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.CrI.A.No.672 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 01.11.2023

Delivered On : 17.04.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.A.No.672 of 2018

Velan

... Appellant/Accused-1

Vs.

State Rep. By
The Inspector of Police,
All Women Police Station,
Arni,
Thiruvannamalai District.
(Cr.No.385/2016)

... Respondent/Complainant

PRAYER: Criminal Appeals filed under Section 374(2) of Cr.P.C., to set aside the Judgment and Conviction passed in S.C.No.65/2012 dated 20.07.2018 on the file of the learned Judge, Fast Track Mahila Court, Thiruvannamalai.

For Appellant : Mr.B.M.Subash
For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor



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ORDER

This Criminal Appeal has been filed to set aside the Judgment of conviction passed by the learned Additional Sessions Judge, Fast Track Mahila Court, Thiruvannamalai in S.C.No.65/2012 dated 20.07.2018.

2. The Appellant is arrayed as A-1 in S.C.No.65 of 2012 on the file of the learned Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai. Accused-2 is the Mother of Accused-1. Accused-3 is the Sister of Accused-1

3. The learned Counsel for the Appellant invited the attention of this Court to the charges framed against the Accused-1 to Accused-3 by the learned Assistant Sessions Judge, Arani, Tiruvannamalai District in S.C.No.65 of 2012. Subsequently on the formation of the Fast Track Mahila Court in Tiruvannamalai, the case in S.C.No.65 of 2012 was withdrawn from the learned Assistant Sessions Court, Arani and transferred to the file of the learned Additional Sessions and Fast Track Mahila Court, Tiruvannamalai.



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3. Accused-1 to Accused-3 were framed charges for the offences under Sections 498(A), 323, 324, 342 and 307 of IPC. Since Accused-1 to Accused-3 denied charges, the learned Additional District and Sessions Judge, Fast Track Mahila Court, Tiruvannamalai ordered trial. During trial, Prosecution had examined 9 witnesses and marked 10 documents. The Town Secretary of Kamakoor Village/D.W-1 had been examined by P.W-1 regarding all the allegation with the Accused-2 and Accused-3. They had alibi at the alleged time of occurrence. They were engaged as daily wage labourers by the Town Panchayat. D.W-2 is Doctor Jayaprakash, who examined the Accused-1, who had suffered injuries at the evidence of the brothers of P.W-1.

Brief facts of the case are as follows:

4. Accused-1 married the De-facto Complainant in the year 2005. In the course of their Matrimonial life, she became pregnant. Subsequently, she suffered abortion in which caused her to suspect the character of the Accused-1. Accused-1 was serving in the Army.



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Subsequent to the marriage, he had taken his wife/P.W-1 to Bhopal where he was posted. After the wife of Accused-1 becomes pregnant, she was sent back to her Mother's house. Since she suffered abortion, she started picking up quarrel with Accused-1. When the Accused-1 had visited the native place to see his wife, the Brothers of his wife (There are 7 brothers) joined together picked up a quarrel with the Accused-1 and attacked him brutally. Therefore, he got admitted to the Government Hospital on 17.02.2010.

5. As per Ex.D-3-Wound Certificate, since the wife of Accused-1 was aware of the fact that he had been admitted to the Hospital on 17.10.2010 and undergone treatment as a counter blast she herself got admitted to the hospital on 18.02.2010. From the Hospital bed, she alleged to have given oral complaint to the P.W-8/Sub-Inspector, All Women Police Station, Arni, who had recorded the Complaint. Based on which, the case in Crime No.2/2010 of All Women Police Station, Arni was registered by her. P.W-8 had proceeded with the preliminary investigation. Subsequently, she had handed over the investigation to the Inspector of Police/P.W-9, who had filed the Final Report.



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6. The learned Counsel for the Appellant submitted that P.W-1 is the wife of Accused-1. P.W-2 is the mother of P.W-1. P.W-3 and P.W-4 are the Mahazar witnesses. P.W-5 and P.W-6 are the Brothers of P.W-1, P.W-7 is the Doctor, who had examined P.W-1 and issued Accident Register under Ex.P-6. The Mahazar witnesses viz., P.W-3 and P.W-4 had turned hostile.

