

Chitrapandi Vs. Janakaraj

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Court : Chennai

Decided On : Jan-31-2013

Judge : B. Rajendran

Appellant : Chitrapandi

Respondent : Janakaraj

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

31. 01-2013 Coram THE HONOURABLE MR. JUSTICE B. RAJENDRAN Criminal Revision Case Nos. 1880 and 1907 of 2004 CrI.R.C. No. 1880 of 2004 Chitrapandi .. Petitioner Versus 1. Janakaraj 2. Kamala 3. Muthupandi 4. The Dy. Superintendent of Police Udumalpet Coimbatore District .. Respondents CrI.R.C. No. 1907 of 2004 C. Sudalaimuthu .. Petitioner Versus Janakaraj @ Janagarajan @ Janaga Maheswaran .. Respondent CrI. R.C. No. 1880 of 2004:- Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the Judgment dated 12.10.2004 made in S.C. No. 311 of 2003 on the file of the Sessions Judge, Magalir Needhi Mandram, Coimbatore District. CrI. R.C. No. 1907 of 2004:- Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the Order dated 19.08.2004 passed in C.M.P. No. 5978 of 2003 on the file of the Judicial Magistrate not VI, Coimbatore. For Petitioner : Mr. C. Deivasigamani in both the Criminal Revision Cases For Respondent : Mr. S. Vadivel Murugan for RR1 to 3 in CrI. R.C. No. 1880 of 2004 CrI.R.C. No. 1907 of 2004 Mr. S. Prathap Kumar Government Advocate (CrI. Side) for R4 in CrI. R.C. No. 1880 of 2004

COMMON ORDER Crl. R.C. No. 1880 of 2004 is filed by the father of the deceased Maheswari, who is also the defacto complainant in Crime No. 2 of 2003 on the file of Dhali Police Station, aggrieved by the Judgment dated 12.10.2004 made in S.C. No. 311 of 2003 on the file of the learned Sessions Judge, Magalir Needhi Mandram, Coimbatore District, by which the accused 1 to 3/respondents 1 to 3 herein have been acquitted of all the charges.

2. Crl. R.C. No. 1907 of 2004 is filed by the brother of the deceased Mahaeswari, who is the petitioner in C.M.P. No. 5978 of 2003 filed under Section 200 of Cr.P.C. aggrieved by the order dated 19.08.2004 passed by the learned Judicial Magistrate not VI, Coimbatore, by which the private complaint filed by him was dismissed.

3. The grievance of the petitioners in both the Revision Cases is common besides that parties to the case are also identical and therefore, both the Criminal Revision Cases are disposed of by this common order.

4. For the sake of convenience, the parties shall be referred to as per their litigative status in S.C. No. 311 of 2003 before the learned Sessions Judge, Coimbatore and the Petitioner in Crl. R.C. No. 1907 of 2004 shall hereinafter be referred to as petitioner.

5. The case of the prosecution is that the deceased Maheswari was given in marriage to A-1 on 26.02.2001. A-2 and A-3 are the parents of A-1. After the marriage, the deceased was living with A-1 to A-3 as a joint family. According to the defacto complainant, who is the father of the deceased, the accused 1 to 3 have subjected his daughter to humiliation and harassment in all forms and manifestation by demanding dowry. According to the defacto complainant, the accused demanded money for purchasing a motor cycle for A-1 and Rs.3,00,000/- in cash to set up a separate residence for A-1. Unable to bear the mental agony, to which the deceased was subjected to, at the instigation of the accused 1 to 3, on 09.01.2003 at 9.00 am, the deceased consumed two packets of chemical poison called 'Sani powder' (cow dung) with an intention to commit suicide. On the same day at 11.00 am, the deceased died at Government Hospital, Udumalpet. Therefore, on the death of the deceased, the defacto complainant has given a

complaint to the Dhali Police Station, based on the same, the case in Crime No. 2 of 2003 came to be registered against the accused 1 to 3 for the alleged offence punishable under Sections 4 and 6 of Dowry Prohibition Act and Section 304-B and 406 of IPC.

