

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.469 of 2015
and M.P.No.1 of 2015

V.Duraisamy

... Appellant/Accused
vs.

The State, Rep. By
The Inspector of Police,
Namakkal Police Station
Namakkal District

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment passed by Additional District Sessions Judge, Namakkal in S.C.No.52 of 2012 dated 13.07.2015.

For appellant : Mr.C.D.Johnson

For respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor

JUDGMENT

The convictions and sentences dated 13th July, 2015 passed in Sessions Case No.52 of 2012 by the Additional District and Sessions Court, Namakkal are being challenged in the present Criminal Appeal.

2. The schema of the case of the prosecution is that prior to occurrence, the deceased has received a sum of Rs.1,35,000/- from the 2nd accused by name Duraisamy and in order to discharge the same, he sold his land, but the remaining portion of the sale consideration has not been given and in the said circumstances, on 09.08.2005, the first accused by name Selvam has told the deceased that he has not discharged principal as well as interest amount and he has given only meagre sum of Rs.600/- to the deceased. Since the first accused has stated as mentioned supra, the deceased has committed suicide. After occurrence, one Kokila, daughter of the deceased as defacto complainant has given a complaint to the Investigating Officer, viz., P.W.10 and the same has been registered in Crime No.907/2005. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, P.W.10 has taken up investigation, examined connected witnesses and also made arrangements to conduct post mortem and accordingly, the doctor by name Muthulakshmi (P.W.5) conducted autopsy and she found the following external and internal injuries:-

" Appearances found at the post-mortem: No external injuries. Froasting from mouth seen. Skull-no fracture; Brain-pale; Thorax-Hyoid bone and ribs intact; Lungs-congested; Heart- pale; chambers-empty; Abdomen: All organs normal in position & congested. No injury. Viscera preserved for chemical analysis. "

The Post Mortem Certificate has been marked as Ex.P.4. After completing investigation, P.W.10 has laid a final report on the file of Judicial Magistrate No.1, Namakkal and the same has been taken on file in P.R.C.No.8/2010.

4. The Judicial Magistrate No.1, Namakkal, after considering the facts that the offences alleged to have been committed by both the accused are triable by sessions court has committed the case to the court of sessions, Namakkal Division and the same has been taken on file in Sessions Case No.52/2012 and ultimately, made over to the trial court.

5. The trial court, after hearing both sides and upon perusing the relevant documents, has framed a charge against both the accused under Section 306 of the Indian Penal Code (hereinafter called as "IPC") and also under Section 9 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.12 have been marked.

7. During pendency of trial, the first accused has passed away and therefore, the charge framed against him has become abated.

8. When the 2nd accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime.

9. The trial court, after hearing arguments of both sides and after perusing the relevant evidence available on record, has found the 2nd accused guilty under Section 306 of the IPC and sentenced him to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. He has also been found guilty under Section 9 of the Tamil Nadu Prohibition of Charging Exorbitant

Interest Act, 2003 and sentenced him to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present criminal appeal has been preferred at the instance of the 2nd accused as appellant.

10. The learned counsel appearing for the appellant/2nd accused has contended to the effect that all the allegations made in the charge are only against the 1st accused and no incriminating materials are available against the 2nd accused and during pendency of trial, the first accused has passed away, but the trial court has simply relied upon a suicidal note alleged to have been executed by the deceased and thereby, invited the convictions and sentences against the appellant/2nd accused and therefore, the same are liable to be set aside.

11. The learned Additional Public Prosecutor has contended that in the instant case, as per the dictation given by the deceased, his daughter viz., P.W.1 has written the suicidal note wherein, it has been clearly mentioned the torture made by both the accused and hence, the trial court has rightly invited the convictions and sentences against the 2nd accused and therefore, the judgment passed by the trial court need not be set aside.

12. In fact, this court has scrutinized the entire allegations made in the charge wherein, certain allegations have been levelled against the 1st accused. No where, it is stated that the 2nd accused in collusion with the 1st accused has tortured the deceased. Therefore, it is quite clear that in the charge framed against both the accused, no incriminating materials are available, so as to proceed further against the 2nd accused.

13. On the side of the prosecution, it is alleged that on the date of occurrence, the deceased has given a suicidal note and the same has been reduced into writing by P.W.1. The said document has been marked as Ex.P.2, wherein, it has been clearly stated about the borrowing of money and also the torture alleged to have been made by both the accused.

14. It is seen from the records that Ex.P.1-Complaint has been given by P.W.1, the daughter of the deceased. At the time of giving Ex.P.1, Ex.P.2 has not been given to the Investigating Officer, but subsequently the same has been seized under a cover of Mahazar. Therefore, it is needless to say that Ex.P.2 is nothing but a concocted document and the same cannot be given weight to.

15. As rightly pointed out on the side of the appellant/2nd accused, the trial court has simply believed Ex.P.2. Further, the trial court has failed to understand that no incriminating materials are available against the 2nd accused in the charge and erroneously, invited the convictions and sentences against him. In view of the

discussion made earlier, this court has found considerable force in the contentions put forth on the side of the appellant/2nd accused and altogether, the criminal appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed in Sessions Case No.52/2012 by the trial court are set aside. The appellant/2nd accused is acquitted. Fine amounts, if any paid by him are ordered to be refunded forthwith. Consequently, connected M.P.No.1 of 2015 is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

nvsri

To

1.The Inspector of Police, Namakkal Police Station
Namakkal District

2.The Additional District Sessions Judge, Namakkal.

3.-do- Thro the Principal Sessions Judge, Namakkal

4.The Judicial Magistrate No.I, Namakkal.

5.-Do- Thro The Chief Judicial Magistrate, Namakkal.

6.The Superintendent, Central Prison, Coimbatore.

7.The Public Prosecutor, High Court, Madras

1 cc to Mr.C.D.Johnson , Advocate Sr.No.49742

Crl.A.No.469 of 2015

rsi(co)

pmk.10.9.2015

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