



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CRL.R.C. (MD).No.32 of 2009

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Dhandapani

... Petitioner/P.W.1

Vs.

- | | |
|--|---------------------------------------|
| 1. Raja @ Appadurai | ... Respondent/Accused No.1 |
| 2. Adhavan | ... Respondent/Accused No.2 |
| 3. State rep. by The Deputy Superintendent of Police,
Pudukottai.
(Crime No.512 of 2006 of
Ganesh Nagar police station) | ... Respondent/
Prosecuting Agency |

PRAYER : Criminal Revision is filed under 397 r/w 401 of Cr.P.C., calling for the records in S.C.No.68 of 2007 dated 02.12.2007 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Pudukottai and set aside the same and convict the accused for the offences under Sections 302 r/w 34 and 302 r/w 201 of I.P.C or under Section 306 of I.P.C.

For Petitioner	: Mr.A.John Vincent
For R-1 & R-2	: Mr.D.Rameshkumar
For R-3	: Mr.A.Robinson, Government Advocate(Crl.Side)

ORDER

This Revision petition is directed against the Judgment dated 02.12.2008 in S.C.No.68 of 2007 on the file of the learned Additional District and Sessions Judge/Fast Track Court, Pudukkottai, acquitting respondents 1 and 2 herein.

2. The prosecution case is that the deceased Manjula Devi was the wife of Adhavan/accused No.2/second respondent herein. Both were employed as police constables at Pudukottai. Manjula Devi was found dead on 06.07.2006. Accused No.2 Adhavan lodged Ex.P.15 complaint before Ganesh Nagar police station, Pudukottai on the same date at about 15 hours. Ex.P.16 First Information Report in Crime No.512 of 2006 was registered under Section 174 of Cr.P.C. Investigation was taken up. According to the investigation officer, respondents 1 and 2 herein/accused Nos.1 and 2 had murdered the deceased. Therefore, Ex.P.20 alteration report was filed and the offences under Sections 302 r/w 34 of I.P.C., were incorporated. Final report came to be filed before the Judicial Magistrate, Pudukottai, for the offences under Sections 506(1) and 302 r/w 34 and 302 r/w 201 of I.P.C. Cognizance of the aforesaid offences was



taken and the case was committed to the Sessions Court in P.R.C.No.8 of 2007. It was made over to the Additional District and Sessions Judge, Pudukkottai, for trial in S.C.No.68 of 2007. Charges were framed against two accused. They denied the charges in toto and claimed to be tried.

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3. The prosecution examined as many as 22 witnesses and marked Ex.P.1 to Ex.P.24. M.O.1 to M.O.9 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge after a detailed consideration of the evidence on record came to the conclusion that the prosecution failed to prove the charges against the accused beyond reasonable doubt and acquitted them of all the charges. Aggrieved by the same, P.W.1 has preferred this Criminal Revision petition.

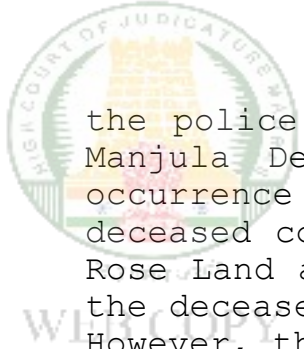
4. Heard the learned counsel on either side.

5. The learned counsel appearing for the Revision petitioner/P.W.1 submitted that accused No.1 Raja @ Appadurai and accused No.2 were friends. The deceased was the daughter of the Revision petitioner and the wife of accused No.2. The deceased as well as accused No.2 worked as police constables. Accused No.2 was having illicit intimacy with the sister's daughter of accused No.1. Accused No.1 had received a sum of Rs.1,50,000/- from the deceased. On the occurrence date, the deceased had stopped accused No.1 and demanded the money back. In response, accused No.1 was said to have threatened her with dire consequences. Later accused Nos.1 and 2 joined together and murdered Manjula Devi by strangulating her neck by using a nylon rope and to screen the crime, they made it appear as if Manjula Devi committed suicide by hanging herself.

