
(2010) 11 MAD CK 0109
In the Madras High Court
Case No : Criminal A. No. 556 of 2010

Chandrasekaran @ Sekar	Vs	APPELLANT
State by Inspector of Police		RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 307

Citation : (2010) 11 MAD CK 0109

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : N. Ramesh, for the Appellant; V.R.Balasubramanian, Additional Public Prosecutor, for the Respondent

Judgement

M. Chockalingam, J.—This appeal challenges a judgment of the Additional Sessions Division, Fast Track Court No. I, Erode, made in S.C.

No. 120/2006 whereby the sole accused/Appellant stood charged under Sections 302 and 307 of IPC, tried, found guilty as per the charges and

awarded life imprisonment along with a fine of Rs. 1000/- and default sentence u/s 302 IPC and 3 years Rigorous Imprisonment along with a fine

of Rs. 1000/- and default sentence u/s 307 IPC.

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

(a) The deceased Saroja was residing along with her mother and family members at Teachers Colony, Kumalankuttai, within the jurisdiction of the

Respondent police. P.W.1 and the deceased are cousin sisters. P.W.2 is the son of P.W.1. P.W.3 is the niece of the deceased. P.W.5 is the

brother of the deceased. Veerammal, the wife of the accused/Appellant, is also

the sister of P.W.1. Saroja was already given in marriage to one Chinnathambi. He deserted her and contracted second marriage, and hence Saroja came to her mother's house and was living with the family members. The accused/ Appellant was residing with his wife Veerammal in a house which belonged to P.W.8, on rental basis. Ten days prior to the occurrence, Veerammal pursuant to a quarrel, left the marital home and came to the house of P.W.1. P.W.1 and others advised her to go and join the company of her husband. They further told that she should not come back, but stay with him. Despite the same, within a few days therefrom, Veerammal came to the house of P.W.1.

(b) On 18.2.1999, the accused came to the house of P.W.1, quarrelled with them and informed them that he could not live with his wife, and they were all responsible for the same, and they have actually hidden his wife, and the next day, she must be sent with him. So saying, he left the place.

This was known to P. Ws.4, 6 and 7 also.

(c) On 19.2.1999 at about 10.30 A.M., P. Ws.1 to 3 were sitting in front of the house and doing their work, while P.W.4 was lying in a cot inside the house. At that time, the deceased Saroja was also sitting by their side. The accused who came there with M.O.1 aruval, cut the tuft of the deceased Saroja, and uttering the words ""You have hidden my wife, and you do not send her to live with me"", he attacked her on different parts of the body. When she tried to escape, he chased her and cut her. P.W.1 went to the rescue. At that time, he attacked P.W.1 also. The occurrence was witnessed by P. Ws.2 to 4 and others also. When there was a distressing cry raised, the accused left the place throwing the weapon of crime in a nearby bush. Saroja was found dead.

(d) P. Ws.2 and 3 took P.W.1 to the Government Hospital, Erode, where P.W.13, the Doctor, gave her treatment, and the accident register copy is marked as Ex.P12. On intimation, P.W.10, the Sub Inspector of Police of the Respondent police station, proceeded to the Government Hospital, Erode, and recorded the statement of P.W.1 which is marked as Ex.P1. On the strength of Ex.P1, the report, a case came to be registered in Crime No. 143/99 under Sections 302 and 307 of IPC. The printed FIR, Ex.P8, was despatched to the Court.

(e) On receipt of the copy of the FIR, P.W.16, the Inspector of Police of that

Circle, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P14, and also a rough sketch, Ex.P19. Then he conducted inquest on the dead body of

Saroja in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P20. He recovered the material objects from the place

of occurrence. Then the dead body was sent to the Government Hospital along with a requisition for the purpose of postmortem.

(f) On receipt of the said requisition, P.W.14, the Civil Assistant Surgeon, attached to the Government Head Quarters Hospital, Erode, has

conducted autopsy on the dead body of Saroja and issued a postmortem certificate, Ex.P13, wherein she has opined that the deceased would

appear to have died of shock and haemorrhage due to multiple injuries about 20 to 24 hours prior to autopsy.

