
(2003) 01 MAD CK 0131

In the Madras High Court

Case No : Criminal Appeal No. 580 of 1998

Muthuvel and Sanjeevi Pulavar

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 13-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374

Citation : (2004) 1 LW(Cri) 67

Hon'ble Judges : M. Karpagavinayam, J;A.K. Rajan, J

Bench : Division Bench

Advocate : V. Murugesan, for the Appellant; E. Raja, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Muthuvel A1 and Sanjeevi Pulavar A2, the appellants herein, along with one Pappammal A3 were tried for the offences under Sections 302, 201 r/w 34 and 498A I.P.C. The third accused Pappammal was acquitted. The first accused Muthuvel was convicted for the offence u/s 302 I.P.C. and the second accused Sanjeevi Pulavar was convicted for the offence u/s 201 I.P.C. Challenging the same, this appeal has been filed by A1 and A2.

2. The short facts leading to the conviction are as follows:

(a) The deceased Kalaiselvi is the daughter of P.W.1 Kulandaivelu and P.W.2 Guruvammal. She got married to Muthuvel, the first accused five months back. 2nd accused is the paternal grand father of A1. Pappammal A3 is the mother of A1.

(b) Immediately after Aadi, P.W.9 Chellakumar, the brother of the deceased, took the deceased to the house of the accused. At that time, the second accused abused the family of P.W.1 stating that the articles relating to the marriage had not been given fully to the accused family. This was complained to P.W.1 by P.W.9. When P.Ws.1 and 2 went to the house of the accused, the deceased told

them that the second accused used to misbehave with her, when her husband, the first accused, was not in the house.

(c) On another occasion, the deceased informed P.W.2 her mother that she was having a wound on her private part. Therefore, she was taken to hospital by P.W.2 and treatment was given.

(d) Thereafter, a separate house was set up for the first accused and the deceased and the said house was situated next to the house of the second accused, Sanjeevi Pulavar. The third accused Pappammal, the mother of the first accused, was living separately.

(e) The fateful occurrence took place in the evening on 26.10.1996. At about 4.30 p.m., the first accused went to the grocery shop of P.W.6 and bought kerosene and "Porikadalai" and came back home. He had to go to factory for night shift. Therefore, the first accused asked the deceased Kalaiselvi to take bed with him for sexual intercourse. The deceased, who was suffering from wound on her private part, refused to share bed with him. However, the first accused insisted that she must come and co-operate with him to have sexual intercourse. But, the deceased refused to have intercourse with him.

(f) Then, the first accused abused her stating that as a husband he had a right to have intercourse with her. She retaliated saying that she would not co-operate with him and she would not want to live with him as wife anymore. Stating so, she removed her Thali from her neck and threw it on his face and also kicked him.

(g) Getting enraged at this, the first accused took a Pillow, M.O.5 and forcibly pressed the same on her face. Within a few minutes, the deceased died. On noticing that her wife died due to his act, he felt panicky. He went and informed this to the second accused Sanjeevi Pulavar. Then, the second accused asked the first accused to go out of the place stating that he would look after the body. The first accused came out and saw P.W.8 Ramar proceeding towards lake. As requested by P.W.8, the first accused accompanied him to lake.

(h) In the meantime, the second accused in order to cause disappearance of the evidence for murder, took the kerosene tin M.O.2 and poured the same on the dead body of the deceased and set fire to the body. When the smoke emanated from the house of the first accused, the neighbours P.Ws.6 and 7 came there and found that the second accused was sitting near the house. When the second accused was enquired about the same, he said that somebody was boiling paddy inside the house. But, P.Ws.6 and 7 opened the door and found the body of the deceased with burn injuries. P.W.7 poured water on the body and extinguished the fire.

(i) Meanwhile, the second accused asked P.W.12 to purchase firewood. He wanted to arrange cremation of the body of the deceased even without giving intimation to the parents of the deceased. On entertaining suspicion that the

deceased was done to death by the accused, P.W.11, the village elder and others prevented them from cremating the body of the deceased and asked them to give intimation about the death of the deceased to her parents.

(j) P.Ws.1 and 2, the parents of the deceased, on coming to know about the death of the deceased, came to the house of the accused and saw the dead body with burn injuries all over the body. P.W.1, on suspicion against the second accused, who earlier was said to have attempted to misbehave with the deceased, gave a complaint to P.W.20 Sub Inspector, Keelarajakularaman Police Station on 27.10.1996 at about 8.00 a.m. and the same was registered u/s 174 Cr.P.C. The F.I.R is Ex.P.21.

(k) Thereafter, an intimation was sent to the Revenue Divisional Officer, P.W.19. The inquest was conducted by him on 27.10.1996 from 3.00 p.m. to 5.30 p.m. P.Ws.1,2 and 7 were examined. P.W.19 Revenue Divisional Officer examined the accused 1,2 and 3. The statements of the accused given before the Revenue Divisional Officer is Ex.P.15. Then, P.W.19 sent the dead body to the Government Hospital, Rajapalayam for post mortem.

