

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.388 of 2012

Sai Premnath

.. Appellant/Accused

Vs.

State rep. by

The Assistant Commissioner of Police,
Pulianthope Range,
Chennai.

(Crime No.194/2009)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and sentence dated 20.06.2012 passed by the Sessions Judge (Mahalir Neethimandram), Chennai in S.C.No.230 of 2010.

For Appellant : Mr.K.Kannan

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 20.06.2012 passed by the Sessions Judge (Mahalir Neethimandram), Chennai in S.C.No.230 of 2010.

2.The prosecution story is as under :

2.1.The deceased Shenbagavalli was the daughter of Logabiran (P.W.1) and Ammani (P.W.9). She had studied up to B.B.A. and was employed in a private concern. Her marriage with the accused was solemnized on 11.06.2007, after which, she lived in joint family with the accused at No.3, Venkatesapuram, New colony, 4th Street, Kannigapuram, Chennai-12. The couple was unfortunately not blessed with child. In the night on 13/14.05.2009, Shenbagavalli committed suicide by hanging in the bedroom of her matrimonial home. The accused who was sleeping beside her, incidentally woke up to reduce the temperature of the air conditioner and was shocked to see his wife hanging.

2.2.The parents of Shenbagavalli were informed and on the written complaint (Ex.P1) given by Logabiran (P.W.1), the police registered a case in Crime No.194 of 2009 under Section 174(3) Cr.P.C. on 14.05.2009 at 12.15 hours and prepared the printed F.I.R. (Ex.P7).

2.3.Investigation of the case was taken over by Chandran (P.W.11), Assistant Commissioner of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P10) and rough sketch (Ex.P11). Since the death was within seven years of marriage, Pandurangan (P.W.10), Revenue Divisional Officer conducted inquest over the body of the deceased and in his evidence as well in the inquest report (Ex.P8), opined that the death of Shenbagavalli was not due to dowry harassment. Autopsy was done over the body of the deceased and the post-mortem certificate (Ex.P13) shows that 'she died of asphyxia due to hanging'. Except the ligature mark, no other external injury was found on the body of the deceased.

2.4.After examining witnesses and collecting various reports, the police filed a final report in P.R.C.No.267 of 2009 before the X Metropolitan Magistrate, Chennai for the offence under Sections 498-A, 304-B alternatively 306 IPC and Section 4 (1) of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 against the accused.

3.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.230 of 2010 and was made over to the Mahila Court, Chennai, for trial. The trial Court framed charges under Sections 498-A, 304-B alternatively 306 IPC and Section 4(1) of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. When the accused was questioned, he pleaded "not guilty".

4.To prove the case, the prosecution examined 11 witnesses and marked Exs.P1 to P13. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the accused.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 20.06.2012 in S.C.No.230 of 2010, acquitted the accused of the charges under Sections 304-B and 306 IPC, but convicted and sentenced him as follows :

Provision under which convicted	Sentence
Sections 498-A IPC	Three years rigorous imprisonment and fine of Rs.5,000/- in default, to undergo six months simple imprisonment
Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998	Three years rigorous imprisonment and fine of Rs.10,000/- in default, to undergo six months simple imprisonment

The aforesaid sentences were ordered to run concurrently. Challenging the conviction and sentence, the accused has preferred the present appeal.

6.Heard Mr.K.Kannan, learned counsel for the appellant/accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

7.Before advertng to the rival submissions, it may be necessary to state here that the State has not chosen to file any appeal challenging the acquittal of the appellant of the offence under Section 304-B/306 IPC.

8.The nub of the allegations in the charge that was framed by the trial Court against the appellant is that, he would come drunk, demand dowry from his wife, beat her and had illicit intimacy with one Lakshmi.

9.In this case, the independent witnesses viz. the neighbours, Amudha Gunalan (P.W.2), Rosemary (P.W.3) and Arumugam (P.W.4), turned hostile and did not support the prosecution case. Therefore, this Court is left with the evidence of Logabiran (P.W.1) and Ammani (P.W.9). Ammani (P.W.9), the mother of the deceased, turned hostile and did not support the prosecution case. What remains is, the evidence of Logabiran (P.W.1), the father of the deceased.

10.Logabiran (P.W.1) was examined in-chief on 03.02.2011, but was not cross-examined on the same day. However, he was recalled on 22.05.2012, for the purpose of cross-examination and at that time, he turned hostile. Of course, this Court cannot jettison his evidence completely on that score, in view of Section 154(2) of the Evidence Act.

