
(2007) 04 MAD CK 0185

Madras High Court

Case No: Criminal R.C. No. 1138 of 2003

M. Vijayakumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision: April 17, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 207
- Dowry Prohibition Act, 1961 - Section 4
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2007) 04 MAD CK 0185

Hon'ble Judges: A.C. Arumugaperumal Adityan, J

Bench: Single Bench

Advocate: K. Ashokan for N. Baskaran, for the Appellant; V.R. Balsubramanian, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.C. Arumugaperumal Adityan, J.

This revision has been preferred against the Judgment in C.A. No. 39 of 2001 on the file of the Additional District and Sessions Judge(Fast Track Court), Vellore. On the basis of the complaint preferred by the wife Violasingh, All Women Police, Vellore have registered a case in Cr. No. 8 of 1999 u/s 498A of IPC and u/s 4 of Dowry Prohibition Act.

2. The case was taken on file by the learned Judicial Magistrate No. 5, Vellore in C.C. No. 86 of 1999 and on appearance of the accused on summons, copies u/s 207 Cr.P.C were furnished to the accused and when charges were framed u/s 498A of IPC and u/s 4 of Dowry Prohibition Act and questioned the accused pleaded not guilty.

3. On the side of the prosecution P.Ws 1 to 11 were examined. Exs P1 to P3 were exhibited.

4. P.W.1 is the complainant. According to her, the marriage between her and the accused was solemnised on 4.12.1997 as per the christian custom and that she and her husband lived along with the accused and his foster mother A2. The matrimonial life went on happily only for three months. P.W.1 would allege that even in three months, she had on many occasions noticed that A1 and A2 behaved dishearteningly and that A2 had developed aversion towards A1 and the complainant and she was not even allowed A1 and the complainant to take coffee together and in February 1998 one Suganya who came to participate in the family prayer indicated a room in which she saw A1 and A2 in a compromising posture. She would further complain that A1 used to ask her to take sleeping pills very often and also A1 and A2 used to confine her in a room for nearly three days and during that period she has been provided only with food and on 30.3.1998 at about 6.00p.m., A1 and A2 went to the upstairs for the purpose of washing their clothes and at about 8.00p.m., A2 alone came down to the down stairs handed over the bed sheet asking her (complainant P.W.1) to hand over the same to A1 in the upstairs and A1 after dipping the bed sheet in a bucketfull of water lifted her and made an attempt to throw her from the upstairs to the ground. Fortunately she caught hold of the parapet wall and escaped from the attempt and thereafter immediately she left the matrimonial house and began to live with her parents. At that time, her father had gone to Kerala in connection with his business and after his return she narrated what had happened in the in-law's house and with the help of the elders, there was a mediation took place. But A1 and A2 never came for an amicable settlement and on 2.5.1999 somebody brought her household articles and strewn in front of her house on the street. Thereafter she preferred a complaint with All Women Police Station., Ex P2 is the complaint preferred by her.

4a) P.W.2 is the mother of P.W.1. P.W.2 would depose some of the facts which were not even spoken to by P.W.1 or narrated in her complaint Ex P2. According to P.W.2, P.W.1 has complained that A2 had insisted A1 to have sexual intercourse with the complainant even during her menstrual period. Further she would allege that A2 had insisted P.W.1 to bring a computer from her parents house. In other aspects, she would corroborate the evidence of P.W.1.

4b) P.W.3 is the father of P.W.1. He would depose that by spending Rs. 50,000/- he had celebrated the marriage of his daughter with A1. He would accuse A2 that he never allowed him to talk with his daughter even over telephone. After his daughter P.W.1 left the matrimonial home, he made an attempt to meet A1 and A2 to settle the issue amicably between P.W.1 and A1. Since it cannot be fructified, P.W.1 had preferred a complaint on 3.5.1999 with All Women Police, Vellore.

4c) P.W.4 is the retired teacher who knows both the complainant's family and the accused for nearly 17 years and he has also attended the marriage of P.W.1 with A1

which was solemnised on 4.12.1997. He would depose that when he visited the house of P.Ws 2 and 3 at 10.00 a.m., on 3.5.1999, he saw the house hold articles like cot, bureau and other utensils were found strewn in front of their house. When he enquired about this with P.W2 and 3, they informed him that at about 12.00 in the previous night somebody had left those articles in front of their house. P.Ws 2 and 3 have informed him that they were trying to mediate between P.W.1 and A1 for an amicable settlement but they could not succeed in their attempt.

