

**Joseph Vs. Antony and Others**

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**Court :** Kerala

**Decided On :** Apr-12-2011

**Judge :** The Honourable Mrs. Justice K. Hema

**Appeal No. :** Crl. Appeal No. 430 of 2007, Crl. Rev. Pet. No. 3094 of 2005 & Crl.M. Appl. No. 1099 of 2011

**Appellant :** Joseph

**Respondent :** Antony and Others

**Judgement :**

1. Jessy died in the early morning of 26.09.1998 in her matrimonial house. Her daughter, aged 1 years, was also found dead by her side. Jessy's father, PW1, lodged First information Statement, Ext.P1 before local police and Ext.P1(a) - FIR was registered under the caption "Unnatural death" in Ext.P1, PW1 stated that there is no possibility for Jessy to Commit suicide and that the child was murdered by somebody. During investigation, Jessy's husband, his parents and sisters were brought to the array of accused. Charge sheet was laid against them as accused 1 to 8, alleging offences under Sections 304B, 498A and 306 of Indian Penal Code ('IPC', for short).

2. According to prosecution, deceased Jessy Committed suicide by consuming Sodium Cyanide, which is a poisonous substance. She administered the same substance to her child also. The commission of suicide was allegedly abetted by

accused nos.1 to 8, who subjected her to cruelty and harassment in connection with unlawful demand of dowry, during her life time. The marriage of Jessy and first accused took place on 02.08.1995 and she died within seven years of marriage, under suspicious circumstances, on 26.09.1998. Cruelty inflicted on deceased Jessy by the accused drove her to commit suicide by poisoning.

3. After completion of investigation, charge sheet was laid before Magistrate Court under Sections 304B, 498A and 306 IPC. The case was committed to Court of Session and charge was framed by that court against accused nos.1 to 8 under Sections 304B, 306 and 498A IPC. To prove the case, prosecution examined PW1 to PW17 and marked Exts. P1 to P37 and MO1 to MO22. The accused marked Exts. D1 to D3 on their side. The accused pleaded not guilty.

4. On an analysis of evidence, trial court held that prosecution failed to establish beyond reasonable doubt that accused committed the alleged offences and all accused were acquitted, extending benefit of doubt. The order of acquittal is challenged in appeal filed by the state and in a revision filed by PW1 - defacto complainant. The appeal and revision are being disposed of by this common judgment.

5. Heard both sides. Perused the records. As per the allegations made by prosecution, deceased Jessy committed suicide by consuming Sodium Cyanide. She administered the same poison to her daughter also and caused her death. She procured the poison which was kept in the provision store run by her husband (A1) in a portion of the house where deceased Jessy lived with her husband. The records, evidence and impugned order in this case reveal that the case was proceeded with on the assumption that deceased Jessy and the child died due to Sodium Cyanide poisoning and arguments were also advanced accordingly.

6. Before this Court also, both sides made their Submissions admitting that this is a case of suicide by poisoning. But, the prosecution records rule out the possibility of death by poisoning. No poison was detected in the blood and viscera of the deceased, as per the Chemical analysis reports. Ext.P34-Chemical analysis report relates to the daughter and Ext.P36 relates to the mother. It is specifically reported in those reports that 'no poison was detected' in any of the items collected from

the body of both the deceased.

7. Ext.P33 series, Chemical Analysis Reports, reveal that there was no poison in the various articles seized from the scene of occurrence. A steel vessel and a teaspoon were seized by the investigating officer from the bed room where the incident allegedly occurred. Some powder was also found smeared on both the steel vessel and teaspoon. According to prosecution, the steel vessel and teaspoon might have been used for dissolving the poison, for administering to the child and also for consumption by deceased Jessy. But no poison was detected either in the steel vessel or in the teaspoon as per Chemical Analysis Reports Ext.P33 series.

8. Milk found on a desk in the scene was also seized and it was also sent for chemical analysis. But no poison was detected in the milk also, as per Ext.P33. A white cup and some liquid found in the room were also seized and sent for chemical analysis. But, neither in the cup nor in the liquid no poison was detected on chemical analysis. Some wetting was found near the cot and it was scraped, seized and sent for analysis and that also did not contain any poison, as per Chemical Analysis Reports, Ext.P33 series.

9. In such circumstances, on the basis of the records and documents produced by prosecution, it is difficult to believe that deceased Jessy committed suicide by consuming poison, as alleged by prosecution. Equally so is the allegation that poison was administered by deceased Jessy on the child and her death was caused due to poisoning. Without establishing that death was suicidal, offence under Section 306 IPC will not lie. Section 306 IPC reads as follows:

‘Section 306. Abetment of suicide. - if any person commits suicide, whoever abets the commission of such suicide, shall be punished for a term which may extend to ten years, and shall also be liable to fine’.

