

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2020

PRONOUNCED ON : 10.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Crl.A.No.851 of 2013

C.Venkatesan

...

Appellant/Accused

Vs.

State by Inspector of Police,
B.3, Fort Police Station,
Chennai. (Crime No.73 of 2007)

...

Respondent/Complainant

Prayer:- This Criminal Appeal has been filed under Section 374 (2) of the Criminal Procedure Code against the judgment dated 18.11.2013 passed in S.C.No.286 of 2010 on the file of the Sessions Court, Mahalir Neethimandram, Chennai.

For Appellant

: Mr.S.Panneer Selvam

For Respondent

: Mr.R.Ravichandran

Government Advocate (Crl.side)

JUDGMENT

The Sessions Judge, Mahila Court, Chennai, by judgment dated 18.11.2013, passed in S.C.No.286 of 2010 has convicted the appellant under Section 498 A IPC and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rupees 5,000/- in default to undergo simple imprisonment for three months and acquitted him of the offences put forth against him under section 306 IPC. Impugning the conviction and sentence imposed on him, the criminal appeal has been preferred by the appellant/accused.

2. Briefly stated, the respondent police has laid the final report against the appellant/accused alleging that the deceased Mariammal and the accused got married eight years ago and were residing at Annai Sathya Nagar, P3Kottai within the jurisdiction of P3 Kottai Police station and they had three male children and the accused was in the habit of consuming liquor and on account of the same, not undertaking avocation properly and used to ill treat deceased Mariammal by demanding money from her for consuming liquor and due to the same there used to be often quarrel and fights between the deceased Mariammal and the accused and the deceased Mariammal used to go to her

brother Kuppusamy's house who is residing adjacent often and Kuppusamy used to pacify her and leave her in her house. Whiles, 4 days prior to the occurrence, the accused without engaging in any avocation consumed liquor and ill treated and beat the deceased Mariammal and on 28.08.2007, the accused demanded money from the deceased Mariammal to give him money for consuming liquor and the same was refused by the deceased and he picked up quarrel and fight with her and uttered that when he returns home, she should not be alive and thereby abetted the deceased Mariammal to commit suicide. On hearing the abovesaid words uttered by the accused, the deceased Mariammal decided to commit suicide on 28.08.2007 at 10:15 p.m. The deceased Mariammal poured kerosene on her body and set herself to fire and immediately she was rushed to hospital with burns and despite treatment, she succumbed to the burn injuries on 02.09.2007 and it is thus put forth that the accused has committed the offences punishable under sections 498A and 306 IPC.

3. The occurrence is stated to have taken place on 28.08.2007 at 10:15 p.m. According to the prosecution, on account of the ill treatment and torture inflicted by the accused to his wife, the deceased Mariammal by demanding money for consuming liquor, particularly, on 28.08.2007, when he threatened her that she should not remain alive on his returning home and on hearing the

abovesaid words of the accused, Mariammal felt mentally distressed and thereby, it is stated that she decided to commit suicide at 10:15 p.m. She poured kerosene on her body and set fire on herself and immediately, she was taken to the hospital with burn injuries. It is found that the complaint based on which the criminal action has been set in motion in the matter had been lodged by the deceased Mariammal herself which has been marked as Ex.P1. At the time when the deceased Mariammal was admitted at the Royapettah Hospital with burn injuries, it is found that PW13 Doctor Ravi was the medical officer who had admitted her in the hospital and he has stated that the deceased had apprised that she had committed self immolation around 10:15 p.m. on 28.08.2007 inside the house and the deceased Mariammal, at the time of admitting in the hospital, was conscious oriented and accordingly, it is found that the deceased Mariammal had been admitted with burns and the accident register is marked as Ex.P5. Following the same, it is found that on the intimation sent to the police station, the Sub Inspector of Police proceeded to the hospital and recorded the statement from the deceased and the same has been spoken to by the medical officer who was on duty at that point of time, namely, Udaya Chander PW12. It is found that PW12 has also made an endorsement in Ex.P1 complaint lodged by the deceased Mariammal that she

