



Crl.A.No.41 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.41 of 2020

P.Senthil

...Appellant

Vs.

The State
Rep. by the Inspector of Police,
W-8, All Woman Police Station,
Chennai.

...Respondent

Criminal Appeal Case filed under Sections 374(2) of Cr.P.C. to set aside the judgment dated 16.12.2019 passed by the Sessions Judge, Mahalir Neethimandram, Allikulam Complex, Chennai – 3, in S.C.No.316 of 2018.

For Appellant : Mr.K.Balakrishnan

For Respondent : Mr.S.Sugendran,
Additional Public Prosecutor



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JUDGMENT

The criminal appeal has been filed against the judgment of conviction dated 16.12.2019 passed by the Sessions Judge, Mahalir Neethimandram, Allikulam Complex, Chennai – 3, in S.C.No.316 of 2018.

2 The respondent police registered a case in Crime No.4 of 2017 against the appellant and five others for the offence under Sections 495, 498A and 313 r/w 109 IPC against the appellant/A1, 495 r/w 109 IPC, 498A and 313 r/w 109 IPC against A2 to A5 and 495 r/w 109 IPC, 498A and 313 IPC against A6. After investigation laid a charge sheet before the learned Additional Mahila Metropolitan Magistrate, Chennai, which was taken on file in P.R.C.No.5 of 2018. Since the offence charged against the accused are triable only by the Court of Session, the case was committed to the learned Principal District and Sessions Judge, Chennai, who has taken the case on file in S.C.No.316 of 2018 and made over the same to the learned Sessions Judge, Mahalir Neethimandram, Allikulam Complex, Chennai, for disposal.



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Before the trial Court, in order to bring home the charges levelled against the accused, prosecution examined 8 witnesses as P.Ws.1 to 8 and marked seven documents as Exs.P1 to P7. On the side of the defence no oral and documentary evidence was adduced.

4 The learned trial Judge, after trial and hearing of arguments advanced on either side, by judgment dated 16.12.2019, acquitted all the accused and convicted the first accused/appellant only for the offence under Section 498A IPC and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a further period of three months.

5 Aggrieved over the finding and the judgment of conviction, the first accused has preferred the present appeal before this Court.



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6 The learned counsel appearing for the appellant would submit that the appellant/A1 is husband of the defacto complainant/P.W.1 and A2 to A6 are in-laws of the defacto complainant. There are two incidents alleged to have taken place and the first incident is that the appellant alleged to have dashed the head of the defacto complainant against the wall and caused injuries, which is not proved by the prosecution by producing any medical certificate. The second incident is that the accused 2 to 6, being the in-laws alleged to have committed cruelty against the defacto complainant and the appellant herein stood as a mute spectator. It is to be noted that when A2 to A6 were acquitted of the charge under Section 498A IPC by the trial Court, convicting the appellant/A1 for the offence under Section 498A is not justified in law. The trial Court disbelieved the evidence of the prosecution witnesses as far as the accused 2 to 6 are concerned for the offence under Section 498A IPC, but, relying on the same set of evidence convicted the appellant alone for the offence under Section 498A, which is against law.



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6.1 The learned counsel would further submit that P.W.1 is defacto complainant and other witnesses P.W.2 to 6 are relative of P.W.1 and they are interested and hear say witnesses, which cannot be relied upon by the trial Court for convicting the appellant for the offence under Section 498A. The trial Court failed to note that the defacto complainant has not lodged the complaint soon after the occurrence i.e. the alleged incident took place on 19.04.2017, but, the complaint was lodged only on 21.05.2017. The judgment of the trial Court would speak about the co-dependency attitude of the appellant, which is nothing but natural in a joint family and in a joint family every one depends on others and this is nature of joint family and this has been found fault by the trial Court as a crime. The trial Court has also discussed about the inconvenience faced by P.W.1 in the joint family because of the inability of the appellant to raise upto the occasion and to prevent other accused from committing cruelty against the defacto complainant, which cannot be construed as cruelty and the finding of the trial Court with regard to the same is unsustainable in law. To support his contentions, the learned counsel has placed reliance on the following



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decisions of the Hon'ble Supreme Court.

