



BAIL SLIP

Appellants/ Accused 1 to 3 Viz, 1. Nagarajan, S/o. Malaichamy
2. Sethu W/o. Malaichamy 3. Malaichamy S/o. Chinnakaruppan, was
already released on bail vide order of this court dated 10.05.2017
in CRL.MP(MD).No. 1452 of 2017 in CRL.A.(MD).No. 53 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 30.06.2021

DELIVERED ON : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.53 of 2017

1. Nagarajan
S/o. Malaichamy

2. Sethu
W/o. Malaichamy

3. Malaichamy
S/o. Chinnakaruppan

: Appellants/Accused 1 to 3

Vs.

State Represented by
The Deputy Superintendent of Police,
Thirupathur,
Sivagangai District.
Singampunari Police Station in
(Crime No.475 of 2012)

: Respondent/Complainant

PRAYER: Criminal Revision filed under Section 374 (2) of Criminal Procedure Code, to set aside the Judgment of Conviction dated 31.01.2017 made in S.C.No.9 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai.

For Appellants : Mr.R.Senthil Kumar

For Respondent : Mr.T.Senthil Kumar

Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been filed against the Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.9 of 2004, dated 31.01.2017.

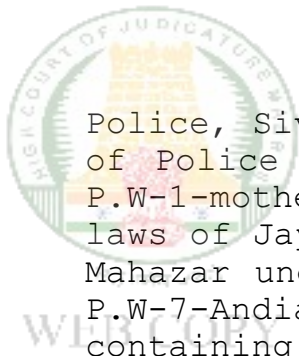
2. The brief facts, which are relevant for consideration in this appeal as per the case of the Prosecution in short, are as follows:

2.1. P.W-1-Saraswathi was living with her husband at Sakkudi within the limit of Sakkudi Police Station. She had seven daughters

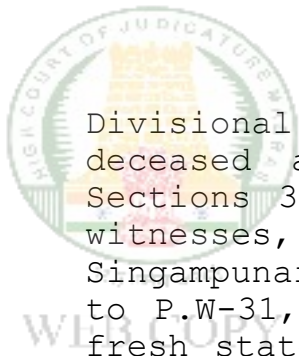
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and a son. Out of them, three daughters had been married. The second daughter-Jaya was married to one Nagaraj, S/o. Malaichamy, Chinnasengundu, Mela Theru, Singampunari, Sivagangai District, roughly about 1½ years prior to the date of occurrence. P.W-1 and her husband were eking out their livelihood as Dhobis. At the time of marriage, five sovereigns of gold jewels and other vessels were gifted. After marriage, the in-laws and husband of Jaya harassed her demanding more dowry. Unable to tolerate the harassment meted out to Jaya, the daughter of P.W-1, she came back to the house of her mother-P.W-1. P.W-1 had consoled her daughter and afterwards, she used to return to her matrimonial home. 15 days prior to the date of occurrence, Ambiga, the third daughter of P.W-1 was married. Even though P.W-1 extended the invitation to her second daughter and her in-laws, the in-laws of second daughter did not attend the marriage and the second daughter was also not allowed to attend the marriage. Three months prior to the said occurrence, the husband and his parents harassed the second daughter-Jaya. Unable to bear the same, she left the matrimonial home to her mother's house. The second daughter of P.W-1-Jaya had also preferred a complaint before All Women Police Station, Thiruppathur regarding the harassment meted out to her by her husband and his parents for more dowry. P.W-29-Inspector of Police, All Women Police Station, Thiruppathur had issued summons to the husband of Jaya and his parents and conducted enquiry and mediation. Therefore, she was taken back to the matrimonial home by her husband and in-laws. On the date of occurrence (i.e.,) 19.12.2012, P.W-1 received information by around 4.15 p.m., from the Government Hospital that her daughter-Jaya had immolated herself and had been admitted to Hospital with burn injuries. On hearing the shocking news, P.W-1 and their relatives rushed to the Government Hospital. The Doctor who had given First Aid to Jaya, had given intimation to Singampunari Police Station. Therefore, the Sub Inspector of Police, Singampunari Police Station had visited the Government Hospital, Singampunari where she was informed that for advance treatment, they had forwarded her to the Government Rajaji Hospital, Madurai. Therefore, P.W-20-Sahathevan-Sub Inspector of Police, Singampunari Police Station proceeded to the Government Rajaji Hospital by 17.25 hrs on 19.12.2012. On reaching the Government Rajaji Hospital, Madurai, he came to know that the mother of the victim-P.W-1 was available. Since Jaya-the daughter of P.W-1 was not on speaking condition, he took the oral complaint from P.W-1-mother of the victim. The oral complaint was reduced to writing under Ex.P-7. The Sub Inspector of Police returned to Police Station and registered FIR under Ex.P-8 for the offences under Section 498 (A) of IPC and Section 4 of Prohibition of Women Harassment Act in Cr.No.475 of 2012 and sent the original complaint under Ex.P-7 and the original FIR under Ex.P-8 to the Court of learned Judicial Magistrate, Thiruppathur and the copies of the same were forwarded to the higher officials of the Police Department including P.W-31-Kodilingam-Inspector of Police, Singampunari and P.W-32-Maduraichamy-Deputy Superintendent of



