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CRL A No.738 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.738 of 2022

Boopathi

... Appellant

Vs.

The Inspector of Police,
Edapadi Police Station,
Salem District.
Crime No.251 of 2013

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the order of conviction dated 26.11.2019 passed in S.C.No.199/2014 on the file of the Sessions Judge, Mahila Court, Salem and acquit the appellant.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.S.Sugendran\
Additional Public Prosecutor



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JUDGMENT

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Challenging the judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Salem in S.C.No.199/2014 dated 26.11.2019, this Criminal Appeal has been preferred.

2. The respondent police, originally, registered a case against the appellant in Crime No.251/2013 for the offences punishable under Section 305, 294, 506(i) IPC. Subsequently, after investigation, they filed a charge sheet for the offences under Section 4(B)(1) & 92) of Tamil Nadu Prohibition of Harassment of Woman Act and Section 294(b), 506(ii), and 305 IPC, before the Judicial Magistrate-II Sankagiri. The learned Magistrate, has taken it on file and assigned as PRC No.2/2014 and after completing formalities, he committed the case to the District Sessions Court, Salem. The learned Principal District and Sessions Judge, Salem has taken the case on file and assigned as S.C.No.189/2014 and made over the same to the Sessions Judge, Mahila Court, Salem, since the offence is against the woman.

3. The learned Sessions Judge, Mahila Court, after taking the case



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on file and completing formalities, framed charges against the appellant for the offences punishable under Section 4(B)(1)&(2) of the Tamil Nadu Prevention of Harassment of Woman Act and Section 294(b), 506(2), 305 IPC.

4. After framing charges, during Trial, in order to substantiate the charges framed against the appellant, on the side of the prosecution, as many as 12 witnesses were examined as PW1 to PW12 and 11 documents were marked as Ex.P1 to Ex.P11 and one Material Object was marked as M.O.1

5. After completing examination of entire prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant / accused by questioning under Section 313 Cr.P.C. However, the same were denied by the accused as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was adduced.

6. On completion of trial and hearing the arguments advanced on either side and considering the materials, the trial Court found guilty of



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the appellant for the offence under Section 4(B) (1)&(2) of Act and Section 294(b), 506(ii), 305 IPC. Accordingly, the Trial Court convicted the appellant (i) for the offence under Section 4(B)(1)&(2) of the Act and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of six months simple imprisonment, (ii) for the offence under Section 294(b), sentenced to undergo three months rigorous imprisonment, (iii) for the offence under Section 506(ii) IPC, sentenced to undergo 3 three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of six months simple imprisonment, (iv), for the offence under Section 305 IPC, sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo a further period of one year simple imprisonment.

7. Aggrieved over the above said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

8. The specific case of the prosecution is that, while the victim was studying in XI Standard, the appellant spread out rumour, as if the victim roamed along with him and also they went to cinema and since the



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victim felt ashamed about the rumour, she committed suicide. Therefore, a case was registered against the appellant, as stated above.

9. The learned counsel for the petitioner submitted that in order to prove the charge under Section 305 IPC, the prosecution has not produced Birth Certificate or any authenticated certificate to establish the fact that the victim has not completed the age of 18 years. He further submitted that, the de-facto complainant, who is none other than the father of the victim, even in his complaint, or in the statement under Section 161 of Cr.P.C. or during examination as PW1, has not mentioned any named persons, to whom, the appellant spread rumour, as if the victim roamed along with him here and there and they went to movie. He also submitted that, the witnesses examined on the prosecution side are relatives to PW1 and are interested witnesses. The prosecution has not examined any independent witness to prove the above rumour and also to prove the charge under Section 506(ii) IPC that the appellant threatened and criminally intimidated the victim or her parents to cause death or grievous hurt to them and also not proved the charge under Section 294(b) that the appellant abused them in filthy language. Therefore, the



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prosecution has failed to prove the charges as against the appellant beyond reasonable doubts and hence, the benefit of doubts has to be extended to the appellant. He also submitted that, without any evidence to corroborate the alleged offence, the Trial Court has erroneously convicted the appellant, based on the evidence of interested witnesses alone.

