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Karuppasamy Vs. State Rep.by

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Court : Chennai

Decided On : Nov-05-2014

Judge : The Honourable Mr. Justice a.Selvam

Appellant : Karuppasamy

Respondent : State Rep.by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

05. 11.2014 CORAM THE HONOURABLE MR. JUSTICE A.SELVAM and THE HONOURABLE MR. JUSTICE V.S.RAVI Crl.A.(MD)No.206 of 2013 and MP(MD)No.1 of 2014 Karuppasamy .. Appellant/1st Accused Vs. State rep.by The Inspector of Police, Rajapalayam South Police Station, Virudhunagar District. Crime No.140 of 2007. .. Respondent/Complainant Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 14.06.2013 passed in Sessions Case No.95 of 2009 by the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur. For Appellant : Mr.M.Daniel Manoharan For Respondent : Mr.C.Ramesh Addl.Public Prosecutor Judgment reserved on 28.10.2014 Judgment delivered on 05.11.2014 :

JUDGMENT
(Judgment of the Court was delivered by A.SELVAM, J.) Challenge in this Criminal Appeal is to the conviction and sentence dated 14th June, 2013 passed in

Sessions Case No.95 of 2009 by the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur.

2. The nubble of the case of the prosecution is that the appellant/first accused by name Karuppasamy is the husband of the deceased Nithya and both of them have loved each other and subsequently got married. Both the accused and deceased have been blessed with two female children. After some time, the accused 1 to 3 have consistently demanded five sovereigns of gold jewels and Rs.5,000/- by way of dowry from the deceased and thereby made frequent dowry torture. On 25.05.2008, the deceased has given a complaint in All Women Police Station, Rajapalayam against all the accused and the same has been registered in Crime No.5 of 2008 and after investigation, a final report has been filed on the file of the Judicial Magistrate Court No.II, Srivilliputhur. Due to compromise, all the accused have been acquitted. The appellant/first accused has intended to marry another lady and due to his intention he made a false allegation against the deceased by way of saying that she has had illicit conduct and frequent quarrels have had happened. On 18.03.2009 at about 05.00 pm, in the house of second accused, all the accused have contrived themselves to murder the deceased and in pursuance of their conspiracy, on the same day at about 09.15 pm, the appellant/first accused has pressed face of the deceased by using a pillow. After hearing mutter of the deceased, the accused has doused kerosene on her body and set her ablaze and due to overtacts committed by the appellant/first accused, she passed away. After occurrence, the defacto complainant by name Ganesan has given a complaint and the same has been marked as Ex.P16 through PW17, Investigating Officer.

3. On receipt of Ex.P16, PW17 has registered the same in Crime No.140 of 2009 and taken up investigation. The concerned Revenue Divisional Officer (PW13) has conducted inquest. After inquest, PW12, concerned doctor has conducted autopsy. The Investigating Officer (PW17) after completing investigation has laid a final report on the file of the Judicial Magistrate Court, Rajapalayam and the same has been taken on file in PRC No.23 of 2009.

4. The Judicial Magistrate, Rajapalayam after considering the fact that the offences alleged to have been committed by all the accused are triable by

Sessions Court, committed the case to the Court of Sessions, Virudhunagar Division and the same has been taken on file in Sessions Case No.95 of 2009.

5. The trial Court after hearing both sides and upon perusing the relevant records has framed first charge against the first accused under Section 302 r/w 120(b) of the Indian Penal Code and second charge against the accused 2 and 3 under Section 120(b) r/w 302 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, PWs.1 to 17 have been examined and Exs.P1 to P17 and M.Os.1 to 8 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial Court after perpending the available evidence on record has found the appellant/first accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.5,000/- with usual default clause. The trial Court has acquitted the accused 2 and 3 under Section 235(1) of the Code of Criminal Procedure, 1973. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the first accused as appellant.

9. The consistent case put forth on the side of the prosecution is that both the appellant/first accused and deceased Nithya have loved each other, which culminated their marriage and both of them have been blessed with two female children. After some time, the accused 1 to 3 have demanded 5 sovereigns of gold jewels and Rs.5,000/- by way of dowry from the said Nithya and since she has not been able to thole the demand made by the accused, they tortured her and due to that a police complaint has been given in All Women Police Station, Rajapalayam and registered in Crime No.5 of 2008 and after investigation a final report has been filed on the file of the Judicial Magistrate Court No.II, Srivilliputhur and

subsequently all the accused have got acquittal due to compromise. After some time, with an intention to perform second marriage, the appellant/first accused has thrown mud-slings upon the said Nithya by way of saying that she has had immoral life. On 18.03.2009 at about 05.00 pm, in the house of second accused, all the accused have contrived themselves to murder the deceased. In pursuance of their conspiracy, on the same day, at about 09.00 pm, the first accused has made quarrel with the said Nithya. On the same day at about 09.15 pm, the appellant/first accused has placed a pillow on her face and pressed and after hearing mutter from her, he doused kerosene and set her ablaze and due to overtacts committed by the appellant/first accused, she passed away.