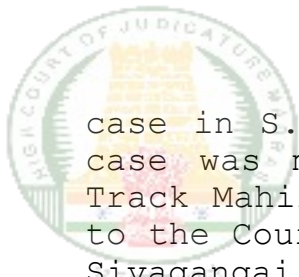
Police, Sivagangai. On receipt of copy of the FIR, P.W-31-Inspector of Police proceeded to the Hospital and recorded the statement of P.W-1-mother of the victim and he proceeded to the residence of in-laws of Jaya and prepared Rough Sketch under Ex.P-23 and Observation Mahazar under Ex.P-22 in the presence of witnesses P.W-6-Azhagu and P.W-7-Andiappan. He had also seized plastic bottle under M.O-1 containing Kerosene, Match Box under M.O-2 and Burnt Matchstick under M.O-3 in the presence of same witnesses P.W-6 and P.W-7 and prepared Seizure Mahazar under Ex.P-24. The witnesses in the neighbourhood where the occurrence took place by name Mani-P.W-3, P.W-4-Thenammal, P.W-5-Manoharan and P.W-7-Andiappan were examined and recorded their statements. Subsequently, he proceeded to the Rajaji Government Hospital, Madurai and examined P.W-1-the mother of victim, P.W-2-father of victim and recorded their statements and had sent his officials in search of the absconding Accused/in-laws of victim and her husband. On 22.12.2012 by around 18.00 hours in the evening, he had arrested Nagarajan-husband of Jaya and forwarded him to the Court of the learned Judicial Magistrate along with escort party and remand request. On 23.12.2012, P.W-31-Sub Inspector of Police had examined the Doctors viz., PW-21-Dr.Rajkumar and P.W-25-Dr.Saravanan, Rajaji Government Hospital, who had given treatment to the victim, the Head Constables of Singampunari Police Station viz., P.W-22-Saradha and P.W-28-Murugesan and on 24.12.2012, P.W-31 visited Sakkudi and examined P.W-15-Devendran and P.W-8-Panchavarnam and recorded their statements. On 26.12.2012, he received information that around 12.30 hrs, the victim of burn, Jaya succumbed to her injuries. Therefore, based on information, he had altered the Section of law in the FIR under Ex.P-8 and sent an alteration report under Ex.P-25 to the Court of the learned Judicial Magistrate including the offence under Section 304 (b) of IPC and a copy of the same was forwarded to P.W-32-Deputy Superintendent of Police since the burnt victim Jaya died due to the injuries suffered by her and not responding to the medical treatment. As the investigation has to be done by an officer not below the rank of Deputy Superintendent of Police, P.W-31- Inspector of Police had handed over the case diary file of the investigation to P.W-32-Maduraichamy-Deputy Superintendent of Police for further investigation. Since the deceased died within seven years from the date of marriage, the investigation had to be conducted by the Deputy Superintendent of Police and also inquest had to be conducted by the Revenue Divisional Officer. P.W-32 had proceeded with the investigation and arrested the parents of the husband of the burnt Jaya viz., Sethu and Malaichamy. On 29.12.2012 forwarded them to the Court of the learned Judicial Magistrate for remand along with remand request and police escorts. He had examined the parents of the deceased Jaya and Doctors at Rajaji Government Hospital, Madurai who had treated the injured Jaya till her death and also neighbours of in-laws who had witnessed the occurrence of self-immolation by the deceased Jaya and prior to the self-immolation, the harassment meted out by her in-laws. He had sent requisition to the Revenue



