



Crl.A.No.246 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on:27.04.2023

Pronounced on:18.05.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.246 of 2020

Arumugam

.. Appellant

/versus/

State Rep.by
The Inspector of Police,
Anchetty Police Station,
Krishnagiri District.
(Crime No.121 of 2006)

.. Respondent

Prayer : Criminal Appeal has been filed under Section 374 of Cr.P.C., to call for the records and set aside the conviction and sentence imposed in S.C.No.148 of 2007 dated 28.01.2020 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnangiri.

For Appellant :Mr.K.Gandhikumar

For Respondent :Mr.R.Kishore Kumar
Government Advocate(crl.side)



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J U D G M E N T

The appellant, who is the sole accused in C.C.No.148 of 2007 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri, being aggrieved by the judgment of conviction and sentence, dated 28/01/2020 is before this Court.

2. The gist of the prosecution case unveiled through its witnesses and documents is as below:-

PW-1 [Mangammal] is the wife of the accused/appellant [Arumugam]. They were married 13 years ago and have two children. A month prior to the incident, the accused expressed his intention to marry another lady and forced PW-1 to give consent letter for his second marriage. PW-1 refused to sign the consent letter. While so, on 05/08/2016 at about 10.00 a.m, the accused under the pretext of collecting fire wood from Talavadi Forest, took PW-1 to the forest area. After collecting fire wood, at about 2.00 p.m near Mallikodi tamarind tree, PW-1 showed a white paper and forced PW-1 to sign in it. He told her, he is going to marry another lady. When PW-1 refused to sign, the accused slapped her cheek and kicked her hip. When PW-1 fell down, took the knife and hit her head several times saying 'get lost'. Believing that PW-1 is dead, the accused fled away from the scene. Cattle grazers Mathappan [PW-2], Sivasakthi [PW-3]



and Velu [PW-4] saw the accused fleeing and PW-1 lying injured on her head, informed Perumal [PW-5] the brother of PW-1. The injured was taken to the Thenkanikottai Government Hospital by PW-5. Later, the injured was shifted to Dharmapuri Government Hospital. She was treated as inpatient for more than a year and got discharged later.

3. In the hospital, on 08/08/2006 at about 9.00 a.m the statement of PW-1 was recorded by the Head Constable attached to Anjetti Police Station. Based on the statement, the First Information Report in Crime No:121/2006 came to be registered by the Sub Inspector of Police, Anjetti Police Station at about 12.00 hrs under Sections 323 and 307 IPC. The copy of the FIR reached the Judicial Magistrate Court on 09/08/2006 at 3.30 p.m. The accused was arrested near Seretti to Ethaginaru junction bus stand on 09/08/2006 morning at about 9.00 am. Based on his confession statement, the knife M.O.1 used to attack PW-1 concealed under a bush near the scene of crime was recovered under seizure mahazar Ex.P-1, The blood stained soil and soil without blood collected from the SOC sent for serological test. PW-6 and PW-7 are the witnesses for recovery of M.O -1.

4. PW-1 sustained 4 lacerated wounds around the occipital region. The



nature of injuries sustained was opined by the surgeon as simple in nature.

Dr.Poongothai (PW-11), who treated PW-1 and Dr.Pugalenthirajan (PW-8 who gave the opinion) had spoken about the AR copy, wound certificate and discharge summary marked as Ex.P-6, Ex.P-7 and Ex.P13.

5. The Head Constable [Raja] who recorded the statement of the injured PW-1, Santhalingam, the Sub Inspector of Police, Anjetti Police Station who registered the FIR and Akkumaran, the Circle Inspector, who investigated the case were examined as PW-9, PW-10 and PW-12 respectively.

6. The trial Court relying on the testimony of the injured witness PW-1, who is none other than the wife of the accused, which is corroborated by PW-2 to PW-4 held the accused guilty of offences under Section 498(A) IPC and Section 324 IPC. The Court sentenced the accused to undergo 2½ years RI with fine of Rs.1000/- for each of the offences, in default, ordered to undergo 4 months RI. The period of sentence was ordered to run consecutively. The period of sentence already undergone ordered to be set off.

7. The learned counsel for the appellant submitted that, the trial Court



erred in believing the testimony of PW-1, who is the estranged wife of the accused and PW-2 to PW-4, who are the relatives of PW-1. They are not eye-witnesses to the alleged occurrence. Further, he submitted that the alleged occurrence took place in a forest area and the probability of these witnesses being present is not remote. Further, the AR copy [Ex.P-6] indicates that the injured PW-1 was brought to the hospital by one Anand on 06/08/2006 at about 8.00 am. But the time of attack is reported as 12.00 noon on 06/08/2006, which is highly improbable. PW-2 to PW-4 had deposed that on seeing PW-1 with head injuries in the forest area, they took her to her house and handed over her to her brother Perumal (PW-5) and he took her to the hospital. Whereas, in the AR copy entries and PW-11 [Dr. Poongothai] says that PW-1 was brought to the hospital by one Anand, who was not examined by Investigating Officer. The case of the prosecution bristles with infirmities and contradiction regarding the time of occurrence, place of occurrence and the identity of the person, who caused the injuries. No witnesses had spoken about any cruelty to PW-1 by the accused, which is the required ingredient to attract the offence under Section 498 (A) IPC. Likewise, the charge of offence u/s 307 IPC, was found not proved. However, the trial Court has convicted the accused for the offence under Section 324 IPC, even though the medical evidence indicates that the injuries



are simple in nature. Finally, the learned counsel also contended that, strangely the trial Court has ordered the sentences to run concurrently, which is unwarranted and unusual.