7. The learned Counsel for the Appellant invited the attention of this Court to the charges framed by the learned Assistant Sessions Judge, Arni and the Judgment recorded by the learned Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.65 of 2012.

8. It is the contention of the learned Counsel for the Appellant that based on the Defence Witnesses viz., D.W-1 and D.W-2, the learned Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai had acquitted the Accused-2 and Accused-3 and had convicted the Accused-1 for the offences under Sections 324, 498(A) of IPC alone. Regarding other charges, he was acquitted.



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9. It is the contention of the learned Counsel for the Appellant that the oral evidence of P.W-1 not supported by the Documentary evidence under Ex.P-6. Also, it is the contention of the learned Counsel for the Appellant that the learned Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai had in his judgment discussed about the charge against Accused-1 under Section 498(A) of IPC as though the Accused-1 had teased P.W-1 that she could not be treated as his wife and had planned to marry another woman. In the judgment, the learned Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai discussed the fact that the Accused-1 had married one Reena and living as husband and wife. There is no evidence through the P.W-1 and P.W-2, P.W-5 and P.W-6. No such incriminating materials were put to the Accused-1 during the questioning of Accused under Section 313 of Cr.P.C. Therefore, Accused-1 had been aggrieved as under Section 313 of Cr.P.C., no particulars attracting Section 498-A of IPC was put to him under incriminating circumstances. The learned Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, without any material put to him had convicted the Accused for the offences under Section 498(A) of IPC. Therefore, the



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same is to be set aside as perverse.

10. Also regarding the allegation under Section 324 of IPC that the Accused-2 and Accused-3, the Sister and Mother of the Accused-1 had been acquitted and the same acquittal should be extended to the Accused-1 also. In support of his contention, the learned Counsel for the Appellant relied on the following decisions:-

(i) in the case of, **CDJ 2023 SC 842 Para 17 in Javed Shaukat Ali Qureshi -vs- State of Gujarat**, in which the Supreme Court has observed as follows:

“Accused nos. 1,5 and 13 were convicted only on the basis of the testimony of PW25 and PW26. They were acquitted by holding that the testimony of both witnesses was unreliable and deserved to be discarded. If the same relief is not extended to accused nos. 3 and 4 by reason of parity, it will amount to violation of fundamental rights guaranteed to accused nos. 3 and 4 by Article 21 of the Constitution of India. Therefore, we have no manner of doubt that the benefit which is granted to accused nos. 1,5 and 13 deserves to be extended to accused nos.3 and 4, who did not challenge the judgment of the High Court. In this case, the suo motu exercise of powers under Article 136 is warranted as it is a question of the liberty of the said two accused guaranteed by Article 21 of the Constitution”.



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(ii) In the case of **CDJ 2022 SC 1353 Para 23** in **Kalicharan & Others -vs-State of Uttar Pradesh** in which the Supreme Court has observed as follows:

“Now coming to the facts of the case, not only that a charge was not framed on the allegation that the death of Harpal Singh was caused due to assault physically made by the accused and in particular accused nos.1,2 and 4 by use of sharp weapons, a misleading charge was framed that Harpal Singh died due to bullet injuries sustained by the bullets fired by the accused no.2 with a pistol in his hand. There is every possibility of the accused getting misled due to the framing of such a charge and omission to frame the correct charge. What is more serious is that though the prosecution case made out during the trial clearly indicated that the death of Harpal Singh was not caused due to any bullet injury, the circumstances put to all the accused under Section 313 was that th death of Harpal Singh was caused due to four to five shorts fired by accused no.2 by a country-made pistol. In fact, question no.5 in the statement of the accused under Section 313 clearly records that the bullets fired by accused no.2 hit Harpal Singh and he died on the spot. As can be seen from the oral evidence, the postmortem reports and examination of the doctor. Harpal Singh did not receive any bullet injury. Still, the said allegation was put to all the accused in the examination under Section 313. Thus, not only that the charge framed was misleading, but most material circumstance brought on record against the accused in the evidence that Harpal Singh died due to injuries caused by the attack made by accused nos.1,3 and 4 was not put any of the accused. Thus, not only that the charge was misleading but the accused had no opportunity to explain the circumstance in which Harpal Singh was allegedly



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killed which was brought on record during the trial. Therefore, in the facts of the case, by reason of omission to frame a proper charge in terms of Section 213 of CrPC, and by reason of not putting important circumstances appearing in the evidence in the statement under Section 313 caused serious prejudice to the accused. The prejudice, in the facts of the case, has occasioned a failure of justice”.

