
(2009) 11 MAD CK 0036
In the Madras High Court
Case No : Criminal Appeal No. 50 of 2009

Gowran	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 309

Citation : (2009) 11 MAD CK 0036

Hon'ble Judges : V. Periya Karupiah, J; M. Chockalingam, J

Bench : Division Bench

Advocate : N. Doraisami, for Y. Deva Arul Prakash, for the Appellant; Babu Muthu Meeran, APP, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to the judgment of the Additional Sessions Division, Krishnagiri in S.S.C. No. 190 of 2007

whereby the sole accused/appellant stood charged under Sections 302, 307 and 309 I.P.C. and on trial, he was found guilty of all the three

charges and awarded the punishment of life imprisonment, 10 years rigorous imprisonment and one year simple imprisonment respectively along

with fine and default sentences.

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

(a) P.W.1 is the sister of the deceased Jeyanthi. During the relevant time, she was staying along with the accused and the deceased. 12 years prior

to the occurrence, the accused/appellant met with an accident and he claimed compensation and it was awarded. Out of the amount received, he

deposited a sum of Rs. 40,000/- in the name of his wife the deceased Jeyanthi

and thereafter, he often demanded her to withdraw the said amount and give it to him but she refused to do so. On account of the same, the accused often quarrelled with his wife/deceased. On 5.12.2006 at 5.00 a.m., there was a quarrel between the accused and the deceased. At that time, P.W.1 was in the house along with the deceased and the accused. The accused demand for the deposit amount to which course, the deceased was not amenable. Immediately, the accused took a bill hook and cut her on different parts of her body and severed her head. It was witnessed by P.W.1 and the accused strangulated his child Sathyapriya aged 8 1/2 years who was sleeping nearby. On seeing the same, P.W.1 raised alarm and on hearing the cry, P.W.2 neighbour ran inside the house and he was informed about the occurrence. When the crowd gathered, the accused attempt to commit suicide by cutting himself with bill hook. Thereafter, he ran away from the place of occurrence.

(b) The 8 : years old child Sathyapriya was taken to Kallavi Government Hospital and thereafter to Krishnagiri Government Hospital for treatment.

The doctor attached to the Government Hospital Krishnagiri gave treatment to the child and the accident register copy was marked as Ex.P.10.

P.W.2 took P.W.1 to Kallavi Police Station where P.W.11 was the Inspector of Police to whom she gave Ex.P1 report, on the strength of which,

a case came to be registered in Crime No. 478/2008 u/s 302 and 307 I.P.C. The F.I.R., Ex.P.15 was dispatched to Court.

(c) On receipt of a copy of the F.I.R. P.W.13 the Circle Inspector at Bargur took up investigation. He proceeded to the spot, made an inspection

and prepared an Observation Mahazar, Ex.P3 in the presence of witnesses and panchayatdars and also drew a rough sketch Ex.P.19. He

conducted inquest on the dead body of the deceased Jeyanthi and prepared the Inquest report Ex.P.20. Thereafter, the dead body was sent for post mortem.

(d) P.W.9 doctor attached to the Government Hospital, Uthangarai, Krishnagiri District, on receipt of the requisition from the Investigating Officer

conducted autopsy on the deceased Jeyanthi and issued Ex.P13 post mortem certificate wherein he has opined that ""the deceased would appear

to have died of Haemorrhage and shock due to injury to blood vessels of neck nerves and spinal cord. 8-10 hours prior to autopsy

(e) Further, pending investigation, on 5.12.2006 at 11.00 a.m, when P.W.4 Village Administrative Officer was in his office, the accused appeared

before him and gave confessional statement as to the entire occurrence. The statement given by the accused was recorded by P.W.4 in Ex.P.5.

P.W.4 took the accused to the Police station and handed over the accused along with his report Ex.P.6 and the confessional statement given by

the accused to the Investigating Officer. Thereafter, the accused gave confessional statement to the Police and the same was recorded by the

Investigating officer. The admissible part of the confessional statement given by the accused was marked as Ex.P.7. Pursuant to which, the accused

produced M.O.4, pant M.O.5, shirt and M.O.6, vest which were recovered under a cover of mahazar, Ex.P.9. He also produced M.O.3 bill

hook which was recovered under a cover of mahazar Ex.P.8. All the material objects recovered from the place of occurrence, from the dead body

of the deceased and the material objects recovered from the accused, pursuant to the confessional statement were subjected to analysis by the

Forensic Science Department pursuant to the requisition made by the concerned Court.

(f) The accused was taken to the Government where he was given treatment by the doctor, P.W.9 and he has given statement that he sustained

injuries by hurting himself. The accident register copy was marked as Ex.P.11 and the accused was sent for judicial remand. On completion of the

investigation, the investigating officer filed a final report.

