



WEB COPY

CRL.A.NO.373 OF 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 08 / 2023

JUDGMENT PRONOUNCED ON: 23 / 02 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.373 OF 2016

Kajamaideen

... Appellant

Versus

State through
The Inspector of Police
Thudiyalur All Women Police Station
Coimbatore District.
(Crime No.12 of 2011)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to call for the records in S.C.No.100 of 2013 on the file of the learned Sessions Judge, Magalir Neethimandram (Mahila Court) at Coimbatore, allow the appeal, set-aside the judgment and order of conviction dated May 4th, 2016 and acquit the appellant.

For Appellant : Mr.R.Ganeshkumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



CRL.A.NO.373 OF 2016

J U D G M E N T

WEB COPY

This Criminal Appeal is preferred, assailing the judgment dated May 4th, 2016, passed by the 'learned Sessions Judge, Magalir Neethimandram (Mahila Court) Coimbatore' (henceforth 'Trial Court' for the sake of brevity) in Sessions Case No.100 of 2013, by the 'appellant herein' (henceforth 'accused' as per Trial Court's description) in which he was convicted and sentenced to undergo three years of rigorous imprisonment with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo three months of simple imprisonment for the offence under Section 498-A of 'The Indian Penal Code, 1860' [hereinafter 'IPC' for the sake of brevity].

2.The case of the prosecution, in brief, is as follows:

2.1.The accused belongs to Islam religion and has two wives. First wife is Maria Bivi. He had two children through his first wife Maria Bivi. During the subsistence of the first marriage, the accused herein married Fathima Bivi as his second wife. Out of the marriage between the accused



CRL.A.NO.373 OF 2016

and Fathima Bivi, they had two children, one aged two years and another aged one year.

2.2.Ayisha Bivi (P.W.1) is the mother of Fathima Bivi. Shahila Banu (P.W.2) is the sister of Fathima Bivi. Meharunisha (P.W.12) is the sister of P.W.1.

2.3.The case of the prosecution is that the accused neglected his second wife and her children and used to assault, torture and inflict cruelty on his second wife frequently. On April 18th, 2011, the accused scolded his second wife Fathima Bivi and assaulted her with his hands and thereafter, he abetted her to commit suicide. Hence, Fathima Bivi set herself and her two toddlers ablaze with kerosene. Due to the said incident, she suffered 90% burn injuries and her two toddlers suffered 10% burn injuries. Upon learning the said incident, the accused took Fathima Bivi and his two toddlers to Mettupalayam Government Hospital and then shifted them to Coimbatore Government Hospital at 08.30 a.m. At 08.45 a.m., Fathima Bivi passed away despite medical treatment. Ayisha Bivi (P.W.1) is the mother of the deceased



CRL.A.NO.373 OF 2016

filed a complaint against the accused at 05.30 p.m., on the aforementioned date.

WEB COPY

2.4.The Police initially registered a case under Section 174 of 'The Code of Criminal Procedure, 1973', [henceforth "Cr.P.C." for the sake of brevity] and conducted investigation.

2.5.The Revenue Divisional Officer, Coimbatore District conducted inquest on the dead body of Fathima Bivi on April 19th, 2011 in the presence of Panchayatdars at Government Hospital, Coimbatore and submitted Ex-P.8 Report.

2.6.The Investigating Officer, during his investigation, found that the deceased committed suicide due to the cruelty inflicted and abetment caused by the accused. Hence, he altered the section of law from Section 174 of Cr.P.C., to 498-A and 306 of IPC and sent the alteration report to the Judicial Magistrate concerned. Thereafter, he examined the Doctor who conducted post-mortem on the body of the deceased. After completing



CRL.A.NO.373 OF 2016

investigation, he filed a final report against the accused under Sections 498-A and 306 of IPC before the learned Judicial Magistrate, Mettupalayam.

2.7.The learned Judicial Magistrate, Mettupalayam, registered a case in PRC No.49 of 2012. After following the procedure under Section 207 of Cr.P.C., the learned Judicial Magistrate, observing that the offence under Section 306 of IPC is exclusively triable by the Sessions Court, committed the case to the Principal District and Sessions Judge, Coimbatore, under Section 209 of Cr.P.C.

