
(1998) 10 MAD CK 0027

In the Madras High Court

Case No : Criminal Appeal No. 1 of 1992 and Criminal Revision Case No. 485 of 1993

Ravi Shah and Another etc.

APPELLANT

Vs

State and etc.

RESPONDENT

Date of Decision : 07-10-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313

Evidence Act, 1872 — Section 103, 105, 106

Penal Code, 1860 (IPC) — Section 302, 304, 304(B), 306, 34

Citation : (1999) CriLJ 188

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : S. Ramasamy and B.K. Singh, in Cri. R.C. No. 485/93, for the Appellant; C.M. Gunasekaran, Government Advocate, for the Respondent

Judgement

M.K. Arpagavinayagam, J.—These appeal and revision are being disposed of by this common judgment, as both arise out of a single case

and the parties are the same.

2. Ravi Shah and Narayan Shah (A1 and A2) were convicted in S.C. No. 164 of 1990 on the file of 5th Additional Sessions Judge, Madras, for

the offence u/s 498(a) r/w Section 34, I.P.C. and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- each.

Hence, the present appeal in C.A. No. 1 of 1992.

3. Though the said appellants were convicted u/s 498(a) read with Section 34, I.P.C. they were acquitted in respect of the offence u/s 302 read

with Section 34, I.P.C. in the same trial in S.C. No. 164 of 1990 on the file of 5th Additional Sessions Judge, Madras. Hence, the present revision

in Cri. R.C. No. 485 of 1993 as against the said acquittal, by Ramchandra Shah,

the petitioner, who was examined as P.W. 4 in the trial, the father of the victim in this case.

4. The facts leading to the filing of the above appeal and revision could be, summarised as follows :-

(a) Ravi Shah (A 1) is the son of Narayan Shah (A2) and Ganga Bai (A3). On 22-1-1986 there was Betrothal between A1 and deceased Shanthi

Bai, the daughter of P.W. 4. As regards, P.W. 4 gave jewels of 12 sovereigns and Rs. 12,000/- as dowry. The marriage was performed on 4-9-

1987. On that day, as demanded by A2, the father of A1, P.W. 4 gave Rs. 1,200/- for the purchase of a marriage cot. P.W. 10 is another

daughter of P.W. 4. P.W. 8 is the cousin of P.W. 4. P.W. 1 is the friend of P.W. 4. P.Ws. 1 and 4 are working in the same concern. P.W. 13

belongs to the same caste to which P.W. 4 and the accused belong and he is the Secretary of the Caste Association,

(b) After marriage, the victim Shanthi Bai was not sent back to the parents' house in order to attend the milk drinking ceremony. P.W. 4, the father

went several times to the house of the accused and requested A2 to send her along with bridegroom. From the beginning A2 used to insult P.W. 4.

Hence, P.W. 4 complained about the attitude of A2 to P.W. 13 and presented a requisition asking P.W. 13 to intervene in the matter and settle

the dispute. Accordingly, P.W. 13 pacified both the parties and arranged to send the accused, family along with the victim to the house of P.W. 4.

In pursuance of the effort of P.W. 13 a feast was arranged in the house of P.W. 4 and all. participated.

(c) After some months, P.W. 4 visited the house of A2 to see his daughter. At that time, he found the victim applying balm on the bare body, of

A2. The victim also told P.W. 4 and her mother that she was unwillingly doing the same, since she was compelled to massage the body of A2 on

so many occasions, even during night hours. She also informed this to A1, who in turn asked her to act according to the wish of A2. Some times

A2 used to scold the victim and threatened that he would arrange for the second marriage for his son. A1 and employ the victim as their servant-

maid.

(d) On the eve of Deepavali, P.W. 4 along with the relatives sent to the house of A2 by taking sweets and other things for the purpose of inviting

the new couple to his house for first Deepavali. (Vernacular matter in omitted.)
When the victim Shanthi Bai did not talk to P.W. 4 freely, P.W. 4

questioned her as to why she was not joining with them in a happy mood. At that point of time, A2 intervened and asked P.W. 4 and others not to

talk to victim any more, as she became his daughter-in-law. There was a wordy quarrel at that time. A1 intervened and scolded P.W. 4 in a filthy

language in the presence of the victim and asked them to go out. Consequently, P.W. 4 and others had to go out of the house. Ultimately, the

bridegroom and bride did not come to the house of P.W. 4 for celebrating first Deepavali festival.

(e) P.W. 4 came to know that the victim became pregnant. After some months, P.W. 4 visited the house of A2 and requested to send her to his

house to perform "Seemantham." A2 demanded Rs. 10,000/- and told that only if the said amount is given, he would send the victim to his house.

Since P.W. 4 was not able to give the money, despite the request of P.W. 4, the victim was not sent to the house of P.W. 4 for the purpose of

Seemantham"" function.