10. The learned counsel for the appellant also submitted that the appellant and the victim are relatives and the appellant proposed the victim to marry her and she also agreed the same and since the parents of the victim acted against her wish, she committed suicide and not because of the action of the appellant, as alleged by the prosecution. It is argued by the counsel for the appellant that, even the PW1 himself clearly stated that the victim never met and talk to the appellant and he also admitted during cross examination that there is no enmity between his family and the appellant. Therefore, since the victim died, in order to take vengeance, they foisted a false case against the appellant, as such, the judgment of conviction and sentence passed by the Trial Court is liable to be set aside.



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11. The learned Additional Public Prosecutor submitted that the law was set into motion by filing a complaint by the father of the victim, wherein, he clearly stated that the appellant spread rumour against her daughter, as if she roamed here and there along with him and they went to movie, and since the victim felt ashamed of the above rumour, committed suicide in their house, by hanging, while her parents were not in the house. Subsequently, after hearing the news, her parents went to their house and found that the victim was unconscious and took her to the hospital, where, the doctor declared that the victim already died. Therefore, the father of the victim registered the complaint against the appellant and subsequently, he was examined as PW1. He further submitted that the brother of the victim, who was examined as PW4, has clearly stated that the appellant spread rumour against her sister to his friends Venkatesh and Prabu, and they informed the same to PW4, who in turn, informed to his parents. Therefore, the parents and PW4 went to the village of the appellant to prefer the matter before the Panchayat, where, the appellant scolded them in filthy language and even, he did not oblige for decision of the Panchayat, on that day, his sister committed



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suicide in their house, due to untrue news spread out by the appellant.

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12. The learned Additional Public Prosecutor further submitted that PW8, PW9 and PW10 also clearly stated that the victim committed suicide by strangulation with Saree and the PW8, who went and laid down the victim by cutting the Saree. As such, the prosecution has proved its case beyond reasonable doubt and the Trial Court has rightly convicted the appellant. Therefore, there is no merits in the appeal.

13. Heard the counsel appearing on either side and perused the materials on record.

14. The PW1, father of the victim, clearly stated that, due to the wrong news spread out by the appellant against his daughter, he went to the house of the appellant and questioned the same, during that time, wordy quarrel arose between them. The learned counsel for the appellant pointed out that in the complaint, the PW1 has not given all the details, but, subsequently when he was examined as PW1, improved all the things and further, there are contradiction between the statement under



Section 161 of Cr.P.C. and complaint. But the complaint is only an information to set the law into motion and the complainant, who would not expect the sudden death of his daughter by suicide, aged only 14 years, cannot remember all the things for the past 10 years and narrating entire things during Trial, as narrated in the complaint. The fact remains that during cross examination, the defence counsel has raised all the questions to PW1 that before death of victim, there was no talking terms between the family of the appellant and the de-facto complainant and his daughter and appellant never met together. That being so, when a young boy spread out rumour about a young girl, being ashamed about the same, the girl would take extreme steps. In such circumstances, mere non mentioning of all the things in the complaint, will not disbelieve the evidence of PW1.

15. The PW4, brother of the victim stated that his two friends informed him that the appellant spread out a rumour against his sister, who in turn informed to his parents. Therefore, his parents went to the house of the parents and questioned the same, at that time, wordy quarrel arose between them. In order to substantiate the same, PW7, who is the



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resident of the same village of appellant deposed that, on the date of occurrence, the father of the victim came to the house and appellant to enquire about the rumour, at that time, the appellant scolded him in filthy language, who in turn scolded the appellant. Therefore, the prosecution has proved that, prior to the occurrence, there was a quarrel between the appellant and the parents of the victim.

