

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.A.No.217 of 2011

State rep. by
The Inspector of Police,
W-1, All Women Police Station,
Thousand Lights,
Chennai - 600 006.
(Cr.No.12/1996)

...Appellant/Complainant

-Vs-

Dr.C.Rajasekar

...Respondent/Accused I

This Criminal Appeal is filed under Section 374 of Cr.P.C. praying to set aside the judgment of acquittal dt.18.12.2009 in Crl.A.No.185 of 2006 by the learned V Additional Sessions Judge, Sessions Court, Chennai, and restore the conviction made by the learned X Metropolitan Magistrate, Egmore, Chennai - 8, in C.C.No.7793 of 1996 dt.08.06.2006.

For Appellant : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)
For Respondent : Mr.S.AshokKumar, Senior Counsel
for Mr.K.Balu

JUDGMENT

This criminal appeal has been filed by the state against the judgment of acquittal passed by the learned V Additional Sessions Judge, Sessions Court, Chennai, reversing the conviction made by the learned X Metropolitan Magistrate, Egmore, Chennai - 8, in C.C.No.7793 of 1996 dt.08.06.2006.

2 Based on the complaint lodged by the defacto complainant, appellant/state registered a case against the respondent and two others namely his parents in Cr.No.12 of 1996 for the offence punishable under Section 498(A) of IPC and Section 4 of Dowry Prohibition Act. After completing investigation, the appellant/state laid a charge sheet

before the learned X Metropolitan Magistrate, Egmore, Chennai - 8, which was taken on file in C.C.No.7793 of 1996. Before the trial Court, in order to prove the case of the prosecution, P.W.1 to 16 were examined and Exs.P1 to 38 were marked and on the side of the defence, no one was examined and Exs.R1 to 53 were marked. After trial, the learned X Metropolitan Magistrate, by judgment dated 08.06.2006, convicted the respondent and sentenced him to undergo rigorous imprisonment for a period of one year for the offence under Section 498(A) and to undergo simple imprisonment for a period of three months for the offence under Section 4 of Dowry Prohibition Act, and acquitted the other accused. Aggrieved against the said judgment of conviction, the respondent had preferred an appeal in C.A.No.185 of 2006 and the learned V Additional Sessions Judge, Court of Sessions, Chennai, after hearing both the counsel, by judgment dated 18.12.2009, allowed the appeal and set aside the conviction recorded by the trial Court. Challenging, the judgment of acquittal made by the lower appellate Court, the state has filed this criminal appeal.

3 Case of the prosecution is that marriage between the defacto complainant/P.W.1 and the respondent was solemnized on 27.06.1986 and at the time of marriage, parents of P.W.1 provided 30 sovereigns of gold and Diamond earstud and household articles as sridhana. After marriage, the respondent along with his parents demanded dowry and caused physical and mental cruelty towards the defacto complainant. The defacto complainant begot a female child, which was mentally sick and the respondent and his family members had not even taken any care on them and driven out from the matrimonial home and they are living with parents of P.W.1. Further the respondent performed second marriage and they did not return the sridhana articles, which were provided by parents of P.W.1, at the time of marriage. Therefore, the defacto complainant preferred a complaint against the respondent and his parents.

4 The learned Government Advocate (Crl.Side) appearing for the appellant/state would submit that marriage between the defacto complainant and the respondent was solemnized on 27.06.1986 and at the time marriage, parents of P.W.1 provided 30 sovereigns of gold and Diamond earstud and household articles as sridhana, but the respondent and his parents demanded 50 sovereigns of gold. After marriage, the defacto complainant was living as a joint family and her husband the respondent herein and her parents-in-law incessantly tortured her demanding dowry and

money for construction of new nursing home. Due to the act of the respondent and his parents, the defacto complainant got threatened abortion. At one point of time, respondent forcibly given poison to the defacto complainant/P.W.1 and she become unconscious. When her father went to see her, the parents-in-law told her father that they were arranging for second marriage for their son and hence P.W.1 should leave their son. The respondent and his parents often threatened the defacto complainant saying that if she will not bring money as demanded by them, the respondent would divorce her and they not even allowed the defacto complainant to pursue her higher studies and do her job. In the year 1987, the defacto complainant begot a female child, which is mentally sick. Later, they demand Rs.50,000/- to make a job of the respondent in Chennai Corporation as permanent. The respondent and his family members had not even shown any care and love on the child and the defacto complainant and driven them out of the matrimonial home. The defacto complainant and the mentally challenged child were living with parents of the defacto complainant/P.W.1. The evidence of P.W.1 would go to show that the respondent and his family members made dowry harassment and caused physical as well as mental cruelty to her and not returned her jewels. P.W.1, being a victim, had clearly narrated the incidents which had taken place from the day of marriage till filing of the complaint. Even though, the trial Court has rightly appreciated the evidence of prosecution and convicted the respondent, but, the lower appellate Court has erroneously acquitted the respondent, which warrants serious interference.

