

(2012) 04 KL CK 0013

In the High Court Of Kerala

Case No : Criminal Appeal No. 2983 of 2008 (C)

Karunan, C. No. 9378, Central Prison, Kannur

APPELLANT

Vs

State of Kerala Public Prosecutor, High Court of Kerala,
Ernakulam

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2012) 04 KL CK 0013

Hon'ble Judges : R. Basant, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : I. Sheela Devi, State Brief, for the Appellant; Roy Thomas, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The appellant/accused is alleged to have picked up a quarrel with his wife and then physically assaulted her before pouring kerosene over her head and body and setting her ablaze and thus causing her death. The accused himself having suffered some injuries countered the case of the prosecution with the allegation of mental illness of his wife, which according to him, led to her suicide. The explanation of the injuries found in his body was that he had attempted self-immolation, motivated by the grief and despair in seeing his wife consumed by flames. The alleged incident occurred in the Estate quarters of the Plantation Corporation, Perambra allotted to the deceased, by virtue of her employment in the said Corporation. The alleged incident occurred on 1.4.2000 at 7.30 p.m. in the Quarters allotted to the deceased. Immediately after the incident, the neighbours, being adjacent occupants of similar quarters, rushed to the aid of the victim and finding her badly burned, removed her from the scene of occurrence to the Medical College Hospital. At the MCH, she was examined by P.W.18 doctor, who issued Exhibit P14 wound certificate. On intimation received from the Medical College Hospital, P.W.14 recorded Exhibit P1

F.I.Statement from P.W.1. Based on that, Exhibit P1(a) First Information Statement was incorporated in the records. In accordance with that, Exhibit P1(b) FIR was registered u/s 307 of the Indian Penal Code by P.W.15. Subsequently, on information being received about the death of the victim of the crime registered as per Exhibit P1(b) FIR, Exhibit P12 report was filed before the concerned Judicial First Class Magistrate Court altering Section 307 IPC to Section 302 IPC. Investigation was taken over and concluded by P.W.19, Circle Inspector of Police and charge sheet was filed by P.W.17. The Judicial First Class Magistrate-II, Perambra committed the case to the Court of Sessions, Kozhikode Division, which conducted trial, found the accused guilty u/s 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. .20,000/- with a default sentence of 3 months rigorous imprisonment.

2. The prosecution examined 19 witnesses and marked 24 Exhibits as Exhibits P1 to P22 as also M.Os 1 to 6, being Material Objects. On the side of the defence, as noticed above, a plea of suicide was advanced and no witnesses were examined. Case Diary contradictions were marked as Exhibits D1 and D2. The learned counsel for the appellant/accused as also the learned Public Prosecutor took us elaborately through the testimonies of the witnesses as also the Exhibits marked in the case. The sequence of events has been detailed in the judgment of the learned Sessions Judge and we do not deem it necessary to reiterate the same in the appellate judgment. The instant case being one wherein there are no witnesses to the actual occurrence of the crime, this Court necessarily has to consider and analyse the circumstances to decide upon whether the judgment of the Sessions Court is to be confirmed or reversed.

3. The learned Sessions Judge, after trial, proceeded broadly to consider the issues of cause of death of the deceased; whether the same was homicidal or suicidal; and on an analysis of the evidence endeavoured to identify the person, if any, who was the perpetrator of the crime and if so, as to the particular offence which the said person is deemed to have committed. The Sessions Judge found the death to be caused by reason of the homicidal burn injuries suffered by the deceased and identified the husband of the deceased as being behind the said homicide; found him guilty of murder u/s 302 of the Indian Penal Code and sentenced him as above. In evaluating the circumstances that led to the conviction of the appellant herein, we are called upon, as the appellate Court, to look into the circumstances relied on by the Sessions Court and find as to whether such circumstances do clearly and unerringly point to the guilt of the accused and whether such guilt is the only conclusion that can safely be arrived at, in exclusion to any and every reasonable hypothesis of innocence.

4. What is above controversy is the cause of death of the deceased. The deceased in a badly burned condition, was immediately removed to the Medical College Hospital by the neighbours in an Ambulance driven by P.W.4. The Ambulance belonged to the Plantation Corporation and the victim was accompanied by P.W.1, P.W.2 and two others to the Medical College Hospital. The

Log Book of the Ambulance, Exhibit P3, was taken into custody by Exhibit P4 mahazar, both of which were proved by P.W.7. At the Medical College Hospital, the deceased was examined by P.W.18 doctor, who issued Exhibit P14 wound certificate. It was noticed in Exhibit P14 itself that the deceased had 90% burns and P.W.18 spoke in consonance with the said wound certificate. The victim succumbed to the burn injuries on the next day and autopsy was conducted by P.W.10 doctor, who issued Exhibit P7 post-mortem certificate. Exhibit P7 post-mortem certificate shows the cause of death as "due to burns". The learned Sessions Judge has extracted the post-mortem findings in paragraph 12 of his judgment. P.W.10 the doctor who conducted autopsy, deposed in consonance with the post-mortem certificate. The circumstance of death due to burn injuries is established beyond any pall of doubt.

