



Crl. Appeal Nos.695, 696 and 699 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 29.08.2023

Delivered On : 09.08.2024

Coram

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal Nos.695, 696 and 699 of 2016

Crl.A.No.695 of 2016

1.Settu

2.Arul

.. Appellants/Accused 3 and 4

Vs.

The Inspector of Police,
Veeranam Police Station,
Salem District.

Crime No.8 of 2012

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C seeking to set aside the conviction and sentence imposed on the Appellants by judgment dated 12.09.2016 passed in S.C.No.210 of 2013 on the file of the learned Sessions Judge, Mahila Court, Salem.



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Crl.A.No.696 of 2016

Elumalai (Died) .. Appellant/2nd Accused
(Charge abates against the Appellant
in Crl.A.No.696 of 2016 as per order
dated 03.08.2023 in Crl.A.No.696 of 2016)

Vs.

The Inspector of Police,
Veeranam Police Station,
Salem District.
Crime No.8 of 2012 .. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C seeking to set aside the conviction and sentence imposed on the Appellant by judgment dated 12.09.2016 passed in S.C.No.210 of 2013 on the file of the learned Sessions Judge, Mahila Court, Salem.

Crl.A.No.699 of 2016

Venkatesh .. Appellant/1st Accused

Vs.

The Inspector of Police,
Veeranam Police Station,
Salem District.
Crime No.8 of 2012 .. Respondent/Complainant



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Criminal Appeal filed under Section 374(2) Cr.P.C seeking to set aside the conviction and sentence imposed on the Appellant by judgment dated 12.09.2016 passed in S.C.No.210 of 2013 on the file of the learned Sessions Judge, Mahila Court, Salem.

For Appellants in all cases	..	Mr.V.Karthik Senior Counsel for Mr.R.Nalliyappan
For Respondent in all cases	..	Mrs.G.V.Kashthuri Additional Public Prosecutor

COMMON JUDGMENT

The Appellants/Accused 1 to 4 had preferred these Criminal Appeals as against the judgment of conviction and sentence imposed on them by judgment dated 12.09.2016 made in S.C.No.210 of 2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Salem.

2. The learned Senior Counsel appearing for the Appellants Mr.V.Karthik submitted that the second Accused/Appellant in Crl.A.No.696



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of 2016 – Elumalai died during the pendency of the Prosecution. Therefore, the Appeal against the second Accused/Appellant in Crl.A.No.696 of 2016 may be dismissed as abated.

3. The brief facts which are essential for disposal of this appeal are as follows:-

3.1.The learned Sessions Judge, Fast Track Mahila Court, Salem, framed Charge No.1 which relates to offence under Section 376 (1) of IPC as against the first Accused/Venkatesh; Charge No.2 relates to offence under Section 313 r/w. Section 511 of IPC against Accused Nos.1 to 4; Charge No.3 relates to offence under Section 417 of IPC as against first Accused alone and Charge No.4 relates to Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 as against Accused Nos.1 to 4. When the trial Court framed charges, the Accused denied the charges and claimed to be tried. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Salem, ordered trial. In the trial, the Prosecution had examined the witnesses P.W-1 to P.W-12. P.W-1 is the Prosecutrix/De-



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facto Complainant/Victim. P.W-2 is the father of P.W-1. P.W-3 is the mother of P.W-1. P.W-4 to P.W-7 are the independent witnesses. P.W-8 Doctor who had examined P.W-1 and issued Ex.P-7 certificate. P.W-9 is the Special Sub Inspector of Police, Veeranam Police Station who had registered FIR under Ex.P-8 on the basis o the complaint under Ex.P-1 preferred by P.W-1. P.W-10 is the Forensic Expert. P.W-11 is the Headmaster of the School where P.W-1 studies. P.W-12 is the Investigation Officer who had conducted the investigation and laid final report before the learned Judicial Magistrate, Additional Mahila Court, Salem. The learned Judicial Magistrate, Additional Mahila Court, Salem had taken on file as PRC No.11 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 Sessions Judge, Fast Track Mahila Court, Salem and the Accused were bound over to the Fast Track Mahila Court, Salem.

4. On appearance of the Accused before the Fast Track Mahila Court, Salem, the learned Sessions Judge heard the Prosecution and the learned



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Counsel for the Accused and framed the following charges:

“ 376 (1) of IPC
313 r/w. Section 511 of IPC
417 of IPC
4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998”

Therefore, to prove the charges, the Prosecution had examined 12 witnesses P.W-1 to PW-12 and marked 13 documents Ex.P-1 to Ex.P-13. On the side of the defence one Komalavalli was examined as D.W-1 and one document was marked as Ex.D-1. On assessment of evidence, the learned Sessions Judge, Fast Track Mahila Court, Salem, by judgment in S.C.No.210 of 2013, dated 12.09.2016 had convicted the Accused as follows:

Accused Nos. 1 to 4 were convicted for the offences under Section 313 r/w. Section 511 of IPC and they were sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.2,000/- each, in default, to undergo simple imprisonment for three months. For the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 the Accused Nos.1 to 4 were sentenced to undergo Rigorous Imprisonment for three years and to pay fine of Rs.10,000/- each, in default, to undergo simple imprisonment



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for six months.

