
(2002) 06 MAD CK 0138

In the Madras High Court

Case No : Criminal Appeal No. 717 of 1992, Criminal Revision Case No's. 393 of 1991 and 307 of 1992

State

APPELLANT

Vs

Ganapathy Sundaram
Suganthi Vs Angammal,
Vellaisamy, Nagendran, Veluthayee, Muthu, Sundar, Lakshmi,
Jayamani, Nagajothi and State
Suganthi Vs Ganapathi
Sundaram and State

RESPONDENT

Date of Decision : 21-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482
Penal Code, 1860 (IPC) — Section 109, 406, 454, 498A

Citation : (2002) 06 MAD CK 0138

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : H. Mohammed Rafi, for the Appellant; K. Ashokan, for R.Subramanian, for the Respondent

Judgement

A.K. Rajan, J.—The revision petitioner Suganthi was married to the respondent, Ganapathy Sundaram on 4.9.1978. Thereafter, misunderstanding arose between the husband and wife which resulted in a criminal complaint filed by the revision petitioner against the husband and his other relatives. A.1 is the husband of the revision petitioner; A.2 is the mother of A.1; A.3 is the father of A.1; A.4 is the brother of A.1; A.5 is A.1's mother's sister; A.6 and A.7 are the sons of A.5.; A.8 is the wife of A.1's father's brother. A.9 and A.10 are the sisters of A.1.

2. The revision petitioner gave a complaint against these accused for having committed the offence punishable under Sections 498-A, 454 and 406 I.P.C. On the basis of the complaint, a case was registered and the accused were prosecuted. The trial Court acquitted all the accused of the offence u/s 454 I.P.C. The trial Court also acquitted A.2 to A.10 of all the charges including u/s 498-A read with Section 109 I.P.C. The trial Court convicted A.1 for an offence u/s 498-A and 406 and imposed a sentence of imprisonment for a period of one year and

a fine of Rs.1,000/- on two counts. The husband filed an appeal, C.A.No.90 of 1991 against the conviction passed on him, in the I Additional Sessions Judge, Madurai. The learned Sessions Judge acquitted A.1 of all the charges.

3. Against the acquittal of A.1, the revision petitioner-P.W.1 filed Criminal Revision Case No.307 of 1992. Against the acquittal of A.2 to A.10, P.W.1 Suganthi filed Criminal Revision Case No.393 of 1991. Criminal Appeal No.717 of 1992 is the appeal against the acquittal of A.1, filed by the State Government. All of them were heard together and common judgment is passed.

4. The brief facts of the case are as follows:

The marriage between P.W.1(revision petitioner) and A.1 took place on 4.9.1978. The revision petitioner was living with the husband immediately after marriage. At the time of marriage, 30 sovereigns of gold jewellery and Rs.10,000/- was given as dowry, apart from other materials worth Rs.25,000/-. A.1 falsely represented that he was employed and earning a sum of Rs.1000/- p.m., at the time of marriage. After the marriage, the complainant came to know that A.1 was not employed at all. Thereafter, he got a job for a salary of Rs.150/- p.m. Within three months, he gave up that job also. The other accused drove P.W.1 and A.1 out of the house, since A.1 was not employed. Thereafter, they went to the house of the parents of P.W.1 and were residing there for three months. The mother of the complainant looked after them for one year. In the meanwhile, A.1 demanded Rs.5,000/- for getting a job. The complainant brought Rs.5,000/- from her mother and gave it to A.1, but he had spent that also. Thereafter, the father of the complainant got him a job in the Forest Department. In 1979, a daughter was born to them and in 1984, another daughter was born to them. Between 1979 and 1983, they were residing at various places in Tamil Nadu. In 1984 March, the father of the complainant (P.W.1) died. When they were residing at Madurai, A.1 was suspended from service pending enquiry; A.1 demanded the complainant, forcibly, to get Rs.5000/- from her mother. Unable to tolerate the beatings of A.1, the revision petitioner got Rs.5,000/- from her mother and gave it to A.1; A.1 had also snatched a gold chain from the revision petitioner weighing about 6 1/2 sovereigns and pledged it in the State Bank of India, Othakadai and obtained a sum of Rs.6,500/- and spent that amount also. During the period of suspension, A.1 wanted to sell the valuable household articles to which the revision petitioner did not agree. Therefore, A.1 compelled her to get money from her mother. In August 1985, suspension from service was revoked; A.1 left the house on 16.8.1985 to join service at Kodaikanal. Thereafter, the revision petitioner came to Madras on 21.8.1985 along with the children. When she came to Madras, she locked the house and took the key along with her. When she went back to Madurai, during the last week of August, 1985 along with the children, she found all the household articles and the valuable things were found removed. When she enquired, the house owner, P.W.3 informed that on 23.8.1985. A.1 along with his brother, father and other relatives came to the house, broke open the lock and removed all things from the house. When P.W.3

