

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.8.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 298 of 2009

N.Pandurangan

.. Petitioner/Defac
complainant

Versus

1. The Inspector of Police
Sathuvachari Police Station
Vellore

.. Ist Respondent/Complainant

2. N.yuvaraj

.. II nd Respondent/Accused

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the judgment of learned Additional District and Sessions Judge (Fast Track Court), Vellore in S.C.No.259 of 2001 dated 27.02.2007.

For Petitioner : Mrs.M.Subha

For R1 : Mr.V.Arul
Government Advocate

For R2 : Mr.P.R.Dineshkumar

ORDER

The revision petitioner is the PW1 in S.C. No. 259 of 2001 on the file of the learned Additional District cum Sessions Judge, Fast Track Court, Vellore. The petitioner is aggrieved by the order dated 27.2.2007 passed by the Court below whereby the accused/ second respondent herein was acquitted of the charges.

2. The case of the prosecution is that the deceased Sudharanjani was given in marriage to the accused/second respondent. The revision petitioner is the father of the deceased Sudharanjani. PW2 is the mother of the deceased. PW3 and P.W.4 are relatives of the deceased. P.W.5 to P.W.13 are the neighbours of the deceased. According to the prosecution, the accused ill-treated the deceased Sudharanjani during his matrimonial life and subjected her to harassment and mental cruelty on demand of dowry. On 17.5.2000 at about 8.00 a.m, in Sathuvachari phase III, Bharathi Nagar, B.D. Quarters, A.E. 75, since the deceased did not bring the demanded amount of dowry from her parents house, the accused poured kerosene on the deceased, with the result, the deceased succumbed to the injuries on the spot and thereby the accused committed the offence punishable under Sections 302 read with Sec. 109 of IPC.

On receipt of the final report, the case was taken on file as P.R.C.No.12 of 2001 by the learned Judicial Magistrate No.V, Vellore. Since the offence is triable by the Court of sessions, the entire records were transmitted to the file of the learned Additional District Cum Sessions Judge, (Fast Track Court), Vellore, and it was taken on file as S.C. No.259 of 2001.

3. During the course of trial, the prosecution examined P.W.1 to 24, marked Exs.P1 to P18, besides Mos 1 to 9. The trial court disbelieved the complaint Ex.P1 given by the revision petitioner on the ground that the complaint has been written by third party and the same has not been read over to the complainant and the complainant has simply signed it without knowing the contents. The court below also found that none of the witnesses speak about the alleged demand of dowry and some of the independent witnesses were turned hostile and, therefore, the case put forth by the prosecution cannot be believed.

4. The learned counsel for the petitioner would contend that P.Ws1 to 3 have categorically stated that the deceased had been tortured and attacked for not bringing the money demanded by the accused and their evidence was slightly brushed aside by the Court below without any valid reason. The learned counsel would further contend though the amount was demanded for the purpose of business, it would amount to dowry harassment. The court below failed to take note of the fact that if circumstance is proved beyond a reasonable doubt, a person can be held guilty in offence punishable under Section 302 IPC. The Court below also failed to take into consideration the vital facts with regard to the offence under Section 498 (A) committed by the accused. The learned counsel would also contend that merely because the independent witnesses have not supported the case so as to prove 498 (A) cannot be a ground to acquit the accused. The Court below failed to take into consideration the fact that it is a case of bride burning and due to the injuries sustained by the deceased in the vital parts of her body, she died. There are also enough evidence available to connect the accused to the offence and, therefore, the court below ought not to have acquitted the accused. The learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in STATE OF RAJASTHAN V. RAJA RAM [(2003) 8 SCC 180] ; SHEIKH ZAKIR V. STATE OF BIHAR (AIR 1983 SCC 911); SELVARAJ V. CHINNPRIYAN VS. STATE REPRESENTED BY INSECTOR OF POLICE [(2015 2 SCC 662)] and unreported judgment of the Hon'ble Supreme Court in SURINDER SINGH VS. STATE OF HARYANA (Crl.A.No.1791 of 2008) in support of his contention.

5. On the contrary, the learned counsel appearing for the second respondent would contend that the court below is right in holding that the prosecution has failed to prove the guilt against the accused/second respondent beyond any reasonable doubt. The learned counsel would further contend that during the course of trial, Pws 5,6,8,10 to 12 turned hostile and there is no eye witnesses in this case. P.W.1 and P.W.2 are father and mother of the deceased and they have not supported the case of the prosecution. The court below rightly pointed out that Ex.P1 complaint was not given by P.W.1 and the same has been written by unknown person and that the same has not been read over to P.W.1, and that he simply signed in the complaint without knowing the contents of the same and, therefore, the complaint, Ex.P1 is not natural or voluntarily. The court below also found that there is

no eye witness to speak about the occurrence. Even according to the prosecution, none of the witnesses were present at the time of occurrence and they went to the occurrence place, after the incident, and in any event, when the Court below recorded a finding to acquit the second respondent /accused, the same need not be interfered with by this Court. In support of his contention, the learned counsel for the second respondent/accused relied on the decision of the Hon`ble Supreme Court reported in [Hydru vs. State of Kerala] (2004) 13 Supreme Court Cases 374 for the proposition that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

6. The learned Government Advocate appearing for the first respondent would only contend that the prosecution has not preferred any appeal against the order of acquittal passed by the Court below.

