**Balaji Vs. Vasu and Others**

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**SooperKanoon Citation** : sooperkanoon.com/953992

**Court** : Chennai

**Decided On :** Nov-27-2012

**Reported in** : 2013(1)MLJ(Crl)537

**Judge** : B. Rajendran

**Appeal No.** : Criminal Revision Case No.1200 of 2006

**Appellant** : Balaji

**Respondent** : Vasu and Others

**Advocate for Pet/Ap.** : For the Petitioner: P. Manikannan, Advocate. For the Respondents: R1 & R2, I.C. Vasudevan, Advocate, R3, Prathap Kumar, Government Advocate (Crl.Side).

**Judgement** :

(**Prayer:** Criminal Revision Cases filed under Section 397 and 401 of Cr.P.C. against the Order dated 30.06.2006 made in S.C. No. 391 of 2005 on the file of the Additional District Judge, Fast Track Court No.V, Chengalpattu.)

1. The revision petitioner is the PW1 in S.C. No. 391 of 2005 on the file of the learned Additional District Judge, Fast Track Court No.V, Chengalpattu. The petitioner is aggrieved by the order dated 30.06.2006 passed by the Court below whereby the accused/respondents 1 and 2 herein were acquitted of the charges.

2. The case of the prosecution is that the deceased Amudha was given in marriage to the first accused. The second accused is the brother of the first accused. The revision petitioner is the brother of the deceased Amudha. PW5 is the daughter of the deceased and A-1. PW6 is the mother of the deceased. According to the prosecution, the first accused ill-treated the deceased Amudha during his matrimonial life and subjected her to harassment and mental cruelty on demand of dowry. The first accused used to beat her often and in fact the deceased also complained it to the revision petitioner. The deceased also gave several complaints against her husband, the first accused complaining ill-treatment and the same were also enquired into by the respondent police. On 14.11.2003 at about 12.00 hours, in Periapalayam Main Road, near Pakkam public well, when the deceased Amudha was proceeding on the road with the revision petitioner, the accused came there with an Aruval with an intention to cause her death and cut her with the Aruval on her stomach, chest, neck, left wrist, back and other parts of her body, with the result, the deceased succumbed to the injuries on the spot. During the course of the transaction, A-2, being the brother of A-1 voluntarily abatted A-1 to commit the murder of the deceased and thereby, A-1 and A-2 committed the offence punishable under Sections 302 read with Sec. 109 of IPC. On receipt of the final report, the case was taken on file as P.R.C. No. 2 of 2004 by the learned Judicial Magistrate No.II, Thiruvallur. Since the offence is triable by the Court of sessions, the entire records were transmitted to the file of the learned Principal District Judge, Chengalpattu and it was taken on file as S.C. No. 391 of 2005.

3. During the course of trial, the prosecution examined PW1 to 22, marked Exs. P1 to P17, besides Mos 1 to 7. The trial court disbelieved the complaint Ex.P1 given by the revision petitioner on the ground that even before the complaint could be lodged, the police personnel have visited the scene of occurrence and that the first information report must have been prepared after due deliberation and consultation. The court below also found that there was a delay in registration of the complaint and therefore, the case putforth by the prosecution cannot be believed.

4. The learned counsel for the petitioner would contend that PW1, 5 and 6 were the eye witnesses and their evidence was slightly brushed aside by the Court below without any valid reason. The court below also failed to see that previously the deceased gave complaint against her husband, A-1 complaining that he raped his own daughter, PW-5 and this complaint had created enemity between the couple. Therefore, due to such enemity, the accused had motivatedly committed the murder of the deceased. The court below also failed to take note of the fact that the deceased died due to shock and haemorrhage, due to the injuries sustained by her in the vital parts of her body, which is evident from the postmortem report, Ex.P9. There are also enough evidence available to connect the accused to the offence and therefore, the court below ought not to have acquitted the accused.

5. On the contrary, the learned counsel appearing for the respondents 1 and 2 would contend that the court below is right in holding that the prosecution has failed to prove the guilt against the accused/respondents 1 and 2 beyond any reasonable doubt. During the course of trial, Pws 11 to 15 turned hostile. The eye witnesses projected by the prosecution namely PW1, PW5 and PW6 have not supported the case of the prosecution. The court below rightly pointed out that Ex.P1 complaint was created after deliberation and instruction by the investigation officer inasmuch as even before Ex.P1 could be given by the petitioner, the police officials came to the spot and therefore, the complaint, Ex.P1 is not natural or voluntarily, besides that there is a delay in giving the complaint. The court below also found that the presence of the eye witnesses in the occurrence spot is highly unbelievable. It was further found that PW1 being the brother of the deceased and was available in the spot, did not resist the accused from attacking the deceased and remained as a mute spectator. Similarly, PW5 in her evidence stated that when A-1 chased her mother, she saw the incident and complained it to her grand mother and when they returned to the occurrence spot, they found the deceased lying in a pool of blood. The court below also found the discrepancy in the time of occurrence, which are based on materials produced by the prosecution. Even according to the prosecution, immediately after the incident, more than 50 persons have gathered in the spot, but the prosecution has not examined any independent witness especially when the occurrence alleged to have taken in the broad day

light. In any event, when the Court below recorded a finding to acquit the respondents 1 and 2/accused, the same need not be interfered with by this Court. In support of his contention, the learned counsel for the respondents/accused 1 and 2 relied on the latest decision of the honourable Supreme Court reported in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 wherein it was held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. The learned counsel for the petitioner also relied on the decision of the Honourable Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 to contend that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

6. The learned Government Advocate appearing for the third respondent would only contend that the prosecution has not preferred any appeal against the order of acquittal passed by the Court below.

