



Crl.A.No.588 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.588 of 2021

Guru

... Appellant

Vs.

The State of Tamil Nadu
Represented by
The Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.
(Crime No.315 of 2014)

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to set aside the conviction and the sentence imposed upon the appellant by the learned Fast Track Mahila Judge, Tiruvannamalai in SC.No.86 of 2015, by a judgment dated 17.02.2020 and to grant such other order.

For Appellant : M/s.R.Mekala

For Respondent : Mr.S.Sugendran
Addl Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed against the judgment of Conviction and Sentence, dated 17.02.2020 made in S.C.No.86 of 2015, on the file of the learned Fast Track Mahila Court, Tiruvannamalai.

2. The respondent-Police registered a case against the appellant in Crime No.315 of 2014, on the file of the Tiruvannamalai, Town Police Station for the offence punishable under Sections 294(b), 498(A) and 307 IPC and after completing the investigation, laid a charge sheet before the learned Judicial Magistrate No.I, Tiruvannamalai. The learned Judicial Magistrate took the charge sheet on file in PRC No.18 of 2014 and after completing the formalities, committed the case to the Court of session, since the offences are triable by Court of session and the same was taken on file in S.C.No.86 of 2015, on the file of the Principal District and Session Court and made over to Fast Track Mahila Court, Tiruvannamalai, as the offence is against a woman.



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3. The Special Court has taken the case and after completing the formalities framed the charges against the appellant for the offences punishable under Sections 294(b), 498(A) and 307 IPC.

4. The specific case of the prosecution is that the appellant/accused who is none other than the husband of the victim lady had been harassing the victim using filthy language, whenever he is in drunken mood. Due to his harassment, the victim lady left the matrimonial home and started residing along with her parents. While so, on 08.07.2014, at about 4.30 P.M, when the victim was inside the house, the appellant/accused came to the house of the parents of the victim and abused her with filthy language and strangulated her neck with a saree, due to which the victim raised alarm and her parents, neighbors rushed to the scene of occurrence, rescued the victim and admitted her in Tiruvannamalai Government Hospital. Thereafter, the Police came to the hospital enquired the victim and recorded her statement and the same was treated as complaint, which was marked as Ex.P1. Therefore, it is submitted that the accused committed the offence with an



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intention to kill the victim and therefore, the prosecution registered the case based on the complaint given by the *de-facto* complainant and filed a charge sheet.

5. In order to substantiate the case of the prosecution, on the side of the prosecution during the trial as many as nine witnesses were examined as PW-1 to PW-9 and eight documents were marked as Ex.P1 to Ex.P8 besides one material object which was marked as MO-1. After completion of the examination of the prosecution witnesses, when the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant, the same was denied as false and on the side of the defence, no oral and documentary evidence was let in. The learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, after hearing the arguments on either side and considering all the materials placed on record, found the appellant guilty and convicted and sentenced, as referred below, which is challenged in this Criminal Appeal.



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6. After considering the evidence on record and on hearing either side, the learned Sessions Judge by judgment dated 17.02.2020, found that the appellant was guilty and convicted and sentenced him to undergo 3 years Rigorous Imprisonment for the offence punishable under Section 498(A) and sentenced him to undergo seven years Rigorous Imprisonment for the offence under Section 307 IPC and it was ordered that both the punishments should run concurrently. Furthermore, the learned Sessions Court found that the accused was not guilty for the offence under Section 294(b) IPC.

7. Challenging the said Judgment of conviction and sentence, the accused /appellant has preferred the present Appeal.

8. The learned counsel appearing for the appellant submitted that the trial Court failed to consider the admitted fact that the victim, PW-1 often quarrelled with her husband and the PW-2, who is mother of the victim admitted in the cross examination that her daughter never lived in matrimonial house of the accused. Further, the learned counsel appearing for



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the appellant submitted that the trial Court failed to consider that in the alleged occurrence, PW-2 said that the door was locked inside and she along with PW-3, who is father of the victim entered inside the house by breaking the door, but in the observation Mahazar, there is no indication of breaking of the door. The learned counsel further submitted that the prosecution had failed to establish the scene of occurrence through other witnesses as the witness to observation Mahazar have turned hostile. The learned counsel further submitted that the prosecution has failed to establish the recovery of MO-1 and the prosecution had not even marked Form-95 so as to establish the seizure of MO-1. In this regard, the trial court has failed to consider that the prosecution had failed to identify MO-1 through PW-1, so as to establish that MO-1 was used to strangle PW-1. The learned counsel further submitted that the PW-7, Doctor admitted in cross that there were possibility of injuries on neck by self tightening of neck and the injuries on PW-1 were simple in nature. Further the learned counsel submitted that the trial Court has failed to consider that PW-9 never recorded 161 statements from victim and there was a delay in reaching the FIR/Ex.P-1 to Court and the trial Court



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has failed to consider that the prosecution has not explained the two days delay in despatching the Ex.P-1/FIR to the Court.

