

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No. 1410 of 2004

Sivakumar

... Petitioner

-vs-

State by
Deputy Superintendent of Police
Tirupattur.

... Respondent

Criminal Revision filed against the judgment dated 25.10.2000 made in C.C.No.151 of 1999 on the file of the Assistant Sessions Judge, Tirupattur, confirmed by the judgment, dated 19.05.2004 in C.A.No.10 of 2002 on the file of the Additional District and Sessions Judge / FTC, Tirupathur, Vellore District.

For petitioner : M/s.T.S.Gopalan & Co

For respondent : Mr.Hasan Mohamed Jinnah
Govt. Advocate (crl.side)

O R D E R

This Criminal Revision is preferred by the petitioner / accused against the judgment, dated 19.05.2004 in C.A.No.10/02 on the file of the Additional Sessions Judge / FTC, Vellore, confirming the conviction and sentence imposed by the Assistant Sessions Judge, Tirupattur in S.C.No.151/99, dated 25.10.2000.

2. The revision petitioner / accused is the husband of the deceased Umavathi. P.W.2 and P.W.5 are the brothers of the deceased. P.W.3 is her mother. For about 3 years prior to the occurrence, the revision petitioner / accused married the deceased and it was an arranged marriage. Out of the said wedlock, they got one male child. As per the complaint given by P.W.5, the brother of the deceased, after the marriage the revision petitioner and the deceased had frequent quarrel, due to their misunderstanding. Two months prior to the occurrence, she came to the house of his

brother, due to such quarrel and one month prior to the occurrence, the dispute was settled by the panchayatdars and the deceased was sent along with the revision petitioner. On 26.02.1997, during morning hours, P.W.5 was informed that the dead body of his sister Umavathi was floating in an irrigation well, belonged to one Manicka Gounder, P.W.8. The dead body was taken out from the well by P.W.6. Based on the complaint given by P.W.5, the case was registered originally under Section 174 of the Code of Criminal Procedure, subsequently; it was altered into 306 IPC.

3. As per the charge framed by the trial court, on 25.02.1997 at about 6 p.m, the revision petitioner / accused induced the deceased to commit suicide, since he had illegal intimacy with one Sivarajammal of Manavalli Village, due to which, the deceased Umavathi committed suicide. It is seen from the evidence of P.W.1, Revenue Divisional Officer, that on 26.02.1997 at about 6 p.m, on receipt of the copy of the Express FIR, relating to this case, he proceeded to the scene of occurrence and conducted inquest on the dead body of the deceased. He examined the brothers of the deceased, P.W.2 and P.W.5, mother of the deceased P.W.3 and other panchayatdars. As per the statement given by P.W.5, brother of the deceased, there was no dowry harassment, according to him, it was a suspicious death. By his statement, he suspected the revision petitioner and the women, with whom he had illegal intimacy and they, with the help of some other person could have caused the death.

4. As per the evidence of P.W.4, doctor, who conducted postmortem on the dead body of the deceased Umavathi and the postmortem certificate, Ex.P.2, there was no external injury found on the dead body of the deceased. After the chemical analysis, the doctor has given his final opinion as follows. Cause of Death: The deceased appears to have died of asphyxia due to drowning about 42 +3 hours prior to the postmortem..

5. Even as per the prosecution case, the death of Umavathi was not caused due to homicidal violence, but she had committed suicide, due to abatement made by the revision petitioner.

6. Learned counsel appearing for the revision petitioner would contend that there is no evidence to show that the revision petitioner / accused has induced or abated his wife Umavathi to commit suicide. He drew the attention of this Court to the evidence of P.W.2 and P.W.5, brothers of the deceased and P.W.3, mother of the deceased.

7. According to P.W.2, one month after his sister was sent to her matrimonial home along with her husband, the revision petitioner / accused came to his house at about 11 p.m, and asked

whether his wife, the deceased had come to his house, for which he asked whether the child was available at house and informed him that since the child was in the house, she could not have left out anywhere else. Immediately, he along with his brother, P.W.5 and another brother Rajendran went to Manavalli Village and searched her till 3 a.m, then went to the village of the revision petitioner / accused and at about 5.30 a.m, found the dead body of the deceased floating in a well. When the dead body was taken out from the well, the complaint was given by P.W.5 before the police, stating that the revision petitioner had illegal intimacy with one women, due to which, she died.

8. According to P.W.5, at about 9 p.m, when he was at his residence, the revision petitioner / accused came and informed that the deceased was not found in his residence, then he along with others went to the village of the revision petitioner and searched at various places and on the next day, again when they searched various places, at about 6 a.m, the dead body of Umavathi was found in the well belonged to Manicka Gounder, P.W.8.

