



CrI.A.No.839 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.A.No.839 of 2016

Velmurugan

...Appellant/Accused

-Vs-

The State Rep by
The Inspector of Police
Meensurutty Police Station
Ariyalur District
(Crime No.216 of 2008)

...Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of Cr.P.C.to call for the records and set aside the conviction judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in S.C.No.53 of 2016 dated 15.11.2016.

For Petitioner : Mr. Shanmuga Sundaram
for G.Nirmal Krishnan

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

ORDER

The Criminal Appeal has been filed under Section 374 of Cr.P.C to set aside the conviction judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in S.C.No.53 of 2016 dated 15.11.2016.



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2. The brief facts, which are relevant for disposal of this Criminal

Appeal, are as follows:-

2.1.As per the final report filed by the Inspector of Police, Meensurutti Police Station, before the learned Judicial Magistrate, Jayankondam on 07.08.2009, the Complainant, Mrs.Muthulakshmi, aged 25 years/2008, W/o. Velmurugan (the Accused herein) a resident of Koluthunga Nallur had married the Accused Velmurugan, S/o. Rengasamy three years prior to the occurrence. After the marriage the Accused doubting the fidelity of the Complainant often quarrelled with the Complainant, harassed the Complainant and treated her with cruelty. Due to the continuous harassment by the Accused, the Complainant on 01.07.2008 at about 7.00 a.m. in the morning, poured kerosene on her. The Accused who was present in the scene did not attempt to prevent the Complainant from doing anything untoward. Instead the Accused abetted the Complainant to set herself on fire and handed over her a match box. The Complainant got disappointed and enraged. She refused to receive the match box, instead took a fire wood from the fire and set herself ablaze. The brother-in-law of the injured Complainant, the brother of the Accused, his wife and mother of the Accused took the injured Complainant Muthulakshmi to Government



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Hospital, Jeyankondam. The duty Doctors at Government Hospital, Jeyankondam, referred the injured to Kumbakonam Government Hospital for better treatment. P.W-10 Dr.Radhakrishnan, the duty Doctor at Government Hospital attended the injured Muthulakshmi at Government Hospital, Kumbakonam. He gave intimation to Meensurutti Police Station and also to the learned Judicial Magistrate, Kumbakonam to record the dying declaration of injured Muthulakshmi. The statement of P.W-10-Dr.Radhakrishnan, who had seen the injured and treated her at Kumbakonam Government Hospital, had given intimation to the learned Judicial Magistrate, Kumbakonam to record the dying declaration of the injured Muthulakshmi who suffered burn injuries. P.W-11 Mrs.Jayanthi, the then learned Judicial Magistrate, Kumbakonam, had recorded dying declaration of the injured Muthulakshmi under Ex.P-3. The Complainant was admitted in the Government Hospital at Kumbakonam, while undergoing treatment at hospital, she died of injuries. Based on the information provided by the Doctor at the Kumbakonam Government Hospital to the Meensuritti Police Station, P.W-13 Sub Inspector of Police, Meensuritti Police Station, Mrs.M.Selvamalar had proceeded to Kumbakonam Government Hospital and recorded the oral statement as Complaint of the injured Muthulakshmi, who had suffered burn injuries.



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She had in her statement stated that disgusted with her husband disowning the child born to them, as not born to him, she had committed self-immolation. Based on her statement, P.W-13 Mrs.M.Selvamalar, Sub Inspector of Police, Meensuruty Police Station had registered a case in Crime No.216 of 2008 on the file of the Meensuritti Police Station, for the offences under Section 498A of IPC under Ex.P-6. She sent the recorded oral complaint and the original FIR to the Court of the learned Judicial Magistrate, Jeyankondam and placed the copy of FIR to higher officials including the Inspector of Police and the Deputy Superintendent of Police. Subsequently, the injured Muthulakshmi died. On receipt of death information, the Sub Inspector of Police, Meensurutti Police Station, had altered the charge by including Section 306 of IPC under Ex.P-10 and sent the copy of FIR under Ex.P-6 and alteration report under Ex.P-10 to P.W-12 Revenue Divisional Officer (Mr.A.G.Selvamani) who is the Executive Magistrate to enquire into the death of a married woman within seven years of the marriage and copy of the FIR was also placed before P.W-16 Deputy Superintendent of Police, Ariyalur. P.W-12 Revenue Divisional Officer conducted inquest over the body of the deceased and also conducted enquiry regarding the circumstances leading to the death of Muthulakshmi.