2.8.The learned Principal District and Sessions Judge, Coimbatore, assigned Sessions Case No.100 of 2013 and made over the same to the Trial Court.

2.9.On appearance of the accused and after hearing both sides under Section 226 of Cr.P.C., the Trial Court found that there are sufficient materials available on record to presume that the accused committed the offence. Hence, the Trial Court framed charges under Sections 498-A and 306



CRL.A.NO.373 OF 2016

of IPC and read over the charges to the accused in Tamil and questioned him.

The accused denied the charges and pleaded not guilty. Hence, trial was ordered.

2.10. In order to prove the case, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and marked Ex-P.1 to Ex-P.13 and M.O.1. The accused side neither examined any witness nor marked any documents.

2.11. After completion of the prosecution evidence, the incriminating evidence available on record were brought to the notice of the accused by way of questions under Section 313(1)(b) of Cr.P.C., and the accused denied the same as false.

2.12. After hearing the arguments of both sides, the Trial Court, came to the conclusion that the charge framed against the accused under Section 306 of IPC was not made out and accordingly, acquitted the accused under Section 306 of IPC.



CRL.A.NO.373 OF 2016

2.13.Further, the Trial Court found the accused guilty of the charge under Section 498-A of IPC and accordingly, imposed the punishment as stated *supra* in paragraph no.1.

2.14.Feeling aggrieved with the conviction recorded and sentence imposed, the accused has preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

3.It appears that neither the prosecution nor the victim side has filed any appeal against the acquittal order passed with respect to Section 306 of IPC. Needless to mention that, therefore, the decision of the Trial Court with respect to the aforementioned acquittal order has attained finality and there is no need to delve into the same in this appeal.

Arguments

4.The learned counsel for the accused would argue that the deceased was conscious at the time of admission in the Hospital, but the prosecution did not take any steps to record the statement of the deceased;

7/28



CRL.A.NO.373 OF 2016

that P.W.1, P.W.2 and P.W.12 are mother, sister and aunt of the deceased respectively; that they are related witnesses and hence, their evidence are not trustworthy; that the Revenue Divisional Officer's report is a mere opinion and it cannot be considered as substantive evidence; that the accused did not commit any act of cruelty against the deceased; that the evidence available on record does not attract the offence under Section 498-A of IPC; that the Trial Court without properly appreciating the evidence came to the conclusion that the accused committed the offence under Section 498-A of IPC and that said conviction recorded and sentence imposed is therefore liable to be interfered by this Court. In support of his submission, he relied on a judgment of the Hon'ble Supreme Court in ***MANJU RAM KALITA VS. STATE OF ASSAM [2009 (13) SCC 330]***.

5. In response to the above arguments, learned Additional Public Prosecutor has submitted that though P.W.1, P.W.2 and P.W.12 are close relatives of the deceased, their evidence is natural and believable and therefore, they cannot be thrown out; that the accused himself has stated before the Revenue Divisional Officer that he assaulted the deceased; that the



CRL.A.NO.373 OF 2016

Trial Court after appreciating the evidence and materials came to the conclusion that the prosecution has proved the offence under Section 498-A of IPC; and that, therefore, there is no warrant to interfere with the judgment. Accordingly, he prayed to sustain the Trial Court's judgment and dismiss the appeal.

6.This Court has heard the submissions made on either side and perused the materials available on record.

Point for consideration

7.The point that arise for consideration is whether the offence under Section 498-A of IPC is proved by the prosecution beyond reasonable doubt?

Discussion and Decision

8.In this case, the accused married the deceased Fathima Bivi as his second wife in the Jamath on June 11th, 2008 and out of their wedlock, they have two toddlers, one aged 2 years and another aged 1 year. Further, the

9/28



CRL.A.NO.373 OF 2016

prosecution has proved that on April 18th, 2011 at 05.30 a.m., the deceased Fathima Bivi poured kerosene and set herself ablaze inflicting burn injuries which resulted in her death and thereby, she committed suicide within seven years from the date of her marriage. The said fact has been proved by the prosecution by examining the Doctor P.W.3 who marked post-mortem report (Ex-P.2). As per the evidence of P.W.3 and Ex-P.2 establishes the fact that the deceased died due to burn injuries.

