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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.07.2019

CORAM :
THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.89 of 2016
and
Crl.M.P.No.6001 of 2017

Vellaiyangiri .. Appellant/Accused
Vs.

State represented by
The Deputy Superintendent of Police,
Gobichettipalayam,
Erode District. .. Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C. to call for the records in judgment dated 30.12.2015 made in S.C.No.121 of 2015 on the file of the District and Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode and set aside the same.

For Appellant : Mr.P.Saravana Sowmiyan

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

J U D G M E N T

This Criminal Appeal has been filed by the appellant/accused, challenging the order of conviction and sentence dated 30.12.2015, passed by the District and Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode, in S.C.No.121 of 2015.



2.It is the case of the prosecution that the deceased Durgadevi @ Shanmugapriya got married to the appellant and within four years of marriage, she committed suicide by hanging on 09.11.2014 between 06.00 a.m. and 09.30 a.m. in her matrimonial home; the appellant had inflicted cruelty on her and had abetted her suicide; the appellant, who had gone for work in the morning, received information from Nandhini Devi (P.W.5) that the door of his house was locked from inside and there was no response from his wife (deceased); therefore, the appellant rushed to his house and banged the door, but to no avail; he, along with this neighbours, entered into the house through the rear side and in the bed room, he found his wife hanging; the body was lowered and was immediately carried to Kalidass Hospital, Kavundhapadi, where, the doctor who examined her declared 'brought dead'; therefore, the appellant brought back his wife's body home and gave intimation to his parents-in-law.

3.On the written complaint (Ex.P1) lodged by Tamilselvan (P.W.1), Thilagavathi (P.W.11), Sub-Inspector of Police, Siruvalur Police Station, registered a case in Crime No.279 of 2014 under Section 174 Cr.P.C. on 09.11.2014 at 12.30 noon and prepared the printed FIR (Ex.P16), which reached the jurisdictional Magistrate only at 02.30 p.m. on the same day, as could be seen from the endorsement thereon. Since the suicide was within seven years of marriage, investigation of the case was taken over by Mr.Murugan (P.W.14), Deputy Superintendent of Police, Gobichettipalayam, who went to the place of occurrence and found that the body was already lowered and prepared the observation mahazar (Ex.P18) and rough sketch (Ex.P19). In the place of occurrence, he saw a duppattah (M.O.1), that was used by the deceased for committing suicide and seized it under the cover of mahazar (Ex.P3) in the presence of witnesses Balusamy and Balamurugan (P.W.6). On the requisition of the Investigating Officer, Krishnan Unni (P.W.7), Sub Collector, Gobichettipalayam, conducted inquest over the body of the deceased and gave inquest reports (Exs.P4 and P9). In the inquest proceedings, he examined the parents of the deceased, the appellant and his parents. Some neighbours were also enquired. In his evidence as well as in the inquest report (Ex.P9), he has opined that the death of the deceased Shanmugapriya was not due to dowry harassment.

4.Dr.Karthigeyan (P.W.8) performed autopsy on the body of the deceased. In his evidence as well as in the post-mortem certificate (Exs.P12 and P13), he has opined that the death would be due to Asphyxia due to hanging; he did not find any external injuries on the body. No poison was detected in the visceral organs, as could be seen from Viscera Report (Ex.P15).

5.The Investigating Officer altered the case from one under Section 174 Cr.P.C. to one under Sections 498-A and 306 IPC, vide alteration report (Ex.P20). The appellant was



arrested on 23.11.2014. After examining witnesses and collecting various reports, the Investigating Officer filed final report in P.R.C.No.5 of 2015 before the Judicial Magistrate Court No.II, Gobichettipalayam, against the appellant, for the offences under Sections 498-A and 306 IPC. On the appearance of the appellant, the provisions under Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.121 of 2015 and was made over to the Mahila Court (Mahila Fast Track Court), Erode, for trial. The trial Court framed charges against the appellant for the offences under Sections 498-A and 306 IPC. When questioned, the appellant pleaded 'not guilty'.