10. One of the important facts to be established by prosecution in a case involving offence under Section 306 IPC is that the victim committed suicide. Offence under Section 306 IPC will be attracted only if a person commits suicide and accused abets commission of such suicide. Commission of suicide is an inevitable

ingredient to be proved in an offence under Section 306 IPC and it is not sufficient if there is only an unnatural death.

11. According to prosecution, accused also committed offence under Section 498A IPC, by subjecting deceased Jessy to cruelty and such cruelty drove her to commit suicide by poisoning. Prosecution has also a case that accused committed offence under Section 304B IPC. Even though offence under Section 304B IPC may be attracted, even if death occurred otherwise than under normal circumstances. Prosecution has specifically alleged that death of Jessy was suicidal by consuming poison. Therefore, for a successful prosecution of accused for offence under Section 304B IPC also, it is necessary to prove that Jessy committed suicide by consuming Sodium Cyanide, as alleged.

12. But, in this case, that the actual cause of death is not only not discernible from the records and documents produced by prosecution, but records also strongly indicate that death may not be due to consumption of poison. However, learned Public Prosecutor submitted that PW12, the doctor, who conducted postmortem examination, stated in the final opinion that postmortem findings are consistent with death due to poisoning. Deceased Jessy had also sent letters (suicide notes) to PW2, the Vicar of the Church and also to the Sub Inspector, Which will also reveal that she intended to commit Suicide.

13. Exts. P35 and P37 are the final opinion given by PW12 on the Cause of death. As per the said certificates, "the postmortem findings are consistent with death due to poisoning. However, the nature of poison could not be made out due to negative chemical analysis." But, the above opinion, on the cause of death, is not consistent with other scientific evidence in this case. It is not stated in any of the reports of Chemical Analysis that "the nature of poison could not be made out due to negative chemical analysis".

14. On the other hand, this is a case in which no poison was detected at all in the blood or viscera of deceased Jessy and her child, as per Exts.P34 and P36 Chemical Analysis Reports. Chemical examination of blood and viscera does not show presence of any poison. It is also relevant to note that this is not a case in which any poison. It is also relevant to note that this is not a case in which any

poison was detected by the Chemical Analyst and he could not confirm the nature of poison.

15. It is also pertinent to note that PW12 and reserved his opinion about the cause of death pending Chemical examination reports. As per first reports-Exts.P11 and P12, PW12, the doctor, had no case that death was due to poisoning. Even though poison was not detected in the blood and Viscera, PW12, the doctor, did not state why and how he came to the conclusion that cause of death is consistent with death due to poisoning. There is also no investigation into this fact, even though doctor's opinion that "the nature of poison could not be made out due to negative chemical analysis" is contrary to the chemical examination reports.

16. Now, coming to the suicide notes also, there are certain suspicious circumstances surrounding them. According to prosecution, deceased sent suicide notes to Sub Inspector of Police and Vicar of the Church. Ext.P4 is the alleged suicide note sent by deceased Jessy to Vicar on 25.09.1998. As per the prosecution case, deceased Jessy went to bed on 25<sup>th</sup> night and she was found dead on the same night (ie., at about 3 a.m. on 26<sup>th</sup>). If prosecution case is accepted, deceased Jessy ought to have sent Ext.P4 on 25<sup>th</sup> itself, before she went to bed. But the postal seal shows the date of posting as 28.09.1998, which is two days after the death and even commencement of investigation.

17. It is also pertinent to note that deceased Jessy had admittedly written a letter to her father, even on the previous day of death, ie., on 24<sup>th</sup>. In that letter, she had also expressed various difficulties which she had faced in the matrimonial house. The tone and tenor of the letter would indicate that she has grown bold enough to resist and retaliate to any act of cruelty which she may face from her husband's relatives. She stated in the letter to her father that she would not remain meek any more, if she were to face any problems from her husband's relatives. It was on the very next day that the death had taken place. May be, PW1, her father had read the mind of his daughter and that must be the reason why he said in the F.I. Statement that she would not commit Suicide and that the child was murdered by somebody.

18. It is also relevant to note that even though deceased Jessy sent a letter to her father even on the previous day of her death, it is not comprehensible why she had chosen the Sub Inspector and Vicar and not her father, to send suicide notes. It is also relevant to note that in the so - called suicide note addressed to PW4-Vicar, she had stated that she wished to see her parents, but she could not do so. In all the above circumstances, there ought to have been a more detailed investigation, regarding the circumstances under which the letters were sent to the Vicar and Sub Inspector.

