

Chakravarthy Vs. State, Represented by Inspector of Police

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Court : Chennai

Decided On : Apr-19-2012

Judge : C.S.Karnan, J.

Acts : [Indian Penal Code\(IPC\) 1860](#) - Sections 147, 323, 306, 149, 342, 302,;
Code of Criminal Procedure(CrPC) - Section 174, 397, 401, 313(1), 235(1);

Appeal No. : Crl.R.C.No.1042 of 2006

Appellant : Chakravarthy

Respondent : State, Represented by Inspector of Police

Advocate for Def. : Mr.C.Balasubramanian, Adv.

Advocate for Pet/Ap. : Mr.A.Padmanaban, Adv

Judgement :

Prayer :-Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to call for the records made in S.C.No.10 of 2005 on the file of the Chief Judicial Magistrate, Namakkal, order dated 18.05.2005 as confirmed by judgment made in C.A.No.46 of 2005 on the file of the Principal District cum Sessions Court, Namakkal, order dated 28.08.2006.

ORDER

1. The short facts of the prosecution case are as follows:-

The first accused's daughter viz., Mayil @ Bhuvaneswari, who hails from Udayyar Community and the deceased namely, Chinnakannu @ Sekar, who hails from Vanniyar Community, developed a love affair towards one another. Under the circumstances, the first accused had arranged a prospective bridegroom for his daughter. But she was not willing to marry the proposed bridegroom. Thereafter, the lovers had decided to move out of their native place and decided to marry each other in a secret place. Accordingly, the deceased had arranged a car bearing Registration No.TSP 2235 for transporting them to Ooty, to the place of the relative of the deceased. Knowing the same, all the 11 accused went to Ooty, by two cars, on 24.10.2002, and separated the first accused's daughter from the (deceased) Sekar. The accused 4, 6 and 7 had assaulted the (deceased) with their hands. The other accused put the (deceased) into the car and beat him. The accused 1 and 2 told the deceased that he is not fit to live after committing such a shameful act, after developing good friendship with their family. Thereafter, an arbitration was conducted in the presence of the relatives of the deceased and the lovers were separated. All the accused took the daughter of the first accused to his place. The deceased was left at Ooty. The deceased became frustrated due to separation of his lover and also by the abusive threats given by the accused. Therefore, the deceased decided to commit suicide. So, he came to Mullukurichi Village and bought pesticide and drank it. Subsequently, he died due to consumption of poison. Hence, the case was registered against the accused 1 to 11, for the offence under Sections 147, 323, 306 r/w 149 of I.P.C.

2. On the side of the prosecution, 29 witnesses were examined and 12 documents were marked and 2 material objects were produced. On the side of the defence, no witness, no documentary evidence. The prosecution side exhibits are as follows:-

Ex.P1-complaint, Ex.P2-observation mahazar, Ex.P3-postmortem report, Ex.P4-medical report, Exs.P5 and P6-medical officer's letters, Ex.P7-first information report, Ex.P8-investigation officer's express report, Ex.P9-Inspectors request letter, Ex.P10-rough sketch, Ex.P11-postmortem report, Ex.P12-complaint of the

first accused. The material objects are the photographs with negatives.

3. P.W.1, the cousin of the deceased, had adduced evidence stating that on 25.10.2002, at about 6 p.m., when he heard a noise of barking dogs in the garden of the deceased, he had rushed to the place, wherein the deceased was found to be dead. Immediately, P.W.1 had rushed to the police station and lodged a complaint before the Inspector of Police, who had registered the case in Crime No.301 of 2002, for the offence under Section 174 of Cr.P.C. The Investigation Officer had been examined as P.W.27 and F.I.R. was marked as Ex.P7 and the complaint was marked as Ex.P1. The said F.I.R. was referred to the Inspector of Police, attached to the Namagiripet Police Station and he was examined as P.W.29. P.W.29 came to the occurrence place on 26.10.2002 at about 1.30 p.m., and he had prepared observation mahazar in the presence of witness, namely, Chellamuthu, who had been examined as P.W.20. P.W.29, had prepared observation mahazar, which was marked as Ex.P2 and rough sketch was marked as Ex.P10. The photographer, who took photographs of the deceased and occurrence place was examined as P.W.6 and he had marked photographs series with negatives as M.Os'1 and 2. Thereafter, the enquiry was conducted in the presence of Srinivasan, P.W.1; Iyyanar, P.W.1; Lakshmi, P.W.3; Sadayan, P.W.4; Manickkam, P.W.21, Chellamuthu and Perumal. A requisition letter was forwarded to conduct postmortem. The same was marked as Ex.P11. P.W.2, the Head Constable submitted the letter to the Salem Hospital.

