

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2020

PRONOUNCED ON : 19.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.36 of 2014

Ranganayagi ... Appellant/PW1

Vs.

1.Palanisamy
2.Chinnamani
3.Valli

... Respondents /Accused

4.The Inspector of Police,
All Women Police Station,
Udumalpet.
(Crime No.3 of 2003)

... Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 372 Cr.P.C against the judgment passed in C.C.No.78 of 2013 on the file of the Judicial Magistrate Court, Avinashi, dated 03.06.2013 and to set aside the same.

For Appellant : Mr.B.Gopalakrishnan

For Respondent: Mr.K.Thilageswaran
Nos.1 to 3

For Respondent: Mr.R.Ravichandran (Crl.side)
No.4 Government Advocate

JUDGMENT

The Criminal Appeal is directed against the judgment dated 03.06.2013, passed in C.C.No.78 of 2013, on the file of the Judicial Magistrate Court, Avinashi.

2.By way of the abovesaid judgment, the Judicial Magistrate, Avinashi, has held that the accused /respondents 1 to 3 had not committed the offences punishable under Sections 324 & 498-A IPC and acquitted them of the charges put forth against them by the 4th respondent.

3.The 4th respondent has laid the final report against the respondents 1 to 3 and the husband of the appellant viz., Muthukumarasamy for the offences punishable under Sections 324 & 498-A IPC

4. Briefly stated, according to the 4th respondent, the husband of the appellant, who had been arrayed as A1 in the final report and the respondents 1 & 2, who are the in-laws of the appellant and arrayed as A2 & A3 and the third respondent being the sister of the second respondent and arrayed as A4 and according to the 4th respondent, the marriage between A1 and the appellant took place in the year 1994 as per the Hindu Customs at Ramar temple, Vadakkukadu, Nagoor and at the time of marriage, 30 sovereigns of Gold and Rs.20,000/- cash was presented as sridhana by her parents and thereafter, the appellant and her husband lived as a joint family in Vadavalli Village, Palladam Taluk. Not content with the jewels and cash given as dowry, the appellant's husband and others subjected the appellant to cruelty and harassment by demanding dowry and on 26.07.2001 at about 8 hours, A1 & A2 assaulted the appellant by making unlawful demand of Rs.1,00,000/- and 20 sovereigns of Gold as dowry and drove out her from the matrimonial home and in that connection, the case had been lodged by the appellant in C.C.No.197 of 2001, which is pending trial and on 24.11.2002, A1 and the appellant had compromised and reunited and spent a peaceful life for about two months. On 23.01.2003 at about 7.00 hours, A1 along with A2 and A3 assaulted the appellant demanding her signature for divorce and A1 bite the appellant on the centre of her chest and A3 assaulted the appellant on her head using Arivalmanai and A2 & A4 caught her hands and legs and assaulted and thereby, the appellant's movements had been curtailed and the accused had caused multiple injuries on the appellant and thus, the accused A1 to A4 had committed the offences punishable under Sections 324 & 498-A IPC.

5. The abovesaid final report was taken on file by the Judicial Magistrate, Avinashi and after furnishing the copies of the documents to the accused, framed charges against them and the accused, on being questioned with reference to the same, had denied the charges put forth against them.

6. To sustain the charges levelled against the accused, PWs 1 to 13 were examined and Exs. P1 to 7 were marked and MO1 has been marked. After the conclusion of the prosecution evidence, the accused were examined under Section 313 Cr.P.C qua the incriminating evidence tendered against them by the prosecution witnesses and the accused had denied the same. On the side of the accused, no oral and documentary evidence has been adduced and no M.O has been marked.

7. From the materials placed on record, it is found that the case, as against the appellant's husband, had been split up and the case proceeded only against the respondents 1 to 3, who are arrayed as A2 to A4 and finally, the judicial Magistrate, Avinashi, had acquitted the respondents 1 to 3 of all the charges put forth against them. Impugning the same, the appeal has been preferred by the appellant.

