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Crl.ANo.150 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.ANo.150 of 2016

A. Natarajan ... Appellant

-Vs-

State rep. By
The Assistant Commissioner of Police,
Washermanpet Division,
Chennai – 600 021.
(Crime No.393/2011) ... Respondent

Prayer - Criminal Appeal filed under Section 374(2) of Cr.P.C, to set aside the judgment dated 28.04.2015 passed by learned Sessions Judge, Fast Track Mahila Court at Chennai in S.C.142 of 2013.

For Appellant : Mr. P.M. Bakthavatsalam
For Respondent : Mrs. G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT



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The Criminal Appeal is filed to set aside the the judgment dated 28.04.2015 passed by the learned Mahila Sessions Judge at Chennai in S.C.142 of 2013.

2. The brief facts, which are necessary for disposal of the Appeal, are as follows:-

2.1. The Accused-1 and the Deceased are cousins. Wife of Accused-1 is his Maternal Uncle's daughter. They were in love and subsequently got married. There was no dispute between them. In the course of their matrimonial life, they were blessed with two children. The younger child, a daughter, is a physically challenged child. Accused-1, Appellant herein was having his own Goldsmith workshop. The shop was in the front portion of the house and in the same building the rear portion of upstairs he had taken the portion on rent and occupied for his residence. After marriage, Accused-1 was living along with his parents and younger brother as Joint Family. Relatives of the Deceased wife were also residing nearby.

2.2. On the alleged date of Occurrence, 11.04.2011, the wife picked up quarrel with her husband/Accused-1 in his workshop. In the course of such quarrel, Accused-1 alleged to have hit her with an iron bar.



Immediately after that she went upstairs and committed suicide by hanging.

Since Accused-1/Appellant herein heard the cries of his children, immediately he went to his home and found his wife hanging from the ceiling of their house. He came to his shop and took some tools to open the door and thereby brought down his wife from the hanging position. Accused-1, with the help of his friends, took his wife to the nearby Private Hospital. There, they referred her to Stanley Hospital. She was admitted in Stanley Hospital for three days. Subsequently she died.

2.3. The Defence of the Accused was that there is a tendency of committing suicide within the family of the Deceased. One of her sister had committed suicide and her Maternal Grand Mother also died due to suicide. The wife of Accused-1 was adamant about setting up a separate family away from the parents of Accused-1, which was refused by Accused-1. He stated that he came up in life due to his hard work and then he took up the business of Goldsmith, having his own workshop and business. As the Appellant is the only source of income and his parents relied on the income from his business, Accused-1 refused to set up a new separate house. The Deceased had alleged to have committed suicide because of the adamant attitude. The Prosecution had developed the case as though Accused-1 had



demanded dowry. The Accused-1 himself had brought down his wife from the hanging position in their house and to save her life, taken the injured (unconscious wife) to Government Stanley Hospital, after first aid in a private hospital. At Stanley Hospital, she was admitted by Dr.Venkatesan P.W-10 as in-patient and issued Ex.P-13 Accident Register. At that time, Accused-1 himself is the Complainant, who had given a complaint based on which FIR under Ex.P-16 was registered with H-1 Washermanpet Police Station, Chennai, in Crime No.393 of 2011 for offence under Section 309 of IPC. After three days of treatment, the wife of Accused-1 died. By that time, the father of the deceased P.W-1 had given a complaint. Based on which, the offence in FIR in Crime No.393 of 2011 was altered under Ex.P-18 for offence under Section 174 (iii) of Cr.P.C. After the death of the wife of Accused-1, the report received from the Hospital under Ex.P-8 Death Report, the Investigation Officer had altered the offence under Section 309 of IPC and 174 of Cr.P.C. Subsequently, the father of the deceased P.W-1 had given a complaint suspecting dowry harassment for the cause of death of his daughter. Therefore, the offence under Section 174 of Cr.P.C. was subsequently altered to offence under Section 498A and 304(b) and also including 306 of IPC under Ex.P-19 since the case involves death of married woman within



