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Crl.A.Nos.102 & 192 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.A.Nos.102 & 192 of 2015

1.Rajamahalingam ... Appellant in C.A.No.102 of 2015
2.A.K.Palraj
3.Dhanalakshmi ... Appellants in C.A.No.192 of 2015
Versus

The State rep. by
Inspector of Police,
W-21, All Women Police Station,
Guindy, Chennai.
(Crime No.1/2012). ... Respondent in C.A.No.102 of 2015

The state rep. by
The Inspector of Police,
All Women Police Station,
Guindy, Chennai. ... Respondent in C.A.No.192 of 2015

PRAYER in Crl.A.No.102 of 2015: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment of Learned Mahila Sessions Judge at Chennai in S.C.No.331 of 2013 by judgment dated 10.02.2015, convicting the appellant herein under Sec.498(B) to undergo one year rigorous imprisonment with fine of Rs.5,000/- in default 3 months imprisonment and under Sec.313 of IPC to undergo 10 years Rigorous Imprisonment with fine of Rs.10,000/- in default 6 months simple imprisonment.

PRAYER in Crl.A.No.192 of 2015: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment of Learned Mahila Judge at Chennai, dated 10.02.2015 passed in S.C.No.331 of 2013 convicting under Sec.498(b) of IPC to undergo for one year Rigorous Imprisonment with fine of Rs.5,000/- and in default 3 months imprisonment under Sec.498(B) of IPC.



Crl.A.Nos.102 & 192 of 2015

For Appellants
in both appeals : Mr.T.Padmanabhan
For Respondents
in both appeals : Mr.L.Baskaran,
Government Advocate (Crl. Side)

COMMON JUDGMENT

These Criminal Appeals filed by the appellants/A1 to A3 against the judgment of conviction and sentence passed by the learned Mahila Sessions Judge, Chennai in S.C.No.331 of 2013, vide judgment, dated 10.02.2015.

2.The appellants were convicted for offence under Section 498(A) IPC and sentenced to undergo one year Simple Imprisonment each and to pay a fine of Rs.5,000/- each, in default, to undergo three months Simple Imprisonment each. Similarly, the 1st appellant alone was convicted for offence under Section 313 IPC and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Simple Imprisonment. The 1st appellant was acquitted from the charges under Section 294(b) IPC and the 2nd & 3rd appellants were acquitted from the charges under Section 313 r/w 34 IPC.



3.The case against the appellants, are as follows:-

(i)The appellants are husband, father-in-law and mother-in-law of PW1/defacto complainant respectively. The marriage between PW1 and the 1st appellant held on 28.03.2009 at Meenakshi Amman Temple, Vadipatti village as per Hindu Rites and Customs. After the marriage, PW1 and the 1st appellant started their matrimonial life at Velacherry, Chennai. Twenty five years prior, PW1's parents went to Erode for their business and survival and for the past seven years, they have been doing business of making eatables. PW1 is the eldest daughter of PW2 and she has one sister and two brothers. Three years prior to the complaint (Ex.P1), PW4/Uncle of PW1 informed PW2 that the 1st appellant completed M.C.A employed in HCL Company at Chennai and earning monthly salary around one lakh and that the 1st appellant earlier marriage ended in divorce and he has 2½ years minor child Varshini and interested to marry PW1 as second wife. PW2/Father of PW1 got convinced seeing the Divorce Order (Ex.D1) of the 1st appellant with one Manju. The appellants convinced PW2 that they would settle house property situated at Velangudi, Madurai in the name of PW1 as security. After the marriage, PW1 came to know that the 1st appellant had married yet another girl prior to marriage with said Manju and this marriage suppressed.



(ii) Prior to the complaint (Ex.P1), PW1 was taking care of the minor child of the 1st appellant Varshini. When PW1 was 5½ months pregnant, the 2nd & 3rd appellants objected the same for the reason if she gives birth to a child, she would not neglect Varshini. The appellants gave tea mixed with some tablets, after drinking the tea, the fetus got ejected, she was admitted in the Apollo First Medical Hospital, Chennai for the same. When the parents of PW1 went to meet her, they were not allowed. PW1 was informed that her parents sold her to the appellants family and she was subjected to cruelty, harassment, torture. Thereafter, she was sent along with the 2nd & 3rd appellants to Madurai, where the house property settled in her favour earlier, was reconveyed in favour of the 1st appellant.