prevented them, A.1 stated that he would take the responsibility and to that extent, he gave a letter to P.W.3. The value of the revision petitioner's property that were removed from the house on that date was Rs.50,000/-. All the things including her personal clothes were found removed. Therefore, she went to the house of A.3, her father-in-law. There she found her things and some of the things were found in the house of other accused. The revision petitioner was not permitted to enter the house. Then A.4, brother of A.1 told that she must procure Rs.20,000/-, in order to live along with her husband; otherwise, a case would be filed for divorcing her. From there, she went to the house of her maternal uncle, P.W.6 at Sivaganga, who informed A.1 by telegram. The telegram was returned as "refused". She was staying in the house of P.W.6 for two months. Thereafter, she came to Madras. Once again, P.W.1 went to Madurai; Her husband was again suspended from service and was at Madurai. P.W.1 was not permitted to enter the house, for four days by the accused; she was made to sit in the verandah for four days; at last A.2 to A.4 beat her and drove her away. Since she was driven out from the house by her father-in-law, P.W.1 gave a complaint, Ex.P.1 to the police. The police took up the investigation and searched the houses of A.4 and A.9. Items numbering 19 were seized from the house of A.9. Thereafter, trial of the case proceeded. The trial Court convicted A.1 for the offences under Sections 498-A and 406 but acquitted all other accused; A.2 to A.10 were acquitted of all the charges. On appeal by A.1, the appellate Court acquitted A.1 of all the charges. P.W.1 has filed CrI.R.C.307 of 1992 against the acquittal of A.1 by the appellate Court. CrI.R.C.393 of 1991 has been filed against the acquittal of A.2 to A.10 by the trial Court by P.W.1. The State has filed C.A.717 of 1993 against acquittal of A.1.

5. The learned First Additional Sessions Judge who heard the appeal acquitted A.1 of all the charges on the ground that after A.1 left the house on 16.8.1985 to join the services at Kodaikanal, the complainant voluntarily removed number of things from the house and went to her mother's house voluntarily on 21.8.1985; There is no evidence that she came to Madurai after one week; If she had really came to the house after one week and found the things were removed, she would not have waited for four months to give the complaint. Only after coming to know of the fact that on 19.12.1985, the first accused filed petition for divorce before Madurai Sub-Court, she gave a false complaint on 20.12.1985 that the things were removed on 23.8.1985 from the house; Further, the First Additional Sessions Judge also held that there is no evidence that the things belonged to the complainant were removed by A.1; Further, she has not stated in the complaint that the things removed were stridhana properties of the complainant and there is no evidence to conclude that A.1 demanded dowry, on any day to 23.12.1983, when Section 498-A of the Indian Penal Code came into force; Further, the case of the complainant is that A.1 took away the "two rows chain" of the revision petitioner, but in evidence she had stated that her chain was an "one row chain". There was no evidence to prove that in the year 1985, the first accused demanded Rs.5,000/- as dowry from the complainant. For all these

reasons, the lower Appellate Court found the the finding of the trial Court as unsustainable and hence acquitted A.1 of all the charges.