9.P.W.1 who is none other than the mother of the deceased has deposed in her evidence that the accused and the deceased Fathima Bivi were in love with each other; that the accused married the deceased as his second wife with the consent of the elders; that since the inception of their marriage, the accused has neglected the deceased and her needs; that he even failed to provide for the livelihood of the deceased and her toddlers; that he used to assault and torture the deceased; and that the deceased informed P.W.1 about the accused's ill treatment frequently. She further deposed that the events took a tragic turn on April 18th, 2011 when news arrived that Fathima Bivi has sustained severe burn injuries; that P.W.1 and others rushed to the

10/28



CRL.A.NO.373 OF 2016

hospital; that the deceased passed away thereafter; and that, hence, P.W.1 lodged complaint (Ex-P.1).

9.1.P.W.1 in her cross examination has deposed that she has not filed any complaint before the incident against the alleged cruelty committed by the accused. The accused side put a suggestion to P.W.1 that, as usual like in every ordinary family, there was an ordinary quarrel between the appellant and the deceased, which she denied.

10.P.W.2, who is the sister of the deceased, has deposed that the accused caused cruelty to her sister; that the accused used to ruthlessly assault the deceased and cause injury to her; that though she insisted, the deceased refused to file complaint against the accused as she was reluctant to approach the police and file a complaint against the accused qua her husband; and that the accused neglected and failed to maintain the deceased and her toddlers. It is pertinent to note that P.W.2 has not stated in her Section 161(3) statement that she insisted the deceased to file police complaint. P.W.2 has not stated the above mentioned facts before the Investigation Officer.

11/28



CRL.A.NO.373 OF 2016

Investigation Officer has also deposed that P.W.2 did not state the above said facts before him. Therefore, this Court is of the opinion that P.W.2 has improved the version while examining her before the Court.

11.P.W.12 is the sister of P.W.1. P.W.1 is the mother of the deceased. She has deposed that the accused assaulted the deceased frequently; that on one occasion, the accused even went to the extent of pouring kerosene over the deceased; and that on April 18th, 2011 when she was in the market, she learnt that the deceased set herself ablaze and passed away in the hospital. It is pertinent to note that, P.W.12 while giving statement before the Investigating Officer, has not stated that, earlier in one occasion, the accused tried to pour kerosene over the deceased and set her ablaze. Therefore, this Court is of the opinion that P.W.12 has also improved her version while examining her before the Court.

12.Considering the fact that P.W.1, P.W.2 and P.W.12 are related witnesses; that they have not witnessed the incident directly; and also the subsequent improvements in the versions of P.W.2 and P.W.12, this Court is

12/28



CRL.A.NO.373 OF 2016

of the opinion that evidence of P.W.1, P.W.2 and P.W.12 requires great scrutiny and corroboration.

13.In this case, the prosecution examined Sirajudeen (P.W.4) who is the owner of the deceased's house where the deceased set herself on fire. He has not supported the prosecution's case.

14.Rafia (P.W.6) who is a neighbour of the deceased has also not supported the prosecution's case.

15.Dr.Prasanna Kumar (P.W.7) who examined the deceased and her toddlers on April 18th, 2011 has deposed that when he was on duty at the Emergency Ward of Coimbatore Medical College Hospital, at about 08.10 a.m., two toddlers were brought to him for treatment by the accused; that the children were conscious; and that he issued Accident Register (Ex-P.6 and Ex-P.7) in this regard and opined that they had 10% burn injuries. Further he deposed that on the same day at about 07.50 a.m., the accused brought his wife Fathima Bivi to him for treatment; that at that point of time, the



CRL.A.NO.373 OF 2016

deceased Fathima Bivi was conscious; and that he found 90% burn injuries on her body.

16. Notably, the Doctor in his evidence has deposed that the deceased did not state as to who set her on fire and also did not disclose the reason behind her burn injuries. The Doctor has specifically stated that he issued Accident Registers for all the three injured persons. However, the Accident Registers pertaining to the two toddlers alone have been marked as Ex-P.6 and Ex-P.7. The Accident Register pertaining to the deceased Fathima Bivi has not been marked and the prosecution has not assigned any reason for not marking the Accident Register of the deceased Fathima Bivi. This adds to the doubt in the case of the prosecution.