7 years from the date of marriage. The original FIR and copy of the alteration report were sent to the Executive Magistrate P.W-9 to hold enquiry under Dowry Prohibition Act and also to hold inquest over the body of the deceased. P.W-9 held enquiry regarding the death of the wife of Accused-1. During recording the statements of the parents of the deceased, the relatives of the deceased P.W-3 and P.W-5 and the neighbours of the deceased, landlord of the Accused-1 and the deceased and prepared the inquest report under Ex.P-11 and Ex.P-12. Since the death of woman within 7 years from the date of marriage, the Assistant Commissioner of Police as Investigation Officer requested the Executive Magistrate, Revenue Divisional Officer to conduct inquest over the body of the deceased and also to hold enquiry under Dowry Prohibition Act for which the requisition of the Assistant Commissioner of Police, Washermanpet are marked as Ex.P-9 and Ex.P-10. Accordingly, the Executive Magistrate P.W-9 held inquest over the body of the deceased and prepared the inquest report under Ex.P-11 and the inquiry report of the Dowry Prohibition Act under Ex.P-12. As per the report of the Executive Magistrate P.W-9, it involved likelihood of Dowry death. Therefore, he had directed the Assistant Commissioner of Police to proceed further with the investigation as it involves dowry harassment death. Therefore, P.W-



12 the Investigation Officer/Assistant Commissioner of Police, Washermanpet Police Station, had proceeded with the investigation by visiting the house where the wife of the Accused-1 committed suicide. He prepared observation mahazar under Ex.P-3 and prepared rough sketch under Ex.P-17 in the presence of the witnesses – the landlord of the house and the neighbours of the house including P.W-5 a relative of the deceased. He had examined the witnesses – the neighbours, the landlord of the Accused and the deceased, the parents of the deceased, the uncle of the deceased P.W-5, the husband of the elder sister of the deceased and the elder sister of the deceased. On completion of the investigation, he laid final report before the Court of the learned XIV Metropolitan Magistrate, Chennai, for offences under Sections 498A, 304(b) and 306 IPC. He also arrested the Accused 1 to 4, the parents of the Accused and the younger brother of the Accused, based on the complaint of the parents of the deceased, P.W-1 and P.W-2. Subsequently, the Accused persons were released on bail. On filing of the final report before the learned XIV Metropolitan Magistrate, George Town, Chennai, the learned XIV Metropolitan Magistrate, George Town, Chennai took cognizance of the offence under Section 498A, 304(B) and 306 of IPC and taken the complaint as P.R.C.No.111 of 2012. Since the offences are triable by



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Court of the learned Sessions Judge, it was taken on file as PRC No.111 of 2012 and summons were issued to the Accused. On appearance of the Accused copies were furnished to the Accused under Section 207 of Cr.P.C. and the Accused were enquired whether they have resources to engage a Counsel on their own. Since they replied that they have resources to engage Counsel, the case was committed to the Court of Sessions and the Accused 1 to 4 were bound over to the Court of Sessions.

2.4. On appearance of the Accused before the learned Principal Sessions Judge, Chennai and on receipt of the case records in P.R.C.No.111 of 2012, the learned Principal Sessions Judge, Chennai had taken the case records in P.R.C.No.111 of 2012 and numbered the case as S.C.No.143 of 2013. On appearance of the Accused, the case was made over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Chennai. As the case involves death of the married woman within 7 years from the date of marriage, the Accused 1 to 4 were bound over to appear before the learned Sessions Judge, Fast Track Mahila Court, Chennai. On appearance of the Accused before the learned Sessions Judge, Fast Track Mahila Court, Chennai, the learned Sessions Judge, Fast Track Mahila Court, Chennai after hearing the learned Public Prosecutor for the State and the learned



Counsel for the defence framed charges against the Accused 1 to 4 as follows:

498-A of IPC

304(B) of IPC

306 of IPC

2.5. Since the Accused 1 to 4 denied charges, the learned Sessions Judge, Fast Track Mahila Court, Chennai ordered trial. To prove the charges, the Prosecution had examined 13 witnesses as P.W-1 to P.W-13 and marked 19 documents as Ex.P-1 to Ex.P-19. Also marked one material object as M.O-1. On appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court, Chennai, had by judgment dated 28.04.2015 convicted the Accused-1 alone for the offence under Section 498A and 304(b) of IPC. The Accused 2 to 4 were acquitted under Section 235(1) of Cr.P.C. The Accused-1 was sentenced to undergo three years Rigorous Imprisonment and also to pay a fine of Rs.5,000/-, in default, to undergo one month Simple Imprisonment for the offence under Section 498A of IPC and for the offence under Section 304(b) the Accused-1 was sentenced to undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/-, in



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default, to undergo three months Simple Imprisonment.

