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Crl.A.No.453 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.453 of 2017
and
Crl.M.P.No.9345 of 2017

Christopher Suresh

...Accused/Appellant

-Vs-

State by
The Inspector of Police,
Erode North 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 Court) Erode, dated 25.10.2016 passed in S.C.No.80 of 2016, in erroneously convicting the Appellant herein under Section 306 of IPC and sentencing him to 10 years rigorous imprisonment and fine of Rs.10,000/- in default to undergo one year simple imprisonment and Section 498-A of IPC sentencing him three years rigorous imprisonment and fine of Rs.5,000/- in default to undergo 6 month simple imprisonment.

For Appellant : Mr.M.Saravana Kumar

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



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J U D G M E N T

WEB COPY This Criminal Appeal is filed challenging the Judgment of Conviction against the Appellant/Accused for the charges under Sections 498-A and 306 of the IPC passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Court) Erode, in S.C.No.80 of 2016 dated 25.10.2016.

2. The Trial Court, vide impugned judgment dated 25.10.2016, in S.C.No.80 of 2016, had convicted the Accused as follows : -

Conviction under section	Sentence awarded
498-A IPC	To undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for six months.
306 IPC	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for one year.

The Trial Court ordered the sentences to run concurrently and has also granted set-off under Section 428 Cr.P.C. for the period of incarceration undergone by the Appellant/Accused during investigation/trial.



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3. The brief facts which are necessary for the disposal of this Criminal Appeal, are as follows:-

The Accused in this case is the Appellant herein. He had married one Christy Rama, who was a resident of Erode. It was a love marriage. The marriage was performed on 21.09.2009 at Sub Registrar Office, Tirunelveli. The marriage even though a love marriage was performed with the consent of elders. After marriage, there had been quarrels between the husband and wife. The Accused/husband was addicted to consume Alcohol and is alleged to have sold ten sovereigns of gold jewels given to his wife by her parents. Also, he is alleged to have borrowed money from people. He had gone to the house of the parents of the wife to seek money to settle the loan borrowed from his friend/acquaintance. Accordingly, the father-in-law of the Accused gave him Rs.8,500/-. Subsequently, the acquaintance of Accused came to the residence of the father-in-law and demanded Rs.40,000/- borrowed by the Accused which was also stated by the father-in-law of the Accused. The Wife and the Appellant/Accused had delivered the female child. After the delivery of the female child, the parents of his wife advised both of them not to borrow money from outside. Instead of heeding the advice of the wife, the Appellant/Accused took his wife and minor child left Erode on 28.08.2010. He had compromised his wife he



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would not drink here afterward. On 29.08.2011 by around 8.30 p.m., at Periyasemur in Erode Door No.5, Christian Road, the Appellant/Accused came home intoxicated. Therefore, there was a quarrel between the husband and wife as the husband followed the promise given to his wife. When the wife objected, he is alleged to have retorted, Yes I will consume alcohol, if you want to live with me, stay with me, otherwise get lost”. Due to this quarrel, the wife of the Appellant/Accused is alleged to have immolated herself. On coming to know about the death of the daughter, the mother of the Accused had given a Complaint. Based on which, the Inspector of Police, Erode North Police Station had registered the case in Cr.No.1285/2010 dated 30.08.2019 for the offence under Section 174 Cr.P.C. Since the deceased married woman died within seven years of marriage, the mandatory procedure of conducting an inquest enquiry by the Executive Magistrate was followed. The Inspector of Police who had registered the case in Cr.No.1285 of 2010 on the file of the North Erode Police Station had forwarded the original FIR and Complaint to the Executive Magistrate/Revenue Divisional Officer for inquest and enquiry as per the Dowry Prohibition Act. The case was originally filed under Section 174 of Cr.P.C. Subsequent to the conduct of enquiry and inquest by the Revenue Divisional Officer, the offence was altered to Section 306 IPC



