

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

CRL.A.No. 474 of 2002 (C)

SC 410/1997 of II ADDL.SUB COURT,TRIVANDRUM

APPELLANT(S)/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

RESPONDENT(S)/ACCUSED 1 TO 5:

1. ANIL KUMAR, S/O. KRISHNAN NADAR,
LEKHA BHAAN, VILAVOORKAL DESOM, VADAKKEKUNNUVILA
KIZHAKKE PUTHEN VEEDU, PAMAMCODE, IDACODE DESOM
PALLICHAL VILLAGE.

2. VAMADEVAN S/O. KRISHNAN NADAR,
KUNNAMCODE, PALIYODE, PARANKIMAMVILA VEEDU
ANTHIYOORKONAM, MARUKIL VILLAGE, VADAKKEKUNNUVILA
KIZHAKKE PUTHEN VEEDU, PAMAMCODE, IDACODE DESOM
PALLICHAL VILLAGE.

3. BALAN S/O. MARKOSE NADAR, PAMAMCODE
VADAKKEKUNNUVILA KIZHAKKE PUTHEN VEEDU, PAMAMCODE
IDACODE DESOM, PALLICHAL VILLAGE.

4. BALAN, S/O. PARAMESWARAN NAIR,
ASWATHI BHAVAN, KOLLODE, ANTHIYOOR KONAM
KULATHUMMAL VILLAGE.

5. SASINDRAN S/O. GOPALAN PANNANCODE
MELETHALAKKAL VEEDU, IDACODE DESOM, PALLICHAL VILLAGE.

R1 TO 5 BY SRI. BLAZE K. JOSE
R1, R2, R5 BY ADV. SRI. GOPAKUMAR R. THALIYAL
R2, R5 BY ADV. SRI. R. B. RAJESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SKV

K.RAMAKRISHNAN, J.

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Crl. Appeal No. 474 OF 2002

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Dated this the 10th day of December, 2015

JUDGMENT

State is the appellant in the above matter. The above appeal was filed against the order of acquittal passed by the Second Additional Sessions Judge, Thiruvananthapuram in SC 410/1997. The accused persons were charge sheeted by the CBCID, Thiruvananthapuram in Crime No.1999/CR/1994 alleging offences under Section 120(b), 342 and 306 read with Section 34 of Indian Penal Code.

2. The case of the prosecution in nutshell was that Sajeesh Kumar was the son a PW1 and brother of PW3. Since accused Nos. 1 and 2 had some suspicion about the pregnancy of their sister CW13 and deceased Sajeesh Kumar was responsible for the same, they hatched conspiracy to make him to marry CW13 and for that purpose on 29.11.1993, at about 9am, from the arrack shop near Pamamcode Junction, accused Nos. 1 and 5 conspired to

take the deceased and conduct marriage and if he was not amenable for the same to do away with him and on account of that conspiracy, on 2.12.1993 at about 7.am, 1st accused and PW8 took Sajeesh Kumar in a tempo car from Pamamcode Junction making him to believe that he was being taken to Kattakkada to stand as a surety for first accused and after reaching the house of the fourth accused in Ayiroorkonam, accused Nos. 1 to 4 wrongfully confined him near the house of fourth accused and threatened him and hired a taxi car with No.KEV 7796 driven by PW8 and thereafter they took the deceased accompanied by accused Nos.1 to 4 and CWs 10, 11, 13, 14 and PW8 and they reached Vellanadu Sub Registrars Office and with the help of PW9 scribe, they prepared a marriage agreement and got it executed by him and thereafter he was taken to the arrack shop of CW16 and given him liquor and thereafter produced him before the Sub Registrar and got the document registered against his will and thereafter went to a photo studio and took the photograph of deceased and CW13 and on account of that pressure tactics exerted on him by

accused Nos.1 to 5 and falsely creating a marriage document against his will affecting his status, he consumed poison on 2.12.1993 at 5.00 pm near his house and he succumbed to the same on 5.12.1993 at 12.50 in the night and he committed suicide as abetted by accused Nos. 1 to 5 on account of the conspiracy and thereby all of them have committed offence punishable under Sections 120(B), 342, 306 read with 34 of Indian Penal Code.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-I, Neyyattinkara, where it was taken on file as CP24/1996. After complying with the formalities, the learned Magistrate committed the case to Sessions Court, Thiruvananthapuram, where it was taken on file as SC 410/1997. Thereafter the case was made over to Assistant Sessions Court, Neyyattinkara for disposal. Subsequently, Sessions Court transferred the case as per order in CMP (TP) 258/1998) dated 21.7.1998 to Second Additional Sessions Court, Thiruvananthapuram for disposal.

