

Pichamuthu Vs. State

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Court : Chennai

Decided On : Jul-25-2013

Judge : V.Dhanapalan

Appellant : Pichamuthu

Respondent : State

Judgement :

In the High Court of Judicature at Madras Date ::

25. .07..2013 Coram :: The Hon'ble Mr. Justice V. Dhanapalan and The Hon'ble Mr. Justice C.T. Selvam Criminal Appeal No:

820. of 2011 Pichamuthu No:

49. Ganapathi Nagar Marakanam Villupuram District. ... Appellant -vs- State represented by Inspector of Police Marakanam Police Station Tindivanam Taluk Villupuram District ... Respondent Criminal Appeal under Section 374 (2) of Cr. P.C. against judgment dated 29.10.2011 passed by the learned Additional District and Sessions Judge, Fast Track Court No:

1. Tindivanam, in S.C. No:

112. of 2011 convicting and sentencing the appellant / accused under Section 302 I.P.C. and to undergo imprisonment for life. For appellant :: Mr. A. Amarnath For

respondent :: Mr. V.M.R. Rajendran Addl. Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by C.T. Selvam, J.) The appellant stood trial for offence under Section 302 I.P.C. in S.C. No:

112. of 2011 before the learned Additional District Judge and Sessions Judge, Fast Track Court No:

1. Tindivanam.

2. The case of the prosecution is that the appellant, while working as a Civil Engineer at Bangalore, developed a relationship with the deceased Ramija @ Jerina, wife of Mubarak. The appellant and the deceased lived together for over a period of four years at Athipalli in Krishnagiri District. Later, the appellant married P.W.1 and took up residence at Marakkanam. Coming to know thereof, the deceased Ramija went to the house of the appellant in the evening of 05.09.2010 at 5.30 p.m. She quarrelled with him stating that he pay her off or alternatively come and live along with her. Angered, the appellant strangled the deceased using her saree and in the process he caused injuries to her face, mouth and nose. The deceased died owing to suffocation.

3. In support of its case, prosecution examined 13 witnesses, marked 13 exhibits and 4 material objects. None were examined on behalf of the defence nor was any document marked. Upon his questioning u/s.313 Cr.P.C. the appellant denied guilt. On appreciation of evidence, oral and documentary, the trial Court convicted the appellant u/s. 302 I.P.C. and sentenced him to imprisonment for life. Hence, this appeal.

4. P.W. 1, wife of the appellant, was an eye witness to the occurrence. She has preferred the complaint Ex.P.1 to P.W.13, Investigating Officer on 06.09.2010 at 6.00 a.m. Thereafter, P.W.13 took up investigation. P.W.2, the father of the accused, to whom P.W.1 is said to have informed of the occurrence, has turned hostile. P.W.3 is the neighbour of the accused who has spoken to the presence of a crowd at the place of occurrence. P.W.4 is the sister of the deceased and P.W.6

is her husband. P.W.5 is the brother of the deceased who has spoken to the recovery of material objects. P.W. 7 was a witness to the Observation Mahazar Ex.P. 4 and Rough Sketch Ex.P.10. P.W.8 is a Village Administrative Officer who has spoken to the Extra Judicial Confession tendered by the accused. A special report submitted by the Village Administrative Officer has been marked as Ex.P.5. It informs the confession of the accused.

5. P.W. 9 is the Doctor who conducted post mortem on the body of the deceased and issued Ex.P.6 Post Mortem Certificate, which reads as follows : ". POST-MORTEM CERTIFICATE Postmortem No.107/10 Date:6.9.10 Name of deceased: Mrs.Jerina @ Ramija, W/o Mr. Farook Basha Sex: Female , Age 35 years. Requisition received at 12.05 p.m. On 6.9.10 from the Inspector of Police, Marakkanam Police Station, Villupuram District, Crime No.406/10 under Section 302 IPC, dated 6.9.10, Body in charge of Police Constable No.1676, Mr.N.Mahalingam. Identification Marks:- 1) A black mole over the chest along the midline 3 cms above the xiphii sternum. 2) A block mole over the chin along the midline. 3) A birth mark 7 cms x 4 cms over the right side of the abdomen 8cms lateral to the imbilicus. Body was first seen by the undersigned at 12:05 pm on 6.9.10. Postmortem commenced at 12.05 pm on 6.09.10. Postmortem concluded at 02.30pm on 06.09.10. General Examination: Body of a female, aged about 35 years moderately built and moderately nourished, measuring 164cms in length and weights 75 kgs. Brownish complexion. Postmortem staining present over the back and is fixed. Rigor mortis is well established all over the body. Dried blood stains over the nostrils. Tongue bitten. Eyes congested with sub-congunctival haemorrhage. Marked congestion of the face, neck and shoulders. Anterior surface of the chest is pale. Bluish discolouration of the fingernail beds. Cloths and articles present over the body. 1) A yellow, while, pink, green coloured design saree. 2) Deep blue coloured blouse with a tear over the back on the left side. 3) purple coloured underskirt with urine stains over the inner aspect. 4) A gold coloured necklace and four earrings. External Examination:

1. Abraded contusion 1cm x 1 cm over the inner aspect of the right upper eyelid.

2) Abraded contusion 1cm x 1 cm over the inner aspect of the left upper eyelid.

- 3) Abraded contusion 1cm x 1 cm over the outer aspect of the ala of the nose on the right side.
 - 4) Abraded contusion 1cm x 1 cm over the outer aspect of the ala of the nose on the left side.
 - 5) A horizontal abrasion 5 cms x 1cm on the left side of the face extending from the outer canthus of the left eye upto the hairline.
 - 6) A horizontal abrasion 8 cms x 1cm over the left cheek situated 5cms below and parallel to injury number
- 5.
- 7) Contused abrasions throughout the inner lining of the upper and lower lips.
 - 8) Multiple abrasions about 0.25 x 0.25 cm over an area of 10cms x 3cms extending from the midline of the chin upto the angle of the mandible on the right side.
 - 9) Multiple abrasions around 0.25 x 0.25 cm over the lower aspect of the left side of the neck and shoulder extending from the supra sternal notch to the middle 1/3rd of the left clavicle over an area of 12cms x 4cms.
 - 10) Multiple abrasions 0.25 x 0.25 cm over an area of 5cms x 3 cms over the upper part of the left side of the chest 3cms lateral to the midline at the level of the 2nd , 3rd and 4th intercoastal space.
 - 11) Abrasion 3.5cms x 2 cms over the right side of the back at the level of the 10th rib along the midscapular line.
 - 12) Abrasion 3cms x 2 cms over the right side of the lower back 6 cms lateral to the 1st lumbar vertebrae.
 - 13) Multiple abrasions varying in size from 1cm x 0.5cm to 0.25 x 0.25cm over an area of 8cms x 4.5cms over middle 1/3rd of the outer aspect of the right arm.

14) Multiple ant bite marks over the anterior aspect of the waistline extending from the iliac crest on the right side to the iliac crest on the left side.

15) Postmortem abrasion 2.5cms x 2.5cms over the upper part of the right side of the chest at the level of the 4th intercostal space along the midclavicular line. Internal examination: Scalp : Intact Skull : Intact Brain : Congested. Cut section shows petechial haemorrhage. Larynx and trachea : Intact Hyoid bone : Intact Lungs : Grossly congested with petechial haemorrhage over the surface and over the interlobular fissures. Cut section exudes dark coloured fluid blood. Heart : Intact Liver : Congested Spleen : Congested Kidneys : Congested Stomach :

200. I of partially digested food particles. Mucosa is normal. No unusual smell. Intestine : Contains gas and faecolith Uterus : Empty. Weighs 110gms and measures 9cms in length x 5cms in breadth x 2cms in width. Bladder : Empty Viscera preserved for chemical analysis:

1. Stomach and its contents. 2) Proximal part of the small intestine. 3) 500gms of liver and one half of each kidney. 4) 20 ml of blood preservative used is sodium fluoride. 5) sample preservative used saturated solution of sodium chloride. 6) Two blood soaked and dried gauze pieces for control. Opinion: The deceased would appear to have died of Asphyxia due to combined effect of smothering and traumatic asphyxia. Sd/- xxxx Dr. Sanjay Sukumar M.D."

6. P.W.10 who was the Judicial Magistrate No:

1. Tindivanam, at the relevant point of time recorded the statement of P.W.1 under Section 164 Cr.P.C. on 23.09.2010. P.W.11 is the Court clerk who has spoken to the material objects received by Court and of forwarding the same for Chemical Analysis. P.W.12 is the Police Constable through whom the body of the deceased was sent for post mortem.

