

Yoganathan Vs. State Represented By

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Court : Chennai

Decided On : Apr-10-2015

Judge : S.Nagamuthu

Appellant : Yoganathan

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

10. 04.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
Crl.A.(MD)NO.226 of 2007 Yoganathan .. Appellant Vs. State represented by
Assistant Commissioner of Police, Cantonment All Women Police Station,
Tiruchirappalli .. Respondent Prayer: Criminal Appeal filed under Section 374(2)
Cr.P.C. against the judgment dated 26.04.2007 made in S.C.No.62 of 2006 on the
file of the learned Sessions Judge, Mahila Court, Tiruchirappalli. !For Appellant ::
Mr.C.Dhanaseelan ^For Respondent :: Mr.C.Mayilvahana Rajendran Addl.Public
Prosecutor :

JUDGMENT

The appellant is the first accused in S.C.No.62 of 2006 on the file of the learned
Sessions Judge (Mahila Court), Trichy. Including the appellant, there were six
accused in the case. All the six accused stood charged for offences under
Sections 498(A), 304B read with Section 34 IPC. The 2nd accused

Mrs. Janagammal died during trial. Thus, the charge against her abated. The trial Court by judgment dated 26.04.2007 acquitted the accused 3 to 6 holding that the charges had not been proved by the prosecution. So far as the appellant/first accused is concerned, the trial Court acquitted him of the charge under Section 498(A) IPC and so far as the charge under Section 304B is concerned, the trial Court found that the appellant committed offence only under Section 306 IPC and accordingly convicted him under Section 306 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows: The deceased in this case was one Silambu Selvi. P.W.1 is her brother. She was married to the first accused/the appellant herein on 30.08.2004. It was an arranged marriage. The 2nd accused is the mother and accused 3 and 5 are the sisters of the first accused and the 4th accused is the husband of the third accused. At the time of marriage, 15 sovereigns of gold jewels and other household articles were presented by P.W.1 and his family members to the newly married couple. But the demand for dowry was for 20 sovereigns. Since only 15 sovereigns of gold jewels were presented, the appellant and the other accused were not satisfied with the same. They started harassing the deceased pressurizing her to get money for purchasing a motorcycle for the first accused. Accordingly, a motorcycle was also presented. After few months of the marriage, the religious ceremony changing 'Thaali' was performed. At that time, the Thaali chain was changed by P.W.1 and his family members. This was objected to by the accused. Again all the accused demanded 5 more sovereigns of gold. P.W.1 agrees to give the same. While so, on 10.01.2005, the deceased committed suicide by hanging. 2.1. P.W.1, thereafter made a complaint to the police. P.W.13, who was the then Inspector of Police attached to Cantonment Police Station, Trichy, registered a case in Crime No.4 of 2005 under Section 174 Cr.P.C., based on the complaint of P.W.1. He forwarded the FIR to the Executive Magistrate cum Revenue Divisional Officer for holding inquest. 2.2. P.W.12, the then Revenue Divisional Officer conducted inquest on the body of the deceased, examined P.W.1 and other witnesses and forwarded the body for postmortem examination. Ex.P11 is his report. 2.3. P.W.10 -

Dr.Karthikeyan, Professor of the Department of Forensic Medicine at Trichy Government Medical College Hospital conducted autopsy on the body of the deceased on 12.01.2005 and he opined that the deceased died of hanging by neck. Ex.P9 is the final report. 2.4. Continuing the investigation, P.W.14, proceeded to the place of occurrence, has examined the witnesses, prepared observation mahazar and a rough sketch on the same day. On 11.01.2005, he arrested the accused Yoganathan, Rajalakshmi and Vasantha Kokilam. On 15.01.2005, he arrested the 2nd accused Janagammal. On 12.02.2005, he examined P.Ws.3,4,5,6,7 and P.W.10. He has collected the medical records and on 30.06.2005, he altered the case into one under Sections 498(A) and 304B IPC. On completing the investigation, the Investigating Officer laid the chargesheet.

