

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :06.09.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C. Nos.1058 of 2009, 347 of 2010
and
CRL.A.No.61 of 2010

Crl.R.C.No.1058 of 2009

Murthy

...Petitioner/Complainant

Versus

1. Natarajan

2. Bharathi Mohan

...Respondents/Accused

Crl.R.C.No.347 of 2010

Murthy

...Petitioner/Complainant

Versus

1. Natarajan

2. Bharathi Mohan

...Respondents/Accused

3. State rep. by
Inspector of Police,
Pallavaram P.S.

...3rd Respondent/Complainant

Crl.A.No.61 of 2010

State rep. by:

Inspector of Police,

S-5, Pallavaram Police Station,

Chennai Sub-urban Police.

(Crime No.469 of 2001)

...Appellant/Complainant

Versus

1. Natarajan

2. Bharathi Mohan

...Respondents/Accused

Prayer in Crl.R.C.No.1058 of 2009:-Criminal Revision Petition is filed under Section 397 Cr.P.C read with 401 Cr.P.C., praying to set aside the final order passed in Crl.M.P.No.2336 of 2009 dated 14.7.2009 of rejection of complaint by the Judicial Magistrate No.1, at Chengalpattu.

Prayer in Crl.R.C.No.347 of 2010:-Criminal Revision Petition is filed under Section 397 Cr.P.C read with 401 Cr.P.C., against the judgment of acquittal u/s 235 (1) Cr.P.C., in S.C.No.602/05 by Mahila Court at Chengalpattu by an order dated 09.04.2009.

Prayer in Crl.A.No.61 of 2010:-Criminal Appeal is filed under Section 378 Cr.P.C., against the judgment dated 09.04.2009 in S.C.No.602/05 passed by Mahila Court at Chengalpattu.

For Petitioner in
Crl.R.Cs.1058/2009, 347/2010 : Mr.V.Kannan

For RR1 & 2 in
Crl.R.Cs.1058/2009, 347/2010
and Crl.A.61/2010 : Mr.R.Vijayakumar

For R3 in Crl.R.C.347/10/
For Appellant
in Crl.A.61/10 : Mr. V. Arul,
Additional Public Prosecutor

COMMON ORDER

Criminal Appeal in Crl.A.No.61 of 2010 and Crl.R.C.No.347 of 2010 has been preferred against the judgment of acquittal dated 09.04.2009 made in S.C.No.602/05 passed by Mahila Court at Chengalpattu.

2. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for State as also counsel for accused.

3. For the purpose of convenience, the respondents in the appeal against acquittal in Crl.A.No.61 of 2010 are referred to by their ranks before the trial Court. A1 and A2, father and son faced trial in S.C.No.602 of 2005 on the file of Mahila Court at Chengalpattu for offence under Sections 406 r/w 34 IPC as against A1, while A1 also was charged for offence under Section 306 IPC.

4. The case of the prosecution is that the Deputy Superintendent of Police, St.Thomas Mount, Pallavaram Police Station has filed final report in Cr.No.469 of 2001 u/s.406 & 306 IPC alleging that on or before February 2001, in No.10-A, Yasin Khan Street, Pallavaram, the deceased Tamilselvi W/o.Moorthy has entrusted 16 sovereigns of gold jewels to Bharathi Mohan (A2) for safe custody. Natarajan (A1) and

Bharathi Mohan (A2), with criminal intention to misappropriate the property entrusted to them committed criminal breach of trust in respect of 16 sovereigns of gold jewels entrusted to them by the deceased Tamilselvi and converted it for their own use and thereby, A1 and A2 have committed an offence punishable u/s.406 IPC R/W 34 IPC and during the course of same transaction, A1 voluntarily abetted the deceased Tamilselvi to commit suicide by representing that if she insist for the return of gold jewels entrusted to them, he would make allegation that she is having illicit intimacy with A2 and in pursuance of the said abettment Tamilselvi (since deceased) has committed suicide by consuming poisonous substance at her house on 17.06.2001 and thereby, A1 has committed an offence punishable u/s 306 IPC. Hence, the Deputy Superintendent of Police has filed final report against the A1 and A2 before the Judicial Magistrate Court, Tambaram.

