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Crl.A.No.151 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.151 of 2016

Jayaprakash

...Accused-1/Appellant

-Vs-

State by
The Inspector of Police,
Kavuthapadi Police Station,
Erode District.

...Complainant/Respondent

Prayer:- Criminal Appeal filed under Section 374 of the Criminal Procedure Code, 1973, to set aside the judgment of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode, dated 17.02.2015, passed in S.C.No.57 of 2014, in erroneously convicting the Appellant herein under Section 306 of IPC and sentencing him to 10 years rigorous imprisonment and fine of Rs.1000/- in default to undergo 2 years simple imprisonment and Section 498-A IPC sentencing him 3 years rigorous imprisonment and fine of Rs.1000/- in default to undergo 6 months simple imprisonment.

For Appellant : Ms.Nethra,
Legal Aid Counsel

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor



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J U D G M E N T

The Appellant is the first Accused in S.C.No.57 of 2014 on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode. The Appellant / A1 stood charged and convicted for the offences under Sections 306 and 498-A of IPC.

2. The Trial Court, vide impugned judgment dated 17.02.2015, has convicted the Appellant / A1 as follows : -

Conviction under section	Sentence Awarded
498-A IPC	To undergo three years of rigorous imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo six months of simple imprisonment.
306 IPC	To undergo ten years of rigorous imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo two years of simple imprisonment.

The learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode, had acquitted A2 from the charges under Sections 306 and 498-A of IPC. The Trial Court further ordered the sentences to run



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concurrently and also granted set-off under Section 428 Cr.P.C.

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3. The A1 / Appellant challenging the legality of the conviction and sentence awarded by the Trial Court vide impugned judgment, has filed this Criminal Appeal.

4. Ms.Nethra, Legal Aid Counsel for the Appellant, nominated by the Legal Aid Committee attached to this Court, submitted her arguments.

5. As per her submission, there were only two independent witnesses, P.W.7 and P.W.10. They turned hostile. The rest of the witnesses, P.W.1 to P.W.4, P.W.8 and P.W.9 are relatives of the deceased.

6. Learned Counsel for the Appellant submitted that P.W.1 is the paternal uncle of the deceased, who had lodged the complaint under Ex.P1. He had lodged the complaint based on hearsay.

7. Learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.1 and P.W.2, who are relatives. They had in



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their depositions stated that the information regarding the death was given to them by P.W.3, who is a relative to A1. His evidence was discarded by the learned Trial Judge stating that there had been civil and criminal litigation pending between the family of A1 and the family of P.W.3. The learned Sessions Judge had observed that P.W.3 had exaggerated facts to incriminate A1 wantonly. Therefore, the learned Sessions Judge had rejected the evidence of P.W.3, who happens to be a relative of A1.

8. It is the submission of the learned Counsel for the Appellant that if the learned Trial Judge had discarded the evidence of P.W.3 as exaggerations to incriminate against A1, then the rest of the witnesses ought not have been relied on by the learned Trial Judge as all the relatives of the deceased who had been examined as P.W.1 to P.W.4 had relied on the hearsay statement of P.W.3. Therefore, automatically, the learned Trial Judge ought to have acquitted A1.

9. Learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.4, who is the first wife of A1, the Appellant herein, and the evidence of P.W.9, who is a cousin of the deceased.



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10. Learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.4, stating that what was stated by her in the evidence before the Trial Court was not stated before P.W.5, who is the Executive Magistrate, who had conducted enquiry and inquest over the body of the deceased as per the provisions of the Dowry Prohibition Act regarding the death of a newly married woman within seven years of marriage. Also, P.W.9, who happens to be a cousin of the deceased had stated that she had a chance meeting with the deceased, few days before her death in the marriage function of a son or daughter of a relative, Pongiyannan. At that time, the deceased had voluntarily came up to P.W.9 and said everything.

11. It is the contention of the learned Counsel for the Appellant that the said Pongiyannan was not examined by the Investigation Officer as a witness. Also, it is the contention of the learned Counsel for the Appellant that the Appellant and the deceased belonged to two different communities. The relatives who had deposed evidence belonged to the



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community of the deceased Kongu Vellalar Community and their cast outfit had been pressured to depose the evidence incriminating against A1.