9. According to P.W.8, his signatures were obtained by police in blank papers, but he has admitted that the dead body of the deceased was found in his well and he saw the same while the body was taken out from the well.

10. There is no evidence on the side of the prosecution to show that there was any quarrel between the revision petitioner / accused and the deceased prior to the occurrence. On 25.02.1997, even in the complaint for the FIR, P.W.5 has stated that his sister, the deceased was living with the petitioner cordially, after she was sent along with her husband, one month prior to the occurrence. In his statement given before the Executive Sub Divisional Magistrate and Revenue Divisional Officer, Tirupattur, he has stated that his sister would not have committed suicide, leaving her child and that there was no dowry harassment. Therefore, it is clear that the suspicion of P.W.2, P.W.3 and P.W.5 against the revision petitioner is based on the earlier quarrel between the revision petitioner and his wife, the deceased that was admittedly pacified by them.

11. Learned Government Advocate (crl.side) has also emphasized only the earlier occurrence, which was settled. As contended by the learned counsel for the petitioner, there is absolutely no evidence available to show that the revision petitioner has abated or induced the deceased to commit suicide. In support of his contention, learned counsel for the revision petitioner cited the following decisions of the Hon'ble Apex Court

1. Sanju vs. State of M.P, 2002 SCC (Cri) 1141
2. Swamy Prahaladdas vs. Stat of M.P. and another, 1995 Supp (3) SCC 438.

12. In the decision Sanju vs. State of M.P, reported in 2002 SCC (Cri)

1141, it has been held that there was a quarrel between the appellant and the deceased, in which the appellant was said to have told the deceased . to go and die. and the deceased was found dead two days later, which was held by the Hon'ble Apex Court that the suicide was not proximate to the quarrel though the deceased was named in the suicide note.

13. In the decision Swamy Prahaladdas vs. State of M.P. and another reported in 1995 Supp (3) SCC 438, it was held by the Hon'ble Apex Court that the suicide was not directly resulted of the words uttered by the appellant, hence, sessions court erred in summoning the appellant to face the trial and it has been held as follows :

"3. At the time of framing of charge, the trial court thought it appropriate to associate the appellant herein as an accused because of the words he uttered to the deceased. We think that just on the basis of that utterance the Court of Sessions was in error in summoning the appellant to fact trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weight the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant. For these reasons, the error is apparent requiring rectification. The appeal is accordingly allowed."

14. It is not in dispute that when there is concurrent finding, unless manifest error of law or perverse finding, this Court cannot interfere with the judgment rendered by the court below. When the finding of the court below is not based on evidence or against evidence, it should be construed as perverse finding. Here in the instant case, admittedly, the revision petitioner himself went to the house of P.W.2, P.W.3 and P.W.5 and informed that his wife, the deceased had not been found in his house, immediately she was searched at various places and she could not found till mid night, only in the early morning on 26.02.1997, the dead body of the deceased was found in the irrigation well, belonged to P.W.8. There was no dowry harassment that has been admitted in the statement given by P.W.2 before the Revenue Divisional Officer.

15. As contended by the learned counsel for the revision petitioner, the fact and circumstance of the case has to be taken into consideration that the revision petitioner and the deceased had a child. After the deceased was not found, the revision petitioner directly went to the house of P.Ws.2,3 and 5 and informed. There is no evidence direct or otherwise to show that the revision petitioner had induced or abated the deceased to commit suicide. As contended by the learned counsel for the petitioner, even there are possibilities that the death could have been accidental, since P.W.2 himself has given statement before P.W.1, the Revenue Divisional Officer that his sister could not have committed suicide, leaving her child. Therefore, it is seen that the complaint was given on suspicion against the revision petitioner, based on the earlier quarrel between the revision petitioner and his wife, the deceased.

16. In the light of the decisions rendered by the Hon'ble Apex Court referred above, I hold that the findings of the court below is not based on evidence. Therefore, I am of the considered view that the same has to be set aside.

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17. In the result, the Criminal Revision is allowed and the conviction and sentence imposed by the court below is set aside. The fine amount if any paid by the revision petitioner shall be refunded. The revision petitioner is on bail. His surety and bail bond shall stand discharged.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Sessions Judge, Tirupattur
2. - do - Thro The Principal Sessions Judge, Vellore
3. The Additional Sessions Judge / FTC, Vellore.
4. - do - Thro The Principal Sessions Judge, Vellore
5. The Judicial Magistrate, No. III Tirupattur
6. The Chief Judicial Magistrate, Vellore
7. The Deputy Superintendent of Police
Tirupattur.
8. The Public Prosecutor
High Court of Madras, Chennai.

+ one cc to M/s. T.S. Gopalan, Advocate sr no. 30011

mbs(co)
nm(13.06.07)

Order in
Cr1.R.C.No.1410 of 2004