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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2021

PRONOUNCED ON : 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A.NO.117 OF 2018

Renganathan .. Appellant/P.W.3

..Vs..

1. State rep. by
The Inspector of Police
Perunagar Police Station
Kanchipuram District
Crime No.129 of 2013 .. 1st Respondent/Complainant

2. Kamalakannan .. 2nd Respondent/Accused

Criminal Appeal filed under Section 372 Cr.P.C. to call for the records and set aside the order of acquittal dated 07.11.2017 passed by the Sessions Judge, Mahila Court, Chengalpattu in S.C.No.64 of 2014.

For Appellant : Mr.G.Karuppasamy Pandian

For R1 : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

For R2 : Mr.V.Parthiban

J U D G M E N T

P.N.PRAKASH, J.

This is an appeal against the judgment and order of acquittal.

2. Renganathan (P.W.3), who is the brother of the deceased viz., Perarasi, has preferred this appeal under the proviso to Section 372 Cr.P.C. challenging the judgment and order of acquittal dated 07.11.2017 passed by the Sessions Judge, Mahila



Court, Chengalpattu, acquitting the 2nd respondent in S.C.No.64 of 2014 of the offences under Sections 498-A and 304-B alternatively 302 IPC.

3. The prosecution story runs thus :

3.1. The 2nd respondent/accused got married to Perarasi on 01.03.2009 and the couple was blessed with a son viz., Vishwa on 11.03.2011. The couple was residing in Visoor Salai, Manambathi Village, Anthonypuram, Uttiramerur Taluk.

3.2. On 07.04.2013, Renganathan (P.W.3), received a phone call around 11.45 p.m. from his sister Perarasi, who told him that the accused is demanding money and was threatening to finish her, if she does not give him the money. Therefore, it is Renganathan's (P.W.3's) case that he went along with his father Ramu (P.W.1) to the house of the accused. When he went there, he found his sister lying in the verandah, with injuries around her neck.

3.3. Therefore, Ramu (P.W.1) gave a complaint (Ex.P1), based on which, the 1st respondent police registered a case in Crime No.129 of 2013 on 08.04.2013 under Section 174 Cr.P.C. and prepared the printed FIR (Ex.P11). It is seen that the complaint and the printed FIR reached the jurisdictional Magistrate only on 10.04.2013 at 04.30 p.m.

3.4. Investigation of the case was taken over by Rajendran, Deputy Superintendent of Police, who went to the place of occurrence and prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P12). He requested Chellappa (P.W.5), Revenue Divisional Officer (RDO) to conduct inquest over the body of Perarasi, as the death was within seven years of marriage.

3.5. The body of Perarasi was sent to the Government Hospital, Chengalpattu, for postmortem, where Dr.Parasakthi (P.W.7) performed autopsy on the body of Perarasi and issued the postmortem certificate (Ex.P8), wherein, she has opined the cause of death as follows :

"OPINION AS TO CAUSE OF DEATH:

- a) The deceased would appear to have died of asphyxia due to strangulation.
- b) Death would have occurred 14 to 18 hrs prior to postmortem."

3.6. The inquest report of the RDO (Chellappa/P.W.5) disclosed that there are prima facie materials to show that the death of Perarasi could be due to dowry harassment.



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3.7. The accused was arrested on 09.04.2013 at 10.00 a.m. and based on his confession statement, a 30 ft. string that was allegedly used for strangulating Perarasi was recovered in the presence of Murugan (P.W.4) and Kuppan (not examined) under the cover of mahazar (Ex.P4).

3.8. After recording the statements of witnesses and collecting various reports, Rajendran (P.W.10) completed the investigation and filed a final report against the accused for the offences under Sections 498-A, 304-B and 302 IPC before the District Munsif-cum-Judicial Magistrate, Uthiramerur in P.R.C.No.6 of 2014.

3.9. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.64 of 2014 and was made over to the Mahila Court, Chengalpattu, for trial.

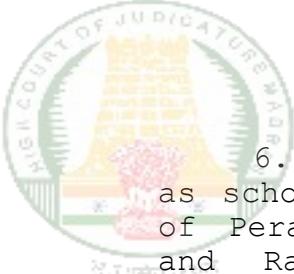
3.10. The trial Court framed charges under Sections 498-A, 302 and 304-B IPC against the accused and when questioned, he pleaded "not guilty". To prove the case, the prosecution examined 10 witnesses, marked 14 exhibits and one material object.

3.11. When the accused was questioned under Section 313 Cr.P.C., he denied the allegations. No witness was examined from the side of the accused.

