

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1450 OF 2009

Kumar

.... Appellant(s)

Versus

State of Tamil Nadu
Respondent(s)

....

J U D G M E N T

P.Sathasivam,J.

1) This appeal has been filed against the judgment and order dated 23.04.2008 passed by the High Court of Judicature at Madras in Criminal Appeal No. 792 of 2007 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and confirmed the order of conviction and sentence dated 30.07.2007 passed by the 1st Additional Sessions Judge, Salem, in Sessions Case No. 56 of 2004.

2) **Brief facts:**

(a) The marriage of Vijayalakshmi (the deceased) and Thiruselvam was solemnized on 06.09.2001 at Murugan Nagar, Zerinakadu, Yercaud, Tamil Nadu. After the marriage, she was staying at her matrimonial home in a joint family consisting of her husband, Krishnan (father-in-law), Chellammal (mother-in-law) and Kumar-the appellant/accused, brother-in-law of the deceased. After one year of the marriage, a baby girl was born out of the said wedlock.

(b) It is the case of the prosecution that after the birth of the girl child, the deceased was harassed and tortured by her husband and in-laws to bring money from her parents in order to take care of the baby. On several occasions, she was forced and even harassed to arrange money from her paternal home in order to fulfill the demand of dowry. In addition to this, her brother-in-law, Kumar (the appellant-accused) had bad intentions towards her.

(c) On 15.08.2003, at 2.00 p.m., the deceased called her brother - Chandrabose (PW-1) over phone and informed him that her husband and in-laws are torturing her for the money and asked him to bring the money immediately, within one hour, failing which, she would kill her and her child. Since she disconnected the phone immediately, PW-1 tried to contact her but he could not get it. Thereafter, he spoke to his sister-in-law - Mariyayi (PW-3) about the same and asked her to visit the house of the deceased. At 3.30 p.m., PW-1 got a call from his elder brother that Vijayalakshmi and her baby died due to burn injuries. On the same day, PW-1 registered a complaint with the Yercaud Police Station which was registered as Crime No. 350/2003 under Sections 498A and 304B of the Indian Penal Code, 1860 (in short "IPC"). Taking note of the death of a 13 months' old baby along with her mother by burning in the matrimonial home, the Superintendent of Police, Yercaud, himself took up the investigation. After one week of the said incident, it was published in the newspapers that the deceased had not committed suicide but it was a case of murder.

(d) During investigation, the role of the appellant-accused came to light whose intention was to rape her sister-in-law and, on the fateful day, when she was alone, he even attempted to have sexual intercourse with her. When Vijayalakshmi resisted him, he struck a blow with 'poorikatai' on her head due to which she fell unconscious. Taking undue advantage of her condition, the appellant-accused had sexual intercourse with her. Immediately thereafter, he attacked her 13 months' old baby-Srimathi who was playing nearby by giving a forcible punch on her face on account of which she also became unconscious.

(e) It was further revealed during investigation that the appellant-accused with the intention of causing disappearance of evidence and in order to show it a suicidal case, caused death of Vijayalakshmi and her daughter by pouring kerosene and set them on fire. It was also revealed during investigation that the appellant-accused arranged kerosene for the same from one Selvi (PW-2) - the neighbour, on the pretext of cleaning a machine. He also narrated the

whole incident to her and even threatened her to give a call to PW-1 impersonating the deceased, which she did.

(f) On the basis of the above said investigation, a chargesheet was filed against the appellant herein under Sections 376, 302, 302/201 and 506(2) of IPC and the case was committed to the court of 1st Additional Sessions Judge, Salem which was numbered as Sessions Case No.56 of 2004.

(g) The Additional Sessions Judge, by judgment dated 30.07.2007, convicted the appellant-accused under Sections 376, 302, 302 read with 201 and 506 IPC and sentenced him to undergo rigorous imprisonment (RI) for 7 years along with a fine of Rs.5,000/-, in default, to further undergo RI for 1 year for the offence punishable under Section 376 of IPC. He was further sentenced to undergo imprisonment for life along with a fine of Rs. 10,000/-, in default, to further undergo RI for 1 year for the offence under Section 302 of IPC. Further, he was sentenced to undergo RI for 2 years along with a fine of Rs. 1,000/-, in default, to further undergo RI for 1 month for the offence under Section 201 of IPC for screening the evidence of rape and murder. He was further sentenced to

RI for 7 years along with a fine of Rs. 2,000/-, in default, to undergo RI for one year for the offence under Section 506(2) of IPC.