(iii) In the case of **CDJ 2016 SC 456** in ***Bhagwan Sahai and another -vs- State of Rajasthan***

(iv) In the case of **CDJ 2021 SC 955** in ***Arvind Kumar @ Nemichand & Others -vs- State of Rajasthan.***

Therefore the learned Counsel for the Appellant seeks to set aside the conviction recorded by the learned Sessions Judge, Fast Track Mahila Court.

11. The learned Additional Public Prosecutor by way of reply vehemently objected to the line of arguments of the learned Counsel for the Appellant. It is the contention of the learned Additional Public Prosecutor that the P.W-1 had narrated the entire facts which was corroborated by the other witnesses, particularly P.W-5 and P.W-6,



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Brothers and P.W-2 Mother. The contents of the Complaint under Ex.P-1 had been clearly narrated by her/P.W-1 which was corroborated by her Mother and Brothers. The learned Additional Sessions Judge, Fast Track Mahila Court had on proper appreciation of evidence, acquitted the Accused-1 from the charges under Sections 323, 307 and 342 of IPC and also acquitted the Mother and Sister of Accused-1 from all the charges. Therefore, the Judgment of the learned Sessions Judge, Fast Track Mahila Court in S.C.No.65 of 2012 dated 06.07.2018 is a well reasoned Judgment. It does not warrant any interference by this Court. This Appeal lacks merit and is to be dismissed.

Point for consideration:

Whether the Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.65 of 2012 dated 20.07.2018 is to be set aside as perverse?

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



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13. Perused the deposition of witnesses viz., P.W-1 to P.W-9, documents under Ex.P-1 to Ex.P-10 and the deposition of defence witnesses viz., D.W-1 and D.W-2 and Ex.D-1 to Ex.D-3.

14. Perused the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai.

15. It is the case of the defence that P.W-1 is the wife of A-1. A-1 was serving in the Indian Army at Bhopal. After the marriage, P.W-1 and A-1 were living as husband and wife in Bhopal. When she was pregnant, P.W-1 was sent to her mother's place where she had suffered an abortion. After the abortion, she suspected A-1 for the same and picked up a quarrel with A-1. When A-1 visited P.W-1 on his leave, the mother, sisters and brothers of P.W-1 had picked up a quarrel with A-1. In the course of the quarrel, the relatives of P.W-1, particularly, the mother, sisters and brothers of P.W-1 joined together and attacked Accused-1 which caused injuries to him. Therefore, he went to the Hospital. Considering the nature of the injuries, he was admitted to the Hospital at Arni Government Hospital, Tiruvannamalai. Suspecting that any



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complaint from A-1 will result in the registration of a Criminal case against P.W-1 and her brothers and sisters, P.W-1 herself went to hospital and was admitted in the Hospital. Based on the complaint of P.W-1, this case was registered. During the course of the trial, the Accused was able to prove his case by marking the wound certificate issued from Arni Government Hospital, Tiruvannamalai as Ex.D-3 which had probablised the case of the defence. Still, the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai had convicted the Accused, the Prosecution has to explain the injuries caused on the Accused. It was not done so. Therefore, the conviction under Sections 498 A & 324 of IPC against A-1 is to be treated as perverse.

16. The learned Judge while discussing the evidence stated that P.W-1 and her mother/P.W-2 deposed that A-1 had developed an illicit relationship with a lady, who was living opposite her house. P.W-1 states the name of the lady is Reena. P.W-2-mother of P.W-1 states that her name is Shakila and based on their evidence, the learned Judge had convicted the Accused/A-1 for the offence under Sections 498 A and 324 of IPC. When one of the witnesses had stated the name of the lady as



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Reena and another had stated as Shakila. It is to be construed as a fertile imagination, if it had been so, it would have been stated in the Complaint under Ex.P-1 which is the earliest document.

