

SUPREME COURT OF INDIA

Kannika

Vs.

Mookaiah

Crl.A.No.286 of 2009

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

12.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal was the judgment of a learned Single Judge of the Madras High Court allowing the revision petition filed by the informant- the respondent No.1. Learned Assistant Sessions Judge Ambasamudram, Tirunelveli District had convicted the appellants for the offences punishable under Sections 306 and 294(B) of the *Indian Penal Code, 1860*(in short the `IPC') so far as the accused No.1, appellant herein is concerned and Section 306 IPC and 323 IPC so far as accused No.2 is concerned.
3. Questioning correctness of the judgment an appeal was filed before the learned Additional Sessions Judge Fast Track Court II Tirunelveli, Tirunelveli District, who directed acquittal of the accused persons. The complainant filed a revision petition which was allowed by the High Court. The High Court allowed the revision and restored the conviction as recorded by the trial court but the sentence imposed was reduced.
4. In support of the appeal learned counsel for the appellant submitted that the view taken by the High Court is clearly unsustainable. Various important aspects have been brushed aside.
5. The prosecution version as unfolded during trial is as follows:

“PW2 is a resident of Vikramasingapuram. Murugammal (hereinafter referred to as the `deceased') was the daughter of PWs. 2 and 3. PW3 is the wife of PW2. PW4 is the brother of Murugammal. PW1 is a friend of PW4. On 5.5.1999 at about 2.15 p.m., the first accused Kannika came to the house of PW2 and shouted that his daughter had rang up asking for her son Rajesh, and spoke insultingly. At that time, the second accused attempted to strangulate PW2 with a towel. Then, he shouted for help. But others who were present there, pacified them. PW5 was present in the scene of

occurrence. Then, the matter was taken to PW6. At that time, the first accused again came to the house of the victim and scolded against the complainant party in filthy language. So, the victim did not take any food and water afterwards. On the next day morning, she committed suicide by pouring kerosene on herself. It was informed to PW7. A misunderstanding between the parties was known to PW8. Then, the victim was taken to Ambasamundram High Ground Hospital. Dr. Tamilselvi PW 10 examined the victim. She found the following injuries:"Burn injuries over face, neck, chest. Burn both arms & legs Skin peeling." and gave a wound certificate Ex.P3. Then the victim girl was examined by Dr. Indira Sujatha PW 11. She found the following injuries.

"100% burn injuries all over the body. Though she is conscious, blood pressure and pulse are not regular due to water insufficiency. Lungs filled with water."

She sent an intimation Ex.P4 to the Medical College Out Post Police Station. Dr. Thangaiya (PW 12) was of the opinion that it is a fit case to record the dying declaration. So, he sent an intimation - Ex.P5 to the Judicial Magistrate and gave a certificate Ex.P6 about the condition of the patient. PW14 the Junior Divisional Engineer in Telephone Department, V.K. Puram was examined in order to verify whether both the telephones were used on 5.5.1999. He said that there was no STD or ISD calls from both the telephone numbers. The telephone Number of the victim is 22839 and the telephone Number of the accused is 22762. He further said that there was no facilities to find out the local calls and gave a report Ex.P8. PW 15 was the Head Constable in the Tirunelveli Medical College out Post Police Station. After receiving an intimation from the hospital, he proceeded to the hospital and accorded a statement from Murugammal. He sent an intimation to V.K. Puram Police Station through phone. That intimation was received by the Head Constable present there. PW 16 was the Judicial Magistrate, No. 6, Tirunelveli. He received an intimation from the hospital and proceeded to the hospital and recorded the statement from Murugammal in the presence of Dr. Thangaiya. At that time, the victim was in a good state of mind to give dying declaration. The dying declaration recorded by the Judicial Magistrate is Ex.P9. PW 17 Inspector of Tirunelveli Medical College out Post Police Station received the death intimation of victim Murugamal from the hospital and sent it to V.K. Puram Police Station. PW 18 the Head Constable in V.K. Puram Police Station received the death intimation and handed over it to V.K. Puram Police Station. PW 19 is the Head Constable in V.K. Puram Police Station. On 13.5.1999 at about 8 a.m. he received the death intimation and dying declaration from the hospital. On the basis of them he registered a case in Cr. No.190/99 under Section 174 of the Code of Criminal Procedure (in short `Cr.P.C.') and sent the FIR to the Judicial Magistrate's Court and other superior officials. Then the investigation was taken over by PW 20 Special Sub Inspector of V.K. Puram Police Station. He proceeded to the Medical College Hospital and conducted inquest over the body of the victim in the presence of witnesses PWs.9 to 12 and panchayatar. He sent the body to the Medical College with a requisition letter through the Head Constable 539 for postmortem PW 13 Dr.

