



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

CrI.A(MD)No.285 of 2013

Chakro

.. Appellant /Accused
Vs.

State Represented by,
The Inspector of Police,
Uvari Police Station,
Cr.No.227 of 2011,
Tirunelveli District.

.. Respondent/ Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying this Court, to call for the records from the Lower Court, to duly set aside the judgment passed by the learned IVth Additional Sessions Judge, Tirunelveli, Tirunelveli District in S.C.No.266 of 2012 dated 05.07.2013.

For appellant : Mr. V.Kathirvelu, Senior Advocate
for Mr.K.Prabhu

For respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in Crime No.227 of 2011 of S.C.No.266 of 2012 on the file of the learned IVth Additional Sessions Judge, Tirunelveli District. He stood charged for the offence under Sections 302 I.P.C. The trial Court, by judgment dated 05.07.2013, convicted him and sentenced him to undergo Life Imprisonment and also imposed fine of Rs.10,000/- and, in default, to undergo six months Rigorous Imprisonment. Challenging the conviction judgment passed in S.C.No.266 of 2012, the appellant/Accused is before this Court with this present appeal and he is, right now, in Central Prison, Palayamkottai, undergoing the imprisonment.

2.The brief case of the prosecution is as follows;

The complainant, namely, P.W.1 Jegan is working in V.V. Mineral I.M.C Company at Kalikumarapuram as Shift Manager, the deceased Kaleeswaran has gone to his native place at Orissa and on 16.12.2011, he has returned with his uncle's son/ the accused, by name Chakro to do job work with him in the said Company. The accused has requested the deceased to send him back to his native place as he is not liking the place of work, and the deceased Kaleeswaran has not sent the deceased, back to his native place and also not paid the arrears of salary amount to the accused. On 17.12.2011 at 2.30A.M, the accused has pushed the deceased on the ground and sat over his body and tightened the neck of the deceased, with the help of M.O.1 towel, in the bathroom of the said Company, and due to that the deceased has expired.

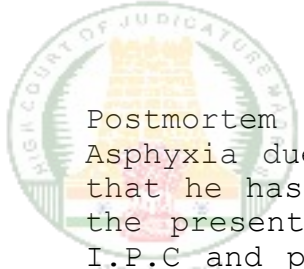


2.1. In order to prove the case of the prosecution, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and also marked 11 exhibits as Ex.P.1 to Ex.P.11 and also Material Objects as M.O.1 and M.O.2.

WEB COPY 2.2. P.W.1, Jegan has stated that he is working in V.V.Mineral I.M.C Sand Company and due to the arrears of salary, the accused and the deceased have fought with each other on 17.12.2011 and P.W.2 Vellaithurai has informed him about the deceased and the accused, fighting in the bathroom of the said Company and P.W.1, P.W.2 and one Rajaguru have gone to the place of occurrence and they have seen the accused sitting over the body of the deceased and with the help of the towel, tightened the neck of the deceased and they have separated both the accused and the deceased. Thereafter, they have seen the deceased Kaleeswaran without any movements and also died and the accused has ran away with the towel and he has gone to the police station in the morning and lodged a complaint as per Ex.P.1 and M.O.1 is the towel used by the accused.

2.3. P.W.2, Vellaithurai has stated that on 16.12.2011, the deceased has brought the accused to work with the said Company and due to the dispute regarding the money, the accused and the deceased fought with each other on 17.12.2011 at early hours of 2.30A.M in the bathroom and he has informed about the said fight to the P.W.1 and thereafter, P.W.1, P.W.2 and one Rajaguru have seen the accused sitting over the body of the deceased and tightening the neck of the deceased with the help of the towel and they have separated both the accused and the deceased and thereafter, P.W.1 has lodged the complaint to the police station. P.W.3, Muthuramalingam has stated that on 17.12.2011 at morning 8.00A.M, the Inspector of Police has seen the place of occurrence and prepared Observation Magazar and he has signed as an attesting witness as per Ex.P.2 and they have recovered the chappal of the deceased as M.O.2 in the Athatchi as per Ex.P.3 and he has also signed in the said Athatchi. P.W.4, Sathiyabalan has stated that he has worked in Orissa for five years and, so, he knows the language of Oriyya and he has translated to the accused about the investigation made by the Inspector of Police. P.W.5, Dhanasingh has stated that the accused has given the confession statement and the Inspector of Police has recorded the said confession statement and recovered the M.O.1 towel in the Athatchi as per Ex.P.4 and he has signed in the said Athatchi.

