

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.654 of 2015

Venkatesappa .. Appellant/Sole Accused

- Vs -

State rep by Inspector of Police,
Hudco Police Station,
Krishnagiri District.
(Cr.No.122 of 2010) ... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.65 of 2013 dated 29.09.2015.

For Appellant : Mr.P.Kumaresan
for Mr.L.Baskaran
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.65 of 2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri. He stood charged for offences under Section 4 of the Dowry Prohibition Act, 1961 and Section 302 I.P.C. By judgment dated 29.09.2015, the trial Court convicted him under Section 302 I.P.C. alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for six months. 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:

2.1. The deceased in this case was one Mrs.K.Shyamaladevi. Three and half years prior to the occurrence, the accused married the deceased. It was a love marriage. At the time of marriage, the deceased was not aware of the fact that the accused was already married. At the time of marriage, the deceased had brought 30 sovereign of gold jewels and a cash of Rs.25,000/- from her parental home. The accused lavishly spent everything and had become a spendthrift. He had also become a drunkard. Because of these bad habits, he started demanding from the deceased dowry from her parents. It is further stated that on 02.06.2010 at around 03.30 p.m. when the deceased alone was at her house, the accused developed a quarrel and kicked her on her stomach and chest repeatedly. The deceased died on the spot. The accused fled away from the scene of occurrence. The occurrence was not witnessed by anybody.

2.2. P.W.1 is the father of the deceased. On 02.06.2010, around 04.30 p.m. he received phone call from his another daughter by name Manjula that the deceased was lying dead at her house. Immediately, he went to the house of the deceased. He found the deceased dead and there were injuries on the body of the deceased. There was a thuppatta tightly around her neck. The accused was not available. P.W.1 and other relatives took the dead body to their house.

2.3. Suspecting some foul play, P.W.1 went to HUDCO Police Station on 02.06.2010 at 09.30 p.m. and he made a complaint. P.W.10 the then Special Sub Inspector of Police on receipt of the said complaint, registered a case in Crime No.122 of 2010 under Section 174 Cr.P.C. (suspicious death). Ex.P8 is the F.I.R. He forwarded both the documents to the Revenue Divisional Officer, which was received by him at 08.30 a.m. on 03.06.2010.

2.4. P.W.12 the then Deputy Superintendent of Police took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. On 03.06.2010 at 06.30 a.m. he examined P.Ws.1 to 6 and few more witnesses. At his request, P.W.11 came to the place of occurrence, conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.5. P.W.9 Dr.Boopathy conducted autopsy on the body of the deceased on 03.06.2010 at 01.10 p.m. He found the following injuries:

"External injuries: (1) Linear abrasion in front of the neck about 9 x 2 cms. (2) Contusion

and abrasion on the right side chest upto the middle about 12 x 10 cms (3) Punctured wound 2 cm depth in left hypochondria region (4) Edematous right upper hyoid.

Internal examination: (1) hyoid bone preserved, large huematoma over the trachea (2) Ribs intact on both sides, but large pool of blood over the right side of the chest cavity in the lung cavity (3) Heart 250 gms chamber empty c/s congested (4) Lungs right 350 gms u/s shown clotted blood and congested, left 300 gms c/s congested (5) Liver - 1600 gms c/c congested (6) Stomach contains 200 ml of undigested food (7) kidneys 150 gms each c/s congested (8) Bladder empty (9) Uterus - normal and empty (10) Skull - intact (11) membranes - intact (12) Brain 1200 gms hemorrhage present (13) base of the skull intact."

Ex.P7 is the postmortem certificate. He gave opinion that the death of the deceased was due to asphyxia due to chest compression, lung injury and also due to strangulation.

2.6. Based on the same, the case was altered into one under Section 302 I.P.C. on 10.08.2010. The case was thereafter taken over for further investigation by P.W.13. On the same day i.e. on 10.08.2010 at 01.00 p.m. he arrested the accused. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden a pillow. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced a pillow and the same was recovered in the presence of P.W.2 and another witness. The investigation was thereafter continued by P.W.14. He examined the rest of the witnesses, collected the medical records and finally on concluding the investigation, laid chargesheet against the accused.

