

Packirisamy Vs. State of Pondicherry

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Court : Chennai

Decided On : Jul-12-2004

Reported in : 2005CriLJ467

Judge : R. Banumathi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498A; [Evidence Act, 1872](#) - Sections 113A

Appeal No. : Crl. Appeal No. 736 of 1997

Appellant : Packirisamy

Respondent : State of Pondicherry

Advocate for Def. : M.R. Thangavel, Adv. for ;PP

Advocate for Pet/Ap. : R. Thirugnanam, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

R. Banumathi, J.

1. Appellant is the accused in S.C. No. 35 of 1997 on the file of Additional Sessions Judge, Pondicherry at Karaikkal. By the Judgment (dated 19-9-1997)

learned Sessions Judge has convicted by Appellant/Accused under Sections 498-A and 306, IPC and sentencing him to undergo rigorous imprisonment for three years for each of the offences.

2. Case of the prosecution could briefly be stated thus :

Victim-Adhliakshmi is the daughter of PW-1-Thangaraj and PW-3-Santha. PW-4-Kalyani is the mother of the accused. The marriage between the accused and the victim-Adhilakshmi was solemnised on 7-6-1990. The couple have a female child by name Nithya born on 21-7-1991. The accused and the vic-tim-Adhilakshmi were living at door No. 12, Thittacherry Salai, T.R. Pattinam.

3. While the accused was living with his wlfе-Adhilakshmi, he developed illicit intimacy with PW-6-Meena alias Meenakshi and was keeping her as his concubine. Both of them were living together at door No. 18, Pillaithottam, Kovilpathu, Karaikkal, which is the house of PW-7-Nagarajan. Out of that relationship, a male child-Karthik was born on 9-8-1992. Ex.P.9 is the birth extract of their son-Karthlk, Ex.P. 12 is the Ration Card, showing the co-habitation of the accused and PW-6-Meena.

4. Further case of prosecution is that the marriage between accused and the victlm-Adhilakshmi was cordial for one year. Afterwards, difference of opinion arose between Adhilakshmi and the accused when she came to know about the illicit intimacy between the accused and PW-6. Whenever Adhilakshmi asked the accused to part his ways from PW-6, the accused used to beat her in a drunken mood, driving her to take shelter in her parents house very often. Moreover, the accused used to keep himself away from the matrimonial house while he was visiting the house of PW-6. Adhilakshmi was informing her parents-PWs-1 and 3 about the conduct of her husband in keeping PW-6 as concubine and also about the cruelty and ill-treatment meted out to her. PWs-5 and 8 being family friends of PW-1 intervened the matter to pacify them. On the date of occurrence 18-3-1996-4.30 p.m., the accused came to the house in a drunken mood and picked up quarrel with victim-Adhilakshmi and assaulted her brutally. As the pain was unbearable, Adhilakshmi oused herself with Kerosene and set fire to herself. The accused, who was present in the house at that time came to the rescue of the

victim-Adhilakshmi and he also sustained burn injuries. On hearing the same, PW-4 mother of the accused had taken Adhilakshmi and accused to Government Hospital at Karaikkal and admitted them.

5. At that time, PW-17 was the duty Doctor attached to Government Hospital, Karaikkal. He found victim-Adhilakshmi with burn injuries all over the body. Adhilakshmi suffered 100% burn injuries. He admitted her in the emergency ward. Requisition was sent for recording the dying declaration of Adhilakshmi. PW-14 then working as Sub-Divisional Judicial Magistrate, Karaikkal received the requisition to record the dying declaration of Adhilakshmi. Immediately, she went to Government Hospital, Karaikkal for recording the dying declaration. Adhilakshmi was unconscious and not in a position to give any statement.

6. The accused was also admitted in the hospital for treatment as to his burn injuries. Ex.P. 16 is the wound certificate of the accused.

