

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.97 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the CrPC' for brevity) by the petitioner/informant (PW1) is directed against the judgment dated 27.03.2006 passed by the learned V Additional Sessions Judge at Eluru of West Godavari District in CrI.A.No.125 of 2003 whereby the learned Additional Sessions Judge while allowing the appeal had found the accused 1 and 2 not guilty of the charges levelled against them for the offence punishable under Section 306 of the IPC and acquitted them after setting aside the judgment dated 30.05.2003 of the learned Principal Assistant Sessions Judge of Eluru passed in SC.No.244 of 2000.

2. I have heard the submissions of the learned counsel for the petitioner/informant, the learned counsel for the respondents 1 and 2/accused and the learned Additional Public Prosecutor appearing for the 3rd respondent/State. I have perused the material record.

3. Now the points for consideration are: -

1. Whether the prosecution had successfully brought home, beyond all reasonable doubt, the guilt of the accused for the offence punishable under section 306 of the IPC?
2. And, if so, whether the judgment impugned is liable to be set aside in the facts and circumstances stated by the petitioner and the accused are liable to be convicted of the offences with which they are charged?

4. **POINTS:**

4. (a) The case of the prosecution including the gravamen of the charge, in brief, is as follows: - "A1 and A2 are residents of Eluru. A1 is doing business in fish. A1 and A2 who are close associates are habituated to cheating innocent people. One late G.V.Raghavulu (deceased) native of Polasigudem during his life time had shifted to Eluru along with his family for business purposes. He was running a finance company under the name and style of GVR finance since 1992 in N R Pet, Eluru. He had developed acquaintance with A1 and A2. All the three of them were moving closely. Late GV Raghavulu used to have illicit intimacy with a woman who is also no more. On the date of incident, when the deceased was in a compromising position with the said woman, A2 had photographed the same and started blackmailing the deceased with the help of A1 and was extracting monies whenever A1 and A2 required monies. While the matter stood thus, on the morning of 05.01.1998, A1 and A2 took the deceased from his residence and confined him in the office of A1. A2 had made a telephonic call to PW2- Gudapati Venkata Ratnam, who is the father of the said Raghavulu, and informed him about the confinement of the said Raghavulu and asked his presence. A1 and A2 had sent a taxi to Polasigudem. LW11-V. Ananda Rao went in that taxi and brought PW2 to the office of A1. A1 and A2 had informed PW2 that the said Raghavulu took an amount of Rs.2,50,000/- and with interest accrued the amount due from Raghavulu has become Rs.6 lakhs and demanded the said amount from PW2 and asked him to discharge the debts and had further stated that otherwise they would not release the said Raghavulu. Raghavulu could not express anything due to fear of the accused. PW2 asked them for some time. On that both the A1 and A2 had stated that PW2 shall register his agricultural land in their names. PW2 had agreed for the same. On that, A1, A2, late Raghavulu and PW2 went to Polasigudem on the same day for inspecting the land which was agreed to be registered in the names of A1 and A2. The deceased having stated that he would narrate the entire

story later had went away to Eluru leaving PW2 in Polasigudem. On the same day night, late Raghavulu again came to Polasigudem and took the scooter from the house of his father-PW2 and did not return to the house at Eluru or his father's house at Polasigudem. On 06.01.1998 morning at 06:00 AM late Raghavulu took a room in Madhu Latha lodge, Eluru. On 08.01.1998 he was found dead in the room no.223 which was occupied by him. On receipt of report from G.Satyanarayana, PW1, the subject crime was registered and was investigated into. After investigation, a charge sheet was laid against the A1 and A2 opining that they are liable to be punished for the offences punishable under Sections 306, 342, 341, 365 and 384 of the IPC."

