

N. Nagarajan Vs. State

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Court : Chennai

Decided On : Jun-10-2008

Reported in : 2008CriLJ4625

Judge : P.D. Dinakaran and ;K.N. Basha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304(1); Code of Criminal Procedure (CrPC) - Sections 164, 174, 174(3) and 313

Appeal No. : Crl. A. No. 664 of 2006

Appellant : N. Nagarajan

Respondent : State

Advocate for Def. : N.R. Elango, Addl. Public Prosecutor

Advocate for Pet/Ap. : K.V. Shanmuganathan, Adv.

Judgement :

K.N. Basha, J.

1. Challenge in this appeal is to the judgment of the learned Additional District and Sessions Judge, Fast Track Court No. 1, Chengalpat, dated 12-12-2001 made in SC No. 122 of 1999 convicting the sole accused, Nagarajan, for the offence under Section 302, IPC and sentencing him to life imprisonment.

2. The occurrence in this case is shown to have taken place on 26-11-1997 at 6.30 p.m. at the house of the accused at Door No. 1/1435, Second Anna Street, Gandhi Nagar, Sengunram, within the limits of Chozhavaram Police Station.

3. The charge against the accused is that suspecting the fidelity of his wife, the deceased Usha, the accused tied a rope on her neck and hanged her from the roof which resulted in the death of the deceased and thereby said to have committed the offence under Section 302, IPC.

4. In order to substantiate the case, prosecution examined P.Ws. 1 to 13, filed Exs. P. 1 to P.27 besides marking M.Os. 1 and 2.

5. The accused faced the trial under the following backdrop:

(i) The deceased is the wife of the accused. P.W. 1 is the uncle of the deceased. P.W. 2 is the brother of the accused. P.W. 3 is the brother-in-law of the accused. P.W. 4 is the brother of the deceased. P.W. 2, brother of the accused, stated that the accused and the deceased got married four years prior to the occurrence and the deceased is none else than the uncle's daughter of the accused. A male child was born out of their wedlock. There were frequent quarrel between the deceased and the accused and the deceased used to go to her parental house as the accused suspected her fidelity. On the fateful date of occurrence, i.e. on 26-11-1997. while P.W. 2 was in his shop, he was informed that the deceased was found hanging in her house. Thereafter, P.W. 2 went and informed P.Ws. 1 and 3 and others stating that the deceased, Usha, committed suicide by hanging.

(ii) P.W. 1, on information from P.W. 2 about the death of the deceased went to the house of the accused along with others and found the deceased lying on an iron cot. He was informed that there was quarrel between the deceased and the accused. He suspected the death of the deceased and therefore, gave a report, Ex. P.1 to P.W. 11, Sub Inspector of Police, at 4.00 a.m. on 27-11-1997.

(iii) P.W. 11, registered a case in Crime No. 1186 of 1997 for the offence under Section 174(3) Cr.P.C. Ex. P. 21 is the Express First Information Report and he sent the same to the higher police officials and to the Court and also to the R.D.O.

P.W. 6.

(iv) P.W. 6, on receipt of the First Information Report and requisition under Ex. P.6, went to the scene of occurrence at 1.00 p.m. on 27-11-1997. He recorded a statement from the accused, which was marked as Ex. P. 7 and also recorded a statement under Ex. P.8 from P.W. 3 and also examined other witnesses and recorded their statements under Exs. P. 9 to 14. Ex. P. 15 is the inquest report. Ex. P. 16 is the opinion of the R.D.O. which was sent to the police with his report, Ex. P. 17.

(v) The Doctor, P.W. 9, attached to the Government Stanley Medical College Hospital conducted post-mortem on the dead body of the deceased on 29-11-1997 at 11.10 a.m. He found the following injuries:

An oblique deeply grooved interrupted ligature mark seen encircling the neck above the level of thyroid cartilage extending over front of neck 10 cms. above suprasternal notch, 5 cms. below the left ear lobe, over the back 9 cms above the 7th cervical spine and on the right side one end is 3 cms below the angle of mandible and the other end is 4 cms below the right ear lobe. The ligature mark is dark in colour, 1 1/2 cms, in breadth and found interrupted over the right lateral aspect of neck with an interval of 6 cms. between the anterior and posterior ends. The base of ligature mark is hard and parchment like. On dissection of the neck, the tissues underneath are found free from bruising. The thyroid bone and thyroid cartilage are found intact.

