

**State Rep.By Vs. 1.Suyambulingam**

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**SooperKanoon Citation :** [sooperkanoon.com/48620](http://sooperkanoon.com/48620)

**Court :** Chennai

**Decided On :** Feb-18-2015

**Judge :** The Honourable Mr. Justice a.Selvam

**Appellant :** State Rep.By

**Respondent :** 1.Suyambulingam

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

18. 02.2015 CORAM THE HONOURABLE MR. JUSTICE A.SELVAM and THE HONOURABLE MR. JUSTICE T.MATHIVANAN Crl A(MD)No.115 of 2011 & Crl RC(MD)No.157 of 2011 Crl A(MD)No.115 of 2011: State rep.by The Inspector of Police, Suchindrum Police Station, Kanniyakumari District, Crime No.93 of 2006. .. Appellant/Complainant Vs. 1.Suyambulingam 2.Stella Baby @ Baby .. Respondent/Accused 1 & 2 Criminal appeal filed under Section 378 of Cr.P.C. against the Judgment of acquittal dated 21.04.2010 passed in Sessions Case No.222 of 2006 by the District and Sessions Court, Kanyakumari Division at Nagercoil. !For Appellant : Mr.K.S.Duraipandian ^For R ?. 1 : Mr.V.Kathirvelu Senior counsel For Mr.K.Prabhu For R ?. 2 : Mr.R.Venkateswaran Crl RC(MD)N.157 of 2011 V.Samuvel .. Petitioner/PW1 Vs. 1.Suyambulingam 2.Stella Baby @ Baby .. Respondents/Accused 3.The Inspector of Police, Suchindrum Police Station, Kanniyakumari District, Crime No.93 of 2006. .. Respondent/Complainant Criminal Revision Case filed under Section 401 of

Cr.P.C. against the Judgment of acquittal dated 21.04.2010 passed in Sessions Case No.222 of 2006 by the District and Sessions Court, Kanyakumari Division at Nagercoil. For Petitioner : Mr.D.Malaichamy For R ?. 1 : Mr.V.Kathirvelu Senior counsel For Mr.K.Prabhu For R ?. 2 : Mr.R.Venkateswaran For R ?. 3 : Mr.K.S.Duraipandian :COMMON

## JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.) The order of acquittal dated 21.04.2010 passed in Sessions Case No.222 of 2006 by the District and Sessions Court, Kanyakumari Division at Nagercoil is being challenged in the present Criminal Appeal and also in Criminal Revision Case.

2. The crux of the case of the prosecution is that the second accused by name Stella Baby @ Baby is the wife of the deceased by name Joseph Justine @ Rabin. The second accused has had illicit intimacy with the first accused. Since the deceased has created obstruction to illicit relationship of both accused, both of them have decided to slay him and in pursuance of their conspiracy, on 06.04.2005 at about 20.30 hours, while the deceased has been in his house, the first accused has taken him in his auto and at the instigation of the second accused, murdered him and subsequently screened the dead body of the deceased. After occurrence the defacto complainant by name Samuvel, father of the deceased has lodged a complaint to the Sub Inspector of Police (PW22) and the same has been registered in Crime No.93 of 2006 as man missing case. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the Inspector of Police (PW25) has taken up investigation and examined some connected witnesses and in the meanwhile, the Village Administrative Officer by name Suyambu (PW5) has produced both the accused as well as their statements on 14.02.2006 to PW25. On the basis of confession alleged to have been given by them, a skeleton has been exhumed and PW25 made arrangements to conduct autopsy. The doctor by name Rajesh (PW17) has conducted autopsy and postmortem report has been marked as Ex.P9. The successor in office of PW25 viz., (PW26) has continued investigation and after

completing the same laid a final report on the file of the Judicial Magistrate Court, No.II, Nagercoil and the same has been taken on file in PRC No.28 of 2006.

