
(2007) 04 MAD CK 0275
In the Madras High Court
Case No : Criminal R.C. No. 2123 of 2002

Muthumari

APPELLANT

Vs

Nagaraja and Raja and The Inspector of Police

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 209, 313
Penal Code, 1860 (IPC) — Section 304(B), 306, 498(A)

Citation : (2007) 2 DMC 574

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; S. Suresh and V.R. Balasubramanian and Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.C. Arumugaperumal Adityan, J.—This revision has been preferred against the judgment in S.C. No. 16 of 2001 on the file of the Principal Assistant Sessions Judge, Coimbatore, dated 30.10.2001. The accused has been charged u/s 304(B), 306 & 498(A) IPC.

2. The short facts of the prosecution case relevant for the purpose of deciding this revision are as follows:

The deceased Kokila was given in marriage on 19.3.1999 to the accused. At the time of marriage the parents of the deceased had presented 12 sovereigns of gold ornaments besides a gold chain weighing 6 grams and other utensils. On 24.1.2000 under the influence of liquor the accused had bet Kokila insisting her to bring Rs. 2,00,000/- from her parents' house. On 24.1.2000 the accused had compelled his wife Kokila to consume a cowdung solution. Afraid of his torture Kokila has consumed the said solution which resulted in her death on 25.1.2000 at about 1.10 am at Coimbatore Medical College Hospital. Hence, the accused has been charged u/s 498(A), 304(B) and 306 IPC.

3. The case was taken on file by the Judicial Magistrate No. V, Coimbatore in P.R.C. No. 32 of 2000. The learned Judicial Magistrate has furnished copies to the accused u/s 207 of Cr. P.C., on appearance of the accused on summons. Since the case is liable to be tried by a Court of Sessions, the learned Judicial Magistrate has committed the case to the Court of Sessions u/s 209 of Cr.P.C. The learned Sessions Judge after going through the records placed before him had framed charges against the accused u/s 498(A), 304(B) and 306 IPC and when questioned the accused pleaded not guilty. On the side of the prosecution P.W. 1 to P.W. 14 were examined and Ex. P. 1 to Ex.P.14 were exhibited.

4. P.W. 1 is the father of the deceased Kokila. According to P.W. 1, the marriage between the deceased Kokila and the accused, who is none other than the brother-in-law of P.W. 1, took place on 19.3.1999 at Ashok Nagar and at the time of marriage, he had presented 12 sovereigns of gold ornaments to Kokila and also presented a gold chain weighing 6 grams to his son-in-law, who is also the brother of his (P.W. 1) wife and after the marriage they lived happily for some time and on one occasion Kokila had seen the accused, talking to one Selvi by touching her body, which was objected to by his daughter Kokila, which was repudiated by the accused by saying that he has spent Rs. 2,50,000/- for their marriage and it is to be borne out only by the parents of Kokila and had asked Kokila to go to her parents' house and bring the said sum of Rs. 2,50,000/-. On that score the accused had driven Kokila out of her matrimonial home, which made her to take asylum in her parents' house and the matter was taken to panchayat. The panchayators have advised to change the house of the accused and accordingly the accused has shifted his residence to Ramakrishnapuram. P.W. 1 would further depose that he later heard that the said Selvi used to visit the house of the accused at Ramakrishnapuram too and two months before the occurrence the accused is said to have abetted the deceased to consume poison and to put an end to her life. Fearing some untoward things may happen due to the act of her husband/accused, Kokila left the matrimonial home once again and began to reside in her parents' house for nearly 1 : months. Some 10 days prior to the occurrence the accused has sent word for him (P.W. 1) and his wife and asked to reunite them. Since the accused was not amenable to take back his wife, he informed his co-brother Balakrishnan and his wife Jothi, who came to their house on the first day of Thai to whom Kokila had revealed what had happened in her house and another panchayat was held in the presence of P.W. 1's brother Rajendran and one Gurusamy and in the panchayat the accused had given an undertaking that he will see that the said Selvi will not visit thereafter to her house. On 24.1.2000 at about 7.00 pm his (P.W. 1) wife and his another daughter Parasakthi went to Ramakrishnapuram to see the mother of the accused, who had sustained a fracture on her hand due to a fall. An hour later his wife and daughter Parasakthi returned to the house in an auto with his another daughter Kokila and his wife was screaming and informed him that the husband of Kokila had asked Kokila to consume cowdung solution and accordingly she had also consumed the same and that she is in a precarious

condition and she must be given proper treatment in a hospital. So immediately, he (P.W. 1) took her to a private hospital from where his daughter Kokila was referred to Government Hospital, since her condition was very serious and accordingly he took Kokila to Government general hospital, Coimbatore, but without responding to the treatment she died within one hour of admission. Ex. P. 1 is the complaint preferred by P.W. 1.