19. The poison, which was allegedly used for Suicide, is Sodium Cyanide and according to prosecution, it was kept in the provision shop run by first accused. It is not clear from the records, why a very dangerous and strong poison like Sodium Cyanide was kept along with the provisions in the shop. From where exactly the poison was procured and why it was kept in the shop, etc. are not investigated into properly. Under what circumstances and how deceased Jessy procured poison and how she had access to poison, etc. are also not investigated into. The circumstances under which deceased Jessy procured Sodium Cyanide also did not catch due and deserving attention of the investigator.

20. If the prosecution case is accepted and if it is believed that deceased Jessy had procured poison by herself from any container kept in the provision store, where is the container? Or, if she had taken only a portion of the poison in some paper or other material, where are such materials and remnants of the poison? If the prosecution allegations are correct, those articles must have been present in the scene of occurrence itself. But, no container nor remnants of poison was seen by the investigating officer in the room. Apart from this, in none of the articles seized from the scene, poison was detected on chemical analysis. There is no explanation from the prosecution why no investigation was done on these aspects also.

21. Had Sodium Cyanide been used by deceased Jessy herself for committing suicide, the highest probability is that the container or other materials, which were handled by her, would have been present in the scene itself, unless somebody had deliberately removed them from the scene. In such circumstances, absence of

any materials containing poison at the scene may reasonably point to the possibility of involvement of some other person than the deceased. It is likely that some person, who would have actually handled the poison, might have apprehended detection of his/her finger prints on the container etc. and removed them from the scene. Right or wrong, these are only certain reasonable thoughts which must normally cross the mind of an investigator.

22. The investigating officer should have felt the necessity to investigate into various possibilities of death due to reasons other than poisoning at least after receipt of chemical analysis reports, which strongly indicate that death may not be due to poisoning. Or, if it is a case in which death was actually due to poisoning and still, due to some reason (such as delay in examination) it was not possible to detect poison investigating officer ought to have investigated into all such possibilities and place all necessary materials before court. Learned Public prosecutor pointed out that there is considerable delay in examination of the material objects in this case.

23. However, it is not confirmed by the investigation how, there could be a death due to poisoning, in the absence of poison in the blood and Viscera of the deceased. There is no satisfactory investigation into the real cause of death. Had there been an effective investigation and if commission of suicide by poisoning could be ruled out, it follows that there may be possibility of death due to some other reason, which may include homicide.

24. There was some visible injury on the mouth of the deceased, which is corrosive in nature, as per the postmortem reports. But the cause of such injury is not investigated into. How those injury or corrosion was sustained by the deceased is not known. No doctor or other expert was questioned on the probable cause of such injuries. In such circumstance, the court cannot assume that such injuries were also caused by poisoning, especially in the absence of any thing on record to show that Sodium Cyanide can cause corrosive injuries.

25. PW1, in the F.I. Statement itself, stated that he met Dr. Santhakumari and made enquiries immediately on confirming death of his daughter and grand daughter, when she told him that deceased were brought to the hospital only after

three hours of death. Any person, who thinks reasonably, will find it essential to enquire into why there was such long delay in bringing the deceased to the hospital and what transpired in between. But, the doctor attached to the hospital or the staff of the hospital, where the deceased were taken, was not even questioned. None of the hospital records relating to the deceased was seized. The doctor, who conducted postmortem examination, was also not questioned by the investigating officer to ascertain the time of death.

26. Any way, without knowing what exactly was the cause of death and under what circumstances the deceased died, it may not be proper for the court to presume that Jessy died due to Sodium Cyanide poisoning and proceed with the case on such assumption. Even for taking cognizance of offences under Section 306, 304B and 498 IPC, there must be sufficient materials on record from which the court can presume that deceased Jessy committed suicide by consuming poison. In the absence of it, the court ought not to have taken cognizance of the above alleged offences and committed the case.

27. A joint reading of Sections 227 and 228 of Code Of Criminal Procedure ('the code', for short) reveals that charge can be framed only if judge is of the opinion that there is ground for presuming that accused committed an offence, after consideration of the records of the case and documents submitted before the court. The records and documents produced by prosecution must contain facts from which the court can presume commission of the alleged offence or offences. Presume means, reasonably presume on the basis of the prosecution records and not on any conjectures or surmises.

28. The records and documents produced in this case do not reveal any explanation how, in the absence of poison in the blood, Viscera and other material objects seized from the scene, court can presume that death was due to poisoning. No doctor nor any expert was questioned to confirm how there could be death due to poison in the absence of poison in blood and Viscera. The records do not reveal that even in the absence of Sodium Cyanide in blood and Viscera, this can still be a case of death due to poisoning. In such circumstances, it will not be reasonable to infer Sodium Cyanide Poisoning.

