
(2010) 08 MAD CK 0413
In the Madras High Court
Case No : Criminal A. (MD) No. 226 of 2010

Abbas

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 300, 302

Citation : (2011) 1 DMC 307

Hon'ble Judges : M. Duraiswamy, J; M. Chockalingam, J

Bench : Division Bench

Advocate : E. Somasundaram, for the Appellant; Samuel Raj, Additional P.P., for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to a judgment of the Sessions Division, Sivagangai, made in S.C. No. 142 of 2007 whereby the sole accused/appellant stood charged u/s 302 (2 counts) IPC, tried, found guilty as per the charge of murder (2 counts) and awarded life imprisonment along with a fine of Rs. 5000/- and default sentence for each count, and the sentences were ordered to run concurrently.

2. Short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W.1 is the mother of the deceased Rashitha Begam. P.W.4 is the brother of P.W.1. One year prior to the occurrence, the deceased was given in marriage to the appellant, and they were living together as a result of which, a male child was born just two months prior to the occurrence. The deceased was not liked by the appellant from the very time of the marriage, and he was harassing her. After the child was born, he was adumbrating that the child was not born to him, and he was also suspecting her fidelity, pursuant to which there was often quarrel between them. At the time of marriage, they were staying at Valaiapatti. P.W.5 was actually residing in the house opposite to the house of the deceased. P.W.6,

the mother of the accused, was also living along with the accused and the deceased.

(b) On the date of occurrence that was on 27.3.2007, at about 2200 hours, P.W.5 heard the wordy altercation between the accused and the deceased and during night hours at about 2.00 A.M. on 28.3.2007, there was a distressing cry. Then P.W.5 came out of his house and found the accused running towards the field after crossing him. The house was actually found burning. Immediately, he got inside and found the dead bodies. Then he informed to P.W.1. P.W.1 accompanied by P.W.4 went over there and found the dead bodies of Rashitha Begam and also the child. Immediately, she was informed that it was the appellant/accused who set fire to the house and ran away.

(c) P.W.1 proceeded to the respondent police station where she gave a complaint, Ex.P1, to P.W.13, the Sub Inspector of Police, on the strength of which a case came to be registered in Crime No. 37 of 2007 u/s 174 of Cr.P.C. for suspicious death. The printed FIR, Ex.P25, was despatched to the Court.

(d) P.W.11, the Revenue Divisional Officer, Devakottai, on receipt of the FIR, proceeded to the spot, recorded the statements of the witnesses and also conducted inquest on both the dead bodies in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P24. Thereafter, the dead bodies were sent to the Government Hospital for the purpose of postmortem.

(e) P.W.2, the Assistant Surgeon, attached to the Government Marudhupandiar Hospital, Tiruppattur, on receipt of the requisitions, has conducted autopsy on the dead bodies of Rashitha Begam and the child Mohamed Athith and has issued the postmortem certificates, Exs.P3 and P4 respectively, with his opinion that they appeared to have died of 100% burn injuries.

(f) P.W.14, the Inspector of Police of that Circle, on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P13, and also a rough sketch, Ex.P26.

(g) On 28.3.2007 at about 10.00 A.M., when P.W.9, the Village Administrative Officer (VAO), was in his office, the accused appeared before him and confessed the offence voluntarily, and the same was also recorded by P.W.9 which is marked as Ex.P15. Along with his report Ex.P16, P.W.9 handed over Ex.P15 to the Investigator along with the accused. Then the accused was actually arrested. P.W.14 recorded the confessional statement given by the accused voluntarily, and then he converted the case from 174 Cr.P.C. to Section 302 of IPC and proceeded with the further investigation. Ex.P27, the alteration report, was sent to the Court.

(h) The hyoid bone was subjected to chemical analysis which brought forth Ex.P23, the report. On completion of investigation, the Investigator filed the final report.

3. The case was committed to Court of Session, and necessary charge was

framed. In order to substantiate the charge, the prosecution marched 14 witnesses and also relied on 27 exhibits and 5 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned u/s 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which he flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced on either side and took the view that the prosecution has proved the case beyond reasonable doubt in respect of the charge of murder (two counts) and awarded the punishment as referred to above. Under the circumstances, this appeal has arisen.