7. Registration of case and investigation : Victim-Adhilakshmi succumbed to the burn injuries on 19-3-1996-5.30 a.m. After the death of victim-Adhilakshmi, PW-1 went to T. R. Pattinam Police Station and lodged Ex.P. 1 -Complaint. On the basis of Ex.P. 1, case was registered in crime No. 30/96 under Section 174, Cr.P.C. under Ex.P. 17-F.I.R. PW-19 Sub-Inspector of Police had taken up investigation. Since Adhilakshmi committed suicide within the period of 5 years from the date of her marriage, PW-19 sent requisition to the PW-14- Sub-Divisional Judicial Magistrate, Karaikkal with a request to conduct inquest on the body of Adhilakshmi as per Section 174(2)(i), Cr.P.C. Pursuant to the requisition from PW-14, PW-18- Deputy Tahsildar (Revenue), Karaikkal conducted inquest on the body of Adhilakshmi, Witnesses were examined in the presence of panchayatdars and their statements were recorded. Ex.P.7 is the inquest report.

8. PW-19-Sub-Inspector of Police had taken up simultaneous investigation. He has inspected the scene of occurrence in the presence of PW-5-Govindarajulu. M.O.1-Iron Stove, M.O.2-Plastic Can, M.O.3-Mat and M.O.4-Partly burnt cotton lungi were seized under Ex.P.5-Seizure Mahazar. PW-19 had also held a parallel inquest on the body of the deceased-Adhilakshmi. Ex. P. 6 is the inquest report. During the inquest, the panchayatdars and witnesses opined individually as well

as unanimously that the deceased-Adhilakshmi chose to commit suicide by self-immolation due to abetment of the accused-Packirisamy who was her husband. After the inquest, the body was sent to autopsy.

9. Pursuant to the requisition from PW-19, PW-2-Assistant Surgeon, General Hospital, Karaikkal conducted the autopsy on the body of deceased-Adhilakshmi. PW-2 opined that the death is due to hypovolacmic shock as a result of burns sustained. Ex.P.3 is the post mortem certificate.

10. After the post mortem, PW-15 handed over the body of Adhilakshmi to PW-1-Father of victim on 20-3-1996. During the investigation, it was revealed that deceased-Adhilakshmi committed suicide by self-immolation due to abetment of the accused. Hence, Ex.P17-F.I.R. was altered from Section 174, Cr.P.C. into one under Section 306, I.P.C.

11. On 24-1-1997-12.00 noon, PW-19 arrested the accused at T. R. Pattinam. The accused was remanded to judicial custody. On completion of formalities of investigation, the accused was chargesheeted for the offences punishable under Sections 498-A and 306, I.P.C.

12. In the trial Court, to substantiate the charges against the accused, prosecution has examined PWs-1 to 19. Exs. P.1 to P.18 were marked. M.Os. 1 to 4 were produced. The accused was questioned about the incriminating circumstances and evidence under Section 313, Cr.P.C. Specifically denying any illicit intimacy with PW-6, the accused put forth defence plea that the death of Adhilakshmi was due to accidental fire. According to the accused, while Adhilakshmi was pumping the gas stove, it burst and due to the bursting of the gas stove, Adhilakshmi sustained burn injuries. The accused also sustained burn injuries while he was trying to rescue his wife out of fire.

13. Upon consideration of the evidence, learned Sessions Judge rejected the defence version. On the evidence of PWs-1, 3 and 8, learned Sessions Judge found that the accused had developed illicit Intimacy with PW-6 and was running a parallel family. The trial Court further found that the deceased-Adhilakshmi was being subjected to cruelty and ill-treatment and the accused caused her mental

agony driving her to commit suicide. On the evidence of PWs-1 and 8 and other circumstances, the trial Court negated the defence plea that it is a case of accidental fire and accepted the case of the prosecution that it is a case of self-immolation. Finding the accused guilty for cruelty and ill-treatment and for abetment to commit suicide, learned Sessions Judge said that in cases of such proved guilt, no leniency could be shown and the trial Court imposed sentence of imprisonment of three years for each of the offences (to run concurrently).