6. According to the defacto complainant, after the death of her daughter, one Gayathri, PW15, who is the friend of the deceased, had handed over a hand bag, which belonged to the deceased, which was said to have been handed over to her by the deceased few days prior to her death. On examination of the bag, the defacto complainant found some letters written by A-1 to his lover. Further, the defacto complainant found a letter said to have written by the deceased herself addressed to the Police stating that she was subjected to cruelty at the instance of A-1 and therefore, in the event of her death, it is A-1 who has to be held responsible for such death. This letter was handed over by the defacto complainant to the investigation officer and the same was also marked as Ex.P2 before the court below in order to prove the guilt against the accused and to bring home the nature of the cruelty meted out to his daughter by the accused 1 to 3.

7. During the course of trial before the learned Sessions Judge, Coimbatore, the prosecution, in order to prove the guilt against the accused 1 to 3, examined Pws 1 to 18 and marked Exs. P1 to P22 besides MOs 1 to 4. On appreciation of the oral and documentary evidence, the learned Sessions Judge, Coimbatore found that even though the investigation officer has said to have filed the charge sheet after receiving the report from the hand writing expert comparing the signature of the deceased contained in Ex.P2 with the admitted signature in the note book, marked as Ex.P3, the report was not filed during the course of trial and therefore it is fatal to the case of the prosecution. The learned Sessions Judge, Coimbatore also pointed out that non-examination of the handwriting expert, who submitted his report, is fatal to the case of the prosecution. Therefore, the learned Sessions Judge, Coimbatore held that the prosecution has not proved the guilt of the accused beyond reasonable doubt and acquitted them. Aggrieved by the judgment of acquittal in S.C. No. 311 of 2003 dated 12.10.2004, Crl. R.C. No. 1880 of 2004 has been filed by the defacto complainant.

8. In the meantime, the petitioner in CrI.R.C. No. 1907 of 2004 has filed a private complaint under Section 200 of Cr.P.C before the learned Judicial Magistrate not VI, Coimbatore, against A-1 alleging that A-1 was solely responsible and liable for the death of his sister. According to the petitioner, A-1 subjected his sister to harassment, mental and physical cruelty, which resulted in the death of his sister by committing suicide. The petitioner further contends that A-1 intended to eliminate his sister so as to enable him to marry one Rajeshwari @ Kunja as his second wife. Inasmuch as A-1 was instrumental for the death of his sister, he prayed for launching criminal prosecution against A-1 and punish him for the offences under Section 498-A, 302 and 406 of IPC. The said private complaint was dismissed by the learned Judicial Magistrate not VI, Coimbatore on 19.08.2004 by finding that already criminal prosecution was launched against A-1 at the instance of the defacto complainant and the same is pending trial before the learned Sessions Judge, Coimbatore, therefore, the parallel relief sought for by the petitioner need not be granted. Aggrieved by the same the brother of the deceased has filed CrI.R.C. No. 1907 of 2004.

9. The learned counsel for the petitioners would contend that the courts below has failed to take into consideration the material available on record, which clearly prove the guilt of the accused. The learned counsel for the petitioners further submit that the prosecution has not properly conducted the trial which resulted in the acquittal of the accused by the the learned Sessions Judge, Coimbatore because of the fact that the first accused is a serving police constable. Therefore, the prosecution has conducted the trial of the case with bias with an intention to secure the acquittal of the accused. The brother of the deceased also filed a private complaint before the learned Judicial Magistrate not VI, Coimbatore wherein documents were marked to prove the guilt of A-1 and even that was also dismissed on the ground that already criminal prosecution was launched at the instance of the defacto complainant. In any event, there are enough evidence available on record to connect the accused to the offence complained of, however, the learned Sessions Judge, Coimbatore simply brushed aside the material evidence, particularly Exs. P2 and P3, to acquit the accused of all the charges.