11.Logabiran (P.W.1) for the first time in the chief-examination, has stated that his daughter told him that the

appellant is demanding further dowry from her and is harassing her. He did not state this either in the complaint (Ex.P1) or in the statement (Ex.P2), that was given by him to the Revenue Divisional Officer (P.W.10). He has not stated in his evidence about the alleged intimacy of the appellant with Lakshmi. In the chief-examination, he has stated that his daughter did not conceive for two years. He has not stated that the appellant or his family members had asked him for more dowry after marriage. He has only stated that his daughter told him that the appellant is harassing her for more dowry.

12.Mr.Kannan rightly contended that such a statement can be construed as a dying declaration, only when Shenbagavalli's death comes into question and not for convicting the appellant under Section 498-A IPC. In support of this proposition, he placed reliance on the judgment of the Supreme Court in Gananath Pattnaik Vs. State of Orissa [(2002) 2 SCC 619]. The State has not chosen to challenge the acquittal of the appellant of the offence under Section 304-B/306 IPC and therefore, the cause of Shenbagavalli's death is not in question before this Court. Hence, the statement of Shenbagavalli to Logabiran (P.W.1) that the appellant harassed her for dowry, is beyond the ken Section 32(1) of the Evidence Act and cannot be used to sustain the conviction under Section 498-A IPC in the absence of any other evidence. Therefore, the solitary evidence of Logabiran (P.W.1) does not inspire the confidence of this Court to sustain the charges under Section 498-A and Section 4(1) of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

In the result, this criminal appeal is allowed. The judgment of conviction and sentence passed by the trial Court in S.C.No.230 of 2010 are set aside. Bail bond executed by him will stand discharged. Fine amount, if any, paid by him shall be refunded. The Registry is directed to transmit the records to the Court concerned forthwith.

Sd/-

Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge,
Mahalir Neethimandram,
Chennai.

2.The Assistant Commissioner of Police,
Pulianthope Range,
Chennai.

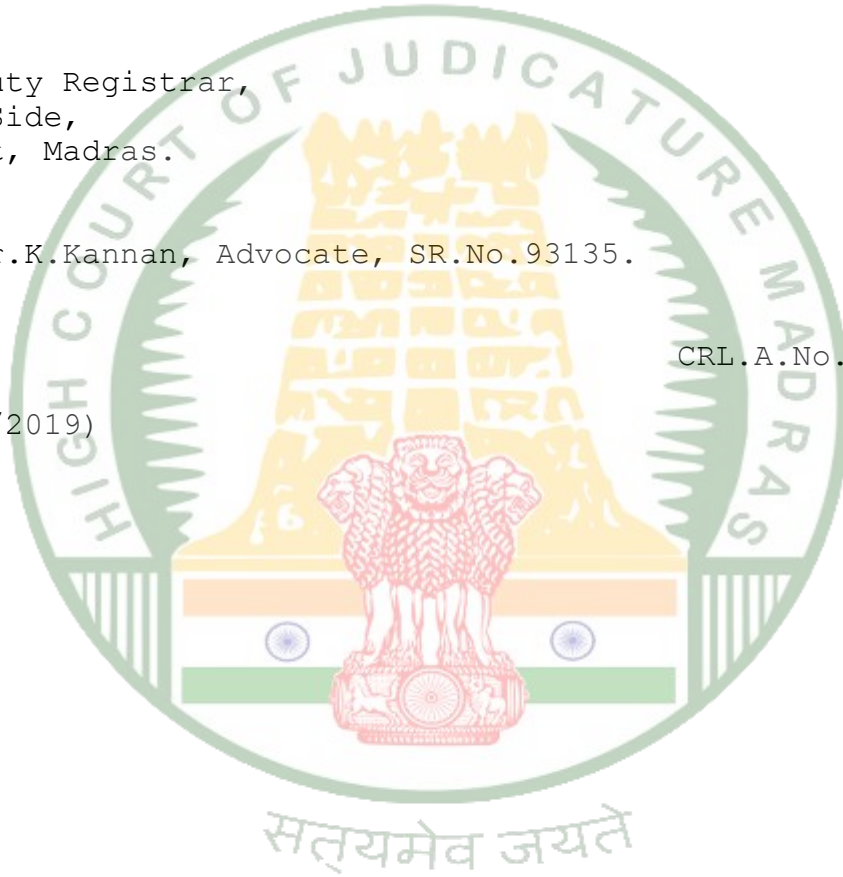
3.The Public Prosecutor,
High Court,
Madras.

4.The Deputy Registrar,
Criminal Side,
High Court, Madras.

+1cc to Mr.K.Kannan, Advocate, SR.No.93135.

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PM (CO)
CSR(12/12/2019)



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