17. On perusal of the charges framed by the learned Assistant Sessions Judge, Arni in S.C.No.65 of 2012, it is found that the fact of an illicit relationship of A-1 with another woman attracting the charge under Section 498 A of IPC is not found proper. As per the Charge under Section 498 A of IPC, A-1 to A-3 are alleged to have caused cruelty on P.W-1 on the ground that after one year, she had not delivered a child. Therefore, A-2 and A-3 are alleged to have threatened the wife of A-1 that they will arrange the marriage of A-1 with another girl thereby A-1 to A-3 are alleged to have caused mental and physical torture to the wife of A-1 attracting the offence under Section 498 A of IPC. Whereas in the Judgment of conviction against A-1, the learned Judge had arrived at a conclusion based on the evidence of P.W-1/wife of A-1 and P.W-2- mother in law of A-1 that A-1 had developed an illicit relationship with a woman living in the opposite house and subsequently, married her and through her, a child was born which had attracted the offences under Section 498



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A of IPC. This is found to be contrary to the charges framed under Section 498 A of IPC. Also, it is to be noted that A-2 and A-3 had been acquitted from the very same charge. If that be so, the same had to be extended to A-1 as per the reported ruling relied on by the learned Counsel for the Appellant in ***CDJ 2023 SC 842 in the case of Javed Shoukath Ali Qureshi Vs. State of Gujarath.***

18. Also, in the light of Ex.D-3 which was marked through the evidence of D.W-2-Dr.Jayaprakash, the Prosecution had not fairly placed all the relevant materials before the Court under Ex.D-3. The Prosecution failed to explain the injuries on the Accused on 17.02.2010. Therefore, the defence of the Accused through D.W-1 and D.W-2 probablised the case of the Accused. It was not a fair investigation. Based on the unfair investigation, charges were framed but the charges were not proved. It is the case of the Prosecution that the conduct of A-1 and his mother and sister viz., A-2 and A-3 had attacked P.W-1 whereas the evidence proved through defence evidence of D.W-1-Panchayat President that mother/A-2 and sister/A-3 were not present in the house and they were working under the MGNRGEAS and the same was marked as Ex.D-1 and Ex.D-2.



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Therefore, the learned Judge did not believe the evidence of P.W-1 and acquitted A-2 and A-3. In the light of the ***Javed Shoukath Ali Qureshi Judgment***, when the learned Judge had arrived at such conclusion on the same set of evidence, A-1 also ought to have been acquitted. Instead what was not found in the charge was relied on by the learned Judge to convict A-1. Based on the evidence of P.W-1 and P.W-2, it is to be treated as fertile imagination. The incriminating evidence attracting 498-A of IPC was not raised by the Court while the Accused was questioned under Section 313 of Cr.P.C.,. Also, it is stated in the discussion that P.W-8, who registered the case had stated that she received a Complaint under Ex.P-1 from P.W-1 in the Station whereas P.W-1 had in her evidence stated that she gave a Complaint from the Hospital bed. Ex.P-6 is the Accident Register of P.W-1, it is dated 18.02.2010. It is one day, after the alleged date of occurrence. The Prosecution had suppressed the Complaint given by A-1 and had not quoted on the complaint and taken it to its logical conclusion. Therefore, the investigation itself is not fair. Based on the unfair investigation, charges had been framed and in the trial, new materials had been recorded by the learned Sessions Judge. If that be so, the incriminating material regarding A-1 had developed an



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illicit relationship with another woman living in the opposite house by name Reena as per P.W-1 and Shakila as per P.W-2 ought to have been put to him in the proceeding under Section 313 Cr.P.C., and explanation for the same could have been offered by him. Instead he was taken by surprise by the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in arriving at a conclusion that the conduct of A-1 had attracted the offence under Section 498 A of IPC having an illicit relationship with another woman. The name of the woman differs as per the evidence of P.W-1 and P.W-2. The same was not put to the Accused regarding incriminating material and seeking his explanation for the incriminating evidence. Therefore, from the point of view of ordinary prudent man, what had been stated by P.W-1 and P.W-2 ought to have been rejected outright. As per Ex.P-10-FIR registered based on the Complaint of P.W-1, she claims that the mother and sister of A-1 tortured her by dashing her head on the iron trunk box given to Military Jawans which caused injuries on her head. Therefore, she was admitted to the Hospital on 18.02.2010. From the Hospital bed, she had given a Complaint. Based on which, Ex.P-10-FIR registered in Cr.No.2 of 2010 on the file of the Arni, All Women Police Station. The evidence of P.W-1



