ITEM NO.301 COURT NO.6 SECTION II/IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SUO MOTU REVIEW PETITION (CRL) NO.1/2016

IN RE -

BLOG PUBLISHED BY JUSTICE MARKANDEY KATJU IN FACEBOOK
IN
CRIMINAL APPEAL NOS.1584-1585 OF 2014

GOVINDASWAMY ...APPELLANT

VERSUS

STATE OF KERALA ….RESPONDENT

WITH

R.P.(CRL.) NO.D 32189/2016 IN CRL.A. NOS. 1584-1585/2014

R.P.(CRL.) NO.655-656/29016 IN CRL. A. NOS.1584-1585/2014

Date : 11/11/2016 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT
HON'BLE MR. JUSTICE UDAY UMESH LALIT

Mr. Justice Markandey Katju, Judge (Retd.), SCI

For parties: **Mr. Mukul Rohatgi, AG**
Mr. A. Suresan, Adv.
Mr. Nishe Rajen Shonker, Adv.
Ms. Anu K.Joy, Adv.
Mr. Gajendra Khichi, Adv.
Mr. Prasaran, Adv.
Ms. Diksha Rai, Adv.

Mr. Siddharth Luthra, Sr. Adv.
Mr. Huzefa A. Ahmadi, Sr. Adv.
Mr. Aljo Joseph, Adv.
Mr. Ritesh Kumar Chowdhary, Adv.
Mr. Shahruk Alam, Adv.
Ms. Shelna K., Adv.
Mr. Atul Nagarajan, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The review petitions are dismissed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

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STATE OF KERALA ….RESPONDENT

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R.P.(CRL.) NO.D 32189/2016
IN
CRL.A. NOS. 1584-1585/2014
[SUMATHI VS. GOVINDASWAMY AND ANR.]

R.P.(CRL.) NO.655-656/29016
IN
CRL. A. NOS.1584-1585/2014
[STATE OF KERALA VS. GOVINDASWAMY]

ORDER

1. Review of a judgment in a criminal proceeding is provided for by the Supreme

Court Rules, 2013 (Part IV – Order XLVII] is only in a situation where there is an error apparent on the face of the record. What is an error apparent on the face of the record need not detain the Court. Suffice it will be to say that an error which is sought to be established by a long process of reasoning would not be such an error.

2. This is an aspect that will have to be kept in mind while we proceed to consider the very elaborate arguments advanced by the learned counsels for the State of Kerala and the mother of victim and the assistance offered/rendered by Mr. Justice Markandey Katju at our request.

3. The views of Justice Katju are in no way in addition to or different from what has been argued by Shri K.T.S. Tulsi,

learned senior counsel and Shri Mukul Rohatgi, learned Attorney General on behalf of the State of Kerala in the Review Petition filed by the State and also Shri Ahmadi and Shri Luthra learned senior counsel appearing for the review petitioner in Review Petition D. No. 32189/2016 i.e. the mother of the unfortunate victim.

4. Though there are several limbs of the arguments advanced, the area of concentration may be conveniently compartmentalized into two. First, it is urged that the Court has erred in relying on inadmissible evidence being the hearsay evidence of P.W.4 (Tomy Devassia) and P.W.40 (Abdul Shukkur). It is contended that such hearsay evidence ought to have been rejected summarily and could not have gone into the process of determination of

the culpability of the accused as has been done in the impugned judgment.

5. The issue with regard to hearsay evidence centers round a part of the deposition of P.W. 4 and P.W. 40 who testified before the Court in their examination-in-chief that though they wanted to stop the moving train by pulling the alarm chain they were dissuaded by a middle-aged man who was standing at the door of the compartment by saying that the victim/girl had jumped out from the train and escaped and that she was alive. The Court in its judgment dated 15th September, 2016 took the aforesaid part of the deposition as a piece of relevant material for adjudication of the issue before it and held that on the face of the aforesaid evidence Injury No.2 cannot be ascribed to the accused. According to the medical

evidence placed on record by the prosecution Injury No.1 (the involvement of the accused in respect of which there is no doubt) coupled with Injury No.2 had led to the death of the victim girl.

6. The very elaborate argument advanced on this score is capable of being answered by a reference to Section 6 and Illustration (a) thereof of the Evidence Act, 1872 which engrafts in the Evidence Act the principle of res gestae. The statement made by the middle-aged man to P.Ws.4 and 40 being contemporaneous and spontaneous and that also being the prosecution case and no attempt having been made to discredit this part of the evidence tendered, we are of the view that in a case where the liability of the accused is to be judged on the touchstone of the circumstantial evidence the

aforesaid part of the deposition of P.Ws. 4 and 40 must go into the process of determination of the culpability of the accused to rule out any other hypothesis inconsistent with the guilt of the accused.

7. The next limb of the case projected before the Court at this stage is that the offence of murder falls within the Third and Fourth clause of Section 300 of the Indian Penal Code, 1860 ("IPC" for short). In this regard, reliance, on the earlier date of hearing, was placed by Shri Mukul Rohatgi, learned Attorney General for India on two decisions; one reported in the case of Bassappa and others *versus* State[1] and another decision of this Court reported in Joginder Singh and another *versus* *State of Punjab*[2]

1 AIR 1980 MYSORE 228
2 (1980) 1 SCC 493

8. It is submitted, relying on the said judgments, that even if the controversy as to whether the deceased was pushed or had voluntarily jumped is to be answered in favour of the accused, the said accused would still be liable for Injury No. 2.

