Gnanagunaseeli Vs. the State

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Court : Chennai

Decided On : Jul-11-1995

Reported in : 1996CriLJ2849; 1995(2)CTC610

Judge : J. Kanakaraj and ;Janarthanam, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 203, 302, 303 and 304; Code of Criminal Procedure (CrPC) , 1973 - Sections 164 and 313; Evidence Act - Sections 118

Appeal No. : Criminal Appeal No. 153 of 1989

Appellant : Gnanagunaseeli

Respondent : The State

Advocate for Def. : R. Raghupathi, Addl. Public Prosecutor

Advocate for Pet/Ap. : N.T. Vanamamalai, Adv. for ;M/s. Rajasekaran and ;S. Paneerselvam, Adv.

Judgement :

Janarthanam, J.

1. The appellant Gnanagunaseeli was accused in S.C. No. 118/86 on the file of the Court of Session, South Arcot Division, Cuddalore. She was found guilty under

Ss. 302 and 203, I.P.C., convicted thereunder and sentenced to R.I. for life imprisonment under S. 302, I.P.C. and R.I. for one year under S. 303, I.P.C. with a direction for the sentences to run concurrently.

2. Aggrieved by the said conviction and sentence, the present action had been resorted to.

3. Brief facts are : (a) one Daniel Appadurai (since deceased) got profitably employed as an Air Condition Mechanic at Neyveli Lignite Corporation. The accused is non-else than his wife. The spouses had two off springs, one female (P.W. 1) and another male (P.W. 2). The spouses along with their kids had been living at Door No. C. 41, Block No. 2, Neyveli Town Ship. The accused was also employed at Neyveli Lignite Corporation as an Assistant.

(b) P.W. 3 is their neighbour. One Gopalakrishnan is the husband of P.W. 4. P.W. 4 and her husband, it is said, are also profitably employed at Neyveli Lignite Corporation. P.W. 4 resides opposite to and P.W. 3 resides on the north of the house of the accused and deceased.

(c) P.W. 4 and deceased hailed from one and the same place, viz., Nagercoil. The deceased had been maintaining friendly relationship with P.W. 4 for quite long. This sort of a friendly relationship was mistaken by the accused, wife of the deceased for one of illicity relationship. As a consequence frequent skirmishes and quarrels between them arose and there was want or cordial atmosphere and peace in their matrimonial abode. P.Ws. 1 and 2 were also grown up children. They were spectators for the on going quarrels, between the accused and the deceased, their parents.

(d) It so happened, some three years prior to the occurrence, which event happened on 15-4-1986, the deceased was stated to have been hit by the accused-wife by means of a hammer on his chin for his illicit relationship with P.W. 4. As a consequence of such a hit, the deceased was stated to have sustained an injury therefor. On receiving such a hit and consequent injury at the hands of his wife-accused, the deceased was stated to have run out of the house crying for help, attracting the attention of others. P.Ws. 4 and 5 had the fortuitous opportunity

of witnessessing such an occurrence having happened. Some how or other, the differences between the deceased and his wife were stated to have been settled by the medication of a good samaritan pastor of the locality. On the advices so tendered by the pastor, the accused appeared to have promised to come to the path of rectitude and have an amicable family life with his wife, the accused.

(e) The deceased, some how or other, was unable to sever his friendly relationship with P.W. 4. Consequently, time and again, quarrels and skirmishes arose between the deceased and his wife, the accused. Some four days prior to the occurrence, the deceased met P.W. 9 a Pastor of Pentecost Mission and complained to him as to his having an apprehension that he was to meet perilous consequences at the hands of his suspicious wife, the accused. The said Pastor, in turn visited the house of the accused and the deceased and prayed for their welfare and went away from there.