29. The final opinion in the postmortem certificates alone (Which does not tally with the chemical analysis reports), is not sufficient to presume that deceased Jessy committed suicide by poisoning, especially since it runs contrary to what is stated in the chemical analysis reports. Learned counsel for accused also could not substantiate (except by stating that opinion of PW12, the doctor, that deceased died due to poisoning may be accepted) That this may be a case of suicide. In such circumstances. The court ought not have framed charge for any of the offences alleged in this case, on the assumption that this a case of suicide due to consumption of poison.

30. Any way, I am satisfied that cognizance of offences was taken by the court wrongly and the case was also committed to the Court of Session wrongly on the ground that this is a case of suicide by poisoning. Instead of taking cognizance of offences and committing the case or framing the charge, courts below ought to have found, at the appropriate stage, that this is a fit case for further investigation and insisted for further investigation, especially since the records in this case negative a case of suicide by poisoning. Without making any effort for a further investigation into the cause of death and other relevant facts, by invoking power under Section 156(3) of the Code [vide *Sakiri Vasu V. State of U.P.* {(AIR 2008 SC 907)}], the court below ought not have proceeded against the accused for the alleged offences.

31. After a detailed hearing on the various aspects, learned Public Prosecutor filed a petition for further investigation under Section 173(8) of the code and requested that a further investigation may be ordered in this case. He placed strong reliance upon *Zahira Habibulla H. Sheik V. State of Gujarath* [( 2004) 4 SCC 158] and vehemently argued that a criminal trial is conducted to find out the truth and therefore, nothing can prevent the court from finding out the truth in a particular case and for that purpose, ordering further investigation. It is also submitted that this Court has inherent power which can be exercised *Suo motu* while exercising the appellate jurisdiction. The relevant portion from *Zahira's* case (*Supra*) is quoted as follows:

“56 ..... if deficiency in investigation of prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (See Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble)”-

32. Learned counsel for revision petitioner also argued that in a fit case, the court can order further investigation even suo motu under Section 482 of the Code to secure ends of justice, as per the dictum laid down in Popular Muthiah v. State represented by Inspector of Police [(2006) 7 SCC 296]. It is also argued that even in cases in which cognizance was taken and case was Committed, further investigation can be conducted by police on the relevant aspects [vide Zahira Habibulla H. Sheikh V. State Of Gujarat [(2004) 4 SCC 158]. Therefore, nothing prevents even this Court also from ordering further investigation in a fit case, it is argued.

33. On hearing both sides, I am satisfied that this is a fit case in which investigation ought to have been ordered, since there is no investigation into the actual cause of death and various other facts which are indicated in this judgment. It is not too late to ascertain even now by a proper investigation, what was the actual cause of death of Jessy and her child and whether deceased committed suicide by poisoning as alleged by Prosecution or whether the death was due to some other cause.

34. However, learned defence counsel submitted that accused nos.2 and 6, who are the parents of first accused, are no more and the charge against them abated. It is also submitted that if further investigation is ordered by this Court, after lapse of such a long time, serious prejudice will be caused. He also submitted that prosecution did not seek for further investigation at the appropriate stage and therefore, the highly belated request may be turned down, as it will cause prejudice to the accused.

35. It is also pointed out by learned Counsel for accused that in an appeal, pending for a period of six years, the Supreme Court in *S. Guin V. Grindlaya Bank* (AIR 1986 SC 289) found that re-trial ought not have been ordered whatever be the error committed by the court below. Relying upon the above decision, it was argued that same principle may be applied in cases of further investigation also. He also submitted that the well settled legal position is that only if there are exceptional circumstances or if findings of facts are perverse or totally unreasonable, this Court can interfere in an order of acquittal.

36. It is also argued by learned defence counsel that if at all any doubt arises as to the cause of death and commission of suicide and consequently on the guilt of the accused, are entitled to the benefit of doubt. He also argued that an order for further investigation, at this stage, will do great injustice to the accused, since it is not likely that sufficient materials can be brought out to prove the cause of death of the deceased. It is argued that the order of acquittal may not be disturbed, since two views are possible and the order cannot be said to be perverse so as to warrant interference in an order of acquittal, in the light of the decision reported in *Arulvelu v. State* [(2009) 10 SCC 206].