4. When the accused appeared before the court

below, after hearing both sides, charge under Sections 120 (B), 342, 306 read with Section 34 of Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 25 were examined and Exts.P1 to P17 and Ext.X1 were marked on their side. After closure of the prosecution evidence, the accused were questioned under Section 313 of the Code of Criminal Procedure (hereinafter referred to as the Code) and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that the deceased and CW13 were in love and they decided to marry and conducted the marriage and since his parents and brothers did not accept the same, he felt bad and committed suicide. Due to some personal animosity, they have been falsely implicated in the case. Since the evidence in this case did not warrant an acquittal under Section 232 of the Code, the accused were called upon to enter on their defence, but they did not adduce any oral evidence but they marked Exts.D1 to D3 through prosecution witnesses on

their side. After considering the evidence on record, the court below found the accused not guilty for the offence alleged and they were acquitted of the charge levelled against them giving them the benefit of doubt under Section 235(I) of the Code. Aggrieved by the same, the present appeal has been preferred by the State.

5. Heard Smt. Seena Ramakrishnan, learned Public Prosecutor appearing for the appellant and Shri. R.P. Rajan representing Shri. Gopakumar R. Thalayil, counsel representing the counsel for the respondents 1 to 5.

6. The learned Public Prosecutor submitted that evidence of PWs1 to 3 will go to show that there was conspiracy between the accused persons, on 29.11.1993 from the arrack shop and on the basis of conspiracy, on 2.12.1993 accused Nos. 1 to 5 had forcibly taken deceased Sajeesh Kumar and got a document executed alleged to be a marriage agreement between him and CW13 the sister of accused Nos. 1 and 2 and thereafter he was taken to arrack shop and he was made to drink and then produced before the Sub Registrars office and got the document executed

against his will and certain photographs were also taken along with CW13 against his wish. Further on the same day evening, he consumed poison on account of the harassment met by him at the hands of accused Nos.1 to 5 and he committed suicide. The fact that the marriage was registered from the Sub Registrars office on the morning of 2.12.1993 was not disputed by the defence also. Though they had a case that deceased and CW13 were in love and she became pregnant on account of their relationship and no positive evidence has been adduced regarding this aspect. Further the dying declaration given by the deceased regarding the circumstances leading to him attempting to commit suicide to PWs 1 to 3 will go to show that the accused persons were responsible for his committing suicide and there is no other reason for the same and the appreciation of evidence in such cases made by the court below is unsustainable in law and as such according to the learned public prosecutor, the court below was not justified in acquitting the accused persons on flimsy reasons and according to her the prosecution proved the case and order

of acquittal has to be reversed and accused have to be convicted.

7. On the other hand, the learned counsel appearing for respondents 1 to 5 submitted that court below had appreciated the evidence and came to the conclusion that prosecution has failed to prove the ingredients of conspiracy or forcible registration of any marriage agreement as claimed by the prosecution. On the other hand the evidence will go to show that the documents was executed at free will and photographs were also taken on their violation and free will and there was no compulsion on them for that purpose. The alleged dying declaration were rightly disbelieved b the court below as there was no evidence to show that the deceased was in such a mental condition to give such a dying declaration. Further there were inconsistencies in the evidence of witnesses regarding the same as well. So under the circumstances, court below was perfectly justified in acquitting them and being an appellate court, it must be slow in reversing the order of acquittal and unless this court is satisfied that the

appreciation of evidence by the court below is perverse and no such conclusion could be possible on the basis of such evidence it should not interfere with the order of acquittal passed by the court below.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:–