2.7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 12 documents and 2 material objects were marked.

2.8. Out of the said witnesses, P.W.1, the father of the deceased has stated about the marriage between the accused and the deceased which took place 3 ½ years prior to the occurrence. He has further stated about the frequent quarrel between the accused and the deceased. He has further stated that around 04.30 p.m. on the day of occurrence, he received a phone call from his daughter Manjula (P.W.4) that the deceased was found

lying dead in her house. He has further stated that he went to the house of the deceased, found the dead body and took the dead body to his house. On the next day, at 09.30 p.m. he made a complaint to the police. P.W.2 is the mother of the deceased, she has also stated about the same facts like P.W.1. P.W.3 is the brother of the deceased. He has also stated about the same facts as spoken by P.Ws.1 and 2.

2.9. P.W.4 is the sister of the deceased. She has also spoken about the marriage and the strained relationship between the accused and the deceased. She has further stated that on 02.06.2010 at around 12.00 noon, the deceased had sent one SMS to her cellphone. Immediately, P.W.4 spoke to her over phone and at that time, the deceased was weeping and when P.W.4 enquired as to why she was weeping, she told that her husband had beaten her. P.W.4 advised her to escape. Then abruptly the telephone conversation was disconnected. When she went to the house of the deceased, she found the deceased inside the house laying dead and the doors were left open. There was a thuppatta tightly around her neck. Then she informed P.W.1 about the same.

2.10. P.W.5 has not stated anything incriminating against the accused. He has stated that he went to the place of occurrence and found the dead body. P.W.6 the brother-in-law of the deceased has also stated about the marriage and the strained relationship between the accused and the deceased and the fact that the accused and the deceased were living together. He has further stated that on 02.06.2010, on hearing about the occurrence, he went to the place of occurrence and found the dead body. P.W.7 is yet another brother-in-law of the deceased. He has also spoken about the strained relationship between the accused and the deceased.

2.11. P.W.8 has spoken about the arrest of the accused and the consequent recovery of the material objects 1 and 2 from him. P.W.9 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.10 has spoken about the registration of the case on the complaint of P.W.1. P.W.11 has spoken about the inquest held by him as Executive Magistrate. P.Ws.12, 13 and 14 have spoken about the investigation done and the final report filed.

3. 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 nor to mark any document on his side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, the appellant is before this Court with this appeal.

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

5. This is a case based on circumstantial evidence. According to P.W.4, lastly the deceased spoke to her around 12.00 noon on 02.06.2010. Unfortunately, the call details in respect of the telephonic conversation between the deceased and P.W.4 has not been collected by the investigating officer. Assuming that the deceased had spoken to P.W.4 at 12.00 noon, it can only be concluded that the deceased was alive till 12.00 noon on 02.06.2010. Thereafter, around 03.30 p.m., the deceased was found lying dead in her house. P.W.9 Dr.Boopathy who conducted autopsy on the body of the deceased has stated there was abrasion measuring 12 cms x 10 cms on the middle of the chest and a stab injury measuring 2 cm on the left side of the armpit. He has opined that the death was due to asphyxia due to chest compression and lung injury and also due to strangulation. From this medical evidence, the prosecution has succeeded in establishing that the deceased had died a homicidal death between 12.00 noon and 03.30 p.m. on 02.06.2010.

