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Thangaperumal Vs. State

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Court : Chennai

Decided On : Dec-01-2011

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

Acts : Indian Penal Code (IPC) - Sections 302, 300, 304; Code of Criminal Procedure (CrPC) - Section 313; Tamil Nadu Prohibition of Harassment of Women Act - Section 4

Appeal No. : Criminal Appeal (MD) No.7 of 2011 and M.P.(MD)No.1 of 2011

Appellant : Thangaperumal

Respondent : State

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

Advocate for Pet/Ap. : Mr.A.Thiruvadikumar, Adv.

Judgement :

1. The appellant is the sole accused in S.C.No.241 of 2005 on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Thoothukudi. The Trial Court, by its judgment dated 30.11.2010, has convicted him for the offence under Section 302 IPC and awarded life sentence with a fine of Rs.1000/- in default, to undergo R.I. for one year. Challenging the same, the appellant is before this Court in the appeal.

2. The case of the prosecution in brief is as follows:- (i) PW.1 is the wife of the accused. After their marriage, the accused and PW.1 were residing at Mettupatti Village in Theni District. Out of the said wedlock, PW.1 became pregnant but the accused had a suspicion about the pregnancy. He started scolding PW.1 that the pregnancy was due to illicit intimacy of PW.1 with someone else and that he was not the father of the child in the womb. PW.1 preferred a complaint against the accused and started staying at the house of her parents. After some time, she gave birth to a male child, who was later on, named after, Karthick Raja. PW.1 and the deceased child were in Kancheepuram at the house of his sister. While so, some time before the alleged occurrence, the accused and his family members including his mother went to Kancheepuram and persuaded PW.1 to return to the matrimonial home. Accordingly, PW.1 along with the deceased child returned to the house of the accused. Even after such return, the accused did not stop alleging that the child was not born to him. While so, on 2.8.2004, the accused told PW.1 that he was going to sleep in a nearby Pilliar Temple and wanted PW.1 to sleep in his house. He had also wanted PW.1 to wake him up at 4.00 a.m., on the next day. Accordingly, PW.1 along with the child was in the house of the accused. Around 4.00 a.m., PW.1 went to the Temple and woke him up. At that time, the child was also with PW.1. The child wept for milk. On seeing the child weeping, the accused got wild. He beat PW.1 on her back of her chest. Even at that time, he scolded PW.1 alleging that she had given birth to the child out of her illicit intimacy with somebody else. PW.1 returned to the house with the child. Within a short time, the accused returned to the house along with a stick. Entering into the house, he started attacking the child with the stick indiscriminately. PW.1 intervened. But the accused attacked her also indiscriminately. On hearing the alarm raised, the neighbours came to his house. The accused told them that it was his domestic affair. Therefore, they all went away believing that he would stop the quarrel. But the accused continued to beat the child and then he took the child and immersed him in water in a vessel (MO.2). He also stamped the child with his legs. PW.1 tried to prevent but could not succeed. The child succumbed to the cruel act of the accused. PW.1 cried for help. On seeing neighbours rushing to his house, the accused fled away from the scene of occurrence.

(ii) PW.1, thereafter, proceeded to Vilathikulam Police Station at 8.15 a.m., and preferred a complaint under Ex.P1. PW.8 accompanied her. (iii) PW.19 who was the then Head Constable attached to the said Police Station registered a case in Crime No.335/2004 under Section 302 IPC. Ex.P8 is the F.I.R.,. Then, he forwarded Exs.P1 and P.8 to the Court and handover the Case Diary to PW.20 for investigation.

(iv) Taking up the investigation, PW.20 proceeded to the place of occurrence at 8.50 on a.m., on 3.8.2004 and prepared an Observation Mahazar in the presence of PW.11 and another witness. He also prepared a Rough Sketch showing the place of occurrence. He recovered Material Objects Mos.1 and 2 from the place of occurrence under Ex.P.3 Mahazar. Then, he conducted inquest on the body of the deceased in the presence of the panchayatdars during which he examined PWs.1 to 10 and recorded their statements. Then he arranged for taking photographs of the child which are MOs.3 & 4. On the same day, at 2.00 p.m., PW.20 arrested the accused at Subramaniapuram Vilakku in the presence of PW.15 and another witness. He brought the accused to the Police Station and then forwarded him to the Court for judicial remand. Then, he recovered the clothe collected from the body of the accused.

(v) PW.12 conducted autopsy on the body of the deceased on 3.8.2004 at 12.15 p.m.,. During autopsy, she found the following injuries:- External Injuries:

1) Contusion of 7 x 1 cm transverse 2 cm below sternum 2) 1 cm below the above wound contusion of 7 x 1 cm transverse. 3) Contusion of 7 x 1 cm oblique just above the umbilicus. 4) Contusion of 7 x 1 cm transverse above the right knee 5) Contusion of 6 cm below right iliac spine 4 x 1 cm. 6)Contusion of 2 X 1 cm in left thigh in oblique position 7)Contusion on the left side of forehead 4 x 4 cm

8) Contusion of 6 cm below the right clavicle on the back of 12 x 1 cm oblique from midline towards right shoulder

9) 1 cm below the above injury, contusion of 3 x 2 cm oblique 10) 1 cm below the above wound contusion of 3 x 2 cm oblique 11) 4 cm below the above injury, contusion of 4 x 2 cm transverse. 12) 4 cm below the above wound contusion of 4

x 1 cm oblique 13) Contusion of 5 x 0.5 cm in the right gluteal region 3 cm lateral to midline.

