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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.03.2015
CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRIMINAL APPEAL(MD)No.161 of 2011

State rep. by
The Deputy Superintendent of Police,
Vilathikulam Sub Division,
Thoothukudi District.
(Vilathikulam P.S.
Crime No.183/2008).

.. Appellant/ Complainant

Vs.

1.Uma

2.Ravi

3.Balasubramanian

.. Respondents/Accused 1 to 3

Criminal appeal is filed under Section 378 of the Code of Criminal Procedure, 1973, against the Judgment dated 19.10.2010 passed in Sessions Case No.300 of 2009 by the Additional District and Sessions Court/Fast Track Court No.I, Thoothukudi.

For Appellant : Mr.K.S.Duraipandian,
Addl. Public Prosecutor.

For Respondents : Mr.Gopalakrishna Lakshmana Raju
for Mr.A.John Vincent

Order Reserved on : 23.02.2015

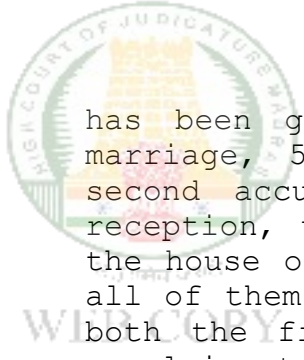
Judgment Delivered on : 04.03.2015

JUDGMENT

(Judgment of the Court was made by **A.SELVAM, J**)

In the present case a newly wedded wife, within a short span of her marriage, has been subjected to holocaust, even without getting blossoming in her marital life.

2.The compendium of the case of the prosecution is that the first accused by name Uma is the second wife of the third accused by name Balasubramanian. The second accused by name Ravi is the son of third accused born through his first wife. The de facto complainant by name Chandrakasan is the adoptive father of the deceased Rajalakshmi and she



has been given in marriage to the second accused. At the time of marriage, 50 sovereigns of gold jewels have been given to her. The second accused is nothing, but a bundle of all bad habits. After reception, the first and second accused along with deceased have come to the house of the de facto complainant. After seeing second show cinema, all of them have slept in his house. Next day morning, it is found that both the first and second accused have slept together. The de facto complainant has enquired the same from the deceased and she replied that it is nothing, but usual practice of the accused 1 and 2. The deceased has told the de facto complainant that he spoiled her and also she expressed the troubles and tribulations meted out by her at the hands of the accused. On 23.08.2008, one Arunachalam has informed the de facto complainant to the effect that the deceased has consumed paint and therefore she has been taken to hospital. The de facto complainant and his wife have come down to Government Hospital, Kovilpatti from Chennai through Air and found the dead body of the deceased and subsequently he has given a complaint to the Sub Inspector of Police (P.W.15) and the same has been registered in Crime No.183 of 2008 under Section 174 of the Code of Criminal Procedure, 1973. The complaint given by the de facto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer (P.W.20) has taken up investigation. Since the deceased has passed away within a period of six months from the date of her marriage, P.W.20 has made arrangements to conduct enquiry by Revenue Divisional Officer and accordingly the concerned Revenue Divisional Officer (P.W.17) has conducted inquest by way of examining relevant witnesses and Inquest Report has been marked as Ex.P.14, wherein it is stated that death has not occurred due to demand of dowry and ultimately directed the Investigating Officer to conduct investigation in some other aspects. After receipt of Inquest Report, P.W.20, Investigating Officer has continued his further investigation and made arrangements for conducting autopsy on the body of the deceased. The doctor by name Venkatesh (P.W.10) has conducted autopsy and he found the following external and internal injuries:

"1. Multiple contusions over left arm upper 1/3rd and left shoulder (anterior aspect) each of size 2 x 2 cms (3 nos).

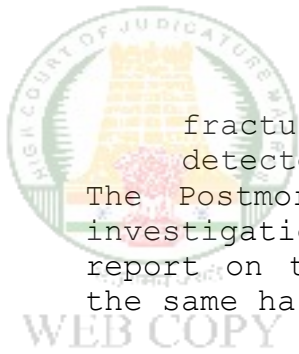
2. Multiple contusion right shoulder (anterior aspect) each of size 2 x 2 cm each (2 nos).

3. Contusion in front of neck 6 x 2 cm extending from right sternocleidomastoid to left sternocleidomastoid.

Her derition was 8/8.

8/8

Tongue within mouth. No discharge from nose and ears. Vagina no secretions seen. On opening the abdomen: Stomach congested empty, no smell present, mucosa intact, no excoriation. Liver, Spleen, Pancreas, Kidney congested. Small intestine and large intestine congested and empty. Bladder empty. Uterus empty. On opening the thorax heart congested and cavities are filled with clots. Lungs are congested and no smell present. Oesophagus empty, no smell, congested, mucosa intact. On opening the skull, bones intact. Brain congested. On layered dissection of neck (lorn) subcutaneous congested, plartysme congested, clots are present in subcutaneous and between plalysma and deep fascia. Hyoid bone was taken carefully and a



fracture of the left horn of hyoid bone (onward fracture) was detected. Trachea congested".

