Kattu Raja Vs. State

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Court : Chennai

Decided On : Apr-30-2013

Judge : K.N.Basha

Appellant : Kattu Raja

Respondent : State

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED 30 04.2013 CORAM THE HONOURABLE MR. JUSTICE K.N.BASHA AND THE HONOURABLE MR. JUSTICE S. NAGAMUTHU CRL.A.No.220/2012 Kattu Raja .. Appellant / Sole Accused Versus The State by The Inspector of Police Oragadam Police Station, Kancheepuram. .. Respondent / Complainant Appeal filed under section 374 [ii] Cr.P.C., against the Judgment of the learned District and Sessions Judge, not II, Kancheepuram, Kancheepuram District in SC.No.10/2011 dated 13.03.2012. For Appellant : Mr.T.R.Ravi For Respondent : Mr.V.M.R.Rajendiran Addl.Public Prosecutor JUDGMENT S.NAGAMUTHU, J.

The appellant is the sole accused in SC.No.10/2011 on the file of the learned Sessions Judge, No.2, Kancheepuram. He stood charged for offence u/s.302 IPC. By the Judgment dated 13.03.2012, the Trial Court found him guilty, convicted him u/s.302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:- [a] The appellant is a resident of Karanithangal village. The deceased in this case was one Mrs.Mageshwari. She also belonged to the same village. The accused was employed as a watchman in a factory known as "M.M.Forgings Limited" in the same village. The deceased was also working in the same industry. It is alleged that in course of time, the accused and the deceased were moving closely. They were also seen frequently by others when they were engaged in chatting in the factory premises. [b] On the night intervening 08.06.2008 and 09.06.2008, the deceased and her mother [P.W.1] were sleeping in the shop run by P.W.1 in the same village. At about 4.00 a.m., P.W.1 found the deceased lying unconsciously. When she tried to wake her up, she found that the deceased was dead. There were injuries on her head. Immediately, P.W.1 proceeded to the Oragadam Police Station. P.W.9-Mr.Madanagopal, was the then Sub Inspector of Police attached to the same police station. On 09.06.2008 at about 7.30 a.m., P.W.1 appeared before him and preferred a complaint under Ex.P.1. On the said complaint, he registered a case in Crime No.335/2008 for the offence u/s.302 IPC [vide Ex.P.8]. He forwarded Ex.P.1 and Ex.P.8 to the Court and handed over the Case Diary to P.W.13, the then Inspector of Police attached to Oragadam Police Station. [c] Taking up the case for investigation, P.W.13 proceeded to the place of occurrence at 8.00 a.m. and prepared an Observation Mahazar [Ex.P.3] and Rough Sketch [Ex.P.10] in the presence of P.W.3 and another witness. Then he recovered blood stained earth [M.O.1] and sample earth [M.O.2] from the place of occurrence under the Mahazar [Ex.P.2] in the presence of the same witnesses. Then he conducted inquest on the body of the deceased between 8.45 a.m. and 10.15 a.m. Ex.P.11 is the Inquest Report. Then, he sent the body for postmortem. [d] P.W.8, Dr.Yamuna conducted autopsy on the body of the deceased on 09.06.2008 at 4.30 p.m. She found the following injuries:- "External Injuries:- Brain tissue found in both nasal cavities. A deep laceration of about 10 x 8 x 4 cm left temporal region of scalp exposing fractured skull bone, brain tissue. A laceration 8 x 4 x 4 cm parietal region of scalp exposing fractured skull bone , brain tissue. Internal Injuries:- Skull opened Clotted blood found on the surface of brain. Laceration brain left temporal lobe 8 x 5 x 4 cm parietal lobe 7 x 4 x 4 cm . Base of brain distalled." Ex.P.7 is the Postmortem Certificate. She opined that the deceased died of head injuries. [e] Continuing the

investigation, P.W.13, examined few more witnesses and recorded their statements. On 30.07.2008 at about 5.00 p.m., he arrested the accused at Thangal Junction. On such arrest, the accused allegedly made a voluntary confession in which he had disclosed the place where he had hidden the wooden log [M.O.3]. Ex.P.12 is the said Disclosure Statement. In pursuance of the same, he took P.W.13, P.W.6 and another witness to the said place and produced M.O.3-wooden log from the hide out. P.W.13 recovered the same in the presence of P.W.6 and another witness under Ex.P.5-Mahazar. On returning to Police Station, he sent the accused for judicial remand and also forwarded the material objects to the Court. He made a request to the Court for forwarding the material objects for chemical examination. He collected the medical records, examined the doctor and finally laid charge sheet against the accused for the lone offence u/s.302 IPC.