9. In Bassappa and others *versus* State (supra), the Mysore High Court was confronted with a situation where the deceased was on the roof of the house of accused No.3 alongwith P.W.2, watching the burning haystacks belonging to the accused. The accused perceived that the deceased and P.W.2 were enjoying the misery of the accused whose haystacks were burning. There was a history of previous enmity between the parties. Apparently, at the spot i.e. roof of the house, the

accused assaulted the deceased on the nape of the neck with sharp-edged weapons whereupon the deceased jumped from the roof. Thereafter, the accused threw the deceased into the burning haystacks. The medical opinion in the case was inconclusive, namely, whether the death was caused by the wounds sustained by sharp-edged weapons or from the fall or from burning. The High Court doubted the evidence of P.W. 1, the doctor so far as cause of death due to jumping by the accused from the roof is concerned. However, it held that even if the said evidence is to be accepted the accused would still be guilty of murder. The reasoning appears to be that though the three circumstances in which death had occurred are different, yet, having regard to the close proximity of time in which they had occurred and the inter connection

between the same the three incidents may be taken as one. What cannot be ignored is that in the Mysore case intention to cause death or atleast a bodily injury to bring the case within the third and fourth clause of Section 300 is more than evident from the injuries caused by the accused on the nape of the neck by sharp weapons or by throwing the victim in to the burning haystack. It is on the said basis that the conclusion holding the accused guilty under Section 302 IPC was returned by the High Court. We do not see how the said judgment can have any application to the facts of the present case wherein the role of the accused in causing injury No. 2 by pushing the victim out of train is not free from doubt and the medical opinion is to the effect that Injury NO. 1, by itself, was not sufficient to cause death.

10. In Joginder Singh and another *versus* State of Punjab (supra) the accused apparently chased the deceased with dangerous weapons across a field. At the distance of about 15-20 feet from the accused, the deceased jumped into a Well, hit his head on the side of the wall of the Well and drowned himself. This Court while deciding the culpability of the deceased in the aforesaid circumstances of the offence of murder exonerated the accused by recording the following view:

> **11. We will now deal with the death of Rupinder Singh. After Kuldip Singh was attacked, Rupinder Singh ran from his house towards the fields. He was followed, apparently chased by Joginder Singh and Balwinder Singh. According to PW 1, Rupinder Singh jumped into a well 'in order to save himself'. Joginder Singh and Balwinder Singh were about 15 to 20 feet from Rupinder Singh when he jumped into the well. It is not the case of the prosecution nor**

is there any evidence to justify such a case, that the accused drove Rupinder Singh to jump into the well leaving him no option except to do so. From the evidence of PW 1 we are unable to get a clear picture of this part of the incident. It is not the case of the prosecution that Rupinder Singh was beaten on the head and then thrown into the well. According to the medical evidence he received an injury on the head which made him lose consciousness and thereafter he died of asphyxia, due to drowning. Apparently when Rupinder Singh jumped into the well his head hit a hard substance with the result that he lost consciousness and thereafter died of asphyxia. In the circumstances of the case we are unable to say that the death of Rupinder Singh was homicidal, though we are conscious of the fact that what induced Rupinder Singh to jump into the well was the circumstance that Joginder Singh and Balwinder Singh were following him closely. If we were satisfied that Joginder Singh and Balwinder Singh drove him to jump into the well without the option of pursuing any other course, the result might have been different. As the evidence stands we are unable to hold that the death of Rupinder Singh was caused by the

> **doing of an act by Joginder Singh and Balwinder Singh with the intention or knowledge specified in Section 299, Indian Penal Code. Joginder Singh and Balwinder Singh are, therefore, entitled to be acquitted of the charge of murdering Rupinder Singh." (Underlining is ours)**

11. No other decision has been pointed out to us. In this regard, we may also usefully notice the provisions of Section 113-A of the Indian Evidence Act, 1872 which engrafts the principle of presumption to be drawn from the acts of cruelty in order to hold a husband guilty of abetment of suicide by the wife. The legislative wisdom has not engrafted any such principle of presumption insofar as the offence of murder is concerned.

12. Though the scope of the present review petitions is confined to the above

two questions, certain incidental questions, including an alleged confessional statement made by the accused before P.W. 47 were also urged. Suffice it will be to say that the aforesaid extra-judicial confession cannot inspire confidence of the Court because of the circumstances surrounding the same. It is perhaps for this reason that the said plea was not advanced before us by the learned State counsel in the course of hearing of the main appeal.

13. Consequently and for the reasons aforesaid, the review petitions filed by the State of Kerala and the mother of victim and also the suo motu review petition entertained by us have to fail and are dismissed. We order accordingly.

14. We record our deep appreciation to

Mr. Justice Markandey Katju, former judge of this Court for the assistance rendered to the Court.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

.....,J.
(UDAY UMESH LALIT)

NEW DELHI
NOVEMBER 11, 2016