(iii) After four months, PW1 got pregnant for two months. Again objections were raised by the appellants and they forced her to abort fetus and also threatened that if PW1 resisted the same, she will not be allowed to continue to be a wife of the 1st appellant and she will be divorced. On 23.03.2011, PW1 was taken to Dhanvanthiri Hospital, Velacherry, where PW8/Doctor enquired the reason for abortion and gave medicines to abort the fetus. On the same day, at about 10.00 p.m., one tablet was given. On 24.03.2011, at about 06.00 a.m., and at about 02.00 p.m., another tablet



given. On the same day, at about 08.00 p.m., the fetus got ejected from PW1's abdomen. After few days, the 1st appellant insisted PW1's abdomen to be scanned to confirm the abortion. Since PW1 was not feeling well and having some health issues often, she was taken to Madurai, where on 30.07.2011, she was taken to Gayathri Hospital and the appellants planned for family planning to her.

(iv) Unable to bear any further, PW1 took rupees fifty from her mother-in-law, left the matrimonial home, joined her parents and she was living with them for six months without any contact with appellants. Thereafter, the 1st appellant lodged a complaint (Ex.D3) with Koodal Puthur Police Station as though PW1's parents were demanding money for allowing him to join PW1. On 27.08.2011, Koodal Puthur Police called for enquiry, but the appellants failed to appear. Thereafter, again another complaint (Ex.D2) was lodged with Samayanallur Police Station by the 1st appellant.

(v) PW1 lodged the complaint (Ex.P1) with the All Women Police Station, Samayanallur about the harassment, abuse and forcible abortion by the appellants and a case in Crime No.11 of 2011 (Ex.P6) was registered, thereafter, on the point of jurisdiction, Ex.P6 was transferred to the file of the



Inspector of Police/PW11, All Women Police Station, Guindy on 17.09.2011

and Ex.P6 was renumbered as Crime No.1 of 2012 (Ex.P9).

PW11/Investigating Officer, on completion of investigation filed the charge sheet before the trial Court.

4.On the side of the prosecution, as many as 11 witnesses examined as PW1 to PW11 and 10 documents marked as Exs.P1 to P10. On the side of the defence, the 1st appellant examined himself as DW1 and marked four documents as Exs.D1 to D4.

5.When the appellants were questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against them, they denied the same.

6.The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the appellants as aforesaid and challenging the legality of the said conviction and sentence, the present appeals have been filed.



7.The submissions of the learned counsel for the appellants, are as follows:-

(i)The admitted case is that the appellants had never demanded any dowry from PW1's family for the marriage held on 23.03.2009. During marriage minimum jewels were presented and there was no presentation of any sridhana articles. The 1st appellant's matrimonial status as divorce is well known to PW1 and her family members. PW4 approached PW2/Father of PW1 and informed about divorced marriage of the 1st appellant and about the 1st appellant's minor daughter Varshini. The family members of PW1 accepted the proposal, with the concurrence of both family members, the marriage between the 1st appellant and PW1 took place on 23.03.2009 at Meenakshi Amman Temple, Vadipatti. Immediately after the marriage, PW1 and 1st appellant stayed at Chennai, started their matrimonial life at Velacherry and Perungudi. PW3/House Owner confirmed the 1st appellant and PW1 living as husband and wife. PW5, the neighbour of the 1st appellant stated that he used to visit the 1st appellant in his house and confirmed they living happily as husband and wife. The learned counsel further submitted that PW1 on her own used to visit her parents often without informing the appellants. In this case, the 1st appellant employed in HCL Company at Chennai and his parents/2nd & 3rd appellants residing at



Madurai. On occasions, PW1 used to visit her parents at Erode.