4. P.W.23, Medical Officer, Doctor, Vallinayagam, conducted postmortem, and he had adduced evidence that the deceased had sustained injuries on his head, right ear, left side neck, lower jaw, lacerated wounds on his left forearm. The doctor further opined that the deceased might have expired after consuming pesticide. The chemical analysis report was marked as Ex.P4. The doctor had also issued a medical certificate, which was marked as Ex.P3.

5. Thereafter, on the basis of doctor's report, the case was altered from Section 174 Cr.P.C. to one under Section 342, 323 and 302 of I.P.C. After alteration, the express report was sent to the Judicial Magistrate Court. Subsequently, the prosecution case was again altered to a case under Sections 147, 323 and 306 of

I.P.C. Thereafter, the accused Chakravarty, A-1, Mohan, A-2, Chengamalai, A-4, Annadurai, A-5, Raja, A-9 were arrested.

6. P.W.13-Venkatachalam and P.W.14-Kandasamy had adduced evidence stating that the deceased had pesticide bottles in his hand. They had enquired him about the said bottles. The deceased replied that the pesticide bottles were meant for spraying up the tomato garden.

7. When the accused were questioned under Section 313(1) of Cr.P.C., about their guilt, the accused pleaded not guilty.

8. The Investigation Officer of Ayyilpatti Police Station had lodged a report stating that as the accused 1 to 11 had instigated the deceased Sekar to commit suicide by using abusive language against the deceased and assaulting the deceased, they were guilty of offence and punishable under Sections 147 and 323 of I.P.C.

9. It is also seen that the deceased Sekar and the daughter of the first accused, knowing that their parents would not give consent to their marriage, as they belonged to different castes, had eloped, by taking help from P.W.5-Mani, at 10 p.m., on 22.10.2002 and had taken shelter in the house on P.W.8, Perumal, who was a relative of P.W.5. Though this fact had not been disclosed in the evidence of P.W.5, it had been brought out clearly in the evidence of P.W.21-Manickkam. P.W.21-had adduced evidence that the first accused and the deceased Sekar were business partners; that the deceased Sekar and the son of the first accused were partners in a tomato business, and had clearly stated about how the love affair between the first accused's daughter and deceased had come about. It is also seen that the first accused had informed P.W.21 that his daughter was missing and had asked him whether he knew about her whereabouts. Subsequently, both of them had searched for the eloped couple and had come to know that the couple was in Ooty, and the accused went in two cars to track them. It is seen from the evidence of P.W.21 that though he had volunteered to come along with accused No.1, the accused No.1 had prevented him from accompanying them. Though P.W.5 had turned into a hostile witness, it is seen from the evidence of P.W.7, that the said Chinnakannu @ Sekar and Mayil @ Bhuvaneswari had eloped from their houses on 22.10.2002 and with the help of

P.W.5 had arranged to rent the car of P.W.7 and had been transported in the said car upto Andalur Gate, and that subsequently the three of them had travelled to Ooty by bus and stayed in the house of P.W.7; that subsequently the accused had found their hide out and assaulted the (deceased) Sekar and used abusive language against him. Though the prosecution witnesses viz., P.W.8 to P.W.19 were examined to establish the above said contentions, none of them had testified in a manner favourable to the prosecution case.

10. It was argued on the side of the prosecution that from the evidence of P.W.1, P.W.2, P.W.3 and P.W.21 it is seen that the eloped couple were prevented from marrying one another as they belonged to different castes and it is seen from the evidence of P.W.6, that she had been forcibly taken by the deceased Sekar from her house on 22.10.2002, and that these circumstances had been the requisite catalysts for the deceased Sekar to commit suicide and that this situation has been brought out mainly by the actions of the first accused.

11. It was argued on the side of the accused that the prosecution witnesses viz., P.W.1 to P.W.8 and P.W.16 to P.W.19, were natives of Ooty and had adduced evidence which contradicts the contentions made by the prosecution regarding death of said Chinnakannu @ Sekar, and had also stated that none of them had adduced any evidence to the effect that they had seen the (deceased) Chinnakannu @ Sekar and Mayil @ Bhuvaneshwari together and no evidence has been produced to show that the accused had all assaulted the deceased and driven him to commit suicide.