4. (b) Now the case of the petitioner/informant and the arguments advanced on his behalf before this court are as follows: 'The trial court had properly appreciated the oral and documentary evidence. The court of appeal had failed to properly appreciate the oral and documentary evidence and had erroneously acquitted the accused holding that they did not commit any offence. The court below had failed to give credence to the evidence of the witnesses and also the documents marked before the trial court. The court below did not consider the direct and corroborated evidence, particularly, the evidence of PWs1 to 4 which would show that the accused had abetted the commission of suicide by the deceased Raghavulu. The court below ought to have taken into consideration the contents of MO4-diary which would go to show that the accused had abetted the commission of suicide by the deceased Raghavulu. The court below erred in not taking into consideration the contents of the said diary-MO4. The court below ought to have seen that the accused were continuously demanding money from the deceased and his father and that for that reason the deceased has committed suicide. The court below ought to have seen that the wife of the deceased had categorically deposed that the accused

used to frequently demand amount from her husband. When the trial court had correctly appreciated the evidence and convicted the accused and had sentenced them to undergo imprisonment the court below had erroneously set aside the conviction and had wrongly acquitted the accused.'

4. (c) The learned Additional Public Prosecutor had submitted that the State had not preferred any appeal.

4. (d) The learned counsel for the accused had submitted that the court below had accurately considered the facts and had properly appreciated the evidence and that the court below having found that the judgment of the trial court is unsustainable had rendered a well-reasoned and well-considered judgment and that the judgment of the Court below is sustainable both under facts and in law and that there is no merit in any one of the contentions raised in the revision and that the revision is devoid of merit and is liable to be dismissed.

5. Now it is necessary to examine the oral and documentary evidence brought on record by the prosecution to find out whether the said evidence is sufficient to hold that the prosecution sufficiently brought home the guilt of the accused for the offence with which they are charged. It is also to be examined as to whether the petitioner made out valid and sufficient grounds for setting aside the judgment impugned and restoring the judgment of the trial court.

5. (a) **PW1** is the elder brother of the deceased. His report dated 08.01.1998 submitted to the Station House Officer, I Town Law and Order Police Station, Eluru had set the criminal law into motion. His said report was received by PW16 at the police station and was registered. Exhibit P12 is the First Information Report issued pursuant to the said report lodged under exhibit P1. The evidence of PW1 and his report are to the effect that on 08.01.1998 on coming to know about the missing of

his brother Veera Raghavulu, he had come down to Eluru to search for his brother and that during the course of his search, he had ultimately found the dead body of his brother Veera Raghavulu (the deceased) in room no.23 of Madhulatha Hotel, Eluru. The evidence of **PW2**, the father of the deceased, on a perusal would show that he had first come to know that the scooter of his deceased son was found in the parking place of Madhulatha Hotel and that on that he went to the said hotel and that while he was at the reception, the police also came over there and at that place he was informed that his son Raghavulu was found dead in the upstairs room of the hotel. **PW3** the younger brother of the deceased had also deposed that he had found the dead body of his brother lying by the side of the cot in room no.23 of the Madhulatha hotel of Eluru. **PW4** the wife of the deceased testified that on 05.01.1998 both A1 and A2 came to their house and took her husband along with them and that later her husband did not return to the house till the evening of that day and that on that she had informed the same to her father-in-law/PW2 and that subsequently she came to know about the death of her husband. **PW12** is the photographer. According to his evidence, he went to the Madhulatha hotel on 08.01.1998 and took the photographs of the broken door and that afterwards they had found that one dead body was lying in that room and that he had taken photographs of that room. In his evidence, exhibits P3 to P6 photographs with negatives were exhibited. **PW13** is the inquest panch witness who was said to have been present when inquest was held over the dead body of the deceased. Exhibit P8 is the inquest panchanama. **PW14** is the Doctor who had conducted post mortem examination over the dead body of the deceased-Veera Raghavulu and had issued exhibit P9 post mortem certificate dated 09.01.1998 opining that the deceased would appear to have died of Organophosphate an insecticide poison. **PW15** is the police constable who had shifted the dead body from the hotel room to the Government

hospital for conducting post mortem examination. According to his evidence, after the completion of the post mortem examination on the dead body of the deceased he had handed over the dead body to the nearest relatives of the deceased. **PW16** had testified that on receiving exhibit P1 report, he had registered the subject crime and had visited room number 223 of the Madhulatha hotel and found the dead body of the deceased Raghavulu in the room.

5. (b) From the evidence adverted to supra, it can safely be concluded that the deceased Veera Raghavulu committed suicide by consuming insecticide poison.