3. Aggrieved by the same, the Accused-1 had filed this Appeal seeking to set aside the judgment of conviction and sentence of imprisonment imposed against him.

4. The learned Counsel for the Appellant submits that the Appellant is the Accused-1 in S.C.No.142 of 2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Chennai. As per the Charge Sheet the Accused-1 along with his parents and younger brother were charged against the offences under Section 498-A, 304-B and 306 of I.P.C.

5. The learned Counsel for the Appellant invited the attention of the Court to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Chennai. As per the charges, Accused-1 to Accused-4 were charged for the offences under Section 498-A, 304-B and 306 of I.P.C as an alternate charge for offence under Section 304-B of IPC. Since the Accused-1 to Accused-4 denied the charges, trial was ordered. During the trial, Prosecution had examined 13 witnesses and marked 19 documents and M.O-1. Accused-1 was examined as D.W-1 and Friends of the



Accused-1 were examined as D.W-2 and D.W-3.

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6. It is the submission of the learned Counsel for the Appellant that the Defence of the Accused-1 before the trial Court was that the Deceased, the wife of Accused-1 committed suicide, not because of dowry harassment, but due to her adamant attitude to set up a separate home which was refused by Accused-1, the husband of the Deceased.

7. The learned Counsel for the Appellant further submitted that the Appellant was arrayed as Accused-1 after trial as per the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.142 of 2013 dated 28.04.2015. Accused-2 to Accused-4, who were the parents and younger brother of the Accused-1, were acquitted from all the charges. Accused-1 alone was convicted for offences under Section 498-A and 304-B of I.P.C. Accused-1 was acquitted from the charge of Section 306 I.P.C. For the offence under Section 498-A of I.P.C Accused-1 alone was convicted for 3 years rigorous imprisonment and fine of Rs.5,000/- for the offence under Section 304-B of I.P.C. Accused-1 was convicted and sentenced to undergo imprisonment for 10 years and to pay fine of Rs.10,000/- in default to undergo simple imprisonment. Aggrieved by the



same, Accused-1 preferred this Appeal.

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8. The learned Counsel for the Appellant invited the attention of the Court to the evidence of P.W-1, father of the Deceased. P.W-2 mother of the Deceased, P.W-3 the relative (uncle) of the Deceased. P.W-5 Kalidoss the husband of the elder sister of the deceased, also the elder son in law of P.W-1, who is also the neighbour of the deceased. He is also witness to the Seizure Mahazar and Observation Mahazar. P.W-7 is Dr.Balasubramanian who had conducted autopsy on the body of the deceased and issued Post Mortem Report under Ex.P-7. P.W-8 is Dr.Gowthaman who had seen the deceased alive at the time of admission and treated her. He had in his evidence stated that he had sutured the wound in the head and also issued the Death Certificate under Ex.P-8. P.W-10 is Dr.Venkatesan, who had seen the deceased alive at the time of admission and as per his evidence, the patient was conscious and was not responding to the questions put to her by him. He had administered the first aid. He had issued Ex.P-13 Accident Register and admitted her in the ward. In his cross examination, he had stated that there was symptoms on the neck regarding claim that she attempted suicide. P.W-11 is the Forensic Expert who had issued Toxicology Report under Ex.P-14 stating that no poisonous substance was



found in the internal organs of the deceased. P.W-12 is the Investigation Officer, the Assistant Commissioner of Police, Washermanpet Zone, Chennai City Police.

9. The learned Counsel for the Appellant invited the attention of the Court to the Post Mortem Certificate under Ex.P-7 issued by P.W-7 Dr.Balasubramanian wherein the Doctor had given his opinion that the death was caused due to hanging. He had clearly stated that there was sutured wound on the head but it was only skin deep and had not affected the skull or the brain of the Deceased.

10. As per the argument of the learned Counsel for the Appellant/Accused, it is a family trait that one of the sisters of the deceased and also her Maternal Grand mother committed suicide. There was a tendency of committing suicide in the family of the Deceased.