14. Aggrieved over the conviction, the appellant/accused has preferred this appeal. Denying any relationship with PW-6, on behalf of the accused, two fold defence is advanced :

i. that the death of Adhilakshmi is not a case of suicide but only a case of accidental fire due to bursting of gas stove;

ii. that the accused had not subjected Adhilakshmi to any cruelty and the accused was cordial with Adhilakshmi in the matrimonial life. Assailing the evidence of PWs-1 and 3, learned counsel for the appellant submitted that because of loss of their daughter, PWs-1 and 3 have undergone mental sufferings and due to their mental agony, they have foisted a false case against the accused. Reasonings of the trial Court are also assailed on the ground that the trial Court erred in basing the conviction on the interested testimony of PWs-1, 3 and 8 and the conviction is unsustainable.

15. Countering the arguments, Mr. M. R. Thangavel appearing for public prosecutor (Pondicherry) has submitted that the prosecution has well proved that the accused had been living with PW-6 for a long time by production of Ex.P.12-Ration Card and Ex.P.9-Birth Extract of Karthik. Submitting that by the evidence of PWs-1 and 3, prosecution has well proved that the deceased-Adhilakshmi was subjected to cruelty, learned counsel urged to raise the presumption available under Section 113-A of the Indian Evidence Act. Drawing the attention of the Court to Ex.P.5-Seizure Mahazar, it is contended that the seizure of M.0.1 -Iron Kerosene stove intact condition falsifies the defence theory of accidental fire. Learned counsel has further submitted that the findings of the trial Court are based upon proper appreciation of evidence and the assessment of the evidence does

not suffer from any infirmity to reverse the verdict of conviction.

16. Upon re-appreciation of evidence and materials on record and the impugned judgment of the trial Court and submissions of both sides, the following points arise for consideration in this appeal:

(i). Whether prosecution has proved that the deceased-Adhilakshmi was subjected to cruelty which has driven her to commit suicide?

(ii). Whether the conviction under Sections 498-A and 306, I.P.C. are based upon the evidence and whether the conviction suffers from any erroneous approach warranting interference?

17. It is the common ground that the accused and the deceased married in the year 1990 were living at door No. 12. Thittacherry Salai, T. R. Pattinam. The couple have a female child by name Nithya born on 21-7-1991. Ex.P.11 is the ration card of the accused and the deceased showing their residence in the above address.

18. Before going to the vital aspects and the evidence, we may refer to the illicit intimacy of accused with PW-6, which is well established by the prosecution by adducing innumerable evidence. PW-6-Meena was married to one Moorthy of Keevalur. Within two years of her marriage, she was separated from her husband. The accused is a cook by profession. Brothers of PW-6 are also cooks by profession and PW-6 was assisting her brothers. In that way, accused came in contact with PW-6 and both of them developed intimacy. During questioning under Section 313, Cr.P.C, the accused has specifically denied such relationship with PW-6. But, PW-6 could not directly deny such relationship. She has admitted her acquaintance with the accused and having a boy by name Karthik.

19. Feeble denial of relationship with PW-6 by the accused is shattered by the unimpeachable evidence adduced by the prosecution. Ex.P.9 is the birth register extract of their son-Karthik. From Ex.P.9 it is seen that Karthik was born on 9-8-1992. In Ex.P.9, name of his parents is stated as :

'Name of father : S. Packirisamy

Name of mother : Meenakshi'

Co-habitation of the accused and PW-6 is well proved by the prosecution by Ex. P.12-Ratlon Card. Accused, PW-6 and their son are stated to be residing in one house at '18, Pillalthottam, Kovilpathu, Karaikkal'. The following entries in Ex.P. 12-Ratlon Card are evidence of strong character showing joint living of the accused with PW-6.

