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Crl.A.Nos.266 & 712 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.A.Nos.266 & 712 of 2016
and Crl.M.P.No.10221 of 2016

Nisha @ Nathia Begum

... Appellant
in Crl.A.No.266 of 2016

K.Selvan

... Appellant
in Crl.A.No.712 of 2016

vs.

State by
The Deputy Superintendent of Police,
Sathyamangalam Police Station,
Erode District.
(Crime No.545 of 2013)

...Respondent

[Crime Number is amended as per the order of this Court dated 23.01.2018 made in Crl.M.P.No.655 of 2018 in Crl.A.No.266 of 2016]

COMMON PRAYER : Criminal Appeal is filed under Section 374(2) Cr.P.C. to set aside the judgment and order in S.C.No.74 of 2015 on the file of the learned Principal Sessions Judge (Mahila Fast-Track Court), Erode and allow this appeal.

For Appellant : Mr.M.Saravanakumar

For Respondents : Mr.L.Baskaran
Government Advocate



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J U D G M E N T

These criminal appeals have been filed against the judgment and order passed by the learned Sessions Judge (Mahila Fast Tract Court), Erode in S.C.No.74 of 2015, dated 12.10.2015, convicting the appellants for offence under Section 306 of IPC and sentencing each of them to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo two years simple imprisonment.

2.The case of the prosecution is that A1 and the deceased Srimathy loved each other and they got married on 25.06.2009. The further case of the prosecution is that A1 developed an illegal intimacy with A2. This came to the knowledge of the deceased and she questioned the accused persons. It is alleged that the accused persons started harassing the deceased and ultimately, the deceased decided to take away her life. On 08.08.2013 night, the deceased committed suicide by hanging.

3.The father of the deceased (PW1) was informed about the suicide of the deceased by A1 and he gave a complaint (Ex.P1) on 09.08.2013 at about 19:00 hours. Based on the same, an FIR (Ex.P9) was registered by PW10 in Crime



No.545 of 2013 under Section 174 of Cr.P.C., and the information was sent to PW11, who was the Revenue Divisional Officer at that point of time at Gopichettipalayam.

4.PW11 went to Sathyamangalam Government Hospital and conducted the inquest. He also recorded the statements of witnesses. Ultimately, he prepared a report. The inquest report was marked as Ex.P10 and the inquiry report was marked as Ex.P11.

5.PW12 also participated in the inquiry along with PW11 and he only prepared the final report which was marked as Ex.P12. As per this final report, it was opined that the demand for dowry was not the reason behind the suicide committed by the deceased. However, it was ascertained that A1 had an illegal intimacy with A2 and hence, the request was made to the police to investigate the same.

6.The investigation was taken up by PW14 and he went to the scene of crime and prepared the Observation Mahazer marked as Ex.P14 and Rough Sketch marked as Ex.P15. He directed PW9 to take the body of the deceased for post-mortem. The dress that was worn by the deceased was seized and was sent



to the Court under Form 91. The same was marked as MO2 to MO4. The post-mortem was conducted by PW7 and the Post-mortem Certificate was marked as Ex.P3. The injuries noted in the Post-mortem Report are extracted hereunder:

External injuries :

An incomplete ligature mark 22 cms x 2.5 cms found encircling the neck noted in upper part of neck in it's front & sides, leaving a gap of 8 cms on the back of neck. The anatomical landmarks of ligature are, 4 cms from chin, 7 cms from ® ear, 5 cms from (L) ear. The base of the ligature is pale, hard & parchment like. There is contusion in neck muscles.

7.A final opinion was given to the effect that the deceased would have died of asphyxia due to hanging and the same was marked as Ex.P4.

8.PW14 got the information from PW8, who is the Village Administrative Officer to the effect that A1 and A2 voluntarily gave a confession to him. The confession that was recorded by PW8 was marked as Exs.P5 and P6. PW14 arrested the accused persons when they were produced by PW8 and they were taken to the Court and were remanded to judicial custody. Thereafter, the Alteration Report (Ex.P16) was sent to the Court and the offence was altered to Section 306 of IPC.



9.PW14 recorded the statements of witnesses and collected the reports from the Doctor and the Forensic Scientist.

10.PW14 was transferred and hence, the investigation was taken up by PW15. He completed the investigation and filed final report before the learned Judicial Magistrate, Sathiyamangalam.

11.The learned Judicial Magistrate served copies to the accused person under Section 207 of Cr.P.C., and the case was committed under Section 209 of Cr.P.C., and was made over to the Court below.

12.The Court below framed the charges against A1 for offence under Section 498A and 306 of IPC. Insofar as the A2 is concerned, the charge was framed for offence under Section 306 of IPC.

13.The prosecution examined PW1 to PW15 and marked Exs.P1 to P16 and also identified and marked MO1 to MO4. The incriminating evidence that was gathered during the course of trial was put to the accused persons when they were questioned under 313 (1)(b) of Cr.P.C., and they denied the same as false.