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2.2.From the enquiry conducted by P.W-12 Mr.A.G.Selvamani, Revenue Divisional Officer/Executive Magistrate, he came to know that the deceased died within four years after the marriage. He ruled out the possibility of dowry harassment. He had conducted the inquest over the body of the deceased. He had examined the witnesses and based on the statement of the witnesses, he had come to the conclusion that the deceased died due to harassment meted out to her by her husband and filed his report under Ex.P-4. P.W-16 the Investigation Officer, Deputy Superintendent of Police, Ariyalur, proceeded with the investigation and prepared rough sketch under Ex.P-8 and observation mahazar under Ex.P-7 in the presence of witnesses Raghavan and Mahalingam. The Deputy Superintendent of Police, Ariyalur, had conducted investigation and recorded the statement of the witnesses. The Investigation Officer who conducted investigation at the earlier stage Mr.Chinnayan, the Deputy Superintendent of Police, Ariyalur, died in an accident. Therefore, his successor P.W-16, Haja Moideen, Deputy Superintendent of Police (Prohibition Wing) who was holding Full Additional Charge of the post of Deputy Superintendent of Police, Ariyalur, who was originally the Deputy Superintendent of Police (Prohibition and Enforcement Wing) had completed the investigation and laid the final report. The earlier Deputy Superintendent of Police, Mr.Chinnayan had



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completed the investigation by examining the witnesses recording the statement of witnesses including Dr.Radhakrishnan, P.W-10 who had seen the injured and treated the injured and also who was the Doctor who certified the mental fitness of the injured while the learned Judicial Magistrate, Kumbakonam recorded the dying declaration and also after the death of the injured, who had conducted Postmortem of the body of the deceased and issued Postmortem Certificate under Ex.P-2. P.W-16 Investigation Officer completed the investigation and laid the final report before the Court of the learned Judicial Magistrate, Jeyankondam. The learned Judicial Magistrate, Jeyankondam, had taken the final report filed by P.W-16, Deputy Superintendent of Police, Ariyalur, taking cognizance of the offence under Sections 498A and 306 of IPC and numbered the final report as PRC No.52 of 2009.

2.3.On appearance of the Accused, the copies of the final report were furnished under Section 207 of Cr.P.C. Since the victim of the crime is a woman, the case was made over to the learned Sessions Judge, Fast Track Mahila Court, on committal by the learned Judicial Magistrate, Jayankondam, the Accused was bound over to the Court of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur.



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WEB COPY 2.4. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur,

on appearance of the Accused, after hearing the Prosecution and the defence, framed charges for offence under Sections 498A and 306 of IPC.

The Accused pleaded not guilty and claimed to be tried. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Ariyalur ordered trial.

During trial, the Prosecution had examined 16 witnesses under P.W-1 to P.W-16 and marked 13 documents under Ex.P-1 to Ex.P-13. After closing

of the Prosecution evidence, the Accused was examined by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, under Section 313(1) of

Cr.P.C. regarding incriminating evidence available during trial against the Accused. The Accused denied the incriminating evidence against him.

After hearing the arguments of the Prosecution and the defence, the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, on appreciation of

evidence convicted the Accused for the offence under Section 498A of IPC and acquitted the Accused under Section 306 of IPC. As per the judgment

dated 15.11.2016 the Accused was convicted for offence under Section 498A of IPC thereby sentencing him to undergo Rigorous Imprisonment for

a period of two years and imposed fine of Rs.5,000/- (Rupees Five Thousand Only), in default, to undergo Simple Imprisonment for a period of



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six months.