11. The learned Counsel for the Appellant also invited the attention of the Court to the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai in Para 30 to 34, in which the learned Sessions Judge, Fast Track Mahila Court, Chennai, herself had doubt in her mind in



convicting the Accused-1 which is available at Para-31. The learned Counsel for the Appellant submits that the learned Sessions Judge, Fast Track Mahila Court, Chennai had convicted the Accused-1 based on the Report of the P.W-9 Executive Magistrate/R.D.O, which is a mandatory requirement regarding the death of a married woman within 7 years from the date of marriage. Only placing reliance on the said report, the learned Sessions Judge, Fast Track Mahila Court, Chennai had convicted the Accused-1 for offences under Section 498-A, 304-B of I.P.C. It is the case of the Appellant that the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai is based on mere surmises and conjectures, which is perverse and is to be set aside.

12. The learned Additional Public Prosecutor vehemently objected and challenged the arguments. The learned Counsel for the Accused-1 stated that there is sufficient evidence from the parents of the Deceased. On perusal of the evidence of P.W-1, the father of the Deceased it is found that in his Cross examination, he had admitted that in the course of the matrimonial life neither the Deceased nor the P.W-1 father of the Deceased had given any complaint regarding dowry harassment to any of the Police Officials or any other Officials. He had denied the suggestion of the



Defence that after the death of his daughter he had made such false allegations that the husband of the Deceased and his parents used to ill treat his daughter seeking dowry. The Elder sister's husband P.W-5 stated that the Accused-1, Appellant herein caused injury on the head of the Deceased on the ground that she did not bring money as demanded by the Accused-1 and she left immediately from the workshop of Accused-1 and committed suicide.

13. P.W-3 was the relative (uncle) of the deceased and P.W-5 was the husband of the elder sister of the deceased. And also the elder son in law of P.W-1. He is the witness to Ex.P-3 Observation Mahazar. Ex.P-5 Seizure Mahazar. P.W-1, father of the deceased had given complaint under Ex.P-1 in which it is claimed that the Accused-1, husband of the deceased, Son in law of P.W-1, alleged to have informed on phone that the Accused-1 had hit his Wife on the head and she was bleeding and fallen unconscious directing the parents of the deceased to take her to hospital. Since P.W-1 was in election work he had directed his elder son in law Kalidas P.W-5, who is residing nearby to go immediately over to the residence of the deceased.



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14. P.W.5 is the elder son in law of P.W-1 and P.W-2 in his cross examination, stated that he is residing nearby to the residence of Appellant/Accused-1. On the date of Occurrence, he had not called 108 Ambulance. Only the neighbours of the Accused called 108 Ambulance. Accused-1 and Accused-2 had accompanied the Deceased in 108 Ambulance. He had not seen the Accused-1 hitting the wife. He claims ignorance regarding the occurrence on the date of the occurrence. The Complaint under Ex.P-1 claims that Accused-1 had murdered his wife, the daughter of P.W-1/ the complainant. Whereas Accused-1 had admitted his wife in the hospital and gave the complaint based on which, F.I.R. in Crime No.393 of 2011 under Ex.P-16 was registered and investigation commenced. After receipt of the intimation of death of the Wife under Ex.P-8, the Alteration Report was filed in the Court of the learned Metropolitan Magistrate, Chennai by the Investigation Officer under Ex.P-18 altering the Section under Section 174(3) Cr.P.C. and Ex.P-19. After the death of the wife of Accused-1 in Stanley hospital, on intimation given by P.W-8 Dr.Gowthaman under Ex.P-8. The case which was registered under Section 174 of Cr.P.C., then altered to offence under Section 498-A and 304(B) of IPC. After the receipt of Complaint from P.W-1 it was further altered to 498-A, 304-B of I.P.C. From the report under Ex.P-12, it cannot



be considered in the light of the evidence available before the trial Court, it is only Summary Enquiry. The Court cannot give due weightage to the Report of the Executive Magistrate for avoiding the risk of indifference allegation of indifferences on the Appeal of the Executive Magistrate invariably. The Executive Magistrate for the reasons of safety gave the finding as though there is involvement of Dowry Harassment indicating the Investigation Officer to proceed with cause of death as Dowry Harassment. P.W-9 is the Executive Magistrate who had conducted Statutory Enquiry for the death of a newly married woman within 7 years from the date of marriage and issued Ex.P-12 report of the enquiry. P.W-9 R.D.O/Executive Magistrate in his cross examination had denied the suggestion of the Defence that the family of the Accused had shifted to the new place one month prior to the date of occurrence. Therefore, the neighbours of the family does not know the details of the family was denied by him in the cross examination. The suggestion of the Defence that he had not conducted the fair enquiry he had only examined the relative of the deceased and filed the report as though the death was due to Dowry Harassment was denied by him. On perusal of the report under Ex.P-12 prepared by P.W-9 R.D.O/Executive Magistrate. It is found that he had concluded the enquiry by stating that there is the involvement of Dowry