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(ii) The learned counsel further submitted that the parents of PW1 taking advantage of the 1st appellant's family condition, they started demanding money and property. The story projected by PW1 is highly imaginary. PW1 in her evidence on one hand stated that a tea mixed with tablets given by appellants caused abortion of her child, on the other hand, she stated that when the 2nd & 3rd appellants were leaving to Madurai, PW1 along with the 1st appellant went to Egmore Railway Station for see off, at that time, bleeding started, immediately, PW1 was taken to Apollo First Medical Hospital, Chennai, where PW9/Doctor gave treatment to her and took scan finding profuse bleeding, she was admitted as inpatient and finally, fetus got ejected. The evidence of PW9 and the medical records (Ex.P2) confirmed there was no forcible abortion. Thus, the appellants exerted no pressure or compelled PW1 to abort her child. Due to medical condition, the abortion had taken place. This abortion happened on 01.11.2009. The second abortion projected is on 23.03.2011 at Dhanvanthiri Clinic, Velacherry, where PW8, the Doctor, who examined PW1 and ejected fetus from PW1. PW8 was informed by PW1 that her menstrual cycle stopped and she requested for medicine. On her request medicine was given and one



week thereafter, PW1 came and informed that her menstrual cycle commenced again. PW7 is the another Doctor, who took scan on the reference of PW8. The scan report is Ex.P4. Thus, from the evidence of PW7, PW8 & PW9 and Exs.P2 & P4, it can be seen that there was no forcible abortion to PW1.

(iii)The learned counsel further submitted that the first abortion took place in the year 2009 and the second one in the year 2011. The third incident, which is projected against the 1st appellant is that on 30.07.2011, she was taken to Gayathiri Hospital at Madurai by the appellants for family planning, where the medical prescription (Ex.P5) was issued. Ex.P5 is a medical prescription to improve PW1's health and nothing more. Thus, PW1 gives exaggeration version during trial. PW11/Investigating Officer admitted that PW1 gave exaggerations and contradictory statement during trial. PW2/father of PW1 admitted that he is not aware of the entire happenings and it is only PW1, who informed him about her hospital visit and forcible abortion of child by the appellants.

(iv)PW4/the relative was informed about the harassment and cruelty by PW1 and PW2. PW6/another relative, who visited PW1 in the hospital



while she undergone abortion, admitted that at that time 1st appellant was besides PW1 in the hospital nursing her. With regard to PW1 leaving to her parents hom without informing her husband/1st appellant, PW6 confirmed on the complaint of PW1, the 1st appellant was called for enquiry. PW10/Inspector of Police, All Women Police Station, Samayanallur stated that PW1 lodged the complaint against the 1st appellant which was number as C.S.R.No.326 of 2011 and further, on 17.09.2011, an FIR in Crime No.11 of 2011 (Ex.P6) was registered and transferred the same to the All Women Police Station, Guindy on the point of jurisdiction. PW11/Inspector of Police, Guindy, who on receipt of Ex.P6, renumbered the FIR in Crime No.1 of 2012 (Ex.P7), took up the investigation, examined the witnesses and filed the final report in this case.

(v)He further submitted that the 1st appellant examined himself as DW1 and marked Exs.D1 to D4 to prove the fact that it was PW1, who voluntarily left the matrimonial home without informing any one. The 1st appellant lodged a complaint (Ex.D3) with Koodal Puthur Police Station, during enquiry, PW1 categorically stated that she is not interested to join the matrimonial home and she wanted divorce and to live alone. Since the issue cannot be decided by Koodal Puthur Police, the complaint of the 1st appellant



was closed and they were requested to approach the All Women Police, Samayanallur. In Ex.D3, the 1st appellant confirmed the earlier complaint (Ex.D2) lodged with the All Women Police Station, Samayanallur Police. During enquiry by All Women Police, Samayanallur, PW1 showed no interest to join the matrimonial home. Ex.D1 is the medical report from the Apollo Hospital, Chennai, which confirms the ejection of fetus from PW1 was not by compulsion or force and it was due to profuse bleeding. The learned counsel produced the divorce order (Ex.D1) of the 1st appellant with one Manju in H.M.O.P.No.248 of 2008.

