



Crl. Appeal No. 39 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2023

Coram

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal. Appeal No. 39 of 2017

1.Balasubramani
2.Palaniappan
3.Bakkiam

.. Appellants

Vs

State rep. By

The Inspector of Police,
Steel Plant Police Station,
Salem District.

.. Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C to set aside the
order of conviction and sentence passed in SC.No.34 of 2015 dated
12.01.2017, on the file of the Mahila Court, Salem.

For Appellants

..

Mr.A.E.Ravichandran

For Respondent

..

Mrs.G.V.Kashthuri
Addl. Public Prosecutor



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JUDGMENT

The Appellants have preferred the Criminal Appeal as against the judgment dated 12.01.2017 in S.C.No.34 of 2015 passed by the learned Mahila Court, Salem.

2. The learned Counsel for the Appellants submitted that the Appellants herein were convicted by the learned Sessions Judge, Fast Track Mahila Court, Salem in SC.No.34 of 2015 by judgment dated 12.01.2017.

3. The learned Counsel for the Appellants invited the attention of this Court to the charges framed by the learned Sessions Judge, Fast Track Mahila Court, Salem. Charge-1 relates to Section 498(A) of IPC against the Accused 1 to 3. Charge-2 relates to Section 306 of IPC against the Accused 1 to 3. In support of the case, the Prosecution has examined totally 12 witnesses. P.W-1-Raji is the father of the deceased, P.W-2 Samundi is the paternal uncle of the deceased. P.W-3, P.W-4 and P.W-5 are Ramesh, Sureshkumar and



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Ganesan who are the neighbours of the Accused and the deceased respectively. P.W-6 and P.W-7 are witnesses to the observation mahazar and rough sketch prepared by the Investigation Officer. P.W-8 is the Doctor who had performed the autopsy on the dead body of the deceased and issued the post mortem certificate under Ex.P-5. P.W-9 is the Forensic Expert and P.W-10 and P.W-11 are the Investigation Officers who have completed the investigation and laid the final report before the Court of the learned Judicial Magistrate.

4. The learned Counsel for the Appellants submitted that the daughter of the 1st Appellant and the deceased Renuka was examined as D.W-1. The Prosecution had examined 11 witnesses and marked 12 documents. Ex.P-1 Complaint preferred by P.W-1. Ex.P-2 is the signature of P.W-6 only. Ex.P-3 is the observation mahazaar. Ex.P-9 is the rough sketch prepared by the Investigation Officer.



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5. The learned Counsel for the Appellants invited the attention of this Court to contents of the complaint under Ex.P-1 and the FIR under Ex.P-8. It is the contention of the learned Counsel for the Appellants that in the complaint, it is stated that the deceased daughter of P.W-1 had visited her father quite often stating she had quarrelled with her husband and also she demanded money from him. In the complaint nothing is stated incriminating the husband A-1. The FIR was originally registered under Section 174 of Cr.P.C. Subsequently, the charges were altered through Ex.P-11 including the offence under Sections 498(A) and 306 of IPC.

6. It is the further submission of the learned Counsel for the Appellants that P.W-2 is the younger brother of P.W-1 and he is the Vice President of Town Panchayat wherein the residence of the Appellants are situated. After receiving the message over phone by P.W-1, he had rushed straight away to the Police Station and not to the residence of the daughter. Accompanied with the Police Officials, he had visited the residence of the Accused. As per the evidence of P.W-1, he received message from “Oor Gounder”, Shanmugam.



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The said Shanmugam had not been examined as witness by the Investigation Officer. Further, as per his evidence, he received message by 12.00 noon whereas in the FIR it was stated that the occurrence took place at 14.00 hrs at column 3(a) and the case was registered by 16.00 hrs on 26.08.2011. The place where the occurrence took place is 6 kms South East direction from the Salem Steel Plant Police Station, Salem. Therefore, it is the contention of the learned Counsel for the Appellants that there was discussion before registering the FIR. The FIR was belatedly filed after the discussion based on the influence exerted by P.W-2.

