brother. The marriage between the deceased and accused was solemnised in the year 2007 and out of wedlock, two male children were born to them, aged about 7 years and 2 years respectively. From the inception of the marriage, accused used to treat the deceased cruelly. During the birth of the second child, the appellant/accused demanded 3 sovereigns of gold and P.Ws.6 and 7 met the demand and they also used to pacify the appellant/accused and their daughter whenever there exist dispute between the spouses. Both the appellant/accused and deceased lived in various places and they lastly resided in R.R.Nagar, Kodungaiyur. P.W.1-Padma, P.W.2-Parameshwari and P.W.4-Ponni are also the residents of R.R.Nagar, Kodungaiyur.

[b] When the matter stood thus, on 04.08.2013, P.Ws.6 to 8 were informed that the deceased had committed suicide by self-immolation. Immediately, they rushed to the hospital and saw the dead body.

[c] P.W.1-Padma, has stated that on 04.08.2013 at about 5.00 p.m., while she was at home, she saw the appellant/accused going in a cycle along with one of his minor children and shouting that his wife had died. When she and others rushed to the house of the appellant/accused, they found the house was locked from outside. Immediately, they broke opened the door and found the deceased lying down with a pillow on her face. Immediately, P.W.1 went to Police Station and lodged a complaint under Ex.P.1.

[d] P.Ws.2 and 4 also seen the accused going in a cycle along with his younger son and shouting that his wife had died. P.W.10-Murugan also seen the dead body on the occurrence date in the house of the appellant/accused. P.W.11-Ganesan, owner of the Provision Shop had stated about the appellant/accused purchasing biscuits for children from his shop and going to his house.

[e] P.W.13-Sampath, Inspector of Police attached to Kodungaiyur Police Station, on receipt of the complaint under Ex.P.1 from P.W.1 on 04.08.2013 at about 745 p.m., registered the crime in Cr.No.1379/2013 u/s.302 IPC. Ex.P.7 is the First

Information Report. He forwarded the originals of Exs.P.1 and 7 to the jurisdictional Magistrate Court and copies thereof, to the superior officials. He took up the case for investigation and went to the place of crime at about 8.30 p.m., and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.8] in the presence of P.W.5-Balaji and another. He seized Pillow [M.O.1] under Ex.P.3-Mahazar. He examined the witnesses and recorded their statements. On the same day at about 9.15 p.m., he held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.9-Inquest Report. He forwarded the dead body for postmortem through Constable along with a requisition.

[f] P.W.12-Dr.Balasubramanian, Additional Professor attached to Stanley Government Hospital at the relevant time, received the requisition from the Investigating Officer on 05.08.2013 at about 10.40 a.m., and commenced the autopsy at 10.50 a.m. He noted the following injuries:-

"Peeling of skin with reddening seen over forehead, peri orbital region, left side cheek and periorbital region, left side chin, front of chest and abdomen with sparing normal skin over an area of 10 cm, in between, whole of right upper limb, left arm with in between patches areas and normal skin. Both shoulder front and back, front of right lower limb, sparing foot and inner aspect of left thigh and leg, vital reaction noted in all areas. No singeing and scalp hair seen.

Dark red contusion 1.5 x 0.5 x 0.25 cms left lower lip and 1.5 x 0.5 x 0.25 cms on right upper lip on it, mucosal aspect and laceration 0.5 x 0.5 cm x muscle deep over centre of upper lip.

Hyoid Bone - Intact. Heart - fluid blood present in all chambers. Sub endo-cardial hemorrhage seen on both ventricles, valves arteries are petechial.

Lungs - Multiple sub plenal petechial hemorrhage seen on both lungs, nose inner lobes seen. Pink frothy secretion seen in trachea mucosa."

He issued Ex.P.5-Postmortem Certificate, wherein he had opined that deceased died of asphyxia due to smothering and the death would have occurred between 12 to 24 hours prior to autopsy.

[g] P.W13, the Investigating Officer, in continuation of the investigation, examined the Medical Officer and others and recorded their statements and obtained the Medical Reports. On 05.08.2013, he effected the arrest of the appellant/accused

and recorded his confession statement in the presence of P.W.10 and another. He sent the appellant/accused for judicial remand and on completion of investigation, filed the Final Report against the accused u/s.498-A, 302 and 201 IPC before the learned X Metropolitan Magistrate, Egmore, who took it on file in PRC.No.32/2014 and issued summons to the accused and on his appearance, furnished him copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal Sessions Judge, Chennai, u/s.209 Cr.P.C., who in turn, had made over the case to the learned Sessions Judge, Mahalir Needhimandram, Chennai, who took it on file in SC.No.148/2014 and on appearance of the accused, had framed the charges u/s.498-A, 302 and 201 IPC and questioned him. The accused pleaded not guilty to the charge framed against him.