6.To prove the case, the prosecution examined 14 witnesses, marked 20 exhibits and 5 material objects. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor was any document marked on the side of the appellant.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 30.12.2015 in S.C.No.121 of 2015, has convicted and sentenced the appellant as under :

Provision under which convicted	Sentence
498-A IPC	3 years rigorous imprisonment and also to pay a fine of Rs.1,000/- i.d. simple imprisonment for 6 months.
306 IPC	10 years rigorous imprisonment and also to pay a fine of Rs.5,000/- i.d. simple imprisonment for 2 years.

8.Challenging the conviction and sentence, the appellant is before this Court.

9.Heard Mr.P.Saravana Sowmiyan, learned counsel for the appellant and Mrs.Kritika Kamal, learned Government Advocate (Crl. Side), appearing on behalf of the respondent police.

10.Learned counsel for the appellant contended that there is absolutely no iota of evidence to show that the appellant had inflicted cruelty on the deceased and had pushed her to the extent of committing suicide. He contended that, even after four years of marriage, the spouses were issueless and that was the main reason for the deceased Shanmugapriya to commit suicide.



11.Per contra, learned Government Advocate refuted the contentions.

12.It is the specific case of the prosecution that, the deceased Shanmugapriya suspected that the appellant was having an extra-marital affair with Nandhini Devi (P.W.5), on account of which, there were frequent quarrels between the couple, which had driven the deceased Shanmugapriya to commit suicide.

13.We have the evidence of Tamilselvan (P.W.1), father of the deceased, Sivagami (P.W.2), mother of the deceased and Murugesan (P.W.4), relative of the deceased, who have stated that the deceased Shanmugapriya and her husband lived in Dharmapuri Village, which is about 30 km away from Chennimalai, the deceased Shanmugapriya's natal village; they were not living in joint family; the appellant was a weaver by occupation and would also work as cook for augmenting his income; the deceased Shanmugapriya told them that the appellant was having an affair with Nandhini Devi (P.W.5) and when she questioned the appellant about that, a quarrel arose between them, in which, the appellant is alleged to have said that he would not sever his relationship with Nandhini Devi (P.W.5). The witnesses also speak about an incident that is said to have occurred on 06.11.2014. They have stated that the appellant and his wife (deceased) were invited for their village temple festival and the deceased Shanmugapriya came on 05.11.2014 without the appellant; on 06.11.2014, the appellant had come to the temple in his motor-bike at 11.00 a.m. with Nandhini Devi (P.W.5) and wanted to bring her to the deceased Shanmugapriya's parental house; the deceased objected to it and so, he did not bring Nandhini Devi; thereafter, the appellant came to the deceased's natal home and took her (deceased) back to his village in the evening; on that night, a quarrel ensued between the appellant and the deceased for having brought Nandhini Devi (P.W.5) to the temple, after which Shanmugapriya committed suicide. This is the sum and substance of the evidence of the prosecution witnesses.

14.The evidence on record shows that, Nandhini Devi (P.W.5) was living with her husband Dharmalingam in Dharmapuri Village and she was a cooking contractor for marriages and functions. The appellant would call her 'Anni' (elder sister-in-law) and he was in part-time employment under her. In fact, Murugesan (P.W.4) has stated that he had seen Nandhini Devi (P.W.5) going in bicycle with the appellant. In the inquest proceedings of the Sub Collector, Gobichettipalayam, it came to light that, it was Nandhini Devi (P.W.5), who had come to meet the deceased Shanmugapriya in her house and found that the door was locked from inside and since, the deceased did not respond to her call, Nandhini Devi (P.W.5) informed the appellant, who was away on work to another village and the appellant rushed home and gained entry through the rear door and found his wife



hanging.

