

V.Murali Vs. the State

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Court : Chennai

Decided On : Mar-05-2013

Judge : T. Sudanthiram

Appellant : V.Murali

Respondent : The State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATE :

05. 03.2013 CORAM THE HONOURABLE MR.JUSTICE T. SUDANTHIRAM
Criminal Appeal No.538 of 2005 V.Murali ... Appellant/ Accused No.2 Versus The State represented by The Inspector of Police Ranipet Police Station Vellore District, (Crime No.165 of 2002) ..Respondent/Complainant Criminal Appeal filed against the Judgment passed by the learned Additional Sessions Judge, FTC -II, Ranipet, dated 31.05.2005 made in S.C.No.259 of 2003. For Appellant : Mr.M.V.Muralidharan For Respondent : Mr.P.Govindarajan Additional Public Prosecutor JUDGMENT The appellant herein is the second accused in S.C.No.259 of 2003, on the file of the Additional Sessions Judge, FTC-II, Ranipet, and he stands convicted for the offence under Section 306 IPC and sentenced to undergo eight years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo three months simple imprisonment. The first accused in this case was acquitted by the trial Court. Challenging the conviction and sentence, the second accused had preferred this criminal appeal.

2. The case of the prosecution in brief is that the second accused married the deceased on 04.05.2000. The first accused is the mother of second accused/appellant herein. At the time of marriage, the second accused was working as a driver. Five months after the marriage, the second accused / appellant lost his job and he was not doing any work. The accused demanded for a car. Further, the deceased was taken to her parents' house and she was left there. PW-1, brother of the deceased and others took her to the matrimonial home and they left her. After ten days, the deceased informed PW-1 that the accused was insisting and demanding for a Car. When PW-1 met them, the accused asked him to take the deceased along with him, but PW-1 left the deceased in the house of the accused. Due to ill-treatment given by the accused to the deceased, on 15.04.2002, she committed suicide by hanging.

3. In order to prove the case, prosecution examined PWs.1 to 17, marked Exs.P.1 to P.11 and produced material objects M.Os.1 and 2. When the accused was questioned under Section 313 Cr.P.C., he denied his complicity. Neither any witness was examined nor any document was marked on the side of the defence.

4. The trial Court after analysing evidence convicted and sentenced the second accused alone as stated above and acquitted the first accused.

5. The learned counsel for the petitioner submitted that all the prosecution witnesses are interested witnesses and there is no direct material to show that the deceased was ill-treated by the accused. Since the accused was not in any job, the deceased only quarreled with the accused. The learned counsel for the appellant further pointed out that even as per the enquiry conducted by the RDO, this is not a case of dowry death and there was no demand of dowry.

6. Per contra, the learned Additional Public Prosecutor submitted that PW-1 to PW-9 would speak about the appellant/accused demanding a car and thereby causing cruelty to the deceased. The learned Additional Public Prosecutor further submitted that as the death had occurred within seven years of marriage, the presumption under Section 113 -A of the Indian Evidence Act, also arose.

7. This Court considered the submissions made by both parties and perused the records. PW-1 is the brother of the deceased, PW-2 is the maternal uncle, PW-3 is the wife of PW-2. PW-4 is the brother of the deceased and PW-5 is the cousin of the deceased. PW-6 is the sister of the deceased and PW-7 is the husband of PW-6. PW-8 and PW-9 are also the uncle of the deceased. The evidence of all these witnesses disclose about the accused demanding for a Car and for that reason, the deceased was taken to her brother's house and she was left there and Panchayat was convened and thereafter she was brought back and left in the matrimonial home. Even thereafter there had been consistent demand by the accused for a Car. Though there was no demand of dowry, the accused/appellant had made an unlawful demand of a Car, and for which, he had harassed his wife. Though there is no material that the accused/appellant had committed cruelty to his wife, the evidence is available to the extent that he had given harassment to the wife by demanding a car.

8. Section 113-A of the Indian Evidence Act is as follows: "113-A. Presumption as to abetment of suicide by a married woman:- When the question is 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: For the purpose of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code." Though as per above section a presumption may be drawn by the court that suicide had been abetted prima facie the prosecution must establish that the deceased was subjected to cruelty. Further it is not mandatory to draw a presumption regarding abetment since it is not worded as "the court shall presume", but it is worded as "the court may presume having regard to all the other circumstances of the case." Hence invoking presumption as provided under Section 113-A of Indian Evidence Act depends on the facts and circumstances of each case and mechanically presumption should not be drawn by the court.

9. In this case, though the facts lead to show that there was unlawful demand by the accused, the other circumstances of the case do not lead to draw an inference that the suicide had been abetted by the accused.

10. Hence, the conviction and sentence imposed on the accused under Section 306 IPC by the trial Court are set aside. At the same time, the evidence being available to the extent that the deceased was harassed by the accused/appellant demanding a car, the ingredients of the offence under Section 498-A are made out. Though there is no specific charge under Section 498-A IPC against the accused, the charge being framed under Section 306 IPC against the accused, the conviction under Section 498-A IPC could be made invoking the provisions under Section 221 of Cr.P.C., which reads as follows: "221. Where it is doubtful what offence has been committed:- (1) If a single act or series of acts is of such nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section(1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it." 11. For the above said reasons, the second accused/appellant is convicted under Section 498-A IPC and sentenced to undergo six months rigorous imprisonment and also to pay fine of Rs.5000/- in default to undergo three months simple imprisonment. The fine amount already paid shall be adjusted towards the fine amount now imposed on the accused.

12. In the result, the criminal appeal is partly allowed. The learned Additional Sessions Judge, FTC-II, Ranipet, is directed to take steps to secure the appellant/second accused and send him to prison in order to undergo the sentence of imprisonment. The period of imprisonment already undergone by him shall be set off. 05.03.2013 Index:yes Internet:yes ksr Copy to:

1. The Additional Sessions Judge, FTC II, Ranipet, 2.The Inspector of Police, Ranipet Police Station Vellore District.

3. The Public Prosecutor, High Court, Madras. T. SUDANTHIRAM, J.

ksr Criminal Appeal No.538 o

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