5 The learned Senior Counsel appearing for the respondent/accused, would submit that earlier there was a case filed at the instance of the defacto complainant and subsequently the same was compromised. The marriage between the defacto complainant and the respondent had taken place in the year 1986 and the earlier case was compromised in the year 1990 and the allegations made in the present complainant are alleged to have taken place prior to 1990. The respondent cannot be prosecuted for the offence, which has already been compounded. Further, P.W.2/father of P.W.1 has not been cross examined to corroborate the evidence of P.W.1. There is no independent witnesses for the allegations levelled against the respondent. The alleged demand of Rs.50,000/- was not termed as dowry, since it is no way connected with the marriage and as per prosecution, it was asked to get a permanent job for the respondent. In support of his contentions, the learned

counsel has relied on the decisions of the Hon'ble Supreme Court reported in (2019) 2 SCC 513 (Mohd. Akhtar Lias Kari and others vs. State of Bihar and another) and (2013) 3 SCC 684 (Vipin Jaiswal vs. State of Andhra Pradesh). Even though, the trial Court has failed to appreciate the documents filed by the respondent, the lower appellate Court has carefully perused the documents filed on behalf of the defence, and acquitted the respondent, which does not call for any interference.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 It is seen that the defacto complainant is wife and the respondent herein is husband. It is the contention of the appellant/state that the respondent, after marriage, has caused physical and mental cruelty towards the defacto complainant incessantly demanding dowry and the respondent has demanded Rs.50,000/- to get a permanent job in Chennai Corporation for the respondent and they did not even take any care on the respondent and the child, which is mentally sick. Even though, as stated by the learned Senior Counsel for the respondent, earlier there was a compromise between the parties, it is alleged by the defacto complainant, even after compromise had taken place, the respondent again caused cruelty towards the defacto complainant/P.W.1. Relationship of the husband and wife is a continuous one and it is not like debt or anything else, which can be compounded as one time settlement. Cases like this, there may not be any independent witness or any strong documentary evidence. It is admitted that already there was a case, which was ended in compromise, which itself shows that the respondent was in the habit of demanding money by causing cruelty towards the defacto complainant/P.W.1. Further it is contended that P.W.2 was not subjected to cross examinations, but the fact remains that in fact he was examined in chief and in the chief examination, he has clearly narrated the incidents, which corroborates with the evidence of P.W.1 and since cross examination commenced after a long period and P.W.2 died, he was not able to be subjected for cross examination. There is no reason to discard the evidence of the victim, defacto complainant/P.W.1 and this Court finds that prosecution has proved its case beyond reasonable doubt. The lower appellate Court has erred in disbelieving the evidence of P.W.1. From the documents filed by both the parties itself shows that P.W.1 was interested in living with the respondent, but, he demanded money and driven out the

defacto complainant from the matrimonial home. The trial Court has appreciated the evidence of the prosecution witnesses and convicted the respondent, but the lower appellate Court, without considering the nature of allegations, has erroneously acquitted the respondent. Therefore, this Court is inclined to set aside the reversal judgment of acquittal made by the lower appellate Court.

8 In the result, this criminal appeal is allowed and the judgment of acquittal dt.18.12.2009 made by the learned V Additional Sessions Judge, Sessions Court, Chennai, in CrI.A.No.185 of 2006 is hereby set aside and judgment of conviction dt.08.06.2006 made by the learned X Metropolitan Magistrate, Egmore, Chennai - 8, in C.C.No.7793 of 1996, is hereby restored. The trial Court is directed to secure the respondent/accused to undergo remaining period of sentence imposed by the trial Court.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The V Additional Sessions Judge,
Sessions Court, Chennai.
(City Civil Court, chennai)
2. Do thro the Principal Sessions Judge,
Sessions Court, Chennai.
(City Civil Court, chennai)
3. The X Metropolitan Magistrate, Egmore, Chennai - 8.
4. Do thro the Chief Metropolitan Magistrate, Egmore,
Chennai - 8.
5. The Inspector of Police, W-1,
All Women Police Station,
Thousand Lights, Chennai - 600 006.
6. The Public Prosecutor, High Court, Madras - 104.
7. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.K.Balu , Advocate SR.No. 69823

CrI.A.No.217 of 2011

rsi

A.SK(17/10/2019)