

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.A. No.488 of 2011

State represented by
the Inspector of Police
Karamadai Police Station
Coimbatore District
(Cr. No.389 of 2001)

Appellant/Complainant

vs.

Maruthachalam

Respondent / Accused

Criminal Appeal filed under Section 378 Cr.P.C. seeking to set aside the judgment of acquittal passed by the Trial Judge, Magalir Neethimandram, Coimbatore in S.C. No.268 of 2004 dated 06.05.2005, convict the respondent/accused for the commission of offences as charged and pass sentence against him in accordance with law.

For appellant State Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

For respondent Mr. B. Kumarasamy

JUDGMENT

This criminal appeal preferred by the State is directed against the judgment of acquittal dated 06.05.2005 passed by the Mahila Court, Coimbatore in S.C.No.268 of 2004.

2 Since this is an appeal against the acquittal of the respondent herein, for the sake of convenience, the respondent would be referred to as the accused.

3 Kalaiselvi, the wife of the accused committed suicide on 19.11.2001 by self-immolation in her matrimonial home, for which, the accused was prosecuted and tried in S.C. No.268 of 2004 for the offences under Sections 498-A, 304-B and 306 IPC and Section 4 of the Dowry Prohibition Act and was acquitted by the Trial Court vide judgment dated 06.05.2005, challenging which, the State has preferred the instant criminal appeal.

4 Heard Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the appellant-State and Mr. B. Kumarasamy, learned counsel for the accused.

5 It appears that this case has had a roller coaster ride, as could be seen from the facts on record.

6 Before adverting to the evidence on record, it may be apposite to refer to the judgment of the Supreme Court in V. Sejappa vs. State¹, wherein, the Supreme Court, after considering the earlier judgments, has broadly catalogued the parameters to be borne in mind by the Court while dealing with an appeal against acquittal. The said parameters laid down by the Supreme Court are profitably extracted hereunder:

"23. . . . Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of

acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

7 The facts leading to the institution of this criminal appeal are as under:

7.1 On the complaint dated 19.11.2001 (Ex.P.32) given by the accused, Udayakumar (P.W.27), Sub Inspector of Police registered a case in Cr. No.389 of 2001 on the same day under Section 174 Cr.P.C. The investigation of the case was taken over by Thirumeni (P.W.28), Inspector of Police. After the arrival of Gopalan (P.W.1) and his wife Saraswathi (P.W.2), their confession statements were recorded and the case was altered to one under Section 498-A IPC vide alteration report (Ex.P.37).

7.2 Not satisfied with the investigation by the local police, Gopalan (P.W.1) alleged that the death of his daughter was not on account of suicide, but, murder and approached the High Court in Crl.O.P. No.25333 of 2001 and this Court, by order dated 01.02.2002 (Ex.P.38), ordered transfer of investigation of the case to the CB-CID.

7.3 The CB-CID, after completing the investigation, filed final report against the accused for the offences under Sections 498-A and 306 IPC and Section 4 of the Dowry Prohibition Act in P.R.C. No.24 of 2003 before the Judicial Magistrate, Mettupalayam, who committed the case to the Court of Session in S.C. No.268 of 2004.

7.4 The case was made over to the Mahila Court (Sessions Level), Coimbatore, where, strangely, the Trial Court framed charges under Sections 498-A, 304-B and 306 IPC and Section 4 of the Dowry Prohibition Act and questioned the accused, who pleaded 'not guilty'.

7.5 To prove their case, the prosecution examined 29 witnesses and marked 42 exhibits and 4 material objects.

7.6 When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he not only denied the same but also gave a written explanation running to 16 pages.

7.7 During the cross-examination of the prosecution witnesses, six documents were marked as Exs. D.1 to D.6. No witness was examined on behalf of the accused.

7.8 After considering the evidence on record and on hearing either side, the Trial Court, by judgment dated 06.05.2005, acquitted the accused of all the charges, aggrieved

by which, the State Government is before this Court, as stated above.

8 At the outset, be it noted that it is indeed disheartening to find that the Sessions Judge has framed a charge under Section 304-B IPC when admittedly, the marriage was on 24.11.1993 and the death had occurred seven years later, i.e, on 19.11.2001.