Deceased Sajeesh Kumar was the son of PW1 and brother of PW3. According to them, on 2.12.1993, at about 7 am, deceased Sajeesh Kumar left the house, stating that he was going to Employment Exchange to renew his registration and at about 5 .00 pm, he came back in a weak state of mind and on reaching the steps of the house he fell down stating that accused Nos. 1 and 5 have cheated him and they were responsible for his act. Immediately PW1 went to fetch a car. But by the time he reached the junction he saw Sajeesh Kumar being taken to hospital by their relative jailer Sadasivan and others. He went to hospital and found the deceased unconscious and later came to know that the accused persons have taken him to Vellanad Registrar's office and got Ext.P2 marriage agreement

registered alleging that he married to CW13, sister of first and second accused and he had received some cash and ornaments as given as dowry. Further it is also revealed according to them that he was made to drink arrack in which they suspected that they mixed poison. It is also alleged that he had disclosed these facts while he was in the hospital. He died on 5.12.1993. On the basis of Ext.P4 statement given by PW3, PW16 registered Ext.P4(a) First Information Report as Crime No.273/1993 under the caption 'unnatural death' and he went to hospital and conducted inquest and prepared Ext.P8 inquest report and he conducted the investigation and submitted original Ext.P10 refer report stating that it was a case of suicide. On the request of the investigation officer PW14, civil surgeon attached to the Government Hospital conducted post-mortem examination and issued Ext.P9 post-mortem certificate, in which he had opined that the death was due to asphyxia due to consumption of poison and the nature of poison can be detected after obtaining chemical examination report.

9. Dissatisfied with the investigation conducted by the local police, PW1 filed Ext.P1 complaint which was forwarded to the police for the investigation by the learned Magistrate under Section 156(3) of the Code and same was received by PW18 and he registered Ext.P1(a) First Information Report as Crime No.249/1999 against the accused under Sections 123B, 342 and 302 read with 34 of the Indian Penal Code and investigation was conducted by him and he questioned the witnesses and recorded their statements. He had also given a report stating that offence under Section 302 of Indian Penal Code was not committed and to delete 302 of the Indian Penal Code but to add Section 365 of Indian Penal Code as Ext.P13. He had also given Ext.P13 report showing the names and addresses of the accused. In the mean time, on the basis of the complaint given by PW1 to the Chief Minister, the investigation of the case was transferred to CBCID, Thiruvananthapuram Unit and they have re-registered this case as Crime No.165/CR/1994 and they also re-opened Crime No.273/1993 and re-registered that Crime as CBCID

Crime No.99/CR/1994. The investigation in this case was undertaken by PWS 24 and 25 and they also filed a report to add Section 120(B) of Indian Penal Code and to delete Section 365 of Indian Penal Code and to add Section 306 of Indian Penal Code and completed investigation and submitted final report.

10. The fact that Ext.P2 marriage agreement between the deceased and CW13 Shobha the sister of accused Nos.1 to 2 was registered by PW10, the Sub Registrar Velland Sub Registrar's Office and it was prepared by PW9 etc. are not in dispute. According to the prosecution, this was done as part of the conspiracy hatched between accused Nos.1 and 5 on 29.11.1993 from the arrack shop and consequent to the conspiracy, he was forcibly taken on 2.12.1993 and forcibly made to execute the document and his photographs with CW13 were taken and he was made to consume arrack etc. In order to prove this fact PWs8, 9, 10 and 11 were examined. The evidence of PW9 will go to show that he had prepared the document and presented it for registration. He did not support the case of the prosecution fully. So he

was declared hostile. He had categorically stated that there was no compulsion exerted on any person to execute any document. The deceased Sajeesh Kumar and CW13 Shobha executed the document on their own will. The evidence of PW10, Sub Registrar also will go to show that the document was executed and registered his presence and before registration, he had explained the contents of the document to the executors and they have admitted the same as well. He never felt that there was any compulsion on any of the parties to execute the document. PW11 was examined to prove that Ext.P3 series photographs were taken against the will of Sajeesh Kumar. But his evidence will also go to show that both the deceased and Shobha came after the marriage and he had taken the photographs and none compelled them to pose for the photographs as well. So their evidence will go to show that there was no compulsion or wrongful confinement of deceased Sajeesh Kumar till the document was executed as claimed by the prosecution.