Divisional Officer to conduct the inquest on the body of the deceased and also conduct enquiry regarding the offence under Sections 304 (b) and 498 (A) of IPC. P.W-32 had examined all the witnesses, who was already examined by P.W-31-Inspector of Police, Singampunari Police Station. Since they had narrated the same facts to P.W-31, P.W-32-Deputy Superintendent of Police had not recorded fresh statements. He had sent requisition for autopsy to the Duty Medical Officer at Government Rajaji Hospital to conduct Postmortem on the body of the deceased along with Constables to identify the body. Accordingly, he had received Postmortem Certificate under Ex.P-16 from P.W-25-Dr.S.Saravanan and P.W-26-Dr.Raghavaganesan who had conducted postmortem. He had examined Revenue Divisional Officer who had conducted enquiry and inquest over the dead body of the deceased-Jaya and recorded the statement. He had examined P.W-23-Dr.Saravanan who attend the causality ward on 19.12.2012 at Rajaji Government Hospital, Madurai who had initially examined the injured Jaya who was brought from the Government Hospital, Singampunari with 75% burns. P.W-32 had examined the Doctors viz., P.W-23-Dr.Saravanan and P.W-24-Aruna Devi who had treated the injured Jaya till her death. P.W-25 and P.W-26 who had conducted autopsy on the body of the deceased based on requisition letter under Ex.P-14 to conduct autopsy on the body of the deceased and had issued Postmortem Certificate under Ex.P-16. The viscera of the deceased Jaya was sent for forensic analysis to obtain forensic opinion regarding Postmortem and after obtaining the viscera report of the deceased, P.W-25 and P.W-26 had issued Ex.P-16-final opinion of the Postmortem. After completion of the investigation, P.W-32 had laid final report of the investigation under Section 173 of Cr.P.C., before the Court of the learned Judicial Magistrate, Madurai.

2.2. On receipt of the final report of the investigation conducted by P.W-32, the learned Judicial Magistrate, Thiruppathur had taken cognizance of the offence under Sections 498 A and 304 (B) of IPC and Section 4 of Tamil Nadu Woman Harassment Act and numbered the case as P.R.C.No.29 of 2013. He had issued summons to the Accused viz., the husband of Jaya/Accused-1 and in-laws of deceased Jaya/Accused 2 & 3. On taking cognizance, the learned Judicial Magistrate had issued summons to the Accused and on appearance of the Accused, copies were furnished under Section 207 of Cr.P.C. The Accused were questioned regarding their financial capacity to engage a counsel or to appoint the State Counsel to defend them effectively in the Sessions Court. Since the offences alleged in this case are triable by the Court of Sessions, the learned Judicial Magistrate had committed the case to the Court of the learned Principal Sessions Judge, Sivagangai and handed over the records to the Court of learned Principal Sessions Judge, Sivagangai.

2.3. On receipt of records from the learned Judicial Magistrate, Tirupathur in P.R.C.No.29 of 2013, the learned Principal Sessions Judge had taken cognizance of the offence and numbered the



case in S.C.No.9 of 2014. Since the offence is against woman, the case was made over to the Court of learned Sessions Judge, Fast Track Mahila Court, Sivagangai and the Accused was also handed over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Sivagangai.

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2.4. On appearance of the Accused and after hearing the Prosecution and defence, the learned Sessions Judge, Fast Track Mahila Court, Sivagangai had framed charges under Sections 498 A and 304 (B) of IPC and Section 4 of Tamil Nadu Prevention of Harassment to Woman Act against the Accused. The Accused 1 to 3 pleaded not guilty and claimed to be tried. Therefore, the learned Sessions Judge had ordered trial.

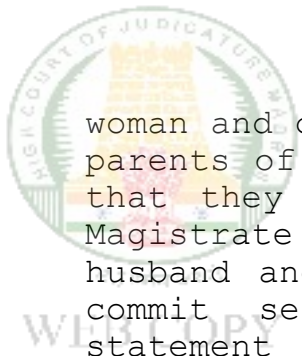
2.5. During trial, the Prosecution had examined witnesses P.W-1 to P.W-33 and marked documents as Ex.P-1 to Ex.P-27 and M.O-1 to M.O-3.

