

Muthaiah Vs. State of Karnataka Rep. by Its State Public Prosecutor High Court of Karnataka

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Court : Karnataka

Decided On : Jan-21-2014

Judge : N. Ananda

Appeal No. : Criminal Appeal No. 57 of 2008

Appellant : Muthaiah

Respondent : State of Karnataka Rep. by Its State Public Prosecutor High Court of Karnataka

Judgement :

(Prayer: This Appeal Is Filed Under Section 374 Cr.P.C., Against The Judgment Dated 30.07.2007, Passed By The Ad-Hoc District and Sessions Judge and Presiding Officer, Fast Track Court, Ramanagaram, In S.C.No.307/2005 - Convicting The Appellant/Accused For Offences Punishable Under Sections 498(A) and 306 Ipc and Etc.)

1. The appellant (hereinafter referred to as accused) was tried and convicted for offences punishable under Sections 498-A and 306 IPC. Therefore, he is before this court.

2. I have heard Sri.Somashekar Harvi, learned counsel for accused and learned Government Advocate for the State.

3. It is the case of prosecution that deceased Gowramma was married to accused about 8 years prior to 07.10.2001. She was living in the house of accused in Arekadakalu village within the limits of Harohalli Police Station. The accused and deceased were living happily for a period of 4 - 5 years. They have two children by their marriage. Thereafter, the accused was addicted to alcohol. He was harassing, assaulting and ill-treating the deceased with a view to coerce her to meet unlawful demand for money. He was demanding her to bring money from her parental house. The deceased not being able to bear the cruelty meted to her consumed poison and committed suicide in the house of accused on 07.10.2001.

4. In view of conviction of accused for aforesaid offences, following points would arise for determination:

1) Whether the prosecution has proved that accused being the husband of deceased was subjecting her to cruelty and coercing her to meet unlawful demand for money, in other words, the accused was demanding the deceased to bring money from her parental house, thereby committed an offence punishable under Section 498-A IPC ?

2) Whether the prosecution has proved that the accused was subjecting the deceased to cruelty and abetted her to commit suicide, thereby committed an offence punishable under Section 306 IPC ?

3) Whether the learned trial judge has appreciated the evidence on record ?

4) To what order ?

5. The prosecution has relied on evidence of the parents of deceased namely PW.1-Nagamma and PW.12-Madalataiah, evidence of elder brothers of the deceased namely PW.5-Krishnappa and PW.6-Narasimhaiah. The prosecution has also relied on evidence of PW.7-Puttaswamy who is a neighbour of PW.12.

6. At the outset, it is necessary to state that suicidal death of Gowramma in the house of accused during the evening of 07.10.2001 has not been controverted. The medical evidence of PW.15-Dr.Jayamma who conducted postmortem examination on the dead body of deceased has not been controverted. The

prosecution has also relied on the contents of FSL report marked as Ex.P9.

7. From the evidence of PW.15-Dr.Jayamma, we find that she had conducted the postmortem examination on the dead body of deceased and after receipt of FSL report, she has opined that the death was due to consumption of organo phosphorous insecticide. Therefore, the prosecution has proved that the deceased committed suicide by consuming poison in the house of accused during the afternoon of 07.10.2001.

8. The first information was lodged by the mother of deceased namely PW.1-Nagamma. In the first information, she has stated that the accused and deceased were cordial for a period of 2 or 3 years after the marriage. They had two children by their marriage. After 2 or 3 years, the accused was demanding the deceased to bring money from her parental house. The deceased was frequently visiting their house. The parents of the deceased were giving money. They were also supplying ration and clothes. Even then, the accused did not stop harassing or ill-treating the deceased. He was frequently demanding her to bring money from her parental house.

9. PW.1-Nagamma has deposed; that married life of the accused and deceased was happy for a period of 4 or 5 years; thereafter, accused started demanding the deceased to bring money from her parental house; the husband of PW.1 namely PW.12-Madalataiah had gone to the house of accused and advised the accused not to subject the deceased to cruelty; the accused did not mend his behavior; the accused under the influence of alcohol was assaulting the deceased and demanding her to bring money. In the cross-examination, she has reiterated the version given in examination-in-chief. During cross- examination, the accused has come up with a theory that deceased was suffering from stomach pain and wheezing, therefore, she committed suicide. The accused has not produced documents to prove the same. During cross-examination, PW.1 has admitted that her husband (PW.12) was owning 2 acres of land; PW.1, PW.12 and her sons were leading humble life; they had no grudge or grievance against the accused to falsely implicate him, on the other hand, PW.1 was pacifying the deceased whenever she used to complain against the accused. Therefore, there are no

reasons to suspect the evidence of PW.1.

