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Crl.A(MD) No.193 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.193 of 2017

Vembuvizhi Vendhan

.. Appellant

Vs.

1. The Inspector of Police
K.Paramathi Police Station
Karur District

2. Murugesan

3. Bhakiyam

...Respondents

PRAYER : Criminal Appeal is filed under Section 372 of Cr.P.C to set aside the judgment passed in S.C. No. 67 of 2012 dated 27.01.2017 on the file of the Mahila Fast Track Court, Karur, and punish the accused in accordance with law.

For Appellant : Mr.N.Mohideen Basha

For R-1 : M/s.M.Aasha
Government Advocate(Crl.Side)

For R-2 : Mr.S.Gokulraj



JUDGMENT

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This Criminal Appeal has been filed by P.W. 11 as against the acquittal judgment passed by the trial Court in S.C. No. 67 of 2012 dated 27.01.2017 on the file of the Mahila Fast Track Court, Karur.

2. The prosecution case is that the first accused developed love with the deceased Indira, who was an Advocate. The second accused is mother of A1. On 13.03.20211 the deceased went to the house of the accused and asked A1 to marry her, for that both the accused scolded her by saying that not to come to the house by speaking about the marriage, thereby on the same day at about 5.00 p.m., the deceased attempted to commit suicide by hanging but she was rescued by the accused and then she was admitted in the Amaravathi hospital and thereafter at about 7.00 p.m., on the advice of the doctor she was taken to Government Hospital, Karur. Thereafter the father of the victim came to the Government Hospital Karur and then she was taken to Gokulam Hospital, Coimbatore but on 14.03.2011 the deceased died at Avinashi on the way to Coimbatore at about 5.45 a.m. Therefore both the accused are not responsible for the death of the deceased Indira. After the death of the deceased the fatehr of the deceased gave complaint/Ex.P13 before the Paramathi Police Station and First Information Report/Ex.P.11 was registered under Section 174(3) of Cr.P.C. Thereafter the case was investigated by P.W.16 and after



examination of witnesses filed final report as against both the accused.

Thereafter the learned Magistrate has furnished copies relied on by the prosecution to the accused under Section 207 of Cr.P.C and then committed the case to the learned Principal District and Sessions Judge, Karur who in turn made over the case to the Mahila Fast Track Court, Karur in S.C. No.67 of 2012.

3. The trial Court after hearing both sides framed charges under Section 4(B) of TNPHW Act. The charges were read over and explained to the accused and the accused denied the charges. Thereafter, prosecution had examined witnesses P.W.1 to P.W.16 and marked Exhibits Exs.P.1 to Ex.P.18 and no material object was marked. On the side of the accused no one was examined and no document was marked. After analysing the evidence adduced on both sides, the trial Court has acquitted the accused .

4. As against the judgment passed by the trial court, the present appeal has been filed by the father of the victim but in the grounds of appeal there is no narration about the case of prosecution and the prosecution side evidence but the grounds raised are with regard to cheque case, however in the memorandum of appeal stated about the evidence of prosecution that the trial Court has wrongly interpreted and gave wrong reason and acquitted the accused.



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5. The learned counsel appearing for the appellant would contend that the deceased was a practicing advocate and the first accused promised to marry her and thereby she went to the house of the victim and on the date of occurrence she asked him to marry her but A1 and A2 scolded her and thereby at the instigation of them she committed suicide by hanging in the house of the accused on the date of occurrence. Thereafter she was taken to hospital and the accused only taken her to hospital and thereafter intimation was given to the defacto complainant who is the father of the deceased and thereby the accused committed offence under Section 4(B) of TNPHW Act. In order to prove the case of prosecution, they had examined witnesses P.W.1 to P.W.16 and marked Exhibits Exs.P.1 to Ex.P.18 and no material object was marked. P.W.1 is the father of the deceased and he deposed about giving of complaint. The deceased died in the house of the accused and thereby they have to explain as to why she went to the house of the accused and she died in the suspicious manner but the trial Court failed to consider that aspect and wrongly acquitted the accused. To support his contention he relied on the judgment of the Hon'ble Supreme Court in the case of ***State of Rajasthan .vs. Thakur Singh*** reported in ***(2014)12 SCC 211***.



