
(2016) 06 MAD CK 0005
In the Madras High Court
Case No : CrI.A.No. 141 of 2015

Selvam

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-06-2016

Acts Referred:

Constitution of India, 1950 — Article 21
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 201, Section 302, Section 498A

Citation : (2017) 2 CriCC 321 : (2017) CriLJ 565

Hon'ble Judges : Mr. S. Nagamuthu and Mr. V. Bharathidasan, JJ.

Bench : Division Bench

Advocate : Mr. M. Maharaja, Addl. Public Prosecutor, for the Respondent; Mr. R. Selvakumar, Advocate, for the Appellant

Final Decision : Allowed

Judgement

S. Nagamuthu, J. - The appellant is the sole accused in S.C. No. 61 of 2014 on the file of the learned Sessions Judge, Fast Track Mahalir Court, Dharmapuri. He stood charged for offences under Section 498-A, 302 and 201 of IPC. By judgment dated 09.01.2015, the trial court convicted him under Sections 498-A, 302, 201 and 316 of IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default, to undergo simple imprisonment for one month for the offence under Section 498-A of IPC, sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to undergo imprisonment for 3 months for the offence under Section 302 of IPC, sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs. 1,000/-, in default, to undergo imprisonment for one month for the offence under Section 201 of IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 2,000/-, in default, to undergo imprisonment for 2 months for the offence under Section 316 of IPC. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution in brief is as follows:

(a) The deceased in this case was one Mrs. Thangammal. The accused married her in the month of July, 2012. After the marriage, they were living together at the house of the accused at A. Mallapuram, Naduvor Village. Out of the said wedlock, the deceased became pregnant. When she was 5 months pregnant, she was taken to the house of her parents religiously. In the absence of the deceased, the accused developed illicit intimacy with one Vennila (P.W.10). This came to the knowledge of the deceased which resulted in frequent quarrels between the accused and the deceased. The deceased was again taken back to the house of the accused. It is further alleged that on 06.01.2013, around 09.00 p.m., one Gowri (P.W.8) informed P.W.1 that there was a quarrel between the deceased and the accused. P.W.1 and the other relatives could not go immediately. On the next day morning, P.W.1 and other relatives of the deceased went to the house of the accused. At that time, the accused was not found in the house. The deceased was lying inside the house with burn injuries and found dead. Immediately, P.W.1 went to Marandahalli Police Station and made a complaint at 12.00 noon on 06.01.2013.

(b) P.W.15, the then Special Sub-Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.2 of 2013 under Section 302 of IPC against the accused. Ex.P.13 is the First Information Report.

He forwarded both the documents to court which were received by the learned Magistrate at 06.00 p.m. on 06.01.2013.

(c) Thereafter, the case was taken up for investigation by P.W.18. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. He recovered few more material objects also from the place of occurrence. He arranged for a Photographer to take photographs at the place of occurrence. Then, he forwarded the body to the Government Hospital, Palacode for postmortem.

(d) P.W.17 Dr. Balakrishnan received the dead body of the deceased and kept it in the mortuary. On a request made by P.W.18, the Revenue Divisional Officer, Dharmapuri Sub-Division, visited the hospital and conducted inquest on the dead body of the deceased between 04.30 p.m. and 05.30 p.m. on 06.01.2013 in the presence of Panchayatdars. Ex.P.15 is the Inquest Report. Then, the body was sent for postmortem.

(e) P.W.11 conducted autopsy on the dead body of the deceased on 07.01.2013 at 03.15 p.m. He found the following injuries:

"External Injuries:

Diffuse irregular epidermo dermal postmortem burns with areas of charring seen over front and sides of chest, front of abdomen, front and sides of right and left thighs and legs, dorsum and inner aspect of both foot. Entire both arms, front, back and outer aspect of both forearm, entire right palm, part of back or right

hand and part of left palm, entire face, front and sides of neck and general.

Heat rupture seen on the following regions:

17 x 4 c.m. x 1 c.m. on the front of lower part of abdomen;

24 x 4 c.m x 1.5 c.m. on the inner aspect of left thigh;

28 x 5 c.m. x 1 c.m. on the inner aspect of left leg;

32 x 3 c.m. x 1 c.m. on the inner aspect of right thigh;

26 x 3 c.m. x 1 c.m. on the inner aspect of right leg;

15 x 2.5 c.m x 0.5 c.m. on the inner aspect of left arm;

11 x 30.5 c.m. on the front of right shoulder;

22 x 4 x 0.5 c.m. inner aspect of right arm;

22 x 7.3 x 1 c.m. on the inner aspect of right forearm;

6 x 2 x 0.5 c.m. on the left cheek".

Dissection of Thorax and abdomen:

Rib cage was intact.

Heart was normal in size, all chambers contained fluid blood. Valves, great vessels, coronary were normal. Lungs were normal in size cut section: congested. Stomach was empty. Mucosa congested.

Liver, Spleen and kidneys were normal in size. Cut section :

Congested.

Urinary Bladder was empty.

Uterus : 15 x 14 x 6 c.m. in size cut section : Cavity contained 3-4 months (12c.m.) old dead male fetus. Pelvis bone was intact.

Dissection of Head:

Scalp, skull and duramater were intact.

Brain : Surface vessels engorged, thin layer of sub arachnoid hemorrhage over right and left parieto occipital region. Cut Section: congested Base : Intact.

Dissection of Neck:

Soft tissue on either side of upper half of thyroid cartilage and soft tissue around both adenoids cartilage shows dark red contusion. Multiple petechial hemorrhages seen on the epiglottis. Larynx and trachea shows no soot particle on the luminal surface. Hyoid bone was intact. Thyroid cartilage was found intact. Blood vessels were found intact. Spinal column was intact."