4. Advancing arguments on behalf of the appellant, the learned Counsel would submit that in the instant case, there is no eyewitness to be produced by the prosecution; that the entire case is actually rested upon the circumstantial evidence; that according to the prosecution, the occurrence has taken place during the night hours of 27.3.2007; that P.W.6 is the mother of the accused, and P.W.1 is the mother of the deceased; that both have categorically admitted that the deceased and the appellant were living happily as a result of which a child was born, and under the circumstances, the prosecution has miserably failed to prove the motive that he suspected the fidelity of his wife either, or he was exerting cruelty on her.

5. Added further the learned Counsel that the prosecution has not proved the occurrence also; that the prosecution did not march any witness who witnessed the occurrence; that the occurrence has taken place in the night hours; that P.W.5 was a planted witness; that according to him, he heard the quarrel between the spouse on the previous night, and at about 2.00 A.M., he heard the distressing cry, and then he came outside and saw the accused running towards the field, and he did not see him either murdering the wife or the child or setting fire to the house; that under the circumstances, it would be quite clear that the evidence of P.W.5 was not useful to the prosecution; that P.W.6 was the mother of the accused; that even according to the prosecution, she was actually sleeping within the same house i.e., in the other part of the house; that if to be so, she should have immediately rushed there or informed others about the occurrence; but she has not stated anything; that she has not been treated hostile; and that under the circumstances, the evidence of P.W.6 though she happened to be the mother of the appellant, was against the prosecution case.

6. Added further the learned Counsel that the evidence of P.W.9, the VAO, was thoroughly artificial; that according to him, he was in his office on 28.3.2007, and at about 10.00 A.M., the appellant/accused appeared before him and made a confessional statement as if he has actually killed both the wife and the child; that this was actually unnatural; that even P.W.9 has categorically stated that the accused was an unknown person, and he was neither acquainted nor already known to the accused; that if to be so, there was no need for the appellant/accused to appear before him to give any such confessional statement; and that it would be quite clear that Exs.P15 and P16, the extra-judicial confession and

the report of P.W.9 respectively, were actually procured by the Investigator in order to strengthen the prosecution case if possible, but in vain.

7. Added further the learned Counsel that the specific charge levelled against the appellant was that he murdered his wife and also left the two months old child, and thereafter, he came outside the house and set the house ablaze; that it is pertinent to point out that the medical opinion canvassed would clearly indicate that the carbon particles were found in the windpipe, and if to be so, he could not have killed his wife; that from the available evidence, it would be quite clear that if the medical evidence was to the effect that the carbon particles were found present in the windpipe, she could not have been murdered; that hence the evidence through the medical opinion was actually contrary to the prosecution case, and hence he is entitled for acquittal in the hands of this Court.

8. The learned Counsel in his further arguments would contend that even assuming that it was he who actually set his wife ablaze and caused her death and also the child, it would not attract the penal provision of murder; that even as per the evidence of P.W.5, there was a quarrel between the accused and the deceased wife on the previous night at about 10.00 P.M., and following the same, the occurrence has taken place at about 2.00 A.M. on the next day; that the act was actually pursuant to a quarrel; that under the circumstances, it is a fit case where it has got to be found as a culpable homicide not amounting to murder since it would fall under one of the exceptions to Section 300 of IPC, and this has got to be considered by the Court if the Court is of the view that the prosecution has proved the factual matrix as put forth before the trial Court.

9. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

10. It is not in controversy that the dead bodies of Rashitha Begam and also the child were found in the house where the appellant/accused was residing with his wife. Following the inquest made by the RDO, the dead bodies were subjected to postmortem by P.W.2, the Doctor, who has given a categorical opinion in Exs.P3 and P4 that they died due to 100% burn injuries sustained by them. The cause of death that they died out of burn injuries as put forth by the prosecution was not disputed by the appellant before the trial Court or before this Court. Hence the trial Judge was perfectly correct in recording so.

11. In order to substantiate that the appellant/accused has caused the death of both his wife and also the child, the prosecution, it is true, had no direct evidence to offer, but it relied upon the circumstantial evidence. It is trite law and also this Court is mindful of the same that in a given case where the case of the prosecution is rested exclusively on the circumstantial evidence, the circumstances placed must constitute a chain without a snap and also be pointing to the hypothesis that except the accused, no one could have committed the offence. In the case on hand, this Court, even after applying the above settled principle of law, is satisfied that it was the appellant/accused who caused the

death of his wife and also the child.

