

(2013) 11 MAD CK 0220

Madras High Court

Case No: Crl. R.C. No. 697 of 2013 and M.P. No. 1 of 2013

Madesh @ Madesh and
Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 6, 2013**Citation:** (2014) 1 MLJ(Cri) 441**Hon'ble Judges:** K.B.K. Vasuki, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.

The petitioners herein are the accused 1 and 2 in S.C. 96/2006 on the file of the Sub Court, Krishnagiri and the appellants in Crl. A. No. 6/2008 on the file of the Principal District Sessions Judge, Krishnagiri. This Criminal revision is filed by the petitioners against their conviction and sentence for the offences under Sections 498A and 304B IPC and Section 4 of Dowry Prohibition Act, passed by the trial court as confirmed by the lower appellate court. It is not in dispute that the deceased Suseela, who is none else than the daughter of PW 1 Govindaraj and PW 2 Selvi and A1 Madesh @ Madesh were in love with each other and Suseela during January 2003 eloped with Madesh and the same led to filing of criminal complaint by PW 1 and they were traced out and the complaint was withdrawn and they got married with the consent of their respective parents during January 2003 and after marriage, they had been living as husband and wife and led matrimonial life happily. While so, Suseela committed suicide by hanging herself on 13.10.2003 and the same led to filing of the present complaint by PW 1 Govindaraj against the husband and in-laws of the deceased and the same was registered as Kathikuppam Police station Cr. No. 822/2003 and the same was investigated into and culminated as S.C. No. 96/2006 arising out of the same is the present criminal revision, in which, the accused faced trial for the offences under Sections 498A and 304B IPC and Section 4 of Dowry

Prohibition Act.

2. The prosecution in order to bring home the guilt of the accused examined PW 1 to PW 16 and produced Exs. P1 to P16 documents, besides MO 1 to MO 8 material objects. No oral witness was examined and Exs. D1 to D4 documents were marked on the defence side. The trial court on the basis of the available records, found the accused guilty for the charges framed against them and convicted and sentenced them. Aggrieved against the same, the accused preferred C.A. 6/2008. The lower appellate court, on the basis of the same set of evidence, confirmed the finding of conviction and sentence imposed on the accused by the trial court. Hence, this criminal revision by the accused before this court.

3. Heard the rival submissions made on both sides.

4. The perusal of the records reveals that both the courts below placed serious reliance on the oral evidence of PW 1 to PW 5 independent witnesses and the report of PW 11/Revenue Divisional Officer to believe the prosecution case regarding the act of ill-treatment and harassment meted out by the wife in the hands of the husband and also father-in-law in which the accused demanded dowry by way of more cash and valuables and tortured her for not complying with the persistent demand for dowry which driven the deceased to put an end to her life. Out of PW 1 to PW 5, PW 1 and PW 2 are the parents of the deceased and PW 3 to PW 5 are the close associates of PW 1, out of which, except PW 1 to PW 4, PW 5 did not speak about demand for dowry made by the accused and harassment of the wife by the accused for complying with such demand etc. It may be true that the remaining witnesses PW 1 and PW 2 have categorically narrated the number of occasions during which money was demanded and complied with and frequent complaints received from the wife against her husband and in-laws in this regard. Both PW 1 and PW 2 would also say that the husband used to harass and beat his wife for complying with demand for money and every time the accused demanded money, they arranged and handed it over to them. It is also deposed by PW 1 that the deceased meted out harassment only at the hands of A1. PW 3 in his evidence would refer about two incidents in which Rs. 15,000/- and Rs. 10,000/- were paid to A1 Madesh, as informed by the deceased to him. PW 4 has also deposed that he rendered financial assistance to the complainant to comply with such demand made by A1 Madesh and A2 Duraisamy. However all the witnesses in the course of their cross examination admitted that they deposed about such incidents for the first time in the witness box and it was not stated either in the complaint or in their Section 161 statement. PW 16 Investigating Officer has categorically admitted that whatever be the evidence deposed by the witnesses in their chief examination are not disclosed either in the complaint or Section 161 statement during investigation, which shows that the parties made improved version at trial stage.

