



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.260 of 2019

WEB COPY
Nagooran

... Appellant/
Defacto Complaint

Vs.

1.State rep. by
The Deputy Superintendent of Police,
Pattukkottai,
Thanjavur District.

...1st Respondent/
Complaint

2.Senthilkumar

3.Periyal

4.Saroja

... Respondents 2 to 4/ Accused

Prayer: Criminal Appeal is filed under Section 372 of Cr.P.C, to call for the records from the lower Court and set aside the judgment of the Appellate Court passed by the Additional Sessions Court (Fast Track Court No.I), Thanjavur in S.C.No.253 of 2009, dated 11.01.2010 by allowing this revision.

For Appellant : Mr.V.S.Badrinath

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R1

JUDGMENT

The appellant herein is the father of the deceased/Radhika. The said Radhika died unnaturally on 04.04.2009. Therefore the appellant herein filed Ex.P.1/complaint, leading to registration of Crime No.55 of 2009 on the file Vattathikottai Police Station. Investigation was undertaken and final report was filed and ultimately committed to Sessions Court in S.C.No.253 of 2009 and made over to the file of the learned Additional Sessions Court, (Fast Track Court No.I), Thanjavur.

2.The prosecution examined P.Ws.1 to 13 and marked Ex.Ps.1 to 14. M.Os.1 and 2 were also marked. On the side of the accused no evidence was adduced.



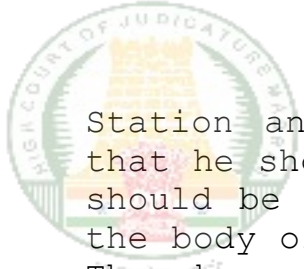
3. The learned Trial Judge by judgment dated 11.01.2010 acquitted the accused of all charges. Challenging the same, the defacto complainant has filed Cr.R.C.No.76 of 2010 was filed. Since the impugned judgment was delivered on 11.01.2019 that is after the cut of date, this Court converted the revision case into one of appeal and that is how the case was renumbered as CrI.A.(MD)No.260 of 2019.

4. Heard the learned counsel appearing for the appellant and the learned Government Advocate (CrI. Side) appearing for the first respondent and there is representation on the side of the respondents 2 to 4/accused.

5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of the appeal. He argued in the alternative that even if the charges under Sections 302 and 304(B) of I.P.C. could not be made out, the accused could have been found guilty of the lesser offence under Section 498(A) of I.P.C. and Section 4 of Dowry Prohibition Act. He drew the attention of this Court to the deposition given by P.Ws.1 to 3. He also contended that non-examination of Dr.Kittappa need not to have been given that much significance.

6. It is not in dispute that the first accused/Senthilkumar and the deceased Radhika fell in love and got married against the wishes of A2 and A3 namely., the parents of the Senthilkumar. The marriage between them took place on 25.03.2004. In fact A1/Senthilkumar and the deceased Radhika were residing in the house of the revision petitioner for a quite few years. It is true that as pointed by the learned counsel appearing for the appellant that the parents of Senthilkumar were not on talking terms. Later the situation changed. While so, the deceased/Radhika consumed rat potion. Radhika was found dead in the backyard of the appellant's house. The appellant is none other than her own father. The appellant's father alleged that A1 herein had beaten Radhika to death and thereafter left the body behind his house. P.W.1 was cross-examined. In the cross-examination, P.W.1 admitted that A1/Senthilkumar used to send money to his daughter/Radhika. In fact A1/Senthilkumar was employed abroad. In fact in the course of cross-examination suggestion was put that Radhika's bank account number was 9963 in Thiruchirampalam Union Bank. P.W.1 did not claim that he was taking care of his daughter. In fact P.W.1 admitted that A1/Senthilkumar funded P.W.1's son Sakthivel so that he can be sent abroad for employment.

<https://hcservices.ecourts.gov.in/hcservices/> 7. On a fateful day when the body of Radhika was found, P.W.1 had taken the body to Dr.Kittappa and he was informed that Radhika already died and they had gone to Vattathikooti Police



Station and left the body there. The police had told to P.W.1 that he should not keep the body in the police station and that it should be sent to the place where it was found. Only thereafter the body of Radhika brought back to the backyard of P.W.1's house. The charge against the accused was one of murder and dowry death. Section 304(B) of I.P.C. would be attracted only if it can be shown that the deceased was subjected to cruelty before her death. In this case, it has been brought out that P.W.1 was not a man having good means. He had admitted that it was A1/Senthilkumar who was not only taking care of his family but also helping financially the P.W.1's son to get employment abroad. A1/Senthilkumar was residing with P.W.1 for quite a few years after the marriage. This admission made by P.W.1 clearly falsifies the prosecution case of dowry death. Even P.W.3 examined on the side of the prosecution also admitted that A1/Senthilkumar and the deceased/Radhika did have cordial relationship.

8. The charges framed against the accused were under Sections 302 and 304(B) of I.P.C. There was no framing of charges under Section 498(A) of I.P.C. and Section 4 of Dowry Prohibition Act. The appellant had levelled very serious allegations against the accused. His case was that the accused murdered his daughter by hitting her to death and thereafter left her body in the backyard of his house. It however turned out that the deceased had consumed poison and that is how she died. Therefore it is obvious that the appellant had attempted to falsely implicate the accused. Now the appellant cannot be heard to contend that the accused and others face the music for a lesser offence. The accused had undergone the agony of a murder trial. They had been acquitted after thorough consideration of the evidence adduced by the prosecution. It would be unfair to make them undergo to the agony of a fresh trial even for a lesser charge. The judgment of the Trial Court is well reasoned and I find no ground to interfere and the Criminal Appeal stands dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)



To:

1. The Additional Sessions Judge,
(Fast Track Court No.I),
Thanjavur.

2. The Deputy Superintendent of Police,
Pattukkottai,
Thanjavur District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.K. SRINIVASAN, Advocate
(SR-8071[D] dated 21/06/2019)

TS(17.07.2019) 4P 6C

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17.06.2019