

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No.197 of 2009

Ram Niwaschari

... Petitioner

Versus

1. State represented by
The Inspector of Police
Vishnu Kanchee Police Station
Kancheepuram District

2. Ramayanji ... Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to call for the records relating to the Judgment and order of acquittal passed by the learned Principal Sessions Judge, Chengalpattu in S.C. No. 471 of 2005 dated 30.08.2006, set aside the same.

For Petitioner :Mr. A.C. Manibharathi

For respondents:Mr. V. Arul

Government Advocate (Crl.side)
for R1

No appearance for R2

ORDER

The petitioner is the defacto complainant in S.C. No.471 of 2005 on the file of the learned Principal Sessions Judge, Chengalpattu. The petitioner is aggrieved by the order dated 30.08.2006 whereby the trial Court acquitted the accused/second respondent herein from the charge of murder punishable under Section 302 of IPC by giving him the benefit of doubt.

2.(i) The case of the prosecution is that the deceased Srinivasan was the administrator of Uthirathi Mutt at Kancheepuram, which was controlled by the Head Mutt at Patna. It is alleged that the deceased did not administer the properties of the mutt properly and thus he earned displeasure of Guruji Dharanidhachari at Patna. Some of the properties belonging to the Mutt are situate at Sriperumbadur and the deceased leased out those lands to PW7, Karthikeyan, by executing a power of attorney deed in his favour. At the instance of Guruji Dharanidhachari, the power of attorney executed by the deceased was cancelled and the lease given to PW7 was terminated.

(ii) PW12 is the brother of the deceased. He came to Uthirathi Mutt and stayed there along with his wife and children and left the Mutt few days before the occurrence. According to PW12, the accused pressurised the deceased to part with money and there was misunderstanding between them. According to prosecution, PW6 was having lease hold rights over the lands of the Mutt but soon after the deceased has taken charge of the administration, he cancelled the lease hold right to PW6 and PW1 and paid them the compensation. However, the deceased permitted PW1 Ramu to milch the cows in the Mutt and he used to come early in the morning to milch the cows. On the previous date of the occurrence, the deceased had information from Patna that his mother died and therefore he sent a word to the accused through PW7 to come to the mutt and take charge of the mutt in his absence so that he could leave to Patna.

(iii) On 20.01.2005, according to the prosecution, PW1 Ramu came to the Mutt to milch the cows. He knocked the door for few minutes and then the accused opened the door. According to PW1, the accused was found to be in a tensed state. According to PW1, the accused has took him to the place where the deceased lying in a pool of blood and said something to him in Hindi. As PW1 is not conversant with Hindi language, he sought the help of one Kannan, who is residing nearby. PW5 enquired the accused and he was informed that the deceased was found lying in a pool of blood early in the morning. Immediately, PW5 informed police through phone.

(iv) On 20.01.2005, based on the information of PW1-Ramu, the respondent police registered a case in Crime No. 21 of 2005 under Section 302 of IPC. PW17, Inspector of Police, took up investigation, prepared an observation Mahazar, Ex.P2 and rough sketch. After conducting an inquest and observing all other formalities, including collecting the statement of the witness, he sent the body of the deceased to postmortem. After investigation of the case, PW17, Inspector of Police filed the charge sheet on 02.06.2005.

3. The trial Court, on appreciation of the oral and documentary evidence doubted the case projected by the prosecution. It was pointed out by the trial Court that the deceased alone called upon the accused to come to the Mutt as he was to proceed to Patna to attend the funeral of his mother. It was further pointed out that there is no direct evidence available to connect the accused to the crime and the prosecution rests wholly on circumstantial evidence, which it failed to prove beyond reasonable doubt. The trial Court also pointed out that the motive for the murder has not been proved to the satisfaction of the Court. Therefore, the trial court acquitted the accused of the charges by giving him the benefit of doubt.

4. The learned counsel for the petitioner would contend that the petitioner is the brother of the deceased and he came down to the Mutt at Kancheepuram and stayed there along with his wife. The deceased was head of the reputed mutt at

Kancheepuram and the accused is in charge of another mutt at Sriperumbadur. The trial Court acquitted the accused on the ground that he did not run away from the scene of occurrence, rather, it is the accused who had shown PW1 the body of the deceased which was lying in a pool of blood. The learned counsel for the petitioner also would contend that the trial court erroneously held that the deceased could have indulged in sexual activities and that is the reason there was semen ejected in his private parts, but the fact remains that the deceased was proceeding to attend the funeral of his mother and no human being could indulge in sexual acts in such a situation. The trial court further held that the accused could not have caused the death of the deceased because he is aged, infirm and weak. Such a reasoning given by the trial court to acquit the accused is not probable and reasonable. The trial court failed to take note of the settled position of law that motive in a case of murder is not required to be established more particularly in a case of circumstantial evidence. In any event, the reasons adduced by the trial court to acquit the accused are not valid and therefore the learned counsel for the petitioner prayed for allowing this Criminal Revision Case.