Harassment. It is based on the statement of the parents of the deceased. The parents of the deceased as P.W-1 and P.W-2 had narrated the same facts as examination-in-chief. In the cross examination, they admitted that they had not filed any complaint regarding Dowry Harassment during the lifetime of Deceased against the Accused-1 and his parents. The cause of death is not known to the parents. The father of the deceased admitted that another daughter, elder of the deceased also committed suicide. He had denied the suggestion that his mother also committed suicide. The grand mother of the deceased also committed suicide denied by him.

15. The learned Additional Public Prosecutor invited the attention of this Court to the F.I.R in Ex.P-16, which was lodged based on the complaint of the Accused-1 himself. The learned Additional Public Prosecutor invited the attention of the Court to the deposition of the Accused-1 as D.W-1. There are contradiction between the complaint under Ex.P-13, which was reproduced as F.I.R and the deposition of D.W-1.

16. Further the learned Additional Public Prosecutor invited the attention of the Court to the persons who were examined as D.W-2 and D.W-3 who were acquaintance of D.W-1. There are contradiction between



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the evidence of D.W-1, D.W-2 and D.W-3. There are contradiction in examination in chief and in their cross-examination. When D.W-1 and D.W-2 stated that they had brought down the wife of the Deceased from the hanging position and took her to hospital she was unconscious, whereas the Doctor who had seen the Deceased at the admission stage in the hospital had clearly deposed that she was conscious but was unanswered by the questions put to her by the Doctor. Therefore the contention of the learned Counsel for the Appellant of the evidence of D.W-1, D.W-2 and D.W-3 cannot be believed. D.W-2 claimed to be the relative of the Deceased as well as the Accused. He is unaware of the name of the Deceased. Therefore it is to be considered as if he was not at all a relative.

17. The learned Additional Public Prosecutor submitted that the Appeal lacks merit and judgment of the learned Sessions Judge is based on the evidence. Therefore the Appeal is to be dismissed and judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai had to be confirmed.

18. As per deposition of the Investigation Officer (P.W-12), on receipt of information from the Stanley Government Hospital, Inspector of



Washermanpet Police Station had deputed his assistant to Stanley Government hospital to record the statement from the relatives of the person undergoing treatment (Deceased). At that time, the husband of the Deceased/Accused-1 was attending on her. Therefore he had given the complaint. Based on which the F.I.R was registered under Crime No.393 of 2011 for offence under Section 309 of I.P.C.

19. The printed F.I.R is under Ex.P-16 based on which the investigation commenced by the Inspector of Police and had handed over the file to the Assistant Commissioner of Police who had conducted further investigation resulting in filing of final report based on which the sessions trial ended in conviction of Accused-1 alone.

20. The learned Additional Public Prosecutor submitted that the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai is based on proper appreciation of evidence thereby convicted Accused-1 only for offences under Sections 498A, 304(b) and acquitted Accused-2 to Accused-4. This Appeal lacks merit and is to be dismissed as having no merits.

Point for consideration:



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Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Chennai convicting Accused-1 alone for offence under Sections 498A and 304(b) of IPC and sentencing him to imprisonment and fine is perverse and is to be set aside?

21. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State. Perused the depositions of P.W-1 to P.W-13. Ex.P-1 to Ex.P-19 and the deposition of D.W-1, D.W-2 and D.W--3.

22. As rightly pointed out by the learned Additional Public Prosecutor, there were contradictions between the deposition of D.W-1, D.W-2 and D.W-3. And contradictions between the complaint given by D.W-1 and deposition of D.W-1 as witness before the Court. Ex.P-12 is the report of the Executive Magistrate/R.D.O, is found to be a mechanical report and does not reflect the real truth. In cases of this nature, it is invariably found that the Executive Magistrate concluded the report stating that there is possibility of Dowry Harassment. From the evidence available in the cross-examination of parents of Deceased, it is found that the father of the Deceased admitted in his cross-examination that the Maternal grand



