

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.A.Nos.893 and 945 of 2007

Godwin Fredrick
S/o.Arunachalam

... Appellant in Crl.A.No.893/07

1.Rita Nalini
W/o.Late Arunachalam

2.Beulah Usha
W/o.John Fredrick

... Appellants in Crl.A.No.945/07

VS

State by
Inspector of Police,
C3 Adambakkam Police Station,
Chennai.
Crime No.527 of 2001

... Respondent in both appeals

Criminal Appeals filed u/s.374(2) of the Code of Criminal Procedure against judgment of learned Additional District and Sessions Judge, Fast Track Court III, Poonamallee, passed in S.C.No.58 of 2007 on 11.09.2007.

For Appellants : Mr.A.Ganesh

For Respondent : Mr.V.Arul
Additional Public Prosecutor

COMMON JUDGMENT

This Court has reserved judgment in these matters on 26.07.2017. Today, the matter is listed under the caption 'for being mentioned' at the instance of learned counsel for appellants.

2. These appeals arise against judgment of learned Additional District and Sessions Judge, Fast Track Court III, Poonamallee, passed in S.C.No.58 of 2007 on 11.09.2007.

3. Prosecution case is that appellants, husband, mother-in-law and sister-in-law of deceased, harassed her demanding dowry and treated her cruelly owing to which the deceased attempted suicide by self-immolation on 13.09.2001 at 22.30 hours. PW-1 preferred Ex.P1, complaint, to PW-13, Inspector of Police, Adambakkam, who registered a case in Crime No.527 of 2001 on the file of respondent for offence u/s.498-A IPC on 14.09.2001 at 09.00 a.m. Printed First Information Report is Ex.P18. PW-13 visited the scene of occurrence, prepared Ex.P13, observation mahazar and Ex.P19 - rough sketch in the presence of PW-10 and another. PW-13 seized MO-1 - 2 litres kerosene can, MO-2 - Match Box and MO-3 - Matchsticks under seizure mahazar. PW-13

examined PWs.1,2, 4 to 7 and others and recorded their statements. PW-13 submitted Ex.P11, requisition to Judicial Magistrate, towards recording the dying declaration. Ex.P12 is the dying declaration. On obtaining information that the deceased died on 25.09.2001, PW-13 altered the First Information Report to reflect offence also u/s.304-B IPC. Ex.P20 is the alteration report. PW-13 forwarded the alteration report to Court and higher officials. PW-13 submitted a requisition to the Personal Assistant to the Collector towards conduct of inquest. On 25.09.2001, PW-14, Additional Superintendent of Police, took up further investigation. PW-14 examined witnesses and recorded their statements. PW-14 arrested accused 1 and 2 and sent them to judicial custody. PW-14 examined PWs.2 and 3, Doctors and another and recorded their statements. On 12.10.2001, PW-14 examined PW-12, Doctor, who had conducted postmortem and obtained Ex.P17, Postmortem Certificate. The same reads thus:

'Post-mortem Certificate

Regarding the body of a female aged about 26 years, named Tmt.Hebsiba Hemalatha. Requisition received at 2.00 p.m. on 25.9.2001 from the Tashdildar and Executive Magistrate, Mylapore and Triplicane of C3 Adambakkam P-5 with his letter No.Cr.527/2001 dated 25.9.2001. Body in charge of Police Constable No.2939 named G.Selvaraj.

Identification and caste marks -

(1) No identification could be made out due to extensive burns.

The body was first seen by the undersigned at 2.15 p.m. on 25.9.2001. Its condition then was rigor mortis present in the lower limbs only. Post-mortem commenced at 2.15 p.m. on 25.9.2001.

Appearances found at the post-mortem of a well nourished female body.

Injuries:

- 1. Nine circular burns injury of varying age ranging from 0.7 to 1.3 cms in diameter made out over the outer aspect of right arm over an area of 10 x 10 cms.*
- 2. Fourteen circular to oval burns injury of varying age ranging from 0.7 to 1.3 cms in diameter made out over the face.*
- 3. Ten circular to oval burns injury of varying age seen over left arm over an area of 12 x 8 cms.*
- 4. Four circular to oval burns injury of varying age seen over front of upper part of left side of chest.*
- 5. Three circular to oval burns injury of varying age seen over outer aspect of lower third of left arm.*
- 6. Four circular to oval ill defined superficial scars each 0.7 to 1.3 cms seen over the pubic region.*
- 7. Extensive mixed burns involving the chin, scattered areas of upper half of abdomen, front and sides and inner aspect of right fore-arm and hand, inner aspect of right arm, inner aspect of left arm and elbow of right lower limb, front and*

sides and most part of left lower limb and scattered areas over back of both thighs.