5. (c) Now the crucial question is as to whether the accused had abetted the commission of suicide by the deceased. It is now necessary to refer to relevant evidence on record on this crucial aspect. **PW4**, the wife of the deceased, on this relevant aspect had testified that she knows A1 and A2 and that on 05.01.1998 both the A1 and A2 came to her house and took her husband along with them and that as her husband did not return till the evening of that day she had informed about the same to her father-in-law (PW2) at Polasigudem and that subsequently she came to know about the death of her husband and that she was admitted in the hospital for treatment on 06.01.1998 and that she was unconscious for about two days and that she does not know about the subsequent events. **PW2**, the father of the deceased, had testified as under: - 'On 05.01.1998 one Johnson (A2) from Eluru informed him on telephone that his deceased son was indebted to A1 and for that reason he (the deceased) was detained in the office room of A1. The said Johnson had sent a vehicle to his village Polasigudem. By that vehicle he had reached Eluru and had visited the office of A1 at Gajjelavaricheruvu. At that time, he had found his son, A1 and A2 in the office of A1. A2 informed him that his son is indebted to A1 in a sum of Rs.6 lakhs towards principal and interest and demanded him to

discharge the said debt. A1 had also insisted to pay cash or to alienate the land for the discharge of the said debt. Then he (PW2), A1 and A2 and the deceased went to Polasigudem. A1 and A2 visited his landed property in the village. He informed both the accused that he is prepared to alienate his land to discharge the debt of his son, the deceased-Veera Raghavulu. All of them agreed for the registration of the sale deed on the next day. A1 and A2 took the deceased along with them to Eluru and released his son at Eluru. After the deceased was released by the accused, the deceased went to his house and found that his wife is away from the house and therefore, he had again went away on his Scooter. Subsequently, he was found dead in a room of Madhulatha hotel.'

5. (d) Before proceeding further, it is necessary to note that when PW1 the elder brother of the deceased had lodged a report on 08.01.1998 after finding the dead body of his brother in room no.223 of Madhulatha hotel, the police have recorded his exhibit P1 statement and the crime was initially registered under Section 174 of the CrPC. However, according to the case of the prosecution after seizure of MO4-diary of the deceased from the scene of offence and after it was found that it contained a death note written by the deceased to the effect that due to continuous harassment and blackmailing of the accused and following their abetment he had committed suicide the section of law was altered to Section 306 of the IPC on 15.01.1998 at about 05:00 PM by the Inspector of Police-PW17. In fact he had verified the investigation done by PW15 and laid the charge sheet. PW4 the wife of the deceased had testified that on 05.01.1998 A1 and A2 came to her house and took her husband and that later he did not return home. However, PW2 stated that after he was called to the office of A1, he (PW2), A1, A2 and the deceased went to their lands and A1 and A2 had inspected the lands and later A1 and A2 left his son at Eluru and that after his release, the deceased went to his house and found that his wife was not at the house

and that therefore, he had again went away on his Scooter. Therefore, the deceased was not last seen in the company of the accused before his dead body was found in the hotel room. The deceased admittedly had left the company of A1 and A2 at Eluru on their return to Eluru after the visit to the lands at Polasigudem. And, the deceased, in fact, had returned to his house and had again left on a Scooter finding that his wife is not at the house. It is to be noted that PW1 having found that his brother is not to be seen did not lodge a police report with the police stating that his brother is missing. PW1 did not state in his evidence anything about the complicity of the accused. His evidence shows that he is not even entertaining a suspicion against the accused. Thus, there is no reference to the accused in his evidence. Exhibit P1 report was lodged only after the dead body of the deceased was found by PW1 and others in the room of the hotel. It is not even mentioned in the report that the deceased has consumed poison and committed suicide. Even though PWs1 and 2 had got knowledge that the deceased was not to be seen and was missing for the last three days, no report was given and no steps were taken for his search. According to the version of PW4, the wife of the deceased, she had found that her husband who had left with A1 and A2 on 05.01.1998 had not returned and that therefore, she had informed about the same to her father-in-law (PW2). Though PW2 is aware that his son's whereabouts are not known and his son is found missing even by 06.01.1998, he did not lodge a report. Even according to him, on 05.01.1998 on the telephonic information given by A2 that his Son is in the office of A1, he had gone there on the vehicle sent by the accused and found his son in the company of A1 and A2 and that later, on the demand of A1 and A2 to transfer the lands in their names in due discharge of the debt which the deceased owed to A1 they had all inspected the lands in the village and that afterwards A1 and A2 left for Eluru along with the deceased and released the deceased at Eluru.