10. The learned counsel for the petitioners also brought to the notice of this Court that pending Criminal Revision Case No. 1880 of 2004, the defacto complainant has filed CrI.M.P. No. 424 of 2007 before this Court under Section 391 read with Sec. 482 of Cr.P.C. praying for a direction to the trial court to take additional evidence in S.C. No. 311 of 2003. According to the counsel for the petitioners, the defacto complainant relied on the letter Ex.P2 to prove the guilt of the accused. Even though it was marked before the trial court, the report obtained from the hand writing expert, comparing Exs. P2 and P3, was not marked and the hand writing expert was not examined. According to the counsel for the petitioners, Ex.P2 was written by none else than the deceased in her own writing addressed to the Superintendent of Police, wherein she had narrated the cruelty meted out to her at the instance of her husband. In that letter the deceased specifically implicated A-1 by saying that if she happen to die, it is her husband who is solely liable and responsible for such death. According to the counsel for the petitioners, this Court, accepting the contention of the defacto complainant allowed the miscellaneous petition on 23.11.2007 thereby directed the trial court to take additional evidence in the Sessions Case with regard to Exs. P2 and P3 series by examining the handwriting expert, who compared the hand writing and for marking the said report. Only thereafter, additional evidence was taken with respect to examination of the hand writing expert and marking of the report filed by him. As per the deposition of the handwriting expert, it is the deceased who had written the letter Ex.P2 in her own hand writing as the hand writing of the deceased in the admitted portion of Ex.P3 tallies with Ex.P2. Therefore, it is clear that the deceased was subjected to matrimonial cruelty and therefore the accused are guilty of the offence complained of.

11. On the other hand, the learned counsel for the Accused 1 to 3 would contend that the prosecution failed to bring home the guilt of the accused and therefore the trial court is right in acquitting the accused. The prosecution failed to prove that soon before the occurrence, the deceased was subjected to cruelty or harassment in any manner. The occurrence took place on 09.01.2003 and shortly prior to that date, the deceased was in her parents house on 07.01.2003 and it is the first accused who took her to the matrimonial home on 09.01.2003 after completing the training. Thus, there was no harassment or cruelty meted out to the deceased

immediate before the occurrence and in the absence of the same, the accused are not liable for the death of the deceased. Under those circumstances, the courts below are right in dismissing the sessions case as well as the private complaint and he prayed for dismissal of both the Criminal Revision Cases.

12. I heard the counsel for both sides. The accused were tried for the offence punishable under Sections 4 and 6 of Dowry Prohibition Act and Section 304-B and 406 of IPC before the learned Sessions Judge, Coimbatore. The learned Sessions Judge, Coimbatore acquitted them on the ground that the prosecution has not marked the report of the handwriting expert to prove that the contents of letter, Ex.P2 said to have been written by the deceased. Therefore, pending the revision, the defacto complainant filed CrI.M.P. No. 424 of 2007 before this Court under Section 391 read with Sec. 482 of Cr.P.C. praying for a direction to the trial court to take additional evidence in S.C. No. 311 of 2003. This Court, accepting the contentions urged on behalf of the defacto complainant, allowed the said petition on 23.11.2007 directing the trial court to take additional evidence with regard to Exs. P2 and P3 series by examining the handwriting expert, who compared the hand writing and marking the said report. Pursuant to such an order dated 23.11.2007 passed by this Court, the handwriting expert was examined as PW19 before the learned Sessions Judge, Coimbatore and his report was marked. In his examination, PW19 would state that the contents of the letter, Ex.P2, on comparison, tallies with the contents in Ex.P3, note book and that he had opined that it is the deceased who had written the letter, Ex.P2. Therefore, it is clear that PW19 had categorically deposed that the letter, Ex.P2 has been written by the deceased herself and therefore the contents of the letter, Ex.P2 can be taken into consideration for establishing the guilt against the accused. Even though Ex.P2 was marked during the course of trial, the learned Sessions Judge, Coimbatore acquitted the accused on the ground that the handwriting expert was not examined to prove the contents thereof. Now, pursuant to the order dated 23.11.2007 of this Court, the handwriting expert was examined as PW19 and there is evidence that Ex.P2 was written by none other than the deceased.