5. Though the cause of death is clearly established, the conflicting claims of homicide and suicide is the real issue to be dealt with in the present appeal. The claim of suicide is advanced by the accused on the alleged circumstance of the deceased being mentally unstable after the death of their only daughter. The appellant, in his 313 statement, paints his wife as a very unstable and irritable personality, subject to frequent mood-swings. It is his case that he along with his spouse had just previous to her death visited temples and relatives to assuage the feelings of his wife and had returned to the quarters in the afternoon of 1.4.2000. His wife having refused to cook food, the appellant had picked up a quarrel with her and in a fit of anger, hit her on the face. This again unsettled the deceased and she cried aloud for her daughter and poured kerosene over herself. The appellant then caught hold of the container, upon which the deceased set herself to fire, and on seeing her ablaze, he too attempted self-immolation. This is the version of the appellant. It is very pertinent that none of the witnesses acquainted with the appellant and the deceased speak of any mental instability of the deceased. The deceased in fact was profitably employed in an estate and had been residing in the Quarters allotted to her by virtue of her employment. Further, not even a suggestion has been made to any of the witnesses regarding the mental state of the deceased. Be that as it may, without ruling out the theory of suicide, we have to consider the circumstances of the occurrence to decipher the nature of death as also the perpetrator, if any, behind such death.

6. The incident proper, though not seen by any witnesses, is discernible from the attendant circumstances. According to P.W.1, on the accursed day, the deceased, just before the incident, had taken tea from her house and on the appellant coming there, she had proceeded to the house of C.W.7 to procure a magazine. When the appellant came to the house of P.W.1, according to P.W.1, there was a slight quarrel picked up by the appellant as to who had to collect the magazine from the house of C.W.7. The deceased having collected the magazine, came back to her Quarters and had settled down in the cot to read it when the appellant demanded it. When the deceased did not comply, the appellant caught her by the hair and pushed her to the floor. P.W.1, who was in the adjacent Quarters, saw the appellant assaulting the deceased, who was lying on the floor.

P.W.1 has categorically stated in cross-examination that standing just outside her Quarters on the verandah, it was possible to see inside the Quarters of the deceased. Exhibit P2 scene mahazar and Exhibit P9 scene plan lends credence to the version of P.W.1. The Quarters occupied by the deceased as also P.W.1 are two out of four separate dwellings in a line constituting a single building with a common wall in between. They are meagre dwelling houses, each with 2 rooms and a verandah.

7. The ocular evidence of P.W.1 is only to the extent of what is stated above, because the appellant then closed the door leading from the verandah to the inner room, thus blocking the vision of P.W.1. However, P.W.1 could hear the sounds of the continuing assault as also the mad ravings of the appellant threatening to kill the deceased. P.W.1 hence ran for help and called C.W.2, who was standing near the shop of one Joseph; which lies to the north of the Quarters as is evident from Exhibit P9 plan. When C.W.2 tried to push open the closed door, the appellant had shouted that it was his family problem and anybody who interferes with will be done away with. C.W.2 hearing the treat retreated. C.W.2 is the husband of the deceased daughter of the appellant. P.W.2 also, who was standing near Joseph's shop, corroborates the testimony of P.W.1 and speaks of having heard calls for help from the deceased. He along with C.W.4 had rushed to the Quarters of P.W.1, when he heard the deceased screaming out that "Karunan was killing her" (sic). When P.W.2 along with C.W.4 came to the spot and tried to open the door, the appellant opened the same from inside and ran out. The appellant also was found to have suffered burns, but definitely not seriously so as to turn the attention of the neighbours even fleetingly to him. The deceased, however, was found to be lying on the floor with extensive burns and on the onlookers trying to take her out, it is their case that her badly burned saree broke away and even her skin peeled off, evidencing the severity of the burns. The badly burned deceased was imploring the onlookers to immerse her in water.

8. It is the common version of P.W.1 and P.W.2 that while P.W.1 was quenching the thirst of the deceased they had asked her about what had transpired. The deceased had then, immediately after the incident, told the onlookers that her husband had assaulted her and had strangled her with the loose end of the saree and restrained her from running away by stamping down on her saree. Before doing so, the appellant had closed the door of the Quarters going out of the verandah and had dragged a table to the door leading to the kitchen, thus blocking all possible avenues of escape. The appellant had hollered that he would hack the deceased to death, but having not got hold of a bill-hook, he had poured kerosene over her body and set her on fire. This version of the deceased as spoken to the onlookers was testified to by both P.W.1 and P.W.2.