2.4. P.W.6, Thiru.Jeyakumar has stated that he has worked as Police Constable and on 17.12.2011 at 8.00A.M, he has received the Express F.I.R from the Special Sub Inspector of Police and submitted to the Judicial Magistrate Court, Valliyur at 10.00A.M and Ex.P.5 is the Passport and on 18.12.2011 at 7.00P.M he has submitted the Inquest Report to the Judicial Magistrate Court, Valliyur and for that, the Passport has been issued as per Ex.P.6. P.W.7, Thiru.Benjamin Franklin has stated that he has worked as Special Sub Inspector of Police and on 17.02.2011, he has received the Ex.P.1 complaint from P.W.1 and registered a case in Crime No.227 of 2011 under Section 302 I.P.C and Ex.P.7 is the F.I.R. P.W.8, Dr.Selvamurugan has stated that he has worked as Doctor in Tirunelveli Medical College he has conducted Postmortem on the dead body of the deceased Kaleeswaran and he has found injuries in the dead body of the deceased and he has issued Postmortem Certificate as per Ex.P.8 and he has stated that the deceased could have died due to the tightening of the neck with the help of M.O.1 towel and also he has stated in the Ex.P.8



Postmortem Certificate that the deceased would appear to have died of Asphyxia due to ligature strangulation. P.W.9, Thiru.Shankar has stated that he has served as Inspector of Police and conducted investigation in the present case registered in Crime No.227 of 2011 under Section 302 I.P.C and prepared Rough Sketch as per Ex.P.9 and Inquest Report as per Ex.P.10 and he has recorded the confession statement from the accused and recovered M.O.1 towel in the Athatchi. P.W.10, Thiru.Sivaraj Pillai has stated that he has served as Inspector of Police and he has conducted further investigation in the present case and recorded the evidences of the witnesses and filed the Final Report, in the present case.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent person.

4. Having considered all the above materials on record, the trial Court has convicted the accused and sentenced him as mentioned in the beginning of this judgment and challenging the said conviction and sentence, the appellant/accused has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the judgment of the Lower Court is against law, the weight of evidence and the broad probabilities of the case. There is a delay in reporting the matter to the police and the P.W.1 is not a reliable witness. The interpreter is not an authorised interpreter. The prosecution has not elicited anything from the Doctor in the present case. The Lower Court has traveled beyond the scope of the evidence and the Lower Court has not properly appreciated the evidence.

6. The points that arise for consideration in the present Criminal Appeal are as follows:-

1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?

2) Whether the Criminal Appeal has to be allowed for the grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

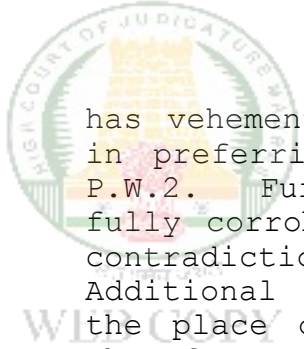
3) Whether it is not safe to convict the appellant for the offence under Section 302 I.P.C, for the reasons stated in the Memorandum of Appeal?

7. Analysis, discussions and findings with regard to the above mentioned points:-

The learned counsel for the appellant has submitted that there is delay in lodging the complaint to the police and the evidence of P.W.1 is not a believable evidence. Further, the learned counsel for the appellant has submitted that the medical evidence has not corroborated the eyewitnesses and also, in respect of the injuries found on the dead body of the deceased. Finally, the learned counsel for the appellant has submitted that even if the accused has caused the death to the deceased, the offence would not fall under Section 302 I.P.C, however, it would fall only under Section 304, Part II, I.P.C.

<https://hcservices.ecourts.gov.in/hcservices/>

8. On the other hand, the learned Additional Public Prosecutor



has vehemently opposed the present appeal. According to him, the delay in preferring the complaint has been duly explained by the P.W.1 and P.W.2. Further, he has submitted that the medical evidence has also fully corroborated with the eyewitness account and there is no material contradiction in the evidences of the prosecution. Further, the learned Additional Public Prosecutor has submitted that the accused has gone to the place of occurrence with an intention to murder the deceased and therefore, the offence committed by him, would come within the provisions under Section 302 I.P.C. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed by the Lower Court do not warrant any interference by this Court.