7. P.W.13 is an Inspector of Police, who, on receipt of Ex.P.1 complaint from P.W.1 on 06.09.2010 at about 6.00 a.m., registered a case in Cr. No:

406. of 2010 for offence under Section 302 I.P.C. He sent printed F.I.R. Ex.P. 9 to higher officials and took up investigation. He went to the house of the accused and

prepared Observation Mahazar, Ex.P.4 and Rough Sketch Ex.P.10 in the presence of witnesses. He conducted inquest between 7.30 and 10.00 a.m. on the same day. The Inquest Report is Ex.P.11. The body was sent for post mortem through P.W.12, police constable. After post mortem, P.W.13 received M.Os.1 to 3, the dress materials of the deceased, under Ex.P.2 mahazar. At about 3.30 p.m. the accused was produced by the Village Administrative Officer who submitted a Special Report, Ex.P.5. P.W.13 arrested the accused and recorded his confession in the presence of witnesses. Pursuant thereto, the accused took the police personnel to his house and produced photograph M.O.4. which was seized under cover of mahazar Ex.P.12. The admissible portion of the confession statement of the accused is Ex.P.13. The accused was submitted to judicial custody. P.W.13 continued investigation and on 08.09.2010, examined witnesses and recorded their statements. On 15.10.2010, P.W.13 examined other witnesses and recorded their statements. Earlier, on 06.09.2010, P.W.13 had examined P.Ws. 1, 4, 6, 7 and 8 and recorded their statements. P.W.13 sent a requisition to Court for permission to record the statement of P.W.1 u/s. 164 Cr.P.C. and upon order passed by the Chief Judicial Magistrate, Villupuram, permitting the Judicial Magistrate No: I, Tindivanam, to do so, Ex.P.7 was recorded by Judicial Magistrate P.W.10. P.W. 13 sought chemical examination of M.Os.1 to 3 as also of the viscera of the deceased. P.W.13 examined P.W.9, Doctor, who conducted post mortem and recorded his statement. After completion of investigation, P.W.13 laid the charge sheet against the accused.

8. We have heard learned counsel for appellant and learned Additional Public Prosecutor and perused the evidence, oral and documentary.

9. Learned counsel for appellant submits that it is relevant that P.W.2, father in law of P.W.1, whom P.W.1 is said to have informed immediately after the occurrence, has turned hostile. The First Information Report in respect of occurrence said to have taken place on 05.09.2010 at 5.30 p.m. has been registered only at 6.00 a.m. on 06.09.2010. There was a delay of 12 = hours in doing so. The evidence of P.W.5, brother of the deceased, was that he along with P.W.4 and P.W.6, proceeded to Tindivanam after receipt of information from P.W.13 about the death of his sister, his phone number having been provided to P.W.13 by the appellant.

They reached the spot around 11.30 p.m. on the date of occurrence. He hence submits that Ex.P.1 was not the original information and the origin of occurrence stands suppressed. Therefore, the prosecution case would have to fall. Learned counsel next submitted that even if it is accepted that the death was caused by the appellant, the circumstances under which the offence was committed would not permit of conviction for offence under Section 302 I.P.C. Learned Counsel, in support of such submission, states that it was the deceased who had come to the house of the accused; picked up a quarrel with him; threatened him to either pay her off in a sum of Rs. 4 lakhs or in the alternative take up residence with her. It was in such a circumstance and finding himself caught in a piquant spot in front of his wife P.W.1 and under threat of ignominy in the eye of neighbours, that the appellant, on the spur of the moment, had committed the offence. In support of his submission, learned counsel drew our attention to the 164 Cr.P.C. statement of P.W.1 and submits that the same reflects the position informed by him. Learned counsel would also take this Court through the confession statement tendered by the appellant to P.W.13 in support of his contention. Though it now is well settled position in law that, that which is in favour of the accused, that which would reflect the commission of lesser offence, can be read in his favour even where a confession stands made to a police officer, learned counsel would place reliance on the following decisions on the point: (1)In re Mottai Thevar [A.I.R. (39) 1952 (MDS) 586].; (2)Thandavan, In re [1972 L.W. (CrI.) 244].; (3)Mohd. Fazluddin vs. State [2007 (1) M.L.J.

CrI. 810].; and (4)Chinnappan @ Karuppusamy vs. State [2008 (3) M.L.J.

(CrI.) 351]..

