

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.2.2016

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THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.A.Nos.598 and 568 of 2015

&

MP.Nos.1 & 1 of 2015

Manoharan

.. Appellant/Accused 1 in
Crl.A.No.598/15

Madhu @ Manivannan

.. Appellant/Accused 2 in
Crl.A.No.568/15

Versus

The State of Tamil Nadu,
Represented by Inspector of Police,
V-6, Kolattur Police Station,
Chennai

.. Respondent/Complainant
in both the Criminal appeals

Criminal Appeals filed under Section 374(2) of Cr.P.C to
set aside the conviction and sentence passed against the
appellants/accused by the learned II Additional Judge, City
Civil Court, Chennai, in S.C.No.316 of 2013 dated 27.08.2015.

For Appellant : Mr.Harikumar for
Crl.A.No.598/15 M/s. P.C.Harikumar Associates

For Appellant
in Crl.A.No.568/15 : Mr. P.R.Dinesh Kumar

For Respondent : Mr.P.Govindarajan
in both appeals Addl. Public Prosecutor

COMMON JUDGMENT

A1 (appellant in Crl.A.No.598/15) and A2 (appellant in
bCrl.A.No.568/15, who have been convicted and sentenced by the
learned II Additional Judge, City Civil Court, Chennai, in the
sessions case, in S.C.No.316 of 2013 have appealed as against
their conviction and sentence.

2. In the said Court, on 27.8.2015, they were convicted and sentenced as under:

Accused	Conviction	Sentence
A1 & A2	Section 306 of IPC r/w.9 of Tamil Nadu Exorbitant Interest Act, 2003.	10 years R.I and fine Rs.10,000/- each i/d 1 year R.I

They have paid the fine amounts.

3. The case of the prosecution, in brief, is as follows:-

(i) P.W.1's husband, Sathyamoorthy is stated to have borrowed money from A1 and A2. And not discharged the loan. In the circumstances, on 13.07.2012, around 1.30 noon, P.W.1's husband was found hanging in his house.

(ii) P.W.1 gave Ex.P.1, complaint on the same day at 10 pm to P.W.9, Sub Inspector of Police at the Kolattur Police Station.

(iii) Initially, a case of suspicious death was registered under Section 174 Cr.P.C, Ex.P.7. He has seized Ex.P.8, a letter from the pant pocket of the deceased. In the presence of P.W.4 and another witness prepared Ex.P.2 Observation Mahazar. He drew Ex.P.9 rough sketch.

(iv) P.W.10, Inspector of Police took up his investigation. He held inquest over the dead body in the presence of panchayatdars. He examined the witnesses and recorded their statement. He altered the section of law to Section 306 IPC and Section 4 of Tamil Nadu Exorbitant Interest Act, 2003. (Ex.P.10 alteration memo). He arrested A2. In the presence of P.W.6 and another witness P.W.10, seized Ex.P.12 diary from A2. It contained an endorsement Ex.P.12. It has Ex.P.13 pronote executed by the deceased, witnessed by P.W.1. Ex.P.14 blank stamp paper signed by the deceased and P.W.1 and Ex.P.15 S.B A/C pass book of the deceased and seized them under Ex.P.16 mahazar. P.W.10 produced the seized documents under Ex.P.17 to the court.

(v) P.W.7, doctor conducted postmortem on the dead body. She issued Ex.P.5 postmortem certificate. P.W.8, the scientific assistant, issued the chemical report. Inspector Murugesan concluded the investigation and filed the final report in this case before the Court.

4. Upon hearing the arguments of both sides and on

consideration of the records of case, the trial Court framed charges under Section 306 of IPC r/w.9 of Tamil Nadu Exorbitant Interest Act, 2003. The accused have pleaded not guilty to the charges.

5. Prosecution examined P.Ws.1 to 10, marked Ex.P.1 to P.17 and exhibited M.O.1.

6. When the accused were examined under Section 313 Cr.P.C on the incriminating aspects in the prosecution evidence, they have denied their complicity in this case. They did not let in defence evidence.

7. Upon considering the prosecution evidence and mainly placing reliance on Ex.P.8 letter, the trial Court convicted and sentenced A1 and A2 as already stated.

8. The learned counsel for the A1 submitted that the sheet anchor of prosecution is Ex.P.8, which is stated to be a letter written by the deceased implicating the accused. It's very genuineness is in doubt. It's details has not been stated in the F.I.R. No satisfactory and acceptable evidence has been let in to show that the writings in Ex.P.8 is in the hand writing of the deceased. And Ex.P.8 has not been proved through persons, who were acquainted with the handwritings of the deceased. It has seen the light of the day for the first time when the trial of the case was started. Till then, Ex.P.8 has been burked by the prosecution. Genuineness of Ex.P.8 has not been established by seeking recourse to company with certain admitted handwritings of the deceased. No expert opinion under Section 45 Evidence Act on Ex.P.8 has been obtained.

9. The learned counsel for A2 subscribed the arguments of the learned counsel for A1. On his part contended that even as per the prosecution version and the evidence of P.W.1, Ex.P.8, letter is stated to have been first seen by Manjula, the sister of the deceased. This has also been stated by Murugan, the brother of the deceased. However, they were not examined. The defence has been denied opportunity to test the veracity of the statement of the prosecution that Ex.P.8 letter has been so unearthed through Majula. Such a valuable piece of evidence has been held back by the prosecution.

10. The learned counsel for A2 would also submit that copies of Ex.P.8 has not been furnished to the counsel under Section 207 of Cr.P.C. Surreptitiously, such a vital document has been held back by the prosecution and it was given after the insistence of the defence during the trial and the defence was completely prejudiced and prevented from preparing their defence with reference to Ex.P.8 well before. Prosecution has not proved its case beyond all reasonable doubts.

