

Prasanth Vs. State of Kerala

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Court : Kerala

Decided On : Jan-02-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Prasanth

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN THURSDAY, THE 2D DAY OF JANUARY 2014 12TH POUSHA, 1935 CRL.A.No. 2011 of 2006 ()
----- (AGAINST THE

JUDGMENT

IN SC.NO. 412/2004 OF ASSISTANT SESSIONS COURT, KOZHIKODE DATED 16-10-2006) ----- APPELLANT/1ST ACCUSED:-
----- PRASANTH, S/O. KRISHNAN, AGED 32 YEARS, RESIDING AT VALAPPIL (H), POST KURIYADI, VADAKARA, KOZHIKODE DISTRICT. BY ADV. SRI.T.G.RAJENDRAN
RESPONDENT/RESPONDENT : ----- THE STATE OF KERALA, (S.H.O., VADAKARA POLICE STATION IN CRIME NO.119 OF 2001, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD

ON0201-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts P.BHAVADASAN, J.

----- Crl. Appeal No.2011
OF2006----- Dated this the 2nd day of January, 2014.

JUDGMENT

A brother and his sister were prosecuted for the offences punishable under Sections 306, 498A read with Section 34 of Indian Penal Code. Among them, 1st accused-brother was found guilty on both counts. He was therefore convicted and sentenced to suffer rigorous imprisonment for a period of five years and to pay a fine of Rs.10,000/- with default clause of rigorous imprisonment for one year for the offence under Section 306 IPC, and for the offence under Section 498A IPC, he was sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- with default clause of rigorous imprisonment for a period of six months. The fine amount, if realised, was directed to be paid to PW1, the mother of the deceased, as compensation. The substantive sentences were directed to run concurrently. The 2nd accused-sister was found not guilty of both the offences and she was therefore acquitted. Crl. Appeal No.2011/2006 2 2. The marriage between the 1st accused and the deceased Supriya was conducted on 18.02.1998. PW1 is the mother of the victim. The victim namely, Supriya was the daughter of Sujatha, PW1, in her first marriage which she put an end to and married Bhaskaran later in which she had two male children. The couple namely, Supriya and the 1st accused had no children. On 01.03.2001, Supriya committed suicide by hanging. CW1 laid First Information Statement which was recorded by PW9, Police Constable who registered a crime as per Ext.P3 First Information Report. Crime was registered for unnatural offence. PW11 Tahsildar conducted the inquest and furnished Ext.P6 report. Autopsy was conducted by PW10 who furnished Ext.P5 postmortem certificate.

3. PW12 took over the investigation. He found that the offence under Section 498A read with Section 34 IPC had been committed and he filed a report before the Judicial First Class Magistrate Court concerned. He had also sent an intimation to the Executive Magistrate to forward the records to the Judicial First Class

Magistrate Court concerned. PW13 Deputy Crl. Appeal No.2011/2006 3 Superintendent of Police then took over the investigation, recorded the statement of witnesses, obtained necessary certificates and completed the investigation. His successor-in- office laid charge before court.

4. Initially, the Judicial First Class Magistrate Court concerned took cognizance of the offence under Section 498A IPC and on appearance of the accused and after following necessary formalities, framed charge for the offence under Section 498A IPC. Trial commenced and at the time of questioning under Section 313 Cr.P.C, the learned Magistrate felt that offence under Section 306 IPC is also made out and therefore, the case was committed to Sessions Court, Kozhikode under Section 323 Cr.P.C. The said court made over the case to Assistant Sessions Court, Kozhikode for trial and disposal. The latter court framed charges for the offences under Sections 306 and 498A IPC, to which, the accused pleaded not guilty and claimed to be tried. The prosecution therefore had PWs 1 to 13 examined and Exts.P1 to P6 marked. The accused had Exts.D1 to D11 marked.