17. As already stated, the evidence of P.W.1, P.W.2 and P.W.12 requires corroboration for the reasons alluded to *supra*. However, neighbours of the deceased (P.W.4 and P.W.6) have not supported the case of the prosecution. The Investigating Officer has neither examined the first wife of the accused nor the neighbours of the first wife of the accused. Thus, there is



CRL.A.NO.373 OF 2016

no evidence on record to corroborate their evidence. Therefore, their evidence does not inspire confidence of this Court.

18.Mr.Mohamed Meeran, Revenue Divisional Officer (P.W.9) has conducted inquest over the deceased body, on April 19th, 2011 in the presence of the deceased relatives and Panchayatdhars at Government Hospital, Coimbatore and filed a report (Ex-P.8). In the report, he stated that there was no dowry demand. After conducting inquest, he has examined P.W.1, P.W.2 and P.W.12, accused and Panchayatdhars. The statement of the accused and other witnesses forms a part of the report (Ex-P.8). Statement of the accused before P.W.9 as per Ex-P.8 is as follows:

“...எனக்கு கடந்த 14 ஆண்டுகளுக்கு முன்பு மரியாபீவி என்பவருடன் திருமணம் நடைபெற்று ஒரு மகனும், இரண்டு மகள்களும் உள்ளனர். நான் காய்கறி மண்டியில் வேலை செய்த போது பாத்திமாபீவியின் சின்ன மாமனார் சைய்யது முகமது என்பவர் மூலம் பாத்திமாபீவி அறிமுகமானார். நாங்கள் இருவரும் பழகி வந்ததை பாத்திமாபீவியின் குடும்பத்தார் தவறாக புரிந்து கொண்டனர். இதனால் பாத்திமாபீவி தன்னையே திருமணம் செய்து கொள்ளுமாறு வற்புறுத்தியதால் கடந்த 3 ஆண்டுகளுக்கு முன்பு தவுஹத் ஜமாத்தில் வைத்து



CRL.A.NO.373 OF 2016

திருமணம் செய்து கொண்டேன். திருமணத்தின் போது நான் பெண் வீட்டாரிடம் நகையோ, பணமோ ஏதும் வரதட்சணையாக கேட்கவில்லை. திருமணம் முடிந்து நானும் எனது மனைவியும் மேட்டுப்பாளையம், நெல்லித்துறை ரோடு, குப்புப்பள்ளம் என்ற பகுதியில் வீடு பார்த்து தனிக் குடித்தனமாக வசித்து வந்தோம். எனது மனைவிக்கும் அருகில் குடியிருப்பவர்களுக்கும் சண்டை ஏற்பட்டதால் அந்த வீட்டை காலி செய்துவிட்டு மேற்கண்ட முகவரியில் உள்ள வீட்டிற்கு குடி வந்தோம். எங்களுக்குள் எந்தவிதமான கருத்து வேறுபாடுகளும் சண்டை சச்சரவுகளும் இருந்ததில்லை. நல்ல முறையில் சந்தோஷமாக குடும்பம் நடத்தி வந்தோம். எங்களுக்கு தற்போது 2 3/4 வயதில் ஒரு பெண் குழந்தையும், 1 வயது 7 மாதத்தில் ஒரு மகனும் உள்ளனர் எனது மனைவியின் தாயார் XXX** தொழில் செய்து வருவதால் அவரை எனது வீட்டிற்கு வரக்கூடாது என தெரிவித்தேன். ஆனால் எனது மாமியார் எனக்குத் தெரியாமல் எங்கள் வீட்டிற்கு வந்து கொண்டு சென்றுவிடுவார். இதனால் எனக்கும் எனது மனைவிக்கும் சண்டை சச்சரவு இருந்து வந்தது. கடந்த ஓயிற்றுக் கிழமை அன்று எனது சகோதரி போன் செய்து அவருடைய மகளுக்கு மாப்பிள்ளை பார்க்க செல்ல வேண்டுமென்று என்னை அழைத்தார். நான் எனக்கு வேலை இருப்பதால் எனது மூத்த மனைவியை அனுப்பி வைக்கிறேன் என்று கூறிவிட்டு மூத்த மனைவியை அவர்கள் வீட்டிற்கு அனுப்பிவிட்டு பிற்பகல் 2.30 மணியளவில் வேலைக்கு சென்றுவிட்டேன். நான் வேலை செய்து கொண்டிருந்தபோது பாத்திமாபீவி சுமார் 10, 20