Ex. P. 20 is the post-mortem certificate. The Doctor opined that the deceased died of asphyxia due to hanging.

(vi) P.W. 13. Inspector of Police, arrested the accused as produced by P.W. 10, who is the village president as the accused sought the help of P.W. 10 to surrender before the police. In pursuance of the confession of the accused, P.W. 13 altered the offence to one under Section 302 IPC from Section 174 Cr.P.C. Ex. P. 25 is the Express First Information Report and he sent the same to the Court and to the higher officials.

(vii) P.W. 13, took up investigation and in pursuance of the admissible portion of the confession of the accused, Ex. P. 23, he recovered M.O. 1, Coir rope, M.O. 2, Wooden stool as produced by the accused under Ex. P. 24 from his residence. He also prepared a rough sketch, Ex. P. 26. He sent the material objects for chemical examination through the Court. He sent a requisition, Ex. P. 27 to the Judicial Magistrate for recording the statement under Section 164 Cr.P.C. from the accused.

(viii) P.W. 5, the Judicial Magistrate, Thiruvottiyur, as per requisition and as per the order of the learned District and Sessions Judge under Ex. P. 3, after following the procedures recorded the judicial confession of the accused, Ex. P. 4. P.W. 5 sent his proceedings, Ex. P. 4, with a covering letter, Ex. P. 5 to the Judicial Magistrate No. II, Ponneri.

(ix) P.W. 13 in continuation of his investigation, examined the other witnesses and received the inquest report from R.D.O., P.W. 6, and also examined the post-mortem Doctor and received post mortem certificate, Ex. P. 20. After completion of investigation, P.W. 13 filed the charge sheet against the accused for the offence under Section 302 IPC.

6. When the accused was questioned under Section 313 Cr.P.C. in respect of the incriminating materials appearing against him through the evidence adduced by the prosecution, the accused denied each and every circumstances put forward against him as contrary to the facts. It is further stated by the accused that there were frequent quarrel between himself and the deceased, his wife, as the deceased was giving money given by him to some other person. It is further stated that whenever he questioned the deceased, the deceased asked him to kill her, but he refused to do so. The accused further stated that on the date of occurrence, when he entered into the house at 4.30 p.m. he found the deceased died due to hanging and he informed his mother and sister and thereafter surrendered before the police.

7. Mr. K.V. Shanmuganathan, learned Counsel for the appellant contended that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt by adducing clear and cogent evidence. It is submitted that the entire case

rests on the circumstantial evidence and there are several missing links in the circumstances put forward by the prosecution. The learned Counsel contended that the materials available on record through the evidence of P.Ws. 1 to 4 clearly shows that the deceased could have committed only suicide and as such, the accused could not have been held liable for the offence of murder. The learned Counsel would further contend that even the alleged judicial confession, Ex. P. 4, recorded by the Magistrate does not implicate the accused for the offence of murder and on the other hand, a perusal of the judicial confession, Ex. P. 4 shows that the deceased was consenting party and as such, the accused could not be attributed with the intention of causing the death of the deceased.