4d) P.W.5 is the sister of P.W.3 and aunt of P.W.1. According to her, she had invited both A1 and P.W.1 for a dinner on the eve of Christmas in the year 1997. But both A1 and his wife(P.W.1) did not turn up. When this was enquired with A1 and A2, they have not given proper reply and would state that she if so desires, can prefer a complaint against them with the police and at that time, some rowdy elements were also present in the house of A1 and A2 and when the rowdy elements interfered with, during the conversation, she heard with A1 and A2, she warned them not to interfere with their family affairs. She would further depose that P.W1 had complained on many times that A1 and A2 never allowed her to use the telephone and also compelled her to consume sleeping pills and A2 had compelled P.W.1 to have sexual intercourse with A1 during her menstrual period.

4e) P.W.6 is a neighbour of P.W.2. According to P.W.6, P.W.3 the mother of P.W.1 had informed him that A1 and A2 have prevented P.W.1 from contacting her parents viz. P.W.2 and P.W.3 even over phone. He is not an eye witness to the occurrence.

4f) P.W.7 is the retired nursing Superintendent who had attended the marriage of P.W.1 with A1. He would say that both a1 and P.W.1 were living separately nearly for 1 1/2 years. According to P.W.7, A1 is the foster son of A2 and both P.W.1, A1 and A2 were lived together under the same roof. Thereafter he has failed to support the case of the prosecution. Hence he was treated as a hostile witness.

4g) P.Ws 8,9, and 10 have also not supported the case of the prosecution and hence they were treated as hostile witnesses by the Additional Public Prosecutor.

4h) P.W.11 is the Investigating Officer. She had registered the case on the basis of the complaint preferred by P.W.1 on 7.6.1999 at 2.00 p.m.,. She had arrested A1 and A2 and produced before the Judicial Magistrate for Judicial remand. She had examined witnesses and recorded their statements and after completing the formalities, she has filed the chargesheet against the accused on 9.7.1999.

6. When incriminating circumstances were put to the accused, the accused would totally deny heir complicity with the crime.

7. After going through the oral and documentary evidence, the learned Judicial Magistrate has convicted and sentenced A1 u/s 498A IPC to undergo one year rigorous imprisonment and a fine of Rs. 1000/- with default sentence and also convicted u/s 4 of Dowry Prohibition Act to undergo one year Rigorous imprisonment and a fine of Rs.

1,000/- with default sentence and the learned trial Judge has acquitted A2 from all the charges levelled against her. The learned trial Judge has further directed that A1 shall suffer the sentence concurrently. Aggrieved by the findings of the learned trial Judge, A1 had preferred an appeal in C.A. No. 39 of 2001 before the learned Additional District and Sessions Judge(FTC) Vellore. After due deliberation to the submissions made by the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State. The learned Sessions Judge has partly allowed the appeal thereby confirming the conviction and sentence against A1 u/s 498A of IPC and allowing the appeal against the conviction and sentence imposed by the trial Judge u/s 4 of the Dowry Prohibition Act which necessitated the A1 to prefer this revision.

8. Now the point for determination in this revision is whether the conviction and sentence imposed by the learned trial Court against A1 u/s 498A which was confirmed by the first appellate Court in C.A. No. 39 of 2001 is liable to be set aside for the reasons stated in the memorandum of revision.?

9. Heard Mr. K.Ashokan, learned Senior Counsel for the revision petitioner, Mr. V.R. Balsubramanian, learned Additional Public Prosecutor appearing for the State-R1 and considered their rival submissions.

10. The Point:

The learned Senior Counsel would attract the attention of this Court to the circumstances spoken to by the witnesses P.Ws 1 to 6 which are not corroborative in nature. The learned Senior Counsel will bring to the notice of this Court that even though P.W.1 would state that she had seen both A1 and A2 in a compromising posture in March 1998. According to her she had left the matrimonial house on the very same date but had preferred the complaint only on 7.6.1999. The explanation for the delay in preferring the complaint according to the prosecution witness is that the house hold articles like cot and bureau and other utensils have been found strewn in front of her parents house in the mid night of 2.5.1999 and thereafter only P.W.1 had preferred a complaint on 7.6.1999.