4. The Judicial Magistrate Court, No.II, Nagercoil after considering the fact that the offences alleged to have been committed by both the accused are triable by Sessions Court, committed the case to the Court of Sessions, Kanyakumari Division and the same has been taken on file in Sessions Case No.222 of 2006.

5. The trial Court after hearing both sides and upon perusing relevant records has framed first charge against both the accused under Section 120(b), second charge under Section 302 and third charge under Section 201 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 26 have been examined and Exs.P1 to P23 and M.Os.1 to 6 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial Court after contemplating the available evidence on record has found both the accused not guilty under the sections mentioned in the charges and ultimately acquitted them. Against the order of acquittal, Criminal Appeal (MD)No.115 of 2011 as well as Crl RC(MD)No.157 of 2011 have been preferred on the file of this Court.

9. The learned Additional Public Prosecutor has contended that the specific case put forth on the side of the prosecution is that prior to occurrence, that is, on 06.04.2005 at about 20.30 hours, the first accused has taken the deceased in his auto from his house and subsequently at the instigation of the second accused, he murdered the deceased and PW21, Thomas has seen both the first accused and deceased and to that effect he has given clear evidence. But the trial Court without considering the nature of evidence given by PW21 has erroneously acquitted both

the accused and therefore, order of acquittal passed by the trial Court is liable to be set aside and the accused are liable to be mulcted with liability.

10. The learned counsel appearing for the revision petitioner has contended that the specific case put forth on the side of the prosecution is that the second accused has had illicit intimacy with the first accused and the same has not been denied either by the first accused or by second accused and further, the second accused being the wife of the deceased has not endeavoured either to lodge a complaint or made in search of the deceased. Under the said circumstances, the Court can very well come to a conclusion that both the accused have contrived themselves and in pursuance of their conspiracy, the first accused has murdered the deceased and further, the trial Court has erroneously disbelieved the extra judicial confession alleged to have been given by both the accused to PW5, Village Administrative Officer and therefore, the order of acquittal passed by the trial Court is liable to be set aside.

11. In order to controvert the contentions put forth on the side of the appellant as well as revision petitioner, the learned Senior Counsel appearing for the first accused has sparingly contended that the defacto complainant, father of the deceased has given clear evidence to the effect that on 12.02.2006 itself he found the second accused in the office of Deputy Superintendent of Police and the same has belayed the alleged confession given by both the accused on 14.02.2006 to PW5 and the trial Court has rightly rejected the role played by PW5 and further PW21 is not a believable witness. The trial Court by way of considering the overall evidence available on record has rightly rejected the case of the prosecution and therefore, the order of acquittal passed by the trial Court does not require any interference.

12. The learned counsel appearing for the second accused has simply reiterated the contentions put forth on the side of the first accused.

13. Basing upon the divergent submissions made on either side, the only point that has now winched to the fore in the present case is as to whether the prosecution has proved the alleged guilt of the accused even without a speck of doubt.

14. The specific case put forth on the side of the prosecution is that the accused 1 and 2 are having illicit intimacy with each other. The second accused is the wife of the deceased. Since the accused has caused stumbling block to the alleged illicit intimacy of the accused, both of them have decided to slay him and in pursuance of their conspiracy, on 06.04.2005 at about 20.30 hours, the first accused has taken the deceased in his auto from his house and subsequently murdered.

15. For the purpose of proving the contentions put forth on the side of the prosecution, some witnesses have been examined.

16. The defacto complainant viz., father of the deceased is not at all an eye witness. One Pon Raja has been examined as PW2 and his specific evidence is that both the accused have given confession statements in police station and PW3, Arul Jeya Singh has become hostile witness. One Mariappan has been examined as PW4 and his specific evidence is that he found skeleton. The concerned Village Administrative Officer has been examined as PW5 and his specific role is that on 14.02.2006 both the accused have come to his office and voluntarily given separate statements. One Thomas has been examined as PW21 and his specific evidence is that he found both the first accused and deceased together in an auto. Except, these evidence, the prosecution has not adduced any other evidence so as to point out guilt of both the accused.