5. (e) In the background of factual matrix, on 05.01.1998 when he (PW2) came to know from PW4 his daughter-in-law that her husband is missing he ought to have lodged a report either on 05.01.1998 or on 06.01.1998 suspecting the accused as the persons responsible for the missing of his son. However, he did not lodge any report. It is not his case that he had not informed about the incident to PW1, his elder son. Even when PW1 gave the report, the incident on 05.01.1998 was not whispered in that report and it is not stated in that report that they had suspected the complicity of the accused for the death of the deceased. Only after finding the dead body of the deceased in the hotel room, PW1 gave a statement on 08.01.1998 at about 01:00 PM that too without referring to the accused. Further even when PW2 was informed that his son was detained in the office of A1, he went to the office of A1 in the vehicle sent by A2 and they all visited the lands and in fact PW2 according to his version agreed to register the land on 06.01.1998 in the name of the accused in lieu of discharge of the debt owed to him by his son, the deceased. In the circumstances, there is an amicable settlement of affairs even by 05.01.1998. PW2 also did not give a report either on 05.01.1998 or on 06.01.1998 stating that his son was detained illegally by A1 and that an illegal demand was made for transfer of the lands owned by the deceased in the names of A1 and A2. The land that was allegedly demanded to be transferred to the accused and which was agreed to be registered on 06.01.1998 stands in the name of the deceased and his wife. Ordinarily, PW2 being the Sarpanch of the village for about ten years and being a reputed man in the village is conversant with the procedures in regard to lodging reports with the police cannot be doubted. If any wrong was done by the accused and in case the accused are guilty of any offence, he would not have kept quiet. PW3 is another brother of the deceased. According to his version, on coming to know that his brother was missing, he came down to Eluru. He too did not lodge a report with the police having come to

know on 07.01.1998 itself that his brother was missing. Thus the oral evidence by any standards is not sufficient to come to a safe conclusion that the accused abetted the commission of the suicide by the deceased. Then what remains is the MO4 containing a death note of the deceased which was already referred to supra. PWs2 and 3 have not deposed that the deceased was in the habit of writing diaries. They also did not depose that when they went to the hotel room and found the dead body of the deceased they had noticed the diary-MO4 at the scene of offence. They did not depose that the handwriting on MO4 is that of the deceased. When PWs1 to 3 the brothers and the father of the deceased were examined, MO4 was not confronted to them and it was not elicited from them that the contents of the said MO4/diary are in the handwriting of the deceased. According to PW4, after her husband had left her house on 05.01.1998 along with A1 and A2 she became unconscious and she was admitted for treatment in hospital on 06.01.1998 and that by the time she regained consciousness she was informed that her husband had died. She had also further deposed that she does not know any subsequent events. PW4 testified as follows: - 'My husband did not return till evening. I informed the same to my father-in-law at Polasigudem. As I came to know about the death of my husband I was admitted in the hospital for treatment on 06.01.1998. I was unconscious for about two days. I do not know the subsequent events.' This evidence of PW4 goes to show that she came to know about the death of her husband by 06.01.1998 itself that is even by the time she was admitted in hospital for treatment on 06.01.1998. Her evidence also shows that she was unconscious for two days. In her cross examination, the following points were elicited. 'As I came to know about the sudden death of my husband on 06.01.1998 I was shocked.' This evidence makes it crystal clear that PW4 came to know about the death of her husband even by 06.01.1998. Therefore, the evidence of PW1 on whose statement the crime was registered and the evidence of PWs2