13. The Court below failed to take into consideration Ex.P12, which is the chemical analysis report, marked through PW13. PW13, in his deposition only state that

from the chemical analysis report, no poison was deducted. But on a careful scrutiny of Ex.P12, in the bottom, it is clearly written in handwriting to the effect "died of some poisoning which is not deductible by chemical analysis". Ex.P12 was issued by the Assistant Surgeon, Government Hospital, Udumalpet on 24.04.2004. Further, when we analyse the evidence of PW9, Doctor, he has categorically deposed that "uz;L ehrp Jthu';fspYk; uj;jk; njha;e;j Jthuk; fhzg;gl;IJ/ cs;s';ifapYk; cs;s';fhypYk; k";rs; epwkhf fhzg;gl;IJ/ ,ug;iga[k; rpWFIYk; k";rs; epwkhf fhzg;gl;IJ/ ,iwg;ig fhypahf fhzg;gl;IJ/ In his conclusion, PW9, Doctor would state that even though the Viscera report says that there is no poisonous substance, he concluded that the deceased died 2 to 28 hours prior to postmortem. The reason for death adduced by PW9 is that "cs;cWg;g[fs; ,urhaz ghpnrhjidf;F mDg;gg;gl;IJ/ mjpy; tprk; vJt[k; ,y;iy vd;W mwpf;if tug;gl;IJ/ nkw;go egh; cly; TW ghpnrhjidf;F Kd; 2 kzp neu;j;ypUe;J 2.kzp neu;j;pw;F Kd;ghf ,dk; fhzhj tprk; mUe;jpajpd; fhuzkhf ,we;jpUf;ff;TLk; vd;W ehd; rhd;W tH';fpa[s;nsd;/ The Postmortem Certificate was marked as Ex.P7 and the final report of the Doctor was marked as Ex.P8. The Court below failed to come to a definite conclusion as to whether the deceased died of suicide or such death was at the instigation of the accused. However, from the evidence of the Doctor, PW9 coupled with the chemical analysis report, it is seen that though the chemical analysis report do not indicate any poisonous substance, the Doctor has come to the conclusion that the death was due to consuming of poison, even though it is not deductible in chemical analysis. In this aspect, there is no cross-examination on the part of the accused. The prosecution also failed to proceed further in the matter to establish the cause of death and only because of that, the learned Sessions Judge, Coimbatore held that the prosecution failed to prove the case beyond reasonable doubt and acquitted the accused 1 to 3.

14. PW8 is another Doctor, who admitted the deceased after the incident. According to PW8, on 09.11.2003 at 10.00 am, the deceased was brought to him by her husband, A-1, and she alleged to have consumed cow dung powder. The deceased was conscious at that time. The certificate given by PW8 was marked as Ex.P5. The deceased died at 11.00 am and PW8 gave an intimation to the police. Therefore, according to PW8, the deceased, at the time of her admission in the hospital, was conscious and she has told PW8 that she had consumed cow

dung. Therefore, the trial court, ought to have given a finding regarding the death of the deceased, as to whether she died of suicide or whether such death had resulted due to the instigation of A-1.

15. The learned Sessions Judge, Coimbatore taken into consideration the delay of seven months in sending the statement recorded by the investigation officer under Section 161 of Cr.P.C. The court below also noted that even in the report filed by the Revenue Divisional Officer, there was no indication that the deceased was subjected to dowry harassment, but in regard to the death of the deceased, the investigation has to go on.

