



WEB COPY

Veeramani

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL (MD).No.149 of 2015

: Appellant/Aggrieved Party

Vs.

1.State represented by

The Inspector of Police,
Keeranur Police Station,
Pudukkottai District.

In Crime NO.152 of 2008 : 1st Respondent/Complainant

2.Sankar @ Kallan : 2nd Respondent/Sole Accused

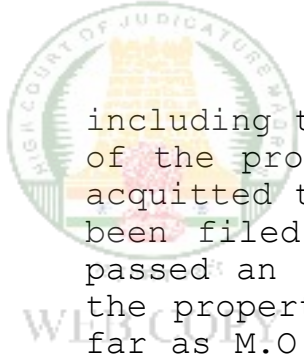
PRAYER: Appeal is filed under Section 454 of the Code of Criminal Procedure to call for the records in S.C.No.46 of 2009, judgement dated 22.04.2010, passed by the Principal District and Sessions Judge, Pudukkottai and to set aside the confiscation order passed in respect of material object M.O.1 and M.O.7 and to return the property to the appellant.

For Appellant : Mr.E.Balasubbrarmanian
for Mr.S.Muniyandi

For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor
for R.1

JUDGMENT

The appellant is the daughter of one Mrs.Rosammal, who according to the first respondent, died in suspicious circumstances on 05.06.2008. In connection with the same, a case in Crime No.152 of 2008, on the file of the Keeranur Police Station, was registered for suspicious death. During the course of investigation, it was found that the accused by name Mr.Sankar @ Kallan had committed the murder of the deceased. A gold chain was found near the dead body of the deceased, which was recovered by the Investigating Officer under a mahazar. Similarly, a pair ear studs made of gold and precious stones was found on the body of the deceased. That was also recovered by the police. On completing the investigation, a final report was filed by the first respondent against the second respondent Mr.Sankar @ Kallan alleging that he had committed the murder of the deceased.



including the gold chain and the ear steads, were marked on the side of the prosecution. The trial Court, by judgment dated 22.04.2010, acquitted the accused. As against the said acquittal, no appeal has been filed by the State. In the same judgment, the trial Court, passed an order purportedly under Section 452 Cr.P.C. disposing of the properties marked as Material Objects 1 to 7 in the case. So far as M.O.1 - gold chain and M.O.7 - gold ear steads with precious stones are concerned, they were confiscated in favour of the Government. Challenging that part of the judgment confiscating the gold jewels, the appellant has come up with this appeal.

3. On 02.07.2015, when this appeal came up for hearing, the learned Additional Public Prosecutor was not in a position to explain to the Court as to why the valuable properties belonging to the deceased were confiscated in favour of the Government. It needs to be mentioned that even the accused did not make any claim for these properties and as a matter of fact, there is no dispute that these properties belonged to the deceased and that the appellant is her daughter. In order to find out the reason for that, this Court perused the case diary and the judgment. It revealed that, shockingly, the investigation was not done properly in this case and that out of two eye-witnesses cited in the final report, one eye-witness was examined, who did not support the case of the prosecution and the other was not examined, without assigning any reason. Therefore, this Court directed the Superintendent of Police, Pudukottai to be present before this Court. The Superintendent of Police, Pudukkottai, who had appeared before this Court on 06.07.2015, submitted to this Court that no appeal was filed by the State in respect of the confiscation order, because the learned Public Prosecutor had not given any positive opinion in this respect. Today, the then Superintendent of Police has filed a report, wherein he has stated *inter alia* in paragraph No.8 as follows:

"It is humbly submitted that neither the then Inspectors of Police nor the Station House Officers have reported me on the trial process of this case and on the dispensation of the prosecution witnesses including an eyewitness. Likewise the then Deputy Superintendent of Police has not reported me on the trial proceedings. Had it been brought to my knowledge, definitely I would have acted upon sincerely, as I am being always diligent in my professional policing." (sic)

4. When the matter was taken up today, Mr. Kalaiselvan, Inspector of Police, who investigated the case between 05.06.2008 to 30.07.2008 was present. Mr. Arumugam, the Inspector of Police, who succeeded him was also present. The Inspector of Police, Mr. Manoharan, who was the Inspector of Police of Keeranur Police Station at the time of trial of the case was also present. I have



afforded them an opportunity to explain about the various queries made by this Court.

5.I have heard the learned Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State. I have also gone through the records carefully.

6.Admittedly, on 05.06.2008, the dead body of the deceased was found by the side of a road near a bush with bleeding through ears and injuries around her neck. There was a ligature around the neck. But, the case was registered only as suspicious death. It was altered into one under Section 302 I.P.C., on 17.06.2008. On 05.06.2008, M.O.1 was found near the dead body and the same was seized. Similarly, M.O.7 was found on the dead body, which was recovered at the time of postmortem. Thus there can be no dispute that these properties belonged to the deceased and therefore, the appellant, who is her daughter, is entitled for the same. I do not find any reason at all for the trial Court to order for confiscation of these properties in favour of the Government. I do not find any reason for the State also not to have filed appeal against that part of order. The recovered properties are to be restored to the person who lost it or to the person who is entitled for the same. It shows that the trial Court was not serious about the order passed under Section 452 Cr.P.C., and instead, in a casual manner, the learned Judge had ordered confiscation of these properties. This order is illegal and therefore, the same cannot be allowed to sustain.

7.So far as the investigation of the case is concerned, I do not want to make any comment, because the accused is not before me and therefore, it is not legally permissible for me to make any adverse comment. But, at the same time, I can only say that out of these two eye-witnesses cited in the final report, one eye-witness was examined and the other was not examined, without assigning any reason. This was not even known to the Police Officials concerned as to why the said eye-witness was dispensed with. This, in my considered opinion, is really shocking and the same cannot be appreciated. In this case, though I have noticed a lot of loopholes in the investigation and the conduct of trial, though a precious life has been smashed away in a gruesome manner, I stop without making further comments, because it is not permissible for me to make any such comment in the absence of the accused and in the absence of any appeal by the State or by the aggrieved person challenging the acquittal of the accused. Of course, there is no prohibition for the Court to initiate *suo motu* revision under Section 397 Cr.P.C. to set right the above miscarriage of justice caused or to use the inherent power under Section 482 Cr.P.C. But, I am not inclined to do so at this length of time as the same may not serve any purpose. It is represented to this Court that the learned Judge, who passed the order confiscating the properties is no more in service and therefore, I am not in a position to recommend for action against him departmentally.



8. In the result, this Criminal Appeal is allowed and that part of the judgment of the trial Court in S.C.No.46 of 2009, dated 22.04.2010, viz., confiscating the Material Objects 1 and 7 in favour of the Government, is set aside and the trial Court is directed to return the Material Objects 1 and 7 to the appellant herein within a period of 30 days from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal District and Sessions Court,
Pudukkottai.
2. The Judicial Magistrate, Keeranur
3. Do through the Chief Judicial Magistrate, Pudukkottai
4. The District Collector, Pudukkottai
5. The Director General of Police, Mylapore, Chennai
6. The Inspector of Police, Keeranur Police Station,
Pudukkottai District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+One cc to M/s.S.Muniyandi, Advocate, SR.No.38581

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RL/9c - 27/7/2015

CRIMINAL APPEAL (MD).No.149 of 2015