

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A.NO.391 OF 2010

State represented by The Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.(Crime No.296/2005)

... Appellant/Complainant

Vs

Senthilkumar

... Respondent/Accused

Prayer:-

The Criminal Appeal is filed under section 378 Cr.P.C., to allow the appeal and set aside the judgement of acquittal, dated 31.03.2010 in SC.No.255/2008 on the file of the learned District Sessions Judge, Mahila Court, Cuddalore and to convict the respondent/accused.

For Appellant : Mr.K.Prabakaran, APP

For Respondent : Mr.P.Palaninathan

JUDGMENT

- 1.This is an appeal filed by the State, against the judgement of acquittal, dated 31.03.2010, made in SC.No.255/2008, by the District and Sessions Court Mahila Court, Cuddalore District.
- 2.Before the Trial Court, the respondent/accused stood charged and tried for the commission of alleged offences under Sections 389, 366, 376(1), 365, 368 of IPC and Section 4(b) of the Tamil Nadu Prohibition of Women Harassment Act.
- 3.The brief facts of the case of the Prosecution are as follows:-
 - a) The respondent/accused is a resident of Alakudi Village and that during the year 1996, one Raja belonging to the same village married one Nandhini @ Rama @ Tamaraiselvi, belonging to Kattumannar Koil and they were living as husband and wife at Alakudi Village. The respondent/accused used to frequently visit the house of Raja and got

close acquaintance with his wife Tamaraiselvi and developed illicit intimacy with her and also had sexual relationship with her. In order to conceal the above illegal relationship, the respondent/accused often threatened the deceased and that in continuation of the above and with the common intention to cheat her, on 01.07.2005, the respondent/accused came to Alakudi Village and threatened the deceased to accompany with him and come out of the house with 35 sovereigns of jewels and a cash of Rs.20,000/- and thereby, kidnapped her from the said Village. Taking her from the house, the respondent/accused had sexual intercourse with her, against her Will concealed and detained from her family, snatched away 35 sovereigns of jewels and cash of Rs.20,000/- from her and after ten days taking her to several places, dropped her at Kattumannarkoil through his brother. Thus, affected by the above criminal acts of the respondent/accused and in continuation of the above incident, the deceased committed suicide by hanging at her house on 27.07.2005, at about 11.00a.m. Since, the respondent/accused through his direct activities induced the deceased to commit suicide, the charges were framed against him for the offence under Sections 365, 368, 366, 389 and 306 IPC.

4.Initially, cognizance of the case was taken by the learned District Munsif Cum Judicial Magistrate, Kattumannarkoil in PRC No.4/2008 and finding that all the offences were exclusively triable by the Court of Sessions, had committed the case to the Sessions Court and subsequently, as per the orders of the Sessions Court, the case was made over to the learned District and Sessions Judge, Mahila Court, Cuddalore and the same was taken to the file on S.C.No.255/2008. On the side of the prosecution PWs.1 to 15 were examined and Exs.P.1 to P.23 were marked. On the side of the defence/respondent/accused Ex.D.1 and M.O.1 were marked and no oral evidence was let in on the side of the respondent/accused.

5.After hearing both sides the learned Trial Judge disbelieved the case of the prosecution and by judgement dated 31.03.2010 acquitted the respondent/accused. While acquitting the accused, the Trial Court in its judgement at paragraph 35, had made certain observations that the victim was murdered and had, expressing its inability to order for investigation to find out the actual culprits, had preferred to offer certain recommendations to the Superintendent of Police to seek permission for further investigation from the High Court and to take action against the the Officers connected with the investigation for their dereliction. Challenging the said judgement of acquittal and further recommendations, this Criminal Appeal has been filed by the State.

6.This court heard the submissions of the learned counsel on either side.

7.The learned Additional Public Prosecutor for the Appellant would submit that the Trial Court has clearly exceeded in its jurisdiction and acted in violation of laws, by overstepping its power envisaged under Section 235(1) of Cr.PC, in which the Sessions Court has only two options, namely, after conducting the full trial as per the provisions of Sections 225 to 234 of Chapter XVIII of Cr.PC, either to convict the accused or acquit the accused and that in this case, the Trial Court, without any legal materials, had assumed it to be a case of murder and had preferred to make certain recommendations, directing the concerned Superintendent of Police to seek permission from the High Court to go for further investigation and to take action against the Officers, who had conducted the investigation. He would further submit that the final report was filed before the Magistrate for the offences under Sections 389, 366, 376(1), 365 and 36 of IPC and Section 4(b) of the Tamil Nadu Prohibition of Women Harassment Act and that though the entire materials were available before the learned Judge, before cognizance was taken and though the powers were available there for ordering further investigation, the learned Judge failed to invoke the powers and strangely, after recording of evidence, questioning and hearing the arguments, had come to the conclusion, on mere assumptions and presumptions and without any legal evidence, that the victim was murdered. He would further submit that the Trial Court, wrongly appreciating part of the deposition of the medical expert, who had conducted postmortem, with respect to the answers given to the suggestions made by the defence counsel, had, on its own, assumed that the husband of the victim, PW.2 Raja might have injected her with empty syringe soon before her death to get rid of her and thereby holding it to be a case of murder, acquitted the accused and directed for further investigation.