16. The Court below also failed to take note of the contents contained in Ex.P2, letter written by the deceased herself. In any event, pursuant to the order passed by this Court on 23.11.2007, the handwriting expert was examined, who has categorically deposed that Ex.P2 was written by the deceased herself on comparison of the contents of Ex.P2 with the contents in Ex.P3. Ex.P2, letter was written by the deceased herself addressed to the police wherein she had narrated the cruel treatment meted out to her at the instance of her husband, A-1. In other words, Ex.P2 pinpoints the involvement of A-1 in subjecting his wife, the deceased, to matrimonial cruelty, immediately before her death and therefore, the learned Sessions Judge, Coimbatore has to necessarily re-consider the evidence to find out the guilt of the accused in view of the evidence let in before it subsequent to the order dated 23.11.2007 passed by this Court pending this revision, particularly, PW19, the handwriting expert who was also subjected to cross-examination by the accused.

17. No doubt, the prosecution has marked the letter, Ex.P2 during the course of trial, but failed to examine the handwriting expert. Therefore, pending this revision, at the instance of the Revision Petitioner/father of the deceased, this Court directed the learned Sessions Judge, Coimbatore to examine the handwriting expert and accordingly, he was examined as PW19. Thus, the main mistake pointed out by the learned Sessions Judge, Coimbatore as to the non-examination of the handwriting expert has been fulfilled at the instance of the defacto complainant/revision petitioner herein. However, it has to be stated that the

learned Sessions Judge, Coimbatore has no occasion to consider the evidence of the handwriting expert, PW19, at the time of passing the order of acquittal, which is impugned in this Criminal Revision Petition. In fact, the prosecution has not assigned convincing reason for non-examination of the handwriting expert during the course of trial. This mistake, according to the counsel for the petitioner, is due to the fact that A-1 is a serving police constable and therefore the prosecution has deliberately not examined the handwriting expert. Be that as it may, now, by reason of the handwriting expert, PW19, there is evidence that Ex.P2 letter was written by none other than the deceased on her own handwriting, but as mentioned above, the learned Sessions Judge, Coimbatore had no occasion to consider the evidence of PW19 at that point of time. Therefore, the learned Sessions Judge, Coimbatore has to be directed to re-consider the Sessions Case in the light of the evidence of PW19.

18. The learned counsel for the petitioner relied on the decision of the Honourable Supreme Court reported in (Shri. Bhaswant Singh vs. Commissioner of Police, Delhi) AIR 198.SC 82.for the proposition that the perpetrator of the crime should not escape from the nemesis from the law because of inadequate police investigation.

19. The learned counsel for the petitioner also relied on the decision of the Honourable Supreme Court reported in (Zahira Habibulla H. Sheikh and another vs. State of Gujarat and others) AIR 200.Supreme Court 3114 wherein the Honourable Supreme Court categorically held that the Court has a definite role to play in the evidence collecting process so as to reach a conclusion to find out the truth. In this case, the Honourable Supreme Court under Section 319 of Cr.P.C. directed for re-trial of the case finding that the case conducted by the prosecution was dishonest and faulty. Therefore, a direction was issued to the Appellate Court to take further evidence in support of the prosecution. It was further held that it is open to the Court to direct that the accused persons may also be given a chance of adducing further evidence.

20. On the other hand, the learned counsel for the respondents/ accused relied on the decision reported in (Vimal Singh vs. Khuman Singh and another) (1998) 7

