



WEB COPY



Crl.A.No.226 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.226 of 2016

K.K.Senthil Kumar

...Appellant

-Vs-

State rep by
Inspector of Police
Annur Police Station
Coimbatore
Crime No.105 of 2010

...Respondent

Prayer:- Criminal Revision Case filed under Section 374(2) of the Criminal Procedure Code, 1973 to set aside the judgment made in S.C.No.115 of 2013 on the file of the Sessions Judge Magalir Neethimandram (Mahila Court) Coimbatore, dated 09.03.2016

For Petitioner : Mr.C.D.Sugumar

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor



CrI.A.No.226 of 2016

J U D G M E N T

WEB COPY The Criminal Appeal has been filed to set aside the judgment of the learned Sessions Judge, Mahila Court, Coimbatore in S.C.No.115 of 2013 dated 09.03.2016.

2. The learned Counsel for the Appellant submitted that the Appellant is the Accused-1 before the trial Court. The learned Counsel for the Appellant invited to the charges framed by the trial Court. As per the charges framed by the trial Court, Accused-1 to Accused-4 were charged for the offences under Sections 498(A) and 306 of IPC . The learned Counsel for the Appellant also invited the attention of this Court to the judgment of the trial Court, where the trial Court on the basis of evidence available, acquitted Accused-2/Father of Accused-1, Accused-3/Mother of Accused-1 and Accused-4/Sister of Accused-1.

3. It is the submission of the learned Counsel for the Appellant that the Accused-1 alone had preferred this Appeal against the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Coimbatore in S.C.No.115 of 2023 dated 09.03.2016.



WEB COPY 4. The brief facts which are relevant for deciding the case are as follows:

4.1. The deceased was the wife of Accused-1 and the daughter of his maternal Uncle who was the P.W-1 before the trial Court. Marriage between deceased and Accused-1 took place on 23.05.2002. As per the prosecution case, there was an altercation between the deceased and the neighbours near the public tap, in which the Husband/Accused-1 intervened and asked her not to pick up quarrel with the neighbours. There was altercation between them in which Accused-1 was alleged to have slapped her in front of the public, near the public tap. Immediately she went back home and consumed pesticide meant for flower pot (Monocrotophos). The parents of the deceased were also residing nearby. While so, there had not been any complaint of dowry harassment or any such complaint during the life time of the deceased. The deceased was alleged to have consumed pesticide. Particularly, the Accused-1 along with the P.W-1 had taken the deceased to a Private Hospital from there, taken to Government General Hospital at Coimbatore. On the way, she died. Therefore the complaint was preferred under Ex.P-1 by P.W-1 to the P.W-7/Sub-Inspector of Police and registered the case under Crime No.105 of



2010 for the offence under Section 498(A) and 306 of IPC on the file of the Annur Police Station. P.W-10 proceeded with the investigation, visited the place of residence of the Accused-1 and prepared the Rough Sketch and Observation Mahazar in the presence of the witness and conducted Inquest over the body of the deceased at the Hospital Mortuary. After examining the witnesses, he laid the final report before the Court of the learned Judicial Magistrate, Avinasi.

5. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1/defacto-complainant/father of the deceased, P.W-2/Ward Counselor of the area where the Accused and the deceased as well as the parents of the deceased reside. P.W-3 was the brother of the deceased. P.W-4 was the Observation Mahazar witness. P.W-5 was the Doctor who had performed the autopsy on the body of the deceased. P.W-6 was the Sub-Inspector of Police, who had registered the FIR under Ex.P-5. P.W-7 was the mother of the deceased. P.W-8 was the resident of the area. He remained hostile. P.W-9 was also the resident of the area. P.W-10 was the Investigation Officer.



WEB COURT

6. The learned Counsel for the Appellant invited the attention of this Court to the cross examination of the witnesses P.W-1/father of the deceased, P.W3/brother of the deceased and P.W-7/mother of the deceased. Also he invited the attention of this Court to the statement given by the witnesses of the father, brother and mother of the deceased to the Investigation officer/P.W-10. He had clearly stated what had been narrated by the P.W-1, P.W-3 and P.W-7 before the Court, was not mentioned to him while conducting investigation.

7. The learned Counsel for the Appellant also invited the attention of this Court to the cross examination of P.W-10/Investigation Officer who had clearly deposed that the witnesses had not stated those facts which incriminating the Accused at the earliest point of time. Further the learned Counsel for the Appellant invited the attention of this Court to the evidence before the learned Sessions Judge Mahila Court, Coimbatore, particularly in Para 31 and para 34 to 36 of the judgment.

