In Re: Kannan

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Court : Chennai

Decided On : Oct-08-1968

Reported in : (1969)2MLJ109

Appellant : In Re: Kannan

Judgement :

R. Sadasivam, J.

1. Appellant Kannan has been convicted under Section 302, Indian Penal Code, for having caused the death of his child Ambujam. alias Marimuthu, aged about 4 years, at about 1-30 p. m. on 25th December, 1967 at Nannadu village and sentenced to imprisonment for life. He has also been convicted under Section 326, Indian Penal Code, on a charge under Section 307, Indian Penal Code, (second part) for having caused several injuries to his wife P. W. 1, Amaravathi, with a knife, in the course of the same transaction.

2. The facts of this case are in a short compass. The appellant suspected his wife, P.W. 1, of being in illicit intimacy with Poongan, his elder brother's son, and also suspected that she had taken a treasure trove from a broken wall of the dilapidated house and concealed the same. These facts put forward as motive for the attack made on P. W. 1 appear from the evidence of P. W. 10, Duraisami Josiyar, and P. W. 11, Alagirisami Udayar. In fact P.W. 1 has referred to the same in her evidence, Exhibit P-2 in the Committal Court and the same has also been

admitted by the appellant during his examination under Section 342, Criminal Procedure Code, in the Sessions Court.

3. P. W. 1, Amaravathi, the wife of the appellant, turned hostile in the Sessions Court and she pleaded ignorance as to how she sustained injuries and how her child Ambujam met with her death. But her evidence in the Committal Court has been marked as Exhibit P-2 under Section 288, Criminal Procedure Code, and it has been accepted by the learned Sessions Judge in view of the. evidence of P. Ws. 2 to 5 in this case. In Exhibit P-2, P. W. 1 has stated that when she and her husband were returning to their village from Villupuram and when they were near the Nanaadu Rice Mill, at about 1. p. m. on the date of occurrence, her husband stabbed her with a knife on several parts of her body and also the child she was carrying, with the result that the child died on the spot and she fell down unconscious. P. W. 2 Ramayee, the child of the appellant aged eight years who was coming behind her parents did not actually see the occurrence, but she saw the dead body of the child and noticed her mother having injuries. She was not examined in the Committal Court. P. W. 3, Varalakshmi, who was vending things in the betel shop of her father near the Rice Mill heard the cries of P. W. 2 and looked in that direction and actually saw the appellant stabbing P. W. 1 with something in his hand and P. W. 1 sustaining bleeding injuries. But she did not even notice as to whether P. W. 1 carried a child at that time. P. W. 4 Abdul Latheef, an accountant in the Rice Mill near the place of occurrence, saw P. W. 1 running with bleeding injuries and falling near the Banyan tree close to the Rice Mill. He saw the appellant running eastwards. P. W. 5, Guruchandran, who was working as a gangman on the road near the Rice Mill heard the alarm and saw the appellant running south with blood stains on his shirt and dhoti and when he questioned him, as he knew him before, the appellant dropped the pen knife which he was carrying and ran away. The appellant appeared at the Police Station and made the statement in pursuance of which P. W. 5 was traced and the knife was recovered. P. W. 1 gave the report, Exhibit P-11, to the Village Munsit, P. W. 13, Balakrisbna Naidu, who came to the spot on being sent for by P.W. 4 Abdul Latheef. Thus the evidence of P. W. 1 in the Committal Court marked as Exhibit P-2 is fully corroborated by the evidence of P. Ws. 2 to 5 and the conduct of the appellant in appearing at the Police Station.

4. The plea of the appellant in the Sessions Court that it was his brother's son Poongan who stabbed his wife and the child can hardly be accepted in the face of the evidence of P. W. 1 in the Committal Court and the evidence of the other witnesses referred to above.

5. There can be no doubt in this case that the appellant inflicted several incised injuries, viz., as may as 15 injuries, on P.W. 1 with a knife. But most of the injuries are only skin deep. The evidence of P. W. 8, Dr. Kesavan, is that the cumulative effect of all these injuries was likely to endanger life of the individual and he has therefore classified the injuries taken cumulatively as grievous. It is clear from his evidence that when P. W. 1 was brought to the hospital she was in a state of shock and collapse due to the injuries. There can be no doubt that the injuries had endangered the life of P. W.1 and the injuries caused by the appellant to his wife taken cumulatively have been rightly found by the Sessions Judge as grievous. The conviction of the appellant under Section 326, Indian Penal Code, for the attack on his wife is thus fully justified on the evidence and the sentence of three years rigorous imprisonment cannot be considered to be excessive. The said conviction and sentence are confirmed.