8. Per contra, Mr. N.R. Elango, learned Additional Public Prosecutor, contended that the prosecution has come forward with a clear, cogent and consistent evidence against the accused. It is submitted that the motive part of the prosecution is also proved by the prosecution through P.Ws. 1 to 4 as there are materials available on record to show that there were frequent quarrels between the accused and the deceased as the accused suspected her fidelity. It is submitted that there are incriminating circumstances available against the accused as per the evidence adduced by the prosecution. It is also submitted that the occurrence took place in the house of the accused wherein, the accused was residing along with the deceased and as such it is for the accused to give probable explanation for the death of the deceased. The learned Additional Public Prosecutor would further contend that the medical evidence through the Doctor, P.W. 9, who has conducted post-mortem also corroborated the version as it is disclosed from the post-mortem, Ex. P. 20 that the deceased died due to asphyxia due to hanging. Therefore, it is submitted by the learned Additional Public Prosecutor that the prosecution has proved its case beyond reasonable doubt against the accused in all aspects.

9. We have given our careful and anxious consideration to the rival contentions put forward by either side and also thoroughly scrutinized the materials available on record and perused the impugned judgment of conviction.

10. The entire prosecution case rests on the circumstantial evidence it is well settled by a catena of decisions of the Hon'ble Apex Court that in a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully proved and circumstances must be conclusive in nature to connect the accused with the crime. By keeping the above well settled principle of law in our mind in respect of circumstantial evidence, we shall now scrutinize the materials available on record against the accused as put forward by the prosecution.

11. The prosecution placed reliance on the following circumstances implicating the accused for causing the death of his wife, the deceased:

(i) Motive: The evidence of P.W. 1, uncle of the deceased, P.W. 2, brother of the accused, P.W. 3, brother-in-law of the accused and P.W. 4, brother of the deceased, clearly shows that there were frequent quarrels between the deceased and the accused as the accused suspected the fidelity of the deceased.

(ii) the occurrence took place inside the house of the accused wherein the deceased was living with the accused and the accused has not given any probable explanation for the death of the deceased.

(iii) the evidence of P.W. 12, who is the neighbour of the house of the accused, shows that there was a wordy quarrel between the deceased and the accused on the date of occurrence from 3.30 p.m. to 4.30 p.m. and as such just prior to the occurrence, the accused was very much available at the scene with his wife, the deceased.

(iv) the statement of the accused recorded under Ex. P. 7 by PW. 6, R.D.O., on 27-11-1997;

(v) the judicial confession recorded by the Magistrate, P.W. 5, as per his proceedings under Ex. P. 4 on 21-1-1998.

Considering the above said circumstances relied by the prosecution, we are constrained to state, at the outset, that there are clinching and incriminating circumstances available on record to implicate the accused for causing the death

of the deceased.

11.1 In respect of the first circumstance, namely, motive is concerned, the evidence of P.W.2, brother or accused, P.W. 3, brother in-law of the accused. P.W. 4, brother or the deceased and P.W. 12, neighbour of the accused and the deceased clearly shows that (here were frequent quarrel between the deceased and the accused as the accused suspected the fidelity or the deceased. Therefore, we have no hesitation to hold that the prosecution has proved the motive aspect against the accused.

11.2 The second circumstance is to the effect that the occurrence itself took place inside the house of the accused as both the accused and the deceased were husband and wife and they were living together in the house. Though P.W. 2, brother or the accused, has been treated as hostile, the fact remains that P.W. 2, on hearing about the death, immediately rushed to the house of the accused and the accused was present at that time in the house. P.W. 3, who is the brother-in-law or the accused, also categorically stated that on hearing about the occurrence he went to the house of the accused along with others and the accused was present at that time. It is the further version of P.W. 3 that on his enquiry, the accused informed him that he suspected the fidelity of the deceased and on that ground, he killed his wife, the deceased, by hanging her. Therefore, it is crystal clear that the occurrence took place inside the house of the accused and the accused was very much present at that time and added to that he has also given an extra-judicial confession to P.W. 3, who is none else than the brother-in-law or the accused. Therefore, we cannot brush aside this clinching circumstance available on record against the accused.

