



BAIL SLIP

The Appellant/ Accused Viz. Rajamani @ Rajamanickam was directed to be released on bail as per the order of this Court dt. 23/7/99 and made in CrI.MP. 5308/1999 in CrI.Appeal No. 40/1999.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No.40 of 1999

Rajamani @ Rajamanickam ... Appellant/Accused

Vs

State rep. by
Inspector of Police,
Kumaralingam Police Station ... Respondent/Complainant

Prayer: Appeal against the order dated 24.12.1996 passed by
Principal Sessions Judge, Coimbatore Division in S.C.No.157/96.

For Appellant : Mrs.T.Ananthi

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM,J)

Aggrieved over the judgment of the learned Sessions Judge, Coimbatore Division in S.C.No.157 of 1996, the appellant, who is the sole accused in a case of murder has brought forth the present appeal.

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

P.W.3, Ponnusamy and his wife Muthammal were residents of Manupati village. Their daughter, Annammal, the deceased, was given in marriage to the appellant about 20 years back, and they gave birth



to P.W.4, Selvi Kaleeswari and two sons, Bharatharaman and Veeraswamy. The appellant/accused and the deceased, along with their children, were living in a thatched shed owned by the accused in Parthasarathipuram. The deceased, her husband/appellant, P.W.4 and the mother of the deceased went to P.W.10, an Astrologer, to see whether the horoscope of P.W.4 was in match with one Nambirajan, a nephew of the appellant. The Astrologer found it to be all right and he informed them to go ahead with marriage. Even then, in the house of P.W.10, there was a quarrel between the deceased and the appellant. P.W.10 intervened and pacified them. After that incident, P.Ws.5 and 7 who were cousin brothers of the deceased, came to the village for making a demand of handloan. The deceased informed to P.W.7 that she would pay the amount later and informed that she would give her daughter, P.W.4 in marriage to P.W.7. At that time the appellant intervened to say that P.W.4 should be given in marriage to Nambirajan, his nephew and none else. There arose a quarrel on that account. P.W.7 pacified them and left the place. On that day, i.e. on the day of occurrence, at about 3.30 p.m., the deceased and appellant sent their three children to Manupatti to their grandmother's house by handing over Rs.100/- to P.W.4. Thus at the night of the day of occurrence, the husband and wife, viz., the deceased and the accused, were staying in the house. Next day morning, at about 4.45 a.m., when P.W.8, the milk vendor, went across the house of the deceased, he found the accused standing near his thatched shed. On seeing P.W.8, the accused asked his torch light which he was having in his hand, but he refused. P.W.8 took the accused to his thatched shed in the light of the torch light and in the thatched shed of the accused, P.W.8 saw the deceased Annammal lying dead. P.W.8 asked the accused as to what had happened, but the accused was weeping without telling anything to P.W.8. P.W.8 went to Co-operative society as the milk van arrived at that time. P.Ws.3,4,5 and 7 were informed about the death of the deceased in the morning of 15.7.1994. They reached the place of occurrence and found the dead body of Annammal. That time, the appellant/accused went to the police station and gave a complaint stating that his wife Annammal had died after consuming poison for herself. P.W.12, the Head Constable attached to Komaralingam Police Station received the said complaint which is marked as Ex.P6. On the strength of Ex.P6, P.W.12, registered a case in Crime No.140/94 for offence under section 174 Cr.P.C. and prepared First Information Report, Ex.P17. He despatched the copy of the FIR to the Court as well as to the Tahsildar, Udumalpet. P.W.12, who took up investigation, went to the scene of occurrence and prepared an observation mahazar under Ex.P4 and prepared a rough sketch, Ex.P8. He recovered material objects under a mahazar. He also conducted inquest on the dead body in the presence of witnesses. Ex.P9 is the inquest report. He forwarded a requisition to the Government Hospital, Udumalpet to conduct autopsy on the dead body of the deceased. Accordingly, P.W.6, a doctor attached to the



Government Hospital, Udumalpet conducted autopsy on the dead body of Annammal and found the following injuries:-

1. Contusion 15 cm x 10 cm size over the left parietal, temporal and forehead above the eye left. On exploration of the above wound subcutaneous echymosis seen and clotted blood 5 cm x 5 cm under the skin correspondingly a depressed fracture of the parietal Bone left side seen. On opening the skull there was subdural haematoma over the parietal region of the left hemisphere.
2. 1 cm x 1 cm abrasions over the anterior aspect of right elbow.
3. 1 cm x 1cm abrasion over the anterior aspect of left knee.

The Doctor has given a post mortem certificate Ex.P2, wherein he has clearly opined that the deceased would appear to have died of shock and haemorrhage due to injury to the vital organ brain above 10 to 12 hours prior to post mortem. Following the same, P.W.13, took up investigation. The accused was arrested and sent to the Court for judicial remand. On completion of investigation, final report has been filed. The case was committed to Court of Sessions. Necessary charges were framed against the accused.

3. In order to substantiate the charges levelled against the accused, the prosecution examined 13 witnesses and relied on 12 exhibits and 4 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the witnesses, which he flatly denied as false. Neither defence witness was examined nor any document was marked on his side.

4. After hearing the arguments advanced by both sides, and on scrutiny of the materials available on record, the trial Court found the accused guilty as per the charge and awarded life imprisonment. Aggrieved against the same, the accused has brought forth the above appeal.