was conscious and in a fit state of mind while giving the statement. On a perusal of Ex.P1, it is found that Mariammal had apprised about her marriage with her husband 8 years ago and the birth of three male children to them and further, apprise that her husband was engaged as coolie labourer in Harbour and she was engaged in construction work and her husband was not going to job regularly and used to consume liquor. On refusal of money for consuming liquor, he used to pick up quarrel with her and he had been ill treating her by consuming liquor without going for any job for the past four days and further stated that on 28.08.2007 morning he picked up quarrel with her and went outside and while going out uttered that she should not remain alive when he returns home. On hearing the same, she feeling distressed, decided to commit suicide on the same day at 10:15 p.m. by pouring kerosene on her body and set fire and thereby sustained burn injuries. This statement is said to have been given by the deceased Mariammal to the Sub-Inspector of Police on being admitted in the hospital. As above pointed out, it is found that it is PW14 Shridevi, Sub Inspector of Police who had obtained the statement marked as Ex.P1 from the deceased Mariammal and based on the same, the case has been registered by her under section 309 IPC. The printed FIR has been marked as Ex.P6. It is further noted that noting that the deceased Mariammal was in a

serious condition, PW14 proceeded to obtain the dying declaration of the deceased Mariammal and based on the same, it is found that the Judicial Magistrate proceeded to hospital and recorded the dying declaration of the deceased Mariammal which has come to be marked as Ex.P11. The Judicial Magistrate PW15 has deposed that he had recorded the dying declaration on 29.08.2007 at 2:30 a.m. and that the deceased Mariammal was fully conscious throughout the recording of the dying declaration and the same is also found to be certified by the medical officer Doctor Udaya Chander PW12. Ex.P1 complaint is stated to have been obtained from the deceased Mariammal on 29.08.2007 and based on the same, the case had been registered on the same day. As above pointed out, the dying declaration had been obtained from the deceased Mariammal from the Judicial Magistrate PW15 at 2:30 a.m. On being questioned as to how she had sustained injuries by the Judicial Magistrate, the deceased Mariammal had informed to the Judicial Magistrate that she has given birth to three children out of her wedlock with her husband and her husband was engaged as a Mason and there was a fight between her and her husband on the previous night on 28.08.2007 and she herself poured the kerosene on her body and that apart, nothing happened and while fighting with her husband, he has been repeatedly uttering that he will die and that she has

retorted by saying as to why he should die and that she will die and accordingly, she poured kerosene on her body and this is the statement said to have been given by the deceased Mariammal to the Judicial Magistrate and the same had been recorded as the dying declaration marked as Ex.P11. As above pointed out, while giving the dying declaration, the deceased Mariammal was fully conscious throughout which has been certified by the medical officer. Therefore, as rightly put forth by the accused counsel, it is found that on a reading of the complaint Ex.P1 as well as the dying declaration Ex.P11 conjointly one could gather that the deceased Mariammal and the accused were living as husband and wife for 8 years and out of the wedlock, they had three male children and there used to be fights and quarrels between the husband and wife, namely, the deceased Mariammal and the accused often. Despite the above said position, they had been carrying on their marital life one way or the other and it is further noted that while picking up quarrel with the deceased Mariammal, her husband, namely, the accused has threatened that he is going to die and on hearing the same, it is further noted that the deceased has uttered why he should die and she will die and accordingly, it is seen that in a sudden spur of a moment, she had poured kerosene on her body and set herself on fire and therefore, to that effect, the deceased Mariammal had given dying