8.The relationship between the parties is not in dispute. The main case of the appellant is that the accused A1 to A4 with a view to demand dowry from her, caused her cruelty and at one stage of the matter, drove out her from the matrimonial home and thereafter, on the lodgement of criminal case by the appellant, the appellant and her husband had reunited and lived peacefully for a short period and according to the appellant, on the date of occurrence i.e. 23.01.2003 at about 7.00 hours, the accused assaulted her demanding her signature for divorce and in the process, A1 bit her on the centre of her chest and A3 assaulted the appellant on her head using Arivalmanai and A2 and A4 had caught hold of her legs and thereby, her movements were restricted and sustained multiple injuries and thus, the accused had committed the offences put forth against them.

9.The complaint lodged by the appellant with reference to the occurrence has been marked as Ex.P1. However, as rightly found by the trial Court, considering the averments put forth by the appellant in the complaint and the evidence adduced by her in the Court as PW1, it is found that the appellant has given a different version of the occurrence, which is stated to have been taken place in her house on 23.01.2003. According to the appellant, as adduced by her during the course of her evidence, her husband and his parents had poured kerosene on her and attempted to set her ablaze and A1 caught hold of her hair and her husband had jumped on her chest and A2 threatened her to put her signature in the blank paper for divorce and the abovesaid occurrence had taken place after she and her husband had reunited as directed by the Court and the appellant had refused to put her signature in the blank paper and on hearing her shouts, the others rushed and took her to the police station and thereafter, she was taken to Palladam Government Hospital for treatment. Therefore, as held by the trial Court, the appellant, during the course of evidence, would only state that the accused had endeavoured to pour kerosene on her and set her ablaze and on the other hand, in the complaint Ex.P1, as abovestated, she would only state that the accused had forced her to put her signature for divorce and towards that end, A1 bit her on the centre of her chest and A3 assaulted the appellant on her head using Arivalmanai and A2 and A4 had caught hold on her legs and thereby, her movement was restricted and caused multiple injuries. However, when the above is not the case adduced by the appellant during the course of evidence and on the other hand, the appellant had given a different version of the occurrence, which is stated to have taken place on the date of occurrence viz., on 23.01.2003, in such view of the matter, the trial Court is found to have rightly not placed any reliance upon the evidence for sustaining the case projected by her.

10.Further, the appellant would also put forth that she had only lodged the complaint against the accused alleging

that they endeavoured to douse kerosene and set her body on fire, and if the abovesaid case of the appellant is true, as rightly contended, the case would have been registered by the police only on the said lines. However, considering the contents of the complaint Ex.P1 and the evidence adduced by the appellant during the course of trial, when they are found to be totally contradictory to each other as to the over acts committed by the accused as well as the nature of the acts committed by the accused, in such view of the matter, no interference is called for in the determination of the trial Court in disbelieving and discarding the evidence of the appellant.

11. According to the appellant, as deposed by her during the course of evidence, immediately on hearing her shouts, PW4 Annadurai and others rushed and took her to Udumalpet Police Station and thereafter, to Palladam Government Hospital. With reference to the case put forth by the appellant, as above pointed out, it is found that PW2 Thangavel, the appellant's father and PW6 Myilsamy, the appellant's paternal uncle are found to be only hearsay witnesses and they are found to have no direct knowledge about the occurrence, which had taken place on 23.01.2003 at the residence of the appellant. Therefore, the evidence of PWs 2 & 6 would not be useful to sustain the case of the version put forth by the appellant. PW3 Selvaraj would only state that about 10 years back, he noticed the appellant crying alleging that her husband had bitten her and thereafter, the appellant was taken to the Government Hospital by PW8 Palanisamy. As above pointed out in the complaint Ex.P1 and in the evidence, the appellant would state that it is only PW4 Annadurai, who had taken her to the hospital for treatment. However, according to PW3, PW8 Palanisamy took the appellant to the hospital and according to PW3, it is he, who had passed on the information to the respondent police. However, quite inconsistent to the abovesaid version of PW3, PW8 Palanisamy had disowned his case and stated that he had not taken the appellant to the hospital and according to PW8, he had only heard the shout at the residence of the accused and that apart, he has no knowledge about the occurrence. Therefore, it is found that both PWs 3 & PW8 had been deposing contradictory to each other as to who had taken the appellant to the hospital and the appellant herself had contradicted the version of PW3 and PW8 as to who had taken her to the hospital. According to the appellant, it is only PW4 Annadurai, who had taken her to the hospital. Accordingly, as rightly held by the trial Court, there are material contradiction in the evidence of PWs 3, 4 & 8 as well as the evidence of the appellant, in such view of the matter, when according to PW4, the appellant's husband had bitten her only on account of the family problems and not deposed anything about the demand of dowry by the accused from the appellant, therefore, when there is no clear and acceptable evidence on the side of the appellant as to the occurrence as projected in the complaint, in such view of the matter, the

