

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.10.2017

PRONOUNCED ON: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Crl.A.No.770 of 2016

Mani @ Manikandan

Appellant

Vs

State represented by Inspector of Police
Chithodu Police Station

Respondent

Prayer:- This Criminal Appeal is filed against the judgement dated 28.05.2015 made in SC.No.90 of 2014, by the District Sessions Mahalir Court, Erode.

For Appellant : Mr.Philip Ravindran Jesudass

For Respondent : Mr.K.Madhan, PP

JUDGEMENT

This Criminal Appeal is filed by the accused in SC.No.90 of 2014, on the file of the District Sessions Mahalir Court, Erode, challenging the conviction and sentence for the offence under Sections 498A and 306 of IPC, by judgement, dated 28.5.2015.

2. The accused was sentenced to undergo three years Simple Imprisonment for the offence under Section 498A of IPC and also imposed a fine of Rs.1000/-, in default, to undergo Simple Imprisonment for six months. The accused was also convicted and sentenced for the offence under Section 306 of IPC to undergo 10 years Rigorous Imprisonment and imposed a fine of Rs.1000/-, in default to undergo six months Simple Imprisonment.

3. The deceased was the wife of the accused. The marriage between the accused and the deceased took place with the consent of both parents about three years prior to the incident. They had small child aged 1 ½ years at the time of the incident. It has been stated that during the marriage, the deceased Veerammal was given one sovereign of gold. Thereafter, they were staying together in the joint family. The case of the Prosecution was that the accused was in friendly terms with the deceased. Thereafter, they set up a separate family. He suspected the fidelity of the deceased and under the influence of alcohol, he often inflicted cruelty on her. It was stated that two months prior to the incident, the deceased informed her mother that the accused had beaten her. Thereafter, one week prior to the incident, the accused promised that he would not consume alcohol again and took the deceased to his house. On 1.2.2013, the accused had inflicted cruelty on the deceased. On 3.2.2013, in the middle of the night at 1.00 a.m. the accused was said to have again inflicted cruelty on the deceased. On 4.2.2013 in the morning at 9.15 a.m. the deceased had taken insecticides, as a result of which, she died. In view of the same, the accused was charged under Sections 498A and 306 of IPC.

4. After framing necessary charges under Sections Sections 498A of IPC and 306 of IPC, the accused was questioned as to the incriminating circumstances under Section 313 of Cr.PC and the accused denied them as false and pleaded not guilty. To establish the charges, the Prosecution had examined PW.1 to PW.12 and also marked Ex.P1 and Ex.P11 and MO.1. On

consideration of oral and documentary evidence, the Trial Court had convicted and sentenced the accused as stated above. Hence, this Criminal Appeal has been filed by the accused.

5. One very disturbing factor in this appeal is the fact that on perusal of the original records, it had come to light that the First Information Report, which was registered on 4.2.2013, has overwritings in the name of the accused. It is also seen that it was dated 4.2.2013 in the First Information Report No.52 of 2013. It was received by the Judicial Magistrate III, Erode on 18.7.2013. There is no explanation at all as to the huge delay of five months in forwarding the First Information Report to the court. There had been alteration in the charges, which was dated 17.7.2013 and this was not at all forwarded to the court. It was produced only during the evidence on 20.8.2014. The statements recorded under Section 161 of Cr.PC were also forwarded only on 18.7.2013 to the court. They were recorded on 4.2.2013. The Investigating Officer had not spoken anything about the delay in forwarding the original records to the court. Even otherwise, this court can interfere with the order of conviction on that one sole ground itself.

6. A perusal of the evidence produced reveals that PW.1, who is the mother of the deceased, had stated that the accused was having very cordial relationship with the deceased and there is absolutely no evidence for demand of dowry or any cruelty inflicted on the deceased. The marriage between the accused and the deceased took place in 2010 and they have also had a small child. Even though PW.1 had stated that the deceased had telephoned her at

1.00 a.m. in the night, again the entire case seems to be created by the Prosecution Further, there is also no corroboration for the evidence of PW.1.

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7. The Inspector of Police had given no explanation as to why there was such a huge delay in forwarding the entire papers to the court. The explanation should have come voluntarily from the Investigating Officer. PW.2 is the Investigating Officer. PW.2 had admitted even in the chief examination that the records were forwarded to the Magistrate Court only on 17.7.2013 even though the First Information Report was registered on 4.2.2013. This delay is fatal to the case of the Prosecution. In the absence of any explanation, I hold that the entire case cannot be believed and more particularly, since there is also overwritings in the name of the accused in the First Information Report, I hold that the accused is entitled to get the benefit of doubt and accordingly, to be acquitted.

8. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence, dated 28.05.2015 made in SC.No.90 of 2014, by the District Sessions Mahalir Court, Erode is set aside. The Appellant is acquitted of all the charges levelled against him. Fine amount, if any paid by the Appellant, shall be refunded to him.

11.10.2017

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To:

1. The District Sessions Mahalir Court, Erode.

Pre-Delivery Judgement in
Crl.A.No.770 of 2016



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