Selvaraj received the requisition and conducted postmortem. The doctor, inter alia, found the following:

Appearances found at the postmortem:

"Moderately nourished body of a female. Finger and toe nails blue in colour. Infected burns seen on head, entire face, neck front and back entire chest including both breasts, upper part abdomen, both upper limbs front and back, upper part of back on both sides. Both gluteal region, both lower limbs front and back including soles of feet. (Lower part of abdomen, external genitalia, low back on both sides are free of burns). The base of the burnt area red in colour and partly covered with pus material. Degloving of skin of both hands noted. Surgical cut down seen on the inner aspect of left ankle. Singeing of scalp hair, eyebrows, eyelashes and axillary hair noted,"

He gave a post mortem report Ex.P7. Then, PW20 examined the witnesses Shanmugavel, Mukkiah, Jeyararn, Chandran, Subramanian, Dhanalalshmi, Mariappan, Murugan, Subramanian, Muniandi, Kothar Mideen and Veeraganesh and recorded their statements. On 13.5.99 at about 3.00 p.m., he prepared the printed FIR Ex.P14, mahazar Ex.P2 and a sketch Ex.P11 in the presence of witnesses. Since the victim was dead, he sent a requisition Ex.P12 to the Court to alter the Section into 306 IPC. Then, he sent a requisition to the Judicial Magistrate No.6, Tirunelveli to send the statement of the victim to the Judicial Magistrate, Ambasamundram. Further investigation was conducted by PW21. He verified the mahazar, sketch and attachi prepared by PW20. So, he did not record the statements of witnesses separately. On 16.6.1999, he went to Tirunelveli Hospital. After examining several others, on 4.11.1999, he recorded the statement of Judicial Magistrate-6, Tirunelveli. On 21.11.1999, he sent a requisition to the Junior Engineer of Telephone Department, V.K. Puram asking the call details of Tel. No.22893 of Murugammal's house and 22732 of accused Rajesh's house. He recorded the statement of Dr. Tahngaiya.

After completion of investigation, charge sheet was filed. Since the accused abjured guilt, trial was held. Trial Court held them guilty. But the First Appellate Court allowed the appeal. Complainant filed a revision which was allowed.”

6. The basic stand raised by the accused before the High Court that the date of alleged occurrence is 5.5.1999 and the FIR was lodged on 13.5.1999. Interestingly, the FIR was sent after 40 days to the Court. The effect of the aforesaid factors does not appear to have been considered by the High Court. It was also urged that the scope and ambit of Section 401 (3) Cr.P.C. has not been kept in view.

7. The prosecution was required to explain the delay which is quite large. It is to be noted that the dying declaration was purportedly recorded by the police constable and the magistrate on 6.5.1999. There is no explanation as to why the FIR was lodged after a week. Still more interesting is the fact that the FIR was sent after 40 days. This position has not been disputed by learned counsel for the respondents.

8. Above being the position, we set aside the impugned judgment and remit the matter to the High Court to consider the effect of the delay in lodging FIR and the delay in dispatching of the same to the concerned court. The scope and ambit of Section 401(3) Cr.P.C. shall also be kept in view while dealing with the matter.

9. The appeal is allowed to aforesaid extent.