5. The learned counsel appearing for the appellant, assailing the judgment of the trial Court, made the following submissions:-

The prosecution had no direct evidence to offer. It rested its case exclusively on circumstantial evidence and the prosecution has not even placed any proved circumstance connecting the accused with the crime. It is also pertinent to point out that according to the prosecution, there is evidence to show that there was quarrel among the spouses all along. On the day of occurrence also there was a quarrel between them and nobody was available to speak about the occurrence. Apart from that, it was the accused who went to the police station immediately and gave a complaint. The evidence of P.W.8, that he saw the accused standing near his house is highly improbable. Nothing has been recovered from the accused. What was

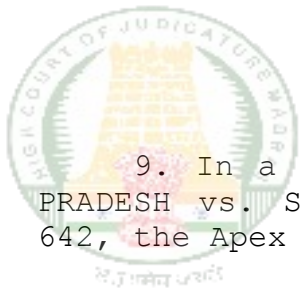


recovered from the dead body did not contain bloodstain. The lower court without considering the evidence in proper perspective found the accused guilty.

6. Added further, the learned counsel for the appellant, that even assuming that the facts put forth by the prosecution were proved, the act of the accused would not fall within the ambit of Section 302 IPC since from the evidence of P.Ws. 3, 5 and 7 it is clear that there was quarrel between the spouses and under such circumstance, it would fall only within the ambit of one of the exceptions to Section 300 IPC, which will not come under the definition of murder and it has got to be considered.

7. Heard the learned Additional Public Prosecutor appearing for the State on those contentions. He would submit that the prosecution has brought forth all the circumstances, which would constitute a clear chain without any lapses and thus, the lower Court was perfectly correct in finding him guilty and awarding the punishment as stated above.

8. This Court paid its full attention on the rival submissions made and had a thorough scrutiny of the entire materials. It was the case of the prosecution that the accused murdered his wife on the date of occurrence i.e. 14.7.1994 at night hours. There are sufficient circumstances pointing to the guilt of the accused. True it is that there is no direct evidence on the side of the prosecution. But sufficient circumstances were placed and sufficient proof with acceptable evidence were also available in the prosecution case. In the instant case, it is not in controversy that the accused and the deceased, who are husband and wife, alone were staying in their house on the night of 14.7.1994. It is not in dispute that three children were sent to Manupatti at about 3.00 p.m. on 14.7.1994. They were also not available in the house on that night. Thus, it would be quite clear that the accused/appellant and his deceased wife, Annammal were the only persons who stayed in the house. That being so, if the wife is found dead, the husband is expected to give responsible answer. But, in the instant case, no proper and acceptable answer was forthcoming from the appellant. On the contrary, he went to the police station and gave a complaint, Ex.P6 stating that his wife committed suicide by consuming poison. As per the post mortem certificate, the doctor, who conducted the post mortem has stated that the deceased died due to the injury sustained in the vital organ. The visera report also clearly shows that the theory of the petitioner that his wife committed suicide by swallowing poison has become false. This was yet another circumstance pointing out the guilt of the accused. Apart from that, as P.W.8 has categorically given evidence that he found the accused standing near his house at about 4.45 a.m. and he also found the deceased lying dead on the floor with some injuries, at this juncture, the Court has to necessarily apply the last seen theory in the instant case.



9. In a decision rendered by the Apex Court in STATE OF UTTAR PRADESH vs. SATISH and reported in 2005 Supreme Court Cases (Cri) 642, the Apex Court has held as follows:-

" The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

10. In the instant case, the theory of last seen adduced through P.W.8 is an acceptable one since it is an admitted position that the deceased and the appellant were staying in the house on that night and at about 4.45 a.m. P.W.8 has seen the appellant standing in front of his house, and the accused took P.W.8 to his house, where, P.W.8 saw the deceased lying dead on the floor and when questioned by P.W.8, the accused did not give any answer, but left the place and went to the police station stating that his wife committed suicide by consuming poison. On the contrary, the post mortem report reveals that she has died due to the injuries sustained. At this juncture, the Court has to point out that in the instant case, the accused has not only suppressed the necessary link, but has also given false story. The Apex Court in a decision rendered in DEONANDAN vs. STATE OF BIHAR (AIR 1955 SC. 801), has held as follows:-

"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain".



11. In the instant case, the appellant/accused had no explanation to offer as to how his wife died. But he came with false story before the police station by giving Ex.P6 complaint. It would clearly indicate the fact that it was none else except the accused, who committed the murder of his wife. Thus, sufficient circumstances were placed and sufficient proof was also placed before the lower court, pointing out the guilt of the accused. Thus, the lower court was perfectly correct in finding him guilty.

12. Now coming to the second contention of the learned counsel for the appellant that there was quarrel prevailed between the spouses on the date of occurrence and thus even assuming the case of the prosecution has been proved, it would not fall within the ambit of murder, it has got to be rejected since it will not stand the scrutiny of law. In the instant case, factually, all the three children left the house at about 3.00 p.m. As per the evidence, the spouses were pacified, but he was in guilty mood. Under such circumstances, the question of quarrel between the spouses themselves does not arise. Apart from that, the evidence clearly indicates that he deliberately acted in guilty mood against his wife, which, in the opinion of the Court, comes within the definition of murder. The lower court was perfectly correct in finding the accused guilty for the offence of murder and in awarding punishment of life imprisonment.

13. In result, the judgment of the lower court has got to be affirmed. Accordingly, the appeal fails and the same is dismissed.

14. It is reported that the appellant is on bail. The learned Sessions Judge shall take steps to commit the accused to prison to undergo the remaining period of sentence.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1.The Principal Sessions Judge, Coimbatore
- 2.
- 2.The Judicial Magistrate, Udumalpet.
- 3.-do- thro' The Chief Judicial Magistrate, Coimbatore.



4.The District Collector, Coimbatore

5.The Director General of Police, Madras.

6.The Public Prosecutor, High Court, Madras.

7.The Superintendent, Central Prison, Coimbatore

8. The Inspector of Police,
Kumaralingam Police Station, Coimbatore.

Cr1.A.No.40 of 1999

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