(l) On 28.10.1996, P.W.15, Doctor conducted post- mortem, found 100% burn injuries and issued post-mortem certificate Ex.P.9. Then, on receipt of the chemical analysis report, he gave his opinion Ex.P.11 that the death was due to asphyxia.

(m) P.W.19 also sent a report to the Deputy Superintendent of Police that there was no harassment for dowry and as such, there was no ground for suicide and asked the Police Department to investigate further in order to find out the cause of the death.

(n) P.W.21, the Deputy Superintendent of Police, on receipt of the message, came to the scene of occurrence on 27.10.1996 and prepared observation mahazar and rough sketch and recovered kerosene tin, burnt cloths, etc. Thereafter, on 28.10.1996, he sent report to the Judicial Magistrate III, Srivilliputhur requesting to alter the case for the offences u/s 304(B) and 306 I.P.C. On 29.10.1996 at about 1.30 p.m., he arrested the accused 2 and 3 and sent them to judicial custody. He took steps to arrest the first accused. But he was absconding.

(o) P.W.21, while trying to arrest the first accused came to know on 6.12.1996 that the first accused surrendered before the Court on 3.12.1996. Then, P.W.21 applied for Police custody from Court and obtained the same on 10.12.1996. He recorded his confession statement, the admissible portion of which is marked as Ex.P.12 and recovered M.O.5 Pillow and M.O.1 Thali.

(p) After recording the statement from the Doctor, he sent another report to the Court to again alter the case from Sections 304(B) and 306 I.P.C. to Sections 302, 201 and 498A I.P.C. After finishing the investigation, he filed charge sheet against all the accused for the above offences.

(q) The Prosecution examined, P.W.1 to P.W.21 and filed Exs.P.1 to P.24 and marked M.O.1 to M.O.7.

(r) When the accused were questioned u/s 313 Cr.P.C., they simply denied their complicity in the crime.

(s) The trial court, on consideration of the materials available on record, convicted the first accused for the offence u/s 302 I.P.C. and sentenced him to undergo Life Imprisonment and convicted the second accused for the offence u/s 201 I.P.C. and sentenced him, to undergo R.I. for 7 years and to pay a fine of Rs. 1,000/- in default, to undergo simple imprisonment for one year and acquitted the third accused. Challenging the above conviction and sentence, this appeal has been filed by the accused 1 and 2.

3. Mr. Murugesan, the learned counsel appearing for the appellants took us through the entire evidence and would contend that the circumstances placed by the prosecution would not be sufficient to hold that the first accused is guilty of murder and in any event, the first accused cannot be convicted u/s 302 I.P.C., as the act has been committed by him due to sudden and grave provocation and at the most, he could be convicted for the lesser offence, namely, Section 304 Part 1 I.P.C. and the second accused is liable to be acquitted for want of adequate evidence.

4. In reply to the same, the Additional Public Prosecutor would contend that various pieces of the circumstances placed by the prosecution would be enough to hold that the first accused committed murder, and as such, the prosecution has established its case. However, he would submit that the confession statement, Ex.P.12, given by the first accused, while he was under police custody can be taken into consideration in favour of the first accused in order to decide the nature of the offence committed by him.

5. We have carefully considered the submissions made by the counsel for the appellants and the respondent and also gone through the records.

6. It is settled law that in a case of circumstantial evidence, the prosecution has to establish the circumstances clearly and those circumstances must form a complete chain without any missing link and the same should unerringly point to the guilt of the accused without giving any room for any hypothesis of his innocence.

7. In the light of the above principles, if we look at the case on hand, in our view, the circumstances projected by the prosecution would clearly point out that the first accused alone had caused the death of the deceased and that the second accused poured kerosene over the dead body of the deceased and set fire to the body for the purpose of causing disappearance of the evidence.

8. The circumstances shown by the prosecution are as follows:

(i) The occurrence had taken place at 5.15 p.m. P.W.6 Grocery shop owner stated

that the first accused came to his shop and purchased some articles and went back to his house at about 4.30 p.m.

(ii) P.W.8 stated that he saw the accused coming out of his house at 5.30 p.m. and took him to lake.

(iii) P.W.11, the village elder would state that the accused 1 and 2 hurriedly made arrangements for cremating the body of the deceased without giving intimation to the parents of the deceased.

(iv) P.W.12 would also state that the second accused gave money to him for the purchase of firewood for cremating the body of the deceased.

(v) P.W.15 Doctor would state through Ex.P.9 and P.11 that the deceased died only due to asphyxia and not due to burn injuries and the burn injuries were caused on the body of the deceased only after the death of the deceased.

(vi) Even though, P.W.21 took up investigation and altered the case from Section 174 Cr.P.C. to Section 304(B) and 306 IPC and arrested the accused 2 and 3 on 29.10.1996, the first accused was not available for arrest. The first accused, ultimately, surrendered before the Court only on 03.12.1996.

(vii) On 10.12.1996, P.W.21 obtained police custody of the first accused and on his confession Ex.P.12, he recovered M.O.5 pillow, which was used as the weapon of the offence and M.O.1, Thali, which was thrown by the deceased at the face of the first accused.