WEB COPY



CRL.A.NO.373 OF 2016

முறை போன் செய்து ஏன் நீங்கள் என்னை வெளியில் அழைத்துச் செல்லவில்லை, மூத்த மனைவியை எங்கு அழைத்துச் சென்றீர்கள் என என்னை தொந்தரவு செய்து கொண்டிருந்தார். எனக்கு வேலை செய்ய தொந்தரவாக இருப்பதால் வீட்டிற்கு வந்த பிறகு பேசிக்கொள்ளலாம் என கூறி போனை வைத்துவிட்டேன். வேலை முடிந்து நேற்று அதிகாலை 4.00 மணியளவில் எனது மூத்த மனைவியின் வீட்டிற்கு சென்று தூங்கிவிட்டேன். காலை சுமார் 5.30 மணியளவில் பாத்திமாபீவி எனது முதல் மனைவியின் வீட்டிற்கு வந்து கதவை வேகமாக தட்டி சத்தம் போட்டு ஏன் நீங்கள் வீட்டிற்கு வரவில்லை. செலவிற்கு பணம் கொடுங்கள், நீங்கள் வந்தாலும் சரி, வரவில்லை என்றாலும் சரி என்று சத்தம் போட்டாள். அதற்கு எனது முதல் மனைவி சத்தம் போட்டு பேசுகிறீர்கள் என்று கேட்டதற்கு பாத்திமாபீவி எனது முதல் மனைவியை அடிக்க சென்றார். அதனால் நான் பாத்திமாபீவியை பார்த்து வேலை செய்யும் இடத்திலும் நிம்மதியாக இருக்க விடமாட்டேன் என்கிறாய். இங்கேயும் நிம்மதியாக இருக்கிவிடமாட்டாயா என்று கேட்டதற்கு பாத்திமாபீவி தகாத வார்த்தைகளால் கூச்சல் போட்டார். அதனால் நான் பாத்திமாபீவியை இரண்டு அடி அடித்து வீட்டிற்கு செல்லுமாறு கூறிவிட்டு முதல் மனைவியின் வீட்டிற்குள் சென்றுவிட்டேன். அருகில் இருப்பவர்கள் என்னிடம், பாத்திமாபீவி கோபமாக சென்று கதவை சாத்திக் கொண்டாள் என்ன என்று பாருங்கள் என்று கூறியதால் நான் பாத்திமாபீவி வீட்டிற்கு சென்றபோது பாத்திமாபீவி உடல் முழுவதும் தீ எரிந்து கொண்டிருந்தது. அருகில் இருந்தவர்கள் தண்ணீர்,



CRL.A.NO.373 OF 2016

சாக்குகளைக் கொண்டு தீயை அணைத்துக் கொண்டிருந்தனர். நானும் அவர்களுடன் சேர்ந்து தீயை அணைத்தேன். அப்போது பாத்திமாபீவி தான் அவசர புத்தியால் தீ வைத்துக் கொண்டதாகவும், தன்னை காப்பாற்றுமாறும் கூறி அழுதாள். நான் உடனடியாக ஆம்புலன்ஸ் மூலம் எனது மனைவியை மேட்டுப்பாளையம் அரசு மருத்துவமனைக்கு கொண்டு சென்றேன். அங்கு எனது மனைவியை பார்த்துவிட்டு மிகவும் சீரியஸாக இருக்கிறது. கோவை அரசு மருத்துவமனைக்கு செல்லுமாறு கூறியதால் கோவை அரசு மருத்துவமனையில் கொண்டு வந்து சேர்த்து சிகிச்சை அளித்தும் பலனின்றி காலமாகிவிட்டாள்.

காலமான எனது மனைவி பாத்திமாபீவி எனது சகோதரியின் மகளுக்கு மாப்பிள்ளை பார்க்க எனது முதல் மனைவியை நான் அழைத்துச் சென்றதாக தவறாக புரிந்து கொண்டு என்னிடம் சண்டை போட்டு கோபித்துக் கொண்டு அவசர புத்தியால் தனக்குத் தானே மண்ணெண்ணெய் ஊற்றி தீ வைத்துக் கொண்டதால் இறப்பு ஏற்பட்டது என தெரிவித்துக் கொள்கிறேன்.”