8. The learned Counsel for the Appellant submit that the Accused-1 himself was acquitted from the grave charge of Section 306 IPC. The learned Judge also convicted the Accused-1 only for the offence under



CrI.A.No.226 of 2016

Section 498(A) of IPC. As per the complaint under Ex.P-1, there was no

incriminating material to attract Section 498(A) of IPC. The Sub-Inspector of Police who had recorded and registered the FIR, himself had deposed in his cross examination that there were no material incriminating to invoke Section 498(A) of IPC in FIR. While so, the learned Judge had lost sight of the same while discussing the evidence and convicted the Accused for offence under Section 498(A) of IPC.

9. There were contradictions between the evidence of P.W-1, P.W-3 and P.W-7 and there were improvements in the their evidence. They had stated those facts which were not stated in the earlier point of time, when the Investigation officer proceeded with the investigation. While so, the learned Sessions Judge, Mahila Court, Coimbatore had recorded the conviction under Section 498(A) of IPC without any materials available before the trial Court. Therefore the judgment of conviction recorded by the learned Sessions Judge, Mahila Court, Coimbatore in S.C.No.115 of 2013 dated 09.03.2016 is perverse and is to be set aside.

10. The learned Additional Public Prosecutor by way of reply vehemently objected to the same stating, there were sufficient materials



CrI.A.No.226 of 2016

available before the learned Sessions Judge Mahila Court, Coimbatore.

Particularly, the learned Additional Public Prosecutor invited the attention of this Court to the evidence of examination in chief of P.W-1 who had deposed as follows:

09.03.2009ம் தேதி நடைபெற்ற சம்பவம் எனக்கு நேரடியாக தெரியாது. நான் 9ம் தேதி வேலைக்கு போன பிறகு நடந்த சம்பவம் எனக்கு செவிவழி செய்தி தான் ஆகும். திருமணத்தின் போது 10 பவுன் நகை கேட்டதாகவும், நான் அதில் 5 பவுன் போட்டேன் என்று புகாரிலும் சரி பின்னிட்டு போலிசார் விசாரிக்கும் போதும் சொல்லவில்லை என்றால் சரியல்ல. தற்போதும் நான் மாணிக்கம்பாளையத்தில் தான் வசித்து வருகிறேன். என் மனைவி இந்திராணி வேலைக்கு சென்று கொண்டு தான் இருக்கிறார். சம்பவத்தன்றும் என் மனைவிக்கு வேலைக்கு போய் விட்டு சம்பவத்தை கேள்விபட்டுதான் வந்தார். ஆஜர் 3ம் எதிரி என் உடன் பிறந்த சகோதரி ஆகும். ஆஜர் 3ம் எதிரி சிங்காநல்லூரில் இருக்கிறார். அதிக நாட்கள் சிங்காநல்லூரில் தான் இருப்பார். ஆஜர் 2ம் எதிரிக்கு கோபிசெட்டிபாளையத்தில் விளைநிலம் உள்ளதற்கு அங்கு தங்கி விவசாயம் பார்ப்பார் என்று சொன்னால் அடிக்கடி ஒரு தடவை வருவார். நான் கொடுத்த புகாரிலும் போலிசார் விசாரணையிலும் 1ம் எதிரிக்கு வேறு ஒரு பெண்ணுடன் தொடர்பு உண்டு என்று கூறவில்லை என்றால் சரியல்ல. கூறியுள்ளேன். 2008ல் 3ம் எதிரி மாமியார் நகை கேட்டதாக விசாரணையில் கூறியுள்ளேன். வரதட்சணை கேட்டதாக குறிப்பிட்டு புகாரில் கூறவில்லை. எனது மகளுக்கு குழந்தை இல்லை என்று சொல்லி அடிக்கடி வருத்தப்பட்டு இருந்தார். 1ம் எதிரியும் எனது மகளுமும்



