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CRL.A.No.399 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2024

CORAM :

MR. JUSTICE N.SESHASAYEE

Crl.A.No.399 of 2018

Ravikumar

... Petitioner

Vs.

State by
Inspector of Police
Mantharakuppam Police Station
Cuddalore District
(Crime No.348/2013)

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C. to set aside the judgment of the lower Court in S.C.No.211 of 2014 dated 19.06.2018 on the file of the learned Mahila Court, Sessions Judge, Cuddalore, Cuddalore District and acquit him from the said charges.

For Petitioner : Mr.A.Arasu Ganesan

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)
Assisted by Ms.J.R.Archana



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JUDGMENT

This appeal is preferred challenging the judgment of Mahila Court at Cuddalore in S.C.No.211 of 2014 dated 19.06.2018, whereby the trial Court has convicted the appellant for offence under Section 498-A and 306 IPC, and imposed three years sentence and seven years sentence respectively along with fine.

2. The case of the prosecution runs as below :

- On 25.10.2013 at about 8.00 p.m., a certain Mahalakshmi aged around 34 years attempted suicide by self-immolation. The appellant herein is her husband. He immediately took her to the Government Hospital, Neyveli, as could be seen from Ex.P7, Accident Register. Later, she was removed to JIPMER Hospital, Puducherry, where PW5, the Judicial Magistrate recorded her dying declaration which later came to be marked as Ex.P3.
- On the following morning (26.10.2013), at around 9.00 a.m., PW10 recorded a four paged complaint statement (Ex.P9), based on which he recorded Ex.P10, F.I.R against the appellant



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for offences under Sections 498-A, 506(ii) r/w. Sec.4 of Women Harassment Act. Then, PW11, the Inspector of Police took over the investigation. He visited the scene of occurrence (SOC) and prepared Ex.P11, Observation mahazar, Ex.P12, Rough sketch and Ex.P.13, Seizure mahazar, whereunder he has collected M.O.2 to M.O.7, such as kerosene can, burnt match sticks etc.,

- On 28.10.2013 at around 11.00 a.m., Mahalakshmi succumbed to her burn injuries. Her body was subjected to autopsy by PW6 and she came out with Ex.P5, postmortem report. The visceral parts of her body was subjected to forensic medical analysis and Ex.P4 report of Forensic Sciences Department disclosed that there was no poison or alcohol in the viscera.
- In between, PW11 filed a memo (Ex.P14) before the concerned Judicial Magistrate altering the provisions of offence to Section 498-A, 506(ii) IPC r/w Sec.4 of Women Harassment Act and Section 306 IPC. After completing the investigation, PW11 laid his final report suggesting that the materials he had collected disclose a commission of offence under Section 498-



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A, 354-B, 294(b), 506(ii), 306 IPC r/w Section 4 and 4-B of Women Harassment Act.

- The charges however were framed only for offences under Section 498-A, 354-B, 294(b), 506(ii) and 306 IPC.
- After appreciating the evidence before him, the learned Sessions Judge acquitted the appellant of offences under Section 354-B, 294(b) & 506(ii) IPC, and convicted him only for offence under Section 498-A and 306 IPC, and sentenced him as below :

<i>Offence</i>	<i>Sentence imposed</i>
U/s.498-A IPC	Simple Imprisonment for three years and a fine of Rs.10,000/-, in default to undergo simple imprisonment for six months.
U/s.306 IPC	Simple Imprisonment for seven years and a fine of Rs.25,000/-, in default to undergo simple imprisonment for one year.

This judgment is now under challenge :

3.The learned counsel for the appellant made the following submissions :

- a) According to Ex.P7, the earliest statement ever made in this case by PW8 (doctor at NLC Hospital), the victim was found to have suffered 90% burn injuries. When PW5, the Judicial Magistrate went to JIPMER Hospital for recording the dying



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declaration of the victim, PW9 has certified that she is conscious enough to speak, and she could barely speak few sentences. Whereas Ex.P9 which was recorded few hours thereafter, literally looks like a thesis. It is unbelievable that a person with severe burn injuries could have a clarity of expression to narrate whatever that Ex.P9 narrates.

- b) PW1, the brother of the victim, who admittedly was not in cordial terms with the accused, as there were civil litigations between them, has deposed in his oral testimony that on the date of occurrence (25.10.2013) he had preferred a complaint to PW10, but the prosecution had suppressed it.
- c) Next, PW5, the Judicial Magistrate in his Ex.P3 report has recorded that he had received a request from Mantharakuppam Police Station at 11.30 p.m., on 25.10.2013 for recording the dying declaration of the victim. Taking the testimony of PW1 about him preferring a complaint, alongside with P.W.5s statement, it goes to show that the respondent police knew about the occurrence even prior to 11.30 p.m., on 25.10.2013. This leaves Ex.P9 F.I.R highly shaky and unreliable.



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d) To prove cruelty, prosecution has examined PW4, but he did not help the prosecution case as he chose to speak the truth, but the prosecution has declared him hostile. Nothing was elicited in his cross examination by the prosecution to establish that he was not speaking the truth.

4.Per contra, the learned Government Advocate (Crl. Side) submitted that, even if the testimony of PW1 and PW2, who are the siblings of the victim are discounted, yet there is a testimony of PW3, the twelve year old daughter of the victim. She has testified in her chief examination categorically that her father (the appellant herein) would beat her mother when he was drunk and even when he was not drunk. Vis-a-vis certain properties of her maternal grandmother, her father would beat her mother. This girl lived with her parents and she knew what was happening. After all, the girl is twelve years old and she perhaps is the best witness to speak about the happenings in the house. It might be that Ex.P10, F.I.R. might have been registered belatedly, yet the quintessence of the narration in the F.I.R. is backed by Ex.P3, dying declaration and testimony of PW3.

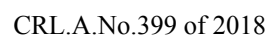


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5. In response, the learned counsel for the appellant submitted that ever since the demise of her mother, PW3 was in the house of PW1 and given the fact that PW1 was inculpatory disposed towards the appellant as is established through some civil litigation, which PW1 had instituted rather unsuccessfully against the appellant, the girl would well have been tutored by him. When the F.I.R. itself is shaky, anything done pursuant to the same becomes unreliable and hence unbelievable.

6. After weighing rival submissions and after carefully considering the evidence on record, this Court finds that the proof in aid of the charge under Section 306 I.P.C. is far too scanty. The dying declaration is cryptic when the declarant of the statement had suffered 90% burn injuries. A dying declaration cannot be a thesis of the entire life of the victim and cannot be an autobiographical sketch of the victim since the declarant would be in imminent danger of death. There is one sentence in Ex.P3 which gives some indication as to the state of affairs that should have prevailed in the house of the victim. It reads: "I would be abused as a bastard always". This sentence reconciles with the evidence of PW3



7. This Court holds that the evidence on record definitely indicates that the appellant indeed has committed an offence under Section 498-A IPC, as his wilful conduct has the potential to lead his wife to commit suicide which she had eventually done.

8. To conclude, the appeal is partly allowed. The appellant is acquitted for offence under Section 306 IPC. With regard to his conviction under Section 498-A IPC, the same is upheld, however, the sentence imposed on him is reduced from three years simple imprisonment to two years rigorous imprisonment excluding the period undergone by him in judicial custody before trial. The fine imposed on the appellant under Section



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498-A would remain unaltered.

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Index : yes / no

Neutral Citation

To

1.The Mahila Court

Sessions Judge

Cuddalore

Cuddalore District

2.The Inspector of Police

Mantharakuppam Police Station

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N.SESHASAYEE, J.



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