9. The learned Additional Public Prosecutor submitted that on 08.07.2014, at about 4.30 PM, the accused came to the victim's parents house with an intention to kill the victim and strangled her neck with saree and as the victim raised alarm, the parents of the victim and neighbours rushed to the occurrence and the accused escaped from the place and therefore, they rescued the victim and admitted in the Tiruvannamalai Government Hospital. The Police who came to the hospital, enquired the victim and recorded the statement and the same was treated as complaint. The learned Additional Public Prosecutor therefore submitted that the accused committed the offence punishable under Section 294(b), 498(A) and 307 IPC. Further, the learned Additional Public Prosecutor submitted that the order of the trial Court is liable to be confirmed.

10. Heard the learned counsel on either side and perused the materials available on record.



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11. Since this Court is an Appellate Court and also final Court of fact finding, it has to re-appreciate the entire evidence and come to the conclusion independently. Admittedly, on 08.07.2014, the occurrence happened in the parents house of the victim. On a careful reading of the evidence of the PW-2 and PW-3, mother and father of the victim, it is seen that on the date of occurrence, after hearing the sound of victim, parents of the victim (PW-2 & PW-3) along with neighbours rushed to the place and they rescued her and admitted her in the Government hospital, but however there is no whisper relating to the allegation of accused uttering filthy language against the victim lady in public and private places and therefore, the trial Court rightly acquitted the accused of the offence punishable under Section 294(b) IPC and that finding is confirmed.

12. As far as the offences under Section 498(A) IPC and 307 IPC is concerned, the prosecution has proved its case. On a reading of the evidence of the parents of the victim PW-2 and PW-3, it is very clear that the victim was harassed by her husband whenever he was in drunken mood and the



accused picked up quarrel with the victim whenever he visited the home.

Frequently, the accused started to demand money and insisted the victim to get jewels from her parents and therefore, the victim was forced to leave matrimonial home. From the evidence of PW-1 to PW-4, it is very clear that the victim was not treated with dignity and comfort by her husband. In the circumstances, this Court finds that the accused is liable to be punished under Section 498(A) IPC.

13. It is to be noted that the evidence of interested witnesses, if found to have credit worthiness, conviction could be based on an uncorroborated testimony. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible. In cases of this nature presence of eyewitnesses is mostly improbable. Though in this case no eyewitness are available, the evidence of the victim is cogent. Therefore in the case of the present nature, no independent witness could be expected, especially when the quarrel is between the husband and the wife within the four walls of their house. The medical evidence also corroborates the evidence of the victim.



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14. From the statement of the Doctor/PW-7, it is seen that the victim sustained injury on her neck and she recovered after giving first aid in the hospital and the victim informed that she was attacked by her husband by strangulating her neck with saree and the Doctor opined that the injuries sustained were 15 x 4cm injury on her left side neck and 0.1 x 3cm abrasion injury in wrist and the same was registered in the Accident Register. Therefore, the evidence of victim, evidence of Doctor/PW-7, Accident Register copy/Ex.P.5, wound certificate/Ex.P.4 given by the Doctor prove that the prosecution established its case beyond reasonable doubt that the appellant/accused was present in the occurrence and he had committed the offences punishable under Sections 498(A) and 307 IPC.

15. Therefore, this Court finds that the prosecution has proved his case through cogent evidence and there is no reason to disbelieve or discard the evidence of the victim and hence, this Court finds no reason to interfere with the judgment of the trial Court. Considering the circumstances, this Court is of the view that if the substantive sentence is reduced to 3 years



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from 7 years for the offence under Section 307 IPC will suffice to meet the ends of justice, since the injury is only simple in nature. Accordingly, while confirming the conviction and the sentence imposed on the accused for the offence under Section 498(A) IPC, only modifying the sentence alone for the offence under Section 307 IPC as stated above.

16. In the result, the Criminal Appeal is partly allowed with the above modification.

17. As per order of this Court in Crl.M.P.No.12143 of 2021, dated 04.02.2022, it is seen that the appellant is on bail. Therefore, the learned Fast Track Mahila Court, Tiruvannamalai shall take steps to commit the accused to prison to undergo the remaining period of sentence, if any.

10.10.2022

Speaking Order / Non-speaking order

Index : Yes / No

Internet : Yes/No

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P.VELMURUGAN, J.

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To

1. The Sessions Judge,
Fast Track Mahila Court,
Tiruvannamalai
- 2.The Public Prosecutor,
Madras High Court, Chennai.
3. The Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai District.

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