(vi) The learned counsel further submitted that except PW1, the other witnesses examined on the side of the prosecution are in the nature of hearsay. The prosecution witnesses are in favour of the appellants. The Doctors/PW7 to PW9 confirmed that there was no forcible abortion by the appellants. Hence, looking the case from any angle, the appellants are entitled for acquittal.

(vii) In support of his submissions, the learned counsel for the appellants relied on the decision of the Hon'ble Apex Court in the case of

“Prabhu @ Kulandaivelu Versus the State of Tamil Nadu in Criminal



Appeal No.1178 of 2011". The relevant portion of the decision is extracted hereunder:-

“(9) The essential ingredient of Section 313 I.P.C. is that “Causing miscarriage without woman’s consent”. But as per the evidence of Dr. Valli (PW-8) consent of PW-1 was taken and, therefore, it cannot be said that the ingredients of Section 313 I.P.C. has been established by the prosecution. (10) That apart, as seen from the evidence of PW-8, even when PW-1 was brought to the hospital, she was already bleeding and had lower abdominal pain and there was nothing in evidence to connect that act with the appellant-accused. In the light of evidence of Dr. Valli (PW-8) and other evidence, the conviction of the appellant under Section 313 I.P.C. cannot be sustained and is liable to be set aside.”

8.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that PW1/the defacto complainant lodged the complaint (Ex.P1) with the All Women Police Station, Samayanallur. PW10/Inspector of Police received the complaint, registered the FIR (Ex.P6) and on the point of jurisdiction, transferred the same to the file of the Inspector of Police, All Women Police Station, Guindy and renumbered that as Crime No.1 of 2012 (Ex.P9). PW11/Investigating



Officer took up investigation, enquired witnesses including Doctors/PW7 to PW9, who treated PW1, collected medical certificates and other documents, on completion of investigation, filed charge sheet before the trial Court. During trial, PW1 stated about the marriage between her and 1st appellant held on 23.05.2009 at Meenakshi Amman Temple, Vadipatti village. This marriage was arranged by PW4/the relative of PW1. It was the 1st appellant and his family members, who approached PW4 to arrange marriage with PW1. He further submitted that the appellants approached PW4, informed that the 1st appellant is a MCA graduate and he was employed in HCL Company at Chennai and earning monthly salary of one lakh and he would take proper care of PW1 and ensure all comfort in life. The appellants suppressed the fact of 1st appellant marriage with another girl prior to marriage with Manjula which got terminated in the Police Station. The 1st appellant's marriage with PW1 was only to ensure PW1 to take care of his minor daughter Varshini. Whenever PW1 became pregnant, she was forced to abort the fetus. But the appellants cleverly projected the same it was either as an accidental one or voluntarily done, but not on compulsion.

9.He further submitted that since PW1 after completed her schoolings, not exposed to new environment, she was unable to disclose the true



happenings to Doctors/PW7 to PW9 and others. The appellants prior to the marriage, to gain confidence and to project themselves as selfless people, had settled the house property in favour of PW1 and after the marriage, PW1 was harassed, tortured and the property was reconveyed in favour of the 1st appellant. During the short period of marriage life, twice PW1's pregnancy was aborted by the appellants and she was forced to stay with the appellants to take care of her minor child Varshini. Added to it, when she was in Madurai, PW1 was taken to Gayathiri Nursing Home for family planning, PW1 realizing that at any cost she cannot forbear any child and she would only be a foster mother throughout the life of Varshini, hence, she left the matrimonial life and joined her parents and lodged the complaint (Ex.P1).

10.It is further submitted that the 1st appellant to create defence, lodged two complaints one with Koodal Puthur Police Station (Ex.D3) and another complaint with the All Women Police Station, Samayanallur (Ex.D2). The evidence of PW1, her father/PW2 as well as her uncle/PW4 and her relative/PW6 confirm forcible abortion and threat on PW1 at various hospitals at the instance of the appellants.