(f) On 9-12-1988 P.W. 4 was informed that Shanthi Bai gave birth to a male child in Sheeba Nursing Home. Thereupon, P.W. 4, P.W. 9 and

P.W. 10 and other relatives went to see the child at the Nursing Home. They were not allowed to see the child by A2, since P.W. 4 did not give

the amount of Rs. 10,000/-. Thereafter, the deceased wrote letters Exs. P5 and P6 to P.W. 4 stating that she was not happy in the house of the

accused.

(g) Some time later, as requested by P.W. 4, P.W. 1, the friend of P.W. 4, went to the house of A2, in order to see the victim. When he visited

the house, he found the victim was not happy and in dejected mood. Even in his presence, the victim was insulted by A1 and A2.

(h) On 13-9-1989 at about 8.15 a.m. P.W. 4 received information that the victim was admitted in the General Hospital and few hours later, she

died in the hospital. At 11.00 a.m. A 1 himself went to Chinthathiripet Police Station and gave a complaint to P.W. 15, Sub-Inspector of Police,

stating that his wife, the deceased was suffering from heart ailment and since she became fainted when she was pumping waterpipe she was taken

to hospital where she died. This complaint Ex. P14 was registered u/s 174 of Cr.

P.C. and the F.I.R. is Ex. P II.

(i) P.W.2 Tahsildar conducted investigation, examined witnesses and sent a report Ex. P 12 to P.W. 5, the then P. A. to the District Collector. On

his request through Ex P1, P.W. 2 Doctor conducted postmortem. Ex. P2 is the postmortem report, Ex. P4 is the Chemical Analyst's report and

Ex. P3 is the final opinion given by the Doctor stating that the deceased died due to consumption of poison.

(j) After investigation, on 21-9-1989 the case was altered into one u/s 304(b), I.P.C. On 19-4-1990 the charge-sheet was filed by P.W. 17,

Assistant Commissioner of Police as against A1 to A3 for the said offence. However, the charges were framed by the trial Court against A1 to A3

for the offence u/s 498(a) read with Section 34, I.P.C. and Section 302 read with Section 34, I.P.C.

(k) During the course of trial, P.W. 1 to P.W. 17 were examined, Exs. P1 to P17 were filed and M.Os. 1 and 2 were marked on the side of

prosecution. On the side of defence, Ex. DI was marked. When the accused were questioned u/s 313, Cr. P.C., they pleaded not guilty.

(l) On perusal of the evidence on record; the trial Court found A1 and A2 guilty for the offence u/s 498(a), I.P.C. and acquitted A3. It further

concluded that A1 to A3 were not guilty for the offence u/s 302 read with Section 34, I.P.C.

(m) As indicated earlier, as against the conviction as well as the acquittal, the present appeal and revision have been filed before this Court.

5. Mr. B. K. Singh, the counsel for the petitioner in the revision, as against the acquittal would contend that the trial Court ought to have convicted

the accused 1 to 3 for the offence u/s 302 read with Section 34, I.P.C., as there are materials to establish the said charge and that the decisions in

Bhupinder Singh Vs. State of Punjab, , Subedar Tewari Vs. State of U.P. and Others, , Shunmugasundaram Vs. State by Deputy Superintendent

of Police, Erode Town, , Shyam Sunder v. State 1997 Cri LJ 35 , Duvasi Ramulu Vs. State of Andhra Pradesh, ; State of Punjab Vs. Baldev

Singh alias Bagga, : State of Andhra Pradesh Vs. Gangula Satya Murthy, ; Godabarish Mishra Vs. Kuntala Mishra and Another, have not been

followed by the trial Court, while appreciating the materials available on record.

6. According to the learned counsel for the petitioner, under Sections 103, 105

and 106 of the Evidence Act, the evidential burden shifts on the accused to establish that they have not committed the murder, especially when the victim was found to have died due to poison while she was staying in the house of accused and that therefore, the possibility of the accused administering poison into the mouth of the deceased could not be ruled out.

7. However, on going through the entire materials produced by the prosecution, I am of the view that the submission made by the learned counsel for the petitioner would not impress me, as the facts of this case are entirely different from the facts of the cases decided in the decisions cited *supra*.

8. In the instant case, the victim was taken to (ho hospital by the accused himself, first to P.W. 3, the Doctor at a private Nursing Home at Chinthahiripet and thereafter, to General Hospital. Since she was declared dead at the General Hospital, Al himself went to the police station and gave a complaint to P.W. 15, the Sub-Inspector of Police at about 11.00 a.m. reported about the death of the deceased.

9. While interpreting Sections 103, 105 and 106 of the Evidence Act, the various High Courts as well as the Apex Court in the citations referred to above, would hold that the accused persons absconded from the place of occurrence and that therefore, the conduct was taken as one of the circumstances to draw the inference that they were the parties for the commission of the crime, in the context of non-explanation of their conduct.