5. Before trial Court, prosecution examined 20 witnesses and marked 20 exhibits. On behalf of the defence, none were examined and two exhibits were marked.

6. On appreciation of materials before it, trial Court, under judgment dated 09.04.2009, acquitted A1 and A2, aggrieved by which, the State has preferred CrI.A.No.61 of 2010 and the defacto complainant has preferred CrI.R.C.No.347 of 2010.

7. In the course of arguments before the trial Court, certain statements were made, which were considered as defamatory by the de-facto complainant. He has sought action against A1 and A2 to prosecute them for offence under Section 499 IPC through CrI.M.P. No.2336 of 2009. Against the dismissal order dated 14.07.2009, defacto complainant preferred CrI.R.C.No.1058 of 2009.

8. In rendering a finding of acquittal, Court below, on a fair appreciation of the materials on record, has reasoned as follows:-

"27. The entire statement Ex.P1.F.I.R and all other documents reaches the court only on 16.7.2001 i.e. after 30 days of seizure. In Ex.P5 there are writings by mentioning the date of entry is on 21.4.2005 at page 30th May 2000. According to the PW-18, this document was received through the court on 09.01.2001. Therefore, no significance can be attached for the date 21.4.2005 found in Ex.P5.

28. Further, it is pointed out in the evidence by the defence counsel that t number of pages in Ex.P4 diary is missing and Ex.P5 Note book containing only 145 pages instead of 192 pages. PW-18 was admitted that there is no correspondents from the police officers that the writings in Ex.P4, Ex.P5 are the admitted signature of the

deceased Tamilselvi. PW-8 also admitted that he had selected certain writings only for comparison. Therefore, the learned counsel argued that the handwriting expert opinion is not conclusive one. There is no direct evidence for the writings found in Ex.P3 to Ex.P5 are the writings of Tamilselvi.

29. The learned counsel for the accused argued that the PW-1 stated in his evidence that the deceased had informed him that the deceased was under stress and mental agony and therefore she requested him to take her to her uncle's house for 5 days. Accordingly, PW-1 took the deceased to her uncle's house. If this version is true one then, the deceased must have taken along with her dress for 5 days. But there is no evidence that she took clothes along with her for her staying. PW-3 did not depose that the deceased came with luggage to her house and also PW-4 did not depose that he saw the deceased and the PW-1 were riding in a motor cycle with luggage. According to the prosecution she had only handbag which was kept in the house of PW-3 which is having Ex.P3, Suicide note. The PW-3 or PW-4 did not depose that the deceased carried handbag along with her. Further, the learned counsel for the accused pointed out the discrepancy of the evidence of recovery of handbag and suicide note. PW-1 and 6 further deposed that they handed over the receipts for payment of telephone bills which show that the deceased and PW-1 resided in the house of accused and they also handed over the partnership deed to the police. But these documents are not produced in court. There is no explanation by the prosecution that why those documents are not produced before the court.

30. Further, it is an admitted fact that A2 is the son of A1; then the allegation against A1 is that if they insisted upon return of 16 sovereigns of jewels, he would say that the deceased and the 2nd accused had illicit intimacy. This allegation is having reciprocating effect to affect prestige and reputation of the 2nd accused and also to his family including the first accused. The evidence is lacking whether the 2nd accused had already married or not. Generally, no father will make such allegation against his son. This also creates doubt in the prosecution version. The PW-1 deposed that he did not know where his wife had consumed poison. PW-16 prepared Observation Mahazar Ex.P18 in the house wherein the deceased committed suicide which shows that the door No.6/27 A, Nehru Street, Pallavaram is the place where the deceased consumed poison. The Deputy Superintendent of Police came

to the conclusion that in door No.6/27 A, the deceased consumed poison. But no incriminating materials such as empty container of the poison, the vessel used for consumption of poison either seen or not seized. On perusal of records it shows that the original report of the Revenue Divisional Officer was not produced in the court. The reason for non production of the original report was not adduced by the prosecution side. In the above discussions there is a lot of material defects which affects the entire prosecution witness. Therefore, the prosecution has failed to prove the offence u/s 406 r/w 34 IPC and 306 IPC against the accused."