11.3 The third circumstance, namely, just prior to the occurrence the accused was very much available inside his house along with the deceased is very much evident from the evidence of P.W. 12, who is the neighbour of the accused. P.W. 12 categorically stated that there was a wordy quarrel between the deceased and the accused from 3.30 p.m. to 4.30 p.m. on the date of occurrence, i.e., on 26-11-1997 just prior to the occurrence. It is further specifically stated by P.W. 12 that after sometime the shouting was stopped and he has seen the accused coming

out of the house and bolted the doors outside. Therefore, the last seen theory coupled with the lad of the wordy quarrel took place between the deceased and the accused just prior to the occurrence as per the evidence of P.W. 12 is clinching and incriminating circumstance against the accused.

11.4 The fourth circumstance, namely, Ex. P. 7, the statement recorded from the accused by R.D.O., P.W. 6, is also incriminating the accused as he admitted that he is responsible for causing the death of the deceased. It is pertinent to be noted that this is the earliest statement of the accused and of course, in that statement he has come forward with the explanation that only at the instance of the deceased and as the deceased consenting, he has tied the rope on her neck and tied the rope from the roof of the house and removed the stool which resulted in the death of the deceased by hanging. This is one of the clinching and incriminating circumstance put forward against the accused and established by the prosecution beyond reasonable doubt.

11.5 The last but not the least circumstance relied on by the prosecution is the judicial confession, Ex. P. 4, recorded by the Magistrate, P.W. 5, from the accused which clearly implicates the accused as the accused admitted that he is responsible for causing the death of the deceased. But he has given explanation to the effect that only as per the consent of the deceased, he has indulged in tying the rope on the neck of the deceased and hanging her from the roof in his house resulting her death. It is pertinent to be noted that even the medical evidence adduced by the prosecution through the Doctor, P.W. 9, who has conducted postmortem is also corroborated the prosecution version as it is opined by the Doctor, P.W. 9 that the deceased died of asphyxia due to hanging.

11.6 Therefore, in view of the above said clear, cogent, consistent and incriminating circumstances put forward by the prosecution without leaving any missing links, we are constrained to come to the conclusion that the deceased died due to homicidal violence and that too at the hands of the accused.

12. Now we are left with the consideration of the crucial question involved in this matter regarding nature of offence said to have been committed by the accused.

13. The first and foremost defence raised by the accused is that the deceased was the consenting party for the accused to commit the offence of murder and as such the accused could not have been attributed with the intention of causing the death of the deceased. The defence placed reliance for such a plea on the statement of the accused under Ex. P. 7 given to P.W. 6, R.D.O., and the judicial confession, Ex. P. 4. recorded by the Judicial Magistrate, P.W. 5. If such defence is accepted by this Court, then the accused is entitled to invoke exception 5 to Section 300 IPC.

14. Exception 5 to Section 300 IPC reads hereunder:

Exception 5 to Section 300 IPC: Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

15. In order to test the materials available on record to find out whether the accused entitled to invoke exception 5 to Section 300 IPC, we have to refer the settled principle of law laid down by the Hon'ble Apex Court in respect of exception 5 to Section 300 in *Vijay v. State of M.P.* reported in : (1994)6SCC308. The Hon'ble Apex Court has held in that decision that,

8. ...The submission of the learned Counsel for the appellant that Exception 5 to Section 300 IPC is attracted in the facts of the case, is an argument in despair. It may be noted that Exception 5 to Section 300 IPC must receive a very strict and not a liberal interpretation and in applying the said exception the act alleged to be consented to or authorised by the victim must be considered with a very close scrutiny. In this connection, reference may be made to an old Full Bench decision of the Calcutta High Court in *Queen Empress v. Nayamuddin* ILR (1891) Cal 484.

The above settled principle of law laid down by the Hon'ble Apex Court clearly shows that exception 5 to Section 300 IPC must receive a very strict and not a liberal interpretation and in applying the said exception that act alleged to be consented to a or authorised by the victim must be considered with a very close scrutiny. If we scrutinize and analyse the materials available on record as relied on by the defence, namely, the statement of the accused recorded under Ex. P. 7 by

P.W. 6, R.D.O., and the judicial confession, Ex. P. 4, recorded by the Judicial Magistrate, P.W. 5, with the touchstone of the principle laid down by the Hon'ble Apex Court in the decision cited supra, we are of the considered view that the accused is not entitled to invoke exception 5 to Section 300 IPC. The plea of consent of the deceased was raised by the accused only in his statement under Ex. P. 7 and his judicial confession. Ex. P. 4 and there is no other material available on record to substantiate his plea.