6. P.W.1 is the father of the deceased. He deposed that the relationship between his daughter and accused No.2 was not cordial. Accused No.2 was having illicit relationships. He also spoke about the financial transaction between accused No.1 and the deceased.

7. P.W.2 Senthil Murugan, P.W.3 Suresh Kumar and P.W.4 Anandhavalli are brothers and sisters of the deceased and their testimony is also on the same lines as that of P.W.1. P.W.5 was a close friend of the deceased. She deposed that a few days prior to the occurrence, both happened to meet each other and during the conversation Manjula Devi had told about her travails and the plan of accused No.2 to marry Hema. P.W.6 Selvaraj witnessed the arrest, confession and recovery of the material objects. Though he turned hostile, he admitted his signatures in Ex.P.1 to Ex.P.4. P.W.7 is a magazar witness. He also turned hostile but admitted his signature in Ex.P.5. It was marked as Ex.P.6.

8. P.W.9 is the doctor before whom the deceased was brought at 13.45 hours on 06.07.2006. P.W.10 Dr.Selvaraj conducted postmortem. <https://hcservices.ecourts.gov.in/hcservices/> he had opined that the deceased appeared to have died by ligature strangulation at about 12 to 18 hours prior to autopsy. P.W.11 was

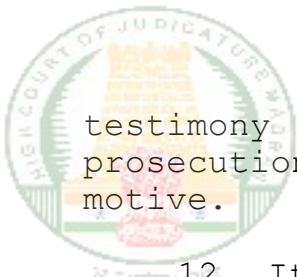


the police constable who worked with the deceased. He deposed that Manjula Devi left her work place at about 12.05 hours on the occurrence date. P.W.12 and P.W.13 told the police that they saw the deceased coming in her two wheeler at about 12.30 p.m., opposite to Rose Land and that they noticed a quarrel between accused No.1 and the deceased and that accused No.1 held out threats to the deceased. However, the said witnesses turned hostile during trial.

9. P.W.15 Devaraj is a police constable who also resided in the police quarters. He deposed that he heard some suspicious sound and that he went to the house of the deceased and saw the accused No.2 sitting in front of the house while the accused No.1 was inside the house. He saw that the deceased was laid on the floor. When he queried, accused No.2 informed him that Manjula Devi had hanged herself and that he brought her down. Thereupon P.W.15 informed the police from the telephone in his house. On his return, he saw that accused Nos.1 and 2 were taking the body of Manjula Devi in an auto and that the accused No.1 followed the same. After a while, they brought the body back. They were advised by another constable by name Nagarajan, to take Manjula Devi to hospital. P.W.16 Muthukumar was working as Sub Inspector of Police in Wireless section and he was informed by accused No.2 about the suicide of Manjula Devi. P.W.16 thereupon went to the place of occurrence and saw the accused Nos.1 and 2 taking the deceased in an auto and returning after half an hour. P.W.17 also deposed on the same lines as that of P.W.15,16, and 19. P.W.22 is the investigation officer who recorded the statements of the witnesses and he effected the arrest and recovery and filed the final report. He also obtained opinion from Dr.Karthikeyan which was in consonance with the opinion of P.W.7 doctor.

10. The learned counsel appearing for the Revision petitioner submitted that the prosecution had clearly established that accused Nos.1 and 2 had a motive to do away with Manjula Devi. He would further contend that even though P.W.12 and P.W.13 had turned hostile, their evidence cannot be rejected in toto. P.Ws.15 to 19 have spoken about the taking of the body in an auto by the accused and bringing it back after a while. This clearly creates suspicion over their conduct. The accused have not at all explained these incriminating circumstances in their examination under Section 313 of Cr.P.C. P.W.7 doctor has clearly opined that the deceased died due to ligature strangulation. This was confirmed by Dr.Karthikeyan. The petitioner's counsel would contend that these incriminating circumstances were not taken note of by the learned Sessions Judge. The reasons given for acquitting the accused are flimsy. The learned counsel also relied on a number of decisions. The Revision petitioner also filed written arguments.

