

Kaleeswaran Vs. the State

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Court : Chennai

Decided On : Dec-15-2011

Judge : M.Jaichandren; S.Nagamuthu, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 449, 304(i) , 300; Code of Criminal Procedure (CrPC) - Sections 313, 428

Appeal No. : CRIMINAL APPEAL (MD).No.471 of 2010

Appellant : Kaleeswaran

Respondent : The State

Advocate for Def. : Mr.C.Ramesh, Adv.

Advocate for Pet/Ap. : Mr.A.K.Azhagar Samy, Adv.

Judgement :

The appellant is the sole accused in S.C.No.338 of 2010, on the file of the learned Principal Sessions Judge, Madurai. The Trial Court has convicted him under Sections 302 and 449 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for 3 months for offence under Section 302 of I.P.C and to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one month for offence under Section 449 of I.P.C. Challenging the said conviction and sentence imposed by the trial court by

judgment dated 30.11.2010, the appellant has come up with this Criminal Appeal.

2.The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Vinoth Kumar. P.Ws.1, 2, 4 are the father, brother and mother respectively of the deceased. P.W.3 is the brother of P.W.1. P.Ws.1, 2, 4 and the deceased were all residing in their own house at Ammapatti village. The accused also belongs to the same village. The accused has got a daughter by name Pandeewari. The deceased had developed intimacy with her. This was opposed to by the accused. During the month of April 2010, the accused had gone to a village near Madurai on account of his work and he was staying there. His daughter Pandeewari and his wife were in the occurrence village. It is the further case of the prosecution that the wife of the accused had informed the accused about the intimacy between the deceased and their daughter. Enraged over the same, on 27.04.2010, accused had come to the occurrence village at about 1.15 p.m. The deceased was sleeping in his house. P.Ws.1 to 3 and 4 were engaged in some work near their house. At that time, it is the case of the prosecution that the accused trespassed into the house of the deceased and cut the deceased with aruval on his neck. After causing an injury on the neck of the deceased, the accused fled away from the scene of occurrence. On hearing the alarm raised by the deceased, P.Ws.1 to 4 rushed towards the house of the deceased. At that time, they found the accused fleeing away from the house of the deceased with an aruval in his hand stained with blood. Thereafter, in an attempt to take the deceased to a hospital, they brought him out of the house. When they had taken him near the house of one Prakash, the deceased succumbed to the injuries. They brought back the body and kept it in front of the house of the deceased. Thereafter, P.W.1 proceeded to Peraiyur Police Station and preferred a complaint under Ex.P.1 at 2.00 p.m. P.W.12 was the then Sub-Inspector of Police, in-charge of the said Police Station. On the basis of Ex.P.1, she registered a case in Cr.No.130 of 2010 under Sections 302 of I.P.C against the accused. Ex.P.14 is the first information report. Then she forwarded Exs.P.1 and 14 through P.W.9 to the Court of the learned Judicial Magistrate No.2, Usilampatti. He handed over the same to the learned Magistrate at 6.00 p.m. P.W.12 handed over the case diary to P.W.13, the then Inspector of Police, attached to Peraiyur Police Station for

investigation.

3. Taking up the case for investigation, P.W.13, proceeded to the place of occurrence at 2.45 p.m and prepared an observation mahazar in the presence of P.W.5 and another witness under Ex.P.4. Then he recovered the bloodstained earth and sample earth from the place of occurrence under the mahazar, Ex.P.5, in the presence of the same witnesses. Then, he conducted inquest on the body of the deceased between 3.15 p.m and 5.15 p.m and prepared Ex.P.16, the inquest report. During inquest, he examined P.Ws.1 to 4 and recorded their statements. Thereafter, he forwarded the body for post mortem.

4. P.W.8 was the then medical officer attached to Thirumangalam Government Hospital. He conducted autopsy on the body of the deceased on 28.04.2010. During autopsy, he found the following external and internal injuries on the body of the deceased:

“External injuries:

Left side of neck- a cut injury - oblique in nature 5 cm below the left ear, 4 cm below the angle of left mandible. 10 cm x 4 cm x 4 cm : Left sterno cleido mastoid; left carotinal artery. External and internal jugular veins and all the nerves were transversed cut. Clotted blood. (n.c)

No other external injury.

Internal examination:

Neck-Hyoid bone normal

Thorax, Heart and Lungs-Pale.

Abdomen, Liver, Spleen, Kidneys-Pale.

Stomach: Contains semi solid food material (rice) around 100 ml present.

Intestines: Contains semi solid food material (rice) around 50 ml present.

Skull: Brain matter-pale.”

6.P.W.8 gave opinion that the deceased would appear to have died of hemorrhage and shock due to vital organ injury (left carotid and internal and external jugular vein), most probably between 20 to 22 hours prior to the autopsy.