10. PW.12-Madalataiah is the father of deceased. PW.12 has deposed; that accused and deceased were happy for a period of 4 years after their marriage; the accused was consuming alcohol and under the influence of alcohol, he was subjecting the deceased to ill-treatment and cruelty; he was demanding the deceased to get money from PW.12; when the deceased used to come to her parental house and inform the matter to her parents about the ill-treatment meted to her by the accused, PW.12 with the assistance of PW's.2 and 3 had advised the accused not to ill-treat the deceased and not to demand her to bring money; the accused and deceased were cordial for some time; the accused again started ill-treating and subjecting the deceased to cruelty; Again, PW.12 had gone to the house of accused and advised and requested the accused not to ill- treat his daughter; after 8 days, when he was working in his land, he learnt from one person who came from the village of accused about the death of deceased; he informed PW.12 that dead body of his daughter was kept in Government Hospital at Anekal.

During cross-examination, PW.12 has admitted that PW.7-Puttaswamy Reddy is his friend. He has admitted that he had visited the house of accused three times prior to her death. He had not advised his daughter to lodge a complaint against the accused. He has admitted that one week prior to the death of his daughter, she had come to her parental house and informed about ill-treatment meted to her by the accused but they did not lodge any complaint. He has denied the suggestion that he had not given a sum of Rs.1,000/- or Rs.2,000/- to the deceased whenever she had visited his house. He has denied the suggestion that he has given false evidence against the accused.

11. PW.5-Krishnappa and PW.6-Narasimhaiah are the elder brothers of deceased. Their evidence is more or less similar to the evidence of PW.1 and PW.12.

12. PW.7-Puttaswamy is an independent witness. PW.7 is the friend of PW.12. He was aged about 72 years when he gave evidence before the trial court. PW.7 has deposed; that after the marriage, the accused and deceased were cordial for a period of 3 or 4 years; thereafter, the deceased Gowamma was visiting her

parental house and demand her parents to give money to her husband; the deceased also told PW.7 about demand made by the accused for money; she had informed that accused was subjecting her to physical and mental cruelty and demanding her to bring money from her parental house; PW.7, PW.12 and others had conveyed a panchayat and they had advised the accused not to ill-treat the deceased; for few days, accused and deceased were cordial; again the accused started ill-treating the deceased to coerce her to meet unlawful demand for money.

PW.7 was an elderly person. He had no grudge against the accused. He had taken part in advising the accused but, accused did not mend his behavior.

13. The marriage of accused and deceased was performed about 8 years prior to the date of incident; they were happy for a period of 4 or 5 years; they had two children by their marriage; the accused was demanding the deceased to bring money from her parental house; PW.12 who was leading humble life was not in a position to meet the unlawful demand for money however, on one or two occasions, he had sent a sum of Rs.1,000/- or Rs.2,000/- to the accused through his daughter, which did not satisfy the unlawful demand made by the accused.

14. From the evidence of PW.1 and PW.12, we find that they have shown lot of endurance. They had advised their daughter to bear with the accused. The accused was repeatedly advised but, he did not mend his behavior. Therefore, the prosecution has proved that accused was coercing and ill-treating the deceased and demanding her to bring money from her parental house and the parents of the deceased were not in a position to satisfy the unlawful demand made by the accused. The acts committed by the accused would squarely fall within the definition of cruelty under Explanation (a) to Section 498-A IPC.

15. The next point for consideration is: whether the prosecution has proved that accused had abetted commission of suicide by the deceased ?

16. The incident of suicide had taken place after a period of 8 years from the date of marriage. Therefore, the prosecution has to prove abetment to commit suicide as a fact without the aid of presumption available under Section 113-A of the Evidence Act. The deceased had not informed her parents that the accused was

physically and mentally instigating her to commit suicide. The parents and close relatives of the deceased have not deposed that accused was subjecting the deceased to cruelty with an intention to abet commission of suicide by the deceased.

17. The law is fairly well settled, in order to bring home the guilt of accused for an offence punishable under Section 306 IPC, the prosecution has to prove that the accused had necessary mensrea and the prosecution has to prove the acts, which would constitute instigation or abetment to commit suicide.

18. The learned trial judge without bearing in mind that incident of suicide had taken place after a period of 8 years from the date of marriage and the prosecution was required to prove that accused had necessary mensrea and the acts committed by accused constituted abetment to commit suicide, has erroneously held the accused guilty of an offence punishable under Section 306 IPC. Therefore, the impugned judgment as it relates to conviction of accused for an offence punishable under Section 306 IPC cannot be sustained.

19. In the result, I pass the following:

ORDER

The appeal is accepted in part.

The impugned judgment as it relates to conviction of accused for an offence punishable under Section 498-A IPC, and the sentence passed thereon are confirmed. The impugned judgment as it relates to conviction of accused for an offence punishable under Section 306 IPC and the sentence passed thereon are set aside. The accused is acquitted of an offence punishable under Section 306 IPC. If the accused has deposited the fine amount imposed for an offence punishable under Section 306 IPC, the same shall be refunded to him. The period of detention undergone by the accused during trial is given set off as provided under Section 428 Cr.P.C.