இணைந்து குழந்தை பெறுவதற்காக பல மருத்துவமனை சென்று வைத்தியம் செய்து வந்தனர். ஆனால் எனது மகள் கர்ப்பம் பெற்ற பிறகு கலைத்து விட்டதாக சாட்சி கூறகிறார். பொது இடத்தில் வைத்து எனது மகளை எதிரிகள் 4 பேரும் சேர்ந்து அடித்ததாக சொல்லப்படும் இடம் தண்ணீர் பிடிக்கும் பைப் இடம் ஆகும். நான் எங்கள் வீட்டிற்கு பைப் போட்டு தண்ணீர் பிடித்தது குறித்து ஊரில் பிரச்சனை இருந்தது. நான் பார்க்கும் போது 1ம் எதிரி தான் என மகளை மருத்துவமனைக்கு அழைத்து போய் கொண்டு இருந்தார். எனது மகளை எனக்கு ஆதரவாக பேசுவதற்காகத் தான் பொது பைப்புக்கு சென்றார் என்றால் சரியல்ல. 2 முதல் 4 எதிரிகள் சம்பவ இடமான பொது பைப்பு இடத்திற்கு வரவே இல்லை என்றும் எனது மகளை பணம் நகை கேட்டு அந்த இடத்தில் அடிக்கவில்லை என்றால் சரியல்ல. சம்பவ சமயத்தில் எனது மகள் அங்கு கூடியிருந்த பொது மக்கள் எனது மகளுக்கு குழந்தை இல்லை என்று சுட்டிக்காட்டி பேசியதாகவும் அதை கேட்ட 1ம் எதிரி அங்கு நின்று பேச வேண்டாம் என்று வீட்டிற்கு அதட்டி பேசி வீட்டிற்கு அனுப்பினார் என்றால் சரியல்ல, சம்பவ தினம் அன்று முந்தின இரவே எனது மகளை அடித்து என் வீட்டிற்கு அனுப்பினார்கள், எந்த ஒரு காலகட்டத்திலும் எனது மகளை வரதட்சணைக் கேட்டு 4 எதிரிகளும் அடித்து துன்புறுத்தவில்லை என்றால் சரியல்ல. எனது மகளை அடித்து துன்புறுத்தியதால் அவர் என்னிடம் 3 மாதங்கள் என் வீட்டில் தான் இருந்தார். என் வீட்டிற்கு 1ம் எதிரி வீட்டிற்கு சுமார் 300 அடி தூரம் தான் இருக்கும், ஆகையால் என் மகளை தினந்தோறும் பார்ப்பேன். 1ம் எதிரியை ஒரு நாள் விட்டு ஒரு நாள் பார்ப்பேன். நான் சொன்ன மாதிரி எந்த சம்பவமும் நடக்கவில்லை என்றும் எனது மகள் இறந்துவிட்ட



CrI.A.No.226 of 2016

துக்கத்தில் எதிரிகள் மீது பொய் சாட்சி சொல்லுகிறேன் என்றால் சரியல்ல. புகார் கொடுத்து 10 நாட்கள் கழித்து என்னை விசாரித்தார்கள்.

11. Also the learned Additional Public Prosecutor invited the attention of this Court to the evidence of PW-2/Ward Counselor, where in she had stated that there had been quarrel between deceased and Accused-1, and she used to mediate between them. On the fateful day also she was present in the scene of occurrence. There was specific evidence that immediately after consuming poison, P.W-2 went to the room where the deceased consumed poison, knocked at the door and asked the deceased to come out. With the help of neighbours, they took her to hospital. There is specific evidence that Accused-1 remained as a mute spectator. Therefore there were sufficient materials available for the learned Sessions Judge Mahila Court, Coimbatore to record the conviction against the conduct of Accused-1 alone.

12. The learned Additional Public Prosecutor also invited the attention of this Court to the evidence of P.W-3/brother of the deceased, P.W-7/mother of the deceased and P.W-5, the Doctor who conducted Post Mortem. The submission of the learned Additional Public Prosecutor to the



CrI.A.No.226 of 2016

judgment of the learned Sessions Judge Fast Track Court, Coimbatore in

S.C.No.115 of 2013 dated 09.03.2016 is a well reasoned judgment it does not warrant any interference by this Court.

13. By way of rejoinder, the learned Counsel for the Appellant invited the attention of this Court to the contents of Ex.P-1 and the Cross examination of P.W-6/Sub-Inspector who had recorded the complaint under Ex.P-1 and registered FIR under Ex.P-5 and the evidence in cross examination of P.W-10/Investigation Officer. Also the learned Counsel for the Appellant submitted that the P.W-1 had filed a separate Appeal seeking conviction against the Accused-1 for offence under 306 of IPC. Subsequently, he had withdrawn the case. The case was dismissed as withdrawn on 21.11.2023. Also the learned Counsel for the Appellant submitted that the Appellant was employed as Police Constable. Subsequently to his judgment, he was dismissed from the service. Therefore he seeks to set aside the same.