There was no demand for dowry. The prosecution had not proved the case beyond reasonable doubt. The learned Trial Judge had misdirected himself by relying heavily on the evidence of P.W.4, first wife of A1 and P.W.9, cousin of the deceased, and also the report of P.W.5-Sub Collector/ Executive Magistrate, who conducted enquiry and inquest regarding the death of a newly married woman within 7 years of the marriage and had convicted A1 for the offences under Sections 498-A and 306 of IPC. The finding of the learned Sessions Judge had to be set aside as he had rightly discarded the evidence of P.W.3, but believed the version of the other witnesses who relied on P.W.3. When P.W.3 evidence is discarded automatically, then the evidence of the other relatives of the deceased has to be rejected as hearsay.

12. Also, the learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.8, father of the deceased, who had stated that after the marriage of the deceased with A1, they were not in contact. This fact is admitted in the cross-examination by P.W.1, paternal



uncle of the deceased and P.W.2, also a relative of P.W.1. The elders in the family of the deceased were not in contact with the deceased during her life time or during her cohabitation with A1. The incriminating evidence against A1 as stated by them cannot at all be believed from the point of view of ordinary prudent man. This fact was ignored by the learned Sessions Judge. The learned Sessions Judge had convicted A1 based on the evidence of P.W.1, P.W.2, P.W.4 and P.W.9. Therefore, the conviction of A1 has to be set aside.

13. Learned Additional Public Prosecutor by way of reply submitted that there is sufficient material evidence available before the Trial Court during trial through the prosecution witnesses, P.W.1 to P.W.16.

14. The learned Additional Public Prosecutor invited the attention of this Court to the depositions of P.W.1 to P.W.9 and the depositions of official witnesses, P.W.11 to P.W.16.

15. The learned Additional Public Prosecutor also invited the attention of this Court to the discussion of evidence by the learned



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Sessions Judge in paras 17 to 22. Also, the learned Additional Public Prosecutor submitted that, only on assessment of evidence, the learned Trial Judge had acquitted A2 from both charges and convicted A1 only for the offences under Sections 498-A and 306 of IPC. Also, the learned Trial Judge had rightly discarded the evidence of P.W.3 based on the material available in the cross-examination as he has axe to grind with A1 as they are facing litigation between them, both civil and criminal. At the same time, the learned Sessions Judge had placed reliance on the evidence of P.W.4, first wife of A1, and P.W.9, cousin of the deceased and P.W.5- Executive Magistrate, who had conducted inquest over the body of the deceased and held enquiry regarding the cause of death of a newly married woman within 7 years from the date of marriage.

16. The learned Additional Public Prosecutor invited the attention of this Court to the evidence of P.W.4, who is the first wife of A1, stating she had been living with A1 and she was aware of the conduct of A1, which made her leave from the matrimonial relationship with A1 and live in her parents house. She had in her evidence deposed that A1 in this case had introduced the deceased as his cousin. Subsequently, she came to know



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that there had been illicit relationship between the deceased and A1. When she had gone for delivery of her second child, she came to know that A1 had been living with the deceased as husband and wife. Therefore, there are enough materials available before the Trial Court through the evidence of P.W.4, who happens to be his first wife. The conduct of A1 is consuming alcohol and abusing his wife. P.W.4 is none other than the first wife of A1. When she was away in her parents house for the delivery of her second child, all the occurrence had taken place right from contracting the second marriage and the death of the so-called second wife. Therefore, the learned Trial Judge had discussed the evidence of reliable witnesses only arrived at the conclusion that the conduct of A1 alone had made the deceased to end her life, escaping from the circumstances created by her own conduct. She had lacked support from the parents because it was a love marriage against the advice of her elders, P.W.1, P.W.2, and P.W.8, who had stated that they had not contacted the deceased after her elopement with A1. Therefore, the judgment of the learned Sessions Judge is not perverse. The Appeal lacks merit and is to be dismissed, thereby confirming the judgment of conviction recorded by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode.



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17. **Point for consideration:**

Whether the judgment of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode, in S.C.No.57 of 2014 dated 17.02.2015 is to be set aside as perverse and the Appellant/A1 is to be acquitted from the charge under Sections 498-A and 306 of IPC?