(h) Challenging the said order, the appellant-accused filed Criminal Appeal No. 792 of 2007 before the High Court. By impugned judgment dated 23.04.2008, the High Court dismissed the said appeal and confirmed the conviction and sentence imposed on the appellant-accused by the trial Court.

(i) Aggrieved by the said order, the appellant-accused has filed this appeal by way of special leave before this Court.

3) Heard Mr. V. Krishnamurthy, learned senior counsel for the appellant-accused and Mr. Subramonium Prasad, learned Additional Advocate General for the respondent-State.

Contentions:

4) Mr. V. Krishnamurthy, learned senior counsel for the appellant made the following contentions:

(i) At the foremost, the conviction solely based on the extra-judicial confession made to one Selvi (PW-2) cannot be

sustained since she had not disclosed the same at the earliest point of time.

(ii) The reliance placed on the complaint (Exh. P-1) is also not sustainable inasmuch as in the said complaint, PW-1 had not uttered anything about the conduct of the appellant-accused towards the deceased.

(iii) The inconsistent stand of PW-3, particularly, at the time of incident and after a gap of 2 months, makes her evidence wholly unreliable.

(iv) Inasmuch as PWs 4-8 were examined after a period of 10-15 days, their statements are not reliable.

(v) Inasmuch as the evidence clearly shows that it is a case of suicidal death, the conviction and sentence under Section 302 of IPC is not maintainable.

(vi) Finally, the offence under Sections 376, 302 and 302 read with 201 IPC has not been proved with the aid of medical evidence, beyond reasonable doubt, therefore, the conviction and sentence under these sections have to be set aside.

5) Mr. Subramonium Prasad, learned Additional Advocate General for the Respondent-State while rebutting the above contentions submitted as under:-

(i) The extra-judicial confession made to PW-2, who is a neighbour, is reliable and acceptable since in her statement made to K. Palanivelu, Deputy Superintendent of Police (PW-30), she stated that she was threatened by the accused that he would do away with her in the same manner like that of the deceased if she reveals the same to anyone and also made her to impersonate as the deceased over phone to PW-1. It is further submitted that it is clear from the above that the accused threatened her to death due to which she did not disclose anything to Thiru P. Kannuchamy (PW-17) on 16.08.2003, the very next day after the alleged incident. Hence, the same would not make her evidence unreliable as she is the only witness who saw the deceased and her child in the kitchen before the incident and in the hall after they were burnt to death.

(ii) With regard to the contention that PW-1 had not uttered anything about the conduct of the appellant in the complaint,

learned AAG submitted that since PW-1 was informed by PW-3 about the conduct of the accused towards the deceased only after the publication of article in the newspapers that the death of the deceased is not suicide but homicide, hence the same was not mentioned in his complaint (Exh. P-1). The evidence of PW-3 is more dependable since on seeing the article in the newspaper that the death was homicidal, she recalled the statement made by the deceased with regard to the conduct of the accused 15 days prior to the date of occurrence and the gap of 2 months does not render her evidence unreliable.

(iii) With regard to the contention regarding delay in examining PWs 4-8, learned AAG submitted that PWs 4-8 only spoke about the movement of the accused just prior to the occurrence, immediately thereafter and at the place of occurrence. Inasmuch as they are not eye-witnesses, even the delay in examining them would not make their evidence unbelievable.

(iv) As regards the claim that it is a case of suicide, learned AAG submitted that while explaining the extra-judicial

confession made by the accused, PW-2 had explained that the accused had an eye over the deceased and since the deceased refused to heed his wish, he hit the deceased on her head and when she fell unconscious, the accused committed rape on her. PW-2 also witnessed the deceased and her child lying in the kitchen before being burnt and in the hall after they were burnt to death. He further submitted that in view of the above, it clearly establishes the motive under Section 302 and 376 IPC.

(v) In reply to the contention regarding deposition of more carbon particles in the kitchen in comparison to the hall supported with the fact that the tiles were removed from the kitchen only and also the evidence of the brother of the deceased (PW-1) who had stated that the deceased called him and stated that she would commit suicide if he did not reach her place within one hour with money, it was submitted by learned AAG that in view of the deposition of PW-2 coupled with the certificate (Exh. P-25) issued by Dr. R. Vallimayagam (PW-20), who examined the accused and the evidence of Tmt. Kamalatchi (PW-11), the Scientific Officer,

who examined the brief (M.O. 15) and detected semen in it as per the Chemical Report (Exh. P-8), there is no doubt about the role of the appellant-accused in committing rape and double murder.

6) We have carefully considered the rival contentions and also perused all the materials relied on by both sides.