11. Ext.P9 post-mortem certificate coupled with the

evidence of PW14, the civil surgeon, General Hospital, Thiruvananthapuram will go to show that the death was due to asphyxia due to consumption of some of poison. But the nature of poison consumed was not detected. It is quite unfortunate as observed by the court below that no steps were taken by the investigating agency to send the viscera and blood for chemical examination though it was collected at the time of post-mortem examination. So the nature of poison consumed by the deceased was not established by the prosecution. Though the prosecution has a case that the accused persons have mixed poison and administered the same to the deceased, there was no acceptable evidence adduced on the side of the prosecution to prove this fact and that was the reason why after investigation though PW1 had a case that his son was murdered by accused persons, the investigating officer came to the conclusion that no offence under sections 302 of the Indian Penal Code has been made out and that Sections was deleted.

12. In order to prove the conspiracy, the prosecution relied on the evidence of PW2, an alleged witnesses who

happened to overhear the conversation between the accused Nos. 1 and 2 on the morning of 29.11.1993 from an arrack shop. According to him, he was a coolie worker and he was waiting for getting some employment near the place. But he did not get a job on that day. So he went to the arrack shop for making some conversation with the owner of the arrack shop and also to consume arrack. At that time, he saw accused Nos. 1 and 5 standing near the door of the shop and talking that they wanted to make the deceased to marry to the sister of the first accused and if he was not amenable for the same, even to kill him. On seeing him, they stopped their taking. So immediately he left the place. On 5.12.1993 when he came to know about the death of the deceased, he informed the same to PW3 who is the brother of the deceased and also a friend of that witness. A reading of this evidence, as rightly observed by the court below, will have to show that he had gone there only for the purpose of hearing this and not for any other purpose. Further the way in which he had deposed also will go to show that he is a planted witness by PW3 in order to prove the case of the

conspiracy alleged by them and so the court below had declined to accept his evidence to prove conspiracy.

13. Further it will be seen from Ext.P4 statement given by Ext.PW3 immediately after the death of the deceased he did not mention anything about the conspiracy which was said to have been disclosed by PW2. If really PW2 had disclosed this fact to PW3 he would have made mention of the same in Ext.P4 statement given by him, on the basis of which Ext.P4(a) case was registered under the caption 'unnatural death'. So except this evidence, there is no other evidence to prove the conspiracy. Further there is no occasion for accused Nos.1 and 5 to make such a conspiracy on that day as well because there was no need for them to make such conspiracy on that day as they have no case that the deceased will not be interested in marrying the sister of the first accused CW13 at the time. So the court below was perfectly justified in disbelieving the evidence of PWs2 and 3 on the question of conspiracy as claimed by them.

14. Then the prosecution relies on the alleged dying

declaration said to have been given by the deceased about the circumstances made him to commit suicide. According to PW1, the father of the deceased on 2.12.1993 at 7 am, the deceased left the house stating that he was going to Employment Exchange for the purpose of renewing his employment registration and thereafter he came home at about 5 pm in a weak state and told him and his mother that he was cheated by accused Nos.1 and 5 and they were responsible for his present condition and if anything happens to him, they should not be left out and immediately he fell down. Thereafter PW1 went to fetch a car and by the time he reached the junction, he saw the deceased being taken in another car by jail warden Sadasivan, Jayan and Balan and asked him to come to the hospital. According to him in the chief examination, after he reached the hospital, his son became speechless and thereafter he did not speak anything till his death. But later his case was that while he was in the causality, he narrated the entire incident to him and even according to him when he disclosed this fact, his another son PW3 was also