2.6. After closing of the Prosecution evidence, the incriminating evidence available from the deposition of P.W-1 to P.W-33 were put to the Accused under Section 313 of Cr.P.C. The Accused denied the incriminating evidence against them. The Accused had not let in evidence, therefore, the Prosecution advanced the arguments and defence replied to the Prosecution arguments.

2.7. After hearing arguments of the Prosecution and defence and on assessment of evidence of the witnesses viz., P.W-1 to P.W-33 and Ex.P-1 to Ex.P-27 and M.O-1 to M.O-3, the learned Sessions Judge, Fast Track Mahila Court, Sivagangai by Judgment dated 31.01.2017 had found the Accused guilty to the charges under Sections 498 (A) and 304 (B) of IPC and Section 4 of Tamil Nadu Prevention of Harassment of Woman Act and convicted the Accused for the above offences and sentenced them to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo three months Rigorous Imprisonment for the offence under Section 498 (A) of IPC and also sentenced the first Accused to undergo 10 years of Rigorous Imprisonment and Second and third Accused sentenced to undergo 7 years of Rigorous Imprisonment and to pay a fine of Rs.3000/- for the offence under Section 304 (b) of IPC. All the sentences was ordered to run concurrently. The remand period already undergone by the Accused was set off under Section 428 of Cr.P.C.

3. Aggrieved by the Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai, the Appellants had preferred this appeal before this Court.

4. The learned counsel for the Appellants/Accused had furnished written arguments. As per the submission of the learned counsel for the Appellants/Accused, the witnesses P.W-1 to P.W-15 had turned hostile. The Court had acted on dying declaration of the deceased



woman and convicted the Appellants/Accused. P.W-1 and P.W-2 are the parents of victim. They had, in their evidence specifically stated that they saw their daughter in the Ward and told her when the Magistrate come to record her statement, she has to implicate her husband and in-laws as having caused harassment which made her to commit self-immolation herself and she had accordingly gave statement to the learned Judicial Magistrate who recorded the statement. Therefore, the Dying Declaration recorded by the learned Judicial Magistrate under Ex.P-21 was not given voluntarily. In support of his contention, the learned counsel for the Appellants/Accused relied on the ruling of this Court in Crl.A.No.836 of 2013 dated 03.06.2020 (**Mallika vs. State**) and in Crl.A.No.595 of 2009 dated 24.01.2019 (**Udayakumar Vs. State**). Therefore, the conviction recorded against the Accused 1 to 3 for the offence under Sections 498 (A), 304 (B) of IPC and sentencing them to undergo Rigorous Imprisonment of 10 years against A-1 and Rigorous Imprisonment of Seven years against A-2 and A-3 for the offence under Section 304 (B) of IPC and one year of Rigorous Imprisonment against the Accused 1 to 3 for the offence under Section 498 (A) of IPC are to be set aside and the Accused to be set free.

5. The learned Government Advocate (Crl. Side) submitted that in this case, totally 33 witnesses have been examined and Dying Declaration of the victim was supported by the medical evidence. The learned Judicial Magistrate had examined the Doctor who had given Medical Certificate. Prior to six months of the occurrence, an allegation was made against the Accused for harassing the victim to give dowry. In this regard, the victim had already given a complaint before the All Women Police Station, Thiruppathur and enquiry was conducted and both of them compromised. Thereafter, the Accused and his family members continuously harassed the victim. Since she was unable to bear the torture, she immolated herself. Thereafter, she was taken to the Hospital, where she gave Dying Declaration. In this regard, the trial Court has also made detailed discussion in paragraph Nos.17,18,19,20 and 22.

6. Therefore, the learned Government Advocate (Crl. Side) submitted that the learned trial Judge had properly appreciated the evidence as per the provisions of the Indian Evidence Act and on perusal of the discussions in paragraph Nos.17 and 19, we cannot arrive at a conclusion that the reasoning of the learned trial Judge is perverse. There is no ground to interfere with the findings of the lower Court as the Rulings of the Hon'ble Supreme Court of India that when the trial Judge arrived at a finding based on proper appreciation of evidence, even though there is an opportunity of arriving at a different finding based on the very same set of evidence. The finding arrived at by the trial Court shall not be disturbed, if it is on proper appreciation of evidence. In this case, this Court cannot interfere with the findings of the learned



trial Judge as it is not found to be perverse. Therefore, the learned Government Advocate (Crl. Side) prays this Court to dismiss the appeal as there is no merit.