9. P.W.1, Jegan has categorically deposed in his evidence that he is working as Shift Incharge in V.V.Mineral I.M.C Sand Company and the accused has also worked in the said Company and there arose a dispute between the accused and the deceased, due to arrears of salary amount and on 17.12.2011, at early hours of 2.30A.M, P.W.2 has informed him about the fight going on, between the accused and the deceased in the bathroom of the said Company and P.W.1, P.W.2 and one Rajaguru have gone to the place of occurrence and seen the occurrence and the accused has sat over the body of the deceased and tightened the neck of the deceased with the help of towel and they have separated both the accused and the deceased. Thereafter, they have seen the deceased Kaleeswaran without any movements and also died and the accused has ran away with the towel and and he has lodged the complaint to the police, in the morning as per Ex.P.1 and M.O.1 is the towel used by the accused. P.W.2, Vellaithurai has clearly deposed that he has informed about the incident on 17.12.2011 at early hours of 2.30A.M, to the P.W.1 that he has seen both the accused and the deceased fighting with each other in the bathroom of the said Company. Thereafter, P.W.1, P.W.2 and one Rajaguru have gone to the place of occurrence and they have have separated the accused and the deceased and seen the deceased without any movements and the accused has run away from the scene of occurrence with M.O.1 towel and P.W.1 has lodged the Ex.P.1 complaint in the morning to the police.

10. P.W.3, Muthuramalingam has specifically deposed that on 17.12.2011 at 8.00A.M, the Inspector of Police has prepared Observation Magazar as per Ex.P.2 and he has signed in the said Mazagar and also he has signed in the Athatchi as per Ex.P.3 for the recovery of M.O.2 chappal of the deceased. P.W.4, Sathiyabalan has categorically deposed that he has worked in Orissa for five years and therefore, he knows the language of Oriyya and he has translated to the accused about the investigation made by the Inspector of Police and the accused has given confession statement to the police. P.W.5, Dhanasingh has deposed that the Inspector of Police has recorded the confession statement of the accused and recovered the M.O.1 towel through the accused in the Athatchi as per Ex.P.4 and he has also signed in the said Athatchi. P.W.6, Thiru.Jeyakumar has deposed that he has worked as Police Constable and on 17.12.2011 at 10.00A.M, he has submitted Express F.I.R to the Judicial Magistrate Court, Valliyur and the Passport is Ex.P.5 and on 18.12.2011 at 7.00P.M, he has submitted the Inquest Report to the Judicial Magistrate Court, Valliyur and Ex.P.6 is the Passport. P.W.7, Thiru.Benjamin Franklin has deposed that he has served as Special Sub Inspector of Police and on 17.12.2011, he has received the complaint from P.W.1 and has registered a case in Crime No.227 of 2011 under Section.302 I.P.C, and submitted to the Judicial Magistrate Court and other higher officials.



11. P.W.8, Dr. Selvamurugan has deposed that on 17.12.2011, he has conducted Postmortem on the dead body of the deceased Kaleeswaran and issued Postmortem Certificate as per Ex.P.8 and the death would appear due to strangulation, by tightening the neck of the deceased with the help of M.O.1 towel and there are chances of the Hyoid Bone, not breaking, when the neck is tightened by the M.O.1 towel. In Ex.P.8 Postmortem Certificate, P.W.8 has clearly mentioned the following injuries:-

“ 1) Finger nail abrasions of size 1 x 0.5cm near left side of nose and 1 x 0.5cm near left side of mouth.

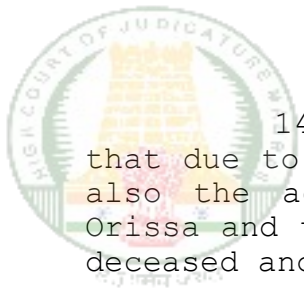
2) Abrasions : 1 x 1cm over right side of chin, 2 x 1cm over left knee and 3 x 2cm below left knee.

3) A horizontal complete ligature mark of size 40 x 1.5cm seen over upper part of neck. It lies 6cm below right ear. 5cm below chin, 9cm above supra sternal notch and 6cm below left ear. The skin of the ligature mark is dark in colour and hard in consistency.”

P.W.8 has also pointed out in his opinion in Ex.P.8 that the deceased would appear to have died of Asphyxia due to ligature strangulation.

12. P.W.9, Thiru.Shankar has deposed that he has served as Inspector of Police and on 17.12.2011, he has gone to the place of occurrence and prepared Rough Sketch as per Ex.P.9 and Inquest Report as per Ex.P.10 and arrested the accused Chakra at 11.30A.M and he has recorded the confession statement from the accused in the presence of Sathiyabalan and recovered the M.O.1 towel from the accused in the Athatchi. P.W.10, Thiru.Sivaraj Pillai has deposed that he has served as Inspector of Police and he has conducted investigation in the present case and also enquired the P.W.8 Postmortem Doctor and received the Ex.P.8 Postmortem Certificate and after, completing the investigation, he has filed the Final Report as against the accused.

