



*Crl.A.Nos.231 and 245
of 2014*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.3.2023	DELIVERED ON : 03.3.2023
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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Appeal Nos.231 and 245 of 2014

Rathna

...Appellant in
Crl.A.No.231 of 2014

1.Ravi
2.Puhalendhi

...Appellants in
Crl.A.No.245 of 2014

Vs

State rep.by the Inspector of
Police, D4 Jambajar Police
Station, Chennai-5.

...Respondent in
both appeals

APPEALS under Section 374 of the Criminal Procedure Code
against the judgment dated 07.4.2014 made in S.C.No.279 of 2007 on
the file of the Sessions (Mahila) Court, Chennai.

For Appellant in
Crl.A.No.231 of 2014 : Mr.V.Venkatasamy

For 2nd Appellant in
Crl.A.No.245 of 2014 : Mr.A.N.Rajan



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*Crl.A.Nos.231 and 245
of 2014*

For Respondent in
both the appeals :

Mr.L.Baskaran, GA (Crl.Side)

COMMON JUDGMENT

These criminal appeals have been filed against the judgment and order passed by the Sessions (Mahila) Court, Chennai in S.C.No.279 of 2007, dated 07.4.2014 convicting the appellants for an offence under Section 498-A of the Indian Penal Code (hereinafter called the Code) and sentencing each of them to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo three months simple imprisonment.

2. Crl.A.No.231 of 2014 has been filed by A3.

3. Crl.A.No.245 of 2014 has been filed by A1 and A2. During the pendency of this appeal, A1 died on 16.4.2016 and the death certificate was also produced to substantiate the same. **In view of this development, the appeal in Crl.A.No.245 of 2014 stands abated in so far as A1 is concerned.**



*Crl.A.Nos.231 and 245
of 2014*

4. The case of the prosecution is as hereunder :

(i) One Thamarai Selvi was married to A1 on 30.10.1996.

Through the wedlock, the first girl child was born in the year 1998, another girl child was born in the year 2001 and the third child, which was a male, was born in the year 2006. A2 is the brother of A1 and A3 is the wife of A2.

(ii) A1 used to get inebriated and cause physical and mental cruelty to Thamarai Selvi. According to the father of Thamarai Selvi (P.W.1), she used to complain about this to him on a regular basis through phone. P.W.1 used to come to the matrimonial home of Thamarai Selvi and advise/pacify both Thamarai Selvi and A1. It was alleged that A2 and A3 also used to instigate A1, verbally abuse the Thamarai Selvi on many occasions and cause mental cruelty to her.

(iii) Ultimately, the situation got worse and on 09.2.2007, Thamarai Selvi was said to have been subjected to cruelty by all the three accused persons and she was also asked to go out of the matrimonial home. Not able to take it any more, on 09.2.2007 at about 10 PM, Thamarai Selvi poured kerosene and set herself on fire. She was taken to KMC Hospital and on 10.2.2007, at about 6.45 AM, she was declared dead.



*Crl.A.Nos.231 and 245
of 2014*

(iv) P.W.1, who is the father of the deceased Thamarai Selvi was informed by A1 that Thamarai Selvi had been admitted in the hospital and P.W.1 rushed to the hospital where he found his daughter dead. Thereafter, P.W.1 gave a complaint (Ex.P.1) to P.W.14 and a first information report (Ex.P.8) was registered in Cr.No.278 of 2007 on 10.2.2007 at about 8.30 AM for the offence under Section 306 of the Code. P.W.1 thereafter took away all the children along with him.

(v) P.W.14 took up the investigation and went to the scene of crime at about 9 AM on 10.2.2007 and prepared the observation mahazar and the rough sketch marked as Ex.P.9 and Ex.P.10 respectively. P.W.14 also recovered M.O.1 to M.O.8 from the scene of crime under seizure mahazar marked as Ex.P.11. P.W.14 also recorded the statements of witnesses under Section 161(3) of the Criminal Procedure Code (hereinafter called the Cr.P.C.).

(vi) The investigation was taken over by P.W.15 and he collected all the relevant certificates and documents and laid the final report before the 13th Metropolitan Magistrate, Egmore, Chennai.