[h] The prosecution examined P.Ws.1 to 13 and marked Exs.P.1 to 9 besides marking M.O.1.

[i] The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. No evidence was let in on the side of the defence nor any documents were marked.

[j] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had convicted and sentenced the appellant/accused u/s.302 and 498-A IPC as above stated and acquitted him u/s.201 IPC. Hence, this appeal.

3 Mr.J.C.Durairaj, learned counsel for the appellant submitted that the entire case rests on the circumstantial evidence and the circumstances have not been proved in the manner known to law by the prosecution. The cross-examination of P.W.1 shows that the police had already reached the scene of crime and subsequent thereto, she lodged the complaint in the police station. Therefore, the very complaint itself is hit by section 162 Cr.P.C. Further, the Investigating Officer has not all conducted the investigation in accordance with law and the version of the prosecution that the house of the appellant/accused was locked from outside and the same was broke opened by the witnesses and others, has not been clearly established and the same is not found place in the Observation Mahazar and had the house really been locked, the alleged lock and key has not been seized by the Investigating Officer. It is also the submission of the learned counsel that the deceased had committed suicide and the evidence of P.Ws.6 to 8 implicating the appellant/accused with demand of dowry is also improbable and as such, contended that the entire prosecution case is doubtful and prayed for allowing of the appeal.

4 Per contra, Ms.M.Prabhavathi Ganesh Ram, learned Additional Public Prosecutor submitted that evidence of P.W.11-Medical Officer coupled with Ex.P.5-Postmortem Certificate proves the homicidal death of the deceased and P.Ws.1, 2 and 4 have seen the accused leaving the street along with his younger child and they and others had found the dead body of the deceased inside the house of the appellant/accused. There was no explanation whatsoever from the appellant/accused as to what had transpired between him and his wife inside the house and he has failed to discharge his burden and the prosecution has proved the guilt of the accused beyond all reasonable doubt and prayed for dismissal of the appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, now it has to be analysed whether the prosecution has brought home, the guilt of the appellant / accused beyond all reasonable doubt?

7 The law was set in motion on the basis of the complaint - Ex.P.1 said to have been given by P.W.1. P.W.1 in her evidence has stated that she is a resident of R.R.Nagar, Kodungaiyur where the appellant/accused and the deceased were also residing as her neighbour. It is the evidence of P.W.1 that the appellant/accused used to beat the deceased frequently and the neighbours used to intervene and question him. When the matter stood thus, on 04.08.2013 at about 5.00 p.m., the appellant/accused left his house in a cycle along with his younger child by stating that his wife was dead. Immediately, the P.W.1 and other neighbours rushed to the house of the appellant/accused and found the same was locked. They broke opened the door and saw the dead body of the deceased lying with a pillow covering her face. Immediately, P.W.1 went to the police station and lodged a complaint. P.W.1 was cross-examined on 15.07.2015, i.e., eight months after the chief examination, and she has stated that the police also reached the spot on receipt of information and at that time, thereafter she gave the complaint. Though her evidence clearly shows that Ex.P.1 came to be filed after police reaching the spot, Ex.P.1 cannot be treated as FIR in the strict sense as the police had already reached the scene of crime and the same is hit by section 162 Cr.P.C., we are of the view that, de hors Ex.P.1-complaint, the substantive evidence of the parties/witnesses cannot be discarded.

8 Through the evidence of P.Ws.1, 2 and 4 - neighbours of the appellant/accused and deceased, the prosecution has established the fact that the appellant/accused and deceased were residing together in the said house at the