and 3, the father of the deceased and the younger brother of the deceased, to the effect that they do not know about the death of the deceased even by 07.01.1998 and that on 07.01.1998 PW2 informed PW1 that his younger brother Veera Raghavulu was missing and that he came down to Eluru in search of his brother and that while searching they had found the Scooter in the parking place of Madhulatha hotel and that on enquiries made with the hotel authorities they had found the dead body in the hotel room are all highly doubtful. Further, even PW4 did not say that the handwriting in the diary/MO4 is that of her husband. In fact she was not confronted with the contents of diary when she was examined as PW4. None of the witnesses from the hotel i.e., PW5, the sweeper in the Madhulatha hotel and PW6, the receptionist of the said hotel did not speak that when they found the dead body in the hotel room they also had noticed a diary in the said room. Further, as per the charge sheet one LW11 went in a car and brought PW2 to the office of A1. That LW11 was not examined. PW7 the driver of the car who allegedly took PW2 on 05.01.1998 to the office of A1 did not support the case of the prosecution. Therefore, the prosecution evidence that was adduced to show that A2 sent a car to the house of PW2 and that on that PW2 had travelled in that car and had arrived at the office of A1 and that he had noticed his son in the office of A1 and that they had again visited the village to inspect the lands is doubtful. Therefore, the only other evidence on record to the effect that MO4 was available in the hotel room is that of PW13, a mediator who was said to have been present when the scene of offence was observed and exhibit P7 mediators report was prepared. He deposed about the recovery of MOs 1 to 11 from the room in which the dead body of the deceased was found. Amongst them, MO4 is the diary which was alleged to have been recovered. He did not say as to from which place of the room the said diary was seized. He had admitted that no identity slips with his signatures were affixed to MOs 1 to 11. In exhibit P7 observation report it was mentioned

that the entry in the diary is in the handwriting of the deceased. There is no basis for the panch witness to say so. In the prosecution case it is alleged that the deceased had an illicit affair with a woman who is no more and that when he was copulating with that woman a photograph was taken and that by using that photograph A1 was blackmailing the deceased and that A1 and A2 were taking monies from time to time and as and when necessary. In the inquest report also the said facts were mentioned. At the time of inquest, PWs1 to 3 were admittedly present. Their presence was noted in the inquest report. PWs1 to 3 deposed that the deceased was not having any bad vices. They did not at all whisper in their evidence that A1 and A2 used to blackmail Raghavulu, the deceased, on the basis of the alleged photograph and by taking advantage of his illicit intimacy with a woman. Therefore, they did not support the case of the prosecution insofar as the contents of exhibit P8 in regard to the version that the deceased was having illicit intimacy with a woman who is no more. Even the police constable who prepared the scene of offence observation report did not depose as to from what place in the room the diary was recovered. The exhibit P13 rough sketch also does not show the place from where the said diary was recovered. PW17 is the police officer who had issued a memo for alteration of Section of law from 174 of the CrPC to 306 of the IPC. He did not make any whisper about MO4 recovery in his evidence. Therefore, his evidence is silent as to on what basis he had issued a memo for alteration of the section of law. The police officer who had investigated into the crime did not seize any material containing the handwriting of the deceased and also his signature and did not make an attempt to send such collected material and MO4 to a handwriting expert and had failed to obtain an opinion from the expert that MO4 contents are in the hand writings of the deceased. Thus, there is no reliable and credible evidence with regard to seizure/recovery of MO4 from the hotel room where the dead body of the deceased was found and there is absolutely

no evidence to show that the contents of MO4 are in the handwriting of the deceased. All these facts cumulatively bring to the fore the fact that there are many missing links in the case of the prosecution which give rise to a reasonable doubt and hence, the benefit of said doubt must be necessarily extended to the accused. Therefore, this court finds no material irregularity or illegality in the judgment of the court below calling for interference. The law is well settled that when two views are possible and that the view taken by the court below is consistent with the evidence on record and is probable and plausible, this court shall not substitute its own view because another view is possible.

5. (f) Viewed thus, this court finds that there is no merit in the revision and the revision is liable to be dismissed.

6. Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, in this CrIRC shall also stand dismissed.

M.SEETHARAMA MURTI, J

19th January 2015
Vjl