

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

CRL.A.No.36 of 2013

1. Mohammed Rafiq
2. Vahidha

...Appellants

Vs.

State represented by
The Inspector of Police
All Woman Police Station Mettur
Salem District.

.. Respondent

Criminal Appeal filed under Section 374(2) of the Cr.P.C. against the judgment of conviction and sentence by the learned Sessions Judge (Mahila Court) Salem in S.C.No.285 of 2010 dated 26.12.2012.

For Appellants : Mr.R.John Sathyan

For Respondent : Mr.M.Mohamed Riyaz

Government Advocate, (Crl. Side)

ORDER

This appeal is preferred against judgment of learned Sessions Judge, Mahila Court, Salem in S.C.No.285 of 2010 dated 26.12.2012. Appellants/A1 and 2 were tried for offences under Sections 498-A, 313 IPC (two counts) and Sec.4 of the Dowry Prohibition Act 1961.

2. Trial Court acquitted A3 of all charges and A1 and 2 of one of the charges u/s. 313 as also the charge u/s. 4 of the Dowry Prohibition Act. A1 and 2 were found guilty of offences u/s.498-A and one count of 313 IPC. For offence u/s. 498-A they were sentenced to two years R.I and fine of Rs.2,000/- in default 3 months S.I. For conviction u/s. 313 IPC they were sentenced to 6 years R.I and fine of Rs.10,000 i/d 6 months S.I. Both sentences were ordered to run concurrently.

3. Learned counsel for appellants submitted that Court below had found disproved the prosecution case of demand of dowry. He submitted that the prosecution case was of appellants/accused committing acts of cruelty in connection with demands of dowry and the Trial Court acquitted all the accused of the charge under Section 4 of the Dowry Prohibition Act. Offence under Section 498(A) IPC allegedly was committed only in respect of demand of dowry. It is the contention of the counsel that under such circumstances, the Court below ought to have acquitted the appellants also for the offence under Section 498 (A) IPC when it found no materials to convict them for the offence under Section 4 of the Dowry Prohibition Act. The conviction by the Court below for the offence under Section 313 IPC is in respect of an abortion allegedly forced upon PW1 on 27.05.2008. Doctor-P.W.9 had deposed that when she examined PW1 on 27.05.2008, she found a dead foetus which had to be removed. Though PW1 had spoken about A1-

husband and A2- mother-in-law purchasing and forcing her to consume tablets towards abortion, she has also spoken to A2 mother-in-law contacting her mother over phone and asking if abortion could be resorted to. She has informed that her mother had responded saying that P.W.1 had been given away in marriage and that she could be dealt with as considered appropriate. P.W.1 further had deposed that she was aware of her brother- P.W.6 having spoken to her husband-A1 regarding her conduct and that P.W.6 had informed A1 of having received a phone call informing of a relationship between P.W.1 and another and that if A1, her husband received any such call, he ignore it. P.W.6 had deposed to P.W.1 having been found 40 days pregnant 15 days after the marriage. Learned counsel submits that in the above circumstances, the operation of 27.05.2008 took place with the concurrence of all concerned.

4. Learned Government Advocate (Crl.side) submits that on fair appreciation of evidence a finding of conviction in respect of offence u/s. 498 A and 313 IPC has been made by the Trial Court and such finding did not call for any interference.

5. P.W.6 brother of P.W.1 has spoken to P.W.1 having been found so pregnant as suggested conception before marriage. Doctor P.W.9 has spoken to finding P.W.1 having suffered an incomplete abortion (scan report Ex.P.3,

Doctors report Ex.P.4) and of her having informed of consumption of tablets towards abortion. Doctor P.W.9 has spoken to doing the needful towards cleaning the womb.

6. We find much force in the submission of learned counsel for appellants that the treatment of P.W.1 on 27.05.2008 was entered upon with the consent of all concerned. When prosecution case is of harassment of P.W.1 towards receiving dowry and the Trial Court found charge for offence u/s. 4 of the Dowry Prohibition Act unacceptable it necessarily would follow that conviction for offence u/s. 498-A is bad.

The appeal is allowed. The conviction and sentence imposed on the appellants A1 and A2 are set aside. They are acquitted of all charges. The fine amount, if any, paid by the appellants shall be refunded. The bail bond, if any, executed by the appellants shall stand cancelled.

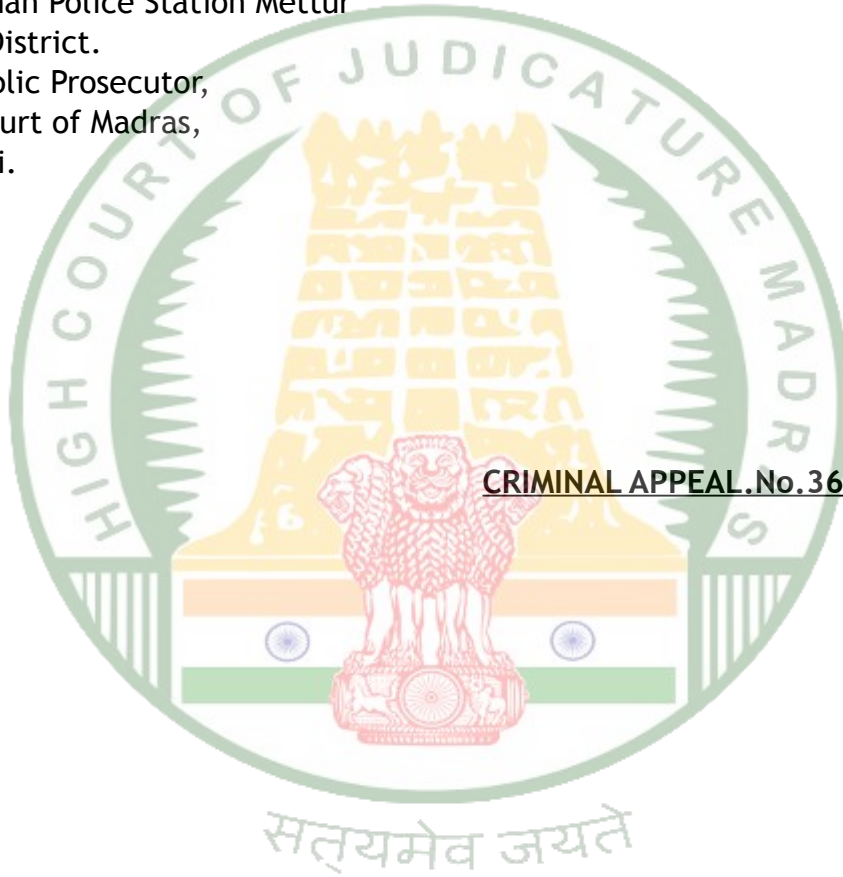
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Index :Yes/No
Internet:Yes/No
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C.T. SELVAM,J
dpq/kpr

To

- 1.The learned Sessions Judge (Mahila Court)
Salem
- 2.The Inspector of Police
All Woman Police Station Mettur
Salem District.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.



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