5. After the close of the prosecution evidence, the accused Crl. Appeal No.2011/2006 4 were questioned under Section 313 Cr.P.C. They denied all the incriminating circumstances brought out in evidence against them and maintained that they were innocent. On finding that the accused could not be acquitted under Section 232 Cr.P.C, they were asked to enter on their defence. They chose to examine no witnesses.

6. On an appreciation of the evidence in the case, relying basically and mainly on Ext.P1(a) writing and Ext.P1(e) to a certain extent, the court below came to the conclusion that the victim was driven to commit suicide due to the ill-treatment meted out by the accused and therefore found him guilty on both counts namely, offences under Sections 498A and 306 IPC. The conviction and sentence as already mentioned followed.

7. Learned counsel appearing for the appellant contended that the court below has misdirected itself both on facts and in law. A close reading of the series of writings namely, Exts.P1 to P1(i) would show that the 1st accused had great affinity and love for the victim and vice versa. It is true that in Ext.P1(a), there is some mention

of ill-treatment by the 1st accused but the rest of Crl. Appeal No.2011/2006 5 writings would clearly show that the incident made mention of in Ext.P1(a) is a stray incident and that they had lot of love and affinity for each other. It is evident from a reading of the various writings marked as Exts.P1 to P1(i) that the victim was frustrated because she had no children and she found it difficult to carry on the matrimonial life along with the 1st accused and she was under the impression that the 1st accused was losing interest in her because of her inability to conceive. There is nothing in Ext.P1(a) which is dated 16.10.2000 to show that the victim was driven to commit suicide due to any act committed by the accused.

8. Learned counsel for the appellant drew attention of this Court to the fact that the victim committed suicide by hanging on 01.03.2001 and obviously, the writing noticed as Ext.P1(a) which is in the month of October 2000 would not be the basis for the commission of suicide in March 2001. Learned counsel also referred to the subsequent writings of the victim which would clearly show, according to the learned counsel, that there was no act committed from the side of the accused which would have driven the victim to commit suicide. In fact, Ext.P1(i) writing Crl. Appeal No.2011/2006 6 which is admitted by prosecution shows that the 1st accused had developed social conduct which was not to the liking of the victim. A reading of the various writings which were marked as Exts.P1 to P1(i), according to the learned counsel, would show that the victim was frustrated with the fact that she was not able to bear a child and she was aware of the fact how much the 1st accused wished to have a child.

9. Learned counsel for the appellant pointed out that the court below was not justified in picking out Ext.P1(a) from the series of writings marked by the prosecution and relying on that writing alone to come to the conclusion that the offences have been made out.

10. Learned Public Prosecutor, on the other hand, pointed out that Ext.P1(a) would clearly show that the victim was ill- treated and used to be assaulted by the 1st accused and that necessarily be taken note of by the court below. If Ext.P1(a) is to be accepted, then there is ample evidence to show that there was cruelty meted out by the accused and also that she was driven to commit suicide as a

result of the act committed by the Crl. Appeal No.2011/2006 7 1st accused. In short, the contention is that no grounds are made out to interfere with the findings of the court below.

11. PW1 is the mother of the victim. PW2 is the aunt of the victim. PWs 3 and 4 are neighbours. The evidence of PWs 2 to 4 are of no help to the prosecution for the simple reason that they did not support the version given by the prosecution and whatever they say are only hearsay. All of them say that they were unaware of the commission of suicide by the victim. As already noticed, PW1 is the mother of the victim. It has come out from her evidence that the 1st accused is a fisherman by profession. Even according to her, for the first two years of marriage, the couple led a happy matrimonial life. According to her, after the marriage of the 2nd accused, trouble began. She would say that her daughter used to be beaten and kicked by the 1st accused. She would also say that troubles increased when the 2nd accused used to come home though she was married and residing with her husband. She makes mention of the fact that the 1st accused used to taunt his wife and also referred to PW1 as a prostitute. According to PW1, the 1st accused used to suspect Crl. Appeal No.2011/2006 8 the victim and that she never used to be sent to any place and she was confined to the house. She would also say that the victim used to reveal her agonies to PW1. PW1 further says that the handwriting in Ext.P1 is that of the victim.