On Dissection : Bruising of scalp seen over left side of head 10 x 7 cms, rest of the areas appeared oedematous. Carnial vault and meninges - Intact.

Brain : Appear pale and oedematous. Bruising of para and retro pharyngeal soft tissues of neck and bruising of tissues over upper part of right side of chest and adjacent right side of neck made out 16 x 10 cms.

Hyoid bone : Intact. Laryngeal cartilages and thoracic cage : Intact. Heart : Normal in size. Chambers contained clotted blood.

Lungs: showed evidence of pyothorax and massive areas of consolidated either lobe.

Stomach : Empty. Mucosa - congested.

Liver, spleen and kidneys : Enlarged and C/s pale.

Intestines : Distended with gas.

Bladder : Empty.

Uterus : Empty.

Pelvis and Spinal Column - Intact.

Viscera preserved for chemical analysis.

Opinion as to cause of death -

(a) Reserved pending report of

(b) The deceased would appear to have died of shock due to infected extensive mixed burns with multiple circumcised wounds of varying age and blunt injury over head and neck.'

PW-14 obtained Ex.P10, inquest report, from the Tahsildar. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.498-A, 306 and 304-B IPC before learned Judicial Magistrate II, Poonamallee. Upon committal, the case was tried in S.C.No.58 of 2007 on the file of learned Additional District and Sessions Judge, Fast Track Court III, Poonamallee. Accused were charged for offences u/s.498-A, 306 and 304-B IPC.

4. Before trial Court, prosecution examined 14 witnesses and marked 20 exhibits and 3 material objects. 1 witness was examined on the side of defence and 1 exhibit was marked. On appreciation of materials before it, trial Court, under judgment dated 11.09.2007, convicted first accused for offence u/s.306 IPC and accused 2 and 3 for offences u/s.498-A, 306 and 304-B IPC and sentenced A2 and A3 to 3 years R.I. and fine of Rs.1,000/- i/d 6 months R.I. for offence u/s.498-A IPC, A1 to A3 to 3 years R.I. and fine of Rs.1,000/- i/d 6 months R.I. for offence u/s.306 IPC and A2 and A3 to 10 years R.I. for offence u/s.304-B IPC. Trial Court directed that sentences run concurrently. Against such finding, first accused/husband of deceased preferred Crl.A.No.893 of 2007 while accused 2 and 3, his mother and sister, preferred Crl.A.No.945 of 2007.

5. Heard learned senior counsel for appellants and learned Additional Public Prosecutor. Parties are hereinafter referred to as per rank before the trial Court.

6. Learned senior counsel submitted that the marriage between first accused and deceased took place on 15.05.2000. The deceased suffered burn injuries on 13.09.2001 at about 10.30 p.m. and died on 24.09.2001. Ex.P4, Accident Register of the deceased had been recorded by PW-2, Doctor, on the date of occurrence i.e. 13.09.2001 at 11.15 p.m. Therein, burn injuries were informed to have been suffered by deceased at her residence owing to a kerosene stove burst. Such position has been spoken to by PW-2, Doctor, even in the course of his chief-examination. In cross, he had stated that such information had been told him by deceased. PW-1 had preferred Ex.P1, complaint, to PW-13, Inspector of Police, the next morning on 14.09.2001 at 09.00 a.m. PW-9, Judicial Magistrate had recorded Ex.P5, dying declaration, at 03.20 a.m. on 14.09.2001. In such dying declaration, the deceased has spoken to first accused being aggrieved over her parents not taking due care of her child and that he would quarrel with her on such account. Accused 2 and 3, mother-in-law and sister-in-law would quarrel with her since she had not

brought sufficient sridhana. She has spoken to a quarrel with first accused on 13.09.2001 at about 10.00 p.m. on his alleging neglect of her child by her parents. Tellingly, she has informed that when the argument between them became severe she poured kerosene over herself and lit a match. First accused/husband doused the fire and took her to hospital. She has spoken to her holding a masters degree in Public Administration and of being a Manager of a company, of her husband being employed in a courier service and that the incident informed by her was the cause of burn injuries suffered. Learned senior counsel submitted that the above was clearly indicative of the deceased having resorted to a suicidal act owing to a quarrel with first accused. In such circumstance, no offence of abetment of suicide punishable u/s.306 IPC would be occasioned and allegation of offence u/s.304-B IPC, requirement of which was that of harassment of the woman 'soon before her death' also would not be met. Learned senior counsel submitted that the conclusion of PW-8, Revenue Divisional Officer in Ex.P10, inquest report, that the case was one of dowry death was erroneous.

