

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 22.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Crl.A.No.632 of 2010

Gaja @ Gajendran

... Appellant/Accused

vs.

The State,
rep.by its Inspector of Police,
Maraimalai Nagar Police Station,
Maraimalai Nagar, Kancheepuram Dt. ... Respondent/Complainant
(Crime No.671/2007)

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 22.12.2009 passed by the Additional
District and Sessions Judge, Fast Track Court No.1,
Chengalpattu, Kancheepuram District in S.C.No.80 of 2009.

For Appellant : Mr.M.N.Balakrishnan

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellant is the sole accused in Sessions Case No.80 of 2009, on the file of the Additional District and Sessions Judge, Fast Track Court No.1, Chengalpattu. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 22.12.2009, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one month. 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:

(a) The deceased in this case was one Mrs.Parimala. The accused is the husband of the deceased. The accused had a suspicion that the deceased Mrs.Parimala had developed illicit intimacy with one Mr.Ravi. This resulted in frequent quarrels between the deceased and the accused. Since the deceased did not change her attitude, the accused decided to do away with the deceased. This is stated to be the motive for the occurrence.

(b) On 2.11.2007 at about 1.30 a.m., when the deceased was sleeping at her house, the accused pushed a pillow against the face of the deceased and caused suffocation, which resulted in her death instantaneously. After abandoning the dead body, the accused absconded from his house.

(c) P.W.1, the Village Administrative Officer, was informed by his Assistant that the deceased was found dead at the house of the accused. On receiving the said information, at about 10.00 a.m., on 2.11.2007, the Village Administrative Officer immediately made a complaint before the police, under Ex.P1. The then Inspector of Police (P.W.8), on receiving the said complaint, registered a case, in Crime No.671 of 2007, under Section 302 of the Indian Penal Code, against the accused. Ex.P5 is the First Information Report. He forwarded both the documents to Court and handed over the case diary to his successor in office, viz. P.W.10, the Inspector of Police, for investigation.

(d) P.W.10, took up the case for investigation, proceeded to the place of occurrence and found that the accused was not there. He prepared an observation mahazar and a rough sketch, in the presence of P.W.6 and another witness. He recovered blood stained earth and sample earth from the place of occurrence under a mahazar, in the presence of some of the witnesses. Then he conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.9, Dr.Parasakthi, conducted autopsy on the body of the deceased