11. The learned Additional Public Prosecutor relying on State by Inspector of Police, Anti Dowry Cell etc., v. Sivasubramaniam 1999 2 L.W.862 and contended that in the matrimonial cases, the delay in preferring the complaint is not fatal to the case of the prosecution. The short facts of the above said ratio is that the accused who is the husband was prosecuted u/s 498A of IPC and also u/s 4 of the Dowry Prohibition Act. The cruelty alleged against the husband was that even two or three months after the marriage, the accused/husband had caused burn injuries on the right knee of his wife with an iron box. The said occurrence had taken place on 28.11.1989, the marriage between P.W.1 and the accused was solemnised on 23.6.1989. The complaint was preferred by P.W.1 on 17.2.1990. ie., about three months from the date of occurrence. It is pertinent to note in the facts of the above mentioned case that P.W.1 the wife was all along living with the accused/husband tolerating the cruelty received at the hands of her husband/accused

till she preferred a complaint with the police three months thereafter. But that is not the case on hand, herein. According to P.W.1, she had left the matrimonial home on 30.3.1998 but she had preferred a complaint only on 7.6.1999. Even according to P.W.1, P.W.2, and P.W.3 the household articles were found strewn in front of their house in the mid night of 2.5.1999 and that the prosecution witnesses are not able to identify who had strewn those household articles in front of their house on the mid night of 2.5.1999. There is no explanation forthcoming from P.W1 why P.W.1 has not preferred a complaint with the police soon after 2.5.1999 and why she waited for another month thereafter from 2.5.1999 to prefer the complaint with the police. P.Ws 2,3 and 4 in their evidence would refer to some of the facts which are not even spoken to by P.W.1 in her evidence. The allegation that A2 had compelled A1 to have cohabitation with P.W.1 during her menstrual period was not even spoken to by P.W.1 or alleged in Ex P2 complaint. So I am of the opinion that inordinate delay in preferring the complaint against A1 by P.W.1 is fatal to the case of the prosecution.

12. The suggestion put in the cross examination of P.W1 is that she had eloped with one Paul on 30.3.1998 and left the matrimonial home on 30.3.1998. With regard to the allegation of cruelty, the learned Additional Public Prosecutor relying on the ratio decidendi in State of West Bengal v. Orilal Jaiswal and Anr. 1994 Supreme Court Cases (cri) 107 and contended that as per the definition u/s 498A IPC, "cruelty" means 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 and in the said decision, the mother in law of the deceased always telling her that she was a woman of evil luck and had swallowed her baby and had preferred her to take an extreme step of committing suicide and on facts, the deceased was subjected to abuses, humiliation at the hands of her husband, will come squarely under the definition of Section 498A of IPC and that, the facts in the above said dictum will also applicable to the present facts of the case on hand except that P.W.1 has not committed suicide.

13. The learned Additional Public Prosecutor would attract the attention of this Court to the evidence of P.W.1 to the effect that she had seen both A1 and A2 in a compromising posture on 30.3.1998. It is relevant to be noted at this juncture that P.W1 has filed a petition for divorce before the Principal District Court, Vellore in IDOP. No. 11 of 1999 alleging the same ground. After going through the evidence, it has been held by the learned Principal District Judge that adultery coupled with cruelty was not proved and since the respondent is also not willing to live with the petitioner Violasingh, the learned Principal District Judge has granted divorce which will amount to a consent divorce. Except the Ipse Dixit of P.W.1, there is absolutely no evidence on record to show that A1 and A2 were living in Adultery. So the above said dictum will not be applicable to the present facts of the case.

14. As I have already observed in the earlier paragraphs that non explanation of long delay of one year three months from the date of 30.3.1998, on which date P.W1 had admittedly left the matrimonial home, to prefer a complaint on 7.6.1999 is unexplained

which in my opinion is fatal to the case of the prosecution. The point is answered accordingly.

15. In the result, the revision is allowed and conviction and sentence against A1 u/s 498A of IPC by the learned Additional District and Sessions Judge,(Fast Track Court) Vellore in C.A. No. 39 of 2001 is set aside and A1 is set at liberty forthwith. The fine amount, if any paid to be refunded to the revision petitioner. The bail bond executed by the accused shall stand cancelled.