5. P.W. 2 is the wife of P.W. 1, who would corroborate the evidence of P.W. 1. She would depose that when she went to the accused's house to see his mother who had sustained a fracture on her right hand due to a fall, her daughter Kokila was found lying on the bed and she was seen very weak and had also vomited yellow colour substance. On her enquiry Kokila had informed her that her husband purchased cowdung powder and asked her to consume the same and to commit suicide before he returns from cinema, otherwise she will be beaten to death and that due to this threat Kokila got afraid and consumed the cowdung solution and washed the glass used for consuming the said cowdung solution and that immediately she (P.W. 2) took her Kokila to her house in an auto and informed the same to her husband P.W. 1 and took Kokila to a private hospital by name Maruthi Hospital and as per the advice of the doctor in Maruthi hospital, Kokila was taken to Government Hospital at Coimbatore and within a short while Kokila breathed her last.

6. P.W. 1 is the Sub-Inspector of Police, B8 Verity Hall Police Station at the time of occurrence. He deposed that while he was on duty on 24.1.2000 at about 2.00 am he received death intimation from CMC Hospital and immediately rushed to the hospital where P.W. 1 had preferred a complaint at about 3.00 am and returned to the police station and registered a case under Cr. No. 22 of 2000 u/s 498(A), 306 & 304(B) IPC. Ex. P. 9 is the FIR. Ex. P. 10 is the death intimation. Since the deceased had died within 10 months from the date of her marriage he (P.W. 11) passed on the information to RDO along with the copy of the FIR with a request to conduct inquest. He has forwarded the express FIR to concerned officials including the Judicial Magistrate.

7. P.W. 12 is the RDO, who had conducted the inquest in this case. P.W. 12 after receiving the express FIR proceeded to the Coimbatore Medical College Hospital at about 11.00 am on 25.1.2000 and he had conducted inquest in the presence of the witnesses on the dead body of Kokila. P.W. 12 in his enquiry came to know that Kokila died not due to dowry harassment but only due to cruelty met at the hands of her husband Nagarajan. Ex. P. 11 is the inquest report of RDO.

8. P.W. 13 is the Investigation Officer, who had conducted investigation in this case. On the receipt of the express FIR, P.W. 13 proceeded to the place of occurrence and prepared Ex.P.2-observation mahazar in the presence of P.W. 6. He had drawn a rough sketch Ex. P. 12. He has examined the witnesses and recorded their statements. The inquest was conducted by RDO. P.W. 13 had given requisition to the Doctor for conducting autopsy on the corpse of Kokila and handed over the case record to his successor. Ex. P. 13 is the inquest report

of RDO.

9. P.W. 3 is a panchayator. He speaks about the misunderstanding which was prevailing between the deceased Kokila and her husband and that within 10 months from the date of marriage the accused had cruelly treated Kokila 6 or 7 times and he used to consume liquor and bet her and had also compelled her to sign in blank papers in order to give her consent for the second marriage of the accused with one Selvi and that after hearing the incident that Kokila had consumed cowdung solution, he (P.W. 3) has also went to the private hospital at about 11"O clock on 24.1.2000. But at that time there was no one in the Maruthi hospital, and he was informed that Kokila was referred to government hospital since her condition was serious. He also proceeded to the government hospital where he saw Kokila being treated by the doctor but without responding to the treatment she died within one hour.

10. P.W. 4 would depose that on 24.1.2000 at about 8.00 pm Kokila"s sister and mother brought Kokila from inside the house of the accused and took her in an auto and that he came to know that on the previous night Kokila had consumed cowdung solution.

11. P.W. 5 would speak that very often he had noticed quarrel between Kokila and her husband in connection with the affair the accused had with one Selvi and he would also say that on 24.1.2000 he was informed that Kokila had consumed cowdung solution and she was admitted in a private hospital in a precarious condition and later she was referred to government hospital where she breathed her last without responding to the treatment.

12. P.W. 7 is the doctor who is conducting the private hospital by name Maruthi Hospital, where Kokila was admitted on 25.1.2000 early morning at 000.30 hours. P.W. 7 would depose that the said Kokila aged about 18 years, was brought to his hospital by her father Muthumari and at the time of examination Kokila had informed him that she had consumed cowdung solution on 24.1.2000 at about 8.30 pm, but she was found conscious and since she had developed fits, he (P.W. 7) immediately referred her to emergency ward where stomach wash was given to her and thereafter referred Kokila to government hospital. Ex.P.3 is the admission slip. He has also sent intimation Ex.P.4 to the police.

13. P.W. 8 is the Doctor, who had treated Kokila at the government hospital. P.W. 8 would depose that at the time of admission Kokila was in a serious condition and there was no movement seen in the retina of the eyes and that she died at about 1.10 am and he had sent the death intimation to the police station.

14. P.W. 9 is the Doctor, who had conducted autopsy on the corpse of Kokila on the basis of Ex. P. 5 requisition made by RDO. He would speak that the specimens of internal organs of Kokila were sent to Forensic Science Laboratory for chemical examination and from the report received from the Forensic Science Laboratory he came to know that a poisonous substance by name Aromine was found in the internal organs of the deceased. He has opined that the deceased

would have died due to consumption of aroamine poison. Ex. P. 6 is the post-mortem certificate. Ex. P. 7 is his final report.