11. I am unable to agree with the submissions of the learned counsel appearing for the Revision petitioner. While it is true that P.W.1 to P.W.5 have spoken about the intense strain in the relationship between the accused No.2 and the deceased, their



testimony by themselves is wholly insufficient to sustain the prosecution case. At best they may indicate that the accused had a motive.

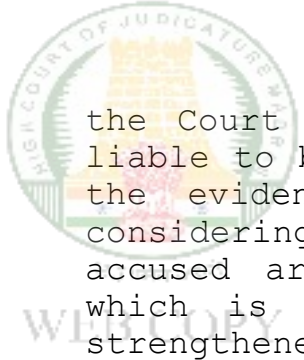
12. It must be noted that the prosecution case rests only on circumstantial evidence. The prosecution came out with the case that the deceased was last seen with the accused No.1 by P.W.12 and P.W.13. But they did not support the prosecution case. Likewise P.W.14, who is another witness to sustain the last seen theory also turned hostile.

13. In order to prove the confession and recovery, the prosecution examined P.W.6 Selvaraj. He also turned hostile. P.W.10 Dr.Selvaraj conducted autopsy. To a specific question posed in the cross examination, he answered that he could not give any definite opinion regarding the cause of death. In Ex.P.14, it was opined that the deceased would have appeared to died due to ligature strangulation at about 12 to 18 hours prior to the autopsy. It is beyond dispute that no definite opinion was offered by the postmortem doctor. Thus the prosecution miserably failed to prove that the deceased died due to homicidal violence.

14. Of course, the learned counsel appearing for the Revision petitioner would cite the opinion given by Dr.Karthikeyan from whom the second opinion was obtained. But the said Dr.Karthikeyan was not examined. Therefore, no reliance can be placed on the opinion attributed to Dr.Karthikeyan. It is true that after Manjula Devi died, the accused took her body in an auto and brought it back after a while and once again took it to the hospital. But from this apparently suspicious conduct of the accused, one cannot come to the conclusion that the charges framed against them have been established by the prosecution.

15. As rightly contended by the learned counsel appearing for the respondents 1 and 2, the prosecution will have to prove two things. Firstly, Manjula Devi died as a result of homicidal violence. Secondly, the accused are the authors of the said homicidal violence. In this case, the prosecution have not even established that Manjula Devi was strangulated to death. Both in the case of suicide and the death due to strangulation, there will be ligature strangulation. In this case, the prosecution was not able to rule out the possibility of suicide. In fact P.W.10 Dr.Selvaraj had admitted in the cross examination that the ligature marks found on the deceased could be consistent with suicide also. In these circumstances, when suicide could not be ruled out and it could not be definitely established beyond reasonable doubt that Manjula Devi was strangulated to death, the benefit of doubt should obviously go to the accused.

16. The State did not prefer any appeal against the Judgment of acquittal. It is only the father of the deceased who has filed this Criminal Revision case. The scope of Revision is not broad or wide as that of an appeal. Unless it can be shown that the Judgment of



the Court below is perverse and patently unreasonable, it is not liable to be interfered with. The learned trial Judge had discussed the evidence adduced by the prosecution in extenso and after considering the rival contentions came to the conclusion that the accused are entitled to acquittal. The presumption of innocence which is available to the accused during trial stands further strengthened and reinforced by the Judgment of acquittal. The learned counsel appearing for the Revision petitioner has not made out any case for dislodging the presumption in favour of the accused. The Judgment of the Court below has not been shown to be perverse or suffering from illegality or irregularity.

17. I find no ground to interfere with this Criminal Revision case. The Criminal Revision stands dismissed. No costs.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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To

1. The Additional District and Sessions Judge,
Fast Track Court, Pudukottai.
 2. The Deputy Superintendent of Police,
Pudukottai.
 3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)
- +1 CC to M/s.A.JOHN VINCENT, Advocate (SR-82303[F] dated 20/08/2019)

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