(f) On the day of occurrence at about 9.00 p.m. the deceased, after visiting the house of P.W. 4 returned to his house, which has obviously irritated the accused. The deceased appeared to have taken food in his house with his family members, viz., the accused and his grown up children P. Ws. 1 and 2. After taking food the accused along with her children P. Ws. 1 and 2, was stated to have taken her bed in their bed room adjoining the hall. The deceased, in turn, was stated to have taken his bed in the sofa-cum-bed available in the hall. It appears a Zero watt bulb used to burn during night hours in the hall. There is no bath room attached to the bed room and any one taking bed in the bed room adjoining the hall, it is said, had to go to the bath room by crossing the hall. It appears that the accused along with her children P. Ws. 1 and 2 after taking their bed in the bed room adjoining the hall, locked the door from inside and the deceased was taking his bed in the hall over the sofa-cum-bed with a Zero watt bulb burning.

(g) At about 1.00 or 1.30 a.m. the accused armed with M.O. 1 Koduval was stated to have inflicted series of cuts on the person of the deceased her husband, while he was taking his bedover the sofa-cum-bed available in the hall, after her emerging out of the bed room where she was taking her bed along with her children P. Ws. 1 and 2. On receipt of the cuts, the deceased appeared to have

raised agonising cries. Attracted by such cries, the daughter and son, viz., P. Ws. 1 and 2 woke up from their bed, came out of the room and saw the accused their mother engaged in revelling in infliction of cuts on the person of the deceased their father. The accused-mother in turn was stated to have issued threats of dare consequences to P. Ws. 1 and 2 in an eloquent fashion by her sheer starting look with glance of eye. P.Ws. 1 and 2 in turn went inside the bed room and took shelter therein.

(h) The accused thereafter went to the bed room, took some clothes from there then made a march to the bath room, changed her clothes therein, returned to the bed room and told her kids P. Ws. 1 and 2 that the dastardly act of doing away with their father, the deceased was only for their benefit, and they in turn should pose to the outside world as if such a dastardly murder of their father had been done by intruders into their house during night hours and they should also cry 'thief', 'thief' so as to attract the attention of neighbours. Thereafter, she was also stated to have locked the bed room from inside and P. Ws. 1 and 2 also raised a hue and cry, 'Thief', 'thief'.

(i) Attracted by such agonishing cries for help. P.W. 3, Gopalakrishnan and others came there, and at their instance, the door of the bed room was stated to have been opened. To them, the accused narrated as to how the occurrence took place. At their instance, accused was stated to have written a report, respecting the occurrence, Exhibit P. 1. The time was then 2.30 a.m. Then P.W. 3, Gopalakrishnan and others took the accused to Neyveli Police Station, which is 3 kms. away from the scene of occurrence. All of them went by walk. They reached the police station at 4.00 a.m.

(j) P.W. 12 was the then Sub-Inspector of Police, Law and Order, Neyveli Police Station. On receipt of Exhibit P. 1 at 4.00 a.m. from the accused, he registered the same as a case in Crime No. 181/86 under Section 302, I.P.C., as if the murder had been committed by intruder-strangers. We also prepared Express reports and sent the same to the concerned officials. Exhibit P. 23 is the printed Express First Information Report.

(k) P.W. 13 was the then Inspector of Police. On receipt of the Express F.I.R. at 4.45 a.m. he took up further investigation in this case. At 5.45 a.m. he rushed and reached the scene of occurrence. After inspecting the scene, he prepared Exhibit P. 2, observation mahazar in the presence of P.W. 6 and another. He drew a rough sketch of the scene, Exhibit P. 24 He caused photographs to be taken of the scene by P.W. 10 a photographer. Exhibits P. 7 to P. 12 are the negative and Exhibits P. 13 to P. 18 are the photo copies. Between 7.30 a.m. and 11.00 a.m. he held inquest over the body of the deceased. Ex.P. 25 is the inquest report. During inquest, he examined P. Ws. 1 to 3 and others. After the inquest was over, he handed over the body of the deceased to the Constable P.W. 8 for the purpose of autopsy, along with a requisition. He arrested the accused. On interrogation, the accused gave a voluntary confession statement, the admissible portion of which is Exhibit P. 3. Pursuant to the said confession statement, at 1.15 p.m. he recovered M.O. 2 sari, and M.O. 3 jacket at the instance of the accused, who was stated to have taken out them from the bath room and produced them before P.W. 13, who in turn seized the same under Exhibit P. 4 Mahazar. At 2.00 p.m. he recovered from the hall M.O. 1 Arval, besides M.O. 4 bed. M.O. 5 pillow, M.O. 6 blanket, M.O. 7 Banian, M.O. 8 folding chair, M.O. 9 blood stained pillow, M.O. 10 cement colour easy chair, M.P. 11 green colour easy chair, M.O. 12 a pair of chappel M.O. 13 blood stained scrappings of cement flooring, M.O. 14 Sample scrappings of cement flooring, M.O. 15 blood stained scrappings of the wall and M.O. 16 sample scrappings of the wall under Exhibit P. 5 mahazar. Exhibits P. 2 to P. 5 were attested by P.W. 6 and another.