5. Aggrieved by the same, the first Accused had filed Criminal Appeal No.699 of 2016, the second Accused had filed Criminal Appeal No.696 of 2016 and the third and fourth Accused had filed Criminal Appeal No.695 of 2016. During the pendency of Appeals, the second Accused/Appellant in Crl.A.No.696 of 2016 died and therefore the appeal against the second Accused abated.

6. The learned Senior Counsel for the Appellants invited the attention of this Court to the evidence of P.W-1. It is a clear case of P.W-1 that she belongs to different caste and the Accused No.1 belongs to different caste. Both were in love for more than 1½ years prior to the alleged occurrence. They represented to their respective families. The family of first Accused objected to the matrimonial relationship with P.W-1. The parents of P.W-1 objected to the matrimonial relationship with first Accused. Since both the families objected to the marriage between the first



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Accused and P.W-1, the first Accused and P.W-1 eloped. They first went to Thanjavur and then Palani. At Palani, they got married and stayed in a lodge. Subsequently, they came to Tiruppur where both were employed and lived as husband and wife for four months. Subsequently, the Accused 2 to Accused 4 came to the place of residence of first Accused and P.W-1. Subsequently, the mother of first Accused used to contact him regularly on his mobile phone and the second Accused directed the first Accused to come to Salem and execute a release deed so that he does not have share in the family property. Accordingly, the first Accused went to Salem and executed a release deed. Subsequently, they stayed in the residence of Accused-3 for some time. The mother of the first Accused prevented him from attending his avocation. Therefore, the first Accused and P.W-1 left for Tiruppur. When P.W-1 was about four months pregnant, the mother of first Accused used to call first Accused and he visited his parents two or three times. After his visit to his mother, the first Accused picked up quarrel with P.W-1 stating that he had lost everything due to his relationship with P.W-1. On a particular day, the Accused-1 to Accused-4



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came to Tiruppur and took the first Accused and P.W-1 forcibly to Salem.

P.W-1 was not willing to accompany them. However, the first Accused forced her to come along with him. On the way, inside the car, Accused-2 to Accused-4 threatened P.W-1 that this is the last time she will be seeing the first Accused. Nowhere she had stated that the first Accused raped on her. She had stated that she herself eloped with first Accused and nowhere in the evidence she had stated that they were not on terms. She had clearly stated that they were living as husband and wife peacefully. In the final portion of her evidence, she had stated that she wanted to reunion with first Accused. In the complaint under Ex.P-1 also, she had stated that she wants to join her husband. In the course of her evidence, she had stated that she had given complaint to Steel Plant Police Station to Veeranam Police Station. That means she had given two complaints in two Police Stations. Since it is a matrimonial dispute, they had not registered FIR. Subsequent to the pressure from higher officials, FIR was registered under Ex.P-8. It is the case of P.W-1 that she was administered with some liquid by P.W-2-Settu for her termination of pregnancy which had resulted in committing the



offence under Section 313 of IPC r/w. Section 511 of IPC. It is her specific case that she had delivered a boy baby who was aged two years on the date of her examination as a witness as P.W-1 before the trial Court. Therefore, automatically the charge under Section 313 r/w. Section 511 of IPC is not at all attracted. Above all, there is evidence before the trial Court through P.W-8 Doctor who had issued Ex.P-7 Medical Certificate on the Ex.P-4 the request of the learned Judicial Magistrate-IV on the requisition of the Investigation Officer under Ex.P-12 wherein it is sated that the foetus is alive – four months pregnancy. Therefore, the charge under Section 131 r/w. Section 511 of IPC is not at all attracted.

7. Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 is usefully extracted hereunder:

"**Section 4:** Penalty for harassment of woman: Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand



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rupees."

8. Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 is attracted only if a woman is harassed in a School, in a Temple, in a public place in in a moving train or moving bus or in moving vessel. Here the case of P.W-1 is that she was harassed by Accused-2 to Accused-4 for severing her relationship with first Accused. Subsequent to the marriage it was converted as a criminal case based on which the Police had registered a case under Sections 376, 417, 313 r/w. Section 511 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. None of the offences are attracted. There is clear evidence of P.W-1 during cross-examination that there had been marital relationship with P.W-1 and first Accused. Therefore, the offence under Section 417 of IPC is not at all attracted. Under the pretext of promise to marry, if first Accused had intercourse with P.W-1 and thereafter did not join her or marry her, Section 417 of IPC is attracted. Here that is not the case. It is her clear evidence that she was living happily with first Accused at Tiruppur and she was four