Aggrieved by the same, the Accused had preferred this Appeal.

3. The learned Counsel for the Appellant submitted that the Appellant is the Accused before the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in S.C.No.53 of 2016. The learned Counsel for the Appellant invited the attention of this Court to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur. The first charge relates to Section 498-A of I.P.C. The second charge relates to Section 306 of I.P.C. As the Accused denied the charges, the learned Sessions Judge, Fast Track Mahila Court, Ariyalur ordered trial. To prove the charge, Prosecution had examined 16 witnesses as P.W-1 to P.W-16 and marked 13 documents as Ex.P-1 to Ex.P-13.

4. The learned Counsel for the Appellant submitted that except P.W-1, all other witnesses turned hostile. The Official witnesses and P.W-1 alone had deposed evidence in support of the Prosecution. Even, the P.W-1 was treated as partly hostile. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur had relied on the depositions of the mother of the victim and convicted the Accused for the offences under Section 498A of I.P.C and



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sentenced to undergo a period of 2 years of rigorous imprisonment and to pay a fine of Rs.5,000/- and acquitted the Accused from the charges under Section 306 of I.P.C.

5. The learned Counsel for the Appellant invited the attention of this Court to the deposition of P.W-1/Mother of the deceased and to her cross examination by the learned Public Prosecutor before the trial Court and the portions of the cross examination on behalf of the Accused. Also he had invited the attention of this Court to the depositions of P.W-2, the brother in law of P.W-1 (Uncle of the deceased). The evidence of P.W-10/Dr.Radhakrishnan who had treated the deceased during her period of stay in the hospital as inpatient. P.W11/the learned Judicial Magistrate had recorded the dying declaration of the deceased. P.W-12/the Executive Magistrate/the R.D.O, Kumbakonam, P.W-13/the Sub-Inspector Selvamalar who had registered the F.I.R under Ex.P-6 and proceeded with the investigation. Subsequently, the investigation was handed over to the Deputy Superintendent of Police/ P.W-16 who laid final report of the investigation.

6. It is the submission of the learned Counsel for the Appellant that



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only based on the evidence of P.W-1 and P.W-2, the learned Judge had arrived at a conclusion thereby recording the judgment of conviction against the Accused for the offences under Section 498A of I.P.C thereby sentencing the Accused to 2 years of imprisonment and fine of Rs.5000/-.

7. The learned Counsel for the Appellant invited the attention of this Court to the discussion of the evidence by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in paragraphs 20 to 28 of the judgment. It is the submission of the learned Counsel for the Appellant that the judgment of learned Sessions Judge, Fast Track Mahila Court, Ariyalur is perverse and is to be set aside.

8. The learned Additional Public Prosecutor vehemently objected to the submission of the learned Counsel for the Appellant stating that the P.W-1 was the most competent witness to speak about the complaint of her daughter who was suspected of her fidelity by the Accused on the date of the occurrence. On 01.07.2008, the Deceased had immolated herself by pouring kerosene on herself and set ablaze. When the Accused was alleged to have given her the match box, she had not accepted it, but she had taken fire wood from the fire to set herself ablaze. Even though the occurrence



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took place on 01.07.2008, she was admitted in Kumbakonam Hospital on 08.07.2008. On which date, the learned Judicial Magistrate recorded the dying declaration of the deceased in the presence of the P.W-10/Doctor.