Mother of the Deceased died due to suicide. One of the sisters of the Deceased also committed suicide. The Accused in his statement to the R.D.O./Executive Magistrate stated that the wife wanted to set up separate home for which he refused on the ground that he was the bread winner and came up in life in hard way and does not want to leave his parents in old age home. This would be the reason for her to commit suicide. Also, on perusal of the statement of the Complainant, it was none other than the Accused-1 who had given the complaint after registration of the case. From the investigation, the Investigation Officer laid the final report as though the Deceased had died due to dowry harassment. From the evidence of the Prosecution witness, it is found that the father of the Deceased (P.W-1) used to drink and lie in front of the shop frequently. Therefore, the wife/Deceased, wanted to shift from that place and set up a house. Therefore, from the available material in Cross examination of the Prosecution witnesses the Defence of the Accused-1 is made out. The probability of the cause of death of the newly married woman who committed suicide within four years of the marriage, the Court cannot come to the conclusion that she committed suicide only due to dowry harassment. Particularly in this case, there is evidence from the P.W-1 as well as the D.W-1 that it was a love marriage and the Deceased was the Maternal



Uncle's daughter. Whether that is the case, when the dear daughter died under suspicious circumstances. There is a possibility of the Complainant suspecting the husband and his parents, when there is presumption available in law that is also to be used at initial stage of investigation. Therefore there was nothing wrong with the Executive Magistrate filing the report as though it was a Dowry Harassment case but the facts are otherwise.

23. The learned Sessions Judge, Fast Track Mahila Court, Chennai in conclusion, raised a doubt as to whether the Accused-1 was solely responsible for the death of his wife. To conclude the trial and to convict the Accused-1, the learned Sessions Judge, Fast Track Mahila Court, Chennai had relied upon the report of the Executive Magistrate which was found perverse. On appreciation of evidence, the learned Sessions Judge, Fast Track Mahila Court, Chennai had fairly acquitted all the Accused except Accused-1. Therefore, on the same doubt as the learned Sessions Judge, Fast Track Mahila Court, Chennai expressed she ought to have acquitted the Accused, instead she had convicted the Accused merely based on the report of the Executive Magistrate. Therefore, that part of the Judgment is found perverse which had to be set aside. The Appellant is



acquitted.

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24. Woman of marriageable age after marriage, may commit suicide due to many causes, economic difficulties, difficulty in coping with the Joint family environment etc. Here the Defence of the Accused is the wife of the Accused-1 wanted to set up independent family, independent of the parents of Accused-1. He had stoutly refused it, claiming he came up in life with hard work of his parents and he does not want to ignore their needs, remain indifferent which was in conflict to the interest of the wife. On the alleged date of occurrence, also there was altercation in the shop/workshop where the Accused-1 is running his Goldsmith workshop and in the same building rear portion upstairs he had occupied rented premises as his residence. P.W-4 Vijayakumar is the house owner who is also Mahazar witness for the Observation Mahazar, Ex.P-3 and Ex.P-5 Seizure Mahazar. P.W-4 and P.W-5 as the witnesses for Observation Mahazar and Seizure Mahazar. The Inquest report prepared by the P.W-9 under Ex.P-11 Executive Magistrate claims that the death of the deceased by hanging was due to difference of opinion. When the deceased wife wanted to set up independent home, the Accused-1 did not wanted to leave his parents. The Panchaytdars of the inquest are the Vijayakumar in this



case. P.W-4 is the landlord of the house wherein the Accused-1 and his wife, the deceased had occupied on rent. The other witness in the Inquest report are neighbours, tenants where all are women. The Post Mortem Report issued by P.W-7 Dr.Balasubramanian under Ex.P-7 stated that the death was caused due to hanging.

25. The evidence of P.W-1 and P.W-2 parents of the deceased, P.W-5 Kalidoss husband of the elder sister of the deceased, P.W-3 Balakrishnan is found to be in conflict with the evidence of Doctor P.W-7 who had performed the autopsy on the body of the deceased clearly stated injury found on the head having fresh stitches was only skin deep and had not endangered the life of the deceased. In the cross examination of P.W-1, P.W-2, P.W-3, P.W-5 and P.W-6 it was found that whatever was stated in the cross examination is only the presumption. If the evidence of P.W-5 is to be believed, he immediately rushed to the occurrence place and found the deceased lying on the floor with bleeding injuries. He was prevented from taking the injured woman to the hospital by the Accused-1. In the cross examination he states that husband of the deceased along with the neighbours took her in 108 ambulance to Stanley Hospital. Therefore what had been stated in the chief examination of P.W-1, P.W-2 and P.W-5 are