7. I heard the counsel for both sides and perused the materials available on record. The prosecution has examined 24 witnesses, marked 18 documents, besides marking material objects viz., Mos 1 to 9 to prove the guilt against the second respondent /accused. Of the 24 witnesses, Pws 1 and 2 are father and mother of the deceased. P.Ws.3 and 4 are relatives of the deceased. P.Ws.5 to 13 are independent witnesses. Out of these, except P.Ws.7,9 and 13, all others turned hostile even during the course of trial.

8. No doubt, this Court felt deep anguish of the unfortunate parent, who lost their daughter after marriage. But at the same time, the pathetic situation of the parent does not take away the right of the innocent person. Evidence is the proper material to come to the conclusion.

9. On careful scrutiny of the deposition of PW1, it is clear that the complaint has not been written by him. P.W.1 has categorically stated that he has only signed in the complaint and the same has not been written by him. P.W.1 further stated that he did not know the person, who wrote the complaint on behalf of him. He also deposed that the contents had not been read over to him by the said third party before signing. More over, in the chief examination, P.W.1 himself admitted that his daughter never sent letters to him with regard to the alleged demand of dowry or harassment by the second respondent/accused. When the person, who has given the complaint, says that he does not know anything about the contents of the complaint, the same cannot be believed. Therefore, the Court below has rightly disbelieved the complaint itself. Further, P.W.1 being the father of the deceased, has not stated anything with regard to the alleged dowry. P.W.1 has only stated that there was a loss in business and that the demand was made by the accused for the purpose of doing business. The son-in-law requesting the father-in-law to help in business is quite natural and the same does not amount to dowry. Therefore, the Court below has categorically stated that P.W.1 and P.W.2, father and mother of the deceased, have not established the alleged demand of dowry. Therefore, naturally, Section 498 A cannot be attracted. Merely because the death took place within 2 1/2 years from the date of marriage would not attract Section 498 A.

10. Further, in the complaint, it is stated that the accused/husband poured kerosene on the person, namely, the deceased/wife. But there is no eye witness in this case to substantiate the same and the so called independent witnesses, namely P.Ws.5,6,8,10 to 12 have turned hostile. Even the other independent witnesses, namely, P.Ws.7,9 and 13 have stated that they do not know anything about the case and they went to the spot only after hearing the sound. But it is the case of the prosecution that at the time of pouring kerosene, P.Ws 5 to 9 were present. Admittedly, all the hostile witnesses were neighbors of the deceased. Since all the witnesses have clearly stated that they do not know anything about the occurrence, the Court below has rightly held that there is no clear acceptable evidence. Even the mahazar witnesses have stated that they do not know anything about the case and they put their signature alone. They were also treated as hostile witnesses by the prosecution.

11. Though, P.W.2, the mother of the deceased, has stated that there was a difference of opinion between the accused and the deceased with regard to the delay in getting child and the same has been corroborated by the evidence of P.W.3, the relative of the deceased, no independent witnesses have been examined to prove the same. Therefore, the complaint, as such is not believable. Therefore, I am of the view that the Court below is justified in disbelieving the version of P.W.2.

12. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme court in STATE OF RAJASTHAN V. RAJA RAM [(2003) 8 SCC 180] for the proposition that in a case where admissible evidence is ignored, a duty is cast upon the appellate Court to appreciate the evidence in a case where the accused has been acquitted for the purpose of ascertaining as to whether any of the accused committed any offence or not.

13. No doubt, if there are cogent evidence at least in some portion or there is a misrepresentation in respect of one of the main offence, it is the duty of the appellate Court to re-appreciate the evidence. But, in the case on hand, on a careful perusal of the entire evidence and the judgment of the Court below, it is clear that no procedural irregularity or material evidence has been over looked or misread by the Court below.

14. Similarly, the learned counsel relied on the decision of the Hon'ble Supreme Court in SHEIKH ZAKIR V. STATE OF BIHAR [AIR 1983 SCC 911] and SELVARAJ V. CHINNPRIYAN VS. STATE REPRESENTED BY INSECPTOR OF POLICE [(2015 2 SCC 662)] for the proposition that hostile witnesses would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the prosecution.