Discussion:

7) Inasmuch as the extra-judicial confession made by the accused is a material evidence for prosecution, let us discuss its reliability and acceptability.

8) The law is well settled as to what extent extra-judicial confession can be relied on. If the same is voluntary and made in a fit state of mind, it can be relied upon along with other materials. It is true that the extra-judicial confession is a weak type of evidence and depends upon the nature of circumstances like the time when the confession was made and the credibility of the witnesses who speak to such a confession.

9) The extra-judicial confession was made by the accused to Selvi (PW-2), who is his neighbour. In her evidence, she deposed that she is residing near the Krishnan's House in Murugan Nagar, Yercaud. At the relevant time, she was working as an Assistant of Nutritious Meal in Mungagambadi School. According to her, she knows the deceased Vijayalakshmi and her child as her neighbours. She also identified the accused in the Court. She narrated that on 15.08.2003, when she was having lunch at her home, the appellant-accused called her and asked for some Kerosene for cleaning the machine. As requested, she handed over the Kerosene available in a 10 litre can. Within 10 minutes, when she came out of the house, she saw the appellant-accused standing on the rear side of the house who asked her to come by action. When she went there, the accused called her inside the house where she saw that Vijayalakshmi and her daughter lying without any sign of life. After seeing this, she asked the appellant-accused "You sinner. What did you do to her?" The appellant-accused told her not to shout. Thereafter, he told her that he had an eye on his sister-in-

law. She further deposed that the accused informed her that since nobody was there in the house, he embraced her but when she did not agree for the same, he took a wooden ruler used to make 'poorikattai' and gave a blow on her head due to which, she became unconscious and fell down. Thereafter, he raped her and he also informed PW-2 that he will make it as if she had committed suicide. He also said that he punched the baby on her nose who was playing nearby and when the child cried, he put the child also near to his sister-in-law. Thereafter, the accused squashed her neck and threatened her not to tell this matter to anyone, otherwise, he will kill her also. On his direction, PW-2 made a call to the elder brother of the deceased over phone. In her evidence, she further deposed that at about 2.00 p.m., she ran from there and again returned to their house at 4.00 p.m. and saw that lot of persons were gathered at the spot. She further noticed from the kitchen that Vijayalakshmi and her child were burnt and lying in the hall. On 16.08.2003, she was examined by Revenue Divisional Officer but she did not depose much to him. On 17.08.2003, when she was

examined by the Deputy Superintendent of Police, she deposed all the details to him. Similarly, on 19.08.2003 and 25.08.2003, she was examined by Superintendent of Police and the Magistrate Court respectively and she deposed the entire truth before them.

10) The analysis of the evidence of PW-2 clearly shows that the extra judicial confession was made by the accused to her, who is a neighbour. It is also clear from her evidence that the accused had taken kerosene from her house stating that it was required for cleaning the machine and thereafter, when PW-2 came out, she was called by the accused to his house where she witnessed the deceased and her child lying unconscious in the kitchen. When she questioned the accused about the same, he admitted to her about the occurrence and compelled her to speak to PW-1 impersonating the deceased by threatening her. It is also clear that among all the prosecution witnesses, PW-2 was the only witness who saw the deceased and her child in the kitchen before being burnt and in the hall after they were burnt. It is only PW-2 before whom the accused had

confessed about the commission of offence under Section 376. The trial Court as well as the High Court rightly relied on the evidence of PW-2. Her statement before the Court and confession made by the accused before Shri T.P. Rajesh (PW-28), the District Revenue Officer corroborates each other. Even in cross-examination, PW-2 reiterated what she deposed in the examination-in-chief. There is no reason to disbelieve her testimony, on the other other hand, the same is acceptable if we consider other circumstances.

11) Apart from the extra-judicial confession made to PW-2 by the accused, who is a neighbour, the prosecution heavily relied on various circumstantial evidence.

12) While discussing the evidence of PW-2, this Court noted her statement that the accused threatened her to call the brother of the deceased (PW-1) as if that the deceased was calling him by putting her saree on the receiver of the phone. In fact, PW-2 spoke to PW-1 as threatened by the accused that she had been tortured for money and asked him to come within one hour, otherwise, she would commit suicide.