9. The circumstances as shown by P.Ws.6, 8, 11 and 12 would clearly show that the first accused, the husband of the deceased was living with the deceased in the same roof on the date of occurrence. Furthermore, the first accused himself has given a statement under Ex.P.15 to P.W.19 on the date of inquest that he was staying along with the deceased on the date of occurrence. As a matter of fact, a reading of Ex.P.15 would make it clear that he also suspected that somebody had committed murder of his wife and it was not the case of suicide. Thus, it is clear that during the relevant time, the first accused was staying with the deceased when the deceased sustained injuries.

10. It is settled law that it is for the accused as contemplated u/s 106 of the Evidence Act to show as to how the deceased sustained injuries as the same would be in the exclusive knowledge of the accused. That apart, the evidence of P.W.15, the Doctor and Ex.P.9 and Ex.P.11 would indicate that the deceased died due to asphyxia and not due to burn injuries.

11. It is the case of the prosecution that the second accused poured kerosene on the body of the deceased in order to cause disappearance of the evidence for murder and set fire to the body. Though there is no direct evidence, the evidence of P.W.15 would clearly show that kerosene was poured on the body and set fire only after the death.

12. Through the evidence of P.Ws.11 and 12, it is noticed that the second

accused asked P.W.12 to purchase firewood for cremation of the deceased hurriedly, even without giving intimation to the parents of the deceased and the said attempt was prevented by P.W.11, the village elder.

13. Yet another important circumstance is that he was absconding from 28.10.1996 to 3.12.1996 on which date he surrendered before the Court. Admittedly, the FIR was altered into one under Sections 304(B) and 306 IPC and the second and third accused were arrested on 29.10.1996. After obtaining police custody of the first accused from the Court, M.O.1 Thali and M.O.5 Pillow were recovered on his confession on 11.12.1996.

14. It is true that M.O.5 pillow was found available when the observation mahazar was prepared. But, the same was not recovered. The reason is that at that time, P.W.21 did not suspect that the pillow was used as a weapon by the first accused. Only on the confession given by the first accused on 11.12.1996, the Investigating Officer came to know that M.O.5 pillow was used for pressing the face of the deceased and causing her death.

15. When we look at the evidence of P.W.15 coupled with the other circumstances projected by P.Ws.6, 8, 11 and 12, it would make it clear that the prosecution has established that the first accused alone was staying in the house along with the deceased and the deceased died due to Asphyxia. As a matter of fact, P.W.15, Doctor, who has given the above opinion, has not been cross examined at all. Once the same is established by the prosecution, then it is for the first accused to explain as to how his wife sustained injuries, which resulted in her death. Admittedly, no explanation has been offered by the first accused in his Section 313 Cr.P.C. examination.

16. Under those circumstances, we are constrained to hold that the first accused alone caused death of the deceased and the second accused set fire to the dead body of the deceased in order to cause disappearance of the evidence for the said act.

17. For deciding the nature of the offence committed by the first accused, it is stated that the confession statement given by him to the Police Officer, P.W.21 can be considered in entirety in view of the fact that it contained some facts which would be in favour of the accused. This principle has been laid down in VENKATESAN VS. STATE BY INSPECTOR OF POLICE, THIRUPPORUR 1997 (2) MWN(Cr.)141 .

18. It is the case of the prosecution that the first accused by means of M.O.5 pillow caused suffocation by pressing the same on the face of the deceased, and therefore, he is liable to be convicted u/s 302 I.P.C.

19. The confession statement of the first accused, Ex.P.12 would clearly indicate that the first accused had sudden and grave provocation and due to this, he took M.O.5 pillow, which was kept inside the house, and pressed the same on the face of the deceased and caused suffocation. According to the first accused, he came

in the evening to the house and asked the deceased to come and take bed with him to have sexual intercourse. But, the deceased refused for the same, since she was suffering from wound on her private part. Even then, he insisted for the intercourse stating that he had a right to have intercourse with her as a husband. Then, the deceased retaliated by saying that she would not live as his wife any more, and as such, he had no right to ask for intercourse. Stating this, she removed her Thali from her neck and threw it on the face of the accused and also kicked him on the chest.

20. This act of the deceased, according to him, provoked him to take the pillow and press the same on her face and within few minutes, she died. The incident, as narrated in Ex.P.12, would clearly indicate that the incident had occurred in a sudden quarrel due to sudden and grave provocation.

21. Under those circumstances, we are inclined to hold that the first accused is liable to be convicted for the offence u/s 304 Part 1 I.P.C. and not u/s 302 I.P.C. Consequently, the conviction and sentence imposed on the first accused by the trial Court u/s 302 I.P.C. are set aside. Instead, he is convicted u/s 304 Part 1 I.P.C and sentenced to undergo R.I. for seven yearS. Consequently, instead of 201 r/w 302 I.P.C., the second accused is liable to be convicted only u/s 201 r/w 304 Part 1 I.P.C. and sentenced to undergo R.I. for seven yearS.

22. With the above modifications, this appeal is dismissed. The trial Court is directed to take steps to secure the custody of the second appellant (A2) to undergo the remaining period of sentence, as the first appellant(A1) is already in jail.