

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2019

PRONOUNCED ON : 24.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.635 of 2013
and M.P.Nos.1 & 2 of 2013

Viswanathan ..Petitioner/1st Accused

Vs.

State represented by
The Inspector of Police,
K.V.Kuppam Police Station,
Gudiyatham Taluk,
Vellore District.

..Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 03.04.2008 passed in S.C.No.361 of 2004 on the file of the Assistant Sessions Court, Gudiyatham, Vellore District, confirmed by the judgment and order dated 15.02.2013 passed in C.A.No.5 of 2011 on the file of the I Additional District and Sessions Court, Vellore.

For Petitioner : Mr.A.R.Suresh
For Respondent : Mr.G.Ramar
Government Advocate
(Crl.Side)

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 03.04.2008 passed in S.C.No.361 of 2004 on the file of the Assistant Sessions Court, Gudiyatham, Vellore District, confirmed by the judgment and order dated 15.02.2013 passed in C.A.No.5 of 2011 on the file of the I Additional District and Sessions Court, Vellore.

2. The facts in brief giving rise to the filing of this revision are as under:

2.1 The deceased "X" (name not divulged for the sake of anonymity), who was aged about fifteen years, studying in the IX Standard, was living with her parents Mani (PW1) and Indhirani (PW2) in Pudhupettai, P.K.Puram village, Gudiyatham. Her parents

were ordinary construction workers and with great difficulty, they were educating "X".

2.2 It is alleged that Viswanathan (A1) and Kumar (A2), who hailed from the same village, harassed and eve-teased "X" continuously when she was on her way to school. Unable to withstand their harassment, she complained to her parents, pursuant to which, her ("X's") mother Indhirani (PW2), lodged a complaint on 16.02.2004, but, to no avail.

2.3 Emboldened by the failure of the police to take appropriate action, Viswanathan (A1) and Kumar (A2) further humiliated "X" around 2.00 p.m on 17.02.2004, while she was going to school and thereafter, at 3.30 p.m., she committed suicide by hanging in the pump room in her father's land.

2.4 On the complaint given by Mani (PW1), father of "X", the respondent/police registered a case in Crime No.85 of 2004 for the offence under Section 4-B of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 (for brevity "the TNPHW Act") r/w Section 34 IPC and Section 509 IPC.

2.5 After completing the investigation, the police filed a final report in P.R.C.No.13 of 2004 before the Judicial Magistrate, Gudiyatham, for the aforesaid offences, against Viswanathan (A1) and Kumar (A2). The case was committed to the Court of Session in S.C.No.361 of 2004 and was made over to the Assistant Sessions Court, Gudiyatham, Vellore District, for trial.

2.6 The trial Court framed charges for the aforesaid offences against Viswanathan (A1) and Kumar (A2) and when questioned, they pleaded "not guilty".

2.7 To prove the case, the prosecution examined eight witnesses and marked fourteen exhibits and two material objects.

2.8 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked on behalf of the accused.

2.9 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 03.04.2008 in S.C.No.361 of 2004, convicted and sentenced Viswanathan (A1) and Kumar (A2) as follows:

Accused	Provisions under which convicted	Sentence
Viswanathan (A1)	Section 4-B of the TNPHW Act r/w Section 34 IPC	Seven years simple imprisonment and fine of Rs.50,000/-, in default to undergo two years simple imprisonment.
Kumar (A2)	Section 4-B of the TNPHW Act r/w Section 34 IPC	Seven years simple imprisonment and fine of Rs.50,000/-, in default to undergo two years simple imprisonment.

2.10 Challenging the above conviction and sentences, Viswanathan (A1) filed C.A.No.5 of 2011, which was dismissed by the I Additional District and Sessions Court, Vellore, on 15.02.2013.

2.11 Challenging the concurrent findings of fact arrived at by the Courts below, Viswanathan (A1) has preferred the present revision under Section 397 r/w 401 Cr.P.C.

3. Heard Mr.A.R.Suresh, learned counsel for Viswanathan (A1) and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent/State.

4. The learned counsel for Viswanathan (A1) submitted that there is no substantive evidence to show that the accused had eve-teased or harassed "X". He further submitted that on account of previous enmity, the case has been foisted on the accused by the family members of "X" and the accused were not responsible for her suicide.

5. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for Viswanathan (A1).