3. Based on the above materials, the Trial Court framed charge u/s.302 IPC against the accused. The accused pleaded innocence and therefore, he was put on trial. During the course of trial, on the side of prosecution, as many as 13 witnesses were examined; 15 documents were exhibited besides 7 material objects.

4. Out of the said witnesses, P.W.1-Chokkammal, is the mother of the deceased, who has spoken to about the frequent meetings of the deceased and the accused. She has also stated that on the crucial date, the deceased was sleeping along with her and early in the morning, she found the deceased dead and she also found injuries on the head of the deceased. P.W.2-Mageshwari, is the sister-in-law of the deceased. She is not an eyewitness to the occurrence and she has stated that she came to the place of occurrence after hearing the message that the deceased was dead. P.Ws.4 and 5 are the co-employees of the deceased. They have also spoken to only the fact that on few occasions they found the accused and the deceased talking to themselves. P.W.6 Ramesh, has spoken to about the arrest of the accused, the alleged voluntary confession of the accused and the consequential discovery of the material object [M.O.3]. P.W.8-Dr.Yamuna, has spoken to about the cause of death. P.W.9-Madanagopal, the Sub Inspector of Police, has spoken about the registration of the case. P.W.10 and P.W.11 have

not said anything against the accused and they have turned hostile. P.W.13-Varadharajan, the Inspector of Police has spoken to vividly about the investigation done by him.

5. When the above materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. He did not chose to examine any witness on his side nor to mark any document. Having considered the above, the Trial Court found the accused guilty u/s.302 IPC and accordingly punished him as stated supra. Hence, the appellant is before this Court with this appeal.

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

7. This is a case based on circumstantial evidence. It is a well established principle of law that in a case where the prosecution relies on circumstantial evidence, the circumstances projected should be proved beyond reasonable doubts and such proved circumstances should form a complete chain so as to unerringly point the guilt of the accused and there should not be any other hypothesis which is consistent with the innocence of the accused. Applying the said principle to the facts of the instant case, let us analyse the evidence available on record to find whether the prosecution has proved the charge against the accused.

8. To find the accused guilty , in the instant case, the trial court has relied on the following circumstances:- (i) the deceased and the accused were closely moving in the factory where they were working. (ii) the accused did not turn up for duty from 09.06.2008 onwards. (iii) the accused gave a voluntary confession to P.W.13 during the course of investigation on 30.07.2008. In the said confession, the accused had disclosed that he had illicit intimacy with the deceased and he did not like the deceased in talking terms with other male members working in the factory. On the fateful day when he advanced sexual overtures to her, she did not agree and, therefore, he killed her by attacking her with wooden log. (iv) M.O.3 Wooden Log was recovered on the disclosure statement of the accused made to P.W.13. (v) the accused did not examine any witness on his side to prove that he turned up for duty. (vi) According to medical opinion, the injuries found on the deceased would have been caused by a weapon like M.O.3 and the death was due to shock

and haemorrhage due to the head injuries. The accused had the intention to do away with the deceased and, therefore, the offence would fall under Section 302 of IPC.

9. In our considered opinion, the above circumstances relied on by the trial court to hold the accused guilty are either not admissible or not proved. At any rate, there is no evidence to connect the accused with the death of the deceased at all.