11. The learned Additional Public Prosecutor would draw our attention to the pen ultimate paragraph in Ex.P.1 F.I.R wherein it has been mentioned that such letter has been found in the pocket of the deceased. P.Ws.1 to 3 also spoke that they have heard the contents of Ex.P.8 letter read by others. They have also confirmed Ex.P.8 has been left by the deceased. In such circumstances, no dispute as to the genuineness of Ex.P.8 can be raised. Thus, the trial court rightly has convicted and appropriately sentenced them.

12. I have given my thoughtful consideration to the submissions of both sides and also perused the Judgment under the postmortem of both sides and also the entire materials on record.

13. Now, the question is whether prosecution has established that A1 and A2 have committed offences under Section 306 of IPC r/w.9 of Tamil Nadu Exorbitant Interest Act, 2003 beyond all reasonable doubts.

14. The gravement of the charge against A1 and A2 is under Section 306 of IPC. They were alleged to have abetted commission of suicide by the husband of P.W.1 on 13.07.2012.

15. The twin requirements under Section 306 of IPC is that there must be suicide and there must be abetment in the sense of a positive act on the part of the accused forcing, instigating the deceased to put an end to his life. Thus, it requires presence of mental element mens rea on the part of the accused. No criminal court would expect mens rea on the part of the victim. What is in the mind of the deceased to commit suicide is not requirement of Section 306 IPC. The requirement is what is the intention on the part of the accused.

16. Now in this case, undoubtedly, the first requirement is satisfied, namely, commission of suicide by the deceased. The important aspect is 'abetment'. There is oral evidence of P.Ws.1 to 3 to the effect that the deceased was indebted to A1 and A2, who were stated to be money lenders. This is not sufficient to mulct the accused with this case.

17. The main plank of prosecution case is Ex.P.8. Ex.P.8, letter is stated to be in the hand writing of the deceased. It is to the effect that the deceased had borrowed money from A1 and A2, and he had paid them more by way of interest and since there was some balance, they have continuously tortured him and scolded him and because of that, he has committed suicide. Court must be serious of proving such Ex.P.8 in this case.

18. According to prosecution, Ex.P.8 is stated to have been found in the pant pocket of the deceased. It was handed over along with Ex.P.1, by P.W.1 to P.W.9, S.I of Police, at the time of lodging the F.I.R. The contents of Ex.P.8 when read is stated to have been heard by P.Ws.2 and 3. They have also spoken about it in their evidence.

19. When we read Ex.P.1, complaint at its pen-ultimate part, there is one stray sentence that a letter of her husband has been produced to P.W.9. The omission to mention the content of Ex.P.1 although in a concise form implicating the accused with the death of her husband is very significant. There is no reference to the contents of Ex.P.8 in Ex.P.1. If really Ex.P.8 was available with P.W.1, she would have mentioned that A1 and A2 are responsible for her husband's suicide.

20. Ex.P.8 is stated to have been taken out from the pant pocket of her deceased brother by Manjula. This has also been spoken to by P.Ws.1,2 and 3. But that Manjula has not been examined. On the contrary, it has been produced through P.W.9, S.I of Police. Further, Ex.P.8 has not been exhibited through P.W.1. It is a common sense that P.W.1 would know or aware of or acquainted with the hand writing of her deceased husband. The defence has been deprived of opportunity to test P.W.1 as to the veracity and writing in Ex.P.8.

21. In view of the importance of Ex.P.8 in this case, it's genuineness has to be established by the prosecution in a manner known to law. It must be proved that the hand writing in Ex.P.8 is in the hand writing of the deceased. In his cross examination P.W.10, the Investigating Officer admits that he did not make any endeavour to send Ex.P.8 for expert analysis with the undisputed hand writings of the deceased. Although as per Section 67 of Evidence Act, proper mode or particular mode of proof has not been prescribed, but the idea behind Section 67 of Evidence Act is that the genuineness of the signature or hand writing of a person in a document must be proved. Court must be satisfied with the genuineness of the hand writing in the document when especially based on such a document, a conviction is expected. Now, in this case, Ex.P.8, did not pass the test of reliability. In such circumstances, necessarily, Ex.P.8 has to be eschewed from our zone of consideration. Less Ex.P.8, the net result is death of the prosecution case because the remaining evidence did not substantiate the charges levelled against the accused. Thus, the prosecution has thoroughly failed to prove its case beyond all reasonable doubts.

22. The Criminal Appeals are allowed. The conviction and sentence imposed on the appellant in Cr.A.No.598/15 and the

appellant in Crl.A.No.568/15 under Sections 306 IPC r/w Sec 9 of Tamil Nadu Exorbitant Interest Act 2003 in S.C.No.316 of 2013 on the file of the II Additional Judge, City Civil Court, Chennai, are set aside. The appellants are acquitted. The appellants shall be released forthwith, if their further custody is no longer required in connection with any other case. Fine amount, if already paid shall be refunded to them. Consequently, connected M.P.Nos.1 and 1 of 2015 are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.II Additional Sessions Judge,
City Civil Court, Chennai,

2.-do-Thro The Principal Sessions Judge
City Civil Court Chennai

3.The Superintendent of Central prison,
Puzhal Chennai-66

4. The Inspector of Police,
V-6, Kolattur Police Station,
Chennai

5.The Public Prosecutor,
High Court,
Madras.

+1 cc to Mr.P.R.DineshKumar Advocate sr.6046
+1 cc to M/s.P.C.Harikumar Associates Advocate
sr.6062

Crl.A.Nos.598 and 568 of 2015

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