3. Based on the above materials, the trial Court framed charges as narrated in paragraph No.1 of the judgment. All the accused denied the charges.

4. In order to prove the case, the prosecution examined as many as 14 witnesses and marked as many as 16 documents. When the above incriminating circumstances were put to the accused, they disputed the same. On their side, Ex.D1 was marked, proved through P.W.1 during cross examination. Ex.D1 is a legal notice issued by P.W.1. Having considered all the above, the trial Court found that there was no demand for dowry. There was no harassment and there was no dowry death. That is how the trial Court acquitted the accused 3 to 6.

5. So far as this appellant is concerned, the trial Court acquitted him from the charge under Section 498(A) IPC as well as under Section 304B IPC. But the State has not preferred any appeal against the acquittal of the accused 3 to 6 as well as the acquittal of the appellant from the charges under Sections 498(A) and 304B IPC. Therefore, in the present appeal, it is not open for the prosecution to contend that from and out of the evidence, there are materials to prove that there was demand for dowry, there was consequential harassment and because of the harassment, she died.

6. A perusal of the judgment of the lower Court would go to show that in many places, more particularly, in paragraph No.39, the lower Court has given a categorical finding that there was no demand for dowry and there was also no

harassment at the hands of the first accused to the deceased. Regarding this finding, as already pointed out, there is no appeal and the same has become final. But the trial Court has convicted the appellant under Section 306 IPC only out of assumption. This is evident from the observation made by the learned Judge in paragraph No.31 of the judgment, wherein, he has stated that the accused had the impression that the deceased was suffering from AIDS. The Court has further observed that because of the same, there is every possibility that the appellant would have abused the deceased. The Court further proceeded to say that because of the abuse, the deceased would have got depressed and therefore, she would have committed suicide. This conclusion of the trial Court is based only on mere surmise and there is no evidence at all, even to infer such occurrence would have happened.

7. Again in paragraph No.39 of the judgment, the learned Judge has observed that though the prosecution has not proved that there was demand for dowry; there was harassment and she died of the said harassment, because the death occurred within few months of the marriage, some problem would have arisen between the appellant and the deceased and because of that problem or quarrel, the deceased would have got depressed and because of that depression, she would have committed suicide. This conclusion, again, is only out of mere surmise. To come to this conclusion, absolutely, there is no evidence. In order to prove an offence under Section 306 IPC, it is essential for the prosecution to prove that there was abetment to commit suicide.

8. The term abetment as defined in Section 107 IPC, is as follows: 107. Abetment of a thing.--A person abets the doing of a thing, who, First.-Instigates any person to do that thing; or Secondly. -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.?

9. Here in the instant case, absolutely there is no material to satisfy any one of the above ingredients. It is nowhere in evidence that the appellant had the mens rea to

drive the deceased to commit suicide. In criminal law, it is not at all permissible to convict an accused out of mere suspicion or surmise. In the instant case, what exactly the trial Court has done is recording conviction based on mere surmise. This, in my considered opinion, is not only impermissible but also illegal. In such view of the matter, the conviction and sentence, imposed on the appellant cannot be allowed to sustain.

10. Though there was no charge under Section 306 IPC, there is no legal impediment to convict the accused under Section 306 IPC, provided, the evidence adduced go to prove that the accused has committed offence punishable under Section 306 IPC in this case. As I have already pointed out that the evidence let in by the prosecution did not go to prove the offence under Section 306 IPC also. In such view of the matter, the appellant is entitled for acquittal.

11. In the result, the appeal is allowed and conviction and sentence imposed on the appellant are set aside and he is acquitted of the charge. The bail bond executed shall stand terminated and fine amount, if any, paid by the appellant shall be refunded to him. 10.04.2015 Index :Yes/No Internet:Yes RR S.NAGAMUTHU, J.

RR To 1.The Sessions Judge, Mahila Court, Tiruchirappalli. 2.The Assistant Commissioner of Police, Cantonment All Women Police Station, Tiruchirappalli 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. Crl.A.(MD)NO.226 of 2007 10.04.2015

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