11.He further submitted that after pronouncing judgment of conviction by the trial Court, dated 10.02.2015, the 1st appellant was confined to the Central Prison, Puzhal and thereafter, his sentence was suspended by this Court during the pendency of the present appeals, on 15.04.2015. Since the appellant as well his counsel failed to appear before this Court for arguments, this Court cancelled the suspension of sentence on 06.11.2022, as a result, the 1st appellant was arrested and confined in Central Prison, Puzhal. Now, the 1st appellant is in prison from 06.11.2022 for 135 days. The trial Court on the evidence of PW1, PW2, PW4, PW6 and Doctors/PW7 to PW9 and the medical records (Exs.P2 & P4), had rightly convicted the appellants. Hence, he prayed for dismissal of appeals.

12.This Court considered the rival submissions and perused the materials available on record.

13.In this case, the anchor witness is PW1/defacto complainant. PW1 stated that on 23.03.2009, she married the 1st appellant, immediately after the marriage, they started to live at Velacherry, Chennai. Thereafter, they moved to another house at Perungudi, Chennai. PW1 further stated that she became pregnant few months after the marriage, she suspected some tablets mixed in



tea given to her is the reason for abortion of fetus on 01.11.2009. When the 2nd and 3rd appellants were leaving to Madurai, PW1 along with 1st appellant went to Egmore Railway Station to see off them. At that time, bleeding started, immediately, PW1 was taken to Apollo Hospital, Chennai for treatment. PW9/Doctor finding profuse bleeding took scan and admitted PW1 as inpatient and finally, the fetus got ejected. After two days of treatment, she was discharged from the hospital. In the meanwhile, the parents of PW1 came to visit her, but the appellants refused to allow them to meet PW1.

14.From the evidence of PW9 and on the medical records (Ex.P2) issued by PW9, it is confirmed that on 01.11.2009, PW1 came as emergency patient with 16 weeks pregnancy with bleeding vaginally with history of pain abdomen. PW9 was informed by PW1 that she was married seven months back. Since PW1 was bleeding profusely, abortion was carried out, finally, the fetus got ejected after six hours of treatment. Thereafter, she was discharged on 02.11.2009. PW9 in her evidence confirmed the spontaneous abortion which is not uncommon and it is a normal one. PW1 not made any complaints to PW9 during treatment. Thus, the happenings took place on 01.11.2009 is a natural one, abortion was spontaneous and not on force or



compulsion.

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15. For the abortion of PW1 on 23.03.2011, it is relevant to peruse the evidence of PW8/Dr. Madhulika of Dhanvanthiri Hospital, Velacherry. PW8 stated that it was PW1 and A1, who came together and it was PW1, who informed about menstrual period stoppage and sought some medicine. PW8 administered medicine and fetus was aborted. This is a voluntary one and not on compulsion or by force. Ex.P4/scan report issued by PW7 confirms the voluntariness of PW1 for abortion. PW1 had never made any objection to PW8/Dr. Mathulika and PW9/Dr. Moni Bansal while seeking abortion of fetus. Due to strained relationship between PW1 and 1st appellant for some other reason, now such allegations and complaint (Ex.P1) made. Added to it, PW1 produced Ex.P5/prescription of Gayathri Hospital, Madurai to show the appellants planned to have family planning for her. None from Gayathiri Hospital was examined and Ex.P5 is only a medical prescription prescribing medicines to improve the health of PW1.

16. Thus, from the evidence of PW7, PW8 & PW9 and from Exs.P2, P3, P4, P5 & D1, it is confirmed the 1st appellant had never forced PW1 for abortion or miscarriage. Thus, the conviction and sentenced imposed on the



1st appellant for offence under Section 313 IPC are not sustainable and, the same are liable to be set aside and, are set aside.

17.As regards conviction and sentence against the 2nd & 3rd appellants for offence under Section 498(A) IPC, again the evidence of PW1 has to be looked into. PW1 in her evidence admitted that she knew earlier marriage of 1st appellant with Manju and the 1st appellant having minor child Varshini. PW1 in the complaint (Ex.P1) admitted that she and her parents were informed about the divorced marriage of 1st appellant and minor child Varshini. Thus, PW1 contradicts her earlier statement, PW1 is a motivated witness uttering falsehood. PW2/Father of PW1 and PW4/Uncle of PW1 confirmed that the 1st appellant and his family members/the 2nd & 3rd appellants disclosed the entire facts about the divorced marriage of the 1st appellant with Manju and having minor child Varshini with him. After the marriage, PW1 was living separately with the 1st appellant at Velachery, thereafter at Perungudi, Chennai along with minor daughter Varshini. PW3/House Owner and PW5/Colleague confirmed PW1 and the 1st appellant living separately as husband and wife. PW5, who was living in the same building along with the 1st appellants, gives positive evidence in favour of the appellants. PW5 stated due to some misunderstanding, PW1 left the