(l) P.W. 7 was the then Assistant Surgeon attached to Government Hospital, Panruti. On receipt of requisition from P.W. 13, he conducted the autopsy over the body of the deceased. Exhibit P. 6 is the post mortem certificate he issued. He would opine that the injuries 1 to 14 could have been caused by infliction of a cut with a weapon like M.O. 1 while injury No. 15 could have been caused by coming into contact with a rough surface. He would further opine that external injury Nos. 8 and 9 were necessarily fatal.

(m) After the autopsy was over, the post mortem constable P.W. 8 seized from the body of the deceased M.O. 17 lungi and handed over it at the police station where

it was appeared to have been seized under form No. 95.

(n) On 16-4-1986, P.W. 13 examined P. Ws. 7 and 9 and others. On 20-4-1986 he examined P.W. 8 He also made arrangements on 25-4-1986 for recording S. 164, Cr.P.C. statement of P.W. 1 before the Judicial Magistrate, Panruti. On 29-4-86 he sent requisition Exhibit P. 19 to the Judicial Second Class Magistrate, Neyveli for the purpose of forwarding the incriminating material objects to the Chemical Examiner for the purpose of examination.

(o) P.W. 11 was the then Head Clerk attached to the Judicial II Class Magistrate's Court, Neyveli. On receipt of Exhibit P. 19 requisition, he despatched the incriminating material objects, as per the directions of learned Magistrate to the Chemical Examiner for the purpose of examination under the original of Ex.P. 20, office copy of the letter. Exhibits P. 21 and P. 22 are respectively the reports of the Chemical Examiner and Serologist.

(p) After completing the formalities of investigation, P.W. 13 laid a final report before Judicial II Class Magistrate, Neyveli on 25-6-1986 against the accused for an offence under Ss. 302 and 203, I.P.C.

(4) On Committal, learned Sessions Judge, South Arcot Division at Cuddalore framed charges against the accused under Ss. 302 and 203, I.P.C.

(5) The accused when questioned as respects the charge so framed, denied the same and claimed to be tried.

(6) The prosecution in proof of the charges so framed, examined P. Ws. 1 to 13, filed Exhibits P. 1 to P. 25 and marked M. Os. 1 to 17.

(7) The accused, when questioned under S. 313, Cr.P.C. incriminating circumstances available in evidence against her, denied her complicity in the crime, as projected by the prosecution. She did not, however, choose to examine any witness on her behalf. She was rest content in marking Exhibit D1, the contradiction in the statement of P.W. 1 examined under S. 164, Cr.P.C. before the Judicial Magistrate, Panruti, besides giving a statement as respects the defence theory she would take.

(8) In pith and substance what she would state therein was that at or about the time of occurrence, Velammal P.W. 4 was found having bed in the company of her husband the deceased and on seeing the same, she, as a consequence of deprival of power of self-control, took out aruval and inflicted a cut on her husband the deceased.

(9) Learned Session Judge, on consideration of the materials placed and after hearing arguments of learned counsel for the defence and learned Public prosecutor, however, rendered the verdict as stated above.