10. The prosecution has set the law in motion only on the basis of Ex.P16. The author of Ex.P16 viz., defacto complainant (PW1) has turned hostile and he admitted his signature (Ex.P1) found in Ex.P16. The other connected witnesses Balasubramanian @ Mani, Ramammal @ Rasammal and Saroja examined as PWs.2, 3 and 5 have also turned hostile. Now the prosecution is having only the testimonies of PW4, Subramanian and PW6, Ramammal.

11. Before contemplating the rival submissions made on either side, it would be condign to analyse the motive put forth on the side of the prosecution.

12. The specific contention put forth on the side of the prosecution is that in the year 2003, both the appellant/first accused and deceased Nithya have loved each other and consequently their marriage has been performed and both of them have been blessed with two female children and after some time, the accused 1 to 3 have demanded dowry from the deceased viz., Nithya and since she has not been able to meet out their demands, they used to torture her and on 25.05.2008 she has given a complaint in All Women Police Station, Rajapalayam and the same has been registered in Crime No.5 of 2008.

13. On the side of the prosecution, the Sub Inspector of Police who registered the case in Crime No.5 of 2008 has been examined as PW15 and his specific evidence is that on 25.05.2008 the deceased Nithya has given a complaint against all the accused and the same has been registered in Crime No.5 of 2008 under Sections 498(A) of the Indian Penal Code r/w Section 4 of Dowry Prohibition Act

and consequently all the accused have been arrested and remanded to custody. The First Information Report has been marked as Ex.P12.

14. On the basis of Ex.P12 coupled with evidence given by PW15, the Court can easily discern that prior to occurrence, due to dowry torture, the deceased viz., Nithya has given a complaint against all the accused and all of them have been arrested and remanded to custody. Therefore, it is quite clear that motive for occurrence has been clearly proved on the side of the prosecution.

15. The learned counsel appearing for the appellant/first accused has repeatedly contended that the specific case of the prosecution is that the occurrence has taken place on 18.03.2009 at about 09.15 pm in the house of both the appellant/first accused and deceased and no eye witnesses are available on the side of the prosecution and PW6 is having animosity against the family of the accused and therefore, her evidence cannot be admitted and further PWs.4 and 6 have not been examined by Revenue Divisional Officer and their statements recorded under Section 161(3) of the Code of Criminal Procedure, 1973 have reached the Court very belatedly and further a contra evidence is available with regard to can and pillow and in fact, both PWs.4 and 6 have given a contradictory evidence with regard to the said aspect and the trial Court without considering the infirmities found on the side of the prosecution, has erroneously invited conviction and sentence against the appellant/first accused and therefore, the conviction and sentence passed by the trial Court are liable to be interfered with.

16. In order to resile the contentions put forth on the side of the appellant/first accused, the learned Additional Public Prosecutor has contended that the entire occurrence has taken place inside the house of the appellant/first accused and deceased and that too during night hours and the prosecution has adduced evidence to the effect that prior to occurrence, the appellant/first accused has been present in the house. Under the said circumstances, the entire burden lies upon him as to how the occurrence has taken place and no explanation has been given by him. Under the said circumstances, the conviction and sentence passed by the trial Court are perfectly correct and the same do not require any interference.

17. In support of the contention put forth on the side of the respondent, the decision reported in (2006) 10 Supreme Court Cases 681 [Trimukh Maroti Kirkan Vs. State of Maharashtra]. is relied upon, wherein the Hon'ble Apex Court has had an occasion to deal with a similar case and ultimately culled out the following aspects: (i) either the husband and wife were last seen together, or (ii) the offence was committed in the dwelling house, where the husband also resided, and if the accused husband offers no explanation as to the injuries received by his wife or if the explanation is false, there is strong circumstance which indicates that he committed the crime.

18. Further in paragraph ?. 12, it is observed as follows: ?.In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.?.

19. Further in paragraph ?. 15 it is observed as follows: ?.Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. ?.

20. From a close reading of the observations made by the Hon'ble Apex Court, it is easily discernible that in a case like this, if there is evidence to the effect that prior to occurrence both the husband and wife have been seen together or if the offence has been committed in a dwelling house where husband also resided, the entire burden lies upon him to offer proper explanation as to how death has occurred or injuries have been caused. If no explanation is offered by the husband, a strong circumstance would arise that the husband committed the crime.

21. In the instant case, some connected witnesses namely PWs.1 to 3 and 5 have become hostile witnesses. Apart from PWs.1 to 3 and 5, the prosecution has examined PWs.4 and 6. The specific evidence given by PW4 is that after occurrence, he has come to the house of the appellant/first accused and the appellant/first accused has run through back door with a can. In fact, this Court has perused the entire testimonies given by PW4. Except the fact that he belongs to communist party, no personal motive is in existence between him and appellant/first accused. Under the said circumstances, the evidence given by PW4 cannot be discarded.

22. It is an admitted fact that PW6 is a relative of the accused. It is seen from her evidence that PW6 is not in talking terms with the appellant/first accused and her specific evidence is that after occurrence she has seen the accused in the place of occurrence. Even assuming without conceding that the evidence of PW6 cannot be accepted due to animosity, as pointed out earlier, the evidence given by PW4 with regard to presence of appellant/first accused in the place of occurrence remains intact and also uncontroverted and that itself is sufficient for coming to a conclusion that both the appellant/first accused and deceased are seen together prior to occurrence.

23. As pointed out in many places, the occurrence has taken place on 18.03.2009 at about 09.15 pm inside the house of the appellant/first accused and deceased. On the side of the appellant/first accused, no explanation has been given even at the time of answering questions posed to him under Section 313 of Code of Criminal Procedure, 1973 as to how death has occurred to the deceased.

24. It is a pristine principle of law that as per Section 106 of Indian Evidence Act if a fact is exclusively within the knowledge of a particular person, the entire burden lies upon him. In the instant case, even though replete/acceptable evidence is available to the effect that at the time of occurrence, both the appellant/first accused and deceased are seen together in their house, no explanation has been offered on his side. Therefore, it is crystal clear that only due to overtacts committed by the appellant/first accused, the deceased has passed away.

25. The first and foremost attack made on the side of the appellant/first accused is that in the instant case, no eye witnesses are available. It is true that the alleged eye witnesses have turned hostile. But as per the dictum given by the Hon'ble Apex Court reported in (2006) 10 Supreme Court Cases 681 [Trimukh Maroti Kirkan Vs. State of Maharashtra]. the Court can decide culpability of the appellant/first accused on the basis of available circumstances. It has already been pointed out that the evidence given by PW4 with regard to the said aspect remain unshattered and that itself would be sufficient for coming to a conclusion that the appellant/first accused has committed the crime. Therefore, the first and foremost contention put forth on the side of the appellant/first accused is sans merit.

26. The second contention put forth on the side of the appellant/first accused is that PW6 is having enimical terms towards the family of accused and therefore, her evidence cannot be accepted. In fact, PW6 has spoken about the previous occurrence and also present occurrence. Further she has candidly admitted the animosity that exists between her family and family of the accused. Simply because PW6 is having animosity against the accused, her evidence cannot be rejected in toto. Further as pointed out earlier, even for the sake of argument if the evidence of PW6 cannot be accepted, evidence of PW4 remains uncontroverted. Under the said circumstances, the second contention put forth on the side of the appellant/first accused would not militate the case of the prosecution.

27. The third and fourth contentions put forth on the side of the appellant/first accused are that the statements recorded under Section 161(3) of the Code of Criminal Procedure, 1973 from PWs.4 and 6 have reached the Court very

belatedly and PWs.4 and 6 have not been examined by Revenue Divisional Officer.

28. It is a settled principle of law that mere delay in sending documents to Court would not militate case of the prosecution, provided, sufficient evidence is available so as to point out guilt of the concerned accused. It is an admitted fact that the Revenue Divisional Officer has conducted inquest and he omitted to examine PWs.4 and 6 and that itself cannot be a basis for coming to a conclusion that the appellant/first accused has had no connection whatsoever with the crime. Therefore, the third and fourth contentions put forth on the side of the appellant/first accused are of no use.

29. The last contention put forth on the side of the appellant/first accused is that with regard to can and pillow, mutually incongruous evidence is available in the evidence of PWs.4 and 6. It is an admitted fact that the specific evidence given by PW4 is that the accused has run with a can through back door. The specific evidence given by PW6 is that appellant/first accused after occurrence has placed can and pillow in the place of occurrence. It is nothing but a flimsy contradiction and the same would not affect the case of the prosecution.

30. Even at the risk of repetition, the Court would like to point out that as per Section 106 of the Indian Evidence Act, on the basis of available circumstances, the appellant/first accused has to explain as to how the occurrence has taken place. But he completely observed obmutescence. Under the said circumstances, the Court can very well come to a conclusion that the appellant/first accused has murdered the deceased as put forth on the side of the prosecution.

31. The trial Court after considering the available evidence on record has rightly found the appellant/first accused guilty under Section 302 of the Indian Penal Code. In view of the foregoing elucidation of both factual and legal aspects, this Court has not found any valid ground to make interference with the conviction and sentence passed by the trial Court and therefore, the present Criminal Appeal is liable to be dismissed.

32. In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed. Connected Miscellaneous Petition is also dismissed. the conviction and sentence passed against the appellant/first accused in Sessions Case No.95 of 2009 by the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur are confirmed. To 1.The Principal District and Sessions Court, Virudhunagar District at Srivilliputhur 2.The Inspector of Police, Rajapalayam South Police Station, Virudhunagar District. 3.The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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