10. The said circumstance is not available in this case. In fact, as indicated earlier, the accused only took the victim to the hospital and after her death, he gave a complaint to the police suspecting that the death must have been due to heart ailment. If actually, the poison was administered by the accused, the victim would not have been taken to the hospital nor would the accused have given any such complaint to the police. In such circumstance, I am not able to agree with the contention urged by the learned counsel for the petitioner that there are materials for the offence u/s

302 read with Section 34, I.P.C.

11. The trial Court would also come to the Conclusion that there is no direct evidence for the offence u/s 302 read with Section 34, I.P.C.

However, by quoting several instances, it would hold that the offence u/s 498(A),

I.P.C. is made out, as there are materials to show that the victim was constantly subjected to the ill-treatment and cruelty at the hands of A1 and A2.

12. It was submitted before the trial Court on the side of prosecution that though there are no direct materials for convicting the accused for the offence u/s 302 read with Section 34, I.P.C., there are sufficient materials to convict A1 and A2 at least for the offence u/s 304(B), I.P.C. This submission was turned down by the trial Court mainly on the ground that the materials available on record would only show the ill-treatment and there is no material to show that the said ill-treatment could be termed to be a dowry torture and that mere cruelty or torture in the absence of dowry demand would not attract Section 304(b), I.P.C.

13. Mr. Ramasamy, the counsel for the appellants in C.A. No. 1 of 1992 challenging the conviction u/s 498(a), I.P.C., would submit that the evidence on record would not prove even the offence u/s 498(a), I.P.C.

14. In this context, though appeal has not been filed by the State as against acquittal in respect of charge of murder the Government Advocate was asked as to his assessment of law and factual aspects in this case. He would fairly submit that there are no materials to show that the accused were liable to be convicted for the offence u/s 302 read with Section 34, I.P.C., but certainly there are materials to show that A1 and A2 committed the offence u/s 304(b), I.P.C.

15. In the light of the submissions made by the counsel for the parties, let me now discuss the evidence available on record.

16. The following circumstances have been brought out by the prosecution to show that the victim was subjected to cruelty on various occasions till her death :-

(i) Though the Betrothal was held on 22-1- 1986, the marriage was performed only on 4-9- 1987. According to P.W. 1, during this period A2 was not agreeable for the early marriage, since originally A2 demanded 16 sovereigns for which P.W. 4 agreed for 12 sovereigns. On the date of marriage, an amount of Rs. 12,000/- and 12 sovereigns were given. Since A2 demanded the money of Rs. 1,200/- towards the purchase of marriage cot, the same was given. The general custom in their caste is that both bride and bridegroom have to come back to the bride's place for

participating in the milk drinking ceremony. A2 did not allow the bride and bridegroom to attend the said ceremony in P.W. 4's house. A2 gave lame excuses as if his sisters were objecting to it, When P.W. 4 enquired his sisters, they had stated that they had no objection for the said ceremony. With reference to this P.W. 4 gave a complaint to P.W. 13, the Secretary of the Caste Association. The said complaint is Ex. DI. This was given on 20-1-1988, that is, four months after the marriage. In the said complaint, P.W. 4 had stated that he was insulted by A1 and A2 in the presence of the victim and the victim was not allowed to talk to him and requested P.W. 13 to arrange for the release of the victim, who has been virtually imprisoned in the house of A2.

(ii) The evidence of P.W. 4, P.W. 8 and P.W. 9 would show that the victim and her husband were not allowed to go to the house of P.W. 4 to celebrate the first Deepavali.

(iii) On 20-11-1988, P.W. 4 on coming to know that the victim became pregnant, went to the house of A2 and requested A2 to permit him to take his daughter, the victim to his house to celebrate "Seemantham." A2 demanded Rs. 10,000/- in order to allow the victim to go to the house of P.W. 4.

(iv) After the birth of the child on 9-12-1988, P.W. 4, P.W. 8 and P.W. 10 along with their relatives went to the Sheeba Nursing Home, where they were not actually allowed to see the child by A1 and A2 stating that they are poor beggars and that they cannot see the child without payment of Rs. 10,000/-. Therefore, they did not see the child and came back.

(v) The victim wrote letters Exs. P5 and P6 on 23-2 1989 and 11 -4-1 989 respectively to P.W. 4. Through these letters the victim intimated to her parents that she was not allowed to live in their house freely by A1 and A2 and her jewels were pledged by them and that she was being ill-treated continuously, since she objected to A2's effort of preventing her from meeting them.

(vi) When P.W. 4 visited the house of A2, he saw the victim applying balm on the chest and other parts of the body of A2. He was informed that she was compelled to do so even in the night times by both A1 and A2. P.W. 10 also was informed about this by the victim.