6. The learned Government Advocate(Crl.Side) appearing for the first respondent would contend that in order to prove the case of prosecution they had examined witnesses P.W.1 to P.W.16 and marked Exhibits Exs.P.1 to Ex.P.18 and no material object was marked. P.W.1 had given complaint and then the investigation officer examined the witnesses and filed final report for the offences under Section 4(B) of TNPHW Act and charges were framed and the prosecution witnesses have categorically deposed about the occurrence and the accused only have personal knowledge about the deceased where she died in the house of the deceased. The burden is now shifted on the accused as why the deceased came to the house of the accused. Therefore as per Section 106 of the Indian Evidence Act the accused have to explain, therefore the Court can presume the accused only committed the offence but the trial Court without considering the same wrongly acquitted the accused, therefore the appeal may be allowed by setting aside the judgment of the trial Court and the accused are liable to be convicted in accordance with law.

7. The learned counsel appearing for the second respondent would contend that in this case P.W. 1 has given complaint and based on the complaint First Information Report has been registered and thereafter final report was filed under Section 4(B) of TNPHW Act. There is no any incriminating circumstances found against the accused , however on the



date of occurrence the victim without the knowledge of the accused came to their house and committed suicide by hanging. These petitioners were not in the house on the date of occurrence and these petitioners are no way connected with the deceased and therefore the trial Court has correctly come to the conclusion and acquitted the accused, hence the appeal is liable to be dismissed. The learned counsel appearing for the second respondent relied on the following judgments:

a)Ramanand Yadav.vs. V.Prabhu Nath Jha and others reported in AIR 2004 SCC 1053

b)C.K.Dasegowda and others .vs. State of Karnataka reported in 2014 Crl.L.J.3975

8. Upon hearing both sides, perusing the records and the judgment of the lower Court, the point for determination in this appeal are:

i)Whether the prosecution has proved charges for the offence under Section 4(B) of TNPHW Act as against the accused beyond reasonable doubts?

9. In this case it is an admitted fact that the deceased committed suicide by hanging in the house of the accused and charges were framed as against the accused that the first accused developed love with the deceased



and thereby the deceased asked the first accused to marry her. At that time, both the accused scolded her, thereby the deceased committed suicide by hanging in the house of accused thereby the accused have been charged for the offence under Section 4(B) of TNPHW Act. In order to attract the section 4(B) of TNPHW Act there should be appropriate evidence. At this juncture it is relevant to extract the provision under Section 4(B) of TNPHW Act:

[4B. Harassment suicide. - (1) If any woman 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

10. On perusal of the Section 4(B) of TNPHW Act it is clear that if any woman commits suicide and it is shown that soon before the death she was subjected to harassment by any person, or that in respect of her an offence under Sections 294, 354 or 509 of IPC was committed such suicide shall be called the harassment suicide and such person shall be deemed to



have abetted the suicide. But in this case no any eye witnesses and in order to attract the provision of Section 4(B) of TNPHW Act there is no evidence as to the harassment or commission of offence under Sections 294(b), 354 or 509 of IPC and further the deceased on 13.03.2021 was subjected for cruelty. Obviously no piece of evidence have been produced to substantiate the contention of the prosecution. As per the charge the accused scolded her not to come with marriage talks but none of the prosecution witnesses have stated about the said version. The main witness P.W.1 in this case also turned hostile and the prosecution has not proved the occurrence. Further P.W.3 and 5 have turned hostile, therefore the prosecution has not even taken steps to state where the victim committed suicide. There is no evidence to prove that whether the deceased committed suicide by hanging at the house of the accused and the prosecution side witnesses turned hostile and thereby the prosecution not even established the place of occurrence.