5. The learned Government Advocate appearing for the prosecution would only contend that the case wholly rests on circumstantial evidence and the prosecution has conducted the case by making available all the evidence available to prove the case against the accused. Admittedly, the accused was present at the scene of occurrence and other than the accused, there was no one present there. Therefore, the presumption would be except the accused no one would have caused the murder of the deceased. Further, the accused did not disclose the death of the deceased to any one and only when PW1 knocked the doors of the room where the deceased was lying in a pool of blood, did the crime came to light. During the course of trial, the prosecution has examined many witnesses to strengthen their case, however, the trial court disbelieved the evidence of the prosecution. Even though the prosecution has not filed any appeal against the judgment of acquittal passed by the trial court, for the above reasons, the learned Government Advocate prayed for setting aside the judgment of acquittal passed by the trial court.

6. Even though notice was sent to the accused/second respondent herein, none appears on his behalf.

7. I heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the State. I had carefully examined the documents made available including the judgment of acquittal passed by the trial court.

8. A perusal of the judgment passed by the trial court would indicate that the trial court had appreciated the oral and documentary evidence made available before it extensively and concluded that the prosecution has not proved its case beyond reasonable doubt. For arriving at such conclusion, the trial court has given valid reasons which are probable and

reasonable. The trial court mainly pointed out that the accused is weak, fragile and infirm and he could not have independently committed the murder of the deceased having regard to the postmortem report and other evidences made available on record. By relying on the medical evidence, the trial court concluded that the deceased could have been done to death by more than one person and the accused alone could not have caused the death of the deceased, independently. The trial court also found that there is no strong motive or basis for the accused to have committed the murder of the deceased. The trial court relied on the evidence of PW1 and PW5 and concluded that it is the accused who had shown to them the place where the deceased was lying in a pool of blood and that the accused did not run away from the scene of occurrence. The trial court also pointed out the medical evidence to conclude that prior to the death of the deceased, he had sexual intercourse with girls and that was the reason for ejaculation of semen from his private parts. In order to substantiate this conclusion, the trial court relied on the evidence of the Doctor, who could not deny the suggestion that the deceased could have had sexual activities before his death. Therefore, the trial court concluded that the probabilities of the accused causing the murder of the deceased is not established by the prosecution by cogent and satisfactory evidence and accordingly the trial court acquitted the accused. Such findings arrived at by the trial court, on the basis of documentary and oral evidence, in my view, does not call for any interference.

9. It is well settled that an order of acquittal passed by the trial court need not be interfered with by this Court unless there are strong reasons to hold that the trial court did not appreciate the material evidence on record in the proper perspective or the conclusion arrived at is materially irregular. In this context, useful reference can be made to the decision of the Honourable Supreme Court reported in (Ram Swaroop and others vs. State of Rajasthan) (2005 SCC (Cr1.) 61) wherein it was held that it is well settled that if two views are reasonably possible on the basis of the evidence on record, the view which favours the accused must be preferred. Similarly, it is well settled that if the view taken by the trial court, while acquitting the accused is a possible, a reasonable view on the basis of evidence on record, the High Court need not interfere with such an order of acquittal merely because it is possible to take a contrary view.

10. It is evident from the aforesaid judgment of the Honourable Supreme Court that this Court cannot re-appreciate the evidence and interfere with the order of acquittal passed by the trial court on the ground that the conclusion arrived at by the trial court are manifestly erroneous, contrary to the evidence on record or perverse. In this case, the revision petitioner is unable to establish by any valid evidence that the order passed by the Court below is perverse or contrary to evidence available on record. Therefore, applying the aforesaid decision to the facts and circumstances of this case, in the present case, there are no evidence available on record

to connect the accused to the offence complained of and the prosecution has miserably failed to establish the guilt or link against the accused beyond reasonable doubt. Therefore, I am of the view that the order of acquittal passed by the court below is reasonable, plausible and it need not be slightly brushed aside. I do not find any reason to interfere with the order of acquittal passed by the court below. The Criminal Revision Case is therefore dismissed.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate-I, Kancheepuram.
2. -do- Through The Chief Judicial Magistrate, Kancheepuram.
3. The Additional Sessions Judge, Chengalpattu.
4. The Principal Sessions Judge Chengalpattu.
5. The Inspector of Police, Vishnu Kanchee Police Station, Kancheepuram.
6. The District Collector, Kancheepuram.
7. The Director, General of Police Mylapore, Chennai-4.
8. The Public Prosecutor, High Court, Madras.

+ 1 cc to M/s. A.C. Manibarathy, Advocate SR.44630

Cr1.R.C. No. 197 of 2009

NM(CO)
EU 16.10.15

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