The Postmortem Report has been marked as Ex.P.3. After completing investigation, the Investigating Officer viz., P.W.20 has laid a final report on the file of the Judicial Magistrate's Court, Vilathikulam and the same has been taken on file in P.R.C.No.17 of 2009.

4.The Judicial Magistrate, Vilathikulam after considering the fact that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Thoothukudi Division and taken on file in Sessions Case No.300 of 2009 and subsequently made over to the trial Court viz., Additional District and Sessions Court (Fast Track Court No.I), Thoothukudi.

5.The trial Court after hearing both sides and upon perusing the relevant records has framed first charge against accused 1 and 2 under Section 120(b) of the Indian Penal Code, second charge against third accused under Sections 120(b) read with 302 of the Indian Penal Code, third charge against accused 1 to 3 under Section 4-A of Tamil Nadu Prohibition of Harassment of Woman Act, fourth charge against accused 1 and 2 under Section 302 of the Indian Penal Code and fifth charge against accused 1 to 3 under Section 201 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6.On the side of the prosecution, P.Ws.1 to 20 have been examined and Exs.P.1 to P.17 and M.Os.1 to 9 have been marked.

7.When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8.The trial Court after considering the available evidence on record, has found all the accused not guilty under the Sections mentioned in the charges and acquitted all the accused under Section 235(1) of the Code of Criminal Procedure, 1973. Against the order of acquittal passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the Investigating Officer/complainant.

9.Before pondering the rival submissions made on either side, a primordial fealty is cast upon the Court to find out as to whether the deceased Rajalakshmi has committed suicide by way of consuming paint or she met with holocaust at the hands of the accused?

10.The home-truth is that the occurrence has taken place inside the house of the accused on 23.08.2008. In Ex.P.1, the de facto complainant has vividly described the ordeals meted out by the deceased at the hands of the accused from the date of her marriage and also illicit intimacy/incestuous relationship betwixt the first and second accused and ultimately stated in Ex.P.1 that all the accused have slayed the deceased.

11.It is not an inscrutable fact that an abortive attempt has been made on the side of the accused that the deceased has consumed paint and due to that death has occurred. After occurrence, the deceased has been taken to Jayashree Hospital, Vilathikulam. The doctor by name Padmavathi (P.W.8) has deposed that on 23.08.2008 at about 10.00 p.m., a woman



patient has been brought to the said hospital and all the accused have come along with her and reported that she consumed paint. Since her condition is in critical stage, she has been referred to Government Hospital, Kovilpatti, where she found dead and thereafter on the basis of requisition, Dr.Venkatesh (P.W.10) has conducted autopsy and he filed Ex.P.3, Postmortem Report. In Ex.P.3, it is stated that the following external injuries are found on the body of the deceased:

"(i)Multiple contusions over left arm upper 1/3rd and left shoulder (anterior aspect) each of size 2 x 2 cms (3 nos).

(ii)Multiple contusion right shoulder (anterior aspect) each of size 2 x 2 cm each (2 nos).

(ii)Contusion in front of neck 6 x 2 cm extending from right sternocleidomastoid to left sternocleidomastoid".

Further in Ex.P.3, it is stated that a fracture is found in the left horn of hyoid bone (onward fracture).

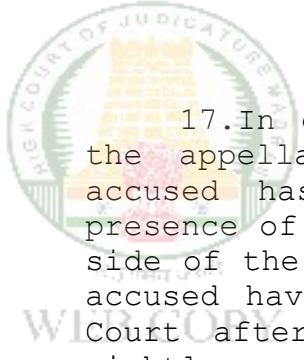
12.The viscera of the deceased has been subjected to chemical examination and P.W.11, Scientific Assistant has conducted the same and filed his report and the same has been marked as Ex.P.4, wherein it is stated that poison is not detected in any item. The ultimate opinion of P.W.11 is that the deceased would appear to have died of compression over neck.

13.From the cumulative reading of Exs.P.3 and P.4, the Court can easily discern that the deceased has not consumed any poison (paint) and her death has occurred only due to compression over neck. Therefore, it is pellucid that the deceased has been subjected to holocaust and she has not committed suicide.

14.Now without having penchant nor predilection, the Court has to meticulously analyse as to whether the accused have had connection whatsoever with the death of the deceased, since the second accused is her husband and first accused is the wife of the third accused and third accused is the father of second accused?

15.It is an admitted fact that all of them have resided together at the time of occurrence.