13. In Ex.P1 complaint, P.W.1 has specifically stated that he is working for eleven years in the said Company and the accused is related to the deceased person, and both of them have come from Orissa to work in Kalikumarapuram V.V.Mineral I.M.C Sand Company and on 17.12.2011 at 2.30A.M, P.W.2 has informed about the fight, going on, between the deceased and the accused in the bathroom and thereafter, they have seen the occurrence. Further, the Ex.P.3 Athatchi has been signed by P.W.3 Muthuramalingam for the recovery of M.O.2 chappal of the deceased and Ex.P.4 Athatchi has been signed by P.W.5 Dhanasingh for the recovery of M.O.1 towel after the arrest of the accused and Ex.P.5 and Ex.P.6 are the Passports issued to P.W.6, Thiru.Jeyakumar, Police Constable. Ex.P.7, namely, F.I.R has been registered by the P.W.7, Thiru.Benja Franklin, Special Sub Inspector of Police, based upon the Ex.P.1 complaint given by P.W.1. As per Ex.P.8 Postmortem Certificate, P.W.8, Dr.Selvamurugan has clearly deposed that the deceased would appear to have died of Asphyxia due to ligature strangulation. Ex.P.9 Rough Sketch and Ex.P.10 Inquest Report have been prepared by the P.W.9, Thiru.Shankar, Inspector of Police. In Ex.P.9, the details of the place of occurrence has been clearly stated.



14. For the above mentioned facts and circumstances, it is found that due to the dispute regarding payment of arrears of salary amount and also the accused has compelled the deceased for sending him back to Orissa and the accused has used M.O.1 towel and tightened the neck of the deceased and also caused death to the deceased person.

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15. Further, it is useful to refer the following decisions for the proper appreciation of the above mentioned facts and circumstances of the present case:-

i) For the benefit of availing of section 300, Exception 4, factors to be established by the accused have been clearly stated in the case of Sukhbir Singh V. State of Haryana, reported in (2002) MLJ (Crl) 524 (525) (SC), as follows:-

" To avail the benefit of Exception 4 of Sec.300 of the Indian Penal Code, the defence is required to probablise that the offence was committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage and the offender had not acted in a cruel or unusual manner."

ii) In the decision of Hon'ble Supreme Court in the case of Sankar Diwal Wadu Vs. State of Maharashtra, reported in (2007) 2 MLJ (CRL.) 1606 (SC), it is clearly observed as follows:-

" When the incident of homicidal death occurred in a sudden fit of anger, the case comes under Section 304, Part II and not under Section 302, I.P.C. "

In the present case also, on a careful scrutiny of records, it is found that the accused / appellant is not liable to be convicted under Section 302 I.P.C and the said death occurred in a sudden fit of anger, and therefore the case comes under Section 304 Part II I.P.C and not under Section 302 I.P.C., in so far as the appellant is concerned for the above mentioned reasons.

Further, Section 304 Part II I.P.C is attracted, as in the present case, it is established that even if the accused has not got any intention to cause such bodily injury as would likely to cause death, but has the knowledge that the injury as would likely to cause death.

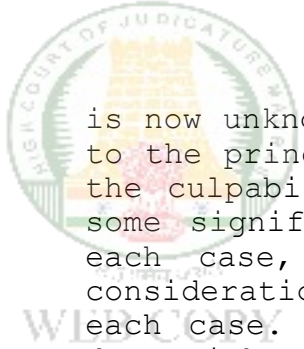
iii) Also, the Hon'ble Supreme Court in the case of Mavila Thamban Nambiar V. State of Kerala, reported in AIR 1997 SC 687, it is held as follows:-

" Knowledge on part of accused that injury would cause death can be inferred though he might not have intention to commit murder - Conviction altered from S.300 to one under Section 304, Part II."

iv) Further, in the Hon'ble Supreme Court, in the case of Kapur Singh V. State of Pepsu, reported in 1956 Supreme Court 654, it is clearly held as follows:-

"He inflicted the injuries not with the intention of murdering the deceased, but caused such bodily injuries, as he must have known would likely to cause death having regard to the number and nature of the injuries."