18. Heard Ms.Nethra, learned Counsel for the Appellant and Mrs.G.V.Kasthuri, learned Additional Public Prosecutor for the State.

19. Perused the evidence of prosecution witnesses, P.W.1 to P.W.16, exhibits marked by the Prosecution under Exs.P1 to P11, and the judgment of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode.

20. On consideration of the rival submission and on perusal of the judgment of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode, as rightly pointed out by the learned Counsel for the Appellant, the learned Sessions Judge had rejected the evidence of P.W.3, who happens to be a relative of A1. Based on the evidence in the



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cross-examination of P.W.3, the learned Trial Judge had discarded the evidence of P.W.3 stating that he has axe to grind with A1 as they are facing litigation against each other in both civil and criminal cases.

21. Also, as rightly pointed out by the learned Counsel for the Appellant, the evidence of P.W.1, P.W.2, and P.W.8 are all based on hearsay. P.W.1 and P.W.2 in their cross-examination stated that the information regarding the death of the deceased was furnished by P.W.3. When the evidence of P.W.3 was rejected, the learned Trial Judge had also rejected the evidence of P.W.1, P.W.2, P.W.8 and P.W.9.

22. As rightly pointed out by the learned Counsel for the Appellant, P.W.7 and P.W.10 are independent witnesses and they turned hostile. Just because two independent witnesses turned hostile and the other witnesses are relatives are interested witnesses, the Court need not reject the evidence of the interested witnesses. The relatives of the deceased had come forward to depose evidence as witnesses, and they were subjected to cross-examination. In the cross-examination, they had admitted the facts mentioned by them in the evidence where hearsay obtained by them. Based



on hearsay, the Trial Court cannot convict A1. In the course of the discussion of evidence, the learned Trial Judge had relied on the evidence of P.W.4, who is the first wife of A1, who had been living with A1, and who had gone for delivery of her second child. She had clearly deposed in her evidence the conduct of A1 during cohabitation.

23. It is pertinent to note that immediately after the marriage with P.W.4 within half an hour A1 slapped P.W.4 as his wife based on suspicion. Also, both had gone for employment with the Banian Factory in Tiruppur or Coimbatore, there also A1 went on suspecting the wife's fidelity and attacked her. Her parents had taken her away from matrimonial life. Her parents had supported her. Therefore, there are materials available in the evidence that, if there was no support, she too might have ended her life. Fortunately, her parents had taken her safely in their confines, and she had deposed evidence before the Court coming from her parents house. She had clearly stated that A1 introduced the deceased as his cousin. Subsequently, she came to know that A1 had illicit relationship with the deceased. There is evidence through P.W.1 and P.W.2, relatives of the deceased and P.W.8, father of the deceased, that against the family elders'



objection, the deceased had eloped with A1 and cohabited with him.

Therefore, naturally, elders in the family who had respect for social mores had discarded the deceased for violating social morals. It is natural from our everyday experience that elders who had respect for social customs and morality naturally discard their son or daughter for violating social mores. Here, it is the case that the deceased had eloped with A1, who was already married.

24. It is the contention of the learned Counsel for the Appellant that the Appellant belonged to different community and the deceased belonged to different community. Therefore, the caste outfit of the deceased had pressurized the witness to speak, incriminating evidence against A1 that can be easily rejected by the Trial Court. Still, there is evidence that the wife, who had cohabited with A1. In course of such cohabitation, the conduct of A1 was abusing his wife after consuming alcohol. Therefore, the learned Trial Judge had rightly convicted A1. Also, P.W.5, who had conducted enquiry regarding the cause of death, had stated in his report that the abusing conduct of A1 after consuming alcohol was reported by the witnesses who were examined by P.W.5. It is true that the neighbour of