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under Ex.P-13. Since the death of a married woman within seven years, the investigation was conducted by the Deputy Superintendent of Police, Erode. After completion of investigation, the report of the investigation was filed before the Court of the learned Judicial Magistrate, Erode. The learned Judicial Magistrate had taken cognizance of the offence under Sections 306 and 498 A of IPC and numbered the case as PRC.No.14 of 2013. On appearance of the Accused, copies were furnished under Section 207 of Cr.P.C., and the case was committed to the Court of the learned Principal Sessions Judge, Erode and the Accused was bound over the learned Principal Sessions Judge. On appearance of the Accused and on taking records as PRC.No.14 of 2013, the case was taken on file as S.C.No.80 of 2016 and the case was made over to the Court of the learned Sessions Judge, Fast Track Mahila Court. On appearance of the Accused before the learned Sessions Judge, the learned Judge after hearing the Prosecution and the learned Counsel for the Defence (Accused) had framed charges under Sections 306 and 498-A of IPC. Since the Accused denied the Charges and claimed to be tried, the learned Sessions Judge, Fast Track Mahila Court, Erode had ordered trial. During trial, the Prosecution had examined the Witnesses viz., P.W-1 to P.W-16 and marked documents under Ex.P-1 to Ex.P-13. After conclusion of trial, after hearing the



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argument of the learned Counsel for the Prosecution and the learned Counsel for the Defence, the learned Sessions Judge, by Judgment dated 25.10.2016 in S.C.No.80 of 2016 convicted the Accused for the offence under Section 306 of IPC and sentenced him to undergo the imprisonment for 10 years and fine of Rs.10,000/- in default to undergo one year imprisonment and convicted for the offence under Section 498 A of IPC and sentenced him to undergo three years of imprisonment and pay a fine of Rs.5,000/- in default to undergo six months imprisonment.

4. Aggrieved by the Judgment of conviction recorded against the Accused for the offence under Sections 498-A and 306 of IPC, the Accused before the trial Court had approached this Court by way of filing this Appeal.

5. Learned Counsel for the Appellant submitted that the learned Trial Judge failed to appreciate the defence of the Accused that the deceased had not committed suicide due to dowry harassment.

6. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W.1 - Tmt.Alphonsa, mother of the deceased;



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P.W.2 - Thiru.Premkumar, brother of the deceased; P.W.3 - Tmt.Arogya Mary, relative of the deceased residing in Erode; P.W.4 - Thiru.Suresh, acquaintance of the Appellant/Accused; P.W.5 - Thiru.Saravanan; P.W.6 - Tmt.Sasikala; P.W.7 - Thiru.Vimalraj; P.W.8 - Thiru.Selvam; P.W.12 - Sampath, Special Sub-Inspector of Police, who registered the FIR in Crime No.1285 of 2010 under Ex.P8; P.W.13 - the Inspector of Police, who investigated the case, P.W.14 to P.W.16 all are Investigation Officers.

7. The learned Counsel for the Appellant invited the attention of this Court to the Revenue Divisional Officer, who had conducted inquest and enquiry regarding the unnatural death of the woman within the period of seven years from the date of marriage and the report filed by him under Ex.P-5. P.W-13 in his cross-examination admitted that the mother and the brother of the deceased did not state anything about the dowry harassment in the enquiry.

8. It is the submission of the learned Counsel for the Appellant that invariably witnesses who had been examined on the side of prosecution had in their cross-examination, admitted the defence of the Accused that there was no complaint of dowry harassment during the life time of the deceased.



While so, the learned Trial Judge on the basis of surmises and conjectures had convicted the Accused for the offence under Sections 498-A and 306 of IPC. In spite of the evidence available in the cross-examination of the witnesses cited by the prosecution. Therefore, the learned Counsel for the Appellant submitted that the judgment of the learned Sessions Judge, Magalir Neethimandram (Fast Track Court) Erode, in S.C.No.80 of 2016 dated 25.10.2016 is perverse and is to be set aside.

9. Learned Additional Public Prosecutor by way of reply, vehemently objected to the line of argument to the learned Counsel for the Appellant. The learned Additional Public Prosecutor relied on the evidence of P.W.1 - mother of the deceased, P.W.2 - brother of the deceased, P.W.3 - acquaintance of the deceased, relative of P.W.1, P.W.4 - acquaintance of the Appellant herein. There are sufficient materials to incriminate the evidence against the Appellant herein, which had caused the newly married wife to end her life due to the frequent dowry harassment.

10. The learned Additional Public Prosecutor invited the attention of this Court to Ex.P-5, the report of the Executive Magistrate/Revenue Divisional Officer, who had conducted inquest and also conducted enquiry



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regarding the death of the deceased with the neighbours and relatives of the deceased.