16.The learned Additional Public Prosecutor has laconically contended that the accused and deceased have resided together at the time of occurrence and only due to overtacts committed by them, the deceased has passed away and even though the second accused being the husband of the deceased and third accused being the father of second accused and first accused is his second wife and since the occurrence has taken place inside their house, they have not given any explanation with regard to injuries sustained by the deceased and as per Section 106 of the Indian Evidence Act, 1872, the entire burden lies upon the accused to prove as to how death of the deceased has occurred, but the accused have not at all established anything with regard to cause of death of the deceased and the trial Court without considering the burden lies upon the accused has erroneously acquitted them and therefore the Judgment of the trial Court is liable to be set aside and the accused are liable to be punished in accordance with the charges framed against them.



17. In order to remonstrate the contentions putforth on the side of the appellant, the learned counsel appearing for the respondents/accused has equally contended that in Ex.P.8, Observation Mahazer, presence of paint tin is noted and motive has not been established on the side of the prosecution and since the deceased has committed suicide, the accused have had no connection whatsoever with her death and the trial Court after considering the overall evidence available on record has rightly acquitted all the accused and therefore the present Criminal Appeal is liable to be dismissed.

18. The author of Ex.P.1, complaint, has been examined as P.W.1. In fact, he elaborately deposed to the effect that from the date of marriage, the deceased viz., Rajalakshmi has met with ordeals at the hands of the accused. Further he deposed that both accused 1 and 2 are having illicit intimacy/incestuous relationship between them. In Ex.P.1, it has been clinchingly stated about the troubles and tribulations meted out by the deceased from inception of marriage at the hands of all the accused. In fact P.W.1 has clearly corroborated the averments made in Ex.P.1.

19. The wife of P.W.1, viz., Sooriya Kalavathi and maternal uncle of the deceased have been examined as P.Ws.2 and 4 and both of them have adduced identical evidence as deposed by P.W.1. In the instant case, no eye witness is available with regard to occurrence. Under the said circumstances, the present case has to be decided on the basis of available circumstances.

20. It is an admitted fact that the marriage between the deceased and second accused has been performed on 10.02.2008 and after marriage the deceased and accused have resided together. It is also seen from the records that the deceased has taken to Jayashree Hospital from the house of the accused. Therefore there is no incertitude in coming to a conclusion that the entire occurrence has taken place inside the house of the accused.

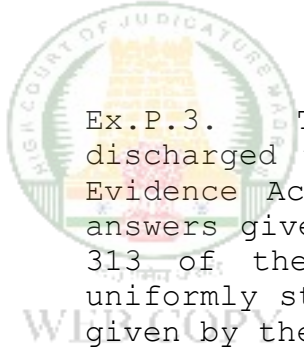
21. It has already been pointed out that P.W.10, Postmortem Doctor has clearly stated the external injuries found on the body of the deceased. Further he deposed that hyoid bone of the deceased is found in a state of broken.

22. The entire argument advanced by the learned Additional Public Prosecutor is based upon Section 106 of the Indian Evidence Act, 1872 and the same reads as follows:

"Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him".

From a cursory look of the said provision, it is easily discernible that if a particular fact is within the exclusive knowledge of a particular person, the entire burden lies upon him to prove the said fact.

23. As stated in many places, on the date of occurrence, the deceased and accused have resided together and deceased has been taken to Jayashree Hospital from the house of the accused with external and internal injuries mentioned in Ex.P.3. As rightly pointed out by the learned Additional Public Prosecutor, the accused have not given any explanation as to how the deceased has sustained injuries mentioned in



Ex.P.3. Therefore, it is quite clear that the accused have not discharged their burden as contemplated under Section 106 of the Indian Evidence Act, 1872. In fact, this Court has meticulously perused the answers given by all the accused to questions posed to them under Section 313 of the Code of Criminal Procedure, 1973 and all of them have uniformly stated that the present case is false. No explanation has been given by them with regard to injuries found on the body of the deceased.

24. For the purpose of analysing the above legal aspect, it would be condign to look into the following decisions:

(i) In *Babu @ Balasundaram v. State of Tamil Nadu* reported in (2013) 8 SCC 60, the Hon'ble Apex Court has held that an incident especially within the knowledge of accused, burden of proof upon the accused and failure to prove, he must be held liable.

(ii) In *State of West Bengal v. Mir Mith Mohammed Omar and others* reported in 2000(8) SCC 382, the Hon'ble Apex Court has held that under Section 106 of the Indian Evidence Act, inference can be drawn against a person, who is having knowledge about particular case.

(iii) In *Paramasivam and others v. State through Inspector of Police* reported in AIR 2014 SC 2936, the Hon'ble Apex Court has held that eye witnesses stated that the accused has abducted the victim, entire burden lies upon the accused under Section 106 of the Indian Evidence Act.