(g) The case was committed to the Court of Sessions. Necessary charges were framed. In order to substantiate the charges levelled against the

accused, the prosecution examined 13 witnesses and relied on 22 exhibits and 14 material objects. On completion of the evidence on the side of

the prosecution, the accused was questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the prosecution witnesses and he

denied them as false. No defence witnesses were examined. On hearing the arguments advanced on either side, the trial Court found the accused

guilty of three charges and awarded the punishments as referred to above. Hence, this appeal at the instance of the appellant.

3. Advancing the arguments on behalf of the appellant, the learned Counsel would submit, in the instant case, the only one eye witness examined on

the side of the prosecution was P.W.1. At the time of occurrence, P.W.1 was only 15 years old and she was a school going child. P.W.1 has categorically stated that on the date of occurrence, in the police station, her signature was obtained in blank papers. Hence, it should have been filled up to suit the prosecution case. Added further learned Counsel, P.W.1 was a child witness, therefore, it has to be carefully scrutinised. All the circumstances attendant have got to be looked into. The trial Court should have disbelieved the evidence of P.W.1 since the occurrence has taken place in the morning hours and naturally P.W.1 would have been sleeping. Barring the evidence of P.W.1, the prosecution has no further evidence to offer. The extra-judicial confession alleged to have been given by the accused to P.W.4 Village Administrative Officer was nothing but cook up affair in order to strengthen the prosecution case. Further, the alleged confessional statement and the recovery were all created by the police. Thus, the evidence of these witnesses should not be given much credence or any evidentiary value. Under such circumstances, the prosecution has miserably failed to prove its case beyond reasonable doubt.

4. The learned Counsel for the appellant, as the second line of argument would submit that even assuming the factual position put forth by the prosecution is said to have been taken as proved, the act of the accused would not attract the penal provision of murder for two reasons. Firstly, the amount which was actually deposited with the Bank originally belonged to the accused/appellant and it was deposited in the name of his wife, the deceased. There was long standing demand for return of the same. Even on the date of occurrence, he made a demand for which she refused. Therefore, in a heat of passion, he has committed the act. Secondly, he entertained suspicion over her fidelity which was also spoken to by the accused and recorded by the Police officer in the course of the confessional statement given by the accused. Under such circumstances, it was due to sustained provocation, sudden quarrel and heat of passion, he has acted so. Hence, the act of the accused cannot be termed as murder. Under such circumstances, it has got to be looked into by this Court.

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

6. It is not in controversy that one Jeyanti wife of the appellant met her end at

5.00 a.m. on 5.12.2006 in her house. Following the inquest made by P.W.13, investigating officer, the dead body was subjected to post mortem. P.W.9, doctor attached to the Government Hospital, Krishnagiri conducted autopsy on the dead body of the deceased and he has deposed before the Court and also gave opinion through the post mortem certificate, Ex.P.13 that ""the deceased would appear to have died of Haemorrhage and shock due to injury to blood vessels of neck nerves and spinal cord. 8-10 hours prior to autopsy ""and he has stated that the head of the deceased was found severed. Apart from that, the cause of death as put forth by the prosecution was never disputed by the appellant before the trial Court and hence, no impediment is felt by this Court in recording the finding that the deceased died out of homicidal violence as recorded by the trial Court.

7. In order to substantiate the act of the accused that it was he who attacked his wife with bill hook and caused her death instantaneously, attempted to commit murder by strangulating his child Sathyapriya and further attempted to commit suicide, the prosecution had rested its entire case on the eye witness of P.W.1. It is well settled principle of law that the evidence of child witness when happens to be a singular evidence, the Court must apply careful scrutiny test, apart from looking for other corroborated piece of evidence. In the instant case, the trial Court has tested the maturity of the child by recording questions and answers and found her matured. Thereafter, the evidence of P.W.1 was recorded.

8. Though P.W.1 was 15 years old, when her evidence was looked into, it was found cogent and it inspired the confidence of the Court.

According to P.W.1, she is the sister of the deceased and during the relevant she was doing 8th standard; that the accused was very affectionate towards his sister/deceased and the amount which he received in the motor accident case was deposited in the Bank in the name of his wife/deceased; that thereafter, there was quarrel between them and the accused asked her to withdraw the amount which was deposited in her name to which, she was not amenable; that on the date of occurrence, at 5.00 a.m., when she woke up, she saw the accused demanding money from her sister to which she refused; that the accused took a billhook and cut her indiscriminately and severed her head; that he further strangulated

his child Sathyapriya, aged 8 : years old and thereafter, it was P.W.1 who raised alarm and the neighbours gathered there.

9. It is true that the accused attempt to commit suicide by cutting himself with the bill hook. Despite cross examination in full, the evidence of

P.W.1 remains unskaky. The only contention putforth by the learned Counsel for the appellant is that P.W.1 has deposed that she had put her

signature in blank paper. At this juncture, the evidence of P.W.2 has got to be looked into. It was P.W.2 who took P.W.1 to the Police Station.

P.W.2 has categorically stated that the statement was given by P.W.1 and recorded by the Sub-Inspector of Police and only thereafter P.W.2 has

signed in the same as a witness thereto. The evidence of P.W.2 is cogent and natural, hence, the same has got to be accepted. Therefore, the

above contention of the learned Counsel for the appellant has got to be rejected.