8.The learned Additional Public Prosecutor would further submit that the Trial Court having framed charges under the provisions of Section 4(b) of the Tamil Nadu Prohibition of Women Harassment Act failed to invoke presumption clause provided under Section 4(1) of the Act to link the accused to the offence and that the Trial Court erred in disbelieving Ex.P2, Ex.P3 and Ex.P16 (series) which were proved to have been the signatures of the victim.

9.Per contra, the learned counsel for the Respondent would submit that earlier, as against the order of acquittal, the father of the victim, PW.1 Duraiappan had filed Cr.RC.No.964 of 2011, wherein, this Court by order dated 9.8.2011, after going through judgement of the Trial Court and the evidence on

record and referring to the observations of the Trial Court that it was a case of murder and finding that the investigation had been done in an improper manner, did not find any fault with the judgement of the Trial Court and dismissed the said revision. He would further submit that the revision against the acquittal had already been heard by this Court and that till date no further investigation has been done by the investigating agency to find out as to who are the real culprits and that when the acquittal of the Respondent/ accused had already been confirmed by this Court, the grounds challenging the acquittal of the Respondent/ accused cannot once again be reagitated by way of an appeal and that the Appellant being a party to the revision ought to have asked for a joint hearing of the revision and the appeal together and would pray for dismissal of the appeal, in so far as it questions the legality of the acquittal of the Respondent/ accused.

10. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

11. PW.1 is the father of the deceased and he had deposed about the occurrence, lodging of Ex.P1 complaint, Ex.P2 and Ex.P3 letter alleged to have been written by the deceased to the Inspector of Police, Kattumannarkoil Police Station and Sethiyathopu, All Women Police Station, respectively. Ex.P4 is the sample handwriting of PW.1 Duraiappan.

12. PW.2 is the husband of the deceased and he was the person who last saw the deceased alive. PW.3 is the mother of the deceased and she trailed PW.1's evidence. Ex.P5 is the sample handwriting of PW.3. PW.4 is the brother of the deceased and he also trailed the evidence of PW.1 to PW.3. Ex.P6 is the sample handwriting of PW.4.

13. PW.5 is the cousin brother of PW.4 and PW.1's brother's son and he was the person, who jumped inside the bathroom through ventilator to save the deceased and cut the knot of hanging. PW.6 is the Sub Registrar, Kattumannar Koil, who received the articles for forensic test. PW.7 is the head constable, who took the body to the Government Hospital for postmortem. PW.8 is the forensic expert and Ex.P7 is the expert report.

14. PW.9 Doctor attached to the Government Hospital, Kattumannarkoil, on receipt of Ex.P8 letter to conduct postmortem, had conducted autopsy on the body of the deceased on 21.7.2005 and Ex.P11 is the postmortem report. PW.10 is the witness to the observation mahazar and he turned hostile.

PW.11 is the Secretary in a Political Party, who conducted a panchayat for settlement between PW.1 and the accused. PW.12 has turned hostile. PW.13 is the Sub Inspector of Police, who on receipt of Ex.P1 complaint, had registered the case in Cr.No.296 of 2005 on 21.7.2005 and Ex.P17 is the express First Information Report and prepared Ex.P18 observation mahazar and Ex.P19 rough sketch. PW.13 had conducted inquest on the body of the deceased and the inquest report is Ex.P20. PW.14 Inspector of Police had conducted further investigation and PW.15 is the Inspector of Police, who had filed the charge sheet against the accused on 3.1.2008 under Sections 365, 368, 366, 389 and 306 of IPC.

15. In this case, the present appeal has been filed on two aspects, namely, (1) to set aside the order of acquittal and (2) finding fault with the observations made by the Trial Court that it is a case of murder and with the direction issued to the Superintendent of Police of the concerned District to file a petition before the High Court for further investigation.