11. The learned Additional Public Prosecutor relied on the statement of the sister of the Accused as well as the brother-in-law of the Accused, who had stated that while the Accused is given to consuming alcohol, there had been frequent quarrel between the Accused and the deceased. The Accused used to borrow money for his business and misuse the same for consuming alcohol. The evidence of P.W.4 is also to that effect. Therefore, the learned Additional Public Prosecutor submits that the judgment of the learned Trial Judge is a well-reasoned judgment, that does not warrant any interference by this Court. This Appeal lacks merit and is to be dismissed, thereby confirming the judgment of conviction and sentence of imprisonment imposed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Court) Erode, in S.C.No.80 of 2016 dated 25.10.2016.

Point for consideration:

Whether the judgment of conviction recorded by the learned Sessions Judge, Magalir Neethimandram (Fast Track Court) Erode, in S.C.No.80 of 2016 dated 25.10.2016 is perverse and



is to be set aside?

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12. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor for the State.

13. Perused the evidence of P.W.1 to P.W.16, Exs.1 to 13 and the judgment of the learned Sessions Judge, Magalir Neethimandram (Fast Track Court) Erode, in S.C.No.80 of 2016 dated 25.10.2016.

14. On perusal of the evidence of P.W.1 to P.W.3, it is found, as pointed out by the learned Additional Public Prosecutor, that there are incriminating materials against the Accused before the Trial Court.

15. As pointed out by the learned Counsel for the Appellant in the cross-examination, particularly P.W.1-mother of the deceased; P.W.2-brother of the deceased; P.W.3-relative of the deceased residing in Erode; P.W.4-Thiru.Suresh, acquaintance of the Accused; P.W.5 also an acquaintance of the Accused; P.W.13-Revenue Divisional Officer/Executive Magistrate, who conducted the inquest over the body of the deceased regarding the unnatural death of the newly married woman within seven years from the date of marriage they had in the cross-



examination conceded the defence of the Accused, i.e., during the life time of the deceased, there was no complaint from the parents or brother of the deceased regarding harassment seeking dowry.

16. As rightly pointed out by the learned Counsel for the Appellant, P.W.4 is unable to state clearly the finance company from which he had availed loan and handed it over to the Accused. From the evidence as highlighted by the learned Counsel for the Appellant there are materials available in the cross-examination of P.W.1 to P.W.5 and P.W.13. Also, the Investigation Officers P.W.14 to P.W.16 in the cross-examination are fairly conceded the defence of the Accused in their cross-examination. In the light of the evidence available in the cross-examination of the witnesses, the learned Trial Judge had not assessed the evidence of the prosecution witnesses in proper perspective while pronouncing Judgment by the learned Trial Judge convicting the Accused for the offence under Section 498-A of IPC is found to be perverse. Then, there is admission in the cross-examination by P.W.1. During the life time of the deceased, there had not been complaint of harassment due to dowry. Therefore, in the light of the materials available in cross-examination of Prosecution witnesses, the conviction under Section 498-A of IPC is found perverse. In the light of the



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same, the conviction and sentence imposed on the Accused for the offence under Section 306 of IPC is also found not acceptable as per the charges framed by the learned Trial Judge. Therefore, the judgment is to be set aside as perverse.

17. The point for consideration is answered in favour of the Appellant and against the prosecution. The Judgment of Conviction recorded by the learned Sessions Judge, Magalir Neethimandram (Fast Track Court) Erode, in S.C.No.80 of 2016 dated 25.10.2016 is found perverse and is to be set aside.

In the result, the Criminal Appeal stands allowed. The conviction and sentence of imprisonment imposed on the Accused/Appellant by the learned Sessions Judge, Magalir Neethimandram (Fast Track Court) Erode, in S.C.No.80 of 2016 by judgment dated 25.10.2016, is hereby set aside. The Accused is to be released if he is not required in connection with any other case. It is reported that the Accused is on bail. Hence, bail bond, if any, executed by him shall stand terminated, and the fine amount, if any paid, may be directed to be refunded to the Accused. The case properties shall be destroyed after expiry of Appeal time. Consequently, connected



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Criminal Miscellaneous Petition is closed.

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Index : Yes/No

Speaking/Non-speaking order

To

- 1.The Sessions Judge, Magalir Neethimandram
(Fast Track Court), Erode.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

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