



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL(MD)No.28 of 2015

Paunthai : Appellant/ P.W.1

Vs.

1.The Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District. :1st Respondent/Complainant
(in Crime No.58 of 2013)

2.Dharmar :2nd Respondent/Accused No.1

3.Ganga Lakshmi :3rd Respondent/Accused No.2

4.Minnalkodi :4th Respondent/Accused No.3

PRAYER : Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the records relating to the judgment of acquittal dated 12.12.2014 made in S.C.No.19 of 2014 on the file of Fifth Additional District and Sessions Judge, Madurai and set aside the same as illegal and convict them.

For Appellant : Mr.R.Gandhi

For R-1 : Mr.A.Robinson,
Government Advocate (Crl.Side).

For R-2 to R-4 : Mr.S.Louis

JUDGMENT

The criminal appeal is filed against the Judgment dated 12.12.2014 made in S.C.No.19 of 2014 on the file of Fifth Additional District and Sessions Judge, Madurai.

2.Heard the learned counsel appearing for the appellant, the learned Government Advocate (Crl.side) appearing for the first respondent and the learned counsel appearing for the respondents 2 to 4.

3.This appeal against the order of acquittal is preferred by the de facto complainant/P.W.1.



4.The brief facts of the case is that one Kalaivanan, son of de facto complainant got married Ganga Lakshmi. A female child by name Dennisha was born to them. There was a matrimonial dispute between them. Hence, Ganga Lakshmi has left her husband and was living with her parents. On the day of occurrence, i.e., on 30.03.2013, Kalaivanan has told his mother that he wants to go to his wife's house and bring her back. But later, at about 04.00 pm., he came crying lamented to his mother that they have abused him using filthy language and therefore, he wants to end his life. Thereafter, at about 7.00 p.m., he came to the house and told his mother that he has consumed poison and gave suicide note, which was written and kept his shirt pocket. Immediately, Kalaivanan was taken to the nearby hospital. They referred him to Government Headquarters Hospital, but on the way, he lost his breathe.

5.Based on the complaint given by the Paunthai-P.W.1, mother of the deceased Kalaivanan, the respondent police has registered a case under Section 306 IPC. After completion of investigation, they have filed a report final report. Based on the final report the trial Court has framed the charge under Section 306 IPC and tried the case.

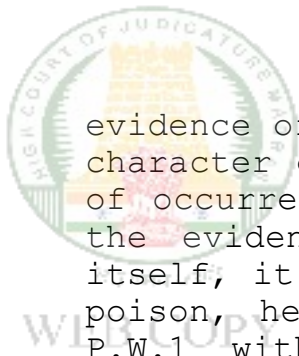
6.To prove the case, the prosecution has examined thirteen witnesses, thirteen exhibits and two material objects were marked on behalf of the prosecution. To prove the defence two witnesses and thirteen exhibits were marked.

7.The trial Court on considering the evidence let in by the prosecution as well as the defence, has concluded that there is no evidence to prove that the death of Kalaivanan was due to the instigation of the accused persons, who are none other than his wife, father-in-law and mother-in-law. Aggrieved by that, the de facto complainant has preferred the appeal against the acquittal.

8.The learned counsel for the appellant has contended that the evidence of P.W.1 to P.W.5 are cogent and clearly supported the prosecution case. Therefore, acquitting the accused persons pointing out the minor discrepancies, is unsustainable. While the Doctor has deposed that the death was caused due to consuming poison, acquitting the accused, is unsustainable in the eye of law. It is also contented that when P.W.1 has spoken about the ill-treatment met by her deceased son at the hands of the accused person and the suicide note has also pointed out the guilt of the accused person, the trial Court ought to have convicted them under Section 306 IPC.

9.The learned counsel for the appellant would also pointed out the portion of the deposition recorded on behalf of the prosecution and contented that the order of acquittal is improper and unsustainable.