relevant point of time and that the appellant/accused had left the house on 04.08.2013 at about 5.00 p.m., along with his younger son in a cycle, stating that his wife had died and immediately thereafter, they found the dead body of the deceased. It is not the case of the appellant/accused that he was not present in the house at the relevant time along with his wife or he was in some other place or that he came thereafter. But the main contention of the appellant/accused during trial was that the deceased committed suicide due to some remarks made by the house-owner / landlord in respect of rent default. Except the above specific stand, it is not the case of the accused that he was not living with his wife at that particular point of time. It is also clear from the evidence of P.Ws.1, 2 and 4 that immediately on seeing the appellant/accused fleeing away from the street, they all had seen the dead body of the deceased inside the house and she was found murdered. Therefore, when a husband and wife are residing in a dwelling house and any one of the spouses is found murdered at the relevant time, it is for the other spouse to explain as to what had transpired in the house at that time. In the case on hand also, it is for the appellant/accused to explain the facts which were exclusively within his knowledge u/s.106 of the Indian Evidence Act. Whereas, it is the specific stand of the appellant/accused that the deceased had committed suicide. In this regard, when the evidence of the Medical Officer [P.W.12] and Ex.P.5 - Postmortem Certificate is carefully scanned, the Medical Officer has stated that he found rigor mortis present all over the body during postmortem and he has found the following injuries, viz.,

"Peeling of skin with reddening seen over forehead, peri orbital region, left side cheek and periorbital region, left side chin, front of chest and abdomen with sparing normal skin over an area of 10 cm, in between, whole of right upper limb, left arm with in between patches areas and normal skin. Both shoulder front and back, front of right lower limb, sparing foot and inner aspect of left thigh and leg, vital reaction noted in all areas. No singeing and scalp hair seen.

Dark red contusion 1.5 x 0.5 x 0.25 cms left lower lip and 1.5 x 0.5 x 0.25 cms on right upper lip on it, mucosal aspect and laceration 0.5 x 0.5 cm x muscle deep over centre of upper lip."

The above injuries would clearly show that these injuries are the result of resistant and struggle. Further, on examination of the lungs, he has seen multiple sub pleural petechial hemorrhage seen over both lungs and such findings of the Medical Officer of petechial hemorrhage itself show that this hemorrhage in the lungs normally occur during smothering and finally he has

observed that the death was due to asphyxia due to smothering and the death had occurred 12 to 24 hours prior to autopsy. From the nature of the antemortem injuries and the struggle marks coupled with the evidence of P.W.12 and his opinion, we have no hesitation to come to the conclusion that the death is nothing but a homicidal one. Absolutely, there is no indication of suicide in the Postmortem Certificate. Therefore, the contention of the appellant/accused that the deceased committed suicide, cannot be countenanced. In fact, the evidence of the Medical officer and the Postmortem Certificate clinchingly establish the fact of homicidal violence.

9 It is also seen that the appellant/accused has left the place immediately and the dead body was found inside his house and he has failed to offer plausible explanation as to what had transpired inside the house. Further the evidence of the prosecution witnesses also establish the fact that the appellant/accused did not come to the place of occurrence after he had left the place at 5.00 p.m. The above conduct of the appellant/accused in not coming to the place of occurrence after the death of his wife/deceased, is also one of the circumstances pointing the guilt towards him. If really it is the case of suicide, the normal conduct of the appellant/accused would be to be present in the place of occurrence and make an attempt to shift his wife to hospital or inform the neighbours ; but whereas, the appellant/accused left the place hurriedly with his younger son. This conduct of the accused would also go against him. Similarly, in the absence of any explanation forthcoming from him, merely on the basis of his statement that the deceased had committed suicide, which is also found to be false, we are of the view that it is only the appellant/accused who had committed the offence of murder. Merely because the Investigating Officer has not sent the pillow [M.O.1] said to have used for causing smothering, to Forensic Laboratory for examination through the Court, that itself cannot be a ground for disbelieving the prosecution version. The neighbours who tendered evidence have no axe to grind against the appellant/accused. In the absence of any explanation from the appellant/accused as to what had transpired inside the house and in the absence of his discharging his burden u/s.106 of the Indian Evidence Act, we have no other option except to hold that it is only the appellant/accused who had committed the murder of his wife. Hence, this Court is of the view that the prosecution has proved its case of murder beyond all reasonable doubt.