10. We have heard learned Additional Public Prosecutor on the above submissions. He would submit that in the face of the evidence of P.W.1, an eye witness who was none other than the wife of the appellant, informing the manner in which the occurrence took place, there was no room to disbelieve the case of the prosecution. P.W.2 having turned hostile would not adversely affect the prosecution case as it is to be kept in mind that P.W.2 is the father of the appellant. He would further add that in the circumstances under which the

occurrence took place, the delay of 12 hours in registering the F.I.R. by the rattled wife of the appellant could not be made much of. As P.W.5 had deposed to the occurrence which took place on 05.09.2010 after more than one year, he was erroneous regarding the manner in which he came to know about the occurrence and the time at which he visited the police station. According to learned Additional Public Prosecutor the trial Court had, on proper appreciation, rendered a finding of conviction and such finding is to be sustained.

11. We have considered the rival submissions. We find ourselves in agreement with learned Additional Public Prosecutor on the likely reason for the delay in registration of the First Information Report. The circumstances would suggest that P.W.1, as a wife, who has witnessed the incident would not find the immediate support of her husband or his father, P.W.2, in preferring the complaint. Therefore, the delay in registration of the F.I.R. would, in the instant case, be of no consequence. Even if we are to accept the evidence of P.W.5 that he along with P.Ws. 4 and 6, upon receipt of a telephonic information from P.W.13, had gone over to the police station at about 11.30 p.m. on the night of 05.09.2010, that by itself would not be reason enough to negate the prosecution case.

12. P.W.1, wife of the accused, has clearly deposed to the manner in which the occurrence took place and informed that it was the appellant who had done the deceased to death. Not much can be made of the fact that P.W.2, father of the appellant / accused has turned hostile. We have no doubt that it was the appellant / accused, who caused the death of the deceased in the manner stated by the prosecution.

13. However, the question whether the offence committed by the accused would attract conviction for murder under Section 302 I.P.C. or would attract any of the exceptions to Section 300 I.P.C. and consequently lead to conviction for culpable homicide not amounting to murder, is to be considered. In the instant case, the evidence of P.W.1 is that the deceased and the appellant were arguing while she was at her bath. Thereafter, she witnessed the occurrence. What is informed in her statement recorded under Section 164 Cr.P.C. by the Judicial Magistrate No:1, Tindivanam, is that the deceased demanded a sum of Rs.4 lakhs from the

appellant or in the alternative required him to live with her; the accused and the deceased proceeded to the entrance of the house, continuing their quarrel and they both engaged in fisticuffs. The confession statement of the appellant to P.W. 13 informs that on the date of occurrence the deceased contacted him over cell phone at 2.45 p.m. and informed of her having arrived at his house. Rattled, he put aside his cup of tea and went out of his house. The deceased, on seeing him, threatened him. The appellant asked her not to shout and called her into the house; P.W.1, wife was at her bath. The appellant offered the deceased a glass of water which the deceased angrily pushed aside. The deceased asked the appellant to go along with her or in the alternative pay her a sum of Rs. 4 lakhs. She threatened to defame him in the eyes of the community, if he failed to do so. The deceased shouted at P.W.1 also stating that she had married the appellant and cheated her. Ashamed, the appellant had locked the entrance door. The deceased repeatedly kept shouting and hence, the appellant caught hold of her by the neck, held her against the wall and pressed her mouth and cheek. When the deceased sought to push him aside, he held her by the neck, pushed her down, sat upon her and pressed upon her mouth and nose forcing her to be silent. It was thus that the deceased met her death.

14. The facts and circumstances of the present case, make it clear that the intention of the accused primarily was not to loose face in the eye of the community. Driven by such object and caught up in the heat of the moment, he has wrongly conducted himself in causing the death of the deceased. Exception 4 to Section 300 I.P.C. reads as under : ". Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

15. We would afford the appellant the benefit of such exception. We, therefore, while confirming the finding of guilt arrived at by the trial Court, would alter the conviction to one for offence under Section 304 (ii) I.P.C. instead of 302 I.P.C. and accordingly, reduce the sentence of imprisonment for life to one of seven years rigorous imprisonment. The Criminal appeal stands partly allowed. Index : Yes / No (V.D.P.J.

) (C.T.S.J.

) Website : Yes / No 25..07..2013 gp V. Dhanapalan,J., and C.T. Selvam,J., gp
Crl. A.No.820 of 2011 Date:

25. 7.2013

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