

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.06.2019
DELIVERED ON: 09.07.2019

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

Criminal Appeal No.3 of 2016

Ananthalakshmi

..Appellant

vs.

1.The Inspector of Police,
Pallavaram Police Station,
Pallavaram, Chennai.
(Crime No.792 of 2010)

2.Ganesh

3.Rani

4.Bhuvanagiri

..Respondents

Prayer: Criminal Appeal filed under Section 374(2) CrPC against the judgment of the Mahila Court, Chengalpattu dated 04.09.2014 in S.C.No.260 of 2011.

For Appellant : Mr.T.Sivagananasambandan

For Respondents : Ms.Krithika Kamal,
Government Advocate (Crl.Side) for R1

Mr.C.P.Palanichamy
for R2 to R4

JUDGEMENT

The prosecution case is as follows:

1.1. The families of the deceased Sindhuja and the accused were from Manaparai in Trichy District. Sindhuja married Ganesh (A1) on 11.02.2008 and begot a girl child, named Vedavarshini on 15.11.2008. Sindhuja conceived again. While so, on 04.10.2010 at around 2.30 a.m., Sindhuja committed suicide by hanging in her matrimonial home at Chennai.

1.2. On the complaint (Ex.P1) lodged by Ananthalakshmi (PW1) / mother of the deceased, Selvaraj (PW12) / Inspector of Police, Pallavaram Police Station registered a case in Crime No.792 of 2010 on 04.10.2010 under Sections 174(3) CrPC and took

up the investigation of the case. Since the death had occurred within 7 years from the date of marriage, Sowrirajan (PW10) / Revenue Divisional Officer (RDO), Tambaram conducted inquest over the body of Sindhuja and gave the Inquest Report (Ex.P8), wherein he opined that the death of Sindhuja was not "Dowry Death".

1.3. Not satisfied with the findings of the Revenue Divisional Officer, Tambaram, Ashokan (PW2) / father of Sindhuja filed W.P.No.2975 / 2011 in the High Court for a direction to the RDO to once again conduct inquest on the ground that the RDO had not recorded his statement. On the orders of this Court, the RDO gave a further report (Ex.P9) dated 11.03.2011, in which it is stated that the death of Sindhuja could have been due to dowry harassment.

1.4. Dr.Parthipan (PW11) conducted autopsy on the body of the deceased and opined that the death was due to asphyxia due to hanging.

1.5. The investigation of the case was taken over by Thiru.Kuppusamy (PW13) / Assistant Commissioner of Police, Meenambakkam, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P12). He recovered the saree (M.O.1) used by Sindhuja for hanging under cover of Mahazar (Ex.P3). After examining witnesses, he altered the case from one under Section 174(3) CrPC to Sections 498(A) and 306 I.P.C. and prepared the Alteration Report (Ex.P13). PW13 arrested Ganesh (A1) on 05.10.2010 and after recording the statements of the Postmortem Doctor and other witnesses and after collecting the reports, he completed the investigation and filed final report in P.R.C.No.52 of 2011 before the Judicial Magistrate Court, Tambaram under Sections 498(A) and 306 I.P.C. against Ganesh (A1), Venkatachalam (A2) / father of A1, Rani (A3) / mother of A1 and Bhuvaneswari (A4) / sister of A1.

1.6. On the appearance of A1 to A4, the provisions of Section 207 CrPC were complied with and the case was committed to the Court of Session in S.C.No.260 of 2011 and was made over to the Mahila Court, Chengalpattu for trial. The Trial Court framed charges under Sections 498(A) and 306 I.P.C. against A1 to A4. When questioned, the accused pleaded not guilty.

1.7. To prove the case, the prosecution examined 14 witnesses, marked 13 exhibits and one material object. When the accused were questioned under Section 313 CrPC with regard to the incriminating circumstances appearing against them, they denied the same. However, A1 filed a written statement under Section 313 CrPC explaining the circumstances under which the death of Sindhuja had occurred.

1.8. After hearing either side and considering the evidence on record, the Trial Court, vide judgment dated 04.09.2014, acquitted all the accused. Challenging the acquittal, PW1 / mother of the deceased has filed the present Criminal Appeal under proviso to Section 372 CrPC.

2. Heard Mr.T.Sivagnanasambandan, learned counsel for the appellant, Ms.Krithika Kamal, learned Government Advocate (Crl. Side) for the respondent police and perused the materials.

3. Before advertng to the rival submissions, it may be necessary to bear in mind the law laid down by the Supreme Court in V.Sejappa v. State by Police Inspector Lokayukta, Chitradurga [(2016) 12 SCC 150], wherein the Supreme Court has held as follows:

"22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. 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. In State v. K. Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41], this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T. Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In Muralidhar v. State of Karnataka [Muralidhar v. State of Karnataka, (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690], this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State,

AIR 1954 SC 1 : 1954 Cri LJ 225] , Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656] , Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426] , Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167] , Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] , Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820] , Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639] , Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914] , Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] , K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381] , Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355] , Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] , Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] , Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370] , C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161] , K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237] , Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] . It is not necessary to deal with these cases individually. 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."

