

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.571 of 2015

Masilamani

... Appellant/Accused

-vs-

The Inspector of Police
Udayarpalayam Police Station,
Ariyalur District.

... Respondent/Complainant

This Criminal Appeal has been preferred to set aside the conviction and sentence imposed vide judgment dated 18.08.2015 made in S.C.No.8 of 2015 on the file of the Fast Track Mahila Court, Ariyalur, by allowing this appeal.

For Appellant : Mr.V.Illanchezhian

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU,J.)

The appellant is the sole accused in S.C.No.8 of 2015 on the file of the Fast Track Mahila Court, Ariyalur. He stood charged for offences under Sections 302 and 201 IPC. By judgment dated 18.08.2015, the Trial Court convicted him under both charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 5,000/- in default to undergo rigorous imprisonment for one year for the offence under Section 302 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months for the offence under Section 201 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

The deceased in this case was one Mrs.Valarmathi. The

marriage between the accused and the deceased was celebrated hardly four months before the date of occurrence. The date of occurrence is 25.04.2002. But at the time of occurrence, it came to light that the deceased was six months pregnant. This quite naturally laid foundation in the minds of the accused to suspect the fidelity of the deceased. He believed that the accused had pre-marital sex with somebody else. Therefore, according to the case of the prosecution, he decided to do away with the deceased. This is stated to be the motive for the occurrence. It is further stated that on 24.04.2002 around 11.00 p.m, when the deceased was at her house, the accused pressed the pillow against her face and smothered her to death. After the deceased died, in order to erase the evidence, he hanged the dead body by using her saree as a ligature.

3. P.W.1 is the father of the deceased. He has stated that around 4.00 a.m., on the day of occurrence, he was informed that the deceased was no more. When he rushed to the house of the deceased, he found the dead body of the deceased lying in the floor of the house. The accused and other family members were sitting in the house giving a sorrowful look. They told P.W.1 that the deceased had died committing suicide. P.W.1 could not believe the same, because he found blood stains on her ear and nose. Therefore, he took the body to his house. Then he informed to his relatives. Thereafter, he went to the Police Station and made complaint on 26.04.2002 at 6.30 p.m. The Sub-Inspector of Police, Udayarpalayam Police Station on receipt of the said complaint registered a case in Crime No.226 of 2002 under Section 174 Cr.P.C. Ex.P7 is the FIR. She forwarded both the documents viz., Complaint [Ex.P1] and FIR [Ex.P7] to the Court, which were received by the learned Magistrate at 8.00 p.m., on 26.04.2002.

4. P.W.12 took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. Then at his request, the Revenue Divisional Officer conducted inquest on the body of the deceased and forwarded the same for post-mortem.

5. P.W.9- Dr.Jayaraman conducted autopsy on the body of the deceased. He opined that the body was in a de-composed condition. He found the following injuries:

1. A 2 1/2 x 1/2 cm skin deep abrasion on the centre of forehead
2. A 2 x 4 cm abrasion on left cheek close to eye
3. A 3 x 1 cm abrasion on left upper eyelid extending to injury No.2
4. A 5 x 2 cm abrasion on back of left forearm

5. A 8 x 3 cm abrasion over back of right forearm
6. A 4 x 4 cm abrasion on back of right elbow.

Ex.P4 is the post-mortem certificate. He gave opinion that the death of the deceased was due to asphyxia.

6. P.W.12 during the course of investigation, on 30.05.2002 arrested the accused at Athur in the presence of witnesses. On such arrest, he made voluntary confession, in which, he disclosed the place, where he had hidden the pillow. In pursuance of the same, he took the police and witnesses to his house and produced M.O.1- pillow. On completing the investigation, P.W.12 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges under Sections 302 and 201 I.P.C. The accused/appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 15 documents were exhibited, besides 1 Material Object - M.O.1 - Pillow. On the side of the defence, copy of the FIR was marked as Ex.D1.

8. Out of the said witnesses, P.W.1 - the father of the deceased has stated about the marriage of the accused and the deceased. He has further stated that around 4.00 a.m., on the date of occurrence, he heard that the deceased was no more. He went to the house and at that time, the accused and other family members were present. The body was lying on the floor. The accused and others told him that the deceased had committed suicide. But he did not believe and therefore, he took the dead body to his house and made a complaint on 26.04.2002 at 6.30 p.m. P.W.2, the mother of the deceased has also stated the same facts. P.W.3 is yet another daughter of P.W.1. She has stated that on hearing the death of the deceased, she went to the house of the accused. There, she found the deceased lying dead. She has stated that since there were blood stains on the body of the deceased, like P.W.1, she also suspected some foul play in the death of the deceased. P.W.4 is the neighbour of the deceased. She has stated that on the date of occurrence, she heard that the deceased had committed suicide by hanging. P.W.5 has spoken about the preparation of Observation Mahazar and Rough Sketch. P.Ws.6 to 8 have turned hostile and they have not supported the case of prosecution in any manner. P.W.9 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.10 has stated that he took the dead body from the place of occurrence and handed over the same to the doctor for post-mortem. P.W.11 the father of the accused has stated that around 12.00 midnight, the deceased committed suicide by hanging. He removed the dead body from the ligature and laid

the same on the floor. Then he informed her parents. P.W.12 has spoken about the registration of the case; the investigation done by him and the charge sheet laid against the accused.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness on his side.

10. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. In this case, the crucial question to be decided is as to whether, the deceased had committed suicide by hanging or she was done to death by anybody by smothering. Admittedly, there is no eye witness to speak about the occurrence. According to the father of the accused, the deceased committed suicide. P.Ws.1 and 2 have stated that when they went to the house of the deceased, they found the dead body of the deceased lying inside the house and the accused, his parents and other family members were sitting inside the house giving a look, as though they were very sad and sorrowful. In these circumstances, the evidence of the doctor, who conducted autopsy plays a vital role. The doctor has not ruled out the death due to suicide. In the post-mortem certificate, he has given opinion that the death was due to asphyxia. In chief examination, he has stated that the death could have been caused due to smothering by pressing a pillow against the face of the deceased. However, during cross examination he has stated that the other possibility was that the death could have occurred due to suicidal hanging. There is no reason to reject the opinion of the doctor elicited during cross examination, which is in favour of the accused.

13. In a case based on circumstantial evidence of this nature, it is imperative for the prosecution to prove that the death was undoubtedly homicidal. Here in this case, the alternative hypothesis that the death of the deceased was due to suicidal hanging has not been ruled out by the prosecution. Above all, though the deceased died on 24.04.2002 and though P.W.1 had taken the dead body to his house, he made a complaint only on 26.04.2002 at 6.30 p.m. for which, absolutely, there is no explanation. For all these reasons, we hold that since the prosecution has failed to rule out the possibility of death due

to suicidal hanging, it is not possible to convict the accused for offences under Sections 302 and 201 IPC.

14. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the accused/appellant by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur, in S.C.No.8 of 2015, dated 18.08.2015, is set aside and the accused/appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the accused/appellant, shall stand discharged.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. Fast Track Mahila Court, Ariyalur.
2. The Principal Sessions Judge, Ariyalur.
3. The Judicial Magistrate, Jayamkondam.
4. The Chief Judicial Magistrate, Ariyalur.
5. The Collector, Ariyalur.
6. The Director General of Police,
7. The Superintendent,
Central Prison, Trichy.
- 8.The Inspector of Police
Udayarpalayam Police Station,
Ariyalur District.
- 9.The Public Prosecutor
High Court, Chennai.
- 10.The Section Officer,
Criminal Section, High Court, Madras 104.

Cr1.A.No.571 of 2015

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