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is found false. From the evidence of D.W-1 who had produced the attendance register of A-2 and A-3 viz., mother and sister of A-1. Further, it is found that the injuries caused on A-1 is on 17.02.2010 whereas Ex.P-6-Accident Register copy of P.W-1/wife of A-1, dated 18.02.2010. The evidence of P.W-8 states that she had recorded the oral statement of P.W-1 at All Women Police Station, Arni. Whereas FIR under Ex.P-10 states it was recorded from the Hospital bed. Also, it is found that the Accident Register of injured P.W-1 is dated 18.02.2010 under Ex.P-6 whereas Wound Certificate issued to A-1 is 17.02.2010 which is one day prior to the alleged date of occurrence. Therefore, the submission of the learned Counsel for the Appellant that A-1 having undergone treatment in the Government Hospital, Arni, had been investigated regarding the accident against the brothers and sisters of P.W-1. Suspecting the same, P.W-1 brought herself admitted to the Hospital. It is found probable, the injury caused on A-1 is one day prior to the alleged date of occurrence as per P.W-1. However, the claim of P.W-1 is found to be false. On appreciation of evidence of D.W-1 who had produced the Attendance Register under Ex.D-1 and Ex.D-2 of A-2 and A-3, they are attending the work under MGNREGS. Therefore, the charge regarding A-2 and A-3 attacked P.W-1



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with iron rod and hit her head on the iron trunk box given to Military Jawans causing injuries on the head and also tied her with rope. So that she is murdered, had not been proved before the Court. When that Charge had not been proved convicting A-1 on the evidence of P.W-1 that A-1 had developed an illicit relationship with the person by name Reena as per the Wife of A-1, by name Shakila as per mother in law of A-1 ought to have been disbelieved which was not found in the Complaint under Ex.P-1. Further, the incriminating statement regarding an illicit relationship was not extended to the Accused when that was not put to him under Section 313 Cr.P.C., convicting the Accused/A-1 on that material is found unacceptable. In the principles of a fair trial, guaranteed under Article 21 of the Constitution of India as per the reported ruling cited by the learned Counsel for the Appellant in **CDJ 2022 SC 1353** in the case of **Kalicharan & Others -vs-State of Uttar Pradesh**, on appreciation of evidence of D.W-1, who had produced the Attendance Register under Ex.D-1 and Ex.D-2 of A-2 and A-3 when they are attending the work under the MGNRGEAS, the charge regarding the offence attracts A-2 and A-3 attacked P.W-1 with iron rod and hit her head on the iron trunk box given to Military Tawans causing injuries on



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the head and also tied her with rope. So that she is murdered. That charge had not been proved before the Court. When the evidence of P.W-1 is found false particularly in the light of evidence of D.W-1 and the evidence of D.W-1/Doctor had marked Ex.D-3 which date is prior to the date of Ex.P-6. The learned Judge ought to have rejected the evidence of Prosecution witnesses and acquitted the Accused. Therefore, the conviction under Sections 498 A and 324 of IPC recorded by the learned Sessions Judge, Fast Track Mahila Court against A-1 is found perverse. From the materials available before the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai, under those circumstances, this Appeal is allowed. The Judgment of the learned Sessions Judge, Fast Track Mahila Court convicting the Accused for the offence under Section 498 A and 324 of IPC are set aside.

20. In the light of the above discussions, point for consideration is answered in favour of the Appellant and against the Prosecution. The Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.65 of 2012 dated 20.07.2018 is to be set aside.



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In the result, ***this Criminal Appeal is allowed.*** The Judgment of Conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai in S.C.No.65 of 2012 dated 20.07.2018 is set aside. The bail bond executed by the Appellant/A-1 before the learned Sessions Judge, Fast Track Mahila Court, Tiruvannamalai shall be cancelled and the fine amount imposed on the A-1 for the offence under Sections 498 A and 324 of IPC shall be refunded to A-1.

17.04.2024

shl/dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate - II,
Vridhachalam.
2. The Sessions Judge,
Fast Track Mahila Court,
Cuddalore.
3. The Inspector of Police,
All Women Police Station,
Vridhachalam,
Cuddalore District.
4. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

shl/dh

Pre-delivery Order made in
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