7.Continuing the investigation, P.W.13 examined few more witnesses and recorded their statements and went in search of the accused. On the same day at 8.15 p.m, near Peraiyur bus stand, P.W.13 arrested the accused in the presence of P.W.6 and another witness. On such arrest, he gave a confession statement voluntarily and the same was reduced into writing by P.W.13. In the said confession statement, he disclosed that he had hidden the aruval near the Ammapatti Nayakkar Mudam Odai in a bush. In pursuance of the said disclosure statement, he took the accused and another witness and identified the said place and took out M.O.1, aruval and produced the same. P.W.13 recovered the same under Ex.P.7, mahazar. Then he returned to the police station along with the accused and the weapon recovered. Thereafter, he forwarded the accused to the court on 28.04.2010 for judicial remand. Then, he examined few more witnesses including the doctor and the witnesses for the mahazar. On his request, the material objects including aruval were sent for chemical examination by the learned Judicial Magistrate. Ex.P.12 is the chemical analysis report. According to the same, human blood was found in the bloodstained earth seized from the place of occurrence, on the aruval and on the baniyan and Lungi recovered from the body of the deceased. Ex.P.13 is the serologist report. According to the said report, human blood found on the above material objects belongs to 'O' group. Then, he handed over the case dairy to P.W.14 for further investigation. P.W.14 collected further materials, chemical analysis report and finally laid the charge-sheet against the accused under Section 302 of the Indian Penal Code on 08.07.2010.

8.Based on the above materials, the Trial Court framed charges against the accused under Sections 449 and 302 of I.P.C. Since the accused denied the charges, he was put on trial. During such trial, on the side of the prosecution, as many as 14 witnesses were examined and 16 documents were exhibited, besides five material objects.

9. When the accused was questioned under Section 313 of the Code of Criminal Procedure, in respect of the incriminating evidences, he denied the same as false. However, he did not choose to examine any witness or to exhibit any document on his side. Having considered the above materials, the trial Court ultimately found him guilty under both the charges and accordingly, punished him. That is how, the appellant is now before this Court with this Criminal Appeal.

10. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and also perused the records carefully.

11. At the outset, in this case, we have to state that there is no eye witness to the occurrence. P.Ws. 1 to 4 have only seen the accused fleeing away from the scene of occurrence with M.O. 1 arrival. Whether this fact as spoken to by P.Ws. 1 to 4 has been proved or not needs to be considered at the first. A perusal of these evidences would go to show that they have consistently stated that they had engaged in some work in their house at the time of occurrence. At that time, according to them, the deceased was sleeping inside the house. He was alone. When they heard the alarm raised by the deceased, they were attracted to the place of occurrence and when they were nearing the house, they found the accused fleeing away from the place of occurrence with arrival. Thus, from the evidences of P.Ws. 1 to 4, the fact that the accused was found fleeing away from the scene of occurrence has been established.

12. But, the learned counsel appearing for the appellant would contend that since these witnesses are closely related to the deceased and highly interested in the case of the prosecution, their evidences should be rejected. As has been consistently held by the courts, simply because, the witnesses are either closely related or interested in the case of the prosecution, their evidences cannot be straight away rejected. It all depends upon the facts and circumstances of each case. Though the witnesses are closely related and highly interested, if their evidences inspire the confidence of the court, there is no legal impediment to act upon their evidences. In this case, of course, it is true that P.Ws. 1 to 4 are the family members of the deceased. But the appellant/accused has not brought on record anything to disbelieve their evidences. Though the learned counsel made

an attempt to show that there are contradictions between the present evidences and their earlier versions stated in their respective 161 Cr.P.C statements, a close reading of the cross- examination of these witnesses would go to show that they were not contradicted with reference to any contradiction in their earlier versions. Therefore, the above argument of the learned counsel for the appellant deserves only to be rejected. Their presence also cannot be doubted, because they live in the occurrence place. The occurrence has taken place in their house. According to them, they engaged in some work near their house. Therefore, the fact that they were present at the place of occurrence is quite natural. Thus, their presence cannot be doubted and their evidences cannot be rejected. In view of the same, we hold that through P.Ws.1 to 4, the prosecution has proved that this accused was found fleeing away from the place of occurrence, when the deceased raised alarm.

13.It is their further evidence that immediately they went into the house and found the deceased with injuries on the neck. When he was enquired, he told them that it was this accused who caused the injury on his neck, because he had intimacy with the daughter of the accused. The oral statement of the deceased made to these witnesses falls within the ambit of Section 32 of the Evidence Act as oral dying declaration of the deceased. The said statement of the deceased also falls within the ambit of Section 6 of the Evidence Act. From the said oral dying declaration made by the deceased, it has been further established that the injury on the deceased was caused only by this accused.

14.The bloodstained earth recovered from the place of occurrence by the Investigating Officer, has been analysed by the Chemical Analyst and according to his opinion, there was human blood which was of 'O' group. In the baniyan and lungi found on the body of the deceased, human blood was noticed and the same was also of 'O' group. Thus, it has been clearly established that the deceased was cut at the place of occurrence by this accused.