3.12. After considering the evidence on record and hearing either side, the trial Court, by a judgment and order dated 07.11.2017 in S.C.No.64 of 2014, has acquitted the accused of all the charges, aggrieved by which, this appeal has been filed by Renganathan (P.W.3) under the proviso to Section 372 Cr.P.C. as stated above.

4. Heard Mr.G.Karuppasamy Pandian, learned counsel for the appellant; Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the 1st respondent/State and Mr.V.Parthiban, learned counsel for the 2nd respondent/accused.

5. Before advertiring to the rival submissions, it may be necessary to bear in mind the law relating to interference against an order of acquittal which has been summarised by the Supreme Court in V.Sejappa Vs. State [(2016)12 SCC 150]. Further, in Ghurey Lal Vs. State of U.P. [(2008)10 SCC 450], the Supreme Court has held that during trial, there is a presumption of innocence in favour of the accused and that further gets strengthened, when the accused is acquitted by the trial Court. Therefore, the appellate Court should be slow in interfering with an order of acquittal.



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6. In this case, both Perarasi and the accused were working as school teachers. Except the evidence of the close relatives of Perarasi viz., Ramu (P.W.1-Father), Lakshmi (P.W.2-Mother) and Ranganathan (P.W.3-Brother), the prosecution had not examined any other witness to speak about the marital life of the couple. The trial Court has placed reliance on the postmortem findings and has concluded that the death was on account of homicide.

7. Even the evidences of Ramu (P.W.1) and Ranganathan (P.W.3) are to the effect that when they went to the house of Perarasi, they found her in the verandah with injuries on her neck. With regard to the motive, it is the case of Ramu (P.W.1), Lakshmi (P.W.2) and Ranganathan (P.W.3) that the accused demanded Rs.2,00,000/- on three occasions, for his real estate business. This has been disbelieved by the trial Court as there was no proof to show that the accused was doing real estate business and the witnesses had also not stated in their deposition that the accused was in need of money.

8. To cap it all, during examination, Ramu (P.W.1) admitted that six months prior to the incident, Perarasi went missing and a sum of Rs.5,00,000/- was found missing from the house of the accused and at that time, the appellant and the family of Perarasi returned the sum of Rs.5,00,000/- to the accused. This clearly shows that Ramu (P.W.1), Lakshmi (P.W.2) and Ranganathan (P.W.3) were not stating the truth.

9. To attract Section 304-B IPC and the consequent presumption under Section 113-B of the Evidence Act, 1872, the demand of money or dowry must be in connection with the marriage. None of the witnesses has stated that the accused had demanded the amount in connection with the marriage. They have only stated that the accused was demanding money from Perarasi, since six months prior to her death for his real estate business. Admittedly, the accused was a Government School teacher and he lost Rs.5,00,000/- six months ago, when Perarasi went missing with the money, which was later returned to the accused by the family of Perarasi as discussed in para 8 above.

10. As regards the recovery of the string on the alleged confession of the accused, according to the evidence of Ramu (P.W.1), Lakshmi (P.W.2) and Ranganathan (P.W.3), when they went to the house of Perarasi, they found a string around her neck. When that being so, the alleged recovery of the string after the arrest of the accused, loses significance. This aspect has been vividly discussed by the trial Court.

11. Even at the earliest point of time, when the accused was examined by Chellappan (P.W.5), RDO, during inquest, he stated



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that he had a quarrel on the night of 07.04.2013 and went to his sister's house with the child and only on the next day, he learnt from TV news about the incident. Of course, this cannot be treated as a substantive piece of evidence, but, at the same time, this Court cannot completely ignore it and reverse the judgment and order of acquittal. There is absolutely no scintilla of evidence to show that the accused had absconded with his child after the incident, for this Court to draw an adverse inference against him.

12. It is trite that when on the same set of evidence, if two views are possible, the view that favours the accused, merits acceptance. In our opinion, this is not a fit case to reverse the judgment and order of acquittal that has been passed by the trial Court by a well considered and detailed judgment.

In the result, this criminal appeal is dismissed and the judgment and order of acquittal dated 07.11.2017 passed by the Sessions Judge, Mahila Court, Chengalpattu in S.C.No.64 of 2014, is confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge
Mahila Court, Chengalpattu
2. The Inspector of Police
Perunagar Police Station
Kanchipuram District
3. The Public Prosecutor
High Court, Madras

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

+lcc to Mr.A.Ilaya Perumal, Advocate, S.R.No.35022

CRL.A.No.117 of 2018

CP(CO)
CS/12/08/2021