7. He also furnished written submissions stated that the Prosecution established the existence of the necessary ingredients for constituting an offence under Section 304 (B) of IPC. Once these ingredients are satisfied, rebuttable presumption under Section 113 (B) of the Indian Evidence Act operates against the Accused. The Appellant herein failed to rebut the presumption under Section 113 (B) of Indian Evidence Act. Further there is no defence version put forth before the trial Court either by the Appellant or by his Counsel.

8. He also relied on the Judgments of the Hon'ble Supreme Court in **Gurmeet Singh Vs. State of Punjab in Crl.A.No.1731 of 2010** as well as in **Satbir Singh and another Vs. State of Haryana in Crl.A.Nos.1735 & 1736 of 2010**.

9. Also, the learned Government Advocate (Crl. Side) relied on the Judgment of the learned Sessions Judge in Paragraph Nos.23 to 27 wherein the learned Sessions Judge had also relied on the rulings of the Hon'ble Supreme Court reported in **2014 (2) SCC 240 (Thumala Venkatesh Rao Vs. State of Andra Pradesh)** and on application of Section 113 (B) of Indian Evidence Act, he had arrived at a logical conclusion that the deceased committed self immolation.

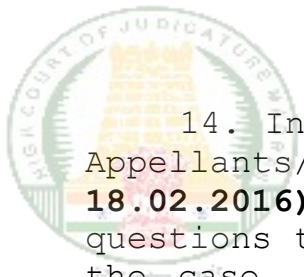
10. Point for Consideration

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.9 of 2014, dated 31.01.2017 is perverse warranting interference of this Court as Appellate Court?

11. Perused the evidence of Prosecution witnesses under P.W-1 to P.W-33 and documents under Ex.P-1 to Ex.P-27 and the judgment of the learned trial Judge.

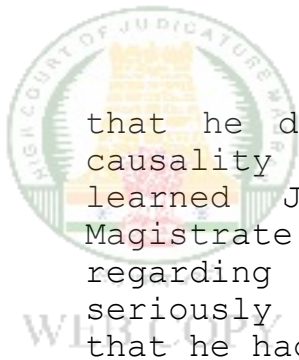
12. On a perusal of the entire materials available on record and the judgment of the learned trial Judge, the arguments advanced by the learned Counsel for the Appellants/Accused cannot be accepted particularly regarding Dying Declaration recorded by the learned Judicial Magistrate.

13. As per the reported ruling of this Court relied on by the learned Counsel for the Appellants/Accused will not be applicable to the facts of this case as learned Judicial Magistrate has certified in his recording of Dying Declaration, he had put question to the burn victim Jaya who was undergoing treatment at Rajaji Government Hospital, Madurai in Ward No.301.



14. In the reported ruling cited by the learned Counsel for the Appellants/Accused (**Jayapal Vs. State in Crl.A.No.237 of 2013 dated 18.02.2016**), the learned Judicial Magistrate had put only two questions to the injured victim who had committed self immolation in the case. Therefore, the learned Judges of the Division Bench of this Court felt that the learned Judicial Magistrate had not applied his mind to satisfy himself that the victim, from whom Dying Declaration statement recorded, was mentally fit to give statement. Therefore, they had rejected the Dying Declaration. In the present case, the learned Magistrate had put about seven questions and had obtained the response to the questions by which he had satisfied himself that the burn victim undergoing treatment for 75% burn injury was mentally fit to give statement and he had certified the same before recording the statement. He had recorded the statement and after recording the statement also he had certified the Dying Declaration statement. Apart from all these facts, the learned Judicial Magistrate was examined as P.W-30, in which he had clearly stated that the victim of burn had stated that the husband and parents of the husband had stated that without getting 5 sovereigns of gold and two wheeler from her parents, she will not be allowed to sleep with her husband. The mother-in-law stated that if she did not bring jewels and two wheeler, she will be treated as maid servant and not as a wife of their son and the in-laws as well as the husband used to curse her "get lost" (rht[]). Therefore, on the date of incident by 4.00 p.m., she committed self immolation. The statement after recorded by the learned Judicial Magistrate was read over to her, she admitted the same and attested the same by toe of her leg, as her thumbs and fingers were burnt that part of the body which cannot be used for attestation.