17. All these materials would clearly show that she was subjected to constant ill-

treatment by A1 and A2. In fact, these materials have been referred to by the trial Court to come to the conclusion that the victim was subjected to cruelty at the hands of A1 and A2, which drove the victim to commit suicide.

18. However, the trial Court has specifically found that there are no materials to hold that A1 and A2 committed the offence u/s 304(b) of I.P.C., since there is no dowry torture and as such, it cannot be said that the offence u/s 304(b), I.P.C. is made out.

19. The above conclusion, in my view, may not be correct, in view of the following reasons.

20. No doubt, it is true that there are various instances which would show that the victim was subjected to cruelty for the reasons other than the demand of money. At the same time, it cannot be said that there is no material at all for the offence u/s 304(b), I.P.C.

21. It is the specific case of the prosecution through P.W. 1 and P.W. 4 that initially there was no dowry demand. Even in Ex. DI, the complaint given by P.W. 4 to P.W. 13, there is no reference about the demand of dowry. Up to "Seemantham" period, as admitted by P.W. 4, the victim

was tortured by A1 and A2 by not allowing her to go to the house of P.W. 4 and by compelling her to apply balm and rub it on the body of A2

without her willingness, especially when A2 has got other daughters living in the same house. But, the demand of money only was made when P.W.

4 approached A2 to permit him to take his daughter to his house to perform "Seemantham" in his house. Since the amount was not paid, the victim

was not sent to the house of P.W. 4. Till the end, "Seemantham" was not performed by A2 nor did he allow P.W. 4 to perform it in his house.

22. After the child was born, P.W. 4 and other relatives went to the hospital to see the child, but they were not allowed by A1 and A2, as the said

amount of Rs. 10,000/- demanded earlier by A2 was not paid. This aspect of the evidence of P.W. 4 has been corroborated by P.W. 8 and P.W.

10. Ex. P9, the statement given by P.W. 4 to P.W. 5, P.A. to the District Collector, on 24-10-1989 would also contain all the details about the

demand of the said money and also the demand for more jewels even prior to the marriage.

23. Apart from this, the letters Exs. P5 and P6 written by the victim would also

go to show that the non-compliance of the said demand had resulted in the ill-treatment to the victim at the hands of A1 and A2. The relevant portion of the letter Ex. P5 dated 23-2-1989 is this :-

(Vernacular matter omitted)

The relevant portion in Ex. P6, dated 11-4-1989, is as follows :-

(Vernacular matter omitted)

24. Subsequent to these dates, P.W. 1, the friend of P. W. 4 went to the house of A2 to see the victim, as requested by P.W. 4. When he visited, he saw the victim being insulted by A1 and A2 in his presence. Thereafter, the death was on 13-9-1989.

25. It is argued by the counsel for the appellants that in order to prove Section 304(b), it must be shown that soon before her death she was

subjected to cruelty at the hands of her husband (A 1) and her father-in-law (A2).

26. In my view, the expression "'soon before her death'" means, within reasonable time prior to her death. Moreover, it cannot be proved by

adducing direct materials that she was subjected to cruelty till the date of death, as it is an admitted fact that the victim was in the control and

custody of A1 and A2. Therefore, the citation, namely State of Punjab Vs. Gurdip Singh and Others, referred to by the learned counsel for the

appellants, would not be applicable to this case, especially when the said case would relate to the offence u/s 306, I.P.C.

27. Since these materials as against A1 and A2 have not been considered by the trial Court, I feel that the finding given by the trial Court as regards

Section 304(b), I.P.C. is not correct and as such, the finding is perverse.

28. The Apex Court as well as this Court and the other High Courts in the decisions in Vemuri Venkateswara Rao and Another Vs. State of

Andhra Pradesh, and Venugopal Vs. State of Karnataka, etc. would hold that even in the absence of specific charge u/s 304-B of I.P.C., the

accused could be convicted for the offence u/s 304-B, I.P.C. in a case tried for the offence u/s 302, I.P.C. However, as pointed out by the trial

Court, there are no materials as against A3. Therefore, I do not propose to disturb the finding of acquittal in respect of A3.

29. In the circumstances, the impugned judgment as regards A1 and A2 is liable to be set aside and remitted back to the trial Court for considering

the materials on the whole and come to the conclusion, in the light of the aspects discussed and referred to above by this Court.

30. In the result, the judgment of the trial Court is set aside and the matter is remanded to the trial Court. The trial Court shall, after hearing the

parties including P.W. 4, consider the materials already available on applying the guidelines given by this Court as well as the Apex Court with

reference to the ingredients of Section 304-B, I.P.C. as against A1 and A2 and decide the case. The appeal and revision are disposed of

accordingly.