9. We find no reason to interfere.

10. By its impugned judgment, the trial Court has directed that the right of the property, i.e., M.Os.1 to 3 would be decided in separate proceedings as A1 and A2 claimed that the same belong to them. Learned counsel for de-facto complainant, as also learned counsel for A1 and A2, informed that both parties mutually have agreed that the jewellery M.Os.1 to 3 be returned to the de-facto complainant and made an endorsement to that effect.

11. Recording the said submission and endorsement, this Court directs return of M.Os.1 to 3 in case tried in S.C.No.602 of 2005 on the file of Mahila Court, Chengalpattu to the de-facto complainant/PW-1 on application made before it.

12. The Criminal Revision Nos.1058 of 2009, 347 of 2010 and Criminal Appeal No.61 of 2010 are disposed of.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS-vii)

//True Copy//

WEB COPY
Sub Assistant Registrar

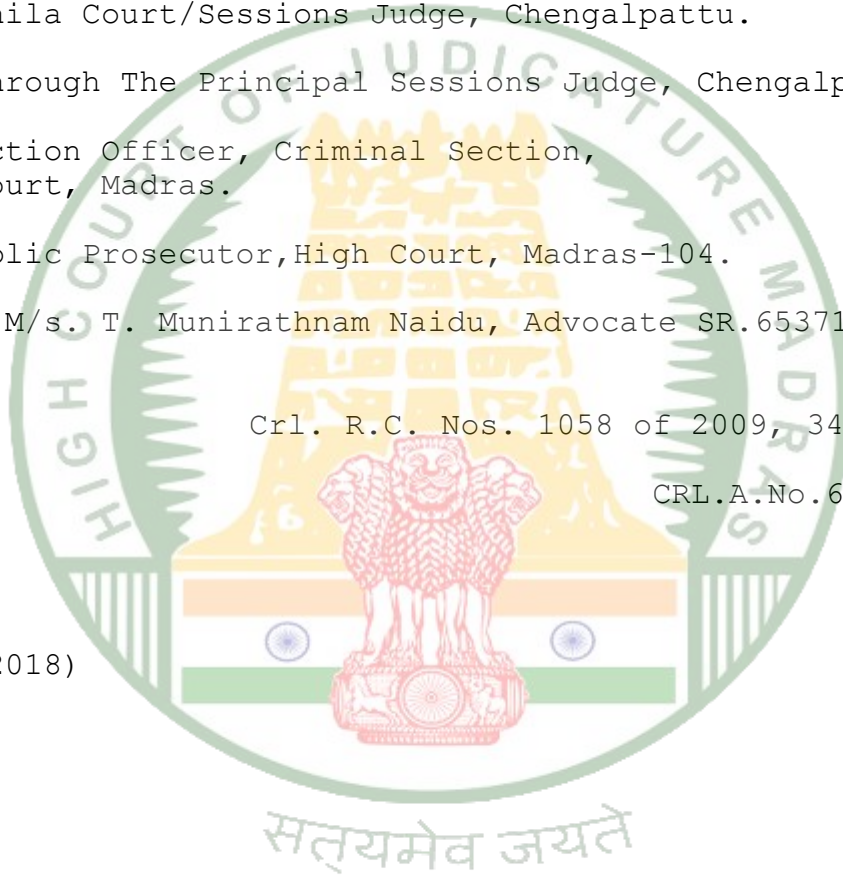
kmi

To

1. The Inspector of Police,
S-5, Pallavaram Police Station,
Chennai Sub-urban Police.
 2. The Judicial Magistrate No.1, Chengalpattu.
 - 3.-DO- Through The Chief Judicial Magistrate, Chengalpattu.
 4. The Mahila Court/Sessions Judge, Chengalpattu.
 5. -do- Through The Principal Sessions Judge, Chengalpattu
 6. The Section Officer, Criminal Section,
High Court, Madras.
 7. The Public Prosecutor, High Court, Madras-104.
- + 1 cc to M/s. T. Munirathnam Naidu, Advocate SR.65371

CrI. R.C. Nos. 1058 of 2009, 347 of 2010
and
CRL.A.No.61 of 2010

skv(CO)
EU(23/01/2018)



WEB COPY