matrimonial home and went to her parents home. As could be seen from Ex.D3, it is seen that since PW1 took jewels and valuables left the matrimonial home without informing the 1st appellant, the 1st appellants lodged the complaint with the Sub Inspector of Police, Koodal Puthur Police, Madurai. After preliminary enquiry, the Koodal Puthur Police Station closed the complaint of 1st appellant for the reason already a complaint (Ex.D2) was lodged before the All Women Police Station, Samayanallur. In Ex.D2, the 1st appellant's complaint is about PW1 leaving the matrimonial home without information. During enquiry, on 28.06.2010, PW1 appeared before the All Women Police Station, Samayanallur, gave written statement that she is not interested to join her husband/1st appellant. Finding that the matrimonial discord will be sorted out as per their family custom or through Court recording, the same complaint closed.

18.It is to be seen that though there was often misunderstanding between PW1 and 1st appellant, whenever joined after some break, they developed close intimacy, for that reason, PW1 got pregnant during the year 2011. On 23.11.2011, PW1 informed missing of her menstrual cycle and took some tablets. Thereafter, PW1 left the matrimonial home and lodged the complaint (Ex.P1) on 28.08.2011 before the All Women Police Station,



Samayanallur and a case in Crime No.11 of 2011 (Ex.P6) was registered on 17.09.2011 and thereafter, on the point of jurisdiction, the FIR transferred to file of the All Women Police Station, Guindy and renumbered as Crime No.1 of 2012 (Ex.P9) on 07.02.2012.

19.From the evidence of PW2/Father, PW4/Uncle and PW6/Relative of PW1, it is seen that it was PW1, who informed them about harassment, cruelty made by the appellants. From the evidence of PW2, PW4 and PW6, it is seen that they have no direct knowledge and it was PW1, who informed them about her abortion twice and about the harassment and cruelty by the appellants. The evidence of PW1 is with exaggeration and contradictions, she gives improvised version each time, which is confirmed by the Investigating Officer/PW11. Added to it, in this case, the documentary evidence are contradictory to the oral evidence. PW1 was well aware that the 1st appellant is a divorcee and having a minor daughter Varshini. Despite the same, PW1 and her family members agreed for the marriage with 1st appellant. Immediately after the marriage, PW1 and 1st appellant started residing at Velacherry and thereafter, at Perungudi. PW1 used to visit the 2nd & 3rd appellants in Madurai on occasions and also visit her parents house in Erode. The 2nd & 3rd appellants are senior citizens, having health ailments



and are living separately in Madurai, which is not disputed. The only overtact against them is that they had forced PW1 not to forbear child, since it would affect the welfare and growth of minor child Varshini. As discussed earlier, in the year 2009 and 2011, the abortions were either on medical compulsion or voluntary and it was due to medical exigency and due with her own will and not on compulsion. In this case, there is no material to show PW1 was subjected to cruelty and harassment at the hands of the 2nd & 3rd appellants. Hence, the conviction and sentence for offence under Section 498(A) IPC are not sustainable against the 2nd & 3rd appellants and the same are liable to be set aside and, are set aside. ***Accordingly, Crl.A.No.192 of 2015 stands allowed.***

