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Crl.A.No.788 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.788 of 2018

Prasanth

... Appellant / Accused No.1

Vs.

The Inspector of Police
Mettur Police Station
Salem District.
(Crime No.916/2013)

... Respondent / Complainant

Prayer : Civil Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the conviction under Section 306 of IPC and the consequent sentence imposed by the learned Mahila Court at Salem by the judgment and order dated 20.11.2018 in S.C.No.325 of 2014 and set the appellant at liberty.

For Appellant : Mr.N.A.Ravindran

For Respondent : Dr.C.E.Pratap
Government Advocate [Crl. Side]



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JUDGMENT

This appeal is preferred by the first accused challenging his conviction as well as the sentence imposed on him for offence under Section 306 IPC in S.C.No.325 of 2014 on the file of Mahila Court, Salem, vide its judgment dated 20.11.2018.

2. The story line of the prosecution case may be summarised as below :

- On 25.09.2013, at about 5.00 p.m., a certain 'K' aged 18 years set fire upon herself and was seriously injured. She was unmarried. The occurrence had taken place at her house. She was immediately removed to Government Hospital, Mettur by her parents where she was received at Emergency ward by P.W.7, doctor.
- Vide Ext.P2 referral request 'K' was removed for better treatment to Dr.Mohan Kumaramangalam Medical College Hospital, Salem. There P.W.10 Judicial Magistrate recorded Ext.P11 dying declaration.
- Without responding to the treatment, 'K' died on 02.10.2013 at



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around 5.45 a.m. On the very date at 11.15 a.m., P.W.1, the father of 'K' preferred Ext.P1 complaint, receiving which, P.W.11, Inspector of Police registered a case in Crime No.916/2013 under Section 174 Cr.P.C. He soon began his investigation, visited the scene of occurrence, prepared observation mahazar Ext.P5 and rough sketch Ext.P.13. He proceeded to hold inquest on the body of the victim and prepared Ext.P14, inquest report.

- The postmortem on the body of the victim was done by P.W.6, and she came out with Ext.P18 postmortem report. The viscera collected from the body of the dead was forwarded for forensic examination and P.W.9 came out with Ext.P9 medical analysis report, and as per Ext.P9, there is no poison content in the viscera examined by the expert.
- On commencing the investigation, the Investigating Officer gave a memo to the Magistrate for alteration of provision and accordingly, the case was investigated for offence under Section 306 IPC. Subsequently vide Ext.P16 memo, the section was further altered to include Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.
- After completing the investigation, the Investigating Officer laid



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his report including above section and the final report was laid not only against A1, the appellant herein, but also against A2 and A3.

3. When questioned, all the three accused persons denied the charges levelled against them, and the matter went to trial. Post trial, the Sessions Court did not find any material to convict all the three accused persons both under Section 306 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998. Therefore, the learned Mahila Judge vide judgement dated 20.11.2018, acquitted A2 and A3 for offences under Section 306 IPC as well as under Sec.4 of the Tamil Nadu Prohibition of Harassment of Women Act. Turning to the appellant, the trial court acquitted him of the offence under Sec.4 of the TNPHW Act, but convicted the appellant alone under Section 306 IPC and imposed 10 years rigorous imprisonment with a fine of Rs.25,000/- with a default sentence of six months simple imprisonment. Under Sec.368 Cr.P.C., the fine amount was directed to be paid to the parents of the victim.

4. The aforesaid judgment of the trial Court is now under challenge. Heard both sides. The learned counsel for the appellant made the following submissions :



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- a) The occurrence had taken place at 5.00 p.m., on 25.09.2013, and the victim had died only on 02.10.2013. In between, the police was not informed. Surprisingly immediately after the occurrence, as per the prosecution line of the case, the victim was taken to Government Hospital at Mettur, but the investigation did not show anything to indicate that Mettur Police was ever alerted either by the parents of the victim or by the doctor at Government Hospital, Mettur.
- b) Ext.P1 the complaint was preferred not immediately, but after few hours after 'K' had died. This would imply that Ext.P1 could well be a concoction and the prosecution has not explained this inordinate delay in registering the case. It is surprising that the police did not know about the offence in spite of the fact that the girl was admitted with burn injuries at the Govt. Hospital, Mettur. The prosecution has not explained whether it received intimation about the suicide from the hospital.
- c) Ext.P11 dying declaration, which was recorded by P.W.10 on the very date of occurrence was between 10.20 p.m. to 10.35 p.m. This dying declaration is the earliest recorded statement in this case. And nowhere here the victim has made any statement which



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might constitute either an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 or Section 306 IPC, and all it discloses is that the victim and A1, the appellant herein, were loving for three years prior to the date of occurrence and that the appellant had disclosed that he might be marrying some other woman. This only indicates that 'K' has over-reacted to certain information, which she attributes to A1.

d) In Ext.P1, P.W.1 alleges that on the date of occurrence, A1 was making repeated cellphonic calls and torturing his daughter. The prosecution neither seized the cellphone of 'K' nor has it opted to produce the call details from the phone.

5. The prosecution line of the case commences with an allegation that the appellant was torturing the victim girl by making incessant cellphone calls. However, there has not been any attempt to establish it. Secondly, the victim girl in her dying declaration recorded by the Judicial Magistrate, did not whisper any accusative statement that would even remotely suggest that the appellant was abetting the girl to commit suicide. Her only statement was that she was loving the appellant for about three years prior to the incident and she was told that the appellant would be marrying some other



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girl. That an affair is made or broken by itself can never be termed as an abetment of suicide.

6. Turning to the investigation part, it is nothing short of being shoddy. Here is a case where a girl has set fire upon herself, got admitted first at the Government Hospital, Mettur, from where she was shifted to Medical College Hospital at Salem, and her dying declaration also came to be recorded by the Magistrate, but it is surprising that the Investigating Agency was not in the loop at any time and the complaint was preferred about a week after the occurrence and the police had lost vital hours to record the complaint statement even from the victim. If she was good enough to give her dying declaration, then she would have been fit enough to make atleast few statements as to why she attempted to suicide. Therefore, the accusation in the complaint are but the perception of the complainant, and there is a huge mismatch between the allegation in Ext.P1, complaint and Ext.P11, dying declaration. It is apparent that the Investigating Agency is searching for a theme to book the appellant in this case. It is unfortunate that the trial Court has also taken it easy when it ought to have realised that every conviction and sentence involves both honour and freedom of the accused.



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7. The conclusion is to state the obvious : that the prosecution has not established its case beyond all reasonable doubt. The benefit should necessarily go to the accused. Accordingly, the appeal stands allowed and the conviction and the sentence imposed on the appellant by the learned Mahila Judge, Salem, vide her judgment and order dated 20.11.2018 in S.C.No.325 of 2014 is set aside and the appellant is set free.

07.08.2024

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Index : Yes / No

Neutral citation : Yes / No

Speaking order / Non-speaking order

To:

1.The Judge

Mahila Court

Salem.

2.The Inspector of Police

Mettur Police Station

Salem District.



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N.SESHASAYEE.J.,

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