16. In this case, the PW4, brother of the victim has clearly stated that his friends namely Venkatesh and Prabu informed him that the appellant spreading rumour against his sister. However, the Investigating Officer has not examined the above named friends of PW4 and also he has not given any reason for not examining them, which clearly shows that the investigating officer has not properly conducted investigation. However, it is settled proposition of law that the defect in investigation is not the sole ground to the accused to claim acquittal.

17. Once the victim or the persons who set the law into motion by way of complaint to the jurisdictional police, it is for the investigating officer to conduct proper investigation in a fair manner and to collect all



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the possible materials and witnesses with due diligence to be produced before the Court of law by way of final report. Further, when the Court take cognizance of the charge sheet and take it on file to frame charges, it is the duty of the investigating officer to bring all the witnesses before the Court of Law, in order to substantiate the complaint and to place all the materials by way of charge sheet. Therefore, it cannot be found fault on the part of the victim or the complainant. The power is vested only with the investigating officer to conduct investigation in a fair manner and to collect all the materials to be placed before the Court, by way of charge sheet. But, this Court finds that the investigating officer has not conducted proper investigation. As already stated, the defect of the investigation is not a ground to escape the appellant from the clutches of law.

18. In this case, the death is suspicious one. In such circumstances, the investigating officer should have conducted inquest through Revenue Divisional Officer. But, that procedure is also not followed in this case and the investigating officer has not brought the case properly before the Court.



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19. This Court, being an appellate Court of fact finding, while re-appreciating the entire evidence, finds that the appellant committed offence under Section 4(B)(1) &(2) of Tamil Nadu Prevention of Harassment of Woman Act. In order to prove the age of the victim, though the investigating officer collected school certificate to show the age of the victim, that was neither placed along with charge sheet nor mentioned in the list of documents and also not marked during Trial. Though the defence side has not disputed that at the time of occurrence, the victim was below 18 years, it is the duty of the prosecution to prove the age of the victim, beyond reasonable doubts by producing all the materials. The above fact clearly shows that the investigating officer has not properly conducted investigation and also not conducted Trial before the Trial Court. Unfortunately, the Public Prosecutor also not properly aided the Court to arrive conclusion.

20. When the Trial Court framed charge under Section 305 IPC against the appellant and when there is no document to prove the age of the victim, the Trial Court ought to have taken steps to summons to



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produce documents from the school authorities, who is maintaining the School Records or from the Birth and Death Registration Department to prove the age of the victim. The Trial Court has discretionary power to remand back the case to the investigating officer for further investigation to rectify all the defects. However, the Trial Court has not exercised its discretionary power. On the whole this Court is of the view that the Investigating Officer, Public Prosecutor and the Trial Court have not applied their mind and have not properly conducted investigation and Trial Court not followed the procedures as contemplated under Code of Criminal Procedure. It is unfortunate that in the State, the stakeholders are not properly applied their mind and do their duty. Though the Trial Court has not properly appreciated the facts, this Court being an Appellate Court, while re-appreciating the entire facts, finds that the appellant committed all the offences, as per the charges framed against him by the Trial Court.

21. Accordingly, the Criminal Appeal is dismissed. The Trial Court is directed to secure the appellant/accused to serve remaining period of imprisonment, if any.



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22. It is to be noted that even though the PW4, in his statement, under Section 161 Cr.P.C., specifically stated about the two named friends, who informed him about the rumour spread out by the appellant and in view of the same, his sister died, the investigating officer has not examined those persons and also has not stated any reason for non examination of the above persons and for non mentioning their name in the list of witnesses. Therefore, the Superintendent of Police, Krishnagiri is directed to take immediate action against PW12, who is the investigating Officer in this case, for not performing his official duty in the manner known to law and because of his inaction, the real culprit can easily escape from the law. The Superintendent of Police, Krishnagiri is also directed to file compliance report within one week from the date of receipt of a copy of this order.

23.11.2022

Internet: Yes/No

Speaking Order/Non Speaking Order

mst

To

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1. The Sessions Judge, Mahila Court, Salem.
2. The Superintendent of Police, Krishnagiri.
3. The Public Prosecutor Officer, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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