15. P.W. 10 is the medical officer in Maruthi private hospital where Kokila was brought on 24.1.2000 at about 9.30 pm. He would depose that he gave stomach wash to the patient Kokila who was in semi conscious condition. Ex. P. 8 (series) are the case sheets relating to Kokila.

16. P.W. 14 is the successor of P.W. 13, who has continued his investigation in this case and recorded the statement of about 23 witnesses and after completion of investigation, filed the charge sheet against the accused on 25.4.2000.

17. When incriminating circumstances were put to the accused u/s 313 of Cr. P.C., the accused denied his complicity with the crime. The accused has examined himself as D.W.1. No documentary evidence was exhibited on the side of the defence. After going through the oral and documentary evidence available before him, the learned trial judge has acquitted the accused on the ground that the prosecution has failed to bring home the guilt of the accused beyond any reasonable doubt. Even though the State had not preferred any appeal over the findings of the learned Sessions Judge, the father of the deceased Kokila has preferred this revision.

18. Now the point for determination in this revision is whether there is any prima facie case made out against the accused to interfere with the findings of the learned Sessions Judge?

19. The Point:- The learned Counsel Thiru. R. Sankarasubbu appearing for the revision petitioner would mainly rely on the evidence of P.W. 1 and P.W. 2 and contended that soon after Kokila had consumed the cowdung solution, according to the prosecution, she had informed her mother P.W. 2 that only at the instance of her husband-accused herein who had prepared the drink she consumed and vomited. The learned Counsel for the revision petitioner would focused the attention of this Court to the evidence given by P.W. 2 in this case. P.W. 2 in categorical terms has deposed before the trial Court that Kokila had informed her (P.W. 2) that the accused had prepared cowdung powder solution and informed her that it is a cowdung powder solution and before he returns from cinema, she must consume and die otherwise she will be beaten to death and that afraid of him she consumed the said solution after her husband left for cinema and washed the glass also and that she had vomited some yellow colour substances and hence she (P.W. 2) took Kokila to her house. The learned Counsel for the revision petitioner relying on the particular portion of the deposition of P.W. 2 contended that this will amount to dying declaration and the findings of the learned Session judge that there is no case made out warrants interference, and there are sufficient materials to warrant conviction u/s 306 IPC available, and in support of his contention, the learned Counsel for the revision petitioner relied on the ratio reported in 2006 (2) SCC (Cri.) 331 Ghanashyam Das v. State of Assam. The exact observation of the Honourable Apex Court relevant for the

purpose of this case is as follows:

The informant Rabin Das, who is examined as PW 4 came out of the house of one Bhabani Sarma with the deceased on the night of 7.7.1990 at about 9 pm and they were proceeding to their respective houses in two different directions, the deceased by a bicycle and PW 4 on foot. A short while thereafter, PW 4 heard the screams of the deceased. Then PW 4 rushed back to the spot and found Gobinda Das lying in an injured condition. By the time he was taken to the hospital, he was declared dead. PW 4 had the FIR (Ext. 1) lodged in the police station at Chaygaon on the same night in the FIR it is mentioned by PW 4 that:

When asked who has assaulted him, Gobinda Das said "Ghanashyam" and became unconscious and some time thereafter, the residents of the village came to the place of occurrence

...The most incriminating evidence in this case is the dying declaration made by the deceased to PW 4. After uttering the words that Ghanashyam "cut him" the victim became unconscious. It may be recalled that PW 4 was with the deceased till they parted company to go to their respective houses and within a few minutes thereafter, the incident had happened. There is absolutely no reason why PW 4 would come forward to give a false version to implicate the accused. The oral dying declaration made to PW 4 was believed by the trial court as well as by the High Court. In the FIR lodged without delay, the oral dying declaration was specifically mentioned.

So the evidence of P.W. 2 in this case will amount to an oral dying declaration of the deceased Kokila. P.W. 2 is none other than the own sister of the accused. There is no motive attributed against P.W. 2 to falsely implicate her own brother in the crime. Further the evidence of P.W. 2 has been strengthened by the report of RDO-P.W. 12 who had stated in his evidence that in his enquiry it was brought to light that only due to the cruelty received at the hands of the accused the deceased committed suicide even though she did not commit suicide due to dowry harassment. From the medical evidence it is seen that poisonous substance like aromine was found in the internal organs of the deceased. It can be inferred from the evidence of P.W. 2 that the solution which was consumed by the deceased was prepared and handed over by the accused. Under such circumstances, I am of the view that even though the offence u/s 304(B) is not attracted against the accused the offences u/s 498(A) & 306 IPC have been attracted. So, under such circumstances, this Court is necessarily has to interfere with the findings of the learned trial judge, which in my opinion is perverse in nature. Point is answered accordingly.

20. In the result, the revision is allowed and the judgment of the trial Court in S.C. No. 16 of 2001 on the file of the Principal Assistant Sessions Judge, Coimbatore, is set aside and the case is remanded to the trial court for consideration afresh. The trial Court is directed to reappraise the evidence already on record and to give a fresh finding in accordance with law. The trial

Court need not be carried away with the observation made by this Court in this revision.