

SUPREME COURT OF INDIA

Balaji

Vs.

State Rep.By Insp.of Police

Crl.A.No.161 of 2008

(Altamas Kabir and Cyriac Joseph JJ.)

02.12.2009

JUDGEMENT

Altamas Kabir, J.

1. This appeal is directed against the judgment and order dated 22nd February, 2007, passed by the Madurai Bench of the Madras High Court confirming the conviction and sentence passed against the appellant under Section 302 of the *Indian Penal Code*, mainly on the evidence of PW.2, the daughter of the accused No.2 who was ten years old on 23rd October, 1999, when the incident is said to have occurred.

2. The second accused in the trial, Dhanalakshmi, is the wife of the deceased, Chelliah Naicker. The first accused is the nephew of Chelliah Naicker.

“According to the prosecution case, the first accused and the second accused developed an illicit relationship. The first accused would visit the house of the deceased carrying liquor with him which he gave to the deceased, and, thereafter, indulge in illicit intimacy with the second accused. PW.2, Sundari, referred to hereinabove, is the child of the second accused and the deceased. At the time of the incident, the deceased and the first accused and Sundari were residing in a hut belonging to PW.4 at Rajiv Nagar, Tuticorin. According to the prosecution, on 23rd October, 1999, the first accused came to the house of the deceased along with a bottle of liquor as usual and handed over the same to the deceased.

Thereafter, after having illicit relations with each other, both the accused decided to do away with the deceased and in furtherance of their object they took a nylon rope and strangled the deceased. Immediately, thereafter, they dug a hole in the floor of the hut and buried the dead body in the said hole. It is the prosecution case that the entire incident had been witnessed by Sundari, who was threatened by the accused that if she revealed the occurrence to anybody, she would have to face dire consequences. One Papammal, who was examined as PW.3, is also alleged to have witnessed the digging of the hole by the accused persons and on being questioned, the

accused persons are said to have informed him that they had killed the deceased as he was a continuous menace for them.”

3. It appears that on 3rd November, 1999, PW.1, the father of the deceased came over to the house of the accused No.2 and asked about his son's whereabouts from PW.2, Sundari. It also appears that Sundari narrated the entire incident to PW.1 and also showed him the place where the deceased was buried. Immediately thereafter, PW.1 and PW.2 went to Muthaipuram Police Station and narrated the entire occurrence to the Sub-Inspector of Police, PW.13, and the same was reduced into writing and an FIR was prepared registering a case against the accused persons under Section 302 IPC. Copies of the same were sent to the Judicial Magistrate No.II, Tuticorin, the Tahsildar, Tuticorin and to the higher police officials.

4. On receipt of the aforesaid information, PW.16, the Inspector of Police attached to Muthaipuram Police Station, went to the place of occurrence at 12.30 a.m. and deployed police security at the place of occurrence. He returned to the spot at 6.00 a.m. on 4th November, 1999 and with the help of PW.6, exhumed the body of the deceased in the presence of witnesses and Panchayatars. An inquest over the dead body was conducted by the Tahsildar and since the body had decomposed, on requisition, PW.7, the Doctor conducted post-mortem on the decomposed body. From the post-mortem report it appears that the Doctor was of the opinion that the deceased had died on account of man-handling and throttling and that he must have died 10 to 15 days prior to the date of autopsy. The skull of the dead body was also subjected to superimposition test by the Forensic Sciences department at Chennai and on examination of the bones and the skull, the opinion was that the skull could very well have belonged to the male individual, whose photograph was shown. On completion of investigation, final report was filed and the case was committed to the Court of Sessions, which, relying on the evidence of PW.2, found both the accused guilty and sentenced them to life imprisonment.

5. The said judgment of conviction and sentence was challenged by the appellants in CrI.A.(MD)No.858 of 2004 which, as indicated hereinbefore, was disposed of on 22nd February, 2007 by the High Court by confirming the conviction and sentence awarded to the accused persons.