S. No.	Name	Relationship	with	theHead	of
Family-----				1. Packirisamy	Head of
Family2.	Meenatchy		Wife3.		Karthik
Son-----					

20. That accused is figuring as head of the family and Karthik is stated to be the son of the accused is formidable circumstance strengthening the prosecution case. Notwithstanding the denial of such relationship by the accused and hostility of PW-6, prosecution has well proved the relationship and Joint living of the accused and PW-6. On the basis of Exs.P.9 and P. 12, learned Sessions Judge has rightly concluded that the prosecution has proved that the accused was keeping PW-6 as his concubine.

21. PWs-1 and 3 have consistently spoken about the illicit relationship of the accused PW-6. PWs-1 and 3 have further stated that in view of such relationship, the accused was beating and ill-treating Adhilakshmi. PWs-1 and 3 have consistently spoken about Adhilakshmi informing them about the cruelty and ill-treatment of the accused and how Adhilakshmi was forced to come to their house frequently. About two or three months prior to the occurrence, Adhilakshmi visited the house of her parents and informed them about the beating of the accused. According to PWs-1 and 3, PW-5-Govindarajulu has intervened and has taken back Adhilakshmi to the house of the accused. On those aspects, PW-5 has turned hostile. In view of the consistent evidence of PWs-1 and 3, reluctance of PW-5 to speak about the cruelty and his intervention in pacifying the couple does not in any way weaken the prosecution case. Learned Sessions Judge has also rightly held that hostility of PW-5 would not in any way undermine the prosecution case.

22. On the aspect of cruelty, we may usefully refer to the evidence of PW-8-Duralsamy, who is the resident of Nagoor. In his evidence, PW-8 has clearly stated about the cordial relationship of the accused and Adhilakshmi for about one year and thereafter she used to come to her parents house very often. PW-8 has stated that he enquired Adhilakshmi from whom he learnt about the scolding and beating of Adhilakshmi by the accused. It is relevant to note that PW-8 has referred to the intervention of PW-5 to pacify the couple. Evidence of PW-8 from independent source amply strengthens the prosecution case.

23. By the evidence of PWs-1 and 3, the prosecution has established cruelty meted out to Adhilakshmi. Ordinarily, offences against married women have been committed within the four corners of a house and normally, direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. Hence, while deciding as to whether a woman was harassed or ill-treated by her husband or his relatives, various factors and circumstances can be considered by the Court. Keeping PW-6 as his wife and bringing up the child-Karthik even while Adhilakshmi was living is certainly constituting 'cruelty' within the definition as encompassed in Section 498-A I.P.C. The trial Court has rightly found the accused guilty under Section 498-A, I.P.C. and the conviction under Section 498-A, I.P.C. is to be sustained.

24. Case of prosecution is that Adhilakshmi set fire to herself by pouring Kerosene on her due to cruelty meted out to her and mental torture by the accused. Denying self-immolation, the accused set forth defence that his wife Adhilakshmi sustained burn injuries due to the bursting of stove while pumping and that he was very cordial to his wife-Adhilakshmi. Whether the deceased-Adhilakshmi committed suicide and whether she was driven to the act of suicide by the cruel contact of the accused are the points falling for our consideration.

25. The material objects seized under Ex.P.5 from the scene of occurrence are marked as M.Os. 1 to 4. In Ex.P.5, the description of M.O. 1-Iron stove is stated as :

'.....uz;L gh;dh; kw; Wk; uz; L buFnyl;lh; nl'; fpy;rpwpj kz;bzz;lza[ld: Toa JU gpoj:J ePy epwKs;s, Uk;ghyhd !;lt; xd;W ...'

Had there been bursting of stove It would have been clearly reflected in Ex.P.5. Defence theory that Adhilakshmi sustained burns due to accidental fire is discredited by recovery of M.O.I-Iron stove 'as is intact' condition.

