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Crl.A.No.158 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.158 of 2019

M.Latha

...Appellant

-Vs-

1.The State,
Rep. by the Inspector of Police,
All Women Police Station,
Virudhachalam, Cuddalore District.
(Crime No.16 of 2005)

2.Ramasamy

3.Kokila

... Respondents

Prayer: Criminal Appeal filed under Section 372 of Code of Criminal Procedure, to set aside the order in Crl.A.No.60 of 2017, on the file of the III Additional District Judge, Virudhachalam, dated 16.07.2018 in reversing the well considered order in C.C.No.209 of 2007, on the file of the Judicial Magistrate No.I, Virudhachalam, dated 23.06.2017.

For Appellant : Mr.C.Saikrishna
for Mr.V.Raghavachari

For Respondents
For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 & 3 : Mr.D.Balachandran



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ORDER

This Criminal Appeal has been filed to set aside the order in Crl.A.No.60 of 2017, on the file of the III Additional District Judge, Virudhachalam, dated 16.07.2018 thereby reversing the order in C.C.No.209 of 2007, on the file of the Judicial Magistrate No.I, Virudhachalam, dated 23.06.2017.

2. This Appeal has been directed as against the order passed in C.A.No.60 of 2017 on the file of the III Additional District Judge, Virudhachalam, thereby reversing the offence made in C.C.No.209 of 2017 on the file of the Judicial Magistrate, Virudhachalam, thereby convicted the respondents two and three herein.

3. The case of the prosecution is that the victim and the son of the respondents two and three herein got married on 10.09.2004 and at the time of their marriage, her husband was presented with totally 21 sovereigns of golden jewels, a two wheeler and other household articles. The marriage expenditure was also borne out by the appellant and her parents. Even prior to their marriage, her husband was taking treatment at Government Hospital, Tambaram, since he was suffering from HIV positive. The above said fact was



known to the accused persons and by suppressing the same, they his arranged marriage with the appellant. After the marriage, the victim lived with her husband along with the respondents two and three herein. Thereafter, for his treatment, the victim also paid a sum of Rs.1 lakh. Because of their relationship, the victim also tested HIV positive and she had taken treatment at Cuddalore. Further, her husband was also affected by Tuberculosis. On 11.05.2005, he was admitted in Government Hospital, Tambaram and he died on 12.05.2005 due to HIV. Hence the complaint.

4. On receipt of the complaint, the first respondent registered FIR in Crime No.13 of 2015 for the offence under Sections 417, 148, 420 and 498(A) IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the trial Court as against these accused persons for the charges under Section 498(A) and 417 IPC

5. On the side of the prosecution PW1 to PW8 were examined as witnesses and Exs.P1 to P11 were marked as exhibits and on the side of the defence, no one was examined and Exs.D1 to D4 were marked as exhibits.



6. On perusal of oral and documentary evidence, the trial Court found the respondents guilty for the offence under Sections 420 IPC and sentenced them to undergo rigorous imprisonment for one year and further, found them guilty for the other offences under Sections 498(A), 417 and 418 IPC. Aggrieved by the same, the respondents two and three preferred an appeal and the same was allowed and the finding of the trial Court was reversed. Aggrieved by the same, the victim filed this appeal.

7. The learned counsel for the appellant submitted that the trial Court rightly appreciated the evidence and convicted the respondents two and three herein. Further, the first Appellate Court acquitted them without even appreciating the medical report produced by the prosecution to establish the guilt of the respondents two and three. The respondents two and three had full knowledge about the illness of the deceased viz., he was suffering from HIV positive. Knowing the fact very well, they had dishonestly proceeded to perform his marriage with the victim with an intention to deceive her.

8. He further submitted that pending this appeal, the learned counsel for



the respondents two and three reported that there is negotiation talks going on and requested further time for amicable settlement between the parties. Today, the learned counsel for the respondents two and three represented that there is no settlement since they had no property to settle in favour of the victim.