16. But as far as exception 1 to Section 300 IPC is concerned, namely, the accused has committed the offence due to grave and sudden provocation, we are of the considered view that there are overwhelming materials available on record in favour of the accused for invoking exception 1 to Section 300 IPC.

17. As we have already pointed out, the evidence of P.Ws. 2 to 4 and P.W. 12 clearly shows that there were frequent quarrel between the deceased and the accused as the accused suspected her fidelity. It is pertinent to be reiterated that even in the statement recorded by the R.D.O., P.W. 6 under Ex. P.7 and the judicial confession, Ex. P. 4, the accused also categorically stated about the frequent quarrel took place between himself and the deceased and he has suspected her fidelity. The vital material available on record to probabalise the theory of grave and sudden provocation is the evidence of P.W. 12, the judicial confession, Ex. P. 4, and Ex. P. 7, the statement of the accused. P.W. 12 categorically stated that there was a quarrel for one hour, namely, from 3.30 p. m. to 4.30 p. m. on the fateful date of occurrence between the accused and the deceased and only thereafter the shouting was stopped and the accused immediately came out and bolted the door of the house from outside. This version of P.W. 12 in respect of the quarrel as well as in respect of last seen theory immediately after the quarrel clearly shows that the accused could have committed the offence only after a prolonged wordy quarrel.

18. A perusal of Ex. P. 4, judicial confession, clearly shows that the deceased was continued to indulge in illicit intimacy with some other person. It is further seen from the perusal of Ex. P. 4. judicial confession, that even a week prior to the occurrence the accused alleged to have seen the deceased coming along with

one Kicha in a cycle which could have very well added fuel into the fire. A reading of Ex. P.4, judicial confession makes it crystal clear that the accused was nurturing sustained provocation and ultimately the wordy quarrel took place for one hour between himself and the deceased just prior to the occurrence which would resulted him to loss his self-control and culminating into causing the death of the deceased due to grave and sudden provocation.

19. In a landmark decision in K.M. Nanavati v. State of Maharashtra reported in : AIR 1962 SC605 the Hon'ble Supreme Court has laid down the following principles regarding the Exception 1 to Section 300 I.P.C.:

1. The test of grave sudden provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in situation in which the accused was placed would be provoked as to lose his self-control.

2. In India, words and gestures may also, under certain circumstances, cause grave, and sudden provocation to an accused so; as to bring his act with the first Exception of Section 300 IPC.

3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

4. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion has cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

20. The above well settled principle of law laid down by the Hon'ble Apex Court, in the decision cited supra, is squarely applicable to the facts of the instant case as in this case also there are materials available on record to the effect that there were frequent quarrel between the accused and the deceased as the accused suspected her fidelity and the deceased continued to indulge in the activities of illicit intimacy with other person and even prior to a week to the occurrence, she was found along with one Kicha coming in a cycle by the accused and added to all these factors, just prior to the occurrence there was a wordy quarrel between the

accused and the deceased which lasted nearly for an hour and as such it is quite possible for the accused to lose his self-control due to grave and sudden provocation for committing the offence.

21. Therefore, for all these reasons, we are of the considered view that the accused is entitled to invoke the benefit of exception 1 to Section 300 IPC and accordingly, the conviction and sentence imposed on the appellant for the offence under Section 302 IPC by the learned Additional District and Sessions Judge, Fast Tract Court No. 1, Chengalpet, in S.C. No. 122 of 1999 dated 12-12-2001 are hereby set aside and instead the appellant is convicted for the offence under Section 304(1) IPC and sentenced to undergo seven years rigorous imprisonment.

22. With the above modification in conviction and sentence, this appeal is partly allowed.

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