37. On the facts of this case, I find that none of the contentions raised on behalf of the accused shall stand in the way of issuing an order of further investigation. The mere delay that may be caused in concluding the trial shall not dissuade the court from ordering further investigation, since without a further investigation on vital aspects, a right decision cannot be taken. I am also of the view that in a case in which the records do not disclose any facts from which the court can presume commission of any offence, it will be highly improper to commission of offence because in such a case, even at the stage of framing of charge, there can only be one view that there is no ground to frame charge.

38. It is also true that if any doubt arises on the guilt of the accused, the benefit must ordinarily go to the accused. But benefit of doubt can be extended only in a case where prosecution records and documents prima facie disclose that accused committed a particular offence and charge is framed for such offence and prosecution fails to prove guilt of the accused beyond reasonable doubt. A criminal

trial will be nothing but a farce if the court acquits an accused by extending benefit of doubt in a case in which records produced by prosecution do not even prima facie reveal necessary facts to constitute any offence.

39. In a fit case in which court finds that the records produced by prosecution do not reveal any offence for want of effective investigation, the proper course would be to order further investigation. If the court fails to adopt such a course and wrongly frames charge against an accused for an offence which is not disclosed from the records and thereafter acquits the accused by extending the benefit of doubt, the court would be committing mainly four mistakes: (1) in not directing proper investigation under Section 156(3) of the code, (ii) in wrongly taking cognizance of the offences, (iii) in wrongly framing the charge and (iv) in wrongly extending the benefit of doubt.

40. The courts exits for doing justice. In the absence of a proper investigation into the relevant aspects to arrive at the truth, it may not be possible for the court to do justice. It is beneficial to refer to *Sakiri Vasu v. State of U.P.* (AIR 2008 SC 907) in this context. It is held therein that when defective investigation comes to light during course of trial, it may be cured by further investigation. The relevant portion from *Sakiri Vasu* is extracted hereunder:

“When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. .... The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice”.

41. A proper and effective investigation is the bedrock of criminal justice. When the court finds relevant facts are not investigated into and brought on record and

hence, it cannot even presume from the facts disclosed in the records produced by prosecution existence of an important ingredient of the alleged offence, it shall ensure that a proper and effective investigation is conducted into the relevant aspects and those are brought on record by issuing appropriate direction.

42. An accused can be convicted or acquitted only after a fair trial. A trial will be fair only if the court is fair to both sides, the victim and the accused, equally. When the court finds that relevant facts are not investigated into, it must exercise its power under Section 156(3) of the Code and take all steps necessary for ensuring a proper investigation at the earliest stage itself and direct proper investigation. If the investigation is perfunctory or ineffective, it is the duty of the court to direct further investigation, in accordance with law.

43. The victim, State and the Society deserve such a fair treatment from court, even if investigator fails to extent such fairness to them. A fair trial can be ensured only if effort is taken to bring in all relevant facts relating to the offence by a meaningful and complete investigation. If this does not happen. The court must see that it happens.

44. Any way, as per the records in this case, the court could not have even presumed that this is a case of suicide by consumption of poison and hence, it was ridiculous on the part of the court below to call upon the accused to answer the charge under Section 306 IPC for abetting commission of suicide and other offences alleged in this case, based on the allegation that death was due to poisoning. It was puerile for the court to acquit the accused by extending benefit of doubt, on the ground that some doubt arises regarding commission of suicide, because, such doubt had existed even prior to framing of the charge itself. Therefore, the trial in this case was a mockery.

45. Taking all the above facts and circumstances into consideration, I find that Magistrate Court was wrong in taking cognizance of the various offences alleged in this case without ordering further investigation under Section 156(3) of the Code. The court also made a serious error in committing the case. The trial court also Committed a mistake in framing charge against accused for the various offences alleged in this case in the absence of collection of all relevant materials

by investigation to establish the guilt of the accused.

46. However, before I conclude, I make it clear that observations made in this judgment on the cause of death, commission of suicide, etc., are all based only on the records which are at present available before court. Hence, further investigation shall be done and conclusions may be arrived at, as to what offence or offences are actually involved in this case, untrammelled by any of the observations made in this judgment on the merit of the case.

47. To Sum up, I hold that I am satisfied that this is fit a case to order further investigation and it is absolutely essential to render real and substantial justice in this case. In the above circumstances, order of acquittal and various other orders referred above are to be set aside and further investigation be ordered. In the result, following order is passed:

- i. The impugned order of acquittal is set aside.
- ii. The Committal order and the charge framed by the trial court are hereby quashed.
- iii. The respondent - police is directed to conduct such further investigation as may be necessary, with respect to cause of death and other related matters in accordance with law.

This appeal, revision petition and C.M. Appl. No. 1099/2011 are disposed of accordingly.

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