6. The Public Prosecutor appearing for the State referred to the evidence on record, P.W.1 has stated that after the death of her father in March 1984, A.1 was working at Rajapalayam; then he was suspended; Thereafter, they resided at Madurai; A.1 forced P.W.1 to get Rs.5,000/- from her mother to get the order of suspension revoked. Unable to bear the cruelty meted out to her, P.W.1 went to her mother and got Rs.5,000/- and gave to A.1, He also took away her 6 1/2 sovereign chain and pledged it in the State Bank of India for a sum of Rs.6,500/- and the jewel was not redeemed at all. It is true that in the evidence of P.W.1, it is found as "single row chain". In the complaint, Ex.P.1, she has clearly stated that it is "two row chain." Therefore, it is obvious that it should be a snap answer obtained at an unguarded moment or a typographical mistake while typing, due to short of hearing or on some other reason. From the evidence of Bank Manager (P.W.8), it is proved that on 7.8.1987, A.1 came to the bank and pledged a "two rows chain" weighing 45.20 gram, for a sum of Rs.6,500/- and that gold chain was not redeemed; as per the rules of the bank, the chain was sold in auction and the excess amount was repaid to A.1. Ex.P.4 is the record of the bank. From this evidence, it is seen that the demand for Rs.5,000/- was made subsequent to month of March 1986 and after getting Rs.5,000/-, the chain was also snatched from P.W.1 and pledged. That was proved by the pledging of the jewels in the year 1987. Therefore, the finding of the learned Appellate Court that there is no evidence for demand of dowry after 23.12.1983, is not correct. Further, P.W.3, house owner in whose house, P.W.1 and A.1 were residing lastly together had deposed that they were residing in the house during the period 1984-85. One day, A.1 came to the house and wanted to remove the things and to vacate the house and when P.W.3 asked him as to why his wife had not come and that P.W.1 had kept the house was locked, A.1 replied to him that he had to go to Kodaikanal after vacating the house. But P.W.3 insisted that A.1 should not remove the things when P.W.1 was not present. Thereafter, A.1 brought his sister A.9 who fixed the house for A.1 and she also told that there was no problem and they were vacating the house. Yet, P.W.3 grew suspicious and therefore, obtained a letter from A.1. Immediately, A. to A.9 removed all the things found in the house. In the cross-examination also, he reiterated that the lock was broke open and things were removed by A.1. P.W.1 in her evidence has stated that "her" properties worth Rs.50,000/- were removed. There is not even a suggestion in the cross-examination, that the things that were removed from her house were not the properties of P.W.1, though she has admitted that the cot, bureau, sewing machine were purchased in the name of her husband. P.W.2 in her evidence has stated that P.W.1 came and got money at various periods, but she says that she gave Rs.2,000/- on two occasions. From this, the learned Sessions Judge came to the conclusion that there was discrepancy about the amount given by P.W.2; it was different from what was stated by P.W.1 and so, the evidence of P.W.1 was also held not acceptable. P.W.2 stated that at the time of

marriage, they gave Rs.10,000/- as dowry and 30 sovereigns of jewellery. She also deposed that A.1 was not employed as represented by him at the time of marriage and she corroborated the evidence of P.W.1 about the suspension of A.1 from service. From the evidence of P.W.2, it is seen that the father of the complainant died in 1984. P.W.6, husband of P.W.1's sister has stated in the evidence about the relationship between P.W.1 and A.1 and also the removal of things by A.1 from the house. He has stated that he tried to settle the disputes between P.W.1 and A.1, but his advice was not heeded and thereafter, he did not want to interfere in their problems. After the police tried to bring a compromise, he told A.1 to take P.W.1. But, A.1 told him that P.W.1 must come and stay in his house. P.W.1 wanted all her things to be returned to set up separate house. P.W.6 told A.1 to return the articles of P.W.1 to her. But, he did not return them. Thereafter, he did not interfere. Though P.W.6 is a relative of P.W.1, his evidence cannot be rejected; in fact he is a competent witness; his evidence is acceptable; his evidence also corroborates that A.1 took away the properties of P.W.1 from the house. P.W.10, Investigating Officer has stated in his evidence that on 25.12.1985, he searched the house of one Arumugam pointed out by A.1 and seized M.Os.1 to 18 belonging to P.W.1 from the house of Arumugam. He also stated that P.W.3 told him during investigation that A.1 broke open the house and removed all the things.

7. Learned counsel for A.1 submitted that P.W.1 did not tell the the Investigating Officer that "unable to bear the cruelty meted out to her," *moj;J Jd;g[Wj;jpajhy; ,k;ir bghWf;f Koahky;* she got Rs.5,000/- from her mother. Therefore, it is an improvement and hence, the evidence of P.W.1 cannot be relied upon. These words, *moj;J Jd;g[Wj;jpajhy; ,k;ir bghWf;f Koahky;* were not stated; but, she has stated that she got Rs.5,000/- from her mother and gave it to the accused.