7. Further, it the submission of the learned Counsel for the Appellants that P.W-1 and P.W-2 while deposing as witnesses, had made improvements in the 161 statement even prior at the stage of investigation to the Police Officials. During trial, they had improved their version incriminating the Accused 1 to 3 for the death of deceased, the wife of A-1 and daughter-in-law of A-2 and A-3 and the mother of D.W-1 also. The learned Counsel for the Appellants invited the attention of this Court to the portion in the cross

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examination of the P.W-1 and P.W-2, the only witness who support the charges under Section 498A and 306 of IPC. It is the contention of the learned Counsel for the Appellants that the deceased, wife of A-1 and daughter-in-law of A-2 and A-3 was suffering from some mental ailments. She used to pick up quarrel with her husband. That is available in the complaint under Ex.P-1. She used to pick up quarrel with her husband and live with her parents house and returned with her father. The contention of the learned Counsel for the Appellants is that the allegation of dowry harassment is not at all attracted as the marriage between the deceased and A-1 took place 15 years prior to the date of the alleged occurrence and they were living happily and they had three daughters. At the time of occurrence, the eldest daughter of A-1 and the deceased is aged about 11 years who is D.W-1. At the time of Trial, she was aged 16 years studying XI Standard and the second and third daughters were studying 8 & 7 respectively at the time of alleged occurrence.



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8. Further, the contention of the learned Counsel for the Appellants is that the sister of the deceased were not examined and the mother of the deceased was also not examined. It is the contention of the learned Counsel for the Appellants that in the normal course of human conduct, the daughter will share all her pains and sufferings only to her mother and sisters and not to her father and brothers. But, here the female relatives of the deceased were not at all examined by the Prosecution. Therefore, the Court has to necessarily draw adverse inference contrary to the normal human conduct that the sisters or the mother of the deceased were not all examined. The learned Counsel for the Appellants submitted that had they been examined, they could have spilled out the truth and they would not have supported the Prosecution case. Therefore, the Investigation Officer had dropped or avoided to examine and record the statement of the sisters of the deceased and the mother of the deceased. Originally, the complaint was lodged under Ex.P-1 without incriminating A-1. Subsequently, as an after-thought, the provisions under Section 498 A and 306 of IPC were included by alteration report by the Investigation Officer P.W-10. If there had been frequent quarrel between



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husband and wife, the neighbours would be the competent persons to speak about the same. P.W-3 to P.W-5 are neighbours of the A-1 and deceased not supporting the Prosecution case. The mahazar witnesses are also not supporting the Prosecution case. Except P.W-1 and P.W-2 and Investigation Officer and Ex.P-10 and Ex.P-11 evidence alone supporting the charges. The post mortem report under Ex.P-5 does not reveal any external injury on the body of the deceased. It is the evidence of P.W-1 that the Accused used to threaten the deceased to hang on and therefore, on the alleged occurrence date, it is his evidence that the Accused 1 to 3 beaten her and hanged her. Whereas, the post mortem report under Ex.P-5 and Ex.P-6 does not state anything about the external injury. It states that there was no injury on the body of the deceased including the head and skull. Under those circumstances, the evidence of P.W-1 and P.W-2 are unbelievable and not acceptable. Further, the learned Counsel for the Appellants submitted that P.W-2 being a Vice President of the Town Panchayat had influenced the Police Officials to incriminate the Accused as he had dragged out of political clout. There is sufficient material available in the cross examination of P.W-2,



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wherein P.W-2 himself had admitted that the Appellants herein had not voted him or canvassed for him and also the suggestions put to P.W-10 and P.W-11 regarding the influence exerted by P.W-2 on them was denied by them, but they agreed that P.W-2 was the politician and on the date of the alleged occurrence, he was holding the post of Vice President of Town Panchayat.

9. Further, the learned Counsel for the Appellants invited the attention of this Court to the flaws in the investigation. As per P.W-1 he had received information of death of his daughter by 12.00 noon by Oor Gounder Shanmugam. The said Shanmugam is a competent person to speak about the occurrence. He was avoided by the Investigation Officer. Immediately after the occurrence, the said Shanmugam had informed P.W-1, the same information is available to the police also, but they had not lodged the FIR immediately. The FIR was registered only by 16.00 hrs mentioning the time of occurrence as 14.00 hrs. Therefore, the FIR itself is embellished FIR which creates suspicion in the eye of Law and there had been discussion with P.W-2 in registering the FIR belatedly. Therefore, the investigation itself is lopsided.

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They had wantonly avoided the evidence of female relatives of the deceased, because they had not supported the case of the Prosecution.