14) Abrasions of 1 cm on left side on the back 4 cm from the midline in 4 places.

15) giHa fhaj;jGk;g[fs; cly; KGtJk; MA;fhA;Bf cs;sJ. Internal Injuries

Hyoid bone fracture of right horn present. njak; 100 fpuhk; miwfs; fhypahft[k;, btspwp BghapUe;jJ. EiuaPuy; nuz;Lk; btspwp BghapUwpjJ. Stomach - Pale and empty. Liver - 550 gms Pale. Intestine Pale and dilated. Spleen 55 gram pale. Right Kidney - Injured and capsule ruptured. Left Kidney pale. About 2 litres of clotted and altered blood seen in peritoneal cavity and retroperitoneal region. Bladder - empty. Skull bone intact. Membranes intact."

Ex.P.5 is the Post Mortem Certificate. She gave an opinion that the deceased would appear to have died of shock and internal bleeding due to injury to right kidney.

(vi) Continuing the investigation, PW.20 collected the Post Mortem Certificate, examined few more witnesses and recorded their statements. Finally, on 8.10.2004, he laid a charge sheet against the accused under Section 302 I.P.C.,.

3. Based on the materials, the Trial Court, framed charges under Section 302 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. When the accused was questioned in respect of the charges, he pleaded innocence. Therefore, he was put on trial. During the trial, as many as 20 witnesses were examined and 10 documents were exhibited, besides 6 Material Objets. When the above incriminating evidences were put to the accused under Section 313 of the Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor exhibited any document on his side. Having considered the above materials, the Trial Court found him guilty in both the charges and accordingly, punished him. Aggrieved by the conviction and sentence awarded by the Trial Court, the appellant has preferred this Appeal.

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

5. PW.1 is the main eye-witness upon whose evidence, the prosecution, mainly relies on. She has categorically narrated the entire occurrence, which took place on the crucial date. But the learned counsel for the appellant would submit that because of the ill feeling between her and the accused she has falsely deposed against the accused and therefore, she should be disbelieved. But, we find it very difficult to accept the said contention. A perusal of the cross-examination would show that nothing has been brought on record to disbelieve her evidence. Her evidence is so cogent and convincing and thus, we do not find any reason to reject her evidence. Simply, it has been suggested to her that she was having illicit intimacy with PW.3 and at the instigation of PW.3, she has given the complaint, we cannot accept at all the said contention put forward by the accused as there are no materials to substantiate the said contention.

6. Apart from the evidence of PW.1, the prosecution relies on the evidence of the neighbours. PW.3 hails from the said village. According to him, on hearing the quarrel from the house of the accused, he went to the house of the accused along with the other witnesses and the accused told them that it was his domestic affair into which others should not interfere. Therefore, they went away. So far as this witness is concerned, it has been suggested to him during cross-examination that, he had developed illicit intimacy with PW.1 and it was he who instigated PW.1 to falsely depose. The said suggestion has been denied by him. However, for some reason, the prosecutor sought permission from the Trial Court to cross-examine him. The Trial Court simply granted permission on such request and accordingly, the prosecution treated him as hostile. In our considered opinion, his evidence as spoken to in chief examination which was asserted in cross-examination could be believed and acted upon.

7. PW.4 is a neighbour of the accused. He has also spoken about the accused scolding PW.1 in his house. PW.5 is yet another neighbour of the accused who has also spoken to about about the beating of the child by the accused with stick. PW.6 has also spoken to about the same. Though these witnesses, later on, when re-called after a long time, have disowned the facts spoken to by them in chief examination, we are of the view that their evidence spoken to during chief examination can be acted upon. As we have seen they were examined in chief

examination on 12.6.2007 and they were cross-examined on the same day itself. But they were recalled for further cross-examination on 22.9.2010 wherein they have rebuked from their earlier evidence.

8. From the evidences of these witnesses, the prosecution has clearly established that it was this accused who attacked the deceased child and caused injuries. PW.12 who conducted Post-Mortem Examination has clearly opined that the death was due to injuries more particularly injury to kidney. Thus, the medical evidence also duly corroborates the eye-witness account, through which the prosecution has established that the deceased was done to death by this accused by beating indiscriminately.

9. The learned counsel for the appellant would submit that the act of the accused would fall within the ambit of Exception 4 to Section 300 of IPC and therefore, the offence would fall only under Section 304 Part-II of the IPC. We were not persuaded to agree with the said argument for the simple reason that here is a case where the accused has attacked an young child indiscriminately with a wooden log. It is a common knowledge of every one that if a small child is attacked with wooden log, it would result in death. Therefore, the act of the accused would fall squarely within the 4th limb of Section 300 of the Indian Penal Code. Further, it is not as though, the accused, without taking any undue advantage and in a fit of anger attacked the child. It is a case where the accused was going on attacking the child repeatedly because, according to him, the child was not born to him but born to some one else with whom PW.1 had illicit intimacy. Therefore, we are of the view that the act of the accused would not fall within the exception 4 to Section 300 IPC. So, we hold that the conviction of the appellant under Section 302 IPC deserves to be confirmed.

10. In the result, we find no merit in the Appeal and the Appeal is dismissed. We confirm the conviction and sentence imposed by the Trial Court. M.P.(MD)No.1 of 2011 is closed.

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