20.As regards A1 is concerned, it is not seriously disputed about settling of house property during the year 2009 in the name of PW1, thereafter, the property had been reconveyed to PW1. The 1st appellant lodged complaint (Ex.D2) with the All Women Police Station, Samayanallur on 04.06.2010 complaining PW1 was forcibly taken by her parents with ulterior motive and they demanded huge amount. The statement of PW1 reveals that she was not having good relationship and confidence with the 1st appellant and she was not inclined to join him. After preliminary enquiry,



the complaint (Ex.D2) lodged to the Inspector of Police, Samayanallur was closed as no further action required. This being so, on 17.08.2011, another complaint (Ex.D3) was given to the Inspector of Police, Kudal Puthur Police Station by the 1st appellant. This time complaining that PW1 took jewels, valuables and left the matrimonial home. After enquiry, this complaint (Ex.D3) also closed. Thus, the 1st appellant lodging the complaints with various Police Stations against PW1 and her family members, is nothing but an harassment. Coupled with the fact that the property assured for life of PW1 in the year 2009 during the marriage got reconveyed in the year 2011 favouring 1st appellant, thereafter, conveniently, property sold to avoid further encumbrance. Thus, the conduct of the 1st appellant confirms ill-motive. From the happenings in the life of PW1 from the date of marriage to the date of separation, it is seen that she was unable to lead a life on her own choice and she was under pressure, constantly harassed and subjected to cruelty by the 1st appellant. In view of the same, this Court confirms the conviction and sentence against the 1st appellant for offence under Section 498(A) of IPC.

21.Now, the appellants filed affidavits before this Court to reconvey the property in favour of minor child Varshini for her welfare. The relevant portion of the affidavits are extracted hereunder:-



“AFFIDAVIT OF RAJAMAHALINGAM

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I, Rajamahalingam, son of Palraj, Hindu, aged about 44 years, residing at No.12, Palanichamy Street, Ramamoorthy Nagar, Pudhu Vilangudi, Madurai District, now confined at Central Prison, Puzhal, Chennai, do hereby solemnly affirmed and sincerely states as follows:-

1. I humbly submit that I am the appellant herein and I preferred this present appeal against the Learned Trial Court judgment on 10.02.2015 by sentencing me me Under Section 498(A) to undergo one year rigorous imprisonment with fine of Rs.5,000/- in default 3 months imprisonment and sentencing me under Section 313 of I.P.C to undergo 10 years Rigorous imprisonment with fine of Rs.10,000/- in default 6 months simple imprisonment. The above trial conducted based upon my wife's complaint namely who is the defacto complainant.

2. I humbly submit that it is brought to the notice of this Honourable Court I already had a female child from my 1st wife, meanwhile we got divorced, after due intimation I married the defacto complainant on 23.03.2009 and we set up our matrimonial home at Chennai along with my female child, unfortunately the defacto complainant made conflict with me and our matrimonial life was not fruitful, in due course the defacto complainant made a complaint and the same the criminal case was registered against me at All Women Police Station, Samayanallur Madurai, further same was transferred to the respondent and the respondent filed a final report before



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the Learned Mahila Sessions Judge at Chennai in S.C.No. 331 of 2013, thereafter the without proper appreciation the Learned Trial Court delivered judgment convicting me and my parents.

3. I humbly submit that relying upon various grounds I preferred an appeal before this Honourable Court along with interim petition for suspension of my sentence, after due discussion and my contention put forth through my counsel I got suspension of sentence for my conviction rendered by trial court, now upon discussion with my family, for interest of justice, more particularly for welfare of my female child namely Varshini now studying at 11th standard I made an idea to settle my property situated in Pudhu Vilangudi, Madurai in favour of my child namely Varshini, which is mentioned in schedule hereunder.

4. I humbly submit that the schedule mentioned property was purchased on my own earnings under proper consideration vide document No.5611/2011 dated 25.11.2011 before Joint Sub Registrar Office at Madurai, in due course I developed the property by constructed a residential home in that property for our residence. Hence there is no hindrance to settle the property to my child namely Varshini aged about 15 years. It is unfortunate to state that due to my counsel inconvenience this Honourable Court cancelled my suspension of sentence and I was taken into Central Prison at Puzhal on 06.11.2022 till the date I am undergone imprisonment.