9 The facts which have been proved beyond cavil are as under:

- Kalaiselvi is the daughter of Gopalan (P.W.1) and Saraswathi (P.W.2).
- Sivakumar (P.W.3) and Velmurugan (P.W.4) are Kalaiselvi's brothers.
- Maheswari (P.W.5) is the wife of Sivakumar (P.W.3).
- Sivakumar (P.W.3) is a member of the Communist Party (Marxist) and a comrade of Amirtham (P.W.8), Punitha (P.W.9) and Chandrasekaran (P.W.12).
- The betrothal for the marriage of the deceased Kalaiselvi and the accused was held on 19.11.1993.
- The accused was not present for the betrothal and only his parents and other relatives were present.
- At the time of betrothal, the family of Kalaiselvi gave 35 sovereigns of gold jewellery and a sum of Rs.25,000/- as cash to the parents of the accused.
- The marriage was solemnized on 24.11.1993 in Coimbatore.
- The first daughter was born to the couple on 16.09.1995.
- The second son was born to them on 23.10.2000.
- The couple were living with their two children in the southern portion of the house of Shankar (P.W.6) in the ground floor.
- Kalaiselvi was a homemaker.

viz., L.G.Balakrishna Brothers, Bus body builders.

- The accused had purchased a vacant land measuring 4 ½ cents on 02.06.1997 (Ex.P.21).
- At the time of the incident, Gopalan (P.W.1) and Saraswathi (P.W.2) were in Singapore.
- The death of Kalaiselvi was on account of self-immolation around 5.30 a.m. on 19.11.2001.

10 The complaint dated 19.11.2001 (Ex.P.32) that was given by the accused to the police, which formed the basis for registration of the FIR is admissible in evidence as admission under Section 21 of the Evidence Act. The accused has admitted his presence in the house when the incident had occurred. He has also admitted that on the previous day, a quarrel ensued with his wife Kalaiselvi, after which, he slept alone in the cot in the front room of the house; around 5.30 a.m., he heard a noise from inside the house and when he looked inside, he found his two children sleeping on the bed, but, did not find his wife; he found the rear door of the house leading to the bath room open and when he went there, he smelled kerosene; he immediately rushed to the front door and on opening it, he found his wife in flames; he immediately called Shankar (P.W.6), the house owner, who was living in the next door and together, they tried to save the life of Kalaiselvi by putting off the fire with gunny bags, but, in vain.

11 On coming to know of their daughter's death, Gopalan (P.W.1) and Saraswathi (P.W.2) who were in Singapore, as stated above, returned home and they lodged complaints (Exs.P.1 and P.2), both dated 21.11.2001, to the Human Rights Commission and the Chief Minister of the State, respectively, alleging that their daughter was murdered. They also gave a complaint (Ex.P.3) on 26.11.2001 to the District Collector alleging that the family of the accused had murdered their daughter and had made it appear as if she had died of self-immolation.

12 For the first time, in the complaint dated 03.12.2001 (Ex.P.4) given to the police, Gopalan (P.W.1) has alleged that the accused was demanding dowry and was subjecting his daughter to harassment. The demand of dowry in this case can be categorised under two heads, viz., demand of 35 sovereigns of gold jewellery and cash of Rs.25,000/- and demand of a sum of Rs.5 lakhs for purchase of a house. These allegations have been repeated in the evidence of Gopalan (P.W.1), Saraswathi (P.W.2), Sivakumar (P.W.3), Velmurugan (P.W.4) and Maheswari (P.W.5), who are all close relatives of the deceased. However, in their cross-examination, they have admitted that the sum of Rs.25,000/- and 35 sovereigns of gold jewellery were given through one Shanmuga Gurusamy (P.W.10), at the time of betrothal on 19.11.1993 to the parents of the accused.

13 On reading of the evidence of these witnesses, it is seen that Kalaiselvi was the only daughter of the Gopalan - Saraswathi couple and they had given the aforesaid items on their own volition as Stridhanam to their daughter without there being any demand by the accused. In fact, all the witnesses have admitted that the accused was not present during betrothal. The absence of the accused for his own betrothal does not surprise this Court, because, the betrothal was held just five days prior to the date of marriage. The photographs (M.O.1 series) show that the platter with cash and fruits was being handed over by Saraswathi (P.W.2) to Shanmuga Gurusamy (P.W.10). Assuming for a moment that this amount was given by the family of the bride on demand made by the parents of the accused, the accused cannot be made vicariously liable. The parents of the accused were not arraigned as co-accused.