8. The counsel for the respondent submitted that once the trial Court had come to one conclusion and such conclusion is also possible on the basis of evidence on record, just because it is also possible for the Appellate Court to come to a different conclusion, the conclusion arrived at by the trial Court cannot be set aside. Therefore, in this case, since the First Appellate Court has come to a conclusion that the offence u/s 498-A has not been proved, that finding cannot be altered in the Appellate Court. Therefore, the appeal is liable to be dismissed.

9. The Senior Counsel, Mr. K. Ashokan also submitted that the fact that the complainant has implicated all the relatives of her husband would go a long way to prove the conduct of the witness and the veracity of her evidence. The very fact that she has implicated all the near relatives of her husband proves that P.W.1 has not come out with truth. Under the circumstances, no reliance can be placed on the evidence of P.W.1. Further, he submitted that there is absolutely no evidence for the commission of cruelty as defined u/s 498-A. Therefore, the offence u/s 498-A is not made out against A.1. Further, except for the interested testimony of P.W.1 and her mother, there is no independent witness to prove the

case of the complainant. Considering the conduct of P.W.1, (according to her, she was refused admission in the house of A.3, during August 14th to 19th, but in her evidence she has stated that the very next day of the incident, she gave the complaint; The complaint has been given on 20th of December). Therefore, it is proved that the complainant changes her stand to suit the circumstances. The complainant has given her complaint only as a counter-blast to the H.M.O.P. for divorce filed by A.1. Therefore, the conduct of the accused proves that she is not speaking the truth and hence, no reliance can be placed on her evidence. It is true that in the evidence, she has stated that during August 14 to 19, that is, immediately after she came to know that A.1 had removed all the household articles from the house, she went to the house of A.3 where they refused to permit her inside the house and she was forced to be in the verandah for four days. But in the evidence, she has stated that immediately after this incident, she gave the complaint to the police. Because of this, it cannot be concluded that the entire evidence of P.W.1 is untrustworthy. It is true that P.W.1 has implicated all the near relatives of A.1. It is not uncommon under such cases that the wife implicates all the near relatives of her husband. At the same time, we cannot brush aside that such allegation would be entirely untrue. Therefore, the mere fact that she has implicated all the near relatives, by itself does not warrant a conclusion that the allegations made against her husband would also be unbelievable on that ground. It is true that P.W.1 has not stated in the complaint that she was beaten; the cruelty as defined u/s 498-A includes even the mental cruelty. Cruelty need not always be physical. Even mental cruelty is punishable u/s 498-A.

10. It is true that where two views are possible on the evidence available on record and if one view is taken by the lower Court, admittedly, the Appellate Court cannot set aside that finding; but where it is not possible for two views and where it is possible to arrive at only one conclusion, but the lower Appellate Court did not come to that conclusion, then this Court can definitely interfere in appeal against acquittal.

11. Having this principle in mind, when the evidence on record is perused as stated above, especially the evidence of P.W.1 read with the evidence of P.W.8 as well as the complaint, Ex.P.1, it is proved that the "two row" chain of the accused was forcibly taken away from P.W.1 and pledged it in the bank and that was never redeemed. The Appellate Court reversed the finding of the trial Court and found this charge as not proved on the ground that P.W.1 has stated in her evidence that her chain is, "one row chain". The word, "one" appears to be a typographical mistake, since she has categorically stated in the complaint that it is "two rows chain". In the circumstances, it is proved that the gold chain of P.W.1 was pledged by the accused with the State Bank of India and that was not redeemed and ultimately it was sold in auction and the balance amount was also received by the first accused. It was not even suggested to P.W.1 that the chain was given voluntarily, nor A.1 had stated in Section 313 Cr.P.C. statement that he did not forcibly remove it. He has stated that it is true that he pledged the chain,

but it belonged to "mother". This appears to be an afterthought and improvement since not even such suggestion was put to P.W.1 during cross-examination. Therefore, from the evidence on record, no Court can come to a different conclusion except the conclusion that the accused forcibly removed the chain from P.W.1 and pledged it. Further, from the evidence of P.W.3, the house-owner, it is proved that the first accused broke open the lock and removed the house-hold articles when P.W.1 was not present. This was done by A.1 in spite of the objections made by P.W.3. P.W.1 had categorically stated as "her property", but the First Additional Sessions Judge has stated that it is the household articles belonging to both P.W.1 and A.1. To arrive at such a conclusion, there is absolutely no evidence. It is not even suggested to P.W.1 that it was not her property that was removed. Therefore, the evidence of P.W.1 read with that of P.W.3, it is proved that A.1 removed the household articles of P.W.1 from the house, in the absence of P.W.1. Therefore, these acts of A.1 are nothing but breach of trust as per Section 406 I.P.C. A.1 and P.W.1 were residing in the house and P.W.1 kept the household articles in that house; without informing her, the things were removed by A.1, and they never resided together, thereafter. Therefore, from this, it is clear that the first accused has committed the offence punishable u/s 406 I.P.C. It is not possible to arrive at a different conclusion on the basis of the evidence.