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5. *I humbly submit that the above arrangement to be made by me for welfare and future of my child namely Varshini and to float peace amongst us and to welfare of our future prospectus, further I swear this affidavit on my own will and I undertake before this Honourable Court to settle the schedule mentioned property to my child namely Varshini after my release by order of this Honourable Court.*

It is therefore prayed that this Honourable Court may be graciously pleased to record this affidavit and set aside the judgment of Learned Mahila Session Judge at Chennai in S.C.No. 331 of 2013 dated 10.02.2015 and acquit me from my charges and thus render justice.”

“AFFIDAVIT OF PAULRAJ & DHANALAKSHMI

We, Paulraj, son of Karuppa Thevar, Hindu, aged about 80 years and Dhanalakshmi, wife of Paulraj, Hindu, aged about 75 years, we residing at No.12, Palanichamy Street, Ramamoorthy Nagar, Pudhu Vilangudi, Madurai District, now temporarily came down to Chennai, do hereby solemnly affirmed and sincerely states as follows:-

1. We humbly submit that we are the appellants herein and we preferred this present appeal against the Learned Trial Court judgment on 10.02.2015 by sentencing and convicting us Under Section 498(A) to undergo one year rigorous



imprisonment with fine of Rs.5,000/- in default 3 months imprisonment. The above trial conducted based upon our son namely Rajamahalingam's wife complaint who is the defacto complainant.

2. We humbly submit that it is brought to the notice of this Honourable Court our son already had a female child from his 1st wife, meanwhile they got divorced, after due intimation our son married the defacto complainant on 23.03.2009 and they set up their matrimonial home at Chennai along with our granddaughter, unfortunately the defacto complainant made conflict with our son and their matrimonial life was not fruitful, in due course the defacto complainant made a complaint and the same the criminal case was registered against us at All Women Police Station, Samayanallur Madurai, further same was transferred to the respondent and the respondent filed a final report before the Learned Mahila Sessions Judge at Chennai in S.C.No.331 of 2013, thereafter the without proper appreciation the Learned Trial Court delivered judgment convicting us and our son.

3. We humbly submit that relying upon various grounds we preferred an appeal before this Honourable Court along with interim petition for suspension of our sentence, after due discussion and our contention put forth through our counsel we got suspension of sentence for our conviction rendered by trial court, now upon discussion with our family, for interest of justice, more particularly for welfare of our granddaughter



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through our son namely Varshini now studying at 11th standard we made an idea to settle and bequeathed our property situated in Vadipatti, Madurai in favour of our granddaughter namely Varshini, which is mentioned in schedule hereunder.

4. We humbly submit that the schedule mentioned property was jointly purchased on our own earnings and savings under proper consideration vide document No.161/2007 dated 08.02.2007 before Sub Registrar Office at Vadipatti, in due course we developed the property by irrigation specialities with electric facility, now and then we are in joint possession and title of the schedule property. Hence there is no hindrance to settle the property to our granddaughter namely Varshini aged about 15 years.

5. We humbly submit that the above arrangement to be made by us for welfare and future of our granddaughter namely Varshini and to float peace amongst us and to welfare of our future prospectus, further we swear this affidavit on our own will and we undertake before this Honourable Court to settle the schedule mentioned property to our granddaughter namely Varshini.

It is therefore prayed that this Honourable Court may be graciously pleased to record this affidavit and set aside the judgment of Learned Mahila Session Judge at Chennai in



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S.C.No.331 of 2013 dated 10.02.2015 and acquit us from our charges and thus render justice.”

22.Considering the passage of time and the 1st appellant taking care of the minor child Varshini and also affidavit filed by him that he is ready to settle the property in favour of his minor daughter Varshini and also willing to deposit sufficient amount in the name of her for her future education and well being, this Court modifies the sentence of imprisonment to the period of incarceration already undergone by the 1st appellant insofar as the offence under Section 498(A) IPC is concerned. The fine amount paid by the 1st appellant is confirmed.

23.In the result, ***Crl.A.No.102 of 2015 stands Partly-Allowed.*** The affidavits filed by the appellants form part and parcel of this judgment.

11.01.2023

Neutral Citation: Yes/No
Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

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- To
- 1.The Mahila Sessions Court,
Chennai.
 - 2.The Inspector of Police,
W-21, All Women Police Station,
Guindy, Chennai.
 - 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR.J.,

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11.01.2023