6. It is clear from the facts referred to above that there is practically no evidence in the statements given in the Sessions Court by the witnesses, P. Ws. 1 to 4, as to how the child met with its death. One has to rely only on the statement of P. W. 1 in Exhibit P-1 and P. (her evidence on the Committal Court) and her report, Exhibit P-11. In Exhibit P-11, the complaint made to the Village Munsif, P. W. 1 has stated that her husband stabbed her child with a knife and also stabbed her on several parts of the body and ran away and that he was not in balanced state of mind. In Exhibit P-1, the statement under Section 164, Criminal Procedure Code, she has stated that her husband had been talking to himself that she was having some other husband and questioned her about it and also about the treasure trove and in spite of her denial he took a knife and stabbed her with it, that she had her child on her hip and that she did not know as to what happened to the child. It is true that Exhibit P-1 is not substantive evidence in this case. In Exhibit P-2, P. W. 1 has stated that when she and her husband were returning home from Villupuram and were near Nannadu Rice Mill, her husband stabbed her with a knife on her cheek

and right shoulder and also stabbed the child. It is evidently on the basis of this latter statement alone the learned Sessions Judge has stated in paragraph 25 of the judgment that the fatal injury inflicted on the child which had pierced the heart was intentionally caused by the appellant. The learned Sessions Judge has not discussed the evidence in the light of the surrounding circumstances, before coming to the said finding of fact. The statement in Exhibit P-1 gives a clue to appreciate the evidence given by P. W.1 in the Committal Court. It could not be said that the appellant had any motive to attack the child or intended to kill the child. The motive spoken to by P. W. 1 in Exhibit P-1 and corroborated by the evidence of P. Ws. 11 and 12 has nothing to do with the attack on the child. In fact, the appellant did not cause any injury to his other child, P. W. 2 who came along with his wife. There can be no doubt that the appellant happened to stab his child during the course of the attack which he made on his wife, P. W. 1. It is therefore not possible to support the conviction of the appellant under Section 302, Indian Penal Code.

7. There is no scope for invoking Section 301, Indian Penal Code, embodying the principle of transfer of malice to convict the appellant under Section 302, Indian Penal Code. The learned Sessions Judge has acquitted the appellant on the charge under Section 307, Indian Penal Code, for the attack made on P. W. 1 but found him guilty only under Section 326, Indian Penal Code. Hence the appellant could not be imputed with the necessary mens rea to invoke Section 301, Indian Penal Code. The rationale of transferred malice has-been dealt with by Glanville L. Williams on Criminal Law--The General part (second edition) under Section 49 at page 134. At page 126 the Author has pointed out that transferred intention (transferred malice) occurs when an injury intended for one falls on another by accident. In Kenny's Outlines of Criminal Law, Nineteenth Edition (1966), page 40, there is discussion as to consequences of actus reus different from those foreseen. Clause (c) in para. 26 refers to the principle enunciated in Section 301, Indian Penal Code. Clause (d) of paragraph 26 refers to cases where the intended aim is an actus rets and an actus reus of a different kind is committed and it is pointed out that in those circumstances, the two cases must be considered separately.

8. In cases similar to the present one, the accused has been convicted either under Section 326, Indian Penal Code, or 304-A, Indian Penal Code, depending on the facts and circumstances of the case. In Empress v. Sahae Roe I.L.R. (1877) Cal. 623, a Bench of the Calcutta High Court found the accused in that case guilty under Section 326, Indian Penal Code, for the act of causing injury to a child in the course of assaulting a woman with a dangerous weapon which resulted in the death of the child carried by her. Referring to the language in Section 321, Indian Penal Code, Markby, J., who delivered the judgment observed:

The very general language of that section was, I think, used expressly for the purpose of covering a case of this kind. I also think that the prisoner is also liable for causing grievous hurt. Section 322 provides that ' Whoever voluntarily causes hurt, if the hurt which he intends to cause, or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt.' I think, that it is impossible to say, when a man strikes a woman with a child in her arms, and strikes her on that part of her person which is close to the head of the child, that he does not know that he is likely to cause grievous hurt to the child, he must, as a reasonable being, know that nothing is more probable than that the blow which he aims at the woman would fall on the child, and that any blow which would fall upon the child's head would be likely to cause such hurt as would endanger the child's life.

Gour, in his Penal Law of India, Eighth Edition, Volume III at page 2243, in referring to this decision has observed:

The learned Judge did not refer to the English law, but it is on this point identical. In this case the degree of violence used was such as led the Court to hold that the accused must have known, from the proximity of the child to the mother and the severity of his blows, that his act was likely to cause grievous hurt. The question whether in such a case the hurt intended or known to be likely, was simple or grievous must, in a measure, depend upon the effect produced, the degree of violence used, and the natural consequence of the use of that violence which the accused might reasonably be presumed to know.

We have already referred to the fact that the appellant dealt as many as, 15 incised injuries on P.W.1, the cumulative effect of which was grievous and one of the cuts which fell on the child caused a fatal injury to it. The appellant could properly be convicted for the stab injury caused to the child only under Section 326, Indian Penal Code, and not under Section 302, Indian Penal Code, having regard to the facts and circumstances of the case. The conviction of the appellant is therefore altered from Section 302, Indian Penal Code, to one under Section 326, Indian Penal Code. We set aside the sentence of life imprisonment and instead sentence him to rigorous imprisonment for three years and direct the said sentence to run concurrently with the sentence of three years rigorous imprisonment imposed under Section 326, Indian Penal Code, for the attack made on P.W. 1.

9. Subject to this modification, the criminal appeal is dismissed.