(vii) The copies were served on the accused persons under Section 207 of the Cr.P.C., and the case was committed and made over to the file of the Sessions (Mahila) Court, Chennai. The Trial Court



*Crl.A.Nos.231 and 245
of 2014*

framed the charges against A1 to A3 for the offences under Sections 498-A and 306 of the Code. The prosecution examined P.W.1 to P.W.15 and marked Ex.P.1 to Ex.P.12 and identified and marked M.O.1 to M.O.8. The incriminating evidence collected during the course of trial was put to the accused persons when they were questioned under Section 313(1)(b) of the Cr.P.C., and they denied the same as false. The accused persons examined D.W.1 on their side.

(viii) The Trial Court, on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, came to the conclusion that the prosecution had proved the case beyond reasonable doubts against the accused persons for the offence under Section 498-A of the Code and accordingly sentenced the accused persons. In so far as the charge under Section 306 of the Code is concerned, the accused persons were acquitted from this charge. Aggrieved by the same, these criminal appeals have been filed before this Court.

5. I have heard Mr.V.Venkatasamy, learned counsel for the appellant in Crl.A.No.231 of 2014, Mr.A.N.Rajan, learned counsel appearing for the second appellant in Crl.A.No.245 of 2014 and



*Crl.A.Nos.231 and 245
of 2014*

Mr.L.Baskaran, learned Government Advocate (Criminal Side)
appearing for the respondent in both the appeals.

6. The learned counsel appearing for the respective appellants in the appeals submitted that P.W.1 to P.W.4 were all interested witnesses, who had exaggerated the case and made false allegations and that there were contradictions in their evidence. It was further submitted that the evidence of P.W.7, who is elder daughter of the deceased, was heavily relied upon by the Trial Court and a casual reading of the evidence of P.W.7 clearly shows that she is a tutored witness. It was also submitted that the first information report was registered on 10.2.2007 whereas the express first information report reached the Court only on 11.2.2007 at about 5.15 PM and that there is absolutely no reason assigned for such enormous delay. According to the learned counsel, this delay was used to rope in A2 and A3 as accused persons whereas they had absolutely nothing to do with the alleged offence.

7. The learned counsel for the respective appellants further pointed out to the deposition of P.W.14 and contended that the



*Crl.A.Nos.231 and 245
of 2014*

evidence of P.W.1 to P.W.4 went contrary to the evidence of P.W.14 and many of the facts, which were not informed to P.W.14, were spoken for the first time before the Court below. The learned counsel concluded their arguments by submitting that the exaggerated version of the witnesses was rightly taken note of by the Trial Court while acquitting the accused persons from the charge under Section 306 of the Code and that the same yardstick should have been followed and the accused persons should have been acquitted for the offence under Section 498-A of the Code also.

8. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the State submitted that the evidence of P.W.1 to P.W.4 clearly established the fact that the deceased was subjected to cruelty by the accused persons for a long time. That apart, P.W.7, in her evidence, had clearly spoken as to what happened on the fateful day and how the accused persons treated the deceased with cruelty. According to him, this version of P.W.7 was very natural since, admittedly, the deceased was living along with all the other family members of A1 in a joint family set up. Therefore, the role played by A2 and A3 is clearly established.



*Crl.A.Nos.231 and 245
of 2014*

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9. The learned Government Advocate (Criminal Side) further submitted that the Trial Court had taken note of the exaggerated version regarding the incident and acquitted the accused persons from the charge under Section 306 of the Code. However, the available evidence on record shows that the present case falls under Explanation (a) of Section 498-A of the Code and the conduct of the accused persons was of such a nature that it had driven the woman to commit suicide. Accordingly, the learned Government Advocate sought for dismissal of these criminal appeals.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. P.W.1 was the father of the deceased. He, in his evidence, had spoken about the fact that A1 used to cause physical and mental cruelty to the deceased in an inebriated state on many occasions and that he used to pacify both the deceased and A1. P.W.1 further stated that he received a phone call from the deceased on 09.2.2007 at about 10 – 10.30 PM in his mobile phone to the effect that she was being physically assaulted by the accused persons. He further claimed



*Crl.A.Nos.231 and 245
of 2014*

that he received yet another call from his daughter at about 11 PM on 09.2.2007. P.W.14, who initially took up the investigation, in his evidence, had clearly stated that in his investigation, there was nothing to establish that the deceased called anyone after 8 PM on 09.2.2007.