15. P.W-23-Dr.Saravanan and P.W-24-Dr.Arunadevi who had sent the burn victim Jaya to Madurai Rajaji Government Hospital. P.W-23 had clearly deposed that she was found 75% burns and he had admitted her in the burns ward of Hospital and she was forwarded to the Government Rajaji Hospital, Madurai from the Government Hospital, Singampunari. He had issued the medical certificate under Ex.P-11 wherein he has recorded that the burn victim Jaya is in conscious state. P.W-24-Dr.Arunadevi-Assistant Professor, Plastic Surgeon had treated the burn victim Jaya and on 26.12.2012, she died. P.W-33 had in his deposition stated that Jaya was admitted on 19.12.2012 by 6.55 hrs in burns ward, she had suffered 75% burns. He had sent requisition to the Judicial Magistrate to record the statement of burn victim Jaya. Based on which, the learned Judicial Magistrate had recorded the Dying Declaration of the burn victim Jaya on 19.12.2012 by 7.20 p.m., at that time he was in burns ward along with the learned Judicial Magistrate. He had certified that the burn victim Jaya was mentally fit to give statement. Recording Dying Declaration was completed by 7.54 p.m. He was cross examined on behalf of the Accused regarding the parents of the patient who were allowed to interact with the patient, for which he had stated



that he did not know about it. Also, he had stated that the causality Medical Officer had only given the requisition to the learned Judicial Magistrate. P.W-30- the learned Judicial Magistrate was also cross examined on behalf of the Accused regarding the parents were allowed to see or had interacted with seriously injured deceased Jaya, before her death. He had stated that he had put no such question to the patient.

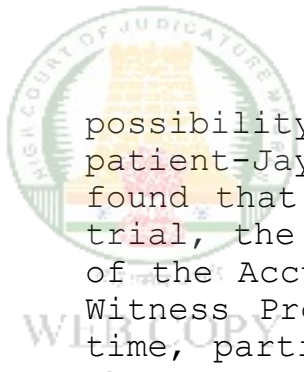
16. From our experience as, Judges in the District Judiciary who had worked as Judicial Magistrate, we had observed that the burns ward in the Government Hospital are maintained as ICU which is protected by AC and the relatives of the burnt victims are not allowed near the patient for fear of spread of infection. The learned Judicial Magistrate and the police officials are only allowed and the relatives of the victims are not allowed. They are permitted to wait outside the burns ward only to give information to the Doctors treating them regarding their daughter or relative.

17. If at all, the suggestion of the Counsel for the Accused is to be accepted, we have the personal experience of recording similar Dying Declaration in our capacity as Judicial Magistrate in the earlier part of our carrier, we are aware of the restrictions in the hospitals.

18. We are aware of the duty cast upon us by law. Therefore, we, as Judicial Magistrate, performed our duty with caution, not to give infection either to the patient or from patient to us by wearing mask. Therefore, the suggestion that the parents of the deceased tutored the deceased cannot at all be accepted. Based on our experience in the District Judiciary, we are allowed to interact with the Doctors in the burns ward. The suggestion by the learned Counsel for the Accused during the trial is considered as only a theoretical question. If the injured woman was transported to the Hospital either by the parents or her own siblings, then there is every possibilities of tutoring the burnt woman in the ambulance or the vehicle till it reaches the Hospital.

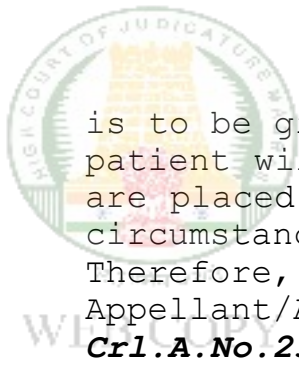
19. On the other hand, if the burnt or injured woman is taken to the Hospital either by the husband or by her in-laws, against there is a possibility of tutoring her in such a way that she will not implicate them. In this case, those possibilities are there.

