

(2010) 12 MAD CK 0253

Madras High Court

Case No: Criminal Appeal No. 948 of 2007

Kumar @ Shivakumar and
Jayalakshmi

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Dec. 23, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 306, 307, 498A

Hon'ble Judges: G.M. Akbar Ali, J

Bench: Single Bench

Advocate: R. Vijayakumar, for the Appellant; S. Senthilmurugan, for Addl. Public
Prosecutor, for the Respondent

Judgement

G.M. Akbar Ali, J.

The Appellants were convicted for an offence u/s 498-A IPC and each sentenced to undergo R.I for 3 years and to pay a fine of Rs. 1,000/- each, in default to undergo RI for 3 months and were further convicted for an offence u/s 306 r/w 34 IPC and each sentenced to undergo RI for 7 years and to pay a fine of Rs. 1000/-each, in default, to undergo RI for 3 months by the learned Additional Sessions Judge (Fast Track Judge-2), Kancheepuram dated 4.10.2007 in S.C. No. 135 of 2007.

2. The case of the prosecution is as follows:

The deceased Mutharasi was the daughter of P.W.1. Ethammal. When she was studying IX Standard, she fell in love with the first Appellant and both of them were married at Ekambaranathar Temple at Kancheepuram against the wishes of P.W.1. After their marriage, they lived for three months in their village at Kaliapatti. Thereafter, they came to Kancheepuram and started living. The 2nd Appellant is the mother of the first Appellant. They lived together for nine years. The first Appellant and the deceased had two children born to them out of the wedlock. However, of late, the Appellant started demanding dowry from the deceased. P.W.1 gave

presentation to her daughter. She also purchased a house site in the name of her daughter and constructed a hut. The deceased and the first Appellant were living in the house.

3. The first Appellant was employed in a die factory. He was irregular in going to work. Since the Appellants were demanding motor cycle, P.W.1 gave Rs. 10,000/-. Even thereafter, the Appellants were demanding more money and the second Appellant was telling that she would get her son married to another woman. The deceased was telling to P. Ws.1 and P.W.7 about the demand of vehicle and jewels and also about the cruel treatment of the Appellants. On 4.9.2006 around 7.00 a.m, the first Appellant quarreled with the deceased, poured kerosene over the deceased and left the house chiding her to burn herself and die. At 7.30 a.m, unable to bear the cruelty of the Appellants, the deceased poured some more kerosene and set fire to herself.

4. The 2nd Appellant and her second son Prakash took the deceased to the Government General Hospital, Kancheepuram where she was admitted. The Sub Inspector of Police, Kancheepuram Taluk Police Station recorded the statement of the deceased and registered a case in Cr. No. 1242 of 2006 u/s 498(A) and 307 IPC r/w 4 of Dowry Prohibition Act.

5. A request was sent to the learned Magistrate for recording her statement. The Judicial Magistrate No. I, Kancheepuram went to the hospital and on 4.9.2006 at 10.10 a.m and recorded her statement at 10.35 a.m. The deceased succumbed to burn injuries on 6.9.2006 at 2.15 p.m. On receipt of the intimation, the Inspector of Police, Taluk Police Station altered the first information report to 498A, 304B IPC and Section 4 of Dowry Prohibition Act. He proceeded to the Hospital and conducted the inquest. He requested for a post mortem and post mortem was conducted. The Inspector of Police examined the witnesses and also obtained post mortem certificate and after completion of investigation, laid a charge sheet against the Appellants for the offence under Sections 498-A, 306 r/w 34 IPC before the learned Judicial Magistrate No. II, Kancheepuram. On committal, the case was transferred to the learned Additional Sessions Judge, Kancheepuram for trial. The case was taken on file in S.C. No. 135 of 2007 and on the appearance of the accused, charges were framed and on denial of charges, trial was conducted. The prosecution examined 13 witnesses, marked 17 documents produced 2 M. Os.

6. On the basis of oral and documentary evidence, the learned Additional Sessions Judge found that the Appellants are guilty for offence under Sections 498-A 306 r/w 34 IPC and imposed the sentences as stated above. Aggrieved by which, the Appellants are before this Court.

7. Mr. R. Vijayakumar, the learned Counsel for the Appellant would submit that when there are two inconsistent dying declaration by the deceased, the trial court ought not to have relied on those dying declarations. The learned Counsel pointed out that

when the Sub Inspector of Police recorded a statement from the deceased at 10.00 a.m, the deceased would state that the Appellants were subjecting her to cruelty which drove her to take the extreme step.