7. I heard the counsel for both sides and perused the materials available on record. The prosecution has examined 22 witnesses, marked 17 documents, besides marking material objects viz., Mos 1 to 7 to prove the guilt against the respondents 1 and 2/accused. Of the 22 witnesses, Pws 1, 5 and 6 were projected as eye witnesses. Pws 11 to 15 turned hostile during the course of trial. On careful scrutiny of the deposition of PW1, it is clear that even though he said to have witnessed the occurrence, he has not deposed that he made any attempts to resist the attack of the accused but only remained as a silent spectator. Even after the attack, the petitioner did not reacted swiftly to either inform the police or made a hue and cry. The court below pointed out that the petitioner has not even attempted to touch the deceased for the reasons best known to him. The court below further pointed out that the petitioner did not make a hue and cry, even though he deposed that the occurrence took place in a broad day light and that the place of occurrence is surrounded by houses. If really the petitioner's sister was brutally attacked, as claimed by the petitioner, it is not known as to why he has not resisted such attack. It was also not the evidence of petitioner that he tried to run

away or raised cries calling for others help. Therefore, I am of the view that the Court below is justified in disbelieving his version of the petitioner. Further, the Court below also pointed out that even before the petitioner could give a complaint to the respondent/police, the police arrived at the scene of occurrence. Therefore, it is clear that the information reached the police through somebody, but the so-called informant or the information received by the respondent police was not reduced into writing and it was not made available as a complaint. Rather, after the respondent police reached the scene of occurrence, Ex.P1 came into existence and therefore, the Court below is right in holding that Ex.P1 was well tutored and instructed to be made to suit the convenience of the prosecution. The court below also pointed out the inconsistencies in the timing put forward by the prosecution viz., 12.00 hours and it was not made known as to whether the occurrence taken place in the night or in broad day light, as alleged. Therefore, the Court below pointed out that Ex.P1 complaint came into existence to fill up the lacuna of the case of the prosecution and it is not legally sustainable to prove the guilt of the respondents 1 and 2/accused.

8. The court below pointed out in the order of acquittal that even according to PW1 in his cross-examination, after an hour, the Superintendent of Police came to the place of occurrence, took him to the police station in jeep by 2.00 pm, gave a white paper to him in which he had written the incident. Again, the petitioner came back to the place of occurrence in ambulance and taken the dead body of his sister. If this version is true, then based on whose complaint or information did the police came to the place of occurrence or is there any earlier complaint received by the police regarding the murder of the deceased is not known. This vital information was suppressed by the prosecution and it is fatal to its case.

9. As regards the version of PW5, she would only depose that she saw her mother chased by her father, first accused and immediately she returned home to inform her grand mother. When she returned to the scene of occurrence, she saw the deceased lying in a pool of blood. According to PW5, on seeing her mother dead, she cried and hugged her mother. If really it is so, there must be blood stains in the dress worn by PW5, but conveniently, the prosecution has not recovered the same and subjected it to chemical examination. Therefore, the Court below also

disbelieved the evidence of PW5 and doubted her presence in the scene of occurrence. Similarly, PW6, who was projected as an eye witness would only state that she heard her daughter, deceased, being assaulted by her son-in-law through her grand daughter, PW5 and immediately, she came to the scene of occurrence and saw her daughter lying dead. Therefore, PW6 cannot be said to have been present in the scene of occurrence or witnessed the occurrence. Therefore, PW6 also cannot be said to be an eye witness, who witnessed the occurrence.

10. The court below also pointed out glaring inconsistencies in the version of the prosecution witnesses, delay in registering the complaint, Ex.P1 and even disbelieved the manner in which Ex.P1, complaint came into existence. Such a conclusion arrived at by the Court below, in my opinion, is based on materials available on record and it cannot be said to be illegal or unreasonable. In this context, it is useful to extract the relevant portion of the latest decision of the Honourable Supreme Court reported in (Murugesan and others vs. State through Inspector of Police) 2012 AIR SCW 5627 wherein it was held as follows:-

"27. It will be necessary for us to emphasize that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

28. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.P.C. was not called for."

11. Similarly, in the decision of the Honourable Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374, which was relied on by the counsel for the petitioner, the Honourable Supreme Court held that it is well settled that in a revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been over looked or misread by the subordinate Court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate Court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. In the present case on hand, this Court, on scrutiny of the order passed by the Court below, can only hold that there is no procedural or material irregularity in arriving at a conclusion to acquit the accused and therefore, I do not find any reason to interfere with the order passed by the Court below.

12. In the result, the Criminal Revision case is dismissed.