10.Per contra, the learned counsel appearing for the respondents 2 to 4/accused 1 to 3 would submit that through the



evidence of D.W.1 and D.W.2 as well as the defence exhibits, the bad character of the deceased person has been established and the place of occurrence, namely, water tank of the village is proved through the evidence of P.W.4. From the case of prosecution witness itself, it is established that immediately after Kalaivanan consumed poison, he was taken to hospital by the people nearby. Whereas, P.W.1 with an ulterior motive, had stated that the deceased Kalaivanan after consuming poison, came to her house and told that he has consumed poison and handed over the suicide note, which are not corroborated, also proved to be an embellishment. Therefore, this criminal appeal is liable to be dismissed.

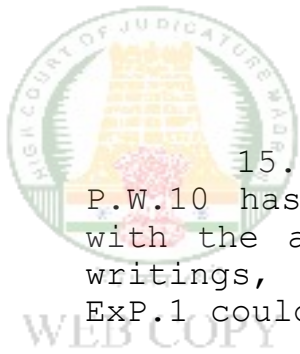
11.Point for consideration:

Whether the view taken by the trial Court acquitting the accused is a possible view and if so, can an appellate Court shall interfere in the findings?

12.The gravamen of the prosecution case is based on the complaint given by Paunthai-P.W.1. The specific case of her complaint is that on the day of occurrence, morning at about 07.00 clock, her son informed her that he was going to his wife's house and bring her back. At that time, Chinnakannu and Ravi were present. Chinnakannu is examined as P.W.3. Ravi is examined as P.W.2.

13.Chief examination of P.W.2-Ravi indicates that on 30.03.2013 at about 06.00 am., when he along with Chinnakannu were presented in the house of Kalaivanan, Kalaivanan was weeping and when he enquired him, he said that the second accused has abused him, with filthy words. Thereafter, he and Chinnakannu left their house. On the same day, at around 06.00 pm., he came to know that the Kalaivanan was consumed poison and taken to the hospital.

14.P.W.3-Chinnakannu in his chief examination has deposed that he came to know that on 30.03.2013 between 05.00 to 06.00 am., there was some quarrel between the deceased Kalaivanan and his wife and on the same day evening he consumed poison. When he came to know that Kalaivanan was taken to the hospital around 07.30 pm., he and along with P.W.2 went to the Ushilampatti hospital. They were informed that Kalaivanan has been referred to Madurai Government Hospital. So, the evidence of P.W.1 regarding her son statement to her in the morning at the presence of Chinnakannu and Ravi, not only lacks corroboration but contradicted by the other two witnesses namely, P.W.2 and P.W.3. In fact, P.W.3, except saying that he knows the family of the deceased Kalaivanan and the deceased, the rest of his deposition is only hear say. Whereas, P.W.2 would say that Kalaivanan was abused by the accused persons on 30.03.2013 morning 06.00 am., itself, which is not the case of P.W.1. P.W.1 came to know about the abusive language uttered by the accused persons, only when her son came to her house at 04.00 p.m.



15. Coming to the suicide note, the handwriting expert-P.W.10 has opined that the signature found in the Ex.P.1 tallies with the admitted signature of the accused, whereas regarding the writings, he could not give any opinion. In such circumstances, ExP.1 could not be piece of evidence to take it as a suicide note.

16. In the above said circumstances, the trial Court has rightly acquitted the accused persons for want of evidence. This Court has no other alternate view, than the view expressed by the trial Court.

17. Hence, this criminal appeal is dismissed, confirming the judgment of acquittal dated 12.12.2014 made in S.C.No.19 of 2014 on the file of Fifth Additional District and Sessions Judge, Madurai.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

cp

To

1. The Fifth Additional District and Sessions Judge,
Madurai.

2. The Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Gandhi, Advocate in SR No.81033

+1cc to Mr.S.Louis, Advocate in SR No.80792

CRIMINAL APPEAL(MD)No.28 of 2015

NM/RSK/SAR 2/27.09.2018/4P/8C

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