SUPREME COURT OF INDIA

Pudhu Raja

Vs.

State, Rep. by Inspector of Police

Crl.A.No.1517 of 2008

(B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla,JJ.)

19.09.2012

ORDER

B.S. Chauhan,J.

1. This appeal has been preferred against the final judgment and order dated 21.8.2008, passed by the High Court of Judicature at Madras in Criminal Appeal No.337 of 2005, by way of which, the High Court has allowed the State appeal against the judgment and order dated 22.12.2004 in Sessions Case No.618 of 2003 passed by the Additional District Sessions Judge, (Fast Track Court No.1), Chengalpet, Kachipuram District, by which, the Trial Court had acquitted the appellants of the charges under Sections 302 r/w 34, 304(b) and 201 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

2. The facts and circumstances giving rise to this appeal as per prosecution are as follows:

A. Padhu Raja (A-1), son of Smt. Angammal (A-2), got married to one Jayalakshmi (deceased), on 6.9.1998 at Gudalur. At the time of marriage the appellant (A-1) demanded 50 Sovereigns of jewels and Rs.2 lacs in cash, however the parents of the deceased gave 35 sovereigns of jewels and cash to the tune of Rs.50,000/-. Thereafter, there were persistent demand for dowry by the appellants from time to time, particularly on festive occasions. Those demands were even met. Appellant (A-1) made a demand for a motor bike which was also met by the parents of the deceased in the presence of several villagers, including the village Head, namely Bose, (PW.6). However, even after this, the demands continued. In July 2000, Jayalakshmi came to her parent's house and told them that a demand had been made bythe husband for 15 sovereigns of jewels, without fulfilling which, she must not return.

B. A Panchayat was convened and thereupon, the appellant (A-1), and Jayalakshmi (deceased), started living separately in a house belonging to Chandran (PW.2), at 9, C.N. Krishna Street, Bharathi Nagar, Perianatham. Karthikeyan (PW.4) and his wife Mrs. Malliga

(PW.3) were living in close proximity to the appellants. Jayalakshmi had told Mrs. Malliga (PW.3) on certain occasions, that the appellants had been torturing her.

C. On 17.4.2001, at about 1 A.M., Mrs. Malliga (PW.3), noticed smoke rising up from the ground floor where the appellants and deceased were living. She immediately informed Karthikeyan (PW.4) and then also came out to ascertain the cause for the smoke alongwith her husband, Karthikeyan (PW.4). Chandran (PW.2) and his wife also came out of their house. Chandran (PW.2) found the appellants standing outside the gate. On being asked by Chandran (PW.2) about the key of the house, as the same was locked from the outside, the appellant (A- 1), replied that the second appellant had thrown away the key. Chandran (PW.2) went upstairs, brought a duplicate key and opened the door of their house. Chandran (PW.2) found the room full of smoke and Jayalakshmi lying dead on the bed, with burn injuries. The Fire Brigade was informed. Mr. Mahalingam, Station Officer, Fire Department Chengalpet, (PW.8) arrived at the spot with his personnel, at 1.45 A.M. and extinguished the fire. Mr. Ezhamparuthi (PW.1), a close relative of the deceased came to the spot upon being informed, and thereafter went to the Police Station at 8.30 A.M. on 18.4.2001 and made a complaint to Mr. Kotteswaran (PW.12), on the basis of which, a case in Crime No.157 of 2001 was registered. The said FIR was handed over to Mr. Durairaj (PW.13), the Investigating Officer who then took up the investigation.

D. Durairaj (PW.13) recovered the dead body of Jayalakshmi (deceased), after taking photographs of the place of occurrence and also of the dead body of the deceased, through the photographer Balaji (PW.11). Durairaj (PW.13) also recovered all material objects and prepared the mahazar.