16. While considering the first ground of the present appeal, it is seen that PW.1, father of the deceased had filed Cr.RC.No.964 of 2011, challenging the order of acquittal and this Court, by order dated, 9.8.2011, had dismissed the said Criminal Revision Petition. On this aspect, it is relevant to refer to the relevant paragraph of the said order, dated, 9.8.2011, as under:-

"5. On appreciation of evidence, the trial Court found that the body of the deceased revealed certain injuries and the access to the room wherein the deceased allegedly had locked herself in, before hanging herself stood unexplained. It reasoned that the case was one of murder. The prosecution had failed to conduct proper investigation and the first respondent/accused has been falsely charged. Exs.P2 and P3 were documents allegedly written by the deceased and one Rama, while Ex.P16 was alleged to have been written by the deceased. On perusal of these documents, the trial Court found that all three documents had been written by one and the same person. Ex.P.16 was under the name of Nandhini Raja. That the deceased Thamaraiselvi used to be called as Nandhini Raja has been sought to be established by the prosecution through an application filed under Section 311 Cr.P.C., by P.W.1/de facto complainant, at very late stage. Even so, P.W.1 had not deposed that she used to write and sign letters under the name of Nandhini Raja. Again, opinion of an expert had been obtained in respect of such communications. The trial Court has found much fault with the investigation and noted that three

investigating officers involved in the case have acted in an improper manner towards shielding a case of murder. The trial Court informed that P.W.19, Investigating Officer ought to have conducted investigation towards ascertaining, who was behind the murder of the deceased, but instead thereof, he had filed Ex.P22, a report informing the alteration of offence to one under Section 306 IPC. Finding that a case of murder had undergo improper investigation and resulted in filing of a false case against the accused, the Trial Court acquitted the accused. This Court finds no error in the finding of the trial Court.

6. In the result, the Criminal Revision stands dismissed."

17. Now coming to the second aspect, with regard to the finding of the Trial Court that it was a case of murder, it is the submission of the learned Additional Public Prosecutor that the Trial Court, on wrong assumptions and presumption, while acquitting the Respondent/ accused, had come to the conclusion as if a case of murder has been falsely projected as a case of suicide. A submissions has also been made that the Trial Court overlooking the legal evidence and materials on record, on presumptions and assumptions, had found fault with the investigation done and directed to take action against the the officers responsible for investigation. It was also the further contention of the learned Additional Public Prosecutor that the charge sheet has been filed based on the statements recorded from the witnesses, who are none other than PW.1, father and PW.2, husband and the other witnesses, who are related to the victim. When the witnesses have not supported the case of the Prosecution or resiled from their earlier statements, the investigation officers cannot be found fault with.

18. Now what is to be seen whether the finding of the Trial Court is proper?

19. In this case, charges have been framed against the accused for the offences under Sections 365, 368, 389 and 306 of IPC and Section 4(b) of the Tamil Nadu Prohibition of Women Harassment Act. As per the case of the Prosecution, the victim was said to have committed suicide on being abetted by the accused. In order to prove that the victim had committed suicide, the Prosecution has relied on the evidence of PW.9 Doctor who had conducted postmortem and Ex.P11 is the postmortem certificate.

20.As per the evidence of PW.9 Doctor, he had deposed that based on the requisition made by the Kattumannar Koil Police, he had conducted the postmortem on the body of the deceased on 21.7.2005. As per Ex.P11 postmortem certificate and the opinion of PW.9, the deceased would have died 4 hours to 6 hours prior to postmortem examination due to respiratory arrest due to hanging. PW.9 had deposed that at the time when the body of the deceased was first seen by him on 21.7.2005 at 4.30 p.m, he had seen rigor mortis present both upper and lower limbs and that he had commenced postmortem at 4.30 p.m. and had stated that her eyes were closed, mouth was closed, the tongue was inside the mouth, her teeth was intact, no discharge from the nose or ears and the hands were free.

21.In respect of the external injury, PW.9 had observed thus:-
"Abrasion about 5"x1" at centre of neck and 1/2" at both side of neck at left in front side of neck extending laterally both sides".

22. In respect of the internal examination, he had observed thus:-

"Neck-underlying tissues congested trachea - congested. Thorax-Ribs intact. Lungs ecchymosis present, in both surface of lungs c/s congested. Blood stained serous fluids comes out. Heart- about 100 ml of blood is seen on right chamber c/s congested. Liver c/s congested. Kidney normal spleen c/s congested. Stomach-Absent 200 ml partially digested food materials - present .Intestine- filled with gas. Bladder empty. Pelvic bone - normal. Head - skull bone intact - membrane intact brain congested.

1. Hyoid bone preserved for chemical analysis
2. Viscera preserved for chemical analysis.
3. Skin of the neck preserved. "

23.PW.9 had deposed in vernacular language, reiterating the medical findings in Ex.P11 postmortem report and given an opinion that the deceased would have died 4 hours to 6 hours prior to the postmortem due to respiratory arrest due to hanging.

24.During the cross examination, certain suggestions have been made to PW.9 Doctor, based on the Book, 'Medicolegal Postmortems in India, by C.K.Parikh', that whether by injecting air through an empty syringe, a death of a person could be caused and whether there is a possibility that it could be

projected as a case of suicide. Though PW.9 Medical Officer had emphatically denied the suggestion put to him that he had arrived at a wrong opinion he having asserted that the death was only due to suicide, the Trial Court wrongly assuming that the death could have been caused by air embolism, by injecting air through an empty syringe, had given undue importance to the suggestion and based on assumptions and presumptions had come to the conclusion that it was a case of murder. Further, the Trial Court had also taken into consideration the fact of the witness entering into the bathroom through a gap and thus entertaining the doubt that the death of the victim was a homicidal death and not suicide.