5. Whereas, the accused totally denied the ill-treatment of wife in their hands. It is their specific case that the deceased left suicide note to the effect that nobody was

responsible for her end and the same was, though produced before the Investigating officer, not received for the reasons best known to him. It is also the case of the accused that the Investigating Officer refused to look into that document and formed an opinion on his own without any enquiry that the document was created for the purpose of this case, as such, the investigation is one sided one and biased and not in the right direction. The learned counsel for the petitioners/accused has also drawn the attention of this Court to the statement of the witnesses in the course of their cross examination and also the evidence of PW 16/Investigating Officer. The reading of the same would shatter the entire prosecution case against the accused. It is categorically admitted by all the witnesses that they did not come forward with the theory as spoken in the witness box, at the earliest possible time and the complaint and Section 161 statement are without any such particulars at their instances. In that event, both the courts below ought not to have placed serious reliance on oral testimony of those witnesses, which are improved one at every stage and are the latest one and the same stand contradicted to their earlier statements. The complaint also does not disclose specific case as spoken by the witnesses in their chief examination. Section 161 statement do not speak anything about it. Above all, the report of the Revenue Divisional Officer is also not cogent, clear and convincing. Whereas, the trial court, without duly considering the oral evidence of the witnesses in the course of their cross examination, found them to be trustworthy and believed their version and passed an order of conviction against the accused. In my considered view, the same is not legally permissible.

6. Next important factor to be considered herein is Ex. D2 letter produced on the defence side. It is, according to the accused, purported to be suicidal note left by the deceased. In order to prove the genuineness of the same, the note book normally used by the deceased for writing or scribbling or drawing kolam etc. is produced before the court. As far as Ex. D2 letter is concerned, the existence of the same is referred to in bail petition by the accused. The petitioners have even in their bail petition, sought for investigation of Ex. D2 document. Though the Investigating officer had been, even at that time aware of the existence of one such document, he did not think fit to hold any investigation on that document to ascertain (i) whether the document is true, (ii) whether it is written by the deceased in her own handwriting, and (iii) whether there is any outside or external force to compel her to write that document. The Investigating Officer, without any enquiry, disbelieved the same to be untrue and not taken as evidence. In my considered view, the Investigating Officer has no authority to do so. It is the duty of the Investigating Officer to place all the materials collected by him during investigation before the court concerned and it is for the court to decide as to whether the materials produced before the same are acceptable or not. The Investigating Officer has no role to choose the material, which is likely to suit their case and to leave other material, which is likely to prejudice the case of the prosecution. Such course

adopted by the Investigating Officer is without any authority, against law and contrary to the procedure laid down under the Act.

7. As already referred to above, the Investigating Officer has not even enquired the neighbours of the accused regarding the nature of matrimonial relationship between the parties to sustain the complaint and to initiate criminal prosecution against the accused. As rightly argued by the learned counsel for the petitioners, the conduct of the Investigating Officer in ignoring Ex. D2 document, inspite of the same being referred to in the court of law, amounts to deliberate suppression of material and willful negligence on the part of the Investigating Officer in discharging the duty cast on him. When the duty cast on him is to place all the materials collected during the course of investigation before the court concerned, the very conduct of the Investigating Officer in not holding any investigation in other direction would only show the biased and one sided nature of the investigation. The Investigating Officer appears to have fixed the accused and collected the materials to suit his case, instead of collecting all the materials and fixed responsibility on the correct person, on the basis of the materials available.

8. Viewing from any angle, the impugned judgment of conviction and sentence passed by the courts below are without any substantive and satisfactory evidence and not supported by proper reasoning and the same hence suffer from gross error and irregularity, thereby warranting interference by this Court. In the result, this criminal revision is allowed by setting aside the judgment of conviction dated 15.04.2013 made in Crl. A. No. 6/2008 on the file of the Principal District Sessions Judge, Krishnagiri confirming the judgment dated 9.1.2008 made in S.C. No. 96 of 2006 on the file of Sub Court, Krishnagiri. The petitioners 1 and 2/accused are acquitted from the charges and the petitioners shall be released forthwith unless their detention is required in connection with any other case. The bail bond, if any, executed by the petitioners shall stand cancelled and the fine amount, if any, paid by the petitioners shall be refunded to them. Consequently, connected Miscellaneous petition is closed.