8. Per contra, the learned Government Advocate(Crl.Side) for the State, submitted that this is a case of gruesome attack on the wife for refusing to give consent for the second marriage. The harassment to meet his demand for marrying another lady, followed by multiple attack on the head with dangerous weapon proved through PW-1, who is the appropriate person to speak about the cruelty. PW-2 to PW-4 are the cattle-grazers of that village and PW-2 had deposed that on seeing the accused running from the SOC and his clothes soaked in blood, PW-2, PW-3 and PW-4 had rushed to the spot and saw her with head injuries. They rescued PW-1 and took her to her home. PW-5 the brother of PW-1 took her to the hospital. In the AR copy, though the name of one Anand is mentioned as person, who brought the injured, it is not a vital omission on the part of the investigation for not examining the said Anand.

9. Regarding the alleged delay in registering the FIR, the Learned



Government Advocate (Crl.Side) submitted that, the patient who was admitted on 06/08/2006 at 8.00 a.m in the Thenkanikottai Hospital, after first aid treatment, was advised to get admitted in the Head Quarters Hospital at Dharmapuri. Hence, with the referral slip she was taken to the Dharmapuri Hospital on 07/08/2006. Intimation about the medical legal case from the Dharmapuri hospital was sent to the Sub Inspector of police Thenkanikottai on 07/08/2006 at 12.00 noon. Thereafter, Raja the Head Constable (PW-9) went to the Dharmapuri hospital and recorded the statement of the injured, which is marked as Ex.P-1.

10. Heard the learned counsel appearing for the appellant and the learner Government Advocate (Crl.Side) appearing for the State and perused the records.

11. The injured and the assailant are wife and husband. The AR copy and the medical evidence indicate that PW-1 had sustained 4 lacerated injuries on her head. The injured had deposed that it was caused by her husband using the knife which she has identified in the Court and marked as M.O.1. She has also deposed why her husband caused her the said injuries. The seat of attack and



the weapon used, clearly expose the intention of the accused. He had left the SOC after causing this injuries presuming that PW-1 is dead. Due to the timely intervention of PW-2 to PW-4, who had taken her to her home and then got her admitted in the hospital, she had survived.

12. The explanation to cruelty in Section 498 A IPC says, any wilful conduct which is in the nature of causing grave injury or danger to life, limb or health of the woman or harassment of the woman with the view to coerce her to meet any unlawful demand amounts to cruelty. From the testimony of PW-1, the ingredient required for proof of the cruelty is sufficiently available. PW-1 been coerced by the accused to give consent for his second marriage. He had taken her to the forest area under the pretext of collecting fire wood. In the forest, he had forced her to sign the consent letter. When she refused, he slapped her, kicked her and chopped her head. With knife all these facts been spoken by PW-1, who is the victim and no reason for her to fix her husband falsely to the injures found on her body by the doctors PW-8 and PW-11.

13. The Court cannot loose sight of the fact that the incident took place in



the year 2006 and the witnesses, who are rustic villagers been examined in the year 2019, nearly about 12 to 13 years after the occurrence. Even a person with everlasting photographic memory cannot recollect details after lapse of 13 years, while so minor contradictions in the testimony between PW-2 to PW-5 does not matter in this case, more so, when the victim of the crime had vividly spoken about the incident.

14. Considering the reliability of the victims testimony which over weighs the lacuna in the prosecution like delay in registering FIR, delay in forwarding the FIR to the Judicial Magistrate, non examination of Anand all pales to insignificance and those lapses no way impinge the credibility of PW-1 testimony.

15. Accordingly, the judgment of conviction passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri. in S.C.No.148/2007, dated 28.01.2020 is confirmed.

16. Regarding the period of sentence imposed for each offences, taking



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into consideration the long lapse of time to dispose the case both at the trial stage as well as the appellate stage, this Court is of the view that, the same may be ordered to run concurrently, instead of consecutively.

17. Accordingly, with the above modification regarding running of the substantive sentence concurrently instead of consecutively, on all other aspects the trial Court judgment is confirmed.

18. In the result, *this Criminal Appeal is partly allowed with the modification stated as above.*

18.05.2023

Index:yes/no
Speaking order/non speaking order
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To:

- 1.The Sessions Judge, Fast Track Mahila Court, Krishnangiri.
- 2.The Inspector of Police, Anchetty Police Station, Krishnagiri District.
- 3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.



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