6. In order to prove that it was this accused who caused injuries on the deceased which resulted in her death, the prosecution relies only on the conduct of the accused. According to the prosecution, from 02.06.2010, until he was arrested on 10.08.2010 at 01.00 p.m., he was absconding. But the fact remains that until 10.08.2010, neither the prosecution party nor the accused were sure about the cause of death. The case itself was altered into one under Section 302 I.P.C. only on 10.08.2010. Immediately the accused was arrested. There is no evidence anywhere on record that the accused was absconding during the interregnum period. According to the learned counsel the accused was very much available in the village and there is no contrary evidence let in by prosecution. Above all, the dead body of the deceased was found around 03.30 p.m. on 02.06.2010. But P.Ws.1 to 6 who are closely related to the deceased did not choose to make any complaint to the police immediately. It is in evidence that they took the dead body to their house and kept it there for the whole day on 02.06.2010. The complaint was made only at 09.30 p.m. There is no explanation for the same also. There is no other evidence available against the accused. Therefore, from the above only circumstance that the accused was not available in the village, even assuming that the same is true, it cannot be safely concluded that it was this accused who caused the death of the deceased. We are hastened to add that even to prove this circumstance that the accused was absconding for such a long time, there is no evidence available on record.

Thus, to hold the accused guilty of murder, we find no evidence at all in this case. We cannot afford to convict the accused on mere surmises. We hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore the appellant is entitled for acquittal.

7. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in S.C.No.65 of 2013 dated 29.09.2015 is set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

(iii) Since the appellant is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.

2 -do- Thro The Principal Sessions Judge, Krishnagiri

3 The Judicial Magistrate
No.II Hosur, Krishnagiri District

4 -do- Thro The Chief Judicial Magistrate Krishnagiri

5 The Superintendent
Central Prison, Salem

6 The District Collector, Krishnagiri District

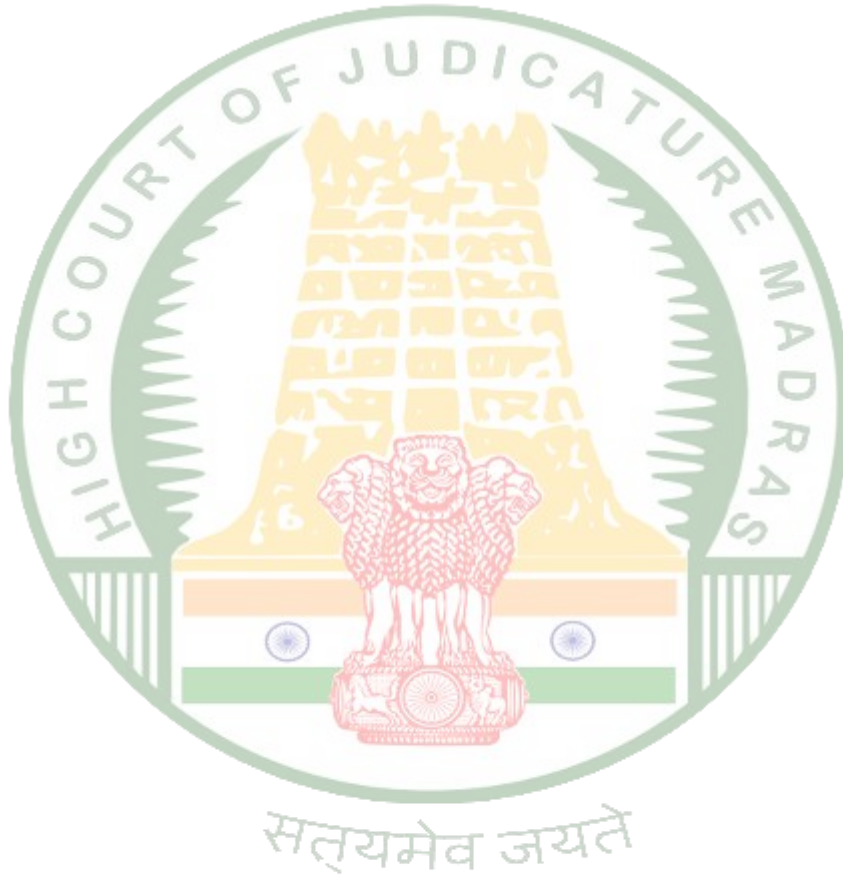
7 The Director General of Police,
Mylapore, Chennai 4

8. The Public Prosecutor,
Madras High Court.

9. The Inspector of Police,
Hudco Police Station,
Krishnagiri District.

Cr1.A.No.654 of 2015

UG (CO)
MD : 05/10/2016



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