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months pregnant. Accused-2 to Accused-4 wanted to sever the relationship and threatened her particularly Settu/second Accused is alleged to have administered a liquid for terminating her pregnancy. But that part of incriminating evidence has not been proved. Apart from that, P.W-8 Doctor's evidence is clear that she was four months pregnant and foetus was alive and healthy. Therefore, the claim of administering liquid by second Accused had been falsified. Therefore, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem, convicting Accused-1 to Accused-4 for offences under Section 313 of IPC r/w. Section 511 of IPC is not at all attracted and consequently, the same is found perverse. Similarly, the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 is also not at all attracted. When the learned Sessions Judge, Fast Track Mahila Court, Salem had acquitted the first for the offence under Section 417 of IPC but had convicted the Accused-1 to Accused-4 for the charges under Sections 313 r/w. Section 511 of IPC and also Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

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9. The learned Additional Public Prosecutor appearing for the State vehemently objected to the line of argument made by the learned Senior Counsel for the Appellants. She has placed reliance on the evidence of P.W-1, P.W-2 and P.W-3 and stated that P.W-1 was driven away from matrimonial home by the Accused-2 to Accused-4. Therefore, the evidence of P.W-1 alone will be sufficient to convict the Accused-1 to Accused-4 for the charges under Sections 313 r/w. Section 511 of IPC and also Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. The learned Additional Public Prosecutor further submitted that the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem, dated 12.09.2016 passed in S.C.No.210 of 2013 is a well reasoned judgment which does not warrant any interference by this Court. Therefore, the Appeals lack merits and the same have to be dismissed.



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Point for consideration:

Whether the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem in S.C.No.210 of 2013 dated 12.09.2016 warrants interference of this Court and is to be set aside as perverse?

10. Heard the learned Senior Counsel for the Appellants and the learned Additional Public Prosecutor for the State/Respondent and perused the evidence of witnesses P.W-1 to P.W-12 and Ex.P-1 to Ex.P-13, Evidence of D.W-1 and Ex.D-1 and the judgment of the learned Sessions Judge, Fast Track Court, Salem in S.C.No.210 of 2013 dated 12.09.2016.

11. On assessment of evidence, it is found that the learned Sessions Judge failed to appreciate the facts that the evidence of P.W-1 itself is against her. Her request was to re-union with the first Accused. The complaint is also for re-union with first Accused. The fact that the second Accused Settu administered some substance attempting to terminate her pregnancy had not been proved. If some substance had been administered

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the foetus would not be alive on the date of examination of P.W-1 by P.W-8 who had issued Ex.P-5 medical certificate. Therefore, on that ground alone the charge under Section 313 r/w. Section 511 of IPC is not proved by the Prosecution. The contrary is proved. The P.W-1 had given birth to a male child and the son was two years old on the date of deposition before trial Court. Therefore, the learned Sessions Judge, Fast Track Mahila Court, Salem ought to have acquitted the Accused 1 to 4 from the charges under Section 313 r/w. Section 511 of IPC. Instead the learned Sessions Judge, Fast Track Mahila Court, Salem had convicted the Accused. It is found against the materials available before the Court. Therefore, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem is found to be perverse.

12. Similarly, the framing of charge under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 is not attracted. Here in this case, if the learned Sessions Judge, Fast Track Mahila Court, Salem had instead of framing charge under Domestic Violence Act it would be a



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better charge. As the learned Sessions Judge, Fast Track Mahila Court, Salem had a discretion to frame charge under Domestic Violence Act and order appropriate relief during the learned Judicial Magistrate, Additional Mahila Court for appropriate relief. The evidence of P.W-1 was that she wanted to be re-united with first Accused. Therefore, as rightly pointed out by the learned Senior Counsel for the Appellants, the charge under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 is not at all attracted. In spite of that, the learned Sessions Judge, Fast Track Mahila Court, Salem had convicted the Accused. Therefore, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Salem is found perverse and the same is to be set aside.

13. 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 the learned Sessions Judge, Fast Track Mahila Court, Salem in S.C.No.210 of 2013 dated 12.09.2016 is set aside.



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In the result, **the Criminal Appeal Nos.695 and 699 of 2016 are allowed** and the Accused 1, 3 and 4/Appellants are acquitted from all the charges. The judgment of conviction and sentence imposed on the Accused 1, 3 and 4 by the learned Sessions Judge, Fast Track Mahila Court, Salem in S.C.No.210 of 2013 dated 12.09.2016 is set aside. As the second Accused/Appellant in **Crl.A.No.696 of 2016 died during pendency of this appeal, this appeal is dismissed as abated.** The bail bonds, if any, executed by the Appellants shall stand cancelled and the fine amount, if any paid, shall be refunded to them.

09.08.2024

srm

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Salem.
- 2.The Additional Public Prosecutor,
Madras High Court, Chennai.

Judgment made in
Criminal Appeal Nos.695, 696 and 699 of 2016