10. Further, the learned Counsel for the Appellants invited the attention of this Court to the cross examination of P.W-1 and P.W-2. P.W-1 who retired as a Cook from Salem Street Plant, admits that after his retirement, he had been working as a Cook in a private concern. He has a meagre income. He is residing in a poramboke site and all his daughters had been married. The Accused-1 was serving as a Conductor in TNSSTC, Salem Division. P.W-1 in his cross examinations stated that he used to give Rs.2,000/-, Rs.5,000/- etc, to the deceased. Those facts are unbelievable, considering the economic status of P.W-1. P.W-1 claims that he only got the employment for A-1 after getting his daughter married to A-1 is also unbelievable. Considering the facts that he had been a Cook, he does not have any political influence. Only as an after thought, the Section of Dowry Harassment was included in the case as the deceased committed suicide. P.W-3 to P.W-5 had not supported the Prosecution case. Post mortem Certificate and expert opinion of the Doctors

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evidence itself are against P.W-1. In short, there is no evidence available before the Trial Court that immediate to the deceased committing suicide there was provocation from any of the Accused.

11. The learned Trial Judge failed to consider the fact that there is no immediate provocation in the case. In cases of grave crime, the Prosecution has to prove the charges framed against the Accused beyond reasonable doubt as the Accused had to undergo imprisonment for 10 years and above. Under those circumstances, the Court has to be cautious in convicting the Accused merely based on surmises and conjectures. Here except P.W-1 and P.W-2 there is no evidence available before the Trial Court to come to the conclusion that the charges against the Accused had been proved beyond the reasonable doubt. Therefore, the learned Counsel for the Appellants seeks to set aside the judgment of conviction recorded by the learned Trial Judge.

12. The learned Additional Public Prosecutor objects to the submissions of the learned Counsel for the Appellants and invited the attention of this



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Court that the Prosecution proved the case beyond reasonable doubt. The father and paternal uncle are competent persons to speak about the matrimonial dispute. As per the Ex.P-1, he clearly stated that there had been frequent quarrel between the Accused and the deceased and that her daughter used to visit the parents house very often. Prior to the occurrence , one or two months back, she is alleged to have gone to the residence of the parents stating that the Accused 2 and 3 have beaten her and demanded money from her parents. Her father P.W-1 expressed his inability, consoled his daughter and sent her back to the matrimonial home. After reaching home, she had contacted him on phone and stated that they had been abusing her. After few days, she had committed suicide. Therefore, evidence of P.W-1 father alone will be sufficient material to convict the Accused. Further, Additional Public Prosecutor submits that in cases of this nature, neighbours will not support the case of the Prosecution. They remain indifferent. Therefore, nothing surprising that P.W-3 to P.W-5 remained hostile. Further, she admits that after long delay of the occurrence, by the time, the trial commenced, the daughter of A-1 and the deceased was examined as D.W-1. On perusal of her

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deposition, it is clear that she had been under the spell of A-1 to A-3.

13. In the cross examination of D.W-1 by the learned Additional Public Prosecutor, she claims that on the date of alleged occurrence she was in school but she concedes that her father was not going for job. This indicates that she had faced her disciplinary action because of the pending criminal case. The evidence of D.W-1 is to be rejected as she had been under the spell of A-1 to A-3. She claims ignorance about the questions put to her regarding her maternal uncle. Therefore, the Additional Public Prosecutor submits that the evidence of D.W-1 is to be rejected. Further, learned Additional Public Prosecutor submits that nothing is found perverse from the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem, in convicting the Accused. Therefore, the Appeal is to be dismissed as having no merit.

Points for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Salem in S.C.No.34 of 2015, dated 12.01.2017 is to be set aside as



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perverse?

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14. Perused the documents under Ex.P-1 to Ex.P-12 and deposition of the witnesses P.W-1 to P.W-11 and the Judgment pronounced by the learned Sessions Judge, Fast Track Mahila Court, Salem dated 12.01.2017.