15.Next comes the recovery of M.O.1-arival. It is the case of the prosecution that on the same day, the accused was arrested and on such arrest, he gave a voluntary confession in the presence of P.W.6 and another witness. In pursuance

of the said confession, he had taken P.W.13 and another witness to the said place and produced the aruval. Though the learned counsel for the appellant argued that the evidence of P.W.6 as well as the evidence of P.W.13 in respect of the arrest and confession of the accused cannot be believed, we do not find any cogent reason to disbelieve the said evidences. Based on the above disclosure statement of the accused, M.O.1 was discovered. According to the chemical analyst report, it also contained 'O' group human blood. Thus, the aruval has also been linked to the crime. P.W.1 has also identified that M.O.1 is the one which was taken by the accused at the time when he was found fleeing away from the scene of occurrence. Thus, the chemical analyst report also corroborates the evidence of P.Ws.1 to 4 that it was this accused who caused the injury on the deceased with M.O.1 aruval.

16.The learned counsel for the appellant would submit that the deceased would not have been in a position to raise alarm and to give oral dying declaration to P.Ws.1 to 4. This argument is based on the fact that the fatal injury was on the neck. In our considered opinion, this argument deserves only to be rejected for the simple reason that there was no injury on the vocal card or wind pipe or to the lungs. The injury was only on the neck more particularly on the left carotid artery and internal and external jugular veins. With this injury, we are of the view, that the deceased would have raised alarm and would have been in a position to speak for some time. During the course of cross examination, nothing has been elicited from P.W.8 about the stand taken by the accused that the deceased would not have been in a position either to raise alarm or to speak. Therefore, this argument is rejected.

17.P.W.8-doctor, who conducted autopsy has opined that the death was due to the injury on the neck, more particularly on the left carotid artery and internal and external jugular veins. He has further opined that the death was due to shock and hemorrhage due to the said injuries. In our considered opinion, in view of the said medical evidence, the act of the accused squarely falls within the ambit of third limb of Section 300 I.P.C.

18. The learned counsel for the appellant would submit that even assuming that the accused had caused the death by causing injury, still the offence would fall only under Section 304(i) of I.P.C. According to him, since there was a single injury on the neck and since the accused had acted due to sustained provocation as his daughter had been spoiled by the accused, the act of the accused would fall within the ambit of first exception to Section 300 I.P.C.

19. But the learned Additional Public Prosecutor would submit that it is a clear case of murder and the same would not fall within the ambit of first exception to Section 300 I.P.C.

20. We have anxiously considered the said submissions. It is the admitted case of the prosecution that the deceased had developed intimacy with the young daughter of the accused. The accused had gone elsewhere for some coolie work. His wife intimated the same to him. Therefore, he had returned to the village. On getting information from the wife that his daughter was spoiled by the accused by developing intimacy, surely the accused would have been provoked. The said provocation would have surely been sustained in his mind. When he went to the house of the deceased, it is not in evidence that he went with aruval, so as to suggest pre-meditation on his part. The accused has not also caused more than single injury. For a moment, we are not prepared to say that in all cases, where there is a single injury, the offence would fall within the ambit of first exception to 300 I.P.C. On the contrary, we only say that in this case, had it been the intention of the accused to do away the deceased and in the backdrop of sustained provocation, we are of the view that the very fact that the accused did not repeat the cut would go to show that he had no intention to cause the death of the deceased. From the totality of the circumstances available, it could be inferred that prior to the occurrence, there might be some wordy quarrel between the accused and deceased, which has resulted in the crime. It is not a mere surmise and it is on appreciation of totality of the circumstances and on going by the natural course of events. We are of the view that out of the said provocation caused by the deceased, the accused would have caused single cut on the deceased. Thus, in our considered opinion, the act of the accused would fall within ambit of first exception to Section 300 I.P.C and consequently, the offence would fall under

Section 304(i) of I.P.C.

21. Coming to the quantum of sentence, at the time of commission of the offence, the accused was hardly aged 47 years. He has got a big family to look after. He is a poor man living on coolie work. While imposing sentence upon him, these factors are also relevant factors which should be taken into account. Appreciating all the above circumstances, more particularly his family background and events which led to the occurrence, we are of the view that imposing a punishment of rigorous imprisonment for 10 years besides fine of Rs.1,000/- will meet the ends of justice. So far as the offence under Section 449 of I.P.C is concerned, since it has been proved that the accused had entered into the house of the deceased, we hold that the said charge has been proved and the quantum of punishment is also very reasonable.

22. In the result, this criminal appeal is partly allowed in the following terms:

i) the conviction and sentence imposed on the appellant/accused in S.C.No.338 of 2010 by the learned Principal Sessions Judge, Madurai under Section 302 I.P.C is set aside and instead, he is convicted under Section 304(i) I.P.C and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.

ii) The conviction and sentence imposed by the trial court for the offence under Section 449 of I.P.C is confirmed.

iii) The period of sentence already undergone by the appellant shall be set off under Section 428 of Code of Criminal Procedure.

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