8. The learned Counsel pointed out that when a dying declaration was recorded by the learned Magistrate at 10.35 a.m, the deceased had stated that there was difference of opinion about the first Appellant's brother's marriage and the first Appellant did not like the comment given by the deceased and told her to die.

9. The learned Counsel pointed out that there is no evidence to show cruelty and there is no evidence for abetting the suicide and therefore, the trial court is wrong in convicting the Appellants for both offences.

10. On the contrary, Mr. A. Senthil Kumar, for Additional Public Prosecutor would submit that in the dying declaration, the deceased had categorically stated that the first Appellant had poured kerosene and uttered the word "set fire to yourself and die", which will squarely attract the offence u/s 306 IPC. The learned Counsel also submitted that the deceased had stated that the Appellants were subjecting the deceased to cruelty which would attract the offence u/s 498-A IPC.

11. Heard both sides and perused the materials available on record.

12. The Appellants are mother and son, who stand convicted for the offences u/s 498-A and 306 IPC. The specific case of the prosecution is that the Appellants were subjecting the victim to cruelty. The nature of cruelty is spoken about by the mother of the deceased, who was examined as P.W.1, the brother of the deceased, P.W.2 and the maternal aunt, P.W.7.

13. Section 498-A reads as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine

Explanation: For the purposes of this section, "cruelty" means

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet demand.

14. It is well settled that the cruelty which drive the woman to commit suicide should have been committed immediately prior to the occurrence. Likewise, to attract the

provision u/s 306 IPC, there must be an instigation by a person to do the particular thing or there must be an intentional aid by any act or illegal omission. Section 306 IPC reads as follows:

Abetment of suicide:

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

15. It is well settled that merely saying "go and die" do not constitute either cruelty or abetment. As far as the present case is concerned, there is a dying declaration given by the deceased. In the beginning part of it, the deceased would state that the Appellants were demanding money and jewels and used to beat her for the last three months prior to the occurrence.

16. In the middle part of the statement she would state that in the previous night, A.1 had beaten her. She would state her brother-in-law one Prakash was in love with a girl for which the 2nd Appellant was not agreeable and the deceased seemed to have stated that atleast for Prakash, they must perform the marriage in a proper manner. Infuriated by this, the first Appellant had beaten her and on the next morning, he poured kerosene on her and said "you set fire yourself and die". In the later part of the statement, she would state that after he left she poured herself the rest of kerosene and set fire to herself. Admittedly, the 2nd Appellant was living separately. Though in the statement to the police the deceased had narrated various acts of cruelty by the Appellants, in the dying declaration she would state that the first Appellant had assaulted her only on the issue of her brother-in-law Prakash's marriage. Even thereafter, nothing had happened. Only on the next day morning, she would allege that the first Appellant poured kerosene and said burn and die.

17. There is no allegation against the second Appellant. Therefore, the conviction and sentence passed against the second Appellant are unsustainable.

18. As far as the first Appellant is concerned, the deceased would state that in the previous night, he had beaten her and in the next day morning, after he left she poured kerosene and set fire to herself. Therefore, I am of the considered view that the Appellant has committed an offence u/s 498-A an act of cruelty which drove his wife to commit suicide by self immolation. The offence u/s 306 IPC is not made out.

19. Therefore, the finding of the trial court that the 1st Appellant is guilty for the offence u/s 306 IPC is not sustained and is liable to be set aside. But the finding that the 1st Appellant is guilty for the offence u/s 498-A IPC is sustainable and to be confirmed.

20. Accordingly, the first Appellant is convicted for the offence u/s 498-A IPC and it is understood that he has already undergone the sentence for more than a year. It is

also submitted that there are two girl children to be taken care of. Therefore, to meet the ends of justice, the period already undergone by the 1st Appellant suffices as sentence. The fine amount imposed by the trial court is confirmed.

21. In the result, the criminal appeal is partly allowed. The conviction and sentence including the fine passed by the learned Additional Sessions Judge (Fast Track Judge-2), Kancheepuram dated 4.10.2007 in S.C. No. 135 of 2007 against the second Appellant are set aside and the fine amount, if already paid by the second Appellant, is ordered to be refunded. Bail bond executed by the second Appellant shall stand cancelled.

22. The conviction of the first Appellant for the offence u/s 306 IPC and sentenced to under go R.I for 7 years and to pay a fine of Rs. 1000/-are set aside and the fine amount, if any paid, is ordered to be refunded.

23. However, the conviction of the first Appellant for the offence u/s 498-A IPC is confirmed and the sentence imposed on the first Appellant to undergo R.I for 3 years is reduced to the period already undergone and the fine imposed on him is confirmed. Bail bond executed by the first Appellant shall stand cancelled.