11. In this case, there is no dispute that the deceased committed suicide due to the hanging but none of the witnesses have stated about nexus between the accused and the deceased. The post mortem doctor deposed about the cause of death but no evidence about the place of occurrence. Though complaint was given to the police on 13.03.2011 at about 7.00 pm., the First Information Report has been registered on



14.03.2211 as if the intimation was received at about 11.00 am., and there is no explanation by the prosecution in that regard. Further the investigation officer failed to collect call details of the deceased. Further in the post mortem report it was stated that there was tatoos on the chest of the deceased "J" and in the thigh mentioned as 'JAYAPAL'. Whiles, the prosecution has to examine about the tatoos punched on the thigh but there is no investigation in that regard and thereby it creates serious doubt over the prosecution case. The deceased why came to the place of occurrence and when she came to the place of occurrence has to be explained by the prosecution and obviously there is no evidence in this regard and without any appropriate evidence it is unsafe to hold that the prosecution has proved the charge. Therefore the prosecution has failed to prove the charges under Section 4(B) of TNPWH Act. At this juncture the learned counsel appearing for the appellant argued that the deceased died in the house of the accused and there by they only have to explain about the special knowledge to them under Section 106 of Evidence Act. But they failed to explain and thereby this Court can presume that the accused only responsible for the death of the deceased and he relied the Judgement in ***State of Rajasthan .vs. Thakur Singh* reported in (2014)12 SCC 211..** On careful perusal of the said judgment it is clear that burden of proving fact especially within knowledge of any person and facts relevant to cause of death bring only known to accused and if not explained then there is a



strong presumption that he only committed the offence. But in the case on hand the prosecution not even proved the place of occurrence and no evidence to prove the same. Thereby the said case law will not be applicable to the present facts of the case. In this context the learned counsel appearing for the second and third respondents relied on the judgements

i) Ramanand Yadav.vs. V.Prabhu Nath Jha and others reported in AIR 2004 SCC 1053, wherein it is held as follows:

There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See [Bhagwan Singh and Ors. v. State of Madhya Pradesh](#) (2002 (2) Supreme 567). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in [Shivaji Sahabrao Bobade](#)



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and Anr. v. State of Maharashtra (1973 (3) SCC 193), *Ramesh Babulal Doshi v. State of Gujarat* (1996 (4) Supreme 167), *Jaswant Singh v. State of Haryana* (2000 (3) Supreme 320), *Raj Kishore Jha v. State of Bihar and Ors.* (2003 (7) Supreme 152), *State of Punjab v. Karnail Singh* (2003 (5) Supreme 508 and *State of Punjab v. Pohla Singh and Anr.* (2003 (7) Supreme 17).

ii) C.K.Dasegowda and others .vs. State of Karnataka reported in 2014 Crl.L.J.3975, wherein it is held as follows:

42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."



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12. On careful reading of the above judgments it is clear that in appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so and if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court as perverse and the Court cannot set aside the judgment.

13. In the case on hand also the trial Court has passed judgment after elaborate discussion holding that there is no sufficient evidence adduced by the prosecution to prove the charges as against the accused, thereby the trial Court has acquitted the accused and there is no any convincing reasons to set aside the judgment of the trial Court.

14. In this case on hand there is no any infirmity found in the judgment passed by the trial Court and the prosecution has failed to prove the charges levelled as against the accused and the trial court after elaborate discussion has acquitted the accused from the charge under Section 4(B) of TNPHW Act, hence there is no infirmity in the judgment and this Court has no warrant to interfere with the judgment of the trial Court.



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15. Accordingly the appeal is dismissed and the acquittal judgment passed by the trial Court in S.C. No. 67 of 2012 dated 27.01.2017 on the file of the Mahila Fast Track Court, Karur is hereby confirmed.

29.09.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Mahila Fast Track Court, Karur
2. The Inspector of Police
K.Paramathi Police Station
Karur District
3. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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