13) Now, it is useful to refer the evidence of PW-1. He is the brother of the deceased and residing in Mettupalayam and at the relevant time, he was working as a clerk in Kerala Transport Office. It is also informed by him that the accused is brother of his younger sister's husband. In his evidence, he deposed that the deceased called him over phone and asked him to come with money within an hour, otherwise, she would commit suicide. Thereafter, PW-1 contacted at his brother's residence as well as his sister-in-law (PW-3) and informed about the demand made by the deceased over phone and asked PW-3 to visit the place of the deceased and apprise him. His evidence further disclosed that he hurriedly reached his sister's house around 7 p.m., where he saw that his younger sister and the child were burnt to death and were lying on the back of the floor. Thereafter, he along with his elder brothers-Thangavelu and Balasubramaniam, went to Yercaud Police Station and informed the incident. Though Mr. Krishnamurthy, learned senior counsel for the appellant raised a doubt about the phone call by showing the telephone number and other details, if we consider the

evidence of PW-1 along with the evidence of PW-2, there is no reason to doubt the veracity of their evidence.

14) One Mariyayi was examined as PW-3. She is a resident of Vellakkadai, Yerkaud, Tamil Nadu. Her husband is running a grocery shop. According to her, the deceased was her sister-in-law. She narrated about the marriage of her sister-in-law and the child born to her. In her evidence, she also stated that PW-1 called her and stated about the demand raised by the deceased over phone. We have analysed the evidence of PW-3 with that of PWs 1 and 2 and we are satisfied that the evidence of PW-2 is corroborated by the evidence of PW-1 in respect of the phone call by PW-2 impersonating the deceased, hence, all the three witnesses support the case put forth by the prosecution.

15) As regards the offence under Section 376 of IPC followed by death is concerned, in the extra-judicial confession made by the accused to PW-2, he had stated that when he hugged the deceased, she refused to accept and wanted to wriggle out of it, hence, he hit on her head with 'poorikattai' (M.O. 11) due to which she fell unconscious. The

wound certificate (Exh. P-25) supports the case of the prosecution viz., that the simple injury might be due to finger nail scratch. In addition, the Chemical Report (Exh. P-8) stating that the brief (M.O. 15) contained semen also supports the claim made by the prosecution about the offence under Section 376 of IPC. No doubt, there is no medical evidence about the same, however, Shri S. Neelamegan (PW-24), the doctor who conducted the autopsy, had stated that due to extensive burns over the front part of the body, he could not noticed any symptom for the commission of offence of rape. In view of the explanation offered and also if we consider the evidence of PW-24, there is no difficulty in accepting the case of the prosecution that the accused committed rape before setting fire on her body.

16) The prosecution has also proved the motive from the evidence of PWs 2 and 3. When PW-2 explained about the extra-judicial confession made by the accused, she informed the court that the accused had an eye over the deceased and since nobody was in the house on the date and time of the incident, he intends to utilize the same. Since the

deceased refused to accede to his wish, he forcibly committed the offence of rape by pushing her down. This aspect has been corroborated by PW-3 in categorical terms.

17) Apart from this, PW-3, in her evidence also explained the complaint made by the deceased about the conduct of the accused and his behaviour towards her. PW-3 has also stated that when the deceased visited her house on the last occasion, she narrated the lust of the accused and requested her not to reveal the same to anyone including her brother viz., husband of PW-3. PW-3 has also stated in her evidence that when her husband came to know about this he scolded her, in fact, he slapped her for not informing the same at the appropriate time.

18) Dr. S. Neelamegam (PW-24), the Doctor who conducted the *post mortem* had deposed that the back side of the body, crown of the head and the soles were not burnt and, therefore, there is no possibility of committing suicide. It is noted in the Post Mortem Certificate (Ex. P-46) that extensive second degree burns were found on the front side of the whole body except the crown of head, the back head,

backside, buttocks and the bottom of the foot. As rightly pointed out by the prosecution that if the deceased had committed suicide, naturally, she would have poured kerosene on her head which would have spread on all over her body and on setting fire, all parts of the body would have got burnt. As pointed out above, the *post mortem* report shows differently. The way in which she was lying on the floor and the throwing of can containing Kerosene in the house itself undoubtedly establish that the deceased had not committed suicide and it is a case of murder. The evidence of PWs 1, 2 and 3 amply prove various circumstances as pleaded by the prosecution. The prosecution has established all the links including the fisting of child and laying her nearby the deceased when she became unconscious and thereafter, burning both of them to death by pouring kerosene. Likewise, the prosecution has also proved the other circumstances, namely, threat to PW-2 with dire consequences and making her to speak to PW-1 over phone impersonating the deceased, to make it a suicidal case. As rightly analysed by the trial Court and the High Court, we

have no hesitation in arriving at a conclusion that the deceased has not committed suicide but it is a case of homicide by the accused and the prosecution has established the offence under Section 302 IPC. We are also satisfied that not only the accused had the knowledge that he had committed the heinous crime but he also caused disappearance of evidence and had the intention to screen the offence by burning the body of the deceased and her child, hence, the prosecution has also established the offence under Section 302 read with Section 201 IPC.