E. As Jayalakshmi had died within 2-1/2 years of her marriage, the matter was reported to the Sub-Collector, Ms. Pila Rajesh, IAS (PW.10) who came to the spot and conducted inquest on the dead body in the presence of witnesses and a panchnama was prepared. Ms. Pila Rajesh (PW.10) also recorded the statements of the witnesses after which, the dead body was sent for post-mortem.

F. Prof. Muguesan (PW.9), who is attached to the Govt. Hospital Chengalpet, conducted the post-mortem and opined that the deceased had died of smothering and burn injuries.

G. The case was converted into one under Section 302 IPC and both the appellants were arrested and sent into judicial remand. After completing the investigation, a charge sheet was filed. Before the trial court, both the appellants pleaded not guilty and, therefore, claimed trial. In the course of the trial, the prosecution examined 13 witnesses, and relied upon 14 exhibits and 3 material objects. The defence also examined one witness, and relied upon 4 documents for the purpose of their defence. The Trial Court after the conclusion of the trial,

upon considering the material on record, and after appreciating the available evidence, acquitted both the appellants vide judgment and order dated 22.12.2004.

H. Aggrieved, the State preferred an appeal before the High Court and the High Court vide its impugned judgment and order, convicted and sentenced both the appellants, thereby reversing the judgment of the Trial Court, as referred to hereinabove. Hence, this appeal.

3. Dr. A. Francis Jullian, learned Senior counsel appearing on behalf of the appellants has submitted that the High Court committed an error by interfering with the order of acquittal as was recorded by the Trial Court. While reversing the judgment of acquittal, the High Court has not complied with the parameters laid down by this Court in such matters. This is because there is no direct evidence on any issue, and the case is one of circumstantial evidence wherein, several links are missing in the chain of events. The Trial Court recorded acquittal, as it came to the conclusion that there were a large number of material inconsistencies that went to the root of the case. There is also considerable embellishment/improvement in the depositions of the prosecution witnesses. There was also an inordinate delay after the incident, in lodging the FIR. The appellant (A-1), had been arrested immediately, however, such arrest was shown to have taken place at 9 A.M. on 18.4.2001. There could have been absolutely no motive on the part of the appellants, to commit the murder of the deceased. Thus, the present appeal deserves to be allowed.

4. Shri Rakesh Sharma with Shri B. Balaji, learned counsel appearing on behalf of the respondent-State, opposed the appeal contending that, the High Court had most certainly appreciated the evidence as a whole and dealt with the case in the correct perspective. The deceased had died in the house where only the appellants were residing with her. Despite this, they were unable to furnish any reasonable explanation with respect to the circumstances under which Jayalakshmi had died. The conduct of the appellants, therefore, points only towards their guilt. At the relevant time when the deceased was burning, both the appellants were found standing outside their house. The gate was locked from the outside. The appellants did not even produce the key of the house upon being asked to do so. It was Mr. Chandran (PW.2), who brought a duplicate key from his house and opened the door to the said house. The appellants did not inform the police, or the fire brigade when the deceased was burning. No attempt was made by either of them, to extinguish the said fire and they made no efforts to inform the family members of the deceased. Had the prosecution witnesses not come out after noticing the smoke coming from the house of the appellants, they would have walked away scot free, as they had already locked the house, from the outside. The appellants had further, also been demanding dowry and harassing the deceased in this context. Thus, they most definitely had a very strong motive to get rid of the deceased. The inconsistencies on the basis of which, the trial Court had accorded acquittal to the appellants,

were all trivial in nature and none of them could be so material, that it could be termed to go to the root of the case. The impugned judgment of the High Court, therefore, does not warrant any interference and thus, the present appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The following injuries were found on the person of the deceased:

> "Scratches:
>
> 1. An injury on the right side of the upper lip measuring 1 x 0.5 c.m.
>
> 2. An injury on the central part of the upper lip measuring 1 x 0.5 c.m. Thecells below these injuries were with clots and there was also swelling.Clotted injuries:
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> 1. A clotted injury on the centre part of the lower lip and its surrounding, measuring 2 x 1 x 0.5 c.m.
>
> 2. A clotted injury on the right cheek, on the upper part of the right jaw, measuring 3 x 2 x 0.5 c.m.
>
> 3. A clotted injury on the left cheek, on the upper part of the left jaw, measuring 2 x 1 x 0.5 c.m.
>
> 4. A clotted injury on the central part to the upper part of the breast, measuring 6 x 5 x 0.5 c.m.
>
> 5. A clotted injury on the front side and the outer part of the left leg 3 c.m. above the left heel, measuring 6 x 4 x 0.5 c.m. Injuries by fire:
>
> The upper skin, inner skin and two types of fire injuries. The body skin was burnt and the fat and cells under the skin appeared to be red and heated. All over the body, including the upper side of the neck, the lower side of the neck, the upper part of both hands, palms, both legs in entirety, the back portion of the breast, the entire front and back portions of the stomach, and the female organ bore injuries by fire. All these injuries by fire, were suffered by her while she was alive."

7. The law on the issue of interference with an order of acquittal is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine

manner where the other view is possible should be avoided, unless there are good reasons for interference.

8. In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance, by way of reliable and clinching evidence, and the circumstances so proved, must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst finding an accused guilty, solely on the basis of the circumstances proved before it.

9. Furthermore, in such a case, motive assumes great significance and importance, as the absence of motive puts the court on its guard and causes it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. The evidence regarding existence of motive which operates in the minds of assailants is very often, not known to any other person. The motive may not even be known, under certain circumstances, to the victim of the crime. It may be known only to the accused and to none other. It is therefore, only the perpetrator of the crime alone, who knows as to what circumstances prompted him to adopt a certain course of action, leading to the commission of the crime.

10. It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence, in order to decide, as to whether or not, the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculpate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (See : *The Transport Commissioner, A.P., Hyderabad Anr. v. S. Sardar Ali Ors*[1] *State of Maharashtra v. Suresh*[2]*and Musheer Khan v. State of Madhya Pradesh*[3]

11. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not effect the core of the case of the prosecution, must not be made a ground for rejection of evidence, in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court

in the normal course of action, would not be justified in reviewing the same again, without providing justifiable reasons for the same. (Vide: State v. Saravanan, AIR 2009 SC 152).

12. Where the omission(s) amount to a contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witness also makes material improvements before the court, in order to make the evidence acceptable, it would not be safe to rely upon such evidence. The discrepancies in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence available or with a statement that has already recorded, then, in such a case it cannot be held that the prosecution has proved its case beyond reasonable doubt.

13. The present case requires to be examined in light of the aforesaid settled legal propositions. The trial Court decided in favour of the accused, and acquitted them on ground of material contradictions in the deposition of the eye- witnesses, as Karthikeyan (PW.4) had deposed that he had gone along with Mr. Chandran (PW.2) to inform the police and also the fire service station. On the contrary, Mr. Chandran (PW.2), deposed that at the time of occurrence he did not accompany Karthikeyan (PW.4), to the police station. According to the deposition of Karthikeyan (PW.4), regarding the opening of the door of the house of the deceased, the statements of Mr. Chandran (PW.2), and Karthikeyan (PW.4), were found to be contrary to the statement of Mr. Mahalingam (PW.8), Fire Service Officer as he stated that, he reached the place of occurrence at about 1.45 A.M. and found the house to be locked. Mr. Chandran (PW.2), brought the key, opened the door and it was then that the fire was put out. Mr. Mahalingam (PW.8) has further deposed that the body of the deceased was on the cot and the fire had burnt the said cot also. However, the photographs taken by the police proved to be contrary to the said deposition. The photograph revealed that the body was lying on the floor while the cot was lying upside down. The trial court further relied upon the statement of Devaraj (DW.1) who deposed, that after the said incident, Kodirasu, father of the deceased Jayalakshmi, had fraudulently taken away land from the father of the appellant (A- 1) by filing Suit No. 14/2002 in the Civil Court and further that Jayalakshmi had been in love with one Selvam and further that, her marriage to the appellant (A-1), was against her wishes and was the reason for her committing suicide. More so, the trial court doubted the time taken for recording FIR, and found the explanation furnished for the delay regarding the same, totally unacceptable. The explanation so furnished by the prosecution was that, Ezhamparuthi (PW.1), was informed by the incident and, thereafter, he went to the place of occurrence and upon seeing the place, he then went to the police station and lodged the said FIR.