14 Coming to the accusation relating to the demand of Rs.5 lakhs by the accused for purchase of a house, it is seen that the accused had purchased a plot measuring 4 ½ cents on 03.06.1997 vide Ex.P.21 and there is no iota of material to show that the family of the deceased had financed the said purchase. The accused was decently employed in a private concern and in the absence of any evidence to show that he had purchased the property with the finance provided by his wife or parents-in-law, this Court cannot infer otherwise.

15 The prosecution have examined Amirtham (P.W.8), Punitha (P.W.9) and Chandrasekaran (P.W.12) to show that they had conducted mediation between the spouses and during mediation, they were told by the deceased Kalaiselvi that she was being ill-treated by the accused.

16 Amirtham (P.W.8) and Punitha (P.W.9) have stated in their evidence that they belong to Indian Democratic Women's Congress and are members of the Communist Party (Marxist). Sivakumar (P.W.3), brother of the deceased, also belongs to the Communist Party of India (Marxist).

17 Amirtham (P.W.8) has stated that on 16.09.1996, one Ramasamy brought the accused to her house and sought her help to settle the matrimonial dispute between the accused and his wife Kalaiselvi; she went to the house of Kalaiselvi on 26.10.1996 along with one Punitha (P.W.9); at that time, Kalaiselvi told her that her husband is demanding money for purchasing a house and is assaulting her; she obtained a letter from Kalaiselvi to that effect and the said letter has been marked as Ex.P.13.

18 Amirtham (P.W.8) has further stated in her evidence that the said letter was written by her, but signed by the deceased Kalaiselvi. The said letter (Ex.P.13) has been addressed to the District Secretary of the Democratic Women's Congress, Coimbatore. Punitha (P.W.9) corroborated the evidence of Amirtham (P.W.8) in this regard.

19 Likewise, Chandrasekaran (P.W.12), in his evidence, has stated that he belongs to the Communist Party of India (Marxist) and knows the family of Kalaiselvi through her brother Sivakumar (P.W.3). In the cross-examination, he has admitted that Sivakumar (P.W.3) belongs to Communist Party of India (Marxist). Chandrasekaran (P.W.12) has further stated that Sivakumar (P.W.3) approached him and requested his intervention to solve the matrimonial problem between his sister Kalaiselvi and the accused; so, he went to the house of the accused and at that time, the accused told him that the family of Kalaiselvi promised to give Rs.5 lakhs for purchasing a house and that they were not keeping up their promise and therefore, he was taking away the household articles and going away separately; on the next day, Ponnammal, the house owner, wanted Kalaiselvi also to vacate the house; when Sivakumar (P.W.3) told him about this, he advised Sivakumar (P.W.3) that it will be better to inform the local police in writing and thereafter, bring Kalaiselvi home after vacating the house; Sivakumar agreed to this and he (P.W.12) prepared a complaint in the name of Kalaiselvi and sent it with Sivakumar (P.W.3) for Kalaiselvi's signature and after obtaining Kalaiselvi's signature in it, he went along with Sivakumar (P.W.3) and gave it to the Inspector of Police, Peelamedu B6 Police Station on 06.10.1998 and thereafter, they vacated the house.

20 It must be borne in mind that this incident had taken place in 1998. Even in the complaint (Ex.P.12) given by Kalaiselvi to Peelamedu B6 Police Station through Chandrasekaran (P.W.12), there is no whisper about the demand of Rs.5 lakhs by the accused towards purchase of house. De hors the contradictions in their evidence, assuming that Amirtham (P.W.8), Punitha (P.W.9) and Chandrasekaran (P.W.12) have spoken truth about the incident that had occurred in the years 1996 and 1998, can the accused be convicted based on that for the occurrence that had taken place in the year 2001? Of course, if there is credible evidence to show that the demand of Rs.5 lakhs had continued upto the death of Kalaiselvi, then, the evidence of these witnesses would assume significance. On the contrary, letters written by Kalaiselvi which have been marked as Exs.P.14 to P.16 to her relatives do not disclose that there was matrimonial discord between her and the accused. In fact, those letters do not show that the couple were leading a cat and dog life. Conversely, it could be seen therefrom they were living happily.