9. The conduct of the accused also raises very valid suspicion against his version in 313. The appellant who claims to have been consumed by grief and who attempted self-immolation was nowhere to be found after the incident. True, the

appellant was taken to a hospital, specifically to the Community Health Centre, Perambra, wherein he was examined by P.W.9 doctor and was later admitted to the Medical College Hospital. We shall come to the injuries suffered by the appellant a little later. What is clearly discernible from the circumstances spoken to by P.W.1 and P.W.2 is that the death of the deceased was not suicide. The physical assault seen by P.W.1 and the act of the appellant closing the door of their Quarters does not in any manner support the version of the appellant. There cannot be any dispute that at the scene of occurrence, i.e., the inner room of the Quarters, there were none but the deceased and the appellant. The threats of the appellant that emanated from the closed room and the cries for help by the deceased clearly indicate that the aggression of the appellant did not start and end with a mere beating. The version of the deceased as spoken to the onlookers, which, on her death, assumes significance as a dying declaration also indicate a homicide, that too by the appellant. It is crucial that the appellant did not advance a version to any one that the deceased had attempted to commit suicide.

10. The injuries suffered by the appellant necessarily have to be examined in excluding the probability of the incident having occurred as per the version of the appellant. P.W.9 was the doctor who examined the appellant at the first instance and also issued Exhibit P6 wound certificate. The wound certificate, Exhibit P6, only refers to burns on both legs and face and does not indicate any percentage of burns making it obvious that they were not serious. True, the wound certificate records the alleged cause of injury as an attempt to commit suicide by pouring kerosene, which has been advanced by the appellant himself. However, more details are forthcoming from P.W.8 doctor who treated the appellant at the Medical College Hospital, Kozhikode and issued Exhibit P5 discharge certificate. The appellant was admitted on 2.4.2000 and was discharged on 15.4.2000, during which period, as is evident from the testimony of the Investigating Officer, he was under surveillance. The appellant was immediately arrested on his discharge from hospital, as is proved by Exhibit P20 arrest report. The statement by the appellant recorded in Exhibit P6 as to the reason for the burn injuries found on his body can only be considered to be a self-serving statement. The counsel for the appellant would place heavy reliance on the testimony of P.W.9 as to her opinion that the cause of injury could be a suicide attempt, as alleged in the wound certificate Exhibit P6. But, P.W.8 who issued the discharge certificate deposed that the appellant had 25% burns and also examined the appellant in Court so as to identify him with reference to the injuries. After examination, the injuries suffered by the appellant were opined to be superficial on the same having left no scars on the face of the appellant. The expert also categorically deposes that if the appellant had in fact poured kerosene over himself and tried to immolate himself, definitely the burns would have been deeper and that the only deduction can be that the burns on his face were caused on contact direct or indirect with the flame. The burns on the feet of the appellant were, in P.W.8's opinion, due to direct contact with kerosene. The deceased having been doused

with kerosene poured over her head, it is only natural that the floor was wet with the inflammable liquid. Even the deceased in her version speaks of having slipped on the floor in her attempt to escape. The burns suffered by the appellant, in such circumstances, could only have been a result of his overt act of having poured kerosene over the head and body of his spouse and having then set her to fire. The theory of suicide by the deceased and the attempt of suicide by the appellant, in our opinion, can be safely ruled out on the strength of the overwhelming circumstances detailed above.

11. In arriving at a definite conclusion, we are amply aided by the dying declarations of the deceased. The same is fervently contested by the learned counsel for the appellant on the ground that such declarations by any stretch of imagination are downright impossible considering the severity of 90% burns suffered by the deceased. The counsel also draws our specific attention to Exhibit P14 wound certificate, wherein in column 13 it is stated that "dying declaration cannot be taken" (sic). However, P.W.18 who issued Exhibit P14 wound certificate states before Court that the patient was conscious when he examined her and there was every possibility of her having retrieved and revived from shock, on treatment. The prima facie opinion of the doctor who first attended to the patient and referred her to the Medical College Hospital cannot assume any significance in examining the dying declarations. The incident is said to have occurred at around 7.30 p.m. and Exhibit P14 wound certificate was at 10.35 p.m. on the same day. It is the version of P.W.1 and P.W.2 that the deceased had spoken to them about the cause of her death immediately after the incident when she was taken out from the room in which she suffered the burns. The same cannot be doubted since it happened immediately after the incident. It is only natural that the patient's condition, on passage of about 3 hours after the incident, without any treatment had turned worse. This might be reason for P.W.18 to record the patients incapacity in Exhibit P14 wound certificate. However, it was after being administered treatment at the Medical College Hospital, the deceased had given Exhibit P13 dying declaration to the Judicial First Class Magistrate-IV, Kozhikode (P.W.16). The said declaration was recorded by P.W.16 from the deceased who was lying in bed No.25 in Ward XX of the Medical College Hospital, Kozhikode. P.W.16 has stated before Court that he had introduced himself and had put questions to assess the mental fitness, memory and capacity of the patient to give dying declaration before recording the statement. The declaration was also recorded in the presence of the doctor who also had signed on the declaration; that too twice. There was absolutely no cross examination of P.W.16. Exhibit P13 dying declaration also discloses the certificate of the Medical Officer after the preliminary questions to the effect that the patient is conscious enough to give statement. The Medical Officer has also at the close of the statement certified that the patient was conscious throughout the recording of the statement. The statement was recorded in the afternoon of 2.4.2000; after the patient was administered treatment. P.W.18, the doctor who examined her at the first instance and issued Exhibit P14 wound certificate also accepts the fact that the