14. The High Court noted that it is an admitted fact that, at the time of occurrence of the incident, the appellants were in the said house. Mr. Chandran (PW-2), saw them both standing outside the house of the deceased. Appellant (A-2) even tried to explain the situation by stating that, they were watching TV in an adjoining room and came out to find fumes coming from the next room, and also further stated that the deceased had committed suicide. The High Court did not accept the story of suicide, saying that the same was not plausible, in the given situation. It stated that as the appellants were present at the place of occurrence, they should have been able to give a reasonable answer regarding the manner in which the deceased died, but failed to do so. Instead, they all attempted to screen the offence.

15. The trial court did not take note of the fact that there was sufficient evidence on record, to indicate the possibility and the likelihood of dowry harassment and death, caused due to failure to give dowry, as demanded.

16. The trial court did not consider that, if the deceased had in fact committed suicide, the natural reaction of the co-accused would not have been to rush out of the house, after locking her inside, but to make an attempt to rescue her. Further, when Mr. Chandran (PW-2) asked for the house key, the same was not provided, stating that the appellant (A-2) had thrown it away. Mr. Chandran (PW-2), had to then fetch a duplicate key to enter the house. This is a clear indication of the fact that the accused were trying to lock up the house and leave.

17. The theory of suicide can further be negated by the fact that the doctor who conducted the post-mortem, did not mention the possibility of suicide at all.

18. All the circumstances, therefore, clearly indicate that the deceased did not die a natural death, nor was she the victim of an accident and neither did she commit suicide. She was therefore killed and no one except the accused could have committed the said offence.

19. A delay in the registration of the case would not materially affect the case of the prosecution in any way, as PW-1 was first summoned, then he went to the spot of the incident, after which he went to the police station. Such a delay was therefore, natural and acceptable.

20. So far as the discrepancies and contradictions pointed out by the trial court are concerned, the same are not material and none of them can be held to go to the root of the case. Further, even if there has been a transfer of property in favour of Kodirasu, father of Jayalakshmi, the deceased, from the father of the appellant (A- 1), as the same is a transaction, subsequent to the incident, it can have no bearing on the case. The trial court unnecessarily gave advantage to the appellants in this regard, even though the vendor himself was not examined. Thus, no motive can be attributed to the complainant on this count. Furthermore, had Jayalakshmi

been in love with Selvam, the same could not have been a ground for her to commit suicide 2 ½ years from the date of her marriage, as she would have in all likelihood, attempted the said act, either at the time of her marriage, or immediately thereafter.

21. In view of the above, we do not see any cogent reason to interfere with the impugned judgment of the High Court. The appeal has no merit and is, therefore, accordingly dismissed.The appellant no.2 is on bail. Her bail bonds are cancelled. She is directed to surrender within a period of four weeks from today before the Chief Judicial Magistrate. In case she does not surrender, we direct the Chief Judicial Magistrate to take her into custody and send her to jail to serve out the remaining sentence. A copy of the order may be sent to the Chief Judicial Magistrate, Chengalpet, Tamil Nadu, by the Registry of this Court for compliance.

Judgment Referred

[1]*AIR 1983 SC 1225*
[2]*(2000) 1 SCC 0471*
[3]*(2010) 2 SCC 0748*