

(2015) 12 MAD CK 0048

In the Madras High Court

Case No : Criminal Appeal No. 673 of 2007

Govindan and Others

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 306

Citation : (2016) 1 MLJ(Cri) 459

Hon'ble Judges : A. Selvam, J.

Bench : Single Bench

Advocate : S. Kalyanaraman, for the Appellant; P. Govindarajan, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A. Selvam, J.

1. The conviction and sentence dated 9.7.2007 passed in Sessions Case No. 240 of 2006 by the Mahila Court, Salem are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the deceased Chinnammal @ Chinnapillai, her daughter, viz., Malar and her husband by name Chandran have taken two daughters of Chinnaperiammal from Bangalore to their native Village and asked one Kumar, son of the said Chinnammal @ Chinnapillai to make arrangements for their marriage and he refused and after 2 or 3 days from such occurrence, the said Chinnaperiammal and her husband have searched their daughters and they have not been able to trace them and due to that, all the accused have come to the house of the deceased and threatened her and also attacked her and due to their overt acts, the deceased has consumed poison on 13.3.2005 and subsequently passed away. After occurrence, one of the sons of the deceased by name Kumar, as defacto complainant, has given a complaint and the same has been registered in Crime No. 62 of 2005.

3. On receipt of the said complaint, the Investigating Officer, viz., P.W.9 has conducted investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, P.W.6 has conducted postmortem and he found the following external and internal injuries:--

"Injuries:--

No antemortem injury seen anywhere in the body

Extremities: Finger nailbeds found bluish.

Heart: Chambers and valves normal, cavities

contained fluid blood

Coronary vessels: Patent,

Great vessels: Normal

Lungs: Both on c/o congested

Hyoid bone: Intact

Stomach: Contained 50 ml. of greyish brown pastematter with no specific smell

Mucosa congested

Small Intestine: Grynish brown chyme, no specific smell, Mucosa congested

Liver, Spleen, Kidneys: All are c/o congested

Bladder: empty: Uterus: Autrophic and empty.

Pelvis, Membranes, Spinal column: All Intact:

Brain: c/o congested"

The Post Mortem Certificate has been marked as Ex. P.3. After completing investigation, P.W.9 has laid a final report on the file of the Judicial Magistrate Court No. 4, Salem and the same has been taken on file in P.R.C. No. 240 of 2006.

4. The Judicial Magistrate No. 4, Salem, after considering the fact that the offence alleged to have been committed by all the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Salem Division and the same has been taken on file in Sessions Case No. 240 of 2006 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents has framed a charge against all the accused under Section 306 of the IPC and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exhibits P.1 to P.13 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, D.Ws.1 to 3 have been examined. No documents have been marked on their side.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found all the accused guilty under Section 306 of the IPC and sentenced them to undergo 3 years Rigorous Imprisonment and also imposed a fine of Rs. 500/- upon each of them with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellants.

9. The case of the prosecution is that the deceased Chinnammal @ Chinnapillai, her daughter, viz., Malar and her husband by name Chandran have taken two daughters of Chinnaperiammal from Bangalore to their native place for the purpose of making marriage arrangements and subsequently they approached one of the sons of the said Chinnammal @ Chinnapillai and he expressed his inability and after two or three days from such occurrence, the parents of the girls in question have searched them and since they have not been able to trace them out, all the accused have come to the house of the deceased, threatened her and also attacked her and due to the alleged overt acts of the accused, the deceased has consumed poison and subsequently passed away.

10. The prosecution has set the law in motion only on the basis of the complaint alleged to have been given by the defacto complainant and the same has been marked as Ex. P.1. The author of Ex. P.1 has been examined as P.W.1, his brother, brother-in-law and sister's son have been examined as P.Ws.2 to 4. The trial court, after considering the evidence given by P.Ws. 1 to 4 and other connected documents, has found all the accused guilty under section 306 of IPC.