patient on treatment would respond and revive. There is absolutely nothing on record to disbelieve P.W.1 and P.W.2 regarding the dying declaration made by the deceased. Their testimonies are eminently corroborated by the dying declaration recorded by P.W.16, the Judicial First Class Magistrate, who had taken all precautions before recording the statement from the victim.

12. Motive though not a necessary incriminating ingredient in the chain of circumstances; it has often been held that the existence of such motive definitely aids the Court to establish an aggravating background on which the other circumstances can safely be anchored. As is usual in uxoricide the motives are aplenty, being infidelity, greed, simple and complex marital discords, drunkenness, rank poverty and so on and so forth. The counsel for the appellant points out a stray reference to the infidelity of the husband in the final report and the marital discord that emanated therefrom. However, there is nothing on evidence to support or confirm the same. The counsel for the appellant would in fact project the same as a major contradiction in the prosecution case. But, we find no worthy evidence to substantiate the same; nor is the contradiction of such a magnitude to disbelieve the prosecution case. Again the evidence of marital discord as also the tendency of the appellant to abuse and assault his spouse are quite evident from the testimonies of P.Ws 1 to 3. P.W.1, neighbour of the deceased; from her evidence is seen to be a close confidant of the deceased. The deceased used to address her as "aunt" (). P.W.1, as also P.W.2, a resident of another neighbouring Quarters, speaks of the marital discord in the house of the deceased and the strain in their relationship. It is the testimony of P.W.1 that none of the other neighbouring residents normally came to the Quarters of the deceased due to the quarrelsome nature of the appellant. P.W.1, however, vouches that she maintained close ties with the deceased and they frequently visited each other. P.W.2 also speaks of an earlier incident in which the appellant fractured the arm of his spouse and the consequent hospitalization of the deceased. To corroborate the evidence of P.Ws 1 and 2, we have the testimony of P.W.3, the brother of the deceased, who also speaks of the terrible marital life of his sister as also the infliction of grievous hurt by the appellant in an earlier incident. The evidence of P.Ws 1 to 3 clearly bring out the strain in the relationship between the appellant and the deceased. The prosecution, according to us, has convincingly brought out the conditions in which the deceased lived with the appellant, which amply provides the background for such a crime.

13. The discussion herein above would satisfy any prudent mind to safely arrive at the conclusion of guilt of the appellant in exclusion to any other theory or hypothesis. Though seemingly senseless, the circumstances in which the appellant and the deceased lived, as established in the case, necessarily provided essential motivation for the commission of the crime. The appellant and the deceased were alone at the time the deceased was immolated and the complicity of the appellant in having actively perpetrated the crime is quite evident from the circumstances as revealed from the evidence of P.W.1 and P.W.2. The chain of circumstances is unbroken and together establish unerringly the guilt of the

accused. The version of the accused in his 313 statement is quite improbable from the circumstances and would in fact by its very improbability be another circumstance against the appellant. The strain in the relationship between the spouses, appellant and the deceased, that the appellant and the deceased were alone when the deceased suffered injuries, the evidence of P.Ws 1 and 2 of what they perceived prior to the incident, that the appellant was seen running away with insignificant burn injuries from the scene leaving the deceased, his wife, with serious burn injuries inside the room, that the appellant did not advance a version to any one at the scene that his wife had attempted to commit suicide and the inherent improbability of such an unacceptable version advanced at the stage of trial do all establish the guilt of the appellant convincingly. The guilt of the appellant having been definitely established from the evidence on record, we are of the opinion that the conviction of the appellant by the learned Sessions Judge u/s 302 of the Indian Penal Code is only to be confirmed and we do so. In the facts and circumstances of the case, we have no doubt that the sentence also requires to be confirmed. The appeal, hence, fails and is dismissed.