10. So far as the evidence of P.W.1 is concerned, her evidence corroborates with the medical evidence also. P.W.9 doctor conducted post

mortem on the deceased Jeyanthi and he has categorically deposed that the injuries found in the body could have been caused by M.O.3, bill

hook.

11. Yet another circumstances which stood against the accused was the recovery of M.O.3 bill hook, M.O.4 pant M.O.5 shirt and M.O.6., vest.

They were found to contain blood stains. It is pertinent to point out that on the very day at 11.00 a.m. the accused appeared before P.W.4,

V.A.O and gave confessional statement and after recording the confessional statement which was marked as Ex.P5, P.W.4 took him to the Police

station. Regarding the confessional statement given by the accused, P.W.4 has given evidence. In a given case, even the extra judicial confession

would be suffice to sustain the conviction but before accepting the extra judicial confession, the Court must apply two tests viz.,(i) To whom and

under what circumstances the extra judicial confession was given? (ii) Whether the evidence of the person to whom the extra judicial confession

was given inspires the confidence of the Court. P.W.4 was an Officer to whom the accused has given the extra judicial confession. The

confessional statement was given at 11.00 a.m and the occurrence has taken place at 5.00 a.m. Within a short span of five hours, the accused has

given the extra judicial confession. The evidence of P.W.4 was acceptable, since it

was natural.

12. Added circumstances is the recovery of the blood stained material objects produced by the accused, following the confessional statement

given by him, which would also indicate the nexus between the accused and the crime. All put together would point to the guilt of the accused.

Therefore, the Court is of the considered opinion that the prosecution has proved its case that it was the accused who has caused the death of his

wife, attempted to kill his child Sathyapriya, aged 8 1/2 years by strangulating her and also attempted to commit suicide.

13. Insofar as the second line of argument that the accused had sustained provocation since his wife refused to give back his money which he

deposited in his wife's name and he also entertained suspicion over her fidelity, therefore, the act of the accused would not come under the

provision of murder but culpable homicide not amounting to murder is concerned, the Court has to necessarily reject the same. The accused and

the deceased were actually living together. The accused received compensation in a motor accident case and it is also an admitted position that he

deposited Rs. 40,000/- in the name of his wife but at the same time, there was demand for withdrawal of the amount all along the period for which

the deceased refused. The accused was a drunkard and they are having a child, aged 8 = years. Hence, quite naturally she felt that if she withdraw

the amount and give it to him, he would spend it for his illegal activities. Under such circumstances, in order to avoid the same, she has refused to

withdraw the amount from the Bank.

14. It is pertinent to point out that the occurrence had taken place at 5.00 a.m. i.e., early morning. When the deceased Jeyanthi woke up, the

accused had demanded money, for which, the deceased refused. The accused had taken a billhook and caused a heinous crime of severing her

head. The Court is unable to notice any quarrel or provocation preceding the occurrence, for the accused to do so. According to the learned

Counsel, the accused was having sustained provocation and in the confessional statement given to the Investigating officer he has stated that he

suspected the conduct of his wife. Mere suspicion, which he entertained, was only an impression created by him without any material whatsoever.

Under such circumstances, that material cannot be given any credence to bring

down the act of the accused from murder. The accused has done a heinous crime of severing the head of his wife. The above circumstances, can be termed only as murder. He has strangled his 8 1/2 years old child who was examined by P.W.9 doctor which was also witnessed by P.W.1. The injuries found therein would show that he attempted to commit murder of his child. In that regard, the trial Court has correctly found him guilty u/s 307 of I.P.C. In so far as the attempt of committing suicide was concerned, it was also proved by necessary medical evidence. The doctor had recorded the statement of the accused in Ex.P.11 Accident register wherein he has stated that the injuries are self made. All would go to show that the prosecution has proved its case beyond reasonable.

15. Under such circumstances, the Court is of the considered opinion that the judgment of the trial Court so far as the conviction and sentence u/s 302 IPC, the same have got to be confirmed. Insofar as the sentence of 10 years rigorous imprisonment for the offence u/s 307 IPC is concerned, it has got to be reduced to 7 years rigorous imprisonment and insofar as the sentence of one year simple imprisonment for the offence u/s 309 IPC is concerned, it has got to be reduced to one month simple imprisonment. Accordingly, the conviction under Sections 302, 307 and 309 I.P.C is confirmed. Coming to the question of sentence, the sentence awarded by the trial Court u/s 302 IPC is confirmed; the sentence of 10 years rigorous imprisonment awarded by the trial court u/s 307 is reduced to 7 years rigorous imprisonment and the sentence of one year simple imprisonment awarded by the trial Court u/s 309 I.P.C. is reduced to one month simple imprisonment. The sentences are ordered to run concurrently. The fine amount and the default sentence imposed by the trial Court will hold good.

16. With the above modification in sentence, the appeal is dismissed.