4. Mr.T.Sivagnanasambandan, learned counsel for the appellant took this Court to the testimonies of the prosecution witnesses and submitted that there has been mis-appreciation of evidence by the Trial Court and therefore, this Court should interfere and reverse the judgment of acquittal. In support of his contentions, he placed strong reliance on the following judgments:

- (i) State of West Bengal v. Orilal Jaiswal [1994(1) SCC 73]
- (ii) Mahesh son of Janardhan Gonnade v. State of Maharashtra [(2009) 3 SCC (Cri) 543]

5. A careful perusal of the evidence of Ananthalakshmi (PW1) and Ashokan (PW2), who are the parents of the deceased and Manivannan (PW3) / brother of the deceased, the following facts stand established:

(a) Sindhuja married Ganesh (A1) on 11.02.2008 ; after marriage she lived in her matrimonial home at Manaparai only for a week; her husband (A1) was working in Chennai ; when her husband went to Chennai, he left Sindhuja with her parents ; Ganesh (A1) went to Manaparrai during the weekends to spend time

with his wife Sindhuja ; as and when he went there, he took his wife from her parents house to his parents house ;

(b) A4 / sister of A1 got married a year prior to Sindhuja's marriage and she was staying in Palayamkottai in Tirunelveli District and was pursuing her degree in Siddha Medicine; A4 conceived and so A3 stayed with her in Palayamkottai to take care of her ;

(c) Sindhuja conceived and delivered a girl baby on 15.11.2008; thereafter, A1 took a house for rent of Rs.5,000/- p.m. belonging to Ganapathy (PW5) in Zamin Pallavaram area in Chennai ; Sindhuja stayed with A1 in that house for only two short spells and went back to her natal home in Manaparai ; Sindhuja's father was a Sailor ; Sindhuja joined A1 on 01.10.2010 and on 04.10.2010 at 2.30 a.m. she committed suicide by hanging.

6. The question is whether the suicide committed by Sindhuja was on account of cruelty by A1 to A4 ?

7. In the complaint (Ex.P1) lodged by PW1, it is stated that immediately after marriage, Sindhuja went for to her in-law's home and after staying there for a week with her husband, returned home, obviously because A1 was working in Chennai. It is also stated in the complaint that for 9 months Sindhuja lived with her parents. Except the general allegation that the family members of A1 treated Sindhuja cruelly, immediately after the marriage there is no other allegation; further there is no allegation of demand of dowry in the complaint. However, the family members of Sindhuja, viz., PWs.1 to 3 steadily improved their case stage by stage.

8. At the time of inquest by the RDO, PW2 was not present and so his statement was not recorded. The first report (Ex.P8) dated 28.10.2010 submitted by the RDO says that there was no dowry demand. As stated above, Ashokan (PW2) / father of Sindhuja, filed a writ petition in the High Court and asked for a direction to the RDO to record his statement, pursuant to which, he gave statement alleging that there was demand of Rs.5,00,000/- by A1 and his family members. The RDO gave the second report (Ex.P9) dated 11.03.2011 wherein it is stated that the death of Sindhuja could have been on account of dowry demand. However, Manivannan (PW3) / brother of Sindhuja has stated in the chief examination itself that A1 wanted Rs.5,00,000/- as loan for his office friend, but his mother (PW1) told him (A1) that she would readily give Rs.5,00,000/- to A1 and not to his friend and therefore, the topic ended there.

9. PW1 / mother of the deceased admitted in the cross examination that neither in the complaint (Ex.P1) nor in the

statement given by her to the police, she had stated that the accused demanded Rs.5,00,000/- as dowry. She also admitted that A4 / sister of A1 was doing Siddha medicine in Palayamkottai in Tirunelveli District, which is far away from Trichy District. In the evidence of PW1, only sweeping allegations stating that all the accused treated Sindhuja cruelly were made and there was no specific allegation. In paragraph No.16 of the Trial Court judgment, these aspects have been vividly discussed.

10. Mr.T.Sivagnanasambandan, learned counsel for the appellant placed reliance on the evidence of PW5 / landlord, who stated in the chief examination that on two occasions in which Sindhuja came and stayed with A1, there was quarrel in the family and Sindhuja went back to her parents' house. The learned counsel for the appellant submitted that on account of cruelty meted out to her, Sindhuja stayed away from the accused and lived with her parents. However, the evidence of PW1 shows that Sindhuja lived with her in-laws for a week after marriage and thereafter when A1 left for Chennai where he was employed, Sindhuja returned to her natal home.

11. In the written 313 CrPC statement submitted by A1, he has stated that Sindhuja was doing B.Sc., Mathematics in an Arts College in Trichy and since she wanted to pursue her studies, she stayed with her parents in Trichy and did not join him in Chennai.