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14.The Trial Court on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, came to a conclusion that the offence under Section 498A of IPC was not proved against A1. But however, the offence under Section 306 of IPC has been proved as against A1 and A2 and accordingly, the Trial Court convicted and sentenced the appellants. Aggrieved by the same, the present criminal appeals have been filed before this Court. Crl.A.No.266 of 2016 has been filed by A2 and Crl.A.No.712 of 2016 has been filed by A1.

15.Heard Mr.M.Saravanakumar, learned counsel appearing on behalf of the appellants and Mr.L.Baskaran, learned Government Advocate (Criminal Side) appearing on behalf of the respondent.

16.This Court has carefully considered the submissions made on either side and also the materials available on record.

17.PW1 is the father of the deceased, PW2 is the mother of the deceased and PW3 is the sister of the deceased. On carefully going through their evidence, it is seen that the deceased had married A1 against the wishes of her



family members and hence, she was never allowed to come to her parents house. They did not even attend the marriage of A1 and the deceased. On carefully going through their evidence, it can be seen that they came to the scene only after they heard about the news that the deceased had committed suicide. Therefore, their evidence as if A1 developed an illegal intimacy with A2 and that both of them harassed the deceased and as a result, the deceased committed suicide, becomes unreliable and it cannot be acted upon. The prosecution has mainly relied upon the evidence of PW4 and PW8 to sustain the charges against the accused persons. PW4 is the husband of the friend of the deceased. He has deposed before the Court to the effect that his wife got in touch with the deceased and she wanted to meet her. Since the wife of PW4 was pregnant, she had sent PW4 to meet the deceased Srimathy. Accordingly, PW4 met Srimathy and the Srimathy is said to have informed him that A1 is having an illegal intimacy with A2 and both of them are harassing and threatening.

18.The evidence of PW4 is totally unnatural and it cannot be relied upon. PW4 has not seen the deceased before. He does not even know where the deceased was living. PW4 meeting the deceased and the deceased informing him about the relationship between A1 and A2 is completely unnatural and the



deceased informing about the same to stranger is highly improbable. Hence, the evidence of PW4 has to be rejected in total.

19.The only other evidence that has been relied upon by the prosecution is the evidence of PW8. He was the Village Administrative Officer, who was working at the relevant point of time. According to PW8, A1 and A2 voluntarily surrendered before him and confessed that both of them had an illicit affair and they harassed the deceased and as a result, the deceased took the extreme step of committing suicide. The extra judicial confession made before PW8 has been marked as Exs.P5 and P6. A careful reading of Ex.P5 and Ex.P6 along with evidence of PW8 shows that it is completely unnatural. The accused persons are not known to the Village Administrative Officer. The accused persons appearing before the Village Administrative Officer whom they have not even met before and confessing about the crime is totally unnatural and this evidence has been brought in by the prosecution only with the intention to strengthen the case of the prosecution by hook or crook. The accused persons making an extra judicial confession to a rank third person is highly improbable and the same cannot be relied upon. Useful reference can be made to the judgment of this Court in ***K.Dhanavel v. The Inspector of Police, Ayyampettai Police Station*** reported in ***2011 1 MLJ Crl 609*** and



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Police, Thiruthuraipoondi Sub-Division, Thiruvarur District reported in 2020

1 MWN Crl 30.

20. An extra judicial confession can be acted upon only if it is true and voluntary and it inspires the confidence of the Court. In the absence of the same, it cannot be acted upon where the Court finds that it is highly improbable. In the instant case, this Court finds the so-called extra judicial confession given by the accused persons before PW8 to be highly improbable and the same cannot be acted upon.

21. If evidence of PW4 and PW8 are discarded, there is no other evidence to sustain the charge against the accused persons for offence under Section 306 of IPC. The prosecution has miserably failed to prove the charge against the accused persons and the Court below has proceeded to convict and sentence the accused persons by placing complete reliance upon the extra judicial confession. The findings of the Court below is mostly based on assumptions and by placing reliance upon evidence of witnesses which this Court has held to be unreliable and improbable.



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22.In the light of the above discussion, this Court has absolutely no hesitation to interfere with the judgment and order passed by the Court below in S.C.No.74 of 2015, dated 12.10.2015 and the same is hereby set aside. The appellants are acquitted from the charge under Section 306 of IPC.

23.In the result, both the criminal appeals are allowed. The appellants were enlarged on bail during the pendency of these appeals by an order dated 20.07.2017 made in Crl.M.P.Nos.10220 and 4240 of 2016. Since the appellants are acquitted from all charges, the bail bond executed by them shall stand cancelled and the fine amount, if any, paid by them shall be refunded. Consequently, connected miscellaneous petition is closed.

08.03.2022

Index : Yes
Internet : Yes
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
SSR



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- To
- 1.The Principal Sessions Judge (Mahila Fast-Track Court), Erode
 - 2.The Deputy Superintendent of Police,
Sathyamangalam Police Station,
Erode District.
 - 3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH, J.

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