20. On perusal of the records in this case, it is found that P.W-1 had given complaint under Ex.P-7 in the Hospital wherein she had clearly stated that she came to know about it only when her daughter was brought to the Government Rajaji Hospital at Madurai from the causality Ward of the Hospital, she received message and she had given complaint at 11.00 p.m., The Inspector of Police who recorded the complaint under Ex.P-7 had stated that P.W-1 was waiting outside the Ward No.301. That is the truth. There is no



possibility of P.W-1-Saraswathy, P.W-2-Raman having accompanied the patient-Jaya to the Hospital. Practically in Tamil Nadu, it is found that invariably in all Districts when Sessions Case came for trial, the witnesses are tutored in order to wean over by influence of the Accused either money or material or coerce. We do not have Witness Protection Scheme as available in USA. Therefore, by the time, particularly the Accused influenced over the witnesses, here, the Court can draw presumption that P.W-1 and P.W-2-parents of the deceased was weaned over by the Accused on the ground that they are striving and struggling for survival. They have 7 daughters, out of which second daughter is the deceased. Considering their economic status, they were weaned over by using money and other influence to wriggle out of this case. After having lost their daughter, they were persuaded to remain hostile to help the Accused to wriggle out of this situation that is only presumption available before this Court. Particularly, when the Accused 1 to 3 had not let in evidence to disprove the presumption available to the Prosecution under Section 113 of Indian Evidence Act as was pointed out in the judgment by the learned Sessions Judge, Fast Track Mahila Court, Madurai. Under those circumstances, the Judgment of Conviction by the learned Sessions Judge, Fast Track Mahila Court based on the Dying Declaration of the victim and the evidence of P.W-30-learned Judicial Magistrate, who had recorded the statement of the victim, is justified and found acceptable. In the background of the above circumstances, the theoretical arguments that P.W-1 and P.W-2 had tutored the victim in the Hospital before the visit of the learned Judicial Magistrate is found unacceptable and unreasonable. The Court has powers to analyse the evidence of P.W-2 who had over enthusiasm to help the Accused had stated those facts in the deposition, as though he had tutored the daughter before the visit of the learned Judicial Magistrate to the Government Rajaji Hospital, Madurai. His conduct gives presumption that he had received the amounts from the Accused. This fact is also available from our past experience as the Judicial Officer in the District Judiciary that the near and dear one themselves turned hostile after receiving the amount from the Accused. In the absence of the evidence from the Accused as defence witness regarding incriminating evidence available from the evidence of Prosecution witness under Section 313 of Cr.P.C., the theoretical arguments of P.W-1 and P.W-2 that they tutored their daughter who was undergoing treatment in the Government Hospital, cannot at all be accepted. Therefore, the near and dear ones are not at all allowed inside and they are allowed only to wait outside. In the AC Ward, there is every possibility of spreading various infections. Therefore, they are given information to the Doctor regarding health status of the patients who are under treatment.

21. If the argument of the learned counsel for the Appellant/Accused is to be accepted, the strict condition restricting the relatives of the patients entering in the Burns Ward

