
(2011) 11 MAD CK 0327
In the Madras High Court
Case No : Criminal R.C. No.1034 of 2009

Ramesh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 304(B), 498(A)

Citation : (2011) 11 MAD CK 0327

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : P. Ezhil Nilavan, for the Appellant; A.N. Thambi Durai Addl.Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice C.T. Selvam

1. This revision arises against two concurrent judgment of courts below convicting the petitioner for offences u/s 304(B), 498(A) and Section 4 of D.P. Act.

2. The prosecution case was that the petitioner/accused is a resident of Moramadugu village in Krishnagiri district. The petitioner and the deceased were married 4 years prior to the death of the deceased. After the marriage, the couple were initially at Bangalore and thereafter they settled at Moramadugu village. A dispute arose between the deceased and the petitioner as he had pledged her gold jewels. In the course thereof, the petitioner on several occasions demanded monies from the deceased and subjected her to cruelty with such wrongful intent. Petitioner caused hurt and intimidated the deceased by beating the deceased with a stick on her head and stating that nobody could question him in circumstance where when she could not bring money. He asked her to run away from the house before he came back as otherwise, he would

murder her. Immediately, thereafter the deceased poured kerosene over her body set herself on fire. She died at the Government hospital Krishnagiri at about 7.10 a.m on 10.09.2004. Petitioner was charged u/s 498(A), 304(B) of I.P.C and Section 4 of Dowry Prevention Act.

3. Before the Trial Court prosecution examined 17 witnesses marked 18 Exhibits and one material object.

4. Under judgment in S.C.No.134 of 2006 on the file of Assistant Sessions Court, (Principal Sub court), Krishnagiri dated 18.07.2007, the trial court on appreciation of evidence, convicted the petitioner and sentenced him to undergo 5 years rigorous imprisonment for offence u/s 304(B) I.P.C, one year simple imprisonment for offence u/section 498(A) and 3 months simple imprisonment and fine Rs.500/-in default two months simple imprisonment for offence u/section 4 of the D.P. Act. There against the petitioner preferred appeal in C.A.No.94 of 2007 which came to be dismissed under judgment of the Additional District and Sessions Judge, Krishnagiri dated 16.10.2008. There against this revision.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

6. Learned counsel for the petitioner submits that the courts below have taken a totally erroneous approach in appreciation of evidence and they have ignored that which is directly in favour of the petitioner and which would show that no offence as alleged stands made out. P.W.7-Doctor, who examined the deceased at her admission to the Krishnagiri Government hospital on 02.09.2004, has deposed that the deceased informed of having set herself on fire by pouring kerosene, owing to stomachache. On intimation from hospital statement u/section 164 Cr.P.C was recorded by the Judicial Magistrate-P.W.15. While the deceased was admitted in hospital at 4.00 p.m on 02.09.2004 her 164 Cr.P.C statement had been recorded at 5.00 p.m. The same disclosed that there was a dispute between the deceased and petitioner/husband regarding his visiting the house of another women, that he had slapped her and that owing to fear and anguish that the petitioner may chase her out of the house she had attempted self immolation. It is only in Ex.P.11 a statement recorded from her by P.W.13 Head Constable at 6.30 p.m on 03.09.2004 at the hospital the allegation of the petitioner having scolded the deceased and beaten her with a wooden log for not having the capacity to bring money is found. Even such statement reflects the dispute over the petitioner visiting another lady and that she had attempted suicide out of anguish over the fact that on the one hand the petitioner had asked her to go away informing that he would murder her and on the other that it would be difficult for her to be in parental home.

7. Learned counsel would state that the narration in Ex.P.11 recorded by P.W.13 Head Constable relating to mentioning of money and beating with a wooden log are embellishments provided by the police agency and the truthful position is

found in the earlier statements recorded. The attester to Ex.P.11 Doctor has not been examined. Though wooden log allegedly recovered has been put up as M.O.1. Two attesters to the recovery mahazar have not been examined except for the interested testimony of P.W.1 and mother of the deceased, since they have spoken in favour of the prosecution case. P.W.2 father of the deceased, P.W.3 uncle of the deceased, P.W.4 sister of the accused and P.W.8 a neighbour have all turned hostile to the prosecution case.

8. Learned counsel would state that the narration in Ex.P.11 recorded by P.W.13 Head Constable informing of the petitioner having beat the deceased owing to her not having brought money is a mere embellishment provided by the police agency and the true position is found in the statements earlier recorded. FIR has been registered pursuant to Ex.P.11. According to the prosecution, Ex.P.11 was recorded in the presence of the duty Medical Officer. The said Doctor has not been examined in court. Though a wooden log allegedly recovered has been put up as M.O.1 the two attesters to the recovery mahazaar have not been examined. Except for the interested testimony P.W.1 mother of the deceased, none have spoken in favour of the prosecution. P.W.2,3 and 4 father and uncle of the deceased and sister of the accused and P.W.8 neighbour all have turned hostile. According to the learned counsel, in the circumstances, the petitioner ought to have been acquitted.

9. Learned Additional Public Prosecutor submitted that the courts below have entered a finding of conviction on the basis of the evidence on record. Such findings are not to be easily interfered with. He would point out that the sentencing of the petitioner to five years rigorous imprisonment for offence u/ section 304(B) I.P.C is erroneous as the minimum punishment for such offence is seven years.

10. On consideration of the rival submissions, this court is of the view that the conviction of the petitioner would have to be set aside. As rightly contested by the counsel for the petitioner excepting for the mother of the deceased, the other immediate relations viz., P.W.2 father, P.W.3 uncle of the deceased have not supported the prosecution case. So also P.W.4 sister of the accused and P.W.8 a neighbour have also not supported the prosecution case. The recovery of M.O.1, the wooden log becomes doubtful in the absence of examination of the attesters to the recovery mahazar. Of more importance is the fact that Ex.P.11 alleged statement for the deceased recorded by P.W.13 Head constable, which forms the basis of the FIR is itself rendered doubtful. Though the same was attested by a Doctor, such Doctor has not been examined. It is only therein that allegations of ill-treatment owing to non-fulfillment of demand for money and of beating the deceased with wooden log is found. On admission into hospital the deceased had informed of having attempted suicide owing to stomachache. In the 164 Cr.P.C statement recorded by P.W.15, Judicial Magistrate, the deceased spoke to relationship between the accused and another lady, of his having slapped her and on her having attempted self immolation owing to fear and anguish that the

petitioner may chase her out of the house. This court would hold that the prosecution has put up a false case not only owing to the variance between Ex.P.11 and the earlier statements but also from the fact that the medical officer who attested Ex.P.11, had not been examined, that the recovery of M.O.1 wooden log is doubtful and a perusal of the post mortem certificate informs the injury to the head of the deceased to be a mere laceration 2X2 cms.

11. Accordingly, the Criminal Revision Case stands allowed. The conviction and sentence passed by both the Courts below, are set aside. The petitioner/accused is acquitted of the charges. The bail bond executed by the petitioner/accused shall stand cancelled. The fine amount, if paid, shall be refunded to the petitioner/accused.