10 It is seen that the Trial Court has also convicted the appellant/accused for the offence u/s.498-A IPC and awarded 2 years of rigorous imprisonment and to pay a fine of Rs.5000/- with a default sentence of 3 months rigorous imprisonment. It is seen that though P.Ws.6 to 8 - parents and brother of the

deceased Anjali, in one voice, have stated that the appellant/accused previously used to beat the deceased since marriage, their conduct in remaining silent despite the alleged physical injuries caused on the deceased on prior occasions, makes their evidence doubtful. Further, the demand of dowry, as spoken by P.W.3 and handing over three sovereigns of gold to the appellant/accused at the time of birth of the second child, has not been spoken to by P.W.7. Therefore, even after seeing of the external injuries caused due to assault by the appellant/accused, on earlier occasions, the conduct of the family members of the deceased remaining silent without reporting to the police, makes their evidence unreliable with regard to demand of dowry, though P.Ws.6 to 8 have spoken in one voice in that aspect. Probably, their evidence is the result of frustration as against the appellant/accused due to the death of the deceased. Hence, we hold that such delayed version about the dowry demand is not sufficient to base the conviction u/s.498-A IPC. However, in view of the definite evidence of homicidal death and the appellant/accused having failed to discharge his burden to explain the facts which were exclusively within his knowledge, we hold that it is only the appellant/accused who had committed the murder of his wife. Hence, the conviction and sentence imposed on the appellant/accused by the Trial Court for the offence u/s.302 IPC warrants no interference at the hands of this Court.

11 In the result, the criminal appeal is DISMISSED with modification. The conviction and sentence imposed on the appellant/accused for the offence u/s.498-A IPC by the learned Sessions Judge, Mahalir Needhimandram, Chennai in SC.No.148/2014 vide Judgment dated 06.05.2016, is set aside. However, the conviction and sentence awarded by the Trial Court for offence u/s.302 IPC is confirmed. Fine amount awarded by the Trial Court for offence u/s.302 IPC remains unaltered.

12 It is reported that the appellant / accused is in jail. He is directed to undergo the remaining period of sentence. The period of sentence already undergone by him, shall be given set-off.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

AP

To

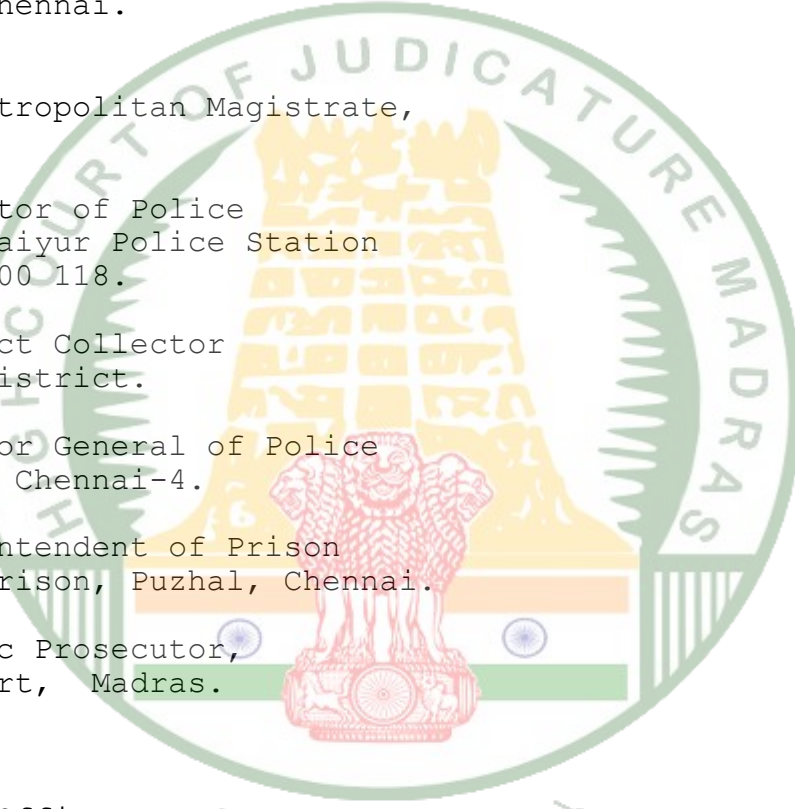
- 1.The Sessions Judge
Mahalir Needhimandram,
Chennai.
- 2.do Thro
The Principal District and Sessions Judge
Chennai.
- 3.The X Metropolitan Magistrate
Egmore, Chennai.
- 4.do Thro
The Chief Metropolitan Magistrate,
Chennai.
- 5.The Inspector of Police
P6 Kodungaiyur Police Station
Chennai-600 118.
- 6.The District Collector
Chennai District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Puzhal, Chennai.
9. The Public Prosecutor,
High Court, Madras.

Copy to:

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

+1cc to Mr.J.C.Durairaj, Advocate sr.no.23988

rsy(co)
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