10. The foremost circumstance relied on by the prosecution is that according to P.W.4 and P.W.5, the accused was found closely moving with the deceased in the factory premises as spoken to by P.W.4 and P.W.5. In our considered opinion, assuming that the evidence of P.W.4 and P.W.5 is true that the accused was found talking to a co-worker viz., the deceased during the working hours, it cannot be said that it is incriminating. Assuming for a moment that this circumstances is incriminating, this itself will not go to establish the guilt of the accused.

11. But, the trial court has relied on the alleged confession made by the accused to P.W.13 during the course of investigation in the presence of P.W.6 and another witness. In paragraph 24 of its judgement, the trial court has extracted the entire confession and in the concluding portion of the judgement, the trial court has observed that the confession of the accused corroborates the evidence of P.W.4 and P.W.5. This observation of the trial court is really shocking. It is well known that a confession made by the accused to the police during the course of investigation is irrelevant and the same is not admissible in evidence against the accused as envisaged in Section 25 of the Evidence Act. Section 27 of the Evidence Act is only a proviso to Section 25 of the Evidence Act. To what extent the said statement could be admitted in evidence as relevant was examined in detail by the Privy Council in Pulukuri Kottaya vs Stae of Emperor, AIR 194.PC 87.The said judgement finds reference in almost all Text Books on The Evidence Act. In the said judgement, the expression distinctly as employed in Section 27 of the Evidence Act was examined in detail and ultimately, it was held that the part of the statement which distinctly leads to the discovery of a fact alone is admissible. This, exception provided in Section 27 of the Evidence Act is very limited. But, in the instant case, unfortunately, the trial court has relied on the entire confession to

come to the conclusion that the accused had illicit intimacy with the deceased. Subsequently, the deceased developed intimacy with the others which was opposed to by the accused and on the fateful day when the accused advanced sexual overtures, the deceased did not respond positively and, therefore, the accused had attacked the deceased with wooden log and caused her death. In order to prove the above facts, absolutely there is no evidence. But, the trial court has relied on the confession of the accused by quoting the same extensively forgetting for a moment that Section 25 of the Evidence Act is a bar.

12. Thus, the trial court has relied on the recovery of M.O.3 Wooden Log on the disclosure statement made by the accused. Section 27 of the Evidence Act states that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Here, it needs to be noticed that it is not every fact that is discovered out of such statement which makes such statement as admissible. It is only the discovery of a relevant fact which makes the statement admissible in evidence. As has been held by the Privy Council in Pulukuri Kottaya vs Stae of Emperor's case [cited supra], the relevancy between the crime and the fact discovered should be proved through other evidence and not by the confession itself. For example, if there is eye witness to the occurrence and if such witness identifies the weapon, such disclosure statement becomes admissible inasmuch as the relevancy between the crime and the weapon is established by means eye witness account. If the blood stains found on the weapon, on its being subjected to DNA examination, discloses that the blood stain tallies with the blood of the deceased, then, the relevancy stands established. Thus, there are other ways to prove the relevancy between the fact discovered and the crime. If only such relevancy is established, the statement, consequence of which the fact is discovered, becomes admissible. But, in the case on hand, the link between M.O.3 and the crime has not at all been established by any other evidence. Thus, the fact discovered [recovery of M.O.3] is not a relevant fact and so, the very disclosure statement is not admissible in evidence as the same does not satisfy the requirements of Section 27 of the Evidence Act.

13. Nextly, the trial court has relied on the statements of the two witnesses [P.W.4 and P.W.5] made under Section 161 of Cr.P.C. during the course of investigation to the investigating officer. In paragraph 24 of the judgement, the trial court has observed that the fact that the accused and the deceased were closely moving and there was illicit intimacy between them have been extensively spoken to by these two witnesses in their statements made under Section 161 of Cr.P.C. Then, the trial court has gone further to hold that the evidence of these two witnesses made on oath before the court is duly corroborated by the statements of the witnesses made under Section 161 of Cr.P.C. We regret to state that even at this length of time, it has not been learnt that the statement of a witness made under Section 161 of Cr.P.C. could be used only to contradict the maker of the statement as provided in Section 145 of the Evidence Act and not for any other purpose. Section 161 of Cr.P.C. is the legislative command which mandates that such statement shall not be used for corroboration.