declaration to the Judicial Magistrate. In such view of the matter and furthermore, apart from the abovesaid facts, nothing had happened between her and her husband. In such view of the matter, to say that the deceased Mariammal had complained about the ill treatment and torture, on the part of the accused by demanding money from her for consuming liquor as reflected in Ex.P1 complaint cannot be easily and readily accepted. As above pointed out, PW14 had recorded the statement Ex.P1 from the deceased Mariammal. According to the accused, Ex.P1 complaint had been concocted by the police to suit the case. It is further put forth that Ex.P1 complaint has not been actually lodged by the deceased Mariammal and if the same had been lodged by the deceased Mariammal, she would have given the same version to the Judicial Magistrate when her dying declaration had been recorded. When in the dying declaration the deceased Mariammal had not complained about the ill treatment, torture inflicted upon her by the accused, other than saying that they had a fight on the previous night on 28.08.2007 and it is she herself self immolated herself on fire and therefore, it is highly doubtful as to whether Ex.P1 complaint apprising that her husband, the accused had been inflicting cruelty, ill-treatment and harassment on her would have been given by the deceased Mariammal. As rightly contended by the accused counsel, on a bare

perusal of Ex.P1, it is found that for the first half page of the complaint Ex.P1, the statement had been recorded by giving proper margin. However, from the second half, the contents have been written closely without giving any margin as found in the first half page and therefore, it is highly doubtful whether the contents would have been recorded by the Sub Inspector of Police herself as given by the deceased Mariammal as alleged by her. On the other hand, considering the close writing without margin in the second half of the complaint would only go to show and reveal that the left thumb impression would have been obtained in the blank papers and the contents would have been recorded to suit the case. It is found that the second half page had been written closely without any margin and therefore, when the contents found in the second half page of the complaint does not suit with the dying declaration given by the deceased Mariammal given on the same day, Ex.P11, it is highly doubtful whether Ex.P1 complaint would have been preferred by the deceased Mariammal as projected by the prosecution. In this connection, the suggestion has also put to the Sub Inspector of police who had recorded the statement and no doubt, she had denied the same and no doubt, no plausible explanation has been offered as to why the second half of Ex.P1 has been in a scramble manner and closely written.

4. In the light of the abovesaid factors, when different versions had been averred by the deceased as to why she had set herself on fire and when in the dying declaration recorded by her at the last, she had not stated anything about the torture and ill treatment inflicted upon her by her husband, namely, the accused, in such view of the matter, when as above pointed out, Ex.P1 is found to be shrouded in mystery and furthermore, when the medical officer PW12 has admitted that when the deceased Mariammal gave the statement Ex.P1, her relatives were not present and he does not remember as to whether the complaint was recorded first or the dying declaration was recorded first and when he has further stated that the deceased Mariammal had apprised him that she had self immolated herself by setting fire on her body, serious doubt arises as to the credibility of Ex.P1 complaint. Therefore, based on Ex.P1 complaint alone, it cannot be held safely that the deceased Mariammal had been tortured, ill treated and harassed by the accused often, particularly, for the past four days prior to the occurrence by consuming liquor as put forth by the prosecution. If that be so, the same would have been reflected in the dying declaration Ex.P11. In addition to that, the prosecution witnesses have also not supported the case projected by the prosecution. PW1 Muniappan, father of the deceased Mariammal, during the course of chief examination would only state that there

used to be quarrel between her daughter and her husband, the accused and the accused would not provide money and not properly maintaining the family. That apart, he has not stated anything adverse to the accused. When it is found that the deceased Mariammal and the accused had been living as husband and wife for the past eight years and the marriage is also found to be a love marriage as stated by the PW1 and therefore, merely because the husband and wife had been engaged in quarrel and fight during the matrimonial life over petty issues, the same cannot be blown out of proportion as if all is not well between them. Accordingly, it is found that PW1, on being cross examined has deposed that it is true to state that the accused is no way connected with the occurrence and the accused and her daughter had fight and they used to often pick up quarrel and fight and they did not pay attention to these fights and suddenly, the deceased self immolated herself and rushed to the hospital and therefore, it is deposed by PW1 that other than the petty quarrels and fights between the deceased Mariammal and the accused, nothing serious has been developed between them, particularly, it is found that PW1 has not deposed about the torture and cruelty said to have been inflicted upon the deceased by the accused. Therefore, PW1's evidence did not lend support to the prosecution case.