12. It is seen from the evidence of P.W.1, P.W.2 and P.W.3 that the first accused, after hearing the news that the (deceased) Sekar and Mayil @ Bhuvaneshwari were missing, had lodged a complaint in the police station suspecting them to have eloped together and had also searched for them in the premises of P.W.1, P.W.2 and P.W.3; that after getting to know that the couple were in Ooty through P.W.2, had gone along with the accused to Ooty and brought back his daughter alone.

13. The learned counsel for the prosecution had argued that the first accused had indirectly abetted and created the circumstances for the suicide of the said

Chinnakannu @ Sekar by his activities while he was at Ooty.

14. The Chief Judicial Magistrate, Namakkal was of the opinion that the contentions of the prosecution side had not been made without cause as P.W.1, P.W.2 and P.W.3 and P.W.21 had not been cross-examined on the above contentions by the accused. The accused had also not refuted the evidence of the doctor, who had stated that the (deceased) Sekar had died due to consumption of poison, and had not let in any other reasons for the said death of the (deceased) Sekar. However, the learned Magistrate was of the opinion that though no direct evidence had been let in to prove that the (deceased) Sekar committed suicide due to the acts of the accused, the prosecution had provided sufficient circumstantial evidence to show that the (deceased) Sekar committed suicide due to the separation of Mayil @ Bhuvaneshwari by the accused herein, and to the mental agony, he had undergone during this period. But as there was no direct evidence to show that the (deceased) Sekar had been assaulted by the accused, the learned Magistrate opined that the accused cannot be held guilty and punished on this count. The learned Magistrate also held that the evidence of the prosecution witnesses i.e., P.W.1, P.W.2 and P.W.3, who are the parents of the deceased Sekar and his uncle, who had sequentially given the activities of the accused resulting in the death of their son, cannot be disregarded merely because they are the relatives of the (deceased) Sekar. The learned Magistrate also opined that other than the evidence of P.W.6, wherein it has been stated that the (deceased) Sekar had threatened the daughter of the first accused i.e., Mayil @ Bhuvaneshwari and kidnapped her, there are no other evidence to show that the said Mayil @ Bhuvaneshwari had been kidnapped by the deceased (Sekar). The learned Magistrate, after scrutiny of the oral and documentary evidence held the first accused guilty of offence under Section 306 of I.P.C. and also held that the accused No.1 to 3 are not guilty of offence under Section 147 and 323 of I.P.C and that the accused No.2 is not guilty of any offence under Section 147, 323 and 306 of I.P.C. and hence acquitted the accused No.2 to 11 from offence under Section 235(1) of Cr.P.C. The learned Magistrate imposed a sentence of rigorous imprisonment of 2 years on the first accused and also imposed a fine of a sum of Rs.1,000/- on him, in default of payment of fine, he was to undergo a further period of simple imprisonment for six months. It was also directed that the period of

imprisonment already undergone by the accused can be deducted from the said sentence.

15. Aggrieved by the conviction and sentence imposed by the trial Court, the accused No.1 had preferred an appeal in C.A.No.46 of 2005 before the Principal District cum Sessions Court, Namakkal. The learned counsel for the appellant had argued that the trial Court had erred in relying only on the evidence of P.W.1, P.W.2, P.W.3 and P.W.21 to come to a conclusion that the appellant herein was guilty of offence under Section 306 of I.P.C. It was also argued that the appellant herein had not committed any offence within the jurisdiction of the trial Court and that the alleged assault of the (deceased) Sekar, and the forcible separation of P.W.6 from the deceased had all occurred at Ooty. It was further pointed out that none of the prosecution witnesses who were based in Ooty had given any evidence in support of the prosecution case. It was also pointed out that the evidence of the doctor (P.W.23) regarding the death of the deceased (Sekar) does not throw any convincing light that the deceased had committed suicide. As such, it was prayed that the appellant herein should be acquitted from the Criminal Proceedings.

16. On the respondents side, it was argued that the postmortem of the deceased Sekar has to be carried out and that after postmortem, the body has to be sent to carry out chemical analysis; that a criminal miscellaneous petition had been filed and taken on file as C.M.P.No.1746 of 2005 and that an enquiry was fixed on 12.12.2005 and that subsequently the said petition was allowed. Based on this admission, the criminal miscellaneous appeal filed for interrogating P.W.29, once again, in C.M.P.No.1972 of 2005 was allowed and the evidence of P.W.29 that postmortem and chemical analysis of the deceased Sekar had to be carried out, was recorded and the request letter given by the investigation department for such a report was marked as Ex.P13.

