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Court : Chennai

Decided On : Feb-23-2001

Reported in : II(2001)DMC495

Judge : M. Karpagavinayagam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 498A; [Evidence Act, 1872](#) - Sections 113A

Appeal No. : Criminal Appeal No. 581 of 1992

Appellant : Rajendran and ors.

Respondent : State Rep. by Acp (Law and Order)

Advocate for Def. : R. Karthikeyan, Govt. Adv.

Advocate for Pet/Ap. : R.L. Narayanan, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. The appellants challenging the conviction and sentence imposed upon them for the offence under Section 498-A, I.P.C. directing them to undergo R.1. for 3 years have filed this appeal.

2. Originally, they were charge-sheeted and tried for the offences under Sections 498-A and 304-B, I.P.C. The Trial Court, after considering the materials available on record, acquitted the appellants in respect of the offence under Section 304-B, I.P.C. and convicted them for the offence under Section 498-A, I.P.C.

3. The case of the prosecution is this :

(a) Rajendran, the first appellant herein, is the husband of the deceased Shanthi. The appellants 2 and 3 are the parents of the first appellant. On 1.12.1989, the deceased Shanthi got married to the first appellant Rajendran. Since there was torture at the hands of the appellants, the deceased Shanthi committed suicide on 7.3.1991 at 10.30 a.m. by setting fire on her after pouring kerosene.

(b) On the complaint of Ganesan (P.W.1), the father of the deceased, a case was registered in Crime No. 99 of 1991 for suspicious death by the Sub-Inspector of Police (P.W. 9).

(c) During the course of investigation P.W. 11 the Assistant commissioner of Police altered the case into one for the offence under Section 304-B, I.P.C. and the accused were arrested.

(d) After examination of witnesses and recovery of material objects, the Assistant Commissioner of Police (P.W. 11) filed a charge-sheet before the Trial Court on 20.3.1992 for the offences under Sections 498-A and 304-B, I.P.C.

4. During the course of trial, on the side of prosecution, P.Ws. 1 to 11 were examined, Exs. P-1 to P-16 were filed and M.Os. 1 to 4 were marked.

5. The Trial Court, on completion of trial, concluded that all the appellants were guilty of the offence under Section 498-A, I.P.C. and convicted and sentenced them to undergo R.1. for 3 years. This is under challenge before this Court in the present appeal.

6. The learned Counsel for the appellants, while challenging the judgment of the Trial Court, would elaborately contend by reading the entire portion of evidence that the Trial Court has committed illegality by convicting the appellants without

any material, whatsoever. He would also contend that in the absence of any dying declaration or suicide note and any evidence relating to dowry torture, the Trial Court ought not to have convicted the appellants for the offence under Section 498-A, I.P.C, especially when the charge framed by the Trial Court is in respect of dowry death.

7. It is also contended that having acquitted the appellants for the offence under Section 304-B, I.P.C. on the ground that there is no evidence for dowry torture, the Trial Court ought to have acquitted the appellants in respect of the offence under Section 498-A, I.P.C. also.

8. The learned Government Advocate, while refuting those submissions, would contend that though there is no materials to prove the offence under Section 304-B, I.P.C, there are materials which would attract the ingredients of the first limb of Section 498-A, I.P.C.

9. I have carefully considered the rival submissions and also perused the records.

10. There is no dispute in the fact that the finding of the Trial Court with reference to insufficiency of materials as regards the offence under Section 304-B, I.P.C. has not been challenged by the State by filing a separate appeal.

11. On going through the deposition of the witnesses, namely, P.Ws. 1 and 2, the father and brother of the deceased, it is clear that there is no consistent evidence relating to the dowry torture. Therefore, the finding regarding the acquittal in respect of the offence under Section 304-B, I.P.C. cannot be said to be wrong.

12. However, the question which remains to be considered by this Court is as to whether there are materials to show that the prosecution has proved its case against the appellants in respect of the offence under Section 498-A, I.P.C.

13. On going through the evidence of P.Ws. 1 and 2, namely, the father and brother of the deceased Shanthi, it is noticed that the deceased whenever used to come to their house, used to tell them that she was being tortured by the appellants.

14. One of the reasons for such ill-treatment was that the deceased gave birth to a female child, which was considered to be inauspicious and after the birth of the said female child, the first appellant's brother's wife died and the appellants thought that the birth of the said female child was the reason for various debacles in the family and consequently, she was tortured by the appellants.