9. The learned counsel for the appellant produced a judgment passed in O.S.No.316 of 2005 on the file of the Principal District Munsif, Virudhachalam, filed by the third respondent herein for declaration and permanent injunction as against the victim and three others. The said suit was partly allowed in favour of the third respondent. Therefore, the third respondent owned property and it was also declared in her favour by the civil court. Now the victim is also tested HIV positive and she is taking treatment regularly and she is spending huge money for her treatment.

10. Per contra, the learned counsel for the respondent two and three submitted that the respondents two and three had absolutely no knowledge about the diseased suffering with HIV positive. They are staying at Virudhachalam, and the diseased being an Auto driver and he used to go outside, he was not in the habit of coming home regularly. Therefore they



absolutely had no knowledge that he was taking treatment at Chennai for HIV positive. Therefore, the prosecution failed to prove the case beyond any doubt and the first Appellate Court rightly acquitted the respondents two and three and it does not warrant any interference by this Court.

11. Heard, Mr.C.Saikrishna, the learned counsel for the appellant, Mr.A.Gopinath, the learned Government Advocate (Crl. Side) for the first respondent and Mr.D.Balachandran, the learned counsel for the respondents two and three and perused the materials available on record.

12. Admittedly, the victim got married with the son of the respondent two and three herein and it was an arranged marriage performed by the respondents two and three herein. After their marriage, the victim found that her husband suffers from HIV positive and he was taking treatment at Government Hospital, Tambaram, Chennai and he was also affected with Tuberculosis. Due to their relationship, the victim also suffered from HIV positive. After full fledged trial, the trial Court found the respondents two and three guilty and sentenced them to undergo one year rigorous imprisonment. Further, the Appellate Court reversed the said findings of the trial Court for the



reason that the respondents two and three had no knowledge about their diseased son taking treatment for HIV positive. Further, the doctor, who treated the diseased deposed that his parents were never informed about his disease. Therefore, there was no intention for them to get married with the victim.

13. On perusal of deposition of PW1 revealed that she was given marriage to the deceased and even prior to their marriage, he was taking treatment at Government Hospital, Tambaram, Chennai. He was diagnosed HIV positive and the same was suppressed by the respondents two and three herein. When A2 and A3 were questioned about the health of the diseased they stated that he was hale and healthy and a tea totaler. In fact, he was taking treatment from the year 2000 onwards and the respondents two and three, being parents, would have known about the health of their deceased son and they also would have had knowledge about the treatment, taken by him at Government Hospital (Thoracic Medicine), Tambaram. It further revealed that because of their relationship, now, the victim also tested HIV positive and she is taking treatment for her disease.



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14. The prosecution, examined PW7 (Doctor), who treated the diseased.

He deposed that from 11.10.2000 onwards the diseased was taking treatment at Tambaram, Chennai. Earlier, he was diagnosed as HIV positive at JIPMER, Pondicherry, when he undergone tests at Government Hospital, Tambaram, it was found that he was affected by Tuberculosis also. Finally on 11.05.2005, he was admitted as "in patient" in hospital, he was suffering from Brain Fever and died on 12.05.2005.

15. It is also seen from the evidence that all the witnesses have categorically deposed that every month, the diseased husband was used to go to Chennai for his treatment. While that being so, the parents of the deceased must be aware of the fact that their son was taking treatment for the said disease. However, the first Appellate Court had on an erroneous presumption, reversed the findings of the trial Court. Therefore, this Court finds there is some force in the argument of the learned counsel for the victim and is inclined to reverse the findings of the First Appellate Court.

16. Accordingly, the Criminal Appeal is allowed and the order passed by



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the III Additional District Judge, Virudhachalam, in CrI.A.No.60 of 2017 dated 16.07.2018, thereby reversing the order dated 23.06.2017 passed in C.C.No.209 of 2007, on the file of the Judicial Magistrate No.I, Virudhachalam, is hereby set aside. As a consequence, the order passed by the trial Court is restored.

19.10.2022

Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.



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To

- 1.The III Additional District Judge,
Virudhachalam.
- 2.The Judicial Magistrate No.I,
Virudhachalam.

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