

Ramesh Vs. the State of Tamil Nadu, Rep. by Deputy Superintendent of Police

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Court : Chennai

Decided On : Sep-14-2012

Judge : T. Sudanthiram

Appeal No. : Crl.A.No.694 of 2005

Appellant : Ramesh

Respondent : The State of Tamil Nadu, Rep. by Deputy Superintendent of Police

Advocate for Pet/Ap. : For the Appellant: R.Ravichandran, Advocate. For the Respondent: P.Govindarajan, Additional Public Prosecutor.

Judgement :

(Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment dated 17.06.2005 passed in S.C.No.613 of 2003 by the learned Assistant Sessions Judge, Thiruvallur.)

The appellant herein is the accused in S.C.No.613 of 2003 on the file of the learned Assistant Sessions Judge, Thiruvallur and he stands convicted for the offences under Sections 498-A and 304-B I.P.C. and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one month simple imprisonment for the offence under Section 498-A I.P.C. and he was also sentenced to undergo ten years rigorous imprisonment and

to pay a fine of Rs.20,000/-, in default, to undergo three months simple imprisonment for the offence under Section 304-B I.P.C., and both the sentences of imprisonment imposed on the accused were ordered to run concurrently. Challenging the said conviction and sentence, the accused/appellant herein had preferred this criminal appeal.

2.The case of the prosecution, in brief, is as follows:-

The accused is the husband of the deceased Meena and their marriage was performed on 28.08.1998. After the marriage, the accused demanded a sum of Rs.10,000/- and he insisted his wife to get that amount from her parents and he also assaulted his wife. Due to ill-treatment, the deceased poured kerosene and set fire on herself. The accused immediately took her to the hospital and admitted in the hospital. P.W.4-Dr.Vijayalakshmi attended her and admitted her in the hospital on 27.03.2002 at 1.00 a.m. Ex.P.14 is the Accident Register. On receiving intimation from the hospital, P.W.12, Sub-Inspector of Police, Thirunindravoor police station went to the hospital and received Ex.P.1-statement from the deceased and it was also attested by Doctor-P.W.4. The deceased died in the hospital.

(ii) P.W.10, the learned IX Metropolitan Magistrate, Saidapet, Chennai, had received a requisition letter-Ex.P.12 from P.W.12 for recording the dying declaration of the deceased and on receiving the same, he went to the Kilpauk Medical College Hospital, Chennai, and recorded the dying declaration of the deceased under Ex.P.13.

(iii) On 28.03.2002, at 9.00 a.m., P.W.12 registered a case on the basis of the statement-Ex.P.1 given by the deceased in Crime No.44 of 2002 for the offences under Sections 498-A and 306 I.P.C. and prepared the First Information Report-Ex.P.15.

(iv) P.W.13, the Deputy Superintendent of Police, took up the investigation in this matter and he went to the scene of occurrence and prepared an Observation Mahazar-Ex.P.16 and a Rough Sketch-Ex.P.17. He also sent a requisition letter-Ex.P.19 to the Tahsildar. The Tahsildar held inquest on the body of the deceased

and recorded the statements of witnesses and he also prepared the inquest report-Ex.P.23. After the inquest, the body was sent for Post-mortem examination.

(v) P.W.9-Dr.Manoharan held autopsy on the body of the deceased. Ex.P.10 is the Post-mortem Certificate. The doctor opined that the deceased died due to complication of burns. P.W.13, the Deputy Superintendent of Police, arrested the accused on 30.03.2003 at 10.00 a.m., and after completing the investigation, he laid the final report against the accused for the offences under Sections 306, 498-A and 304-B I.P.C.

(vi) In order to prove the case, the prosecution examined P.Ws.1 to 13, marked Exs.P.1 to P.27 and produced M.Os.1 to 5. The accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances and he denied his complicity. On behalf of the accused, no witness was examined and no document was marked.

(vii) The Trial Court, after analyzing the oral and documentary evidence, convicted and sentenced the accused as already stated above.