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7. Learned senior counsel submitted that the second accused, now aged 69 years, suffered from heart and other ailments and her further incarceration

would lead to early death. Learned counsel further submitted that the son of third accused, now aged 25, suffered from psychiatric and neurological problems and was under the constant care of his mother/A3. In support of both submissions, learned senior counsel has produced medical records from hospitals of good repute.

8. Learned Additional Public Prosecutor referred to Ex.P2, complaint, preferred by deceased to the Deputy Superintendent of Police, Woman's Help Line, wherein she had narrated in some detail the frequent disturbances and harassment caused to her by accused 2 and 3. Learned Additional Public Prosecutor pointed out that while Ex.P2 is of the date 29.08.2001, the occurrence had taken place on 13.09.2001. Even in Ex.P2, deceased had requested that no immediate action be taken thereon keeping in mind marital interests and stated that if accused 2 and 3 created problems in future she would call the help line for immediate action against them. She had gone on to inform that if any untoward incident took place, her in-laws alone would be responsible.

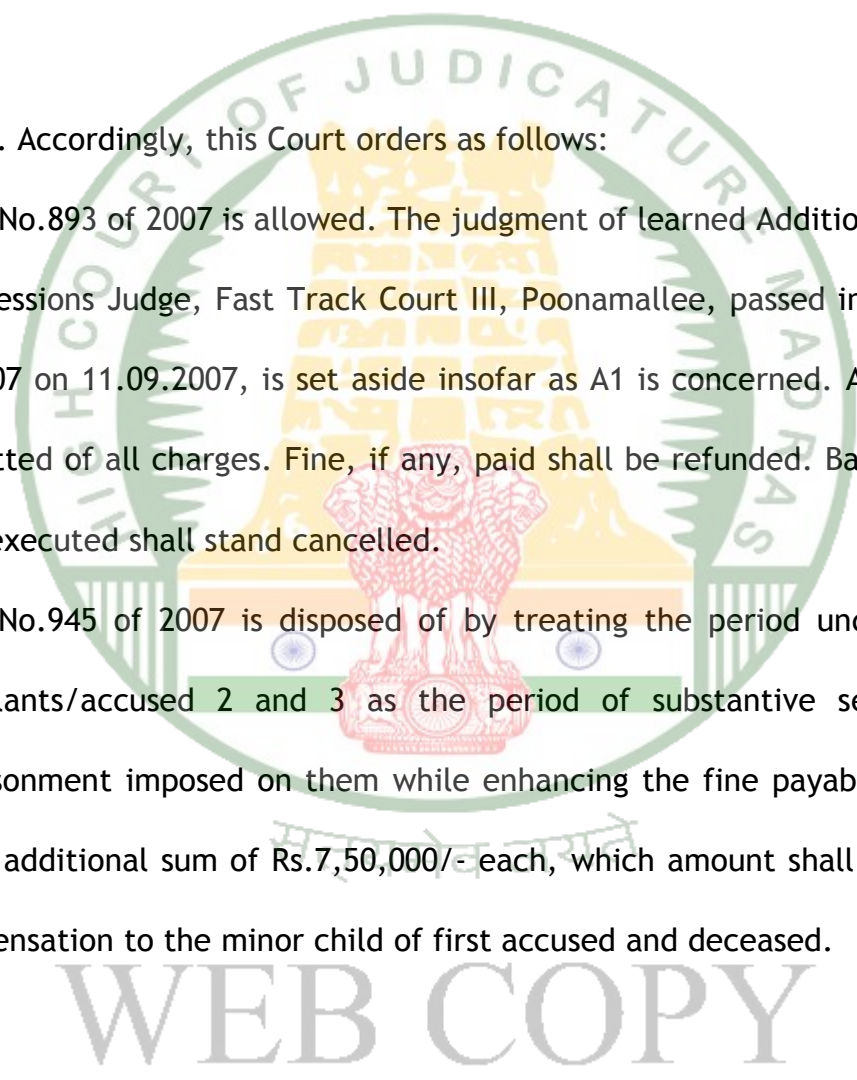
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9. This Court readily would accept the contention of learned senior counsel and hold that the finding of guilt u/s.304-B and 306 IPC stands wrongly arrived at by trial Court. On the facts of this case, the deceased's resort to setting herself on fire in an agitated frame of mind cannot be seen to attract commission of offence u/s.306 IPC by A1 who was with her in their matrimonial home. It is admitted prosecution case that the couple resided separately. A2 and A3 were not at the scene at the time of occurrence. There is no evidence of deceased having been subjected to cruelty or harassment soon before her death so as to attract offence u/s.304-B IPC. However, on the material on record, particularly given the position that Ex.P5, dying declaration, informs acts of harassment by accused 2 and 3, trial Court rightly has convicted them for offence u/s.498-A IPC even while acquitting the first accused of such offence on the proper reasoning that he only was a pawn in the hands of his mother.