(iv) In *Albert Oraon v. State of Jharkhand* reported in AIR 2014 SC 3202, it is held by the Hon'ble Apex Court that husband and wife lived together in a house and husband failed to intimate the police about prolonged absence of wife. Section 106 of the Indian Evidence Act can be invoked.

25. From the conjoint reading of the decisions referred to supra, it is made clear that as per Section 106 of the Indian Evidence Act, 1872, the entire burden lies upon a particular person, who knows particular fact exclusively within his knowledge.

26. In the instant case, considering the relationship between the accused and deceased, all of them have resided together in a house at the time of occurrence and as per Ex.P.3, Postmortem Report, the deceased has sustained some external and internal injuries and all injuries are antemortem injuries. Since the deceased has sustained antemortem injuries as mentioned in Ex.P.3 and since the accused have failed to explain as to how those injuries have happened, it is very clear that except the accused, no one could have inflicted the same on the body of the deceased.

27. The specific case put forth on the side of the prosecution is that the accused 1 and 2 have contrived themselves to slay the deceased and third accused has lent his support. Considering the nature of injuries found on the body of the deceased and also considering that hyoid bone of the deceased is broken, the Court can very well come to a conclusion that only due to joint exertion, homicidal death has occurred.

28. Even at the risk of repetition, the Court would like to point out that as per Section 106 of the Indian Evidence Act, 1872, the accused have not discharged their burden. Further it is not the case of the accused that the injuries sustained by the deceased have been caused by some other person. Since the accused have not spoken anything about the



quite clear that accused 1 and 2 are liable to be mulcted with liability under the said Section.

35.The fifth charge framed against all the accused is under Section 201 of the Indian Penal Code. For the purpose of proving the fifth charge, no credible/trustworthy evidence is available on the side of the prosecution and therefore the fifth charge framed against them is not proved.

36.As per the discussion made earlier, the accused 1 and 2 are liable to be punished under Sections 120(b) and 302 of the Indian Penal Code, whereas the third accused is liable to be punished under Sections 120(b) read with 302 of the Indian Penal Code.

37.When the accused have been questioned with regard to imposition of sentences against them as per Sections mentioned supra, they pleaded not guilty.

38.In fine, this Criminal Appeal is allowed. The Judgment passed in Sessions Case No.300 of 2009 by the Additional District and Sessions Court/Fast Track Court No.I, Thoothukudi is set aside. The accused 1 and 2 are sentenced to undergo imprisonment for life under Section 120(b) of the Indian Penal Code and also imposed a fine of Rs.10,000/- upon each of them and also sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code and also imposed a fine of Rs.10,000/- upon each of them. In default of payment of fine, the accused 1 and 2 must undergo six months rigorous imprisonment in each Section. The third accused is sentenced to undergo imprisonment for life under Sections 120 (b) read with 302 of the Indian Penal Code and also imposed a fine of Rs.10,000/-. In default of payment of fine, the third accused must undergo six months rigorous imprisonment. The life sentences imposed against the accused 1 and 2 under Sections 120(b) and 302 of the Indian Penal Code shall run concurrently. Total amount of fine is Rs.50,000/-. The period if any already undergone by the accused is ordered to be deducted under Section 428 of the Code of Criminal Procedure.

Sd/-

Assistant Registrar(CO)

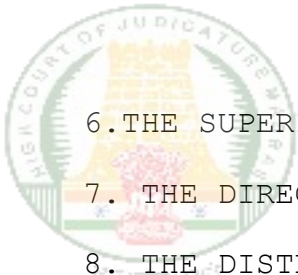
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Sub Assistant Registrar

To

1. THE ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT NO.I, THOOTHUKUDI.
- 2.-DO-THRO' THE PRINCIPAL DISTRICT JUDGE, THOOTHUKUDI
- 3.THE JUDICIAL MAGISTRATE,VILATHIKULAM.
- 4.-DO-THRO' THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI
5. THE DEPUTY SUPERINTENDENT OF POLICE,VILATHIKULAM

SUB DIVISION, THOOTHUKUDI DISTRICT.



6. THE SUPERINTENDENT OF POLICE, THOOTHUKUDI DISTRICT

7. THE DIRECTOR GENERAL OF POLICE MYLAPORE, CHENNAI

8. THE DISTRICT COLLECTOR THOOTHUKUDI

9. THE SUPERINTENDENT OF PRISON, CENTRAL PRISON, PALAYAMKOTTAI
(IN TRIPLICATE FOR COMMUNICATE TO THE ACCUSED)

10. THE SUPERINTENDENT SPECIAL PRISON FOR WOMEN TIRUCHIRAPPALLI
(IN DUPLICATE FOR COMMUNICATE TO THE ACCUSED)

11. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

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MADURAI BENCH OF MADRAS HIGH COURT MADURAI

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Judgment made in
Crl.A(MD)No.161 of 2011
04.03.2015

SMN
NA/04/03/2015/P9/20C