15. Nandhini Devi was examined as P.W.5 and in her evidence, she has stated that, she is from Dharmapuri Village and her house is near the house of the appellant and knows nothing further in the case. She was declared hostile. Based on the statement recorded under Section 161(3) Cr.P.C., it was suggested to her in the cross-examination by the Prosecutor that, in her statement, she had told the police that she did not have any affair with the appellant and it is the deceased Shanmugapriya, who entertained such a suspicion.

16. In the cross-examination of Tamilselvan (P.W.1), he has admitted that, he knows that Nandhini Devi (P.W.5) is a cooking contractor and she would employ labourers and take them for executing her contracts. He further admitted that his daughter Shanmugapriya (deceased) did not conceive and that was troubling her. He further accepted that, if anyone broached that topic, she would immediately go into a state of shock. He has stated that her daughter (deceased) was taken to Rukmani Ammal Hospital in Chennimalai for treatment and it was medically found that she did not suffer from any disability, whereas, the appellant refused to come for medical check-up. As regards the allegation concerning the alleged extra-marital affair, P.W.1 and P.W.2 have stated that they had not seen the appellant with Nandhini Devi (P.W.5), nor have they received any complaint from anyone other than the deceased Shanmugapriya, about the affair. With regard to the incident, that is said to have taken place on 06.11.2014, wherein the appellant is said to have brought Nandhini Devi (P.W.5) to the temple, all these witnesses have stated that they neither saw it, nor did they hear about it from anyone else other than the deceased Shanmugapriya and that she (deceased) herself had not seen the appellant in the temple with Nandhini Devi (P.W.5) on 06.11.2014. The Investigating Officer has admitted that he had not collected any evidence to show that the appellant and Nandhini Devi (P.W.5) came to the village temple on 06.11.2014. In one breath, it is the assertion of the witnesses that, the deceased Shanmugapriya did not suffer from any barrenness and it was the appellant, who was not willing to subject himself to medical examination and in the other, they were alleging that the appellant was having an extra-marital relationship with his sister-in-law Nandhini Devi (P.W.5).

17. During the inquest itself, the appellant admitted that he was working as a cook under Nandhini Devi (P.W.5). Had the appellant been having illicit intimacy with Nandhini Devi (P.W.5), he would not have dared to publicly go with her in bicycle and attract the attention of her husband. Just because Murugesan (P.W.4) had seen Nandhini Devi (P.W.5) going with the appellant in bicycle, this Court cannot infer that the appellant was having an extra-marital affair with her. The appellant has discharged the burden under Section 113-A of the Indian Evidence



Act, 1872, by probabilising that his wife (deceased) could have committed suicide because they were childless even after four years of marriage. None of the witnesses has stated that the appellant had, at any time, physically abused or assaulted the deceased Shanmugapriya. Therefore, the evidence on record is insufficient to infer that the deceased Shanmugapriya was subjected to cruelty by the appellant and that the appellant was having an extra-marital affair with Nandhini Devi (P.W.5), which resulted in her (deceased) committing suicide.

18. In the result, this Criminal Appeal is allowed and the order of conviction and sentence dated 30.12.2015, passed by the District and Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode, in S.C.No.121 of 2015, is set aside. The appellant is acquitted of all the charges. Consequently, connected Miscellaneous Petition is closed. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond, if any executed, shall stand discharged.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.2,
Gobichettipalayam,
Erode Dist.
- 2.-do- Thro' The Chief Judicial Magistrate,
Erode.
3. The District and Sessions Judge,
Mahila Court (Mahila Fast Track Court),
Erode.
- 4.-do- Thro' the Principal Sessions Judge,
Erode.
5. The Deputy Superintendent of Police,
Gobichettipalayam,
Erode District.
6. The Superintendent,
Central Prison,
Coimbatore.



7.The Public Prosecutor,
High Court, Madras.

8.The Section Officer
Criminal Section
High Court, Madras 104.

+1cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.56391

Cr1.A.No.89 of 2016 and
Cr1.M.P.No.6001 of 2017

SKV (CO)

RRS (07/08/2019)