6. Of the two accused, the present appeal has been preferred only by accused No.1, Balaji. The main challenge to the judgment of the trial court was with regard to the acceptance of the evidence of PW.2, Sundari, who was ten years old at the time of occurrence and 14 years old when she had deposed before the trial court.

7. Learned counsel appearing for the appellant contended that the trial court should have exercised great care and caution in considering the evidence of PW.2, since the occurrence had taken place in the middle of the night and even after having allegedly witnessed the entire occurrence, she did not speak to anybody about the murder of her father by the accused till PW.1, her grand- father, came to the house of the deceased on 3rd November, 1999. Learned counsel urged that it was difficult to accept that for 10 days PW.2 would have

remained silent and would not have informed anybody about the incident, particularly, when the body of her father was buried in the same house in which they had been residing.

8. It was also submitted on behalf of the accused that at the relevant time the accused No.2, along with PW.2, was staying with DW.1, the brother of the second accused, at Kattunaickanatti and were not residing at Rajiv Nagar with the deceased, as alleged by the prosecution. Accordingly, neither the accused No.2 nor PW.2 were there in the place of occurrence on 23rd October, 1999 and the evidence of PW.2 was, therefore, liable to be rejected.

“Learned counsel also urged that the trial court had wrongly placed reliance on the evidence of PW.3, although he had turned hostile.”

9. Learned counsel also urged that the High Court affirmed the judgment of the Trial Court mainly on the evidence of PW.2, ignoring the fact that the First Information Report was filed after a period of 10 days within which time a plausible story was sought to be made out relying on the sole evidence of PW.2, who was only ten years old at the time of the incident. Learned counsel submitted that the High Court merely followed the reasoning of the Trial Court without considering the matter on its own merits.

10. Learned counsel submitted that except for the evidence of PW.2, whose testimony was required to be treated with caution, there was nothing else in the entire evidence to connect the appellant with the alleged offence.

11. On behalf of the State, Mr. R. Nedumaran, learned Advocate, while supporting the judgment of the trial Court, which was subsequently affirmed by the High Court, contended that the evidence of PW.2 acquires a great deal of relevance, since apart from the accused, no one else could have had knowledge either of the manner in which the deceased was killed or that he was buried under the floor of the hut in which they were living.

Learned counsel submitted that it is on account of the narration of the event by PW.2 to PW.1, the father of the deceased, that the investigating authorities were informed and they came and exhumed the body of the deceased.

12. Mr. Nedumaran submitted that the aforesaid fact was sufficient to establish the truthfulness of the evidence of PW.2, notwithstanding her age, and such fact had been duly noticed both by the Trial Court and the High Court.

13. Mr. Nedumaran submitted that in the facts and circumstances, as indicated hereinabove, this is not a case which called for interference by this Court.

14. We have carefully considered the submissions made on behalf of the appellant and the State and we are convinced that no fault can be found either with the judgment of the Trial Court or the High Court in convicting the appellant for the offence with which he had been charged.

15. Having regard to the fact that the discovery of the body was made at the instance of PW.2. Sundari, the child witness, and the post-mortem conducted on the dead body was in consonance with the case made out by the prosecution, viz., that the deceased had been strangled and throttled to death, there can be no reason to disbelieve Sundari's evidence which has withstood the test of cross-examination.

16. There is one more aspect of the matter which also bears consideration. It cannot be forgotten that the accused no.2 is Sundari's mother and no reason is forthcoming as to why Sundari should implicate the accused no.2 in the murder of her father. Even the attempt made on behalf of the accused to discredit the evidence of PW.2 by asserting that she was actually living at Kattunaickepatti during the relevant period was considered and rejected both by the Trial Court and the High Court, as both the Courts chose to rely on the evidence of PW.2 that only after the death of her father she was taken to Kattunaickepatti and from there to Madras.

17. In view of the above, we are in agreement with Mr. Nedumaran that no interference is warranted with the judgment of the Trial Court and the High Court, convicting the appellant herein.

18. The appeal is, accordingly, dismissed.