(g) Despite a long search, the accused could not be secured. All the material objects were sent to the Forensic Sciences Department for analysis

which brought forth two reports namely Ex.P6, the chemical analyst's report, and Ex.P7, the serologist's report. They were all placed before the

Court. On completion of the investigation, the Investigator filed the final report before the concerned Judicial Magistrate's Court.

3. The case was committed to Court of Session, and necessary charges were framed. In order to establish the charges, the prosecution examined

16 witnesses and also relied on 20 exhibits and 8 material objects. On completion of the evidence on the side of the prosecution, the accused was

questioned u/s 313 of Code of Criminal Procedure 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 both the charges beyond reasonable doubt and hence, found him guilty and awarded the above punishment. Hence this

appeal at the instance of the Appellant.

4. Advancing arguments on behalf of the Appellant, the learned Counsel Mr. N. Ramesh would submit that in the instant case, though the

prosecution has examined P. Ws.1 to 4 as eyewitnesses and also shown P.W.1 as an injured witness, it is highly doubtful whether such an

occurrence could have taken place as put forth by the prosecution; that the

whole case centered round upon the wife of the accused by name

Veerammal; that even the case of the prosecution as put forth before the trial Court, was that Veerammal leaving her husband, the accused, came

to P.W.1's house where she was actually staying, and even on the previous day, the accused came over there and demanded P. Ws.1 to 3 and

also the deceased to send his wife; but she was not actually sent; that this is shown as the motive for the prosecution case; that under the

circumstances, a duty was cast upon the prosecution to examine the said Veerammal to prove that motive; but, the prosecution has miserably failed

to show her or examine her as a witness; that as far as the eyewitnesses are concerned, the discrepancies in their evidence would suffice to reject

their testimonies; and that the medical opinion canvassed by the prosecution, did not support the ocular testimony.

5. Added further the learned Counsel that the recovery of M.O.1, aruval, from nearby the place of occurrence was highly doubtful; that even all

the witnesses have stated that immediately after the occurrence was over, he threw the weapon of crime in a nearby bush; that if really an

occurrence has taken place in front of the house and witnesses were also standing nearby, they could not have seen the accused throwing the

weapon of crime; that according to the Investigator, it was secured in a bush nearby a Theatre, a public place, and everybody could have seen the

weapon of crime in between two points of time when it was alleged to have been thrown and recovered.

6. It is further added by the learned Counsel that even the weapon of crime which was subjected to chemical analysis, did not contain the human

blood at all; that all would clearly show that the alleged recovery of weapon of crime by the Investigator cannot but be false, and thus the

prosecution has miserably failed to prove its case.

7. The learned Counsel in the second line of argument would submit that admittedly, Veerammal left the company of the accused/Appellant and

was staying in the house of P.W.1 where Saroja was also staying; that he entertained a doubt whether his wife Veerammal was actually hidden by

the deceased Saroja; that on the previous day that was on 18.2.1999, he came to the house of P.W.1 and demanded that his wife should be sent

along with him; that equally the next day, he came and demanded the very same

thing, but she did not send her; that being provoked by the fact that they have actually hidden his wife and were not sending her to live with him, he uttered the words ""you are hiding my wife and not sending her with me"" and so saying, he attacked her; that all would clearly be indicative of the fact that it was not intentional or premeditated; that having failed in his attempt to take his wife who was actually hidden by the deceased Saroja and P.W.1 and others, the accused has attacked her; that under the circumstances, it cannot be said to be premeditated or pre-planned; that the act of the accused cannot be termed as murder, but a culpable homicide not amounting to murder, and this legal aspect has got to be considered by the Court.

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

9. It is not in controversy that in an incident that had taken place at about 10.30 A.M. on 19.2.1999, Saroja, the cousin sister of P.W.1, was done to death at the place as put forth by the prosecution. Following the inquest made by P.W.16, the Inspector of Police of the Circle, the dead body was subjected to postmortem by P.W.14, the Doctor, who has been examined as a witness before the trial Court, and the postmortem certificate issued by him, was also marked as Ex.P13. From the said evidence, it would be quite clear that Saroja died out of homicidal violence. That apart, the cause of death as put forth by the prosecution, was never disputed by the Appellant before the trial Court or before this Court, and hence no impediment is felt in recording so.