26. Advancing the defence case of accidental fire, learned counsel for the appellant has drawn the attention of the Court to the evidence of PW-13-Head Constable. According to PW-13, he received information from Government Hospital, Karaikkal that Adhilakshmi is admitted to treatment of bum injuries due to accidental fire. At the time of admission In the Hospital, Adhilakshmi who suffered 100% bum injuries was unconscious. While she was in unconscious state, she would not have been in a position to narrate the incident as to the manner of sustaining burn injuries. Perhaps to save himself from prosecution, the accused might have given incorrect information to the hospital authorities that it was due to accidental fire. Hence, in that view of the matter, evidence of PW-13 that he received information from the hospital that Adhilakshmi admitted to the hospital for burns due to accidental fire does not in any way advance the defence case.

27. In support of the defence plea that Adhilakshmi sustained bum injuries due to accidental fire, yet another circumstance is pointed out by the accused. According to the accused, in the accidental lire, while he was trying to rescue his wife, he had also sustained burn injuries in both his legs. Undoubtedly the accused also sustained burn injuries, but that does not in any way advance the defence case. Even in the case of self-immolation the accused would have attempted to save the life of his wife and in that way he would have sustained the injuries.

28. During the inquest, on the basis of the statement of witnesses, PW-19 formed opinion that death of Adhilakshmi was due to self-immolation due to abetment of the accused. In Ex.P.6-Inquest report the panchayatdars and witnesses opined individually as well as unanimously that the deceased-Adhilakshmi chose to commit suicide by self-immolation due to abetment of the accused, which strengthens the prosecution case.

29. Referring to the pattern of burns -burns in the scalp and face, learned Sessions Judge inferred that Adhilakshmi committed suicide. Learned Sessions Judge has elaborately discussed the pattern of burn injuries and pointed out that

the death was due to self-immolation. Without much elaborating upon the pattern of damages, suffice it to point out that self-immolation is well established by the prosecution by the evidence on record.

30. Now, the presumption available under Section 113-A of the Indian Evidence Act is also to be pointed out. Under Section 113-A of the Act when a question is raised whether the 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, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Explanation to the Section says that cruelty shall have the same meaning as in Section 498-A, I.P.C. The prosecution available under Section 113-A is rebuttable. No convincing ground is forthcoming rebutting that presumption.

31. The cruelty meted out to Adhilakshmi is well proved by the prosecution. Suicide is proved to be direct consequence of cruelty. When the husband was living with another woman, definitely, it would amount to mental agony and pain. Such acts of the accused would certainly destroy normal mental frame of the mind of the deceased, who was a simple house-wife. Thus, unable to bear the mental agony, the deceased -Adhilakshmi was driven to commit suicide.

32. Thus, direct nexus between cruelty and suicide is well established. The trial Court has rightly convicted the accused for the abetment of suicide under Section 306, I.P.C. For the offences under Sections 498-A and 306, I.P.C., the trial Court has imposed sentence of imprisonment of three years for each of the offences. Learned counsel for the appellant/accused prayed for leniency on the ground that the accused has to take care of his family and aged mother. In cases of proved guilt of abetment of suicide of the wife, no leniency could be shown. The fact that ten years has elapsed since the incident had taken place and that the accused has the family to be maintained cannot be good reasons for reduction of sentence. The finding of guilt, conviction and sentence are to be maintained.

33. C.A. No. 736 of 1997 : Therefore, the judgment of the learned Additional Sessions Judge, Pondicherry at Karaikkal dated 19-9- 1997 in S.C. No. 35 of 1997, convicting the appellant/accused under Sections 498-A and 306, I.P.C. and the sentence of imprisonment of three years for each of the offences imposed upon him are confirmed and this appeal is dismissed.

34. Since the appellant/accused is on bail, the trial Court is direct to secure the custody of the appellant/accused and make him to undergo remaining period of sentence.

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