10. It is brought to notice that second accused has suffered imprisonment for a period of 3½ months while third accused has undergone 2 months. This Court, even while confirming the conviction for offence u/s.498-A IPC against accused 2 and 3 and holding accused not guilty of other offences,

considers that interests of justice would be met by treating the period undergone by accused 2 and 3 as the period of substantive sentence of imprisonment imposed on them while enhancing the fine payable by them to an additional sum of Rs.7,50,000/- each.

11. Accordingly, this Court orders as follows:

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- (i) Crl.A.No.893 of 2007 is allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court III, Poonamallee, passed in S.C.No.58 of 2007 on 11.09.2007, is set aside insofar as A1 is concerned. Appellant is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.
- (ii) Crl.A.No.945 of 2007 is disposed of by treating the period undergone by appellants/accused 2 and 3 as the period of substantive sentence of imprisonment imposed on them while enhancing the fine payable by them to an additional sum of Rs.7,50,000/- each, which amount shall be paid as compensation to the minor child of first accused and deceased.

The child of first accused and deceased, now aged 16, is present, as are her maternal grand parents by names Victor J.S.Kundson and Rebecca Victor.

Two Demand Drafts bearing Nos.047766 drawn on Bank of India, Usman Road, Chennai and 358313 drawn on Kotak Mahindra Bank, Perungudi, each in a sum of Rs.7,50,000/- are handed over to the maternal grand father. The same shall be held in fixed deposit with any one of the nationalised banks and in the name of minor child Celina Shalon, represented by her guardian, the maternal grand father, who is entitled to draw interest on the fixed deposit once in three months towards her upkeep. Upon attaining majority, Celina Shalon shall be entitled to deal with the monies/bank deposits on her own accord and in any manner thought appropriate by her.

28.08.2017

Note to office:
Issue order copy by 08.09.2017

Index:yes/no
Internet:yes/no
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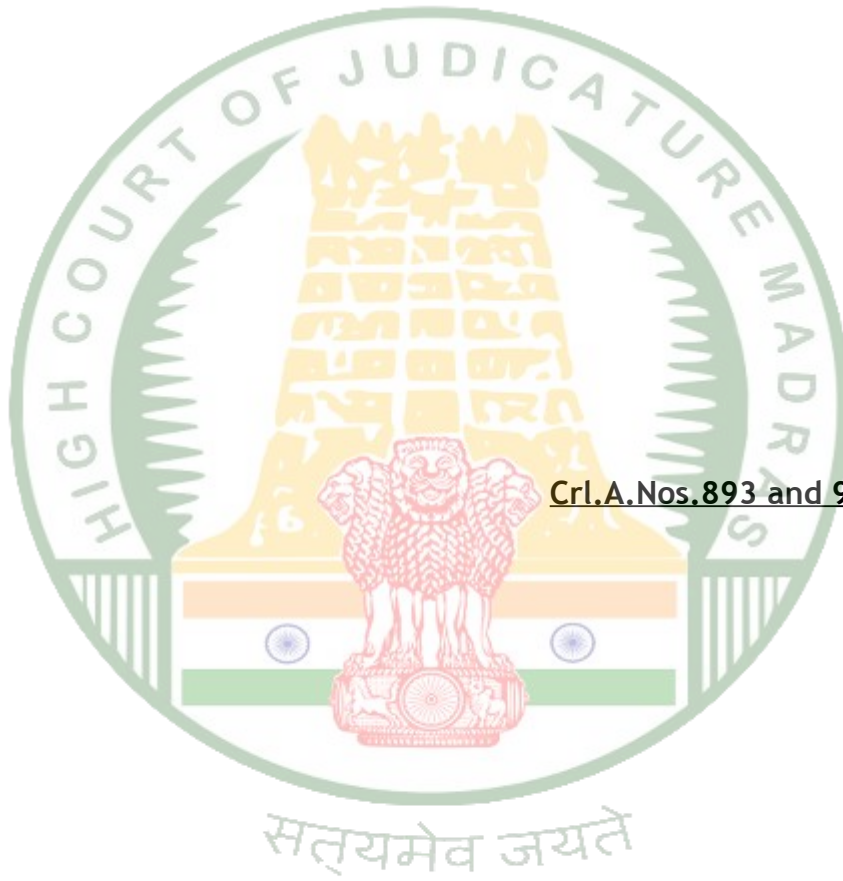
- 1.The Additional District and Sessions Judge,
Fast Track Court III,
Poonamallee.
- 2.The Inspector of Police,
C3 Adambakkam Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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C.T.SELVAM, J

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