

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.R.C.No.610 of 2012

1.Frank Royal
S/o.Soloman

2.Rita Mary
W/o.Late Francis

... Petitioners

vs

1.Sister Hilda
D/o.Felix

2.Sister Michael Cruz
D/o.Cruz Antony

3.Mother Superior Josephine alias
Arul Josephine
D/o.Selvaraj

4.State represented by
Inspector of Police,
Tirupathur Town Police Station,
Vellore District.
Crime No.241 of 2007

... Respondents

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned Additional District and Sessions Judge, Fast Track Court, Tirupattur, Vellore District, passed in S.C.No.81 of 2008 on 03.12.2008.

For Petitioners: No appearance

For Respondents: Mr.S.A.Rajan [R1 & R3]
Mr.Dharmasanjeevi [R2]
Mr.V.Arul,
Additional Public Prosecutor [R4]

O R D E R

After having sought adjournment on 08.09.2017, a memo has been filed withdrawing appearance. It is in such circumstance that this Court, towards avoiding protraction, proceeds to decide the matter on merits.

2. This revision arises against judgment of learned Additional District and Sessions Judge, Fast Track Court, Tirupattur, Vellore District, passed in S.C.No.81 of 2008 on 03.12.2008.

3. Prosecution case is that first respondent was the Warden of the Hostel at the Mary Immaculate Teacher Training Institute, Thirupathur, Vellore District, of which the two deceased were students. Respondents 2 and 3 were President and Mother Superior of such institution. On 14.04.2007, respondents 1 to 3, pointed out wrongful activities of the two deceased and sent them out of the Hostel. On 20.04.2007, respondents 1 to 3 suspended the deceased from the institution and asked them to collect the Transfer Certificate. On 21.04.2007 at about 09.27 a.m., both deceased committed suicide by jumping before a running train. A case was registered in Crime No.241 of 2007 on the file of fourth respondent for offence u/s.306 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offence u/s.306 IPC before learned Judicial Magistrate I, Tirupattur. On committal, the case was tried in S.C.No.81 of 2008 on the file of learned Additional District and Sessions Judge, Fast Track Court, Tirupattur, Vellore District.

4. Before trial Court, prosecution examined 22 witnesses and marked 31 exhibits. None were examined on behalf of defence, however, 2 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 03.12.2008, acquitted respondents 1 to 3. There against, the present revision has been filed.

5. There is no appearance for petitioners. Heard learned counsel for respondents 1 to 3 and learned Additional Public Prosecutor.

6. In arriving at a finding of acquittal, Court below has reasoned as follows:

- (i) PWs. 5 and 6, who were the classmates of deceased, had turned hostile. The evidence of PW-13, father of deceased Sheeba Gethciyal, was to the effect that on 20.04.2007, second accused called him over phone and asked him to collect the Transfer Certificate of his daughter. Thereafter, PW-13, spoke to his daughter over phone and she informed him that the accused have ill-treated her. The above position has been informed by PW-13 during his examination and the same has not been informed during investigation, which shows that the same was an after thought. The evidence of PW-17, mother of deceased Sheeba Gethciyal, was also to the same effect. To prove the contention that second accused called PW-13 over phone in the night of 20.04.2007 and that PW-13 spoke to his daughter Sheeba Gethciyal over phone on the same day, no document has been marked. The evidence of PWs. 14 and 16, mother and guardian of deceased Shoba Mary was also to the same effect and to prove the same, no document has been marked.
- (ii) While it was the evidence of PWs. 2, 15 and 16, relatives of PW-14, mother of deceased Shoba Mary, that PW-16, guardian of deceased Shoba Mary, was informed of the death of Shoba Mary between 08.00 and 08.30 a.m. on 21.04.2007, it was the evidence of PW-14 that she came to know about her daughter's death only between 01.00 and 01.30 p.m on such date.
- (iii) PW-13 deposed that though he came to know about the death of his daughter Sheeba Gethciyal at about 11.30 a.m. on 21.04.2007, he had not gone to the Government Hospital at Tirupathur to see her, instead he went to see one Arockiyam, who obtained the seat in the institution. If anyone is informed of death of his son or daughter, they would first rush to the place where the body of his son or daughter was kept and hence, the deposition of PW-13 that he went to see one Arockiyam was untenable.
- (iv) Ex.P3, the alleged suicide note, was in two parts. In Ex.P3, it was written that Hilda (Warden) was the cause for their suicide. A perusal of Ex.P3 revealed that the wordings above signature, were written before the deceased were admitted into Bethal Hostel i.e., before 17.04.2007 and that below the signature, were written after their admission into Bethal Hostel i.e. after 17.04.2007. Ex.P3 did not bear any date.
- (v) It was the evidence of PWs. 13, 14, 16 and 17 that the deceased got depressed and took a decision to commit suicide as the accused had informed of issuing transfer certificates.

However, a careful perusal of Ex.P3, suicide note, did not inform such position. Further, Ex.P3, suicide note, did not inform what the suffering undergone by the deceased was.

On the above reasoning and for other reasons, Court below found that the prosecution has not established its case through oral and documentary evidence and accordingly, afforded the benefit of doubt to the accused. This Court would add the following in further support of such finding. Ex.D2, Warning Book, has been marked through PW-5, who earlier had been studying in the institution. Such exhibit reflects several entries by students informing wrong doings by them, their undertaking not to repeat the same and in some cases, undertakings to vacate the hostel if they did so. The same reflects an entry of 14.03.2007 by one of the deceased viz., Shoba Mary. Without seeming to be party to moral policing, we would state that such note admits to a not so proper relationship with another girl. Though not examined by police, mother of deceased Sheeba Gethciyal, has, upon a petition moved by her, been permitted to depose as PW-17. She thereafter forwarded as many as nine documents running into several pages under a memo dated 23.10.2008. Though Court below has rejected the memo on 04.11.2008, the same has been represented on 05.11.2008. Be that as it may, the documents are now available amidst the records. They, besides revealing expressions of love, which by itself, of course cannot be objected to, reflects entities and pleadings by deceased Sheeba Gethciyal to the deceased Shoba Mary against the latter resorting to suicide. No dates of correspondences between both deceased are to be found. This makes clear that commission of suicide was in the contemplation of at least one of the deceased over a period and that the deceased Sheeba Gethciyal, who initially had advised the deceased Shoba Mary against such act had joined Shoba Mary either on her own volition or on the inducement of Shoba Mary, in taking the drastic step of jumping before a train on 21.04.2007. In the scenario above mentioned there is no room for conviction for abetment of suicide punishable u/s.306 IPC.

The Criminal Revision Case shall stand dismissed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court, Tirupattur,
Vellore District.
2. The Inspector of Police,
Tirupathur Town Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.Dharmasanjeevi, Advocate sr 66302.
+1 CC to Ms.G. Karthikeyan, Advocate sr 66478.

Crl.R.C.No.610 of 2012

AD(CO)
SP(30/11/2017)



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