(10) Mr. N. T. Vanamamalai, learned Senior Counsel appearing for the appellant-accused would submit, with all vehemence and force, that the materials available on record in the shape of evidence oral and documentary would probabilise the defence theory, the consequence of the acceptance, of which, would reduce the gravity of the offence of murder under S. 302, I.P.C. into one under S. 304, Part 1, I.P.C. He would further submit, with equal vehemence, that lodging of Exhibit P. 1 before P.W. 12, as projected by the prosecution, is rather improbable, on the facts and in the circumstances of the case and this will be quite evident and apparent, if materials available on record, are sifted and scanned in a broad spectrum analysis, to which course Mr. R. Raghupathi, learned additional Public Prosecutor would, however, repeal those submissions with equal vehemence.

(11) We shall now enter into arena of discussion, as respects the rival submissions of either learned counsel in the light of the materials available on record.

(12) The broad spectrum analysis of the materials available on record would point out that there is a thin hair breadth between the case of the prosecution and the theory as trotted out by the defence. To put it otherwise, it is the case of the prosecution that the hand that was responsible for the infliction of the destardly cuts on the person of the deceased at or about the time of occurrence was that of the accused. The defence also did not at all say that the hand that was responsible for the infliction of cuts on the person of the deceased was not that of the hands of the accused and the difference lies this way.

13. According to the prosecution, the accused entertained sexual jealousy, as a consequence of her husband-the deceased having sexual relationship with P.W. 4 residing opposite to her house and that sort of a sexual jealousy prompted her to murder her husband-the deceased on the day of the occurrence, when especially the husband-the deceased returned to the matrimonial abode at about 9.00 or 9.30 p.m. on the day of occurrence, after having visited the house of P.W. 4.

14. But, on the other hand, according to the defence, the conduct of the deceased in having illicit relationship with P.W. 4 had been tolerated all along without any personal wrecks to the safety of the deceased, though he was taking bed in the house and at or about the time of occurrence some incident or event impelling the sinews and nerves of the accused to rise in revolt against her beloved husband - the deceased and that incident cannot be any one other than the one of her husband - the deceased being found in the company of P.W. 4 in the very matrimonial abode during night hours, when especially the accused and her children had been taking their bed in the adjoining bed room of the hall.

15. Of the two projection of versions, which is probable on the facts and in the circumstances of the case is the moot question falling for consideration.

16. As already adverted, the accused and her children P.Ws. 1 and 2 had taken their bed in the adjoining bed room of the hall. It is also in evidence that they locked the bed room from inside and the deceased at that time had taken his bed in the sofa-cum-bed available in the hall. It is also not in dispute that one has to cross the hall to go to the bath room for answering the calls of nature. It is also not equally in dispute that the Children P.Ws. 1 and 2 woke up from their bed after the agonising cries emanating from the deceased, as a consequence of the infliction of cuts on his person by the accused. That would point out what transpired before the infliction of cuts by the accused on the person of the deceased was not within the knowledge of P. Ws. 1 and 2. To put it otherwise they had the fortuitous opportunity of witnessing the infliction of subsequent cuts of the person of the deceased by no less than a person in the shape of the accused, their own mother. In such an eventuality, the theory of the defence that when the accused came out from the bed room to go to bath room, she had seen her husband - the deceased

being found in the company of P.W. 4 in the bed and consequently she rose in revolt losing power of self control, inflicted cuts on the person of the deceased, while P.W. 4 ran away for safety cannot be ruled out of consideration, when especially the outer door of the house was found opened at the time when P.W. 3 and others made an entry into the house. In such state of affairs, we are not far wrong in coming to the conclusion that the defence theory, as tortted out, is more probable, than the version as projected by the prosecution, in the shape of the testimony of P. Ws. 1 and 2, the consequence of which is the conviction and sentence, as had been imposed upon the appellant-accused by the lower Court for an offence under Section 302, I.P.C. are not sustainable and instead, she has to be found guilty for an offence under Section 304, Part-I, I.P.C., as rightly urged by learned senior counsel for the accused-appellants.