12. It is an admitted position that the deceased Rashitha Begam was the wife of the accused, and the child was born to them. During the relevant time and in particular on the date of occurrence that was on 27.3.2007, the specific case of the prosecution was that the accused and the deceased along with the child were living under the same roof. The said fact was never denied or disputed by the appellant by making a suggestion to any one of the witnesses. The occurrence has taken place in the night hours of 27.3.2007 when the appellant was staying with his wife and also the child. As a responsible husband, the accused is expected to give an answer how the death has happened to her. What was all taken by the defence before the trial Court and equally here also by way of defence plea was that it was a matter of self-immolation. This cannot be countenanced even for a moment for more reasons than one. P.W.5 who is actually living in the opposite house, came forward with the evidence to state that on the night of 27.3.2007 at about 10.00 P.M., there was a wordy quarrel between the deceased and the appellant/accused, and at about 2.00 A.M., he heard the distressing cry, and then he came out of the house and found the appellant running towards the field. Had it been really true that it was a case of self-immolation and the lady poured kerosene and set fire on her, one would expect that the husband, who is the appellant herein, should have gone to the rescue or raised a distressing cry calling the neighbours to quench the fire, but he did not do so. On the contrary, he ran from the place, and that would be quite indicative of the fact that he was the person who has committed the crime. The act of the accused running from the place was quite contrary to the reasonable conduct of a prudent person under the stated circumstances. In view of this circumstance that P.W.5 found the appellant/accused running away from the house when the house was burning, it could be quite understandable and inferable that except the accused, no one could have committed the crime.

13. It is a case where, in the considered opinion of the Court, a strong circumstance against the appellant is the extra-judicial confession given by the accused to P.W.9, the VAO. The occurrence has taken place at about 2.00 A.M. on 28.3.2007. On that day, at about 10.00 A.M., he appeared before the VAO, P.W.9, and gave a confessional statement, wherein he has categorically confessed that it was he who killed his wife by setting her ablaze and also leaving the 2 months" old child. Now, at this juncture, this Court is mindful of the caution and settled principle of law that before accepting the extra-judicial confession to sustain a conviction, the Court must apply two tests, and if satisfied, the Court can act on the said extra-judicial confession and sustain a conviction. Firstly, the circumstances at which the confession was made. Secondly, whether the evidence of the person to whom the confessional statement is alleged to have been given inspires the confidence of the Court. In the instant case, P.W.9, the VAO, hailed from the same place. The appellant/accused has given the confession at about 10.00 A.M. i.e., within 8 hours from the time of occurrence, and it has been recorded under Ex.P15. Along with the

report of P.W.9 namely Ex.P16, he was produced before the Investigator, P.W.14, by the VAO, P.W.9, following which the case has actually been converted to Section 302 of IPC. This Court is unable to see any reason to doubt the evidence of P.W.9. This part of the extra-judicial confession coupled with the fact that P.W.5 has found him running from the place of occurrence towards the field when the house was burning, would clearly indicate that it was the accused who actually set fire to his wife and also the hut leaving two months" old child.

14. The learned Counsel laid emphasis on the postmortem certificates and pointed out that the carbon particles were actually found in the windpipe of the lady, and hence he could not have murdered her, and only after he left the place, she should have died. It is true that a person cannot inhale and the carbon particles could not be found inside the windpipe, after the death. The carbon particles could be found while the person is alive. In the instant case, it would be quite evident that after pouring kerosene and setting fire on her, when she was struggling for life, he has left the house and ran away. At the time when he left the house, she was struggling for life. After he left the house, the fume has been inhaled by her and carbon particles are found, and as a result of the burn injuries, she died. What is heartening in the instant case is that while the fumes and flames were on, he left the two months" old child inside the house and left the place. Under the stated circumstances, the last contention put forth by the learned Counsel for the appellant that there was a quarrel, and it was actually going on as a result of which he put kerosene and set fire on her cannot be countenanced.

15. It is a case where this Court is able to see a heinous crime where he has not only killed his wife, but also killed his two months" old baby. Under the circumstances, the trial Judge was perfectly correct in marshalling the evidence proper and has come to the correct conclusion that it is a case of murder and awarded life imprisonment (two counts) which should run concurrently. There is no illegality or infirmity in the judgment of the trial Court either factually or legally.

16. In the result, this criminal appeal fails and the same is dismissed confirming the judgment of the trial Court.