
(2014) 06 MAD CK 0255
In the Madras High Court
Case No : Crl. R.C. (MD) No. 239 of 2012

Muniyasamy

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Evidence Act, 1872 — Section 32(1)

Penal Code, 1860 (IPC) — Section 306, 498[A], 498-A

Citation : (2014) 06 MAD CK 0255

Hon'ble Judges : P.N. Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.N. Prakash, J.—This criminal revision petition has been filed challenging the conviction of the revision petitioner for an offence u/s 498[A] IPC passed by the Courts below. The revision petitioner was sentenced to undergo one year Rigorous Imprisonment and pay a fine of Rs. 1,000/-, in default to undergo one month Simple Imprisonment, for the said offence.

2. It is the case of the prosecution that the revision petitioner/accused was married to one Dhanalakshmi [the deceased], who is the third daughter of Srinivasan [P.W. 1]. The couple were blessed with two girl children. On 23.06.2007 at around 10.30 in the night, Dhanalakshmi tried to self-immolate and the accused attempted to save her. Dhanalakshmi was admitted in the Government Hospital Ramanathapuram, where she was examined by Dr. Noorul Halwa [P.W. 6]. She was found to have suffered 80% burn injuries and the accused who had tried to save her also had 30% burn injuries. The Accident Registers are Exs. P3 and P4 relating to Dhanalakshmi and the accused respectively. The police was informed, that on 24.06.2007 at around 4.55 a.m. Mr. Thangavel [P.W. 9] Judicial Magistrate No. 1, Kamudhi, recorded the dying declaration of Dhanalakshmi in the hospital and the same was marked as Ex. P8. In the evidence of Mr. Thangavelu [P.W. 9], the Judicial Magistrate, he stated that

Dhanalakshmi told him that the accused would beat her suspecting her fidelity and unable to withstand his beatings, she poured kerosene and set fire to herself. Dhanalakshmi succumbed to injuries on 26.06.2007 and on 27.06.2007 Dr. Malaivasan [P.W. 7] and Dr. Jeevajothe [P.W. 8] performed autopsy on the body of Dhanalakshmi and the Postmortem certificate was marked as Ex. P5. They have opined that the death was due to burns. Since Dhanalakshmi had died within seven years of her marriage with the accused, the police informed the Revenue Divisional Officer and accordingly, Ms. Poongodi [P.W. 10], R.D.O. and the Executive Magistrate conducted inquest by examining several witnesses. The Inquest Report was marked as Ex. P9. In the opinion of the Executive Magistrate, there was no dowry harassment and that Dhanalakshmi had died because her husband suspected her fidelity and ill treated her. The police conducted further investigation and filed a final report for offences under Sections 306 and 498[A] IPC.

3. In the trial Court, 14 witnesses were examined, 15 Exhibits and 3 Material Objects were marked. When the accused was questioned about the incriminating circumstances, he denied the same. No witness was examined on behalf of the accused. The trial Court convicted the accused for the offences under Sections 306 and 498[A] IPC and sentenced him to undergo 5 years Rigorous Imprisonment and a fine of Rs. 2,000/-, in default to undergo one month Simple Imprisonment for the offence u/s 306 IPC; and one year Rigorous Imprisonment and fine of Rs. 1,000/-, in default to undergo one month Simple Imprisonment for the offence u/s 498[A] IPC. Aggrieved by the conviction and sentence passed by the trial Court, the accused have filed an appeal in CrI. A. No. 8 of 2011, which was heard by the Additional District and Sessions Court [Fast Track Court, Ramanathapuram]. The appellate Court completely disbelieved the dying declaration given by the deceased and acquitted the accused for the offence u/s 306 IPC. But relying upon the dying declaration, the first appellate Court confirmed the conviction and sentence for the offence u/s 498[A] IPC. Hence, this revision petition.

4. The learned counsel for the revision petitioner raised one singular point before this Court. He submitted that when the first appellate Court had completely disbelieved the dying declaration and had acquitted the accused for the offence u/s 306 IPC, it cannot rely upon the dying declaration to convict him for the offence u/s 498[A] IPC.

5. In order to satisfy my judicial conscience, I perused the records to find out if there was any evidence to establish the offence u/s 498[A] IPC. Srinivasan [P.W. 1] and Valliyammai [P.W. 2], the parents of Dhanalakshmi, turned hostile to the prosecution case and stated in the Court that their daughter was having a serious stomach ailment and she committed suicide unable to withstand the pain. One Duraipandi [P.W. 3], the neighbour of the deceased who was examined to speak about the relationship between the accused and the deceased also turned hostile to the prosecution case. Therefore, apart from the dying declaration,

there is no material to fasten criminal liability on the accused for the offence u/s 498[A] IPC. The dying declaration is relevant u/s 32(1) of the Evidence Act, the relevant portion of which is extracted below:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.--Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death.--When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

6. From a bare reading of this provision, it is clear that a dying declaration is relevant only when the cause of death is under enquiry. For an offence u/s 306 IPC, the dying declaration is relevant because the cause of death is under enquiry. Therefore, the trial Court was right in relying upon the dying declaration and convicting the accused for the offence u/s 306 IPC. The first appellate did not believe the dying declaration and had acquitted the accused for the offence u/s 306 IPC. The State has not chosen to file appeal against acquittal for the charge u/s 306 IPC. In this criminal revision petition, the enquiry is not in relation to the cause of death of Dhanalakshmi, but only whether the accused had inflicted cruelty on her as defined u/s 498[A] IPC. Therefore, I cannot use the dying declaration as a piece of evidence. As stated above, there is no other evidence against the accused to show that he had inflicted cruelty on Dhanalakshmi.

7. The Supreme Court in Kantilal Martaji Pandor Vs. State of Gujarat and Another, has very succinctly held as follows:

17. The question that we have, therefore, to decide is whether the Court could have arrived at this finding that the appellant had starved the deceased and committed various acts of mental cruelty towards the deceased only on the basis of the contents of the letter dated 26.3.1992 written by the deceased to the police station. The letter written by the deceased on 26.03.1992 could be relevant only u/s 32(1) of the Evidence Act, 1872, which provides that a statement, written or verbal, of relevant facts made by a person who is dead, is relevant when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. The High

Court in the present case has already held that the appellant was not guilty of abetting the suicide of the deceased and was, therefore, not guilty of the offence u/s 306 IPC. As the cause of the death of the deceased is no more in question in the present case, the statements made by the deceased in the letter dated 26.3.1992 to the police station cannot be taken to be proof of cruel acts committed by the appellant for the purpose of holding him guilty u/s 498-A IPC.

In the light of the authoritative pronouncement of the Supreme Court, the conviction and sentence imposed upon by the first appellate Court deserves to be set aside. The criminal revision case is allowed and the accused is acquitted.