12. P.W.1 had further stated in his evidence that he got a phone call from his granddaughter – P.W.7 around 11.30 PM on 09.2.2007 informing about the incident. P.W.14, in his evidence, stated that in the course of investigation, there was nothing to establish that P.W.7 had called P.W.1 after the incident and that no such statement was made by P.W.1 also when his statement was recorded or when he gave the complaint.

13. It is clear from the above that P.W.1 had come to know about the incident only after he received the intimation from A1 and he came over to Chennai and found the dead body of his daughter in the hospital. In fact, P.W.1, during the cross examination, had stated that he had given a written complaint to one Mr.Murugesan, who was the then Sub-Inspector and in fact, the complaint that was marked as



*Crl.A.Nos.231 and 245
of 2014*

Ex.P.1 was not the complaint, which he had given. In view of the same, there is a complete silence as to what happened to the previous complaint that was given by P.W.1 to the Police.

14. P.W.2 is the brother of P.W.1. He toes the line of P.W.1 and nothing much comes out of the evidence of this witness. The same is the case of the evidence of P.W.3 and P.W.4. P.W.5 claims to be owner of a PCO booth. She deposed that the accused persons are living in the next street and that a 10 year old girl child came to her shop at about 11 PM and wanted to inform her grandparents about the fact that her mother had self immolated. Accordingly, the girl was permitted to get in touch with her grandparents from the PCO shop.

15. The next important witness is P.W.7, who is the daughter of A1 and the deceased Thamarai Selvi. This girl was hardly aged about 8 years when the incident took place and she immediately left along with P.W.1 after the incident. This girl deposed before the Court below nearly after six years from the date of incident. The Trial Court, after ascertaining the mental capacity of P.W.7 to depose before the Court below under Section 118 of the Indian Evidence Act, permitted the girl



Crl.A.Nos.231 and 245
of 2014

to be examined.

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16. A careful reading of the evidence of P.W.7 shows that she had been tutored and she had given an exaggerated version about the entire incident. P.W.7, in her evidence, had gone to the extent of saying that the accused persons had lit fire by pouring kerosene on her mother. This version was found to be false even by the Trial Court. In India, *the principle of 'falsus in uno, falsus in omni bus'* has no application. The Court is expected to separate the grain from chaff and find out the believable portions of the evidence while appreciating the evidence. Even if major portion of the evidence is deficient, the Court can act upon the residue and if it is found to be sufficient, it can be relied upon to punish the accused.

17. Keeping the above principle in mind, this Court wants to carefully consider the evidence of P.W.7. The portions of evidence of P.W.7, which sound natural and believable, are that she was living with her father and mother in a joint family, which also included A2 and A3. On various occasions, A1 had caused physical and mental cruelty to the deceased in an inebriated state. Many times, he indulged in a fight



*Crl.A.Nos.231 and 245
of 2014*

with the deceased.

18. While describing the role played by A2 and A3, P.W.7 had stated that A2 and A3 used to instigate A1 to commit such cruelty. On the date of incident, there were some arguments between the deceased on the one hand and A1 to A3 on the other hand. To this extent, the evidence of P.W.7 can be taken into consideration. All the other portions of the evidence of P.W.7 are highly exaggerated and runs contrary to the statements recorded by P.W.14 during the course of investigation and she had been obviously tutored by her grandparents.

19. P.W.7 had not stated that she called P.W.1 from a telephone booth after the incident, when her statement was recorded by P.W.14. However, she made such a statement before the Court below and the prosecution tried to rely upon the evidence of P.W.6 to substantiate this fact. On an overall appreciation of the evidence of P.W.7, this Court does not find any strong material as against A2 and A3 except for the general allegations made against them. At the best, the evidence of P.W.7 read along with the evidence of P.W.1 would only



*Crl.A.Nos.231 and 245
of 2014*

establish a strong ground as against A1.