found to be unbelievable and not full truth. It is true that the married daughter was given jewels at the time of the marriage but those things are not on demand by the husband. The Accused-1 as Defence witness stated that he studied only upto 8th standard. The deceased had studied upto 12th standard. They got married after long period of love affair. The parents of the deceased are none other than the Maternal Uncle of Accused-1 and the cousin to the mother of the Accused-1. When the facts are so, it is unbelievable that the evidence of P.W-1 and P.W-2, parents of the deceased incriminating the entire family members for the reason for the death of their dear daughter which caused their daughter end her life. They had attempted to invoke the Dowry Harassment provisions against her in laws. Merely based on presumption the Criminal Court cannot convict the Accused. Particularly when the offence with the evidence alleged attracts long period of sentence of imprisonment which is considered as grave crime. Therefore the Prosecution has to establish beyond doubt that the death was caused only due to the Dowry Harassment. Here there is evidence through the neighbours to the P.W-9, R.D.O/Executive Magistrate who had conducted Inquest under Ex.P-10 regarding the cause of death where the neighbours who are all women had stated that the deceased wanted to set up to independent home for which the Accused-1/husband



was not amenable. He wanted to live with parents as a Joint Family unable to heed to her request, she had committed suicide. The Post mortem report Ex.P-7 clearly stated the cause of death is due to hanging, “***Attempted Hanging Hypoxic Encephalopathy Cardio Respiratory Arrest***” which is found to be in conflict with the evidence of P.W-1 and P.W-2 and P.W-5. If their evidence is to be believed, the deceased died due to head injury, bleeding injury. P.W-8 Dr.Gowthaman had in his evidence deposed that the bleeding head injury was stitched in time by him and had treated her. P.W-10, Dr. Venkatesan had examined her on arrival at the hospital and found her conscious but not responding to questions put by him. She was admitted in hospital. After 3 days of treatment, she died. The Death Report was issued by P.W-8 the Doctor who treated her. The medical evidence is contrary to evidence of P.W-1, P.W-2, P.W-3 and P.W-5. Therefore the doubt raised by the learned trial judge whether the deceased died due to the attack by the Accused-1 or by hanging which was resulted due to the dowry harassment. The learned Sessions Judge, Fast Track Mahila Court, Chennai relied on the report of P.W-9, R.D.O/Executive Magistrate under Ex.P-12 in the light of the evidence available before the Court, the learned Sessions Judge, Fast Track Mahila Court, Chennai had placed reliance on Ex.P-12 is found unacceptable as it is a Summary Enquiry whereas



evidence before the Court is that of the witness. In the light of the evidence P.W-1 and P.W-2 in cross examination that they had never given complaint against the husband or his parents regarding dowry harassment, when the deceased was alive which is against the finding rendered by the learned Session Judge, Mahila Court, Chennai placing reliance of Ex.P-12. What had happened as stated by P.W-1 and P.W-2 parents of the deceased in the examination-in-chief was the gist of the complaint of Ex.P-11 which they had stated to P.W-9. The Executive Magistrate based on the statements of the parents and relatives of the deceased, had given report under Ex.P-12 is conflict with the Inquest report Ex.P-11 had been conducted by P.W-9 as Executive Magistrate. Therefore, the judgment convicting Accused-1 for offences under Sections 498-A and 304(B) of IPC is found perverse. The same is set aside.

26. The point for consideration is answered in favour of the Appellant and against the Prosecution. The conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Chennai in S.C.No.142 of 2013, dated 28.04.2015 is set aside as perverse.

In the result, **this Appeal is allowed.** The Appellant is acquitted



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from the charges under Sections 498-A and 304(B) of IPC. The bail bond executed by the Appellant/A-1 shall stand cancelled. The fine amount is ordered to be refunded to the Appellant/A-1.

04.10.2023

shl/srm

Index : Yes/No

Speaking/Non-speaking order

To

1. The Sessions Judge, Mahila Court,
Chennai.
2. The Assistant Commissioner of Police,
Washermanpet Division,
Chennai 600 021.

SATHI KUMAR SUKUMARA KURUP, J.,

shl/srm



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