5. Similar is the evidence of PW2 Kuppusamy, the brother of the deceased Mariammal. He would depose during the course of cross examination that the accused used to pick up quarrel often by consuming liquor. That apart, he has not tendered evidence that the accused used to beat or ill treat her one way or the other. Further, he would also admit that the happenings of the matrimonial of the deceased and accused are known to him only on being apprised by the deceased Mariammal. Therefore, it is found that he has no direct knowledge as to how the deceased Mariammal and the accused had been living together. Further, during the course of cross examination, he has clearly admitted that it is true to state that the accused is not at all connected with the occurrence and he left the house in the morning hours itself. At this juncture, it is to be noted that the occurrence took place at 10:15 p.m. on 28.08.2007 and the accused is not in the scene of occurrence and the same had been admitted by the prosecution itself. Even as per the complaint Ex.P1, the accused left the house on 28.08.2007 morning and the deceased Mariammal self immolated her at 10:15 p.m. on the same day, therefore, it is seen that the accused was not present at the time of the incident. In view of the above position, PW2's evidence would also not be supporting the prosecution case.

6. PW3 is the cousin sister of the deceased Mariammal and she has admitted during the course of cross examination that she does not know as to the happenings in the matrimonial home of the deceased Mariammal and the accused and she would only state that on hearing the burn injuries sustained by the deceased, she accompanied with her to the hospital and during the course of cross examination, PW3 has admitted that there used to be ordinary quarrels between the deceased Mariammal and her husband, the accused and it is true to state that the accused is no way connected with the self immolation of the deceased Mariammal and the accused was not at the place of the incident and only to threaten her husband, the deceased Mariammal has self immolated herself. When the above being the evidence of PW3, it is found that her evidence would not advance the prosecution case.

7. PW4 Magimairaj has not stated anything about the ill treatment torture said to have been inflicted upon the deceased Mariammal. That apart, during the course of cross examination, he has clearly admitted that he does not know about the fights between the deceased Mariammal and the accused. Therefore, his evidence would be of no use to sustain the prosecution case.

8. PW5 Poongodi has also not stated anything incriminating the accused in the crime and further, during the course of cross examination, she has admitted that she does not know whether Mariammal has self immolated herself and does not know anything about the fights said to have occurred between the deceased Mariammal and her husband, the accused. Similarly, PW6 Ranjitham has also not deposed anything against the accused and during the course of cross examination admitted that she does not know about the fights between the accused and the deceased Mariammal.

9. PWs 7 to 10 having not supported the prosecution case, they had been treated as hostile witnesses and despite cross examination by the prosecution, nothing has been culled out from them in support of the prosecution. Therefore, their evidence would be of no use to buttress the prosecution case. Further, PW11 has also not deposed anything incriminating against the accused and he has only admitted the signature said to have been recorded by the accused. Therefore, his evidence would be of no use to support the prosecution case. As above pointed out, PWs 12 and 13 are medical officers, PW14 is the Sub Inspector of Police who had registered the FIR. PW15 is the Judicial Magistrate who had recorded the dying declaration of the accused. PW16 is the postmortem doctor and the postmortem certificate issued by him

has been marked as Ex.P13. As per Ex.P13, the deceased is reported to have died due to extensive infected mixed burns. PW16 is the investigating officer who had conducted part investigation in the matter. The investigation officer who had laid the final report has not been examined by the prosecution.

10. In the light of the abovesaid factors, when there is no incriminating evidence as such tendered against the accused by the prosecution witnesses as above discussed and the prosecution witnesses have clearly admitted that the accused is no way connected with the incident and have also stated that apart from ordinary fights between the deceased Mariammal and the accused, there is nothing serious between them in their matrimonial home and considering the fact that the accused and the deceased Mariammal had been living as husband and wife for the past eight years and having three children out of their wide lock and to cap it all, during the course of dying declaration, the deceased Mariammal having not deposed anything against the accused, particularly that he has caused torture, ill-treatment and cruelty on her by demanding money for consuming liquor and on the other hand, she would only state that she had self immolated herself and from the materials available on record, when it is noted that she had chosen to immolate with a view to threaten her husband one way or the other, the trial Court having acquitted the accused under section 306 IPC

is found to have erroneously convicted and sentenced him under section 498A IPC, particularly, when there is nil evidence pointing to the commission of the offence under section 498A IPC.