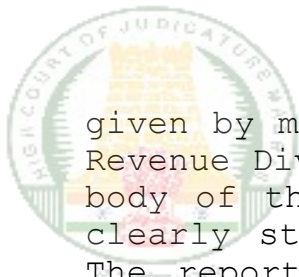


is to be given a go-bye. Particularly, when there is 75% burns, the patient will not be allowed to wear dresses and only banana leaves are placed on the body and no clothes will be available. In those circumstances, parents or near ones will never be allowed. Therefore, the argument of the learned Counsel for the Appellant/Accused is rejected. The Judgment of this Court in **Crl.A.No.237 of 2013 dated 18.02.2016 (T.Jayapal Vs. State)** is found not applicable in this case. P.W-30-Judicial Magistrate had clearly deposed in his evidence and in the Dying Declaration under Ex.P-21 is found acceptable. Based on Ex.P-21, there is no necessity for any corroboration. Above all, the Court has powers to presume things and the conduct of P.W-1 and P.W-2, who are the parents of the deceased who have given complaint under Ex.P-7 and based on which, the case had been registered and after the death of their daughter, they turned hostile. The Court can draw adverse inference under Section 114 of Indian Evidence Act from the conduct of P.W-1 and P.W-2 remaining hostile and that part of evidence of P.W-1 and P.W-2 having tutored their daughter is clear from the statement under Section 164 of Cr.P.C., as given to the Investigation Officer. Therefore, they were treated as hostile by the Prosecution, after receiving monetary help or any other help from the Accused as tutored by the Counsel for the Accused in the trial Court. As per their tutoring, P.W-1 and P.W-2 stated those facts. Based on the rulings available regarding rejection of Dying Declaration. That much the Court can draw adverse interference in this case against the conduct of appearing Counsel for the Accused and monetary power of the Accused to wriggle out of the situation. The Court has power under the Indian Evidence Act to draw presumption under Section 114 of Indian Evidence Act from the facts and circumstances of the case had gathered from the evidence. The condition in the burns Ward in the Government Hospital is strictly maintained considering the health of the patients/victims.

22. The Judges who had worked as Magistrate in their career are aware of these situations. In those circumstances, the suggestion of the learned Counsel for the Accused put to the Doctors and the learned Judicial Magistrate that the parents of the victim had tutored the victim amounts to fertile imagination in this case. Therefore, the same is rejected.

23. As rightly pointed out by the learned Government Advocate (Crl. Side), the reliance placed by the learned Government Advocate (Crl. Side) and the reliance placed by the learned Sessions Judge, Fast Track Mahila Court himself that based on the Dying Declaration itself, the Court can convict the Accused is found acceptable and reasonable.

24. From the records, it is found that there is a previous complaint given to the Thiruppathur Police by the deceased woman herself which is marked as Ex.P-13 and was referred in the complaint



given by mother of deceased, Saraswathi under Ex.P-1. Also, P.W-27-Revenue Divisional Officer, Madurai had conducted the inquest on the body of the deceased and had deposed the evidence as witness, had clearly stated that the death was caused due to dowry harassment. The report of P.W-27-Revenue Divisional Officer under Ex.P-15 has more weightage. Therefore, this Court arrives at a conclusion that the finding of guilt recorded by the learned Sessions Judge, Fast Track Mahila Court is found acceptable and reasonable, not perverse as pointed out by the learned Counsel for the Appellant/Accused.

25. Not only that, on the same set of evidence, if the appellate Court arrives at a different finding, the findings arrived at by the appellate Court shall not be disturbed. The findings arrived at by the learned trial Judge is as per the guidelines issued by the Hon'ble Supreme Court regarding re-appraisal of evidence by the Appellate Court, the trial Court has the benefit of watching and observing the demeanour of the witnesses and the Accused which benefit is not available to the Appellate Judge. Therefore, the finding of fact recorded by the learned trial Judge has more weightage. Considering the Judgment of learned trial Judge, it is found that the learned trial Judge had appreciated the evidence as per the Provisions of Indian Evidence Act. Nothing is found perverse. Therefore, the argument of the learned Counsel for the Appellant/Accused is rejected.

26. Point for consideration is answered in favour of the Prosecution/Respondent and against the Appellant/Accused. The Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.9 of 2014 dated 31.01.2017 is not perverse warranting interference by this Court. The Appeal lacks merit and therefore appeal is dismissed.

In the result, this Criminal Appeal is dismissed.

The Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Sivagangai in S.C.No.9 of 2014 dated 31.01.2017 is confirmed. The learned Sessions Judge, Fast Track Mahila Court, Sivagangai is directed to issue warrant against the Accused to forward them to prison to undergo the remaining period of sentence imposed on the Accused by Judgment dated 31.01.2017 in S.C.No.9 of 2014. The period of detention already undergone by the Appellant/Accused is set off under Section 428 of Cr.P.C.,

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



1. The Sessions Judge,
Fast Track Mahila Court,
Sivagangai.
2. The Judicial Magistrate No. II,
Sivagangai.
3. The Chief Judicial Magistrate, Sivagangai.
4. The Seputy Superintendent of Police,
Thirupathur, Singampunari Police Station,
Sivagangai.
5. The Superintendent
Central Prison.
Madurai.
6. The Superintendent of Police, Sivagangai.
- 7 The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai
8. The Section Officer, (Soft Copy)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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23.12.2021

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