12. It is true that the lock of the house was broken and things were removed in the month of August, but the complaint was given only in the month of December. The fact that P.W.1 and A.1 are husband and wife cannot be forgotten or ignored when considering the evidence on record. As a typical Hindu wife, P.W.1 appeared to have exercised great restraint before approaching either the Court or the police. From the evidence on record, it can be seen that she was meted out with all kinds of cruelty, but, still, she was tolerating and she did not rush to take any legal action; Only after A.1 filed a petition for divorce, she gave up her restraint, broke the shackles and has approached the Court of law for legal relief. Therefore, the delay of four months in filing a complaint against her husband is not material and that does not in any way affect the case in hand.

13. In so far as the offence u/s 498-A I.P.C., the Appellate Court acquitted the accused on the ground that Section 498-A came into force after 23.12.1983, and there is no evidence to prove the demand of dowry coupled with cruelty subsequent to that date. But P.W.1 has stated that three months after the death of her father, A.1 demanded Rs.5,000/- and forced her to get that amount. P.W.2, mother of P.W.1 has stated that her husband died in the year 1984. Therefore, one year subsequent to coming into force of the Section 498-A, this occurrence had taken place. Though there is discrepancy with respect to the amount, that was paid by P.W.2, the fact remains that the amount was paid by P.W.2 to P.W.1 on the demand made by the first accused; P.W.1 had categorically stated that she was forced to get money from her mother and in fact, got money from her mother. The gold jewellery was also removed from her forcibly. Even in the statement u/s 313 Cr.P.C. , the accused admits that he gave a statement in

writing to P.W.3 while he vacated the house and removed things. the accused has not stated anything except that it is a false case. Therefore, the demand of dowry coupled with cruelty is also proved against the first accused. The finding arrived at by the Appellate Court reversing the finding of the trial Court cannot be sustained. The conclusion of the lower Appellate Court is based on misreading of evidence; hence perverse. Therefore, this Court cannot but interfere in appeal against acquittal. Therefore, the judgment of the First Appellate Court is set aside. Hence, the appeal is allowed. The judgment of the trial Court is restored and the conviction and sentence imposed by the trial Court against A.1 is confirmed. A.1 is directed to undergo R.I for one year, less the sentence already served, if any, by him.

14. In view of the allowing of Criminal Appeal No.717 of 1992, Crl.R.C.307 of 1992 filed by P.W.1 against the acquittal of A.1, is allowed.

15. In so far as Crl.R.C.393 of 1991 filed by P.W.1 against the order of acquittal of A.2 to A.10 is concerned, the trial Court has come to the conclusion that there is no evidence against A.2 to A.10 that they have committed the offence u/s 498-A I.P.C. read with Section 109 I.P.C. There is no evidence to corroborate the evidence of P.W.1 and hence the trial Court has acquitted all the accused of all the charges. There is no reason to interfere with the acquittal of A.2 to A.10. The trial Court held that for the mere fact that A.9 went along with A.1 at the time of vacating the house, A.9 cannot be said to have committed the offence under Sections 498-A and 406 I.P.C. Such a finding cannot be said to be perverse or without any basis. There is no valid ground to set aside the order of acquittal passed by the trial Court against A.2 to A.10. As held by the Supreme Court, it is an extraordinary relief which will not ordinarily be resorted to by this Court. Only when there is grave injustice or only in case where manifest illegality or miscarriage of justice, this Court may enquire into the facts of the case u/s 482 Cr.P.C., but this case does not warrant any interference. Therefore, the revision in Crl.R.C.No.393 of 1991 is dismissed.

16. In the result, Crl .Appeal No.717 of 1992 is allowed. Crl.R.C.393 of 1991 is dismissed. Crl.R.C.307 of 1992 is allowed.