11. The learned counsel appearing for the appellants/accused has befittingly contended that the case of the prosecution is that the deceased, her daughter, viz., Malar and her husband by name Chandran have taken two daughters of Chinnaperiammal from Bangalore so as to arrange their marriage and after reaching native place, they approached the defacto complainant, viz., Kumar to make such arrangements and he refused and after two or three days from such occurrence, the parents of the said girls have searched them and since they have not been able to trace them out, the accused have come to the house of the deceased and threatened her and also attacked her, but, for the purpose of proving the said aspect, on the side of the prosecution, the said Chinnaperiammal and her husband have not been examined. But, on the side of the accused, the said Chinnaperiammal has been examined as D.W.3 and her

specific evidence is that she is not having any contact with the accused and she has not given any complaint in respect of alleged missing of her daughters. Since prosecution has not established the origin of its case, the Court cannot come to a conclusion that only due to overt acts alleged to have been committed by all the accused, the deceased has consumed poison and the trial court, without considering the lack of evidence on the side of the prosecution, has erroneously invited conviction and sentence against the appellants/accused and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

12. The learned Additional Public Prosecutor has contended that in the instant case, P.Ws.1 to 4 have given clear evidence to the effect that prior to occurrence, all the accused have come to the house of the deceased and attacked her and only due to their overt acts, she consumed poison and subsequently passed away and in fact, the evidence adduced by P.Ws.1 to 4 have been corroborated by medical evidence and the trial court, after considering the overwhelming evidence available on record, has rightly found the accused guilty under section 306 of IPC and therefore, the conviction and sentence passed by the trial court are not liable to be interfered with.

13. The consistent case put forth on the side of the prosecution is that prior to occurrence, the deceased, her daughter, viz., Malar and her husband by name Chandran have abducted the daughters of Chinnaperiammal from Bangalore for the purpose of arranging their marriage. As rightly pointed out on the side of the appellants/accused, the said Chinnaperiammal has not been examined for the purpose of proving the genesis of the case of the prosecution.

14. The said Chiinnaperiammal has been examined as D.W.3 on the side of the appellants/accused and her specific evidence is that she has not contacted any one of the accused prior to alleged occurrence and further she deposed to the effect that she has not given any complaint. Since the said Chinnaperiammal has been examined on the side of the defence and since she has given such kind of evidence, the Court cannot believe the origin of the case of the prosecution. To put it in short, the prosecution has not at all established the initial occurrence alleged to have been taken place prior to occurrence. Further, the prosecution has not established the alleged abduction of two daughters of D.W.3.

15. At this stage, an inert attempt has been made on the side of the respondent/prosecution to the effect that the said Chinnaperiammal has given a complaint with regard to missing of her daughters and the same has been registered in Crime No. 88 of 2005 and on that basis, the Court can easily come to a conclusion that the deceased, her daughter and son-in-law have abducted the daughters of the said Chinnaperiammal. It is true that Ex. P.10 is a copy of FIR registered in Crime No. 88 of 2005, wherein it is stated about the alleged abduction, but, to prove the said aspect, as indicated supra, the complainant therein has not been examined in the present case on the side of the prosecution. Further, as pointed out earlier, the said Chinnaperiammal (D.W.3) has categorically stated in her evidence that she has not given any complaint

with regard to the alleged missing of her daughters. Therefore, on the basis of the complaint registered in Crime No. 88 of 2005, the Court cannot come to a conclusion that the prosecution has proved the genesis of the case. Since the prosecution has not established the genesis of the case, on the basis of interested testimonies of P.Ws.1 to 4, the Court cannot come to a conclusion that such occurrence has taken place, as spoken by the prosecution.

16. In the charge framed against all the accused, it has not been specifically stated that on which date, the deceased, her daughter and her son-in-law have abducted the two girls of Chinnaperiammal. Further, in the charge, it has not been specifically stated to the effect that on which date, all the accused have come to the house of the deceased and threatened her. Therefore, it is quite clear that the charge framed against all the accused is totally bereft of particulars.

17. It has already been pointed out that the prosecution has failed to establish the origin of the case. Further, the prosecution has not assigned any reason for not examining the said Chinnaperiammal. Further, P.Ws.1 to 4 are inter related to each other. In the Rough Sketch, it has been clearly stated that near the house of the deceased, so many dwelling houses are situate, but the prosecution has not examined any one of the neighbours for the purpose of establishing the occurrence alleged to have been taken place after lapse of two or three days from the date of alleged abduction. The trial court, without considering the lack of evidence on the side of the prosecution, has erroneously found all the accused guilty under section 306 of IPC. In view of the discussions made earlier, this Court has found considerable force in the contentions put forth on the side of the appellants/accused and altogether the present Criminal Appeal is liable to be allowed.

18. In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellants/accused in S.C. No. 240 of 2006 by the trial court are set aside. The appellants/accused are acquitted. Bail Bonds, if any executed by them, shall stand cancelled. Fine amounts, if any paid by them, are ordered to be refunded forthwith.