14. Yet another observation of the trial court exhibits the surmises and conjunctures made by the trial court to meet out the arguments of the learned counsel for the defence that there would not have been any intention on the part of the accused to commit murder. In this regard, the trial court has made the following observation [the translated version of the observations of the trial court] in paragraph 26 is extracted hereinbelow:- "The intention of the accused is only to commit the murder of the deceased because the husband of the deceased was an old man and a drunkard and so the deceased could not enjoy sexual pleasure from him. This was made use of by the accused to share sexual pleasure with the deceased. Since the deceased was found speaking to another male, the accused got wild. This was the circumstance which led the accused to commit the murder. In order to avoid the deceased making cries, the accused would have forced cloth into her mouth and then committed murder.

15. In paragraph 22, the trial court has made the following observation [translated version of the observation of the trial court] is thus:- "A man and woman, if left alone, will always go for sexual intercourse. In this case, the accused and the deceased might have been left alone. At that time, the accused would have advanced sexual overtures towards the deceased. The deceased might have

refused. Still, there might have been sexual intercourse between them. Again the accused would have invited her for sexual intercourse. The deceased might have refused. This would have resulted in ill-feeling. Since the deceased did not readily agree for sexual intercourse with the accused and since the deceased was talking to other men, which was not to the liking of the accused, the accused had developed an intention to commit murder. Since the conversations between the accused and the deceased in respect of their sexual activities would have taken place secretly , the same would not have been known to others. Therefore, I hold that the accused had the intention to murder the deceased." 16. These observations of the trial court are based merely on conjunctures. It is not understood as to how the court could come to a judicial conclusion that a man and woman, if left alone, will always go in for sexual intercourse. To come to the above conclusion regarding the intention of the accused, except the above observation, which were purely based on surmises and conjunctures, there is absolutely no other evidence.

17. Nextly, the trial court has found that the accused was found missing after the death of the deceased. This, according to the trial court, is an incriminating circumstance. In our considered opinion, it is not so. It is not as though the accused was in any manner either related or connected to the deceased. Assuming that the accused was missing, it will not amount to absconding. This circumstance itself will not be sufficient to prove the alleged guilt of the accused as there is no other evidence available against the accused.

18. It is seen from the judgement of the trial court that the learned Public Prosecutor and the learned defence counsel had cited a number of judgements from the Hon'ble Supreme Court as well as this Court in order to drive home their contentions. The trial court has extracted the Head Notes of the reported judgements and has made reference about the same in the judgement. Time and again , the Hon'ble Supreme Court as well as this Court, have been impressing upon the subordinate judiciary that as and when a decision is cited at the bar, the court should look into the ratio decidendi in the same and apply the same, if in the factual scenario, the same is applicable. The Head Notes and Law Reports in Law Journals are made by the Editors of the Law Journals for the benefit of the readers

so that the readers could know as to what the judgement is about. The Head Notes do not form part of the judgement. The judgement cited at the bar should be read as a whole by the court so as to identify the ratio decidendi and then to apply the same to the facts of the case on hand. The practice of extracting the Head Notes of the reported judgements have been deprecated as the same is not a correct practice. But, the recent experience shows that the said practice has not come to an end. The instant case is an illustration of the said inappropriate practice of extracting the head notes written by the Editors of the Law Journals.

19. Nextly, the trial court has not [we regret to say] discharged its judicial obligation as enshrined in Section 313 of Cr.P.C. while questioning the accused. Questioning the accused under Section 313 of Cr.P.C. should not be made as an empty formality. It is not a ritual. It serves a salutary purpose which is guaranteed as a fundamental right by the constitution. Under Article 21 of the Constitution, fair trial is promised. It is only in tune with the guaranteed fair trial, section 313 of Cr.P.C. mandates that all incriminating circumstances should be brought to the notice of the accused so as to provide him an opportunity to express his stand regarding the same. While questioning so, the facts should be put to the accused simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand [vide Tara singh v. State , AIR 195.SC 441]. But, in the case on hand, as we have already noticed, 13 witnesses were examined on the side of the prosecution. The trial court has framed a total number of 13 questions each one question referring to the evidence of one witness. For example, question No.1 relates to the evidence of P.W.1 as a whole and the question No.2 relates to the evidence of P.W.2 as a whole. It goes on like this. In our considered opinion, this does not reflect the fair procedure required to be followed by the court. The questioning of the accused in the instant case does not conform to Article 21 of the Constitution of India.