12. In cross examination, PW1 conceded that though the victim had conceived on three occasions, that ended in abortion and the third one was a tubular pregnancy. She also accepted that the victim was regularly taken for treatment by the 1st accused and Exts.D1 to D6 are the documents which indicate that she was under regular treatment. She also conceded in cross examination that the victim badly wanted to have a child and she was worried about her inability to bear a child.

13. It is interesting to note that PW1 would say that if the victim did not take food, so did the 1st accused also. There is nothing to disbelieve the series of documents marked as Exts.P1 to P1(i). It is true that in Ext.P1(a), it is seen mentioned that the 1st accused was severe and harsh on the victim and that she found it unable to survive. But, Ext.P1(a) cannot be taken in isolation. It is to be noticed that

Ext.P1(a) is dated 16.10.2000. CrI. Appeal No.2011/2006 9 However, Ext.P1(h) is dated 14.11.2000. Ext.P1(i) is also subsequently dated. The writings contained in Exts.P1(h) and (i) gave a totally different version in what is stated in Ext.P1(a). In the writings mentioned above, we get the picture of a loving husband and the agony of a wife who is unable to bear children. In fact, it is interesting to note that in Ext.P1(h), she makes mention as follows: " ".

14. At the risk of repetition, it may be mentioned that it is subsequent to Ext.P1(a). It is therefore evident that Ext.P1(a) refers to a stray incident and not to a routine affair. Even if there was any ill-treatment as evidenced by Ext.P1(a), the difference of opinion has been patched up and the couple were leading a happy and peaceful life thereafter. The court below seems to have placed considerable significance on Ext.P1(a) in finding the 1st accused guilty. The court below conveniently omitted to note the subsequent writings which would show that the situation was otherwise and that the 1st accused was a loving husband. In CrI. Appeal No.2011/2006 10 Ext.P1(i), the victim takes objection to the friendship the 1st accused developed with certain persons which led to him to have smoking and his association with various persons, whom the victim did not like.

15. It is also significant to notice that in Ext.P1(b), she cherishes that if she ever has another life, she would like to spend it with the 1st accused. The evidence is clear to the effect that her husband had been taking her to various hospitals for treatment. Except for a stray writing in Ext.P1(a), there is nothing to show that the 1st accused has been ill-treating or manhandling the victim. A close reading of the writings marked in Exts.P1 to P1(i) would show the picture of a lady who is possessive of her husband and who is agonised by the fact that she is unable to bear children which she feels is causing disappointment to her husband. Even assuming that whatever she stated in Ext.P1(a) is true, the fact remains that the victim committed suicide on 01.03.2001 whereas Ext.P1(a) is dated 16.10.2000. The victim committed suicide six months after the date of Ext.P1(a). One fails to understand how it could be said CrI. Appeal No.2011/2006 11 that the victim committed suicide as a result of the incident which reflects in Ext.P1(a) even assuming it to be true. As already noticed, except for a stray incident mentioned in Ex.P1(a), all her writings give the picture of a loving husband and the concern of

the victim in her inability to bear children.

16. It is difficult to uphold the finding of the court below that merely based on Ext.P1(a), one can come to the conclusion that the victim was treated cruelly by the 1st accused and the 1st accused had made the life hell for her which had driven her to commit suicide.

17. For the above reasons, this Court is unable to uphold the findings of the court below that the offences under Sections 498A and 306 IPC have been made out. In the result, this appeal is allowed. The conviction and sentence passed by the court below for the offences under Sections 498A and 306 IPC are set aside. It is held that the prosecution has not succeeded in establishing the case against the 1st accused. The 1st accused is found not guilty of the offences under Sections 498A and 306 IPC. He is acquitted of Crl. Appeal No.2011/2006 12 the said offences. His bail bond shall stand cancelled and he is set at liberty. If he has paid the fine amount, the same shall be refunded to him. P.BHAVADASAN JUDGE smp

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