trial Court is found to be justified in not relying upon the evidence of the prosecution witnesses to sustain the case projected by the appellant.

12. In addition to that, according to the appellant, after the incident, she had been taken to Palladam Government Hospital for treatment with regard to the injuries sustained by her in the incident. However, the medical officer, who had admitted her and provided treatment, has not been examined as he having been reported dead and PW13 Nazrudeen, medical officer has been examined and PW13 would admit that he does not know the cause of admission of the appellant in the hospital and that he had not provided any treatment to her. Further, he has also admitted that there is no smell of kerosene on the body of the appellant and according to him, one Myilsamy brought the appellant to the hospital for treatment and further, he has also deposed that three injuries were noted on the body of the appellant, which are possible by accidental fall. Further, he would state that the appellant had been brought to the hospital only at 7.15 p.m. and in the accident register Ex.P7, nothing had been whispered as to how the appellant had sustained injuries and further, he would state that in Ex.P7, the injuries stated to have been sustained on 23.01.2003. However, the accident register proceeds that the appellant had been admitted on 21.01.2003 and thereby, admitted that the appellant had been admitted in the hospital even prior to the sustainment of injuries and the factual aspects being above, as rightly held by the trial Court, no safe reliance could be attached to Ex.P7 accident register for concluding that the injuries noted on the body of the appellant would have occurred as claimed by the appellant by the assault inflicted upon her by the accused and furthermore, when the accident register also belies the case of the appellant as deposed by the appellant during the course of trial that the accused poured kerosene on her body and endeavoured to set her ablaze, in such view of the matter, as held by the trial Court, the accident register Ex.P7, belies the case of the appellant.

13. According to the appellant, as deposed by her, it is she, who had entrusted the Arivalmanai to the police at the hospital, while recording her statement, however, quite inconsistent to the abovesaid version of the appellant, the police would tender evidence that the Arivalmanai had been recovered from the residence of the appellant and the observation mahazar Ex.P12 and the rough sketch projected in the matter does not reflect the presence of Arivalmanai at the residence of the accused and in such view of the matter, the mahazar witness examined by the prosecution to sustain the recovery of Arivalmanai, MO1, is also found to be highly artificial and unbelievable and therefore, it is not clear as to whether MO1 is the Arivalmanai handed over by the appellant to the police or the Arivalmanai recovered by the police at the residence of the accused. With reference to the said

contradiction, no proper explanation has been offered by the prosecution. In addition to that, it is found that there is a delay of nearly 33 hours for the lodgement of the complaint by the appellant and that apart, her complaint had been recorded nearly 10 hours after her admission in the hospital and with reference to the abovesaid delay also, there is no proper explanation put forth by the appellant.

14. In the light of the abovesaid factors, when there are serious doubts, suspicions and improbabilities in the appellant's case and when with reference to the same, no proper explanation is offered by the prosecution, in such view of the matter, as held by the trial Court, the benefit of doubt emanating from the same should be extended in favour of the accused persons and accordingly, the trial Court is found to be justified in extending the same in favour of the accused persons and thereby, acquitted them of the charges put forth against them.

15. In the light of the abovesaid discussions, I do not find any reason to interfere with the determination of the trial Court acquitting the respondents 1 to 3 of the offences punishable under Sections 324 & 498-A IPC. Resultantly, the criminal appeal is dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms
To

1. The Inspector of Police, All Women Police Station, Udumalpet.
2. The Judicial Magistrate, Avinashi.
3. The Additional Public Prosecutor, High Court, Madras.

+1cc to Mr.S.Gunalan, Advocate, Sr.No.24346.

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RR(CO)
klt(21/05/2020)