Further, the practice of punishing for severe crimes with equal severity



is now unknown to civilized society. The Criminal Law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of Criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Further, the act in the present case appears to have been done with a knowledge that it is likely to cause death, but without any intention to cause death or cause to such bodily injury as is likely to cause death, within the meaning of 304 Part II I.P.C. In this case, on a careful scrutiny of records, it is found that the accused has to be convicted only for the offence under Section 304 Part II I.P.C.

16. Further, even according to the prosecution case that during the quarrel, the accused has taken M.O.1 towel and tightened the neck of the deceased. Further, the reasons assigned by the Lower Court for convicting the appellant under Section 302 I.P.C are not sustainable and liable to be set aside for the above mentioned reasons and also it is found that the appellant is not liable to be convicted under Section 302 I.P.C and the appellant is liable to be convicted for the offence under Section 304, Part II, I.P.C only. Further, the prosecution has consistent and coherent evidences and materials on record, for connecting the appellant with the commission of crime under Section 304, Part II, I.P.C only. Furthermore, there are no vital contradictions in the evidences of prosecution witnesses, so as to convict the appellant for the offence under Section 304, Part II, I.P.C.

17. Further, requirements for applicability of section 304, Part II, I.P.C are sudden fight, no pre-meditation, heat of passion and no undue advantage or cruel manner. These things are very much present in the present case, to fit the appellant for the offence committed under Section 304, Part II, I.P.C. As there is no premeditation for the appellant to attack the deceased and also to cause murder, the present case is squarely comes under the provisions of Section 304, Part II, I.P.C. Further, there is no material to infer any premeditation and the accused has not taken any undue advantage. Since, the act of the appellant falls under Exception 4 to Section 300 I.P.C., it is only a culpable homicide not amounting to murder for which the accused is liable to be punished under Section 304, Part II I.P.C.

18. Further, in the facts and circumstances as mentioned above, the case can lead to the inference that the appellant has caused the offence under Section 304, Part II, I.P.C. The offence said to have been caused, would depend upon the weapon used and size of it, force with which the blow has been given, part of the body it has been hit and several such relevant factors to determine, the nature of offence committed and the Court has to view it pragmatically and in the present case also, it is not found that the appellant has committed the offence under Section 304, Part II, I.P.C only. Further, it is clearly seen that there is no undue advantage taken by the appellant to murder the deceased and therefore the act of the appellant comes only under Section 304, Part II of I.P.C.

19. On a careful scrutiny of the entire materials on record, it is found that the test to be applied, is the conduct of the appellant, in the circumstances, with due regard to sudden provocation and hence, the said action of the appellant would attract the provisions of under



Section 304 I.P.C, for punishment. Further, the condition of mind is only to be inferred in the circumstances from the manner in which the appellant has reacted to the above mentioned circumstances. From the above mentioned details, it is found that the action of the appellant would come under the provisions of Section 304, Part II, I.P.C. Hence, it is clear from the above mentioned circumstances of the present case that the provisions of under Section 304 Part II I.P.C is attracted, as it is established that if the appellant/accused has no pre-meditation to cause such bodily injury to the deceased, as it would likely to cause death to the appellant. Further, the appellant/ accused has tightened the neck of the deceased Kaleeswaran with the help of M.O.1 towel only, and the accused has not acted in an unusual manner. Therefore, he can be convicted under Section 304, Part II, I.P.C only.

20. In the result, this Criminal Appeal is partly allowed in the following terms:-

i) The conviction and sentence imposed on the accused/appellant/Chakro in Crime No.227 of 2011 in S.C.No.266 of 2012 under Section.302 I.P.C is set aside, instead, he is convicted for the offence under Section 304, Part II, I.P.C.

ii) He is sentenced to undergo Rigorous Imprisonment for five years and also directed to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo further Rigorous Imprisonment for four weeks, for the offence under Section 304, Part II, I.P.C.

iii) The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(Writ)

/True Copy/

Sub Assistant Registrar.

To

- 1.IV Additional Sessions Judge, Tirunelveli District.
- 2.The Principal District of Sessions Judge, Tirunelveli.
- 3.The Judicial Magistrate, Valliyoor
- 4.Do Thro'The Chief Judicial Magistrate, Tirunelveli.
- 5.The Director General Police, Mylapore, Chennai.
- 6.The Inspector of Police, Uvari Police Station, Tirunelveli District.
- 7.The Central Prison, Palayamkottai. (in duplicate for communicate to the accused).
- 8.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- 1CC to Mr.K. Prabhy, Advocate, SR.No.47873.

Cr1.A. (MD) No.285 of 2013
19.08.2015

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