10. In order to substantiate that it was the accused who attacked Saroja and caused her death and also attempted to murder P.W.1, the prosecution marched four witnesses before the trial Court out of whom P.W.1 was an injured witness. Trite law it is that in a given case like this, when an eyewitness happened to be an injured witness, the evidence of such witness should not be discarded by the Court unless and until a strong circumstance is noticed or reason is brought about. But, in the case on hand, neither a strong circumstance is noticed, nor a reason is brought about to cast any doubt on the evidence of P.W.1. P.W.1's evidence is that when she was sitting with P. Ws.2 and 3 and Saroja in front of the house at

about 10.30 A.M. on 19.2.1999, the accused came there and uttering the above words, attacked Saroja indiscriminately, and when P.W.1 went

to the rescue, she was also attacked. This evidence of P.W.1, an injured witness, stood fully corroborated by the evidence of P. Ws.2 and 3.

Saroja was found dead at the spot. P.W.1 was taken to the Government Hospital, Erode, where she was examined by P.W.13, the Doctor. The

accident register copy in her regard is marked as Ex.P12. The above evidence put forth by the prosecution, was natural, cogent, convincing and

rightly accepted by the trial Court. This ocular testimony stood fully corroborated by the medical evidence. The postmortem Doctor was examined

as P.W.14 through whom the postmortem certificate was also marked as Ex.P13. That apart, the accident register copy of P.W.1 is marked as

Ex.P12.

11. The learned Counsel made a comment that Veerammal, the wife of the Appellant/accused, was not examined. It is pertinent to point out that

Veerammal was absconding, and therefore, she could not be secured. In such circumstances, she could not be examined. An explanation was put

forth by the prosecution in that regard, and it has got to be accepted.

12. As far as the recovery of M.O.1, the weapon of crime, is concerned, much comment was made. It is pertinent to point out that M.O.1 was not

recovered from the accused pursuant to a confessional statement. But, even after leaving the recovery of M.O.1, the prosecution had suffice

evidence as narrated above, and thus the prosecution has proved the factual matrix that it was the accused who attacked Saroja and caused her

death instantaneously at the spot and has also attacked P.W.1 and caused severe injuries as could be seen from the accident register copy,

Ex.P12. Thus all the contentions put forth by the learned Counsel for the Appellant in that regard, have got to be rejected.

13. Insofar as the second line of argument, this Court is able to see force in the same. Ten days prior to the occurrence, Veerammal left the

husband, the accused/ Appellant, and came to the house of P.W.1 and others. During the relevant time, Saroja was living in the house of P.W.1

along with others, and she was actually advised by them and sent to the house to live with the accused. But even then, she came after a few days.

The accused suspected that Saroja and others have actually hidden his wife, and

they do not allow her to live with him. Even on the previous day, he came to the house of P.W.1 and also demanded not only to P.W.1, but also to Saroja that she should be sent with him. It would be quite clear that he was suspecting that Saroja and others have hidden his wife Veerammal and they did not permit her to live with him. On the date of occurrence, when he came over there, he uttered the words ""You have hidden my wife and not allowed her to live with me"". Thus it would be clearly indicative of the suspicion in his mind, and thus it has actually provoked him to act so. Under the circumstances, it cannot be said to be an act intentionally done or premeditated, and hence the act of the accused would not attract the penal provision of murder, but would be a culpable homicide not amounting to murder. He has got to be convicted u/s 304 (Part I) of IPC, and awarding a punishment of 7 years Rigorous Imprisonment would meet the ends of justice.

14. Accordingly, the conviction and sentence of life imprisonment imposed on the Appellant/accused by the trial Court u/s 302 IPC, are set aside, and instead, he is convicted u/s 304 (Part I) of IPC and is directed to suffer 7 years Rigorous Imprisonment. The sentence already undergone by him, shall be given set off. The fine amount imposed by the trial Court will hold good.

15. As regards the conviction and sentence imposed by the trial Court on the Appellant u/s 307 IPC, they are confirmed. Both the sentences are ordered to run concurrently.

16. In the result, with the above modification in conviction and sentence, this criminal appeal is disposed of.