25. I have gone through the evidence of the witnesses and materials on record. To satisfy itself, this Court had called for CD File from the Respondent and also perused the statement of the witnesses recorded under Section 161 of Cr.PC and also perused the CD File, containing photographs of bathroom. Further, the final report has been filed based on the statements recorded from the witnesses. This Court is able to see that the witnesses have rescinded from their statements given to the Police at the time of investigation and given a different version before the Court. The Prosecution cannot be found fault for the witnesses who are the close relatives of the deceased not supporting its case. It is seen that there is a wide gap above the bathroom door and ceiling inside the building. The Trial Court had given a wrong finding as if PW.5 relative of PW.1 had entered into the bathroom through the ventilator to suggest that some manipulations had been done to project a case of homicide as suicide.

26. Having gone through the records, this Court does not find any material on the basis of which it could be said that the course of investigation was deliberately twisted or changed to project the case of murder as a case of suicide. The Trial Court, finding that the Prosecution has not proved the case against the Respondent/ accused had acquitted the Respondent/ accused whereas, in the opinion of this Court, further findings based on presumptions and assumptions and ordering for further investigation, cannot be sustained. In the opinion of this Court, it would only amount to a case of wild goose chase without any material and thereby, would be an unnecessary and wasteful exercise.

27. In the result, this Criminal Appeal is partly allowed. The order of acquittal of the Respondent/ accused is confirmed. The order of the Trial Court, directing the Superintendent of

Police of the concerned District to obtain orders from the High Court for further investigation and to take action against the Officers involved in the investigation is set aside.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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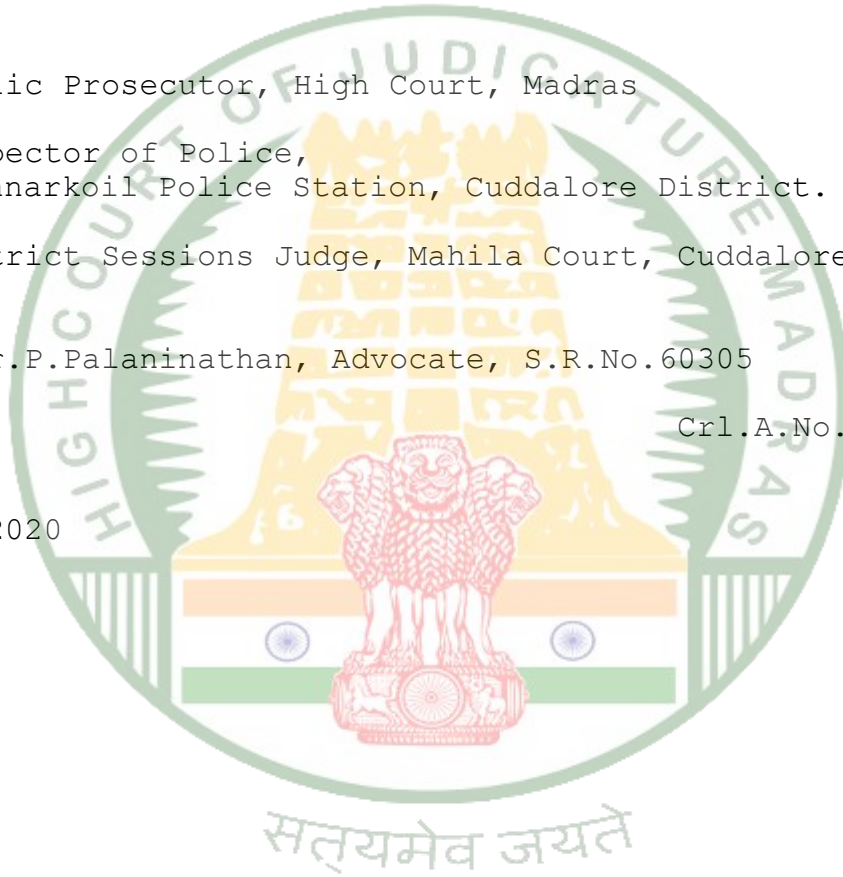
To:

- 1.The Public Prosecutor, High Court, Madras
- 2.The Inspector of Police,
Kattumannarkoil Police Station, Cuddalore District.
- 3.The District Sessions Judge, Mahila Court, Cuddalore.

+1cc to Mr.P.Palaninathan, Advocate, S.R.No.60305

Crl.A.No.391 of 2010

PM(CO)
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