20. P.W.12 was the doctor, who examined the deceased and issued the death certificate marked as Ex.P.6. P.W.13 was the doctor, who conducted the post mortem and the post mortem certificate was marked through this witness as Ex.P.7. P.W.13 had taken note of the burn injuries suffered by the deceased, which were recorded to be 100% burns and he had given an opinion to the effect that the deceased would appear to have died of hypovolemic shock due to burns. It is, therefore, clear that the deceased succumbed to the injuries caused due to self immolation.

21. P.W.14 was the Police Officer, who registered the first information report and took up the investigation. He stated in his evidence that it would hardly take 15 minutes to reach the Court. In the instant case, the first information report was registered on 10.2.2007 at 8.30 AM whereas the same reached the Court only on 11.2.2007 at about 5.15 PM. When P.W.14 was questioned about this enormous delay, he was not able to give any explanation for the same. This delay becomes significant since A2 and A3 have been roped in this



*Crl.A.Nos.231 and 245
of 2014*

case and the possibility of deliberation and fixing the accused persons cannot be ruled out. This is more so in the light of the evidence of P.W.1, who talks about giving an earlier written complaint, which never saw the light of the day.

22. The Trial Court took note of the statement recorded from P.W.7 by the Police under Section 161 of the Cr.P.C. It is quite unfortunate that a statement recorded under Section 161 of the Cr.P.C., has been relied upon by the Trial Court even though such a statement is totally inadmissible in law by virtue of Section 162(1) of Cr.P.C.

23. The Trial Court, by relying upon the statement of P.W.7 recorded under Section 161 of the Cr.P.C., had lent support from the evidence of P.W.5 and had come to the conclusion that P.W.7 had informed about the incident to P.W.1 from the telephone booth. It is very difficult to sustain this finding rendered by the Trial Court.

24. The Trial Court had taken note of the material contradictions in the evidence of P.W.7 and doubted the veracity of the evidence of



*Crl.A.Nos.231 and 245
of 2014*

P.W.7. On that ground, the accused persons were acquitted from the charge under Section 306 of the Code. However, the very same evidence had been taken into consideration to punish the accused persons for the offence under Section 498-A of the Code.

25. In the considered view of this Court, as already stated supra, the evidence available on record, at the best, will help the prosecution to sustain the conviction and sentence for the offence under Section 498-A of the Code only as against A1. Sufficient material is not available to convict and sentence A2 and A3 for the said offence since only general allegations were made against them without any strong material or by pointing out to any specific incident, in which, A2 and A3 were involved. Hence, this Court has to necessarily give the benefit of doubt to A2 and A3 and as a consequence, they must be acquitted from the charge under Section 498-A of the Code also.

26. In the light of the above discussions, this Court holds that A2 and A3 can be acquitted from the charge under Section 498-A of the Code. In so far as A1 is concerned, due to his demise during the pendency of the appeal, Crl.A.No.245 of 2014 gets abated as per



*Crl.A.Nos.231 and 245
of 2014*

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Section 394 of the Cr.P.C. To that extent, the judgment and order passed by the Trial Court require interference of this Court.

27. In the result, Crl.A.No.231 of 2014 is allowed. Crl.A.No. 245 of 2014 is also allowed in so far as A2 is concerned. Accordingly, to that extent, the judgment and order dated 07.4.2014 made in S.C.No.279 of 2007 on the file of the Sessions (Mahila) Court, Chennai is set aside.

28. A2 was enlarged on bail by this Court by an order dated 29.4.2014 vide M.P.No.1 of 2014 in Crl.A.No.245 of 2014. Similarly, A3 was enlarged on bail by this Court by an order dated 23.4.2014 vide M.P.No.1 of 2014 in Crl.A.No.231 of 2014. Since A2 and A3 are acquitted from all charges, the bail bonds executed by them shall stand canceled and the fine amount, if any, paid by them shall be refunded to them.

03.3.2023

Index : No
Neutral Citation : Yes

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16/17



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*Crl.A.Nos.231 and 245
of 2014*

N.ANAND VENKATESH,J

RS

To

- 1.The Inspector of Police, D4 Jambajar Police Station, Chennai-5.
- 2.The Sessions (Mahila) Court, Chennai.
- 3.The 13th Metropolitan Magistrate, Egmore, Chennai.
- 4.The Public Prosecutor, High Court, Madras.

COMMON JUDGMENT IN
CRL.A.NOS.231 & 245 OF
2014

03.3.2023