In Re: Chinnathambi

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Court : Chennai

Decided On : Jul-23-1952

Reported in : AIR1953Mad239; (1952)2MLJ550

Judge : Somasundaram and ;Basheer Ahmed Sayeed, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300, 302 and 325

Appeal No. : Criminal Appeal No. 43 of 1952 and Criminal Revn. Case No. 79 of 1952

Appellant : In Re: Chinnathambi

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : A.B. Nambiar, Adv. for ;K. Krishna Menon, Adv.

Judgement :

Basheer Ahmed Sayeed, J.

1. The appellant in this case has been convicted for having murdered his wife, one Pappal, on or about the 28th July 1951, at about lamplighting time at Thiruvagoundanur, and sentenced to transportation for life by the learned Additional Sessions Judge of Salem division.

2. The prosecution story is that there have been some misunderstanding and quarrels between the appellant and his wife, both being young couple, in respect of certain jewels that had been made for the wife by the appellant. The silver anklet which was made for her by the appellant seems to have been given away to a relation of the wife; and she was questioned about it and then some quarrel ensued in respect thereof. Subsequently, when the wife again went to her parents' house she is said to have parted with silver bangles that were made for her by the appellant. On that occasion the appellant grew very wild and after rebuking her seems to have dealt a blow as a result or which two injuries were caused to the deceased as spoken to by the medical evidence.

3. The post-mortem certificate reveals that there were two injuries which were not very serious but were of a simple nature. As a result of the blow on the head, the deceased is said to have become unconscious and after she became unconscious the appellant tied a rope round her neck and tied her to the beam in the room and closed the door. Hearing the noise that had been created in the room. P. Ws, 1, 2 and 3 rushed to the spot one after another. P. W. 1 cried out against the appellant that he had committed such an offence against the young woman. P. W. 2 also who rushed later heard P. W. 1 exclaim that the appellant had committed such an offence. P. W. 3 also heard to a similar effect. At first, they saw the body hanging from the beam by a rope and subsequently they saw the body being brought down by the appellant cutting the rope.

4. P. W. 1 spoke to these facts in her statement under Section 164, Cr. P. C. P. Ws. 2 and 3 spoke to these facts in the committal Court but in the Sessions Court all these witnesses became hostile and they were treated as such by the prosecution and were allowed to be cross-examined by the Public Prosecutor. The statement ot P. W. I recorded under Section 164, Cr. P. C. as also the statements of P. Ws. 2 and 3 recorded before the committal magistrate have been marked under Section 288, Cr. P. C. as substantive evidence in the trial before the Sessions court.

5. There is no direct eyewitness to the beating by the appellant by any stick or any other weapon; but the medical evidence is. positive to the effect and that two

injuries were found on the person of the deceased. The medical evidence is also positive on the fact that death was not due to these injuries but it was due to asphyxia which was due to the hanging by the rope. That the body was hanging in the room by the rope and that it was brought down have also been made fairly clear from the evidence of the witnesses that have spoken at the earlier stage and whose evidence has been marked. It transpires from the evidence that the appellant having caused a blow as a result of which the deceased woman got unconscious tied her by a rope and then hanged her to the beam being afraid that the blow had caused the death of the woman, while, actually, according to the medical evidence, death had not been caused by the blow dealt by him.

6. The question is what exactly is the offence that has been committed by the appellant? We are unable to see that the offence that has been committed by the appellant on the facts of this case would be one of murder for, the evidence is, so far as it goes, convincing that the hanging has taken place in order to create a false evidence under the impression and belief that the woman had already died as a result of the blow the appellant dealt on her while in fact death has really been caused by the hanging itself. It cannot be said that the] appellant intended to. cause the death by hanging. He was only hanging a body which was dead already according to his belief in order to make it appear that the woman got herself hanged by the rope and died as a result thereof. In such a case, the offence that has been committed would be one of grievous hurt which would fall under Section 325 IPC, and not an offence under Section 302 of the Code. This case is governed by the ruling given by the Full Bench in Palani Goundan v. Emperor', 42 Mad. 547 where the facts have been more or less similar to the facts that emerge in this case. The appellant is, therefore, liable to be punished only under Section 325, I. P. C. as he is proved to be guilty of only that offence and nothing more. He has dealt the blow which made the woman become unconscious, so much so that it created the impression and belief in the mind of the appellant as if she was dead.

7. The evidence of P. Ws. 6 and 7 also goes to prove that the hanging was done by the appellant under the impression that the deceased woman had died by reason of the blow which he dealt on her. Therefore, taking into consideration the material furnished by Exs. P. 4 and P. 6 and the evidence of P. Ws. 6 & 7, the

conclusion could be only that the offence of which the appellant is guilty is one that falls under Section 325 I. P. C. We, therefore, think that the conviction and sentence of transportation for life under Section 302, I. P. C. cannot be sustained. They have, therefore, to be set aside. As we are of the opinion that an offence has been proved only under Section 325 I. P. C, we think the appellant has to be convicted under that section and sentenced to seven years' rigorous imprisonment. The conviction and sentence are accordingly modified and the revision is dismissed.