9. The learned Additional Public Prosecutor submitted that the P.W-10/Doctor who had treated her and identified her to the learned Judicial Magistrate was in the Ward till the completion of the dying declaration and had deposed regarding the same. Also, the learned Additional Public Prosecutor submitted that the P.W-10/Dr.Radhakrishnan himself had conducted the Post mortem over the body of the Deceased and issued Post Mortem certificate under Ex.P-2. Ex.P-3/dying declaration recorded by the P.W-11/Jayanthi. Even though the Deceased had clearly stated the harassment caused by the Husband of the deceased making her to immolate herself which was recorded by the learned Judicial Magistrate/ P.W-11. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur had not relied on the dying declaration under Ex.P-3 and had clearly discussed the evidence of the mother of the deceased stating that the mother of a women is more than a friend. Married women confide or call her and share happiness and difficulties only to their mothers. Therefore the evidence of the mother is found acceptable by the learned Sessions Judge, Fast Track Mahila Court,



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Ariyalur. Particularly, the learned Judge had recorded that P.W-1 had withstood and cross examined. Her evidence inspires confidence.

10. It is the submission of the learned Additional Public Prosecutor that the R.D.O gave a similar report under Ex.P-5. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur had relied on materials incriminating against the Accused from the evidence of P.W-1, P.W-2, P.W-11, P.W-12 and P.W-16. Nothing can be considered as perverse. The well reasoned judgment of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur does not warrant any interference. Only on the basis of the appreciation of evidence, the learned Judge had acquitted the Accused from the charges under Section 306 of I.P.C and had convicted the Accused under Section 498A of I.P.C. Therefore the learned Additional Public Prosecutor prays the Court to dismiss this Appeal as having no merit and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur to be confirmed.

Point for Consideration:



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***Whether the judgment of the learned Sessions Judge,
Fast Track Mahila Court, Ariyalur, in S.C.No.53 of 2016,
dated 15.11.2016, is perverse and is to be set aside?***

11. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor. Perused the materials available before the trial Court through P.W-1, P.W-2, P.W-10, P.W-11, P.W-12 and P.W-16, Ex.P-1 to Ex.P-13 and the judgment of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur in S.C.No.53 of 2016 dated 15.11.2016.

12. On perusal of the judgment, the observation of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur on appreciation of the evidence particularly from the paragraphs 20 to 28 is found well reasoned judgment. Further the learned Sessions Judge, Fast Track Mahila Court, Ariyalur had the advantage of observing the witnesses and Accused. Therefore, the finding recorded by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur is to be given due weightage. The submission of the learned Counsel for the Appellant that the judgment of trial Court is perverse, only on the ground that evidence of P.W-1 cannot be considered as she was treated hostile by the Prosecution. That cannot be a reason to reject



her evidence, even though the witness turned hostile when there are

incriminating materials available, the learned trial Judge has the discretion to

consider the evidence favouring the prosecution. The learned Judge had

appreciated the evidence of P.W-1/ Mother of the deceased, as the deceased

used to confide in her when she was alive regarding her troubles,

difficulties. From the point of view of an ordinary prudent man based on

our everyday experience. On appreciation of the evidence, the learned Judge

relying on the evidence of P.W-1 mother of the deceased particularly the

conduct of the defence in not disputing her evidence incriminating the

conduct of the Accused as Husband of the Deceased for the frequent quarrel

is noted by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur.

In the course of his discussion regarding the witnesses, the learned Sessions

Judge, Fast Track Mahila Court, Ariyalur had observed,

“who else can speak about the cruelty of a married woman other than the mother of the woman. It is quite natural for the married daughters to share their marital pleasures and sorrows with their mother. Mother is like a close friend to married daughters. Mother is the only person on whose lap the daughters will seek solace when they were tormented in the matrimonial house. Mother's house is the only place where the tortured daughters would seek asylum. As such the victim, whose character was doubted, who was beaten up, tortured and harassed by the accused came to her mother P.W-1 and told her everything. P.W-1 had noticed the telltale injuries on the face and fingers of the victim even three



months prior to her death”.