present. But PW3 had a different case. According to him, on 2.12.1993 in the early morning, he went to University and he came only late at 11.00 pm and at that time, he understood from his mother that the deceased consumed poison and he was taken to hospital. But he did not go to hospital on that day, but he went to hospital on 3.12.1993 and at that time, he could not speak to his brother as he was unconscious and only on 4.12.1993 he had conversation with his deceased brother and at that time he made his dying declaration. But there is no medical evidence to show the condition of the deceased after his admission in the hospital till he died from the hospital. The evidence of PW13 who was examined to prove his admission and treatment was not helpful to prove his fact. Quite unfortunately, the case sheet of the deceased though seized by the investigating officer and produced before the court, the same was found missing as reported from the committal court and that could not be traced out also. But however, Ext.X1 was summoned and proved through PW23 but that was also not helpful to prove the condition of deceased

after his admission in the hospital. But the entry in Ext.X1 shows that he was transferred to ward on 3.12.1993. But he was semi conscious at that time. It is not known as to whether he was able to make any statement as claimed by PWs 1 and 3 in this regard. Further though Ext.P1 complaint was filed after 22 days of death of the deceased, the factum of deceased making the dying declaration narrating the entire incident as claimed by PW1 was not mentioned in the complaint. If really such a dying declaration was made by the deceased regarding the cause for his death or attempt to commit suicide, that could have been mentioned by PW1 without fail in Ext.P1 complaint which was prepared with the help of a lawyer after 22 days of death of the deceased. Similarly, though on 5.12.1993 itself, PW3 had made Ext.P4 statement regarding the death of the deceased, he also did not mention about the factum of dying declaration alleged to have been made by the deceased regarding the cause or his attempt to commit suicide at that time. So all these things will go to show that theory of dying declaration was an afterthought which was

not mentioned either in Exts.P1 or P4 which were the first occasion for the witnesses to state about the same especially when though complaint and statement was made at the time when inaction was alleged on the part of the police. So under the circumstances, court below was perfectly justified in coming to the conclusion that prosecution was not able to establish that the deceased had made the dying declaration regarding the cause leading to commit suicide and that cannot be taken as a ground for convicting the accused persons as well.

15. There is no evidence adduced on the side of the prosecution as rightly observed by the court below that the accused persons had administered poison to the deceased after mixing the same in the arrack said to have been given to him by them. There is no evidence adduced on the side of the prosecution to prove that the deceased was taken to arrack shop by the accused persons and he was made to consume arrack as well. There is no investigation conducted by the investigating officer regarding this aspect as well. So under the circumstances, the court below was

perfectly justified in coming to the conclusion that the accused persons had administered poison by mixing the same in the arrack to the deceased.

16. Further it will be seen from the evidence of PW1 himself that the deceased came to the house at 5 pm, and he fell down. They did not know from where he had taken poison. It was admitted by PWs1 and 3 that pesticide was kept in the house as part of their agricultural operation. Further it is also seen from the evidence that though accused Nos. 1 and 2 were relatives of PWs1 and 3, the allegation that they were not aware of the relationship between the deceased and CW13 appears to be unbelievable. The possibility of the deceased having connection with CW13 and voluntarily marrying her and when this fact was disclosed to his parents, they were against it and they did not allow him to bring CW13 to his house would have made him unhappy and to consume poison on account of the same as suggested by the defence in the circumstances of the case cannot be ruled out as well. So under the circumstances, the court below was perfectly

justified in coming to the conclusion that the evidence adduced on the side of the prosecution is not sufficient to come to the conclusion that the prosecution has proved the case against the accused beyond reasonable doubt so as to convict them for the offences alleged and rightly given the benefit of doubt to the accused and acquitted them of the charge levelled against him giving them the benefit of doubt.

17. It is settled law even if two views are possible on the basis of the same set of evidence and if the view taken by the court below is also probable and possible view, then even if another view is possible as claimed by the prosecution, appellate court will be slow in substituting the alternative view so as to upset the order of acquittal passed by the court below on the basis of probable view that could be possible on the basis of same set of facts which is in favour of the accused. So under the circumstances, this court find no reason to interfere with the order of acquittal passed by the court below and convicting the accused as claimed by the prosecution. So the appeal lacks merit and

the same is liable to be dismissed.

In the result appeal fails and the same is hereby dismissed. The order of acquittal passed by the court below against the respondents 1 to 5 is hereby confirmed.

Office is directed to communicate this judgment to the court below at the earliest.

Sd/ –
K.RAMAKRISHNAN, JUDGE

SKV