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A1 who had given statement to P.W.10, had turned hostile in Court. That can be presumed from the angle of the learned Trial Judge why the witnesses turned hostile in Court. P.W.5 who conducted enquiry in which he does not have the power to convict A1. Therefore, witnesses had stated facts which they were aware of and relying on those statements. From the facts, P.W.5 had arrived at the conclusion that the cause of death of a newly married woman within 7 years of the marriage was caused by the abusive conduct of A1 and had given a report based on that. The same witnesses appeared before the Trial Court they were turned hostile since they apprehend attack or threat from A1. Therefore, the Court has rightly assessed the evidence. The Court had not relied on the hostile witnesses. The Court can rely on witnesses, who withstood cross-examination, particularly P.W.4, first wife of A1, and P.W.9, cousin of the deceased. P.W.9, cousin of the deceased, had clearly stated she had attended the marriage function in the house of one Pongiyannan, where she had the chance to meet the deceased where the deceased voluntarily came up to P.W.9 and her mother and opened up, narrating the circumstances that she was facing in her matrimonial life. P.W.9 had clearly deposed that she replied to the deceased, stating that she had chosen to cohabit with A1 and



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therefore, she has to face it with courage. Unfortunately, she died subsequent. P.W.9 had narrated the facts, stating that P.W.9 as well as her mother also wept upon hearing the plight of the deceased expressing the circumstances she was facing in her everyday life while cohabiting with A1. Therefore, the Court can draw adverse inference against A1 from what has been stated by P.W.4 and P.W.9. There are sufficient materials available before the Court that the deceased ended her life unable to bear the abusing conduct of A1. The neighbour of A1 had been examined as P.W.7 and P.W.10 were turned hostile. Just because the neighbours turned hostile, the Court need not acquit A1. There are materials evidence available before the Court on which the Court had relied. The Appellate Court does not have the advantage of observing the demeanour of the witnesses, whereas the learned Trial Judge had the advantage of observing the demeanour of the witnesses as well as Accused.

25. As rightly pointed out by the learned Additional Public Prosecutor, the learned Trial Judge, had on proper appreciation of evidence, acquitted the father of A1, A2 from the charges under Sections 498-A and 306 of IPC and had convicted A1 alone for the offences under Sections



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498-A and 306 of IPC. He had rightly discarded the evidence of P.W.3, who had axe to grind with A1. He had relied on the evidence of P.W.4, first wife of A1; P.W.5-Executive Magistrate, who had conducted inquest over the body of the deceased and enquiry regarding the death of the deceased, a married woman committing suicide within 7 years of marriage; and P.W.9, cousin of the deceased.

26. It is true, as pointed out by the learned Counsel for the Appellant that in the marriage function in the family of one Pongiyannan, P.W.9, is alleged to have met the deceased. The said Pongiyannan was not examined or that the neighbour who had informed the death of the deceased to P.W.9, the said person had not been examined as witness. The benefit of shoddy investigation need not be given to A1. There are materials available before the Trial Court where the Trial Court had believed the version of P.W.4, P.W.5 and P.W.9, who withstood cross-examination, particularly P.W.4, P.W.5 and P.W.9. These three witnesses will be sufficient to convict A1.

27. In the light of the above discussion, the judgment of the learned



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Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode, in paragraphs 17 to 21 is confirmed.

28. The learned Counsel for the Appellant nominated by the Legal Aid Committee is appreciated for her arguments in seeking acquittal for A1.

In the result, the Criminal Appeal stands dismissed. The judgment of conviction and sentence imposed on the Appellant/A1 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode, in S.C.No.57 of 2014, vide impugned judgment dated 17.02.2015, for the offences under Sections 498-A and 306 of IPC is hereby confirmed.

The learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode, is directed to issue warrant to secure the A1 and detain him in prison to undergo remaining period of imprisonment in the light of the judgment of conviction passed in S.C.No.57 of 2014 dated 17.02.2015.



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The Inspector of Police, Kavuthapadi Police Station, Erode District, is directed to secure the Appellant/A1.

Registry is directed to call for compliance report from the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Erode.

The Legal Aid Committee attached to this Court is directed to provide her fees as per the rules that the learned Counsel has been nominated by the Court. Even though she is not a panel lawyer but the Legal Aid Committee shall provide her necessary fees. She has also been recommended to be included as panel lawyer.

15.11.2023

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Index : Yes/No
Speaking/Non-speaking order



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To

- 1.The learned Sessions Judge of Mahalir Neethimandram
(Fast Track Mahila Court),
Erode.
- 2.The Inspector of Police,
Kavuthapadi Police Station,
Erode District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

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