6. This Court gave its anxious consideration to the rival submissions.

7. Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context,

it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power. (emphasis supplied)

23.On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

1 (2004)7 SCC 659

8. The police have proved beyond a peradventure that the death of "X" was on account of suicide by hanging via the evidence of Mani (PW1) and Indhirani (PW2) and Dr.Hemavathy (PW6), who performed autopsy on the body of "X" and issued the postmortem certificate (Ex-P6), wherein she has noted that "X" had died of asphyxia due to hanging. The saree used by "X" for hanging has been marked as M.O.1.

9. The short question that falls for the consideration of this Court is whether the suicide of "X" was triggered by the harassment meted out to her by the accused. At this juncture, it may be relevant to extract Sections 2 (a), 4-B and 4-C of the TNPHW Act, which read as follows:

"2. Definitions. - In this Act, unless the context otherwise requires, -

(a) "harassment" means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force;

4-B. Harassment suicide.-(1) If any women commits suicide and it is shown that soon before her death, she was subjected to harassment by any person or that in respect of her an offence under Section 294, 354 or 509 of the Indian Penal Code (Central Act XLV of 1860) was committed, such suicide shall be called the harassment suicide and such person shall be deemed to have abetted the suicide.

(2) Notwithstanding anything contained in Section 4, whoever abets harassment suicide shall be punished with imprisonment of either description for a term which may extend to ten years and with fine which shall not be less than fifty thousand rupees.

4-C. Presumption as to harassment death and abetment of harassment suicide.-When the question is whether any person had caused harassment death or abetted harassment suicide of a woman, the Court shall, unless the contrary is proved, presume that such person had caused the harassment death or abetted the harassment suicide, as the case may be, when it is shown that before her death, such woman had been subjected to harassment or, in respect of her an offence was committed under Section 294, 354 or 509 of Indian Penal Code (Central Act XLV of 1860) and bodily injury was

caused in furtherance of such harassment or commission of the said offence by or at the instance of that person and it resulted in death or suicide, as the case may be, of that woman"

10. Mani (PW1) and Indhirani (PW2), the parents of "X", have clearly stated that for a very long time, the accused were following their daughter "X", when she was on her way to school and were passing lewd remarks about her appearance; "X" had complained to her parents that the accused commented that she is very beautiful and is fit for becoming a heroine in films and that she can choose either of them (accused) for marriage; on 16.02.2004, around 2.30 p.m., when "X" was teased by Viswanathan (A1), she told him that she ("X") will lodge a complaint to the police, for which, Viswanathan (A1) appears to have told her that no police can do anything to him; again on 17.02.2004, around 7.00 a.m., when "X" went to fetch drinking water, the accused teased her; "X" complained to her mother Indhirani (PW2), who in turn lodged a written complaint (Ex-P2) to the police, based on which, Rani (PW7), Sub-Inspector of Police, registered the complaint as C.S.R.No.57 of 2004 at 11.30 hours on 17.02.2004. On coming to know that the complaint (Ex-P2) has been lodged, the accused, instead of stopping harassment, started threatening "X" in the afternoon while she was on her way to school. Only thereafter, "X" committed suicide at 3.00 p.m. on 17.02.2004.

11. In the light of such clinching evidence, the presumption under Section 4-C of the TNPHW Act comes into play, which, the accused had failed to discharge even by preponderance of probability.

12. In such perspective of the matter, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

In fine, this criminal revision is dismissed. The trial Court is directed to secure the accused and commit him to prison, for undergoing the remaining period of sentence, if any. The Registry is directed to return the original records to the Courts below concerned. Connected M.Ps. are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

nsd

To

1. The Inspector of Police,
K.V.Kuppam Police Station,
Gudiyatham Taluk,
Vellore District.
2. The Assistant Sessions Judge,
Gudiyatham, Vellore District.
3. The I Additional District and Sessions Judge,
Vellore.
4. The Deputy Registrar (Crl. Section),
Madras High Court,
Chennai - 600 104.
5. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.
6. The Inspector of Police
K.V.Kuppam Police Station
Gudiyatham Taluk
Vellore District (Crime No. 85/2004)
7. The Superintendent
Central Prison, Vellore

Copy to

The Section officer
ER Section
High Court, Madras 104.

+2 CCS to Mr.A.R.Suresh, Advocate sr 89323 & 88177

Cr1.R.C.No.635 of 2013

GP(CO)
SP(03/12/2019)