19) We are satisfied that the trial Court, after exhaustive consideration of the oral and documentary evidence adduced by both sides, rightly found the appellant-accused guilty of all the charges and passed the order of conviction and imposed the appropriate sentence. The reports submitted by the Scientific Officers, viz., PWs 11 and 16, coupled with the *post mortem* certificate and the evidence of the Medical Officer, establish beyond doubt that this is a clear case of murder.

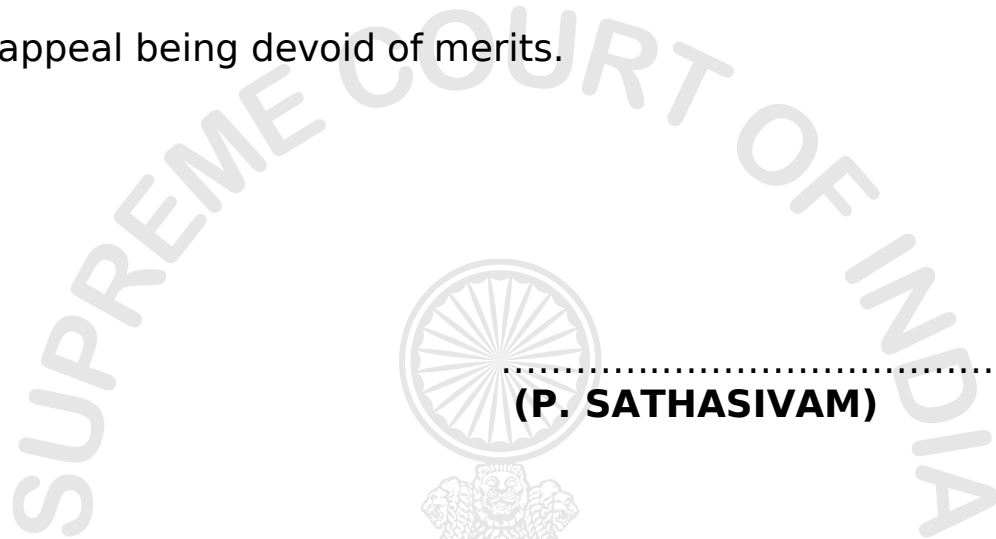
20) As discussed earlier, the extra-judicial confession made to PW-2 has been rightly accepted by the trial Court as the same is within the parameters of law and withstood the test of reasonableness and credibility. An overall assessment of the evidence of the prosecution witnesses clearly establishes the circumstances against the accused in a cogent manner. It is seen from the evidence of PWs 2 & 3 that the appellant-accused had the motive, namely, he had a lustful eye towards his sister-in-law, which had been proved beyond doubt.

21) In justice delivery system, Courts are conscious and mindful of the proportion between the rigor of offence committed and the penalty imposed as also its impact on society in general and the victim of the crime in particular. Social impact of the crime where it relates to offences against women cannot be lost sight of and *per se* requires exemplary treatment. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. Though the trial Court imposed life imprisonment which was upheld by the High Court in view of the gruesome

act of rape followed by double murder, we are of the view that the authorities having power of remission have to be conscious and cannot pass any such order of remission lightly without adhering to various principles enunciated by this Court. [Vide **Swami Shraddhananda (2) @ Murli Manohar Mishra vs. State of Karnataka** (2008) 13 SCC 767 and **Sahib Hussain @ Sahib Jan vs. State of Rajasthan** 2013 (6) Scale 219].

22) The High Court, while analyzing the entire prosecution case and the different versions, appreciated the efforts made by the team headed by Mr. A.G. Ponn Manickavel (Superintendent of Police) (PW-31), who in spite of being the Head of the District Police Force, keeping in view the importance and complicity of the crime, personally investigated the matter and brought all the relevant and acceptable materials before the Court of law. As appreciated by the High Court, we also express our appreciation to the team headed by Mr. A.G. Ponn Manickavel for their tireless investigation in presenting the truth before the Majesty of Law.

23) In the light of the above discussion, we are in entire agreement with the conclusion arrived at by the trial Court and affirmed by the High Court. Consequently, we dismiss the appeal being devoid of merits.



.....J.
(P. SATHASIVAM)

.....J.
(M.Y. EQBAL)

NEW DELHI;
MAY 9, 2013.

JUDGMENT