20. In paragraph 22 of the judgement, the trial court has dealt with the argument of the learned counsel for the accused in respect of non examination of any one from the factory to speak about the absence of the accused after the above occurrence and also non examination of the husband of the deceased. The trial court has stated that the accused would have examined the husband of the deceased or any

body from the company. The trial court has then gone on to say that the failure of the accused to examine these witnesses will amount to failure on the part of the accused to prove his defence. This finding of the trial court is again erroneous. In this regard we may refer to the judgement of the Hon'ble Supreme Court in Byram Pestonji Gariwala v.tUnion Bank of India and others 1992 (1) SCC 3.wherein the Hon'ble Supreme Court has held as follows:- "39. The Indian legal system is the product of history. It is rooted in our soil; nurtured and nourished by our culture, languages and traditions; fostered and sharpened by our genius and quest for social justice; reinforced by history and heritage: it is not a mere copy of the English common law; though inspired and strengthened, guided and enriched by concepts and precepts of justice, enquiry and good conscience which are indeed the hallmark of the common law. ... ...

41. After the attainment of independence and the adoption of the Constitution of India, judicial administration and the Constitution of the law courts remained fundamentally unchanged, except in matters such as the abolition of appeals to the Privy Council, the Constitution of the Supreme Court of India as the apex court, the conferment of writ jurisdiction on all the High Courts, etc. The concept, structure and organisation of Courts, the substantive and procedural laws, the adversarial system of trial and other proceedings and the function of judges and lawyers remained basically unaltered and rooted in the common law traditions in contra-distinction to those prevailing in the civil law or other systems of law.

21. As observed above, as per the common law traditions, in the present day, the inquisitorial conception of the defendant being the best source of evidence has long been displaced with the evolution of adversarial procedure. Accused have been given protections such as the presumption of innocence, right to counsel, the right to be informed of charges, the right of compulsory process and the standard of proving guilt beyond reasonable doubt among others. Excepting the accused to examine those witnesses who ought to have been examined by the prosecution is basically against the adversarial procedure of common law which the Indian Law Courts have been consistently following. As has been consistently held by the Hon'ble Supreme Court Court, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. [vide

judgement of the Hon'ble Supreme Court in [Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116]. Thus, the observation of the trial court that the accused could have examined the husband of the deceased and other witnesses is again a misconception of law.

22. As we have discussed above, absolutely there is no evidence against the accused to prove any circumstance, even remotely pointing to the guilt of the accused. Mere suspicion based on surmises and conjunctures will not take the place of proof. In short, we hold that the prosecution has failed to prove the case beyond reasonable doubts and so, the finding of the trial court deserves interference.

23. Fair investigation and fair trial are the concomitant of right to life preserved by the salutary provision of Article 21 of the Constitution of India. Fair trial is not a new concept as it is a natural human right. In the instant case, as we have seen above, the conviction of the appellant is not in tune with the said right as the same has been recorded merely on conjectures and surmises. Therefore, we are forced to acquit the accused. Incidentally, this happens to be the last case for this Bench as one of us [K.N.B.,J] is demitting his office. At this moment, we are fully satisfied that by pronouncing this judgment, acquitting the appellant, we have reassured that the judiciary always stands for rule of law and justice.

24. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted. Bail bond, if any, executed by appellant shall stand discharged. Fine amount, if any, paid by the appellant shall be refunded to him. ap/kmk To 1. The II Additional District and Sessions Judge, Kancheepuram.

2. The Inspector of Police, Oragadam Police Station, Kancheepuram.

3. The Public Prosecutor, High Court Madras