17. The learned Principal District cum Sessions Court, Namakkal, after scrutiny of the oral and documentary evidence, held the accused No.1 guilty of offence under Section 306 of I.P.C., and confirmed the conviction and sentence imposed by the trial Court.

18. Aggrieved by the said dismissal of appeal, the appellant / revision petitioner herein has preferred this present revision.

19. The learned counsel for the revision petitioner has contended that even though the main part of the case relates to incidents at Ooty, the trial Court has clothed its jurisdiction by virtue of 179 Cr.P.C. It was pointed out that the prosecution witnesses, namely, P.W.8 to P.W.11, 16 to 19 and 25 are Ooty witnesses and they are all hostile to the case of the prosecution and as such there was no proof that the alleged incident took place at Ooty. It was also pointed out that P.W.1 to P.W.3 and P.W.21 are Naraikinur witnesses, who did not go to Ooty and as such their evidence is not relevant for the act done at Ooty. It was contended that from evidence of P.W.1, it is seen that the petitioner herein and others searched for P.W.6 that P.W.21 had also given a complaint (Ex.P1) in this case that whatever he had deposed in Court was denied by the Investigating Officer. It was contended that the trial Court failed to consider that for Section 306 of I.P.C to be applicable, abetment of suicide has to be clearly made out and the suicide must be proved, and that in the instant case, the doctor's evidence is ambiguous and it does not rule out accident or murder as he had deposed that death could have been caused by the grievous injury on the head of the deceased or due to injuries on his body as well.

20. The learned counsel for the State argued that it was an admitted fact that the deceased and accused No.1's daughter developed a love affair and eloped to Ooty. The A1 and his supporters went to Ooty and separated the eloped couple, after beating the deceased severely in the open place as well as after taking him forcibly into the car. Thereafter, A1 used shameful words and also told the deceased to end his life, since he committed such an act after being a good friend of their family. So A1 has directly and indirectly instigated the (deceased) Sekar to commit suicide. As per doctor's opinion, the deceased had consumed pesticide which is poisonous. There is material evidence to show that A1 and others went by 2 cars to Ooty to separate A1's daughter from the deceased. The same was witnessed by the local people in the occurrence place, arbitration also was conducted in the occurrence place. As such, there is nexus between A1 and the deceased. The prosecution had clearly established their case before the trial

Court. The learned counsel for the State further submits that the death of the deceased was unnatural. The learned counsel further submits that P.W.14 and P.W.15 noticed the pesticide bottle, which was in the hands of the deceased. Therefore, there is no discrepancy in the judgment of the Courts below.

21. On considering the evidence of the prosecution side, this Court is of the view that

(i) The doctor P.W.23 had stated in his evidence that the deceased might have expired after consuming pesticide, and had also opined that he had committed suicide.

(ii) P.W.3 and P.W.14 had adduced evidence that the deceased had kept pesticide bottles in his hand, prior to his death. When the witnesses enquired the deceased about the said bottles, it has been replied by the deceased that the pesticide was for spraying of the tomato garden.

(iii) All the accused had rushed to Ooty to secure the first accused's daughter from the clutches of the (deceased) Sekar. At that time, the A1 had warned the deceased and had told him that his family respect has been spoiled by the said act of the deceased. Subsequently, an arbitration was also conducted in front of the local people. The deceased's relatives had also participated in the said arbitration. At the time of arbitration, no violence had been exhibited on either of the sides. After arbitration, all the accused returned back to their native place along with the first accused's daughter.

(iv) The co-accused were also acquitted on the same charges;

(v) No eyewitness or suicide note has been produced in order to prove the prosecution case against the accused.

(vi) There is a gap of 2 days from the date of occurrence on 24.10.2002 at 10. a.m., i.e., the first accused daughter being secured and the date of expiry of deceased i.e., 26.10.2002; on 24.10.2002, the deceased had replied to the witnesses P.W.13 and P.W.14, in a normal way which showed that he was mentally balanced. Therefore, the offence under which the accused has been

charged with under Section 306 of I.P.C. is not proved.

22. In the result, the above revision is allowed and the conviction and sentence made in C.A.No.46 of 2005, on the file of the Principal District cum Sessions Court, Namakkal, dated 28.08.2006, confirming the judgment made in S.C.No.10 of 2005 on the file of the Chief Judicial Magistrate, Namakkal, dated 18.05.2005 is set-aside and the accused is acquitted. Therefore, the accused is at liberty to get refund of the fine amount paid by him. Accordingly ordered.

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