Ex.P.8 is the Postmortem Certificate. He gave opinion that the deceased would appear to have died due to asphyxia due to strangulation. The burn injuries found on the body of the deceased, according to him, are all postmortem injuries.

(f) P.W.18 arrested the accused on 07.01.2013 in the presence of P.W.6 and another witness. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden a Kerosene Can. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the M.O.4 Kerosene Can. P.W.18 recovered the same under a Mahazar. Then, on returning to the police station, he forwarded the accused to court for judicial remand and also handed over the material objects to court. Then, he altered the case into one under Sections 302 and 302 read with Section 4 of Women Harassment Act. Ex.P.17 is the Alteration Report. At his request, the material objects were sent for chemical examination. He also collected call details relating to the telephonic calls between P.W.8 and P.W.1 and on completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 18 witnesses were examined and 18 documents and 7 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the father of the deceased. P.W.2 is a neighbour of P.W.1. P.W.3 is yet another neighbour of P.W.1. P.W.4 is the mother of the deceased. P.W.5 is also a neighbour of P.W.1. They have all stated that when they went to the house of the deceased, they found the dead body of the deceased inside the house of the accused. There were burn injuries on the body. P.W.1 and P.W.5 have further stated about the motive. P.W.6 has stated about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the material objects from the place of occurrence. He has also spoken about the arrest of the accused and the consequential recovery of the Kerosene Can on the disclosure statement made by the accused. P.W.7 is yet another neighbour. She has stated that on one day, the accused invited her to come to his house and at his house, he complained with her that the deceased was quarrelling with him suspecting his fidelity. P.W.8 Gowri has stated that on one day, the accused and the deceased had quarrel. At that time, the parents of the accused were also there. Then, she informed P.W.1 that there was a quarrel at the house of the accused. P.Ws.9 and 10 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.11 Doctor has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.12 photographer has spoken about the photographs taken by him at the place of occurrence. P.W.13 is a Head Constable who has stated that he took the dead body of the deceased to the hospital and handed over the same for the purpose of postmortem. P.W.14 has stated that he handed over the FIR to the learned Magistrate at 06.00 p.m. on 06.01.2013. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.W.16 has spoken about the

call details of the cell phone between P.W.8 and P.W.1. P.W.17 has stated that he kept the dead body in the mortuary of the Government Hospital. P.W.18 has spoken about the investigation done by him and his final report.

5. When the above incriminating materials were put to the accused under section 313 Cr.P.C., he denied the same as false. His defence was a total denial. However, on the side of the accused, two witnesses were examined as D.W.1 and D.W.2. D.W.1 is the father of the accused. He has stated that on 06.01.2013 at the house of the accused, the deceased alone was there. On the next day morning, when he went to the house of the accused, he found the deceased with burn injuries and dead. After that, according to him, the accused came to the house. Thus, according to D.W.1, at the time of occurrence, the accused was not at home. D.W.2 is a close relative of the accused. He has also stated the same facts. According to him, he accompanied D.W.1 to the house of the accused. The defence of the accused is that he was not responsible for the death of the deceased. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. This is a case based on circumstantial evidence. At any rate, in a case based on circumstantial evidence, the prosecution is expected to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain, without any break so as to unerringly pointing to the guilt of the accused and there should not be any hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now go into the circumstances projected by the prosecution in this case.

8. The first and foremost circumstance projected by the prosecution is that the deceased used to quarrel with the accused frequently on the suspicion that the accused had developed illicit relationship with one Vennila. P.W.1 has spoken about the same and few more witnesses have also spoken about the same. From these evidences, at the most, it can be held that there were frequent quarrels between the deceased and the accused.

9. On 06.01.2013 in the evening, it is stated that there was a quarrel between the deceased and the accused. At that time, the parents of the accused were also there in the house. This was seen by P.W.8. She informed the same to P.W.1. That was the last occasion, the deceased was found alive. Thereafter, the accused and his parents were not seen at all.

10. Thereafter, on the next day morning, the dead body of the deceased was found. P.W.11 who conducted autopsy on the body of the deceased has stated that the death was due to manual strangulation and the burn injuries were only

postmortem. From the medical evidence, the prosecution has established that the deceased had been done to death by strangulation and the same had occurred somewhere between 07.00 p.m. on 06.01.2013 and 07.00 a.m. on 07.01.2013.

11. Now the question is as to who caused the death of the deceased. In our considered view, the prosecution has not let in any evidence in respect of this fact.

12. The learned Additional Public Prosecutor would submit that the conduct of the accused that he was absconded at the house would go to prove his guilty. But we are not persuaded by the said argument, for the reason that D.Ws.1 and 2 have stated that the accused was not at all there in the house and on 07.01.2013, after hearing about the occurrence only, the accused came to the house. P.W.8 had lastly seen the deceased alive. She has also not stated that the accused was there in the house for the whole night. Thus, it is difficult to believe that the accused was at the house at the time of occurrence and caused the death of the deceased. If that circumstance goes, absolutely, there is no evidence to connect the accused with the crime. Thus, the prosecution, in our considered view, has failed to prove that it was this accused, who caused the death of the deceased.

13. Article 21 of the Constitution of India guarantees the life and personal liberty of an individual only by following the procedure established by law. It is not possible to deprive of the life and personal liberty of the individual on mere conjectures or surmises. In this case, in our considered opinion, the trial court had convicted the accused based on surmises. Therefore, we are bound to interfere with the conviction and sentence imposed by the trial court on the accused. We hold that the appellant is entitled for acquittal.

14. In the result, the appeal is allowed and the appellant is acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bond, if any executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the accused.