SCC 22.to strengthen his argument that this Court, in exercise of its revisional jurisdiction, has no powers to convert the judgment of acquittal and to substitute its own finding or to convict the accused. No doubt, it is true that in the above decision, the Honourable Supreme Court has categorically stated that re-appraisal of evidence is not permissible by the revisionary court unless there has been a manifest error of law or procedure. In that case, the Honourable Supreme Court found that the High Court, in exercise of its revisionary jurisdiction, reversed the order of acquittal and convicted the accused instead of directing the trial court to do so. Of course, there is a bar under Section 401 (3) of Cr.P.C. to reverse the order of acquittal and convict the accused while exercising revisional jurisdiction, In the present case, there is patent omission on the part of prosecution to deliberately withhold the evidence of the handwriting expert and did not examine him as a witness or his report was marked to prove that Ex.P2, letter was written by the deceased in her own handwriting. This being a vital and strong evidence on the side of the prosecution, the prosecution ought to have examined the handwriting expert during the trial and failure to do so will definitely entitle this Court to set aside the order of acquittal and to direct the trial court to consider the fresh materials now available on record.

21. The learned counsel for the respondents/accused 1 to 3 also relied on the decision of the Honourable Supreme Court reported in (State of Maharashtra vs. Ashok Narayan Dandalwar) (2000) 9 SCC 25.for the proposition that when there is no material irregularity to establish that the husband treated his wife, the deceased, with matrimonial cruelty, conviction is improper. In that case, the Honourable Supreme Court found that in none of the letters said to have been written by the deceased, she has indicated any cruel treatment meted out to her by demanding dowry. Therefore, the trial court convicted the accused for the offence punishable under Section 498-A of IPC, which was reversed by the High Court and it was affirmed by the Honourable Supreme Court. In the present case, the letter, Ex.P2 written by the deceased coupled with the evidence of Pws 1 to 3 are vital evidence available on record, which are to be considered by the learned Sessions Judge, Coimbatore and therefore, the order of acquittal has to be set aside and the sessions case has to be remitted to the learned Sessions Judge, Coimbatore.

22. Therefore, in the light of the above decisions of the Honourable Supreme Court and the discussions made supra, when there is fresh material made available on record, especially the evidence of PW19, the handwriting expert, who opined that it is the deceased who had written the letter, Ex.P2, the learned Sessions Judge, Coimbatore has to be necessarily directed to reconsider the case and for this purpose, the sessions case has to be remitted back to the trial court by setting aside the order of acquittal.

23. Accordingly, the Criminal Revision Case No. 1880 of 2004 is allowed by setting aside the order of acquittal passed by the learned Sessions Judge, Coimbatore. The learned Sessions Judge, Coimbatore is directed to re-consider the evidence made available on record, including questioning the accused under Section 313 of Cr.P.C. with regard to the evidence of PW19, handwriting expert. The accused/respondents 1 to 3 are also at liberty to adduce any further or additional evidence in support of their defence in so far as the evidence adduced by PW19. The learned Sessions Judge, Coimbatore is directed to re-consider the Sessions Case No. 311 of 2003 independently, uninfluenced by any of the observations made in the Criminal Revision Case, inasmuch as they are made only for the purpose of disposal of the same.

24. In so far as Criminal Revision Case No. 1907 of 2004 is concerned, it was filed against the Order dated 19.08.2004 passed in C.M.P. No. 5978 of 2003 on the file of the Judicial Magistrate not VI, Coimbatore, by which the private complaint filed by the brother of the deceased was dismissed. Inasmuch as the Criminal Revision Case filed by the father of the deceased is allowed by this Court with a direction to the learned Sessions Judge, Coimbatore to reconsider the sessions case afresh, I do not find any reason to interfere with the order impugned in Crl.R.C. No. 1907 of 2004. Moreover, the learned Judicial Magistrate not V, Coimbatore is right in dismissing the private complaint when the sessions case filed by the prosecution was pending trial during the relevant period as against the accused. Accordingly, the Crl.R.C. No. 1907 of 2004 is dismissed. 31-01-2013 rsh Index : Yes Internet : Yes To 1. The Sessions Judge Magalir Needhi Mandram Coimbatore District.

2. The Judicial Magistrate not VI Coimbatore B. RAJENDRAN, J rsh Crl.R.C. Nos. 1880 & 1907/2004 31-01-2013

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