(** The accused stated that his mother-in-law is engaged in XXX [masked for legal and ethical reasons])

19.The Trial Court disbelieved the evidence of P.W.1, P.W.2 and P.W.12 and accordingly, acquitted the accused under Section 306 of IPC. But



CRL.A.NO.373 OF 2016

the Trial Court believed the above statement given by the accused before the Revenue Divisional Officer (P.W.9) and hence, convicted him for the offence under Section 498-A of IPC.

20.It is settled law that the purpose of conducting inquest is to note the apparent cause of death of the deceased. The inquest report submitted by the Revenue Divisional Officer is like a statement under Section 161 of Cr.P.C. It can be used as previous statement like Section 161(3) of Cr.P.C. But the statement of the accused annexed in the report cannot be elevated to the status of confession since the Revenue Divisional Officer is not a Judicial Magistrate as required under Section 164 of Cr.P.C. At the same time, the Revenue Divisional Officer is not a Police Officer, hence the bar under Section 162 of Cr.P.C., would not apply. Hence, the statement given by the accused to the Revenue Divisional Officer is admissible as evidence subject to Section 24 of the Indian Evidence Act, 1872. The said view has been fortified by this Court in ***ARULVEL VS. STATE REP. THE DEPUTY SUPERINTENDENT OF POLICE [2017 SCC ONLINE MAD 15583]*** and the relevant paragraphs in the said judgment read as follows:

19/28



WEB COPY



CRL.A.NO.373 OF 2016

“14...The statement made by a witness during investigation to the Investigating Officer falling under Section 161 Cr.P.C. cannot be used for any purpose except for the purposes mentioned in Section 162 Cr.P.C. itself. But a statement made to the Revenue Divisional Officer would not fall within the sweep of Section 161 Cr.P.C. because the Revenue Divisional Officer / Executive Magistrate is not a police officer. Under Sub-Section (2) of Section 176 Cr.P.C., the Executive Magistrate holding an enquiry shall record the evidence taken by him in connection therewith in any manner prescribed in the Code according to the circumstances of the case. The Executive Magistrate is, thus, competent to administer oath to the witnesses and record their statements, if he chooses to do so. The evidence of a witness so recorded by the Executive Magistrate under Section 176 Cr.P.C., at no stretch of imagination, shall fall 17 within the ambit of Section 162 Cr.P.C. and therefore it is undoubtedly admissible in evidence as a former statement.

15. Now turning to the evidentiary value of such evidence recorded by the Executive Magistrate, it is not a substantive piece of evidence and the same could be used either to corroborate the evidence of the maker of the said statement as provided under Section 157 of the Evidence Act or to contradict him as provided under Section 145 of the Evidence Act. In this regard, we may usefully refer to the judgment of the Hon'ble Supreme Court in Ramprasad Vs. State of Maharashtra reported in 1999 5 SCC 10, wherein the Hon'ble Supreme Court has held



WEB COPY



CRL.A.NO.373 OF 2016

as follows:

“Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same fact before any authority legally competent to investigate the fact but its use is limited to corroboration of the testimony of such witness. Though a police officer is legally competent to investigate, any statement made to him during such investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a magistrate is not affected by the prohibition contained in the said Section. A magistrate can record the statement of a person as provided in Section 164 of the Code and such statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof.” (Emphasis added)

16. In view of the above law settled down by the Hon'ble Supreme Court, the observations made by the learned Single Judge of this Court in the case of Gunasekaran (cited supra) is



per incuriam as it is contrary to the law laid down by the Hon'ble Supreme Court and therefore, the same needs to be overruled. Accordingly and with regret, we overrule paragraphs 43 and 44 of the judgment of the learned Single Judge of this Court in the case of Gunasekaran (cited supra).