WEB COPY 13. This part of the observation of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur cannot be rejected by any Judge or ordinary prudent man. Therefore the appreciation of the evidence based on the evidence of P.W-1 alone will be sufficient to convict the Accused. Even though, there were materials in the dying declaration incriminating the Husband, the learned Judge had not considered it as she had not spoken about the abetment. She has spoken only about the harassment caused to her by the Accused denying the parentage of his own child which resulted in ending her life. The learned Judge had recorded the finding after acquitting the Accused for the grave charges under Section 306 of I.P.C. Therefore, the submission of the learned Counsel for the Appellant that the judgment of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur is perverse. As P.W-1 was treated partly hostile by the Prosecution, cannot at all be accepted by this Court.

14. On perusal of the judgment, it was considered to be well reasoned judgment. The learned Sessions Judge, that is why he had acquitted the Accused from the grave charge under Section 306 of I.P.C who convicted under lesser charge under Section 498-A of I.P.C. as he had not convicted



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him based on the evidence of P.W-1 for the offence under Section 306 of I.P.C. The materials available before the witness P.W-1 regarding Section 498A of I.P.C, rightly convicted the Accused for the offences under Section 498A of I.P.C. Also the judgment of the learned Judge had recorded the Accused had undertaken to deposit Rs.50,000/- as compensation to the Mother of the deceased.

15. Considered those facts, considering the judgment recorded by the learned Sessions Judge, **the Appeal is partly allowed only regarding the sentence.** Instead of rigorous imprisonment, the Accused is directed to release on Probation of Offenders Act for the period of 2 years. The Appellant/Accused is directed to surrender before the learned Sessions Judge, Fast Track Mahila Court, Ariyalur within a month from the date of uploading of this order.

16. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur is directed to release the Accused on Probation of Offenders Act, with warning that he shall not indulge in violation of good conduct. If there is violation of good conduct during the period of probation then he has to undergo 3 years Rigorous Imprisonment as per the judgment of the learned Sessions Judge,



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Fast Track Mahila Court, Ariyalur. The Accused shall be released on

Probation of good conduct for the period of 2 years.

17. The Accused released on probation shall execute a bond for Rs.10,000/- along with two sureties for a likesum amount each to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Ariyalur. One of the sureties shall be a blood relative. He shall execute a bond under the Probation of Offenders Act, 1958. He shall remain on probation of good conduct under the supervision of the Probationary Officer concerned. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur, shall warn him that if he violates the bond, his probation shall be cancelled and thereby he has to undergo the remaining period of sentence of imprisonment as per the judgment.

18. The learned Sessions Judge recorded that the Accused had on his volition, deposited Rs.50,000/- that will not be sufficient regarding the loss suffered by P.W-1. The Legal Service Authority, Ariyalur shall conduct enquiry and pay appropriate amount as compensation under the Victim Compensation Act. P.W-1 was the victim and the Grandson is also the victim. Both of them shall be paid as per the Victim Compensation Act.



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WEB COPY 19. As per the Victim Compensation Scheme, the Tamil Nadu Victim Compensation Scheme 2013 (G.O.M.S.1055, Home(Police XII) 30.11.2013) for the life of Rs.3,00,000/- is to be paid to the family of the Victim. Here in this case, the Mother is dependent on the Daughter. The Husband of the deceased is the Accused. The judgment of conviction is upheld by the High Court. On the basis of the same Legal Service Authority attached to the District Court, Ariyalur is directed to issue notice to the Complainant/Mother of the deceased and conduct enquiry and appropriate compensation to be paid. As per the schedule attached to the scheme, the Victim shall be paid compensation, the Victim/Mother of the deceased to be paid accordingly after conducting enquiry.

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Index : Yes/No

Speaking/Non-speaking order

To



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1. The Sessions Judge,
Fast Track Mahila Court,
Ariyalur
2. The Public Prosecutor
Madras High Court
3. The Section Officer VR Records,
Madras High Court.

SATHI KUMAR SUKUMARA KURUP, J.,



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