15. On perusal of evidence available before the Trial Court, it has been rightly pointed out by the learned Counsel for the Appellants that except P.W-1 and P.W-2 none of the witnesses supported the Prosecution case. Also on perusal of cross examination of P.W-1 and P.W-2, it is found that there are some improvements in the evidence of P.W-1 and P.W-2 in incriminating the Accused-1 regarding the allegation against him under Section 498(A) and 306 of IPC. The Investigation Officer was also cross examined regarding the improvements, that the evidence of P.W-1 and P.W-2 fairly concedes that they had not made such statement as stated in their cross examination or in the Chief examination before the Investigation Officer when they had given statement under Section 161 Cr.P.C. Further, the post mortem report under

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Ex.P-5 and Ex.P-6 does not support the case of P.W-1 who had deposed that his daughter was attacked and hanged by the Accused 1 to 3. In the light of the above and on comparison of Ex.P-1 it is found that the reasons are not known either to P.W-1 or P.W-2. Their evidence is based only on presumption available to them. As rightly pointed out by the learned Counsel for the Appellants that the women relatives of the deceased had not been examined. That is the flaw in the investigation. In the cross examination of P.W-1, he had stated that, he was a Cook employed in Salem Steel Plant and after retirement as a Cook in a private concern, he does not have own house. Therefore, the claim that he used to give money and he only got employment for his Son-in-law A-1, is found unbelievable from the point of view of normal prudent man. As rightly pointed out by the learned Counsel for the Appellants that women will discuss her pain and sufferings to their sister and mother only. Here unusually, the mother and sister of the deceased had not been examined as witnesses. Also along with that, the circumstances under which FIR under Ex.P-8 came into existence creates doubt. The intimation regarding death of his daughter received by P.W-1 Complainant, as per Ex.P-8



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FIR, by 14.00 Hrs noon. FIR was registered only by 16.00 Hrs. Considering the fact that P.W-2 the brother of P.W-1 having political clout, the FIR with delay causes concern that the FIR under Ex.P-8 is embellished. P.W-2 admits in cross-examination that he is a retired Loco Pilot. He contested Panchayat election. The family of the Accused are not supporters of the party to which P.W-2 belong. Therefore, there is political enmity between the families of the Accused and P.W-2. Only at the instigation of P.W-2 FIR under Ex.P-8 filed by P.W-1, who is an illiterate, Ex.P-8 came into existence. Along with that, the non-examination of the mother and sisters of the deceased and the person who gave information to P.W-1 and P.W-2 Oor Gounder having not been examined gives lack of credibility in the version of P.W-1 and P.W-2 alone. Apart from that, the evidence of the Doctor who performed autopsy on the body of the deceased does not corroborate the evidence of P.W-1 and P.W-2. Under such circumstances, as pointed out by the learned Counsel for the Appellants that may be the reason to incriminate the Appellants as an after thought by invoking provisions under Sections 498(A) of IPC.



16. As per the guide lines issued by the Hon'ble Supreme Court, the finding recorded by the Trial Judges shall not be disturbed by the Appellate Judges if it is based on proper appreciation of evidence before the learned Trial Judge. Even though on the same set of evidence a contrary view is possible, the Appellate Judge shall not interfere with the findings recorded by the Trial Judge. As the Trial Judge had advantage of appreciating the demeanour of the witnesses, which benefit is not available to the Appellate Judge. In this case, the learned Trial Judge had rejected the defence highlighted by the learned Counsel for the Defence (Accused) Appellants before the Trial Court. The observation of the learned Trial Judge, that the daughter of A-1, being examined as D.W-1 is under spell of A-1 is to be accepted. At the same time, there are flaws in the evidence of the Prosecution. It is unusual that the Investigation Officer had not at all examined either the mother or sister of the deceased. It is also found that the person who had given message regarding the death of the daughter of P-W-1 Oor Gounder Shanmugam is an important witness. He had not been examined by the Investigation Officer in this case. Therefore, those flaws highlighted by the



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learned Counsel for the Appellants cannot be rejected lightly. In the light of those flaws, that the learned Sessions Judge, Fast Track Mahila Court, Salem believing P.W-1 and P.W-2 alone, convicting the Accused is found to be unacceptable.

17. In the light of the above discussion, the Point for consideration is answered in favour of the Appellants and against the Prosecution. The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Salem in S.C.No.34 of 2015, dated 12.01.2017 is found perverse. Therefore, the same is to be set aside.

In the result, **this Criminal Appeal is allowed.** The judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Salem in S.C.No.34 of 2015, dated 12.01.2017 is set aside. The Appellants are acquitted from all the charges. The bail bonds executed by Appellants are ordered to be cancelled. The fine amount paid, if any, by the Appellants is to

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be refunded.

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18.07.2023

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

To

1.The Sessions Judge,
Fast Track Mahila Court,
Salem.

2.The Public Prosecutor,
High Court, Madras.

3.The Inspector of Police,
Steel Plant Police Station,
Salem District.

SATHI KUMAR SUKUMARA KURUP, J.

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