21 Further, in the cross-examination of Gopalan (P.W.1), Deepavali greeting card-cum-letter dated 09.11.2001 (Ex.D.1) and letter dated 28.06.2001 (Ex.D.2) sent by him from Singapore to the accused, have been marked along with the envelopes showing that they have been posted from Singapore. A reading of those letters shows that there was no animosity at all in the father-in-law and son-in-law relationship. That is the reason why after returning from Singapore, Gopalan (P.W.1) did not make any dowry demand accusation against his son-in-law and was instead, alleging that his daughter was murdered by the

family of the accused. This is obvious from the complaints (Exs.P.1 to P.3) which were given by Gopalan (P.W.1) to the Human Rights Commission, the Chief Minister of Tamil Nadu and District Collector, respectively.

22 The evidence of Shankar (P.W.6), owner of the house in which the accused was living assumes significance. Shankar (P.W.6), in his evidence, has stated that the accused took a portion of his house on rent of Rs.1,000/- per month in the year 2000 and was living with his wife and two children there; the accused was working in a private company in Thekkampatty; the mother and brothers of Kalaiselvi would come frequently to see Kalaiselvi; the accused and his wife were living happily; six months prior to the incident, Kalaiselvi's father made a call to his phone wanting to speak to Kalaiselvi; Kalaiselvi spoke to him, but, he did not overhear their conversation; on the night prior to the incident, the father of Kalaiselvi called in his landline and spoke to her; thereafter, he heard the couple quarrelling in their portion; after hearing their quarrel, when he and his wife went and enquired with the couple, the accused said "What to say about what is happening" and went inside the house. In the latter part of the evidence, Shankar (P.W.6) has stated that when he enquired about the quarrel, he learnt that the new born was sick and the accused wanted to take the child to the hospital, but, Kalaiselvi stated that she had already taken the child to the doctor in the morning and that they can go the next day. He has stated that he did not know the reason for it. The prosecution have declared this witness hostile and have cross-examined him by suggesting to him that he had told the police that the accused was demanding Rs.5 lakhs from the parents of Kalaiselvi, on account of which, they were quarrelling and due to that quarrel, the incident had taken place, which suggestion he denied.

23 Be it noted that the evidence of a hostile witness need not be completely discarded. There appears to be a ring of truth in the evidence of this witness with regard to the cordial relationship between the spouses. Even in the Section 313 Cr.P.C. statement given by the accused, he has admitted that on the previous day, his son Mohanakannan had fallen ill and he wanted to take him to the hospital in the night, but, Kalaiselvi did not agree for that, for which, he scolded her in anger. Even for invoking the presumption under Section 113-A of the Evidence Act to fasten criminal liability on the accused under Section 306 IPC, the death must have occurred within seven years of marriage. Therefore, even this presumption cannot be raised against the accused in this case. In the absence of the presumption under Section 113-A of the Evidence Act, this Court will have to rely only upon the ingredients of Section 107 IPC to mulct criminal liability under Section 306 IPC on the accused. To take umbrage under Section 107 IPC, there is no material to show that the accused had instigated, conspired or intentionally aided in the act of self-immolation by Kalaiselvi.

24 In an appeal against acquittal, when there are two views possible, the view that favours the accused merits acceptance. [See Arulvelu and another vs. State rep. by the Public Prosecutor and another²].

25 On independent appraisal of the evidence on record, this Court is unable to persuade itself to disagree with the well merited findings of the Trial Court in acquitting the accused and accordingly, the acquittal of the accused is confirmed.

In the result, this criminal appeal is dismissed as being devoid of merits.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

cad

To

1 The sessions Judge, magalir Neethimandram,
Coimbatore

2. The Inspector of Police
Karamadai Police Station
Coimbatore District

3 The Public Prosecutor
Madras High Court
Chennai 600 104

4. The section officer,
Criminal Section,
High court
Madras

+1cc to Mr. S.Gunalan, Advocate SR.No. 88143

Cr1. A. No.488 of 2011

A.SK(31/01/2019)

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