15. It is also clearly stated by P.W. 1 that on 28.2.1991, P.W. 1 went to the house of the appellants to take both the first appellant and the deceased to attend a function at their 'Kula Theivam' temple. But the appellants allowed only the deceased to go along with P.W. 1 to attend the function. Admittedly, the first appellant did not accompany the deceased to the function.

16. On 7.3.1991 at about 10.30 a.m., P.W. 2, the brother of the deceased, took the deceased and left her in the house of the appellants. At that time, the 3rd appellant abused her. After having pacified the deceased, P.W. 2 came back. Then at 12.30 p.m., P.W. 1 received message from the first appellant that the deceased Shanthy was not well. At that time, the first appellant did not inform him as to what really happened.

17. Immediately, thereafter, P.W. 1 went and saw the deceased in the bath room dead with burning injuries all over the body. Immediately, he went and gave a complaint to the Sub-Inspector of Police. After taking up investigation, P.W. 5 conducted the inquest and sent a report stating that the deceased committed suicide due to the torture meted out to her by the appellants.

18. Thereafter, P.W. 11, the Assistant Commissioner of Police, took up further investigation and filed a charge-sheet under Sections 498-A and 304-B, I.P.C.

19. In the instant case, apart from P.Ws. 1 and 2, the prosecution had produced one other independent witness Tmt. Dhanam (P.W. 3), who was the neighbour. P.W. 3 deposed that the deceased Shanthy used to come often and tell her that she was being ill-treated by the appellants' family.

20. According to the Counsel for the appellants that the said evidence cannot be acted upon. This submission, in my view, may not merit consideration because the

said evidence relates to the statement made by the deceased to P.W. 3 in relation to the torture, which ultimately resulted in commission of suicide by the deceased.

21. Moreover, there is nothing to indicate that P.W. 3 was speaking falsehood as against the appellants. So, the evidence of P.Ws. 1 to 3 would make it obvious that before the death of the deceased, she was ill-treated by the appellants' family for so many reasons mentioned above. Moreover, as noted above, the first appellant did not incline to go along with the deceased for the temple function.

22. That apart, the occurrence took place in the house of the appellants on 7.3.1991 at about 12.00 noon. Only two hours prior to that, she was brought by her brother P.W. 2 and left in the house of the appellants. At that time, the 3rd appellant abused the deceased.

23. The conjoint reading of all these depositions would clearly show that only due to the harassment and torture by the appellants, the deceased had been deprived to a situation where she had to decide to commit suicide.

24. The learned Counsel for the appellants would cite the decisions in (1) Thangapandian v. State 1997 2 LW 578, and (2) State of Maharashtra v. Ashok Chotelal Shukla III (1997) CCR 159 (SC)=II (1997) DMC 685 (SC)=1997 (2) SCC 26.

25. These decisions would not apply to the present case, as, in my view, on the basis of the facts of the case, this Court as well as the Supreme Court acquitted the accused.

26. However, in the present case, as mentioned above, there are materials to show that the appellants committed the offence under Section 498-A, I.P.C.

27. The first limb of Section 498-A, I.P.C. would provide that whoever, being husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished. Cruelty has been defined in Clause (a) of Explanation to the said section as any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide.

28. Therefore, though the demand of dowry comes under Clause (b) of Explanation to Section 498-A, I.P.C, in my view, Clause (a) of Explanation to Section 498-A, I.P.C. would definitely get attracted.

29. Further, as per Section 113-A of the Evidence Act, when the question as to whether commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume that such suicide had been abetted by her husband or by such relative of her husband. This has not been rebutted by the appellants.

30. So, in view of the above provisions and in the light of the materials available on record, I am of the considered opinion that the Trial Court is correct in imposing the conviction on the appellants.

31. The learned Counsel for the appellants would request this Court that in the event of this Court coming into the conclusion that the finding of the Trial Court is correct, this Court may either reduce the sentence or order remission on the basis of various G.Os. issued by the Government.

32. The facts and circumstances of the case do not permit me to show any leniency with reference to the quantum of sentence. Similarly, the question as to whether, the appellants would be entitled to remission under the relevant G.Os. cannot be considered by this Court, as this has to be considered and decided only by the Jail Authorities after verification as to whether those G.Os. are applicable to the appellants.

33. Therefore, I do not find any merit in this appeal and accordingly, the appeal is dismissed. The conviction and the sentence imposed upon the appellants by the Trial Court are confirmed.