17.In the instant case, at the time when the statement (evidence) was made by the accused to the Revenue Divisional Officer / Executive Magistrate, he was not an accused and neither P.W.10 has been empowered to record a confession as provided under Section 164 Cr.P.C. The Hon'ble Supreme Court in Sivakumar Vs. State of Tamil Nadu in Appeal (Crl.) No.242 of 2005 dated 08.12.2005 has held that

“With a view to exclude the admissibility of the confession made before a person, he must be a police officer.”

18.Therefore, the statement made by the accused to P.W.10, in the instant case, is undoubtedly an extra judicial confession, which is admissible in evidence as neither the bar contained in Section 162 Cr.P.C. nor the one contained in Section 25 of the Evidence Act is applicable to the statement of P.W.10.”

Therefore, at best, the statement given by the accused to the Revenue Divisional Officer (P.W.9) can be construed as an extra-judicial confession.



21.For ready reference, Section 498-A of IPC is extracted

hereunder:

“498-A. 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 purpose 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 such demand.”

22.This case, owing to its factual matrix, concerns only Explanation (a) under Section 498-A of IPC and not explanation (b).

Explanation (a) requires the act of the accused to be '**of that nature**' as likely to lead to any of the three situations set out therein viz., (i) to drive the



CRL.A.NO.373 OF 2016

woman to commit suicide (ii) to cause grave injury (iii) danger to life, limb or health.

23. This Court carefully considered the aforementioned statement of the accused before P.W.9 qua extra-judicial confession. It appears that the accused out of heat of disagreement resorted to mild physical force when the deceased attempted to assault his first wife. There is no evidence to show persistent or frequent cruelty. This Court deems fit to note here that not every harassment is cruelty. Whether the acts of the accused is **'of that nature'** to drive a woman to commit suicide is essentially a question of fact. It has to be determined weighing the conduct of the accused, and gravity and nature of the acts of the accused. Merely employing mild physical force in one instance out of heat of disagreement, though definitely wrong and reprehensible, in the absence of any evidence of history of harassment, cannot be construed to be **'of that nature'** to drive a woman to commit suicide under normal circumstances and therefore, the act of the accused does not constitute cruelty as contemplated under Section 498-A of IPC.



CRL.A.NO.373 OF 2016

24.Further, it is pertinent to cite here the judgment of the Hon'ble Supreme Court in ***GIRDHAR SHANKAR TAWADE VS. STATE OF MAHARASHTRA [2002 SCC (CRI) 971]*** wherein it has been held that cogent evidence is necessary to bring home the charge under Section 498-A of IPC and in the absence of such evidence, the accused cannot be convicted under Section 498-A of IPC.

Conclusion

25.As alluded to supra, the statement of the accused before P.W.9 qua extra-judicial confession, relied on by the Trial Court for convicting the accused under Section 498-A of IPC does not establish cruelty. Therefore, the conviction recorded and punishment imposed under Section 498-A of IPC against the accused by the Trial Court is liable to be interfered with.

26.As already stated supra, the evidence of P.W.1, P.W.2 and P.W.12 required corroboration. The evidence available on record do not corroborate the evidence of P.W.1, P.W.2 and P.W.12. In the absence of such



CRL.A.NO.373 OF 2016

corroborative evidence, it is unsafe to convict the accused based on the uncorroborated testimonies of P.W.1, P.W.2 and P.W.12. Therefore, this Court is inclined to interfere with the conviction and sentence imposed on the accused by the Trial Court. The point that arise for consideration in this appeal is answered accordingly in favour of the accused and against the prosecution.

27.Resultantly, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / accused on May 4th, 2016 for the offence under 498-A of IPC in Sessions Case No.100 of 2013, by the learned Sessions Judge, Magalir Neethimandram (Mahila Court) Coimbatore is hereby set aside and the appellant / accused is acquitted from the charge levelled against him. Bail bonds, if any, shall stand terminated. Fine amount, if any paid by the appellant, shall be refunded to him.

23 / 02 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking
TK

26/28



CRL.A.NO.373 OF 2016

To

WEB COPY

- 1.The Sessions Judge
Magalir Neethimandram (Mahila Court)
Coimbatore.
- 2.The Inspector of Police
Thudiyalur All Women Police Station
Coimbatore District.
- 3.The Public Prosecutor
High Court of Madras.



WEB COPY



CRL.A.NO.373 OF 2016

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.373 OF 2016

23 / 02 / 2024