15. The above said judgments relied on by the learned counsel for the petitioner are also not applicable to the facts of the present case, as there is no acceptable evidence in support of the prosecution and even the complaint as such, is not believable. Further, in this case, there is no eye witness to speak about the version of the prosecution. Therefore, the Court below has rightly acquitted the petitioner.

16. The learned counsel for the petitioner also relied on the unreported judgment of the Hon'ble Supreme Court in SURINDER SINGH VS. STATE OF HARYANA (Crl.A.No.1791 of 2008) for the proposition that independent witnesses need not be examined for the bride burning cases and the evidence of parents or the relatives alone is sufficient to establish the case.

17. In the case on hand, P.W.1 and P.W.2, the father and mother of the deceased have been examined and they have not spoken anything about the alleged demand of dowry or cruelty by the accused. Further, no specific overtact has been made by them against the accused. Therefore, the said judgment is also not applicable to the facts of the present case.

18. Above all, in this case, the complaint itself has not been given in a proper perspective manner. P.W.1 / petitioner herein, in his evidence has stated that the complaint has been written by some unknown person and he does not know anything about the contents of the complaint and he has only signed in the complaint. Further, in this case, though the independent witnesses were examined, none of them have established the case of the prosecution and there is no acceptable evidence in support of the prosecution. None of them including the parents of the deceased, namely, P.W.1 and P.W.1, were able to make any case as set out in the prosecution.

19. In this context, it is useful to refer the decision of the Honourable Supreme Court reported in (Hydrus vs. State of Kerala) (2004) 13 Supreme Court Cases 374, wherein the Honourable Supreme Court held that it is well settled that in a revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate Court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. In the present case on hand, this Court, on scrutiny of the order passed by the Court below, can only hold that there is no procedural or material irregularity in arriving at a conclusion to acquit the accused and therefore, I do not find any reason to interfere with the order passed by the Court below.

20. In the result, the Criminal Revision case is dismissed.

Ga

Sd/-
Assistant Registrar (Judicial)

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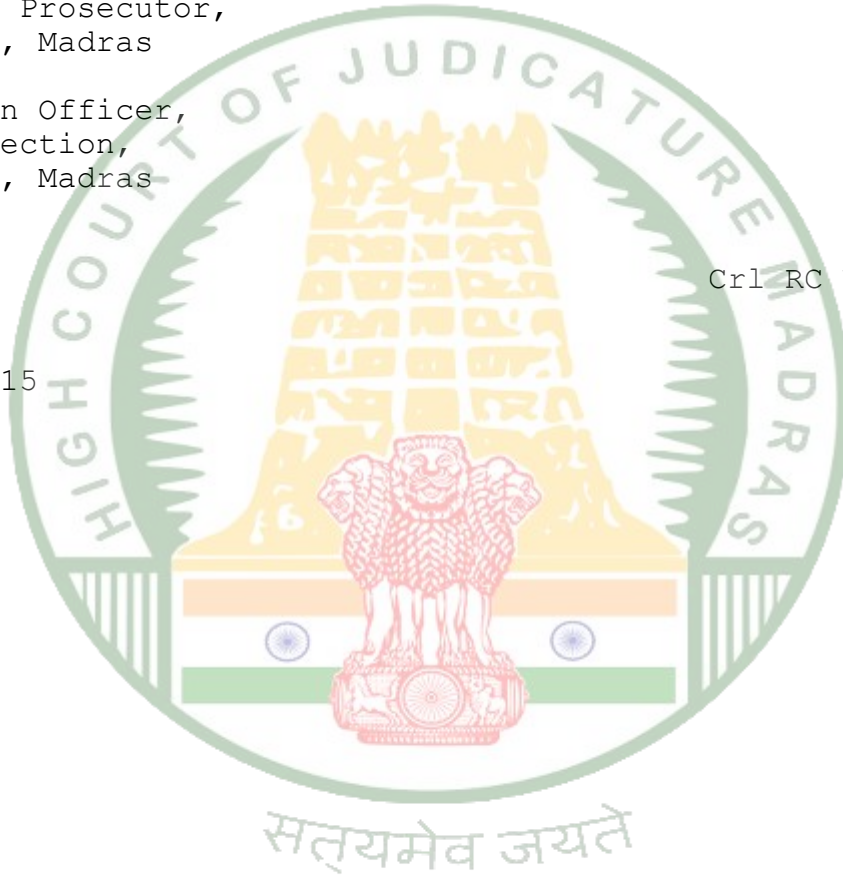
Sub-Assistant Registrar

To

- 1 The Additional District and Sessions Judge,
(Fast Track Court), Vellore
- 2 The Judicial Magistrate, NO.V,
Vellore
- 3 The Inspector of Police,
Sathuvachari police Station,
Vellore
- 4 The Public Prosecutor,
High Court, Madras
- 5 The Section Officer,
Criminal Section,
High Court, Madras

Crl RC No. 298 of 2009

GR(CO)
sd : 09/10/2015



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