

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.07.2019
CORAM
THE HONOURABLE MR. JUSTICE P.N.PRAKASH
Crl.R.C.No.1283 of 2017
and
Crl.MP.Nos.12414 of 2017 & 9375 of 2018

G.Arun @ Arunkumar
S/o.Ganesan

... Petitioner

-Vs-

The State
rep. by the Inspector of Police
Crime Branch CID, Namakkal,
Crime No.310 of 2010
(Pallipalayam P.S)
Namakkal District.

... Respondent

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to call for the records relating to the order framing charges dated 08.09.2017 made in S.C.No.69 of 2012 on the file of the learned Sessions Judge, Fast Track Mahila Court, Namakkal and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manokaran
For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Petition has been filed to call for the records relating to the order dated 08.09.2017 made in S.C.No.69 of 2012 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal and set aside the same by allowing this Criminal Revision Petition.

2. It is the case of the prosecution that a girl named "X", borrowed Rs.1,000/- from A1 on promising to repay the loan within a week. The girl was interested in acting. Taking advantage of her interest, it is alleged that A1 & A7 conspired to lure her on the promise of getting her chance in films, took her to an isolated building on 17.04.2019 at Pallipalayam Agraharam, where A7 raped her and it was filmed by A1. With that film in hand, A1 & A7 were blackmailing the girl. They had

surreptitiously posted the film in websites. When it came to the knowledge of the deceased Velu @ Veluchamy (hereinafter referred to as "Velu") who was the local District Secretary of CPI(M), he started taking steps to stop the further display of the film. On coming to know of this, it is alleged that A1 to A7 entered into a criminal conspiracy to eliminate Velu and accordingly, on 10.03.2010, Velu was attacked by A1 to A6 with deadly weapons, resulting in his death.

3. The Police completed the investigation and filed final report against the seven accused and the same is now, pending trial in S.C.No.69 of 2012 on the file of the Mahila Court, Namakkal.

4. One of the materials, which the prosecution relied upon was the porn film, that is said to have been videographed by A1, since the motive for the murder as alleged by the prosecution is predicated on that.

5. The petitioner, who is arrayed as A5, filed an application before the trial Court for furnishing a copy of the CD containing the alleged porn film. The said application was not entertained, aggrieved by which, the petitioner/A5 filed CrI.OP.No.19706 of 2017. It is represented that the said petition was allowed and a copy was directed to be furnished to the accused. While that being so, the trial Court proceeded to frame the charges against the accused on 08.09.2017. Challenging the framing of charges, this Criminal Revision has been filed before this Court.

6. Heard Mr.N.Manokaran, learned counsel for the petitioner/A5 and Mrs.P.Kritika Kamal, learned Government Advocate (CrI. Side) for the respondent/State.

7. The learned Government Advocate (CrI. Side) submitted that with regard to the allegations of rape of the girl "X", a separate case has been registered and that the prosecution is pending in SC.No.52 of 2012 on the file of the Fast Track Mahila Court, Namakkal.

8. Mr.N.Manokaran, learned counsel for the petitioner/A5 took this Court through the provisions of Sections 226 & 227

Cr.P.C and contended that charges can be framed based on the material records produced by the prosecution and that the CD containing the impugned clip is one of the materials, without which, framing of the charges would stand vitiated. In support of his contention, he placed strong reliance on the judgement of the Supreme Court in Tarun Tyagi V. Central Bureau of Investigation, [AIR 2017 SUPREME COURT 1136].

9. To appreciate the contention of Mr.N.Manoharan, learned counsel for the petitioner/A5, it may be necessary to examine the nature of the allegations against the accused. The allegations against the accused are not for posting the impugned video clippings. The video clippings were collected by the police for establishing the motive for the offences. The gravamen of the allegations against the accused is that, they entered into a criminal conspiracy to eliminate Velu, pursuant to which, they formed themselves into an unlawful assembly on 10.03.2010 armed with deadly weapons and hacked him to death.

10. In the opinion of this Court, motive assumes importance in a case involving circumstantial evidence, that too, at the time of trial. For the purpose of framing charge, if there are materials to show the overt act of the accused, charges can be framed. In this case, there are prima facie materials to show that the accused had formed the murder into an unlawful assembly on 10.03.2010 and had hacked Velu to death.

11. Under such circumstances, the failure of the trial Court to view the CD prior to the framing of the charges, would not, in any manner, vitiate the charges. The law of charges has been laid down in extenso by the Constitution Bench of the Supreme Court in Willie (William) Slaney Vs. State of Madhya Pradesh, (1955) 2 SCR 1140 : AIR 1956 SC 116.

12. In such view of the matter, this Criminal Revision case is dismissed as being devoid of merits. The trial Court is directed to proceed with the trial expeditiously. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Fast Track Mahila Court,
Namakkal.

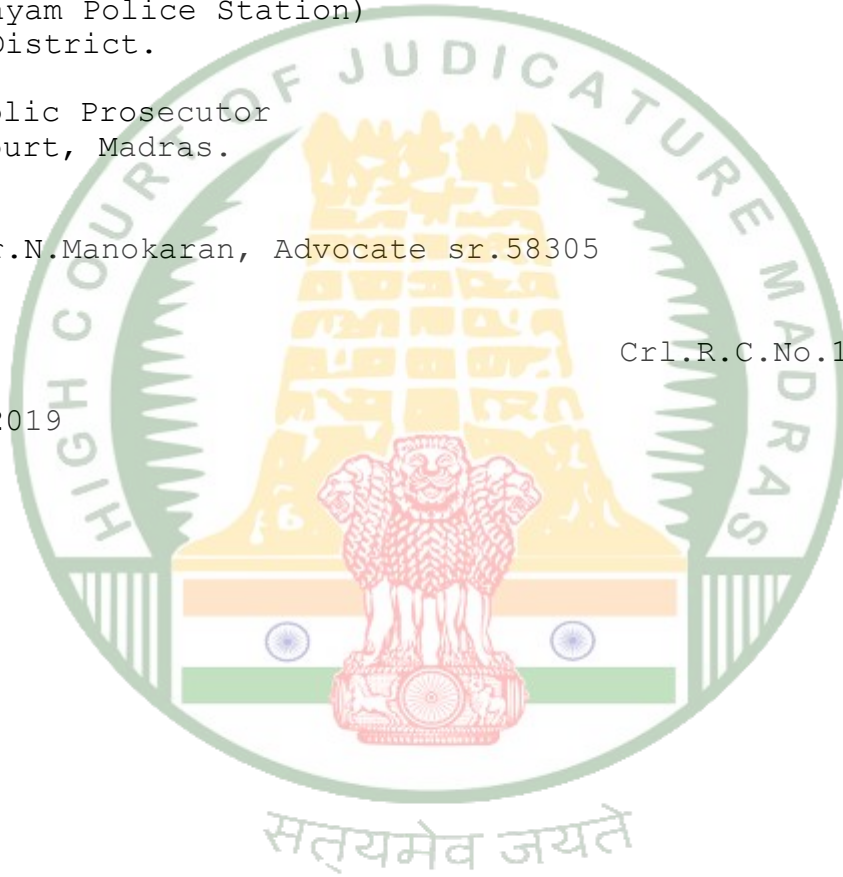
2.The Inspector of Police
Crime Branch CID, Namakkal,
Crime No.310 of 2010
(Pallipalayam Police Station)
Namakkal District.

3. The Public Prosecutor
High Court, Madras.

+lcc to Mr.N.Manokaran, Advocate sr.58305

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nr 15/07/2019



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