11. In the light of the abovesaid discussions, when the prosecution case is beset with serious doubts, failures, lacunae and surmises and when with reference to the same, no acceptable explanation is forthcoming on the part of the prosecution and particularly, when there is no clear cut evidence pointing to the guilt of the accused that he had inflicted cruelty and harassment upon the deceased by demanding money for consuming liquor, as rightly put forth, the benefit of doubt emanating from the same should have been extended in favour of the accused. Accordingly, it is found that the trial Court has erred in convicting and sentencing the accused under Section 498A IPC.

12. For the reasons aforesaid, the conviction and sentence imposed on the appellant under Section 498A IPC by the trial Court by way of judgment dated 18.11.2013, passed in S.C.No.286 of 2010, on the file of the Sessions Judge, Mahila Court, Chennai are set aside and the appellant/accused is

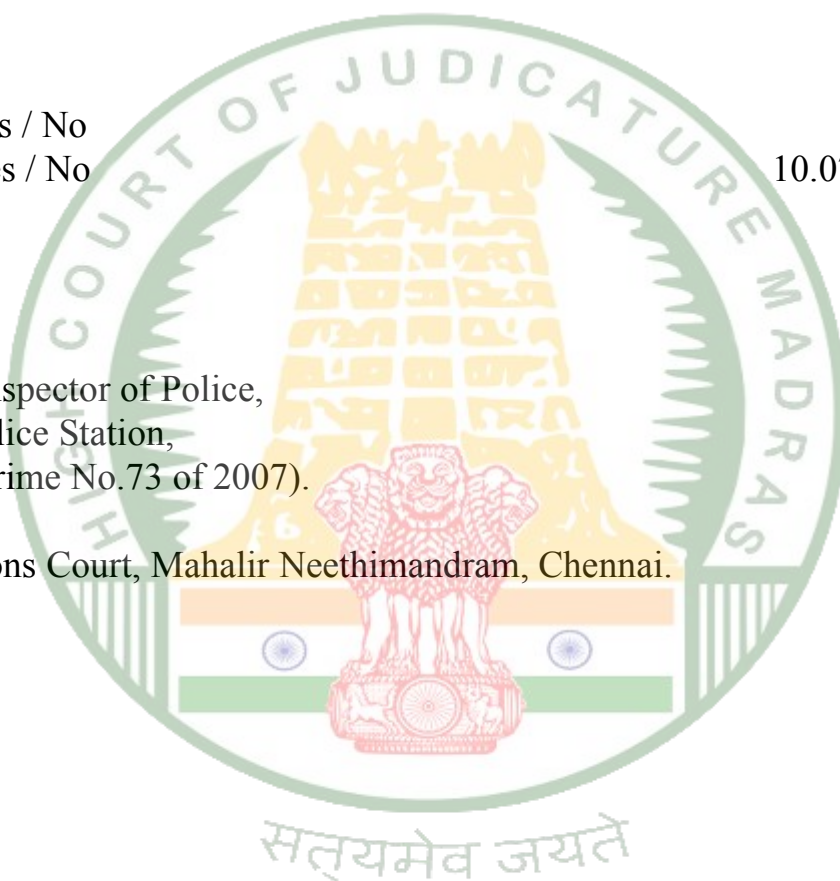
acquitted of the offence punishable under Section 498A IPC. Accordingly, the criminal appeal is allowed. The bail bond executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Index : Yes / No
Internet : Yes / No
sli

10.07.2020

To

- 1.State by Inspector of Police,
B.3, Fort Police Station,
Chennai. (Crime No.73 of 2007).
- 2.The Sessions Court, Mahalir Neethimandram, Chennai.



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Crl.A.No.851 of 2013

T.RAVINDRAN, J.
sli/sms



Pre-delivery Judgment made
in Crl.A.No.851 of 2013

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