3. The learned counsel appearing for the appellant/accused submitted that P.Ws.1 to 3 are father, mother and sister of the deceased and they do not implicate the accused by their evidence. According to their evidence, there is no dowry harassment and there is no ill-treatment to the deceased. The trial Court, erroneously relying on Ex.P.13, the alleged dying declaration said to have been recorded by the learned Magistrate, convicted the accused. In both Ex.P.1-statement and Ex.P.13-dying declaration only the thumb impression of the deceased was obtained and there is no corroboration for Exs.P.1 and P.13. The learned counsel appearing for the appellant/accused further submitted that even according to Exs.P.1 and P.13, the ingredients of the offence under Section 304-B I.P.C., are not made out and there was no dowry demand by the accused as defined under Section 2 of the Dowry Prohibition Act.

4. Per contra, the learned Additional Public Prosecutor submitted that even though there is no oral evidence in support of the prosecution case, immediately after the deceased being admitted in the hospital even by her husband, Ex.P.1-statement

was obtained by the Sub-Inspector of Police and it had also been attested by P.W.4-Dr.Vijayalakshmi. Thereafter, P.W.10, the learned Magistrate went to the hospital and recorded the dying declaration under Ex.P.13 and the same was also attested by the doctor. The doctor certified that the patient was conscious, capable and was in a fit state of mind while giving the statement. The learned Additional Public Prosecutor further submitted that the reading of Exs.P.1 and P.13 reveals the cruelty committed by the accused persistently demanding a sum of Rs.20,000/- and the accused used abusive words and also assaulted the deceased and due to the cruelty committed by the accused, the deceased had committed suicide by self immolation.

5. This Court has considered the submissions made by the learned counsel on either side and perused the records.

6. The deceased Meena and the accused Ramesh got married on 28.08.1998. On 26.03.2002, in the night hours, the deceased poured kerosene and set fire on herself. P.Ws.1 and 3, who are the father and sister of the deceased do not speak anything against the accused. But, P.W.2, the mother of the deceased had stated that on 25.03.2002, the deceased was brought to her house and on the next day she was left in her matrimonial home. On the same day evening, the deceased returned to their home. She was assaulted by her husband and she returned to her husband's house at 8.00 p.m. On the same day in the night at about 12.00 clock, she came to know that her daughter had been admitted in the Kilpauk Medical College hospital. After the deceased being admitted in the hospital and on intimation, the police came to the hospital and recorded her statement-Ex.P.1 in the presence of the Doctor-P.W.4. On the same day, P.W.10, the learned Magistrate also came to the hospital and he also recorded the dying declaration under Ex.P.13. Though the oral evidence is not incriminating against the accused, Exs.P.1 and P.13, the statements of the deceased, which amount to dying declaration, are very much incriminating against the accused. There is no reason to reject the statement-Ex.P.1 and the dying declaration-P.13 recorded by the police as well as by the learned Magistrate. Both Exs.P.1 and P.13 reveal the fact that after the marriage, the accused was demanding a sum of Rs.10,000/- and he was insisting his wife to get the money from her parents house. As the deceased

could not get that amount, the accused had used abusive words. On the date of occurrence, the accused had assaulted his wife with jallykarandi. As per Ex.P.13, the accused told his wife that she should become a prostitute and earn money. The deceased, being affected very much by the cruel act of the accused, poured kerosene and set fire on herself. As per Exs.P.1 and P.13, the deceased was subjected to cruelty by her husband and driven to commit suicide.

7. As per Exs.P.1 and P.13, there was no dowry demand by the accused. But, there was only unlawful demand. The accused, by making unlawful demand, had subjected his wife to cruelty. In the said circumstances, the offence committed by the accused may not fall under Section 304-B I.P.C., but it would fall only under Section 306 I.P.C.

8. Therefore, the conviction and sentence imposed on the accused for the offence under Section 304-B I.P.C. are set aside. Instead, he is convicted under Section 306 I.P.C. The conviction under Section 498-A I.P.C., and the sentence of rigorous imprisonment for two years and fine of Rs.10,000/- imposed on the accused by the trial Court are confirmed. For the offence under Section 306 I.P.C., the accused is sentenced to undergo rigorous imprisonment for a period of three years and he is also sentenced to pay a fine of Rs.20,000/-, in default, to undergo simple imprisonment for a period of three months and both the sentences of imprisonment shall run concurrently. The fine amount of Rs.20,000/- already paid by accused before the trial Court for the offence under Section 304-B I.P.C., shall be adjusted towards the fine amount now imposed by this Court for the offence under Section 306 I.P.C.

9. In the result, the criminal appeal is partly allowed.

10. The trial Court is directed to take steps to secure the accused and send him to prison to undergo the remaining part of the sentence of imprisonment.

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