Point for Consideration

Whether the judgment of the learned Sessions Judge Mahila Court, Coimbatore in S.C.No.115 of 2013 dated 09.03.2016 is to be set aside as perverse.



WEB C

14. Heard the learned Counsel for the Appellant. Heard the Additional Public Prosecutor. Perused the evidence of witnesses P.W-1 to P.W-10 and Ex.P-1 to Ex.P-9 and the judgment of the learned Sessions Judge Mahila Court, Coimbatore in S.C.No115 of 2013 dated 09.03.2016.

15. On assessment of evidence, the learned Sessions Judge Mahila Court, Coimbatore had convicted the Accused-1 only for offence under Section 498(A) of IPC and whereas on appreciation of evidence, acquitted all the Accused-1 to Accused-4 from the charges of Section 306 of IPC.

16. As per the judgment of Hon'ble Supreme Court, when the relative of the Husband are convicted, the same yardstick applies to the Accused-1 also. In this case, the learned Sessions Judge had found that there was no incriminating materials to convict the Accused-1 for offence under Section 306 of IPC. Whereas convicted the Accused only for the offence under Section 498(A) of IPC. It is to be noted that in the Complaint itself in Ex.P-1, there was no incriminating materials to incriminating the Accused-1 for the offence under Section 498(A) of IPC and this fact was admitted by the Sub-Inspector of Police, who was examined before the trial Court as P.W-6.



WEB COPY 17. Further on assessment of evidence, it was found that P.W-

1/father of the deceased, P.W-3/Brother of the deceased and P.W-7/Mother of the deceased had in their depositions before the trial Court stated about the fact that there was no child for the Accused-1 and the deceased and the Accused-1 was claimed to have shown photograph of a girl to the deceased and stated that he would marry her, since the deceased was not able to beget a child. Therefore he forced her to go to her parent's house and wanted to get divorce and marry the girl whose photo he showed to the deceased. This fact was put to them in cross examination by the learned Counsel for the Accused who appeared before the trial Court. They had denied the suggestion that they had not spoken of the same fact when the Investigation Officer examined them in the course of the investigation, and before Court only they had made such statement. This fact was confronted to the Investigation officer/P.W-10. He had clearly admitted that this fact was not stated to him when he proceeded with the investigation when he recorded the statements of the witnesses. Under those circumstances, the conviction of the Accused-1 alone for the charge under Section 498(A) of IPC and acquitted Accused-2 to Accused-4 from charges under Section 498(A) of IPC is to be treated as perverse.



CrI.A.No.226 of 2016

WEB COPY 18. In the decision of the Hon'ble Supreme Court in the case of *Javed Shaukat Ali Qureshi -vs- State of Gujarat* reported in (2023) 9 SCC 164, it is held that when there is similar or identical evidence of eyewitnesses against two Accused by ascribing them same or similar role, Court cannot convict one Accused and acquit other. Here in this case, the trial Judge found guilty under Section 498(A) I.P.C. as against the first Accused and not found guilty under Section 498(A) and 306 of I.P.C. against the Accused 2 to 4. Therefore, the above said decision applies to the Accused-1 also. Further, when there are no materials to incriminate the Accused-1, the learned Judge acquitting Accused-1 from the offence under Section 306 and convicting him for the offence under Section 498(A) of IPC is found to be perverse and unwarranted.

19. In the light of the above discussion, the point for consideration is answered in favour of the Appellant and against the Prosecution. The judgment of the learned Sessions Judge, Mahila Court, Coimbatore in S.C.No.115 of 2013 dated 09.03.2016 is to be set aside.



Crl.A.No.226 of 2016

In the result, **this Criminal Appeal is allowed.** The conviction recorded by the learned Sessions Judge in S.C.No.115 of 2013 dated 09.03.2016 is set aside. The bail bond executed by first Accused shall be cancelled. The fine imposed on the Accused is to be refunded to first Accused.

18.12.2023

shl

Index : Yes/No

Speaking/Non-speaking order

To

1. The Sessions Judge,
Mahila Court,
Coimbatore
2. The State Rep by
Inspector of Police
Annur Police Station
Coimbatore
3. The Public Prosecutor
Madras High Court, Chennai – 600 104.
4. The Section Officer (VR Records)
Madras High Court, Chennai – 600 104.



WEB COPY



Crl.A.No.226 of 2016

SATHI KUMAR SUKUMARA KURUP, J.,

shl

Crl.A.No.226 of 2016

18.12.2023