17. It is an admitted fact that the prosecution has not examined any eye witness to the effect that in the crime, both the accused are involved. Under the said circumstances, the entire case of the prosecution is based upon circumstantial evidence. The specific contention put forth on the side of the prosecution is that on 06.04.2005 at about 20.30 hours, the first accused has taken the deceased in an auto and subsequently the deceased has not turned up.

18. As pointed out earlier, the specific case put forth on the side of the prosecution is that both the accused are having illicit intimacy with each other and the second accused is the wife of the deceased. If that be the case, definitely the deceased would not have gone out along with first accused in the auto mentioned on the side of the prosecution. For the purpose of establishing the said aspect, one Thomas has been examined as PW21 and his specific evidence is that he has

seen both of them on a particular day and for the past one year, he has not divulged the same to anybody. Since PW21 has given such kind of evidence, the Court can very well come to a conclusion that his evidence is not trustworthy. Therefore, last seen theory put forth on the side of the prosecution has not at all been established.

19. The entire contention put forth on the side of the revision petitioner is that on 14.02.2006 both the accused have come to the office of PW5, Village Administrative Officer and voluntarily given separate statements, wherein they candidly admitted their relationship and also murder of the deceased. At this juncture, it would be apropos to look into the evidence given by PW1, defacto complainant and he specifically admitted to the effect that on 12.02.2006 itself he has seen the second accused in the office of Deputy Superintendent of Police. Since PW1 has given such kind of categorical evidence, it is highly impossible and also improbable on the part of PW5 to depose that on 14.02.2006 both the accused have voluntarily come to office and given separate statements. Therefore, the extra judicial confession statements alleged to have been given by both the accused are nothing but false.

20. The learned counsel appearing for the revision petitioner has also made an endeavour by way of contending that with regard to missing of the deceased, the second accused being his wife has not taken any steps nor stated during the course of 313 question with regard to alleged illicit intimacy and that itself has created strong presumption for proving the offences alleged to have been made by both accused.

21. The entire case of the prosecution is based upon the alleged illicit intimacy between the accused. The specific case of the prosecution is that 06.04.2005 the first accused has taken the deceased from his house by using an auto. Ex.P1 has come into existence on 12.02.2006. In between 06.04.2005 and 12.02.2006, no effort has been taken on the side of the second accused and that itself would not pave the way for coming to a conclusion that both the accused have committed the crime. Further, conviction and sentence cannot be invited on the basis of mere surmise or conjecture.

22. It has already been pointed out that last seen theory put forth on the side of the prosecution is nothing but false. Likewise, the extra judicial confession alleged to have been given by both the accused to PW5 has been belayed even on the basis of the evidence given by PW1. Therefore, virtually or absolutely no evidence on the side of the prosecution so as to connect both the accused with the crime. Since no evidence is available on the side of the prosecution so as to connect both the accused with crime, it is not possible on the part of the Court to invite conviction and sentence automatically on the basis of feeble evidence available on record.

23. The trial Court after considering lack of evidence on the side of the prosecution has rightly acquitted both the accused. In view of the discussion made earlier, this Court has not found any error nor illegality in the order of acquittal passed by the trial Court. Under the said circumstances, both the Criminal Appeal as well as Criminal Revision Case are liable to be dismissed.

24. In fine, both Criminal Appeal and Criminal Revision Case are dismissed. The second accused is ordered to be released. (A.S., J) (T.M., J) 18.02.2015 Index : Yes / No Internet : Yes / No mj To 1.The District and Sessions Court, Kanyakumari Division at Nagercoil 2.The Inspector of Police, Suchindrum Police Station, Kanniyakumari District, 3.The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai. A.SELVAM, J.

**and T.MATHIVANAN, J.**

mj Crl A(MD)No.115 of 2011 & Crl RC(MD)No.157 of 2011 18.02.2015

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