17. The consistent stand taken by the defence as respects Exhibit P. 1 was what the accused did not reduced in writing Ex.P. 1 in the presence of P.W. 3 and others before ever she was stated to have gone to the Police Station in the company of P.W. 3 and others. To put it otherwise, Exhibit P. 1 came into existence only subsequent to the arrival of the police in the scene and Exhibit P. 1 has been reduced into writing as per the version projected by the police. This sort of a defence theory cannot at all be stated to be not probable, on the facts and in the circumstances of the case. Their is nothing traceable by way of in built material or intrinsic evidence getting reflected either in Exhibit P. 1 first information report or Exhibit P. 23 printed first information report, as respects the factum of the accused being taken to Neyveli Police Station of which P.W. 12 was the then Sub-Inspector by P.W. 3, Gopalakrishnan and others. Admittedly, from the scene of occurrence, Neyveli Police Station is 3 kms. away. In such a situation, was it probable for the accused a woman after the commission of dastardly murder of the deceased, her husband to walk the distance all along during the night hours to the Police Station, leaving her children P. Ws. 1 and 2 in the lurch, along with the deceased body of her husband. The answer cannot be any one excepting an emphatic 'no'.

18. The conduct of P. Ws. 1 and 2 in not reporting either to P.W. 3 or others present there as to their mother-the accused threatening them to say as if the murder had been committed by strangers-intruders and they were, in fact, asked

to cry 'thief', 'thief' so as to attract the attention of others also serves as a lending assurance factor for the defence theory. Puzzling a factor, it is, to note that immediately after the arrival of the police at the scene, both of them would decipher the real culprit of the murder.

19. At this juncture, we have to take into account the age of P. Ws. 1 and 2 - daughter and son of the deceased at or about the time of occurrence. At the time of trial, it appears P.W. 1 was aged 16 and P.W. 2 was aged 13. Both of them were examined on 28-7-1987. The occurrence admittedly, had happened on 15-4-1986. Their age at the time of occurrence would be about 14 1/2 and 1 1/2 years. No doubt, true it is, that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body of mind, or any other cause of the same kind according to Section 118 of the Evidence Act. Persons Like P.Ws. 1 and 2 having attained the age of blossoming youth of immature discretion at or about the relevant time of occurrence, it is possible for them to succumb to pressure.

20. We have to recaptulate at this juncture that both P.Ws. 1 and 2 were stated to have succumb to the pressure exerted by their mother-the accused at or about the time of occurrence by issuance of threat of wearing a terrific look and glance and they were stated to have accepted to pose to the outside world, as if the destardly murder of their father-the deceased had been committed by intruders-strangers and they even, it is said, went to the extent of obliging their mother-the accused by crying 'thief', 'thief'. The moment the police personnel arrived at the scene, they were stated to have changed the entire story and projected a different version and the investigation proceeded on those lines. This points out their succumbed for a second time to the obvious pressure exerted by the police for projecting a version suiting to the exigencies of the prosecution.

21. In such state of affairs, we are unable to accept the testimony of P.Ws. 3 and 12, when they say that Exhibit P. 1 had been reduced into writing at the scene of occurrence and subsequently handed over at the Police Station, of which P.W. 12 was the then Sub-Inspector of Police and in all probabilities the same could have

come into existence after the arrival of the police in the scene and the same could have been prepared at the dictation of the police and reduced into writing by the accused, who in the circumstances of the case cannot at all be stated to be one, not in a position to succumb to such a pressure exerted by the police. In such state of affairs, it goes without saying that the existence of Exhibit P. 1 as projected by the prosecution cannot at all be believed. Consequently, the conviction and sentence under Section 203, I.P.C. as had been imposed upon the appellant-accused deserves to be set aside and accordingly, the same is set aside.

22. Order accordingly.