WEB COPY 1. (1994) 1 Supreme Court Cases 73

2. (2011) 8 Supreme Court Cases 438

3. (2009) 13 Supreme Court Cases 330

4. (2013) 16 Supreme Court Cases 421

5. (2013) 10 Supreme Court Cases 48

6. (2010) 7 Supreme Court Cases 667

6.2 The evidence of Investigating Officer P.W.8 itself shows that there was no fair investigation and the evidence of prosecution witnesses shows that there is material contradictions regarding the date of miscarriage for P.W.1. From the evidence of the Doctor P.W.6, it is clear that the miscarriage was not happened on the date of the alleged second incident and the same takes away the credibility of the evidence of P.W.1. The trial Court has miserably failed to note all the above and has wrongly convicted the appellant for the offence under Section 498A IPC, which warrants interference of this Court.



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7 The learned Additional Public Prosecutor appearing for the respondent would submit that the defacto complainant is wife of the appellant/A1, A2 and A3 are parent of the appellant and A3 to A6 are in-laws of the defacto complainant. After the marriage, the appellant and his family members demanded more money and two wheeler and since the parent of the defacto complainant could not meet the demands made by them, they caused cruelty against the defacto complainant. Further at one occasion, in the presence of the appellant, the other accused caused mental cruelty against the defacto complainant and the appellant kept quite as a mute spectator without even preventing them. P.W.1 the defacto complainant has clearly narrated the cruelty caused by the appellant and the other accused and even though the trial Court has acquitted the other accused for want of sufficient evidence, has rightly convicted the appellant for the offence under Section 498A IPC, which does not call for any interference of this Court.

8 Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

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9 According to the appellant P.Ws.2 to 5 are interested witnesses

and no other witness was examined to prove the cruelty alleged to have caused to by the appellant. It is to be noted that in the matrimonial disputes, only the family members can notice the incidents, which occurred in the home i.e. within the four wall and they can only come forward to give evidence and the third party, even if they also know, will not be ready to give evidence and they would think that it is a family dispute and the husband and wife will quarrel each other today and tomorrow would join together why should they poke their nose unnecessarily in the family dispute especially between the husband and wife. P.Ws.1 to 5 clearly spoken about the cruelty caused by the appellant against the defacto complainant. Therefore, the evidence of P.Ws.2 to 5 could not be simply brushed aside, since they are interested witnesses as contended by the learned counsel appearing for the appellant.

10 The learned counsel has taken a defence that the complaint was not lodged immediately soon after the occurrence. It is seen that the defacto complainant being a newly married girl, if she has any quarrel or



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misunderstanding with her husband, naturally she would not reveal the same with any one and would not rush to the police station to lodge the complaint and of course the parents of the girl would also think about her future and it would take considerable time to settle the issue and even when the defacto complainant took treatment for her injuries, the parent or the defacto complainant did not say that the newly married groom only caused the injuries. Therefore mere non production of Medical Certificate or not lodging the complaint soon after the occurrence is not a fatal to the case of the prosecution, especially in the matrimonial dispute. However, P.W.1 has categorically stated about the incidents and P.Ws.2 to 5 have also corroborated the same and therefore as far as commission of offence under Section 498A by the appellant is concerned, the witnesses have clearly spoken and prosecution has proved with cogent evidence. As far as the other charges are concerned, since there was no concrete evidence as against the accused, the trial Court extended the benefits of doubts in favour of the accused and acquitted. The decisions referred to by the learned counsel appearing for the appellant would not applicable to the present case on hand, since every case has its own facts and it may not be same as the other



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case and in the same way the facts and circumstances of both the cases are distinguished.

11 This Court, being an appellate Court, has to necessarily re-appreciate the entire evidence independently and give its finding. Accordingly this Court, being an appellate Court, while re-visiting the entire evidence found the appellant guilty for the offence punishable under Section 498A of IPC and there is no sound reason or ground to interfere with the judgment of conviction made by the trial Court.

12 In the result, the criminal appeal stands dismissed as devoid of merit and substance. The trial Court is directed to secure the appellant to undergo remaining period of sentence, if any.

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To

1. The Sessions Judge, Mahalir Neethimandram, Allikulam Complex, Chennai – 3.
2. The Inspector of Police, W-8, All Woman Police Station, Chennai
3. The Public Prosecutor, High Court of Madras.

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