12. Ganapathy (PW5) / the landlord, has stated that on 01.10.2010, A1 brought Sindhuja from Trichy and at that time, he saw them going out together and on 03.10.2010 at 9.00 a.m. they went together and returned home and in the wee hours, A1 called him and told him that Sindhuja has locked herself up in the bedroom and when they staved in, Sindhuja was already dead. In the cross examination, he has stated that the couple were living happily and they used to go frequently together and he has also stated that Sindhuja never made any complaint either to him or to his wife about her husband. He has also stated that Sindhuja never threw tantrums any time.

13. In 313 CrPC statement, A1 has stated that on 02.10.2010, he took Sindhuja to a hotel for dinner, in which the child was fed chicken soup and on 03.10.2010, the child fell sick and they took her to Pallavaram Medical Centre for treatment, where the doctor stated that the child has developed allergy and gave some medicines. He enclosed the medical records in support of his assertion. He also stated that on 03.10.2010, Sindhuja and he purchased some pillows and bed from a bed shop and submitted the bill along with his statement. Finally he has stated that Sindhuja was very upset that the child had developed allergy, because she gave chicken soup and that is perhaps the reason for her to commit suicide.

Mr.T.Sivagnanasambandan, learned counsel for the appellant placed strong reliance on this part of the 313 CrPC statement and submitted that no mother would commit suicide for such a silly reason and therefore, this Court should reject his explanation and convict A1 with the aid of Section 113-A of the Indian Evidence Act.

14. In the opinion of this Court, the written explanation given by A1 under Section 313(a) Cr.P.C. cannot form the foundation to convict him. The initial burden is on the prosecution to prove through cogent evidence that Sindhuja was subjected to cruelty, which pushed her to commit suicide. Of-course in a case involving circumstantial evidence, a false explanation of the accused would provide the missing link. False explanation means an explanation which militates against the proved facts.

15. The aforesaid explanation given by A1 is his interpretation for the suicide of Sindhuja. What actually ran into Sindhuja's mind, none can presume, because there was no suicide note. May be a quarrel would have occurred on that night with regard to the manner in which the child was fed and that could have triggered Sindhuja to commit suicide.

16. In the absence of any satisfactory evidence that Sindhuja was subjected to cruelty, which pushed her to commit suicide, the acquittal of the accused cannot be reversed and they cannot be convicted merely with the aid of Section 113-A of the Indian Evidence Act, 1872.

17. In Section 113-A of the Indian Evidence Act, the words used is "...the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband." Whereas in Section 113-B of the Indian Evidence Act, the expression used is "...the Court shall presume that such person had caused the dowry death." Thus, presumption under Section 113-A may be invoked by the Court after taking into consideration all the other circumstances of the case.

18. In this case, the Trial Court has given cogent reasons cataloging the circumstances to show that Sindhuja never lived for long with the accused. Even her father (PW2) has categorically admitted that Sindhuja lived only for a month and 20 days with the accused from the date of marriage to death, that too in brief spells.

19. In Mahesh v. State of Maharashtra (supra), relied upon by Mr.T.Sivagnanasambandan, the learned counsel for the appellant, the Trial Court had acquitted the accused. The High Court of Bombay had reversed the acquittal and convicted the

accused under Section 302 I.P.C. In the appeal by the accused, the Supreme Court upheld the conviction by holding that the Appellate Court has power to re-appreciate the evidence. One can have no quarrel with the proposition of law that the Appellate Court has the power to re-appreciate the evidence while dealing with an appeal against acquittal. However, when two views are possible, the view favouring the accused should be preferred vide judgment of the Supreme Court in Arulvelu and Another v. State represented by the Public Prosecutor and Another [(2009) 10 SCC 206], wherein the Supreme Court has held as follows:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

20. In this case, this Court re-appreciated the evidence of PWs.1 to 3 and found that there were contradictions inter se between their testimonies and they have also made marked improvements in their testimonies vis-a-vis their statements recorded during investigation and the statements recorded under Section 164 CrPC.

21. In State of West Bengal v. Orilal Jaiswal (supra), the Trial Court convicted the accused and the Appellate Court reversed the conviction, the reason for which was found to be very frail by the Supreme Court, which reversed the acquittal and restored the Trial Court order.

22. In this case, as discussed above, this Court does not find any infirmity in the appreciation of evidence by the Trial Court warranting interference.

23. In the result, this appeal is devoid of merits and accordingly, it is dismissed.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.The Presiding Officer,
Mahila Court,
Chengelpet.

2.The Inspector of Police,
Pallavaram Police Station,
Pallavaram, Chennai.
(Crime No.792 of 2010)

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.P.Palanichamy, Advocate, S.R.No.88001

Criminal Appeal No.3 of 2016

MP(CO)

RRS (07/08/2019)



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