

Selvam Vs. The State

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Court : Chennai

Decided On : Mar-02-2015

Judge : R.S.Ramanathan

Appellant : Selvam

Respondent : The State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

02. 11-2009 CORAM THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM AND THE HONOURABLE MR.JUSTICE V.PERIYA KARUPPIAH CRIMINAL APPEAL No.424 of 2009 Chandrasekaran ..Appellant ..vs.. State by Inspector of Police, Thammampatti Police Station, Salem District. (Crime No.171 of 2007) ..Respondent Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the judgment of the learned Principal Sessions Judge, Salem District, made in S.C.No.13 of 2008, dated 12.06.2009. For Appellant : Mr.S.Shanmugha Velayutham, Senior Counsel for Mr.M.Selvam For Respondent : Mr.Babu Muthu Meeran, A.P.P.,

JUDGMENT

(Judgment of the court was delivered by M.CHOCKALINGAM, J.) This appeal challenges a judgment of the Principal Sessions Division, Salem, made in S.C.No.13 of 2008, whereby the sole accused stood charged, tried and found

guilty under Section 302 I.P.C.and awarded the life imprisonment along with a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.

2. Short facts, necessary for the disposal of the appeal, can be stated thus: (a) P.W.1 is the native of Ulipuram, Anna Nagar. P.w.2 is the second daughter of P.W.1 and her first daughter Rajeswari was given in marriage to the appellant and they got two children, one female and one male. The accused used to humiliate and torture Rajeswari all along and that she used to come to the parental home since she could not tolerate the torture and the accused used to bring her back to his house. Just few days prior to the occurrence, she came to the house of P.W.1 and was staying there. (b) On 21.05.2007, the accused also came to the house of P.W.1 and after the dinner, the accused and his wife Rajeswari went to the pooja room to sleep. P.W.2 along with the child of the deceased, was in the next room abutting the pooja room. P.W.1 accompanied with her husband went to her brother's house for the night stay. At about 2.30 AM, the child of the deceased woke up and cried. Immediately P.W.2 took the child and went inside the room, where the deceased was sleeping with the accused. At that time, she found that the accused was throttling the neck of Rajeswari. Immediately she raised an alarm and found the accused running near the pipeline. P.W.1 and others immediately rushed to the home and found the dead body of the deceased. (c) P.W.1 went to the respondent Police Station at about 4.30 AM where P.W.8, Sub-Inspector of Police, was on duty and gave complaint Ex.P-1 and on the strength of which, a case came to be registered in Crime No.171 of 2007 under Section 302 IPC and express F.I.R. was despatched to the Court. (d) P.W.9, the Inspector of Police, on receipt of the copy of FIR Ex.P-8, proceeded to the spot, made an inspection, prepared an observation mahazar Ex.P-2 and also rough sketch Ex.P-9. Then, the investigator conducted an inquest on the dead body of Rajeswari in the presence of witnesses and panchayatdars and Ex.P-10 is the inquest report. Thereafter, he sent the dead body to the hospital for the purpose of post-mortem along with his requisition. (e) On receipt of the said requisition, P.W.6, doctor attached to the Attur Government Hospital, conducted autopsy on the dead body of Rajeswari and gave a post-mortem certificate, Ex.P-5, wherein he opined that the deceased would appear to have died of shock due to Asphyxia due to strangulation. (f) Pending investigation, on 21.05.2007, the accused was arrested and he came

forward to give a confessional statement and the same was recorded. Pursuant to which, he produced M.O.1 Nylon thread, which was recovered under the cover of mahazar Ex.P-3 and he was sent for judicial remand. On completion of investigation, P.W.9 filed the final report against the accused under section 302 I.P.C. (g) The case was committed to the Court of Session, Salem and necessary charge was framed. In order to substantiate the charge, the prosecution examined 9 witnesses and also relied on 14 exhibits and 5 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found against him in the evidence of prosecution witnesses, which he flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced and scrutinized the materials. On doing so, the trial Judge took the view that the prosecution has proved the case beyond reasonable doubt and found the appellant/accused guilty and awarded the punishment of life imprisonment, which is the subject matter of challenge before this Court.

3. Advancing arguments on behalf of the appellant, the learned Senior Counsel would submit that the occurrence had taken place during the night hours; that when there was no light facility, P.W.2 could not have seen the occurrence at all; that so far as the other witnesses are concerned, P.W.1 categorically admitted that she came to the occurrence spot after the occurrence was over and hence, the evidence of P.w.1 could not be relied upon for any purpose; that the evidence of P.W.4 is highly doubtful since P.W.4 alleged to have seen the accused running near a common pipeline after the occurrence, where there was no light facility and no identification parade was conducted and hence he could not have seen the accused.

4. Added further the learned senior counsel that in the instant case, P.Ws.1 and 2 have categorically admitted that the accused had left the place with the male child and there was no possibility for the stay of the accused during the night hours and hence, the defence plea that the deceased committed suicide should have been accepted by the trial court; that the defence plea was fortified by P.W.6, post mortem doctor, who categorically admitted that there was a symptom of suicide also; that under such circumstances, the defence theory was more probable and

the trial court should have accepted the same; that in the instant case, what was recovered from the accused was M.O.1 Nylon thread, according to the Inspector P.W.9; but the evidence in this regard, namely, arrest, confession and recovery was shaking and hence, the seizure of M.O.1 has not been proved; that under these circumstances, the prosecution has miserably failed to prove this case and the trial court, on an erroneous view, has convicted the accused and hence, the order of conviction has got to be set aside.

5. Further, on the second line of arguments, the learned senior counsel would submit that the relationship of the accused and the deceased was originally strained and during the relevant date, they had been staying over there and even as per the available materials, it will be clear that they had a wordy altercation just preceding the occurrence and the inquest report prepared by the investigator also would clearly indicate that just before the occurrence there was a wordy quarrel; that it is further fortified by the confessional statement alleged to have been recorded by the investigating officer, wherein it was clearly stated that before the occurrence, she went outside and when the accused came out he found that a male was running from there and when he questioned, she told that she would go in her own way and due to sudden provocation by such an answer, he has done the act; that even assuming that the prosecution has proved the factual position that it was the accused who caused her death, in the instant case, the act of the accused would not attract the penal provision of murder; and that without considering the above aspects of the matter, the trial court has taken an erroneous view and hence, he is entitled for acquittal.

6. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

7. It is not in controversy that one Rajeswari, the daughter of P.W.1, was given in marriage with the deceased, whose dead body was subjected to inquest by P.W.9, the investigator, and after conducting the inquest, the dead body was subjected to post-mortem by P.W.6, who has given a categorical opinion, as a witness before the Court and through the contents of the post-mortem certificate, Ex.P-5 that she died due to shock and Asphixia and strangulation. Now, the learned senior

counsel has brought to the notice of the Court two opinions given by the doctor i.e. one in favour of the prosecution and the other in favour of the defence and contended that the plea put forth by the defence was that it was a case of suicide and thus, the opinion canvassed by P.W.6 in his cross examination was in favour of the accused, cannot be accepted by the Court for the simple reason that whenever the death is caused due to a particular mode or manner as put forth by the prosecution and there is a medical opinion canvassed in their favour, then it is for the Court to rule out that possibility. In the instant case, P.W.2 was an eye witness. She has actually seen the accused throttling his wife and immediately after hearing the distressing cry, all gathered there. It is true that P.W.2 is the younger sister of the deceased; but merely on the ground of relationship, her evidence cannot be discarded or rejected but it must be subjected to the test of careful scrutiny. Despite that test, the Court is satisfied since her evidence has inspired the confidence of the Court, where she narrated that the brother-in-law came to the house, staying there, both husband and wife sleeping in the pooja room and P.W.2 was sleeping with the child of the deceased in the another room abutting the pooja room and at about 2.30 AM, the child woke up and cried and P.W.2 went inside the room for feeding, where she found that the accused was throttling the wife. Immediately on seeing her, the accused went outside and on her cry, all gathered there. The evidence of P.W.2 is fortified by P.W.4, who witnessed the accused running from the place of occurrence. Now, this Court is of the considered opinion that the evidence put forth by the prosecution before the trial court coupled with the other circumstances, would be indicative of the fact that except the accused no one had committed the crime and in a given case, where there is a circumstantial evidence, cogent and acceptable, the Court can accept the case of the prosecution to sustain the conviction.

8. Yet another circumstance is the recovery of M.O.1 i.e. nylon rope from the accused pursuant to the confessional statement. In the instant case, the contention put forth by the learned senior counsel that at night hours P.Ws.2 and 4 could not have seen the occurrence and the accused running away from the place after committing the crime, cannot be accepted because it was P.W.2, none else than the sister of the deceased, who was also staying in that night. Therefore she had an occasion to witness the occurrence. Thus, the prosecution placed the

necessary materials to arrive at a conclusion that the accused had committed the crime by strangulating her neck.

9. In so far as the second line of arguments is concerned, the Court is of the view that there is some force in the contention. According to the prosecution, he was staying over that night and P.W.2 witnessed the throttling the neck of the deceased. There is material to indicate that there was a wordy altercation between the accused and the deceased just preceding the occurrence. Two things are noticed by the Court, one is the inquest report, wherein it was categorically recorded that there was a wordy altercation preceding the occurrence between the spouse and the other is the confessional statement, which is to the effect that just preceding the occurrence, she went outside and the accused followed her and a male running from there and when the accused questioned, she stated that she would go in her own way. All these things would go to show that the accused had no intention to cause death and actually, he has acted in the exchange of words and hit of passion. Under such circumstances, it would not attract the penal provision of murder and instead, it would come under section 304 Part-I of the Indian Penal Code. In the considered opinion of the Court, the punishment of 7 years rigorous imprisonment under the stated circumstances would suffice to meet the ends of justice. Accordingly, the conviction and sentence of life imprisonment under section 302 IPC awarded by the trial court is modified into one under Section 304 Part I IPC., for which he would stand sentenced to seven years rigorous imprisonment and the period already undergone by the accused is ordered to be set off. Criminal appeal is disposed of accordingly. Index: Yes. (M.C.,J.) (V.P.K.,J.) Internet: Yes. 02-11-2009 gl To 1.The Principal Sessions Judge Salem. 2.The Inspector of Police, Thaammampatti Police Station, Salem District. (Crime No.171 of 2007) 3.The Public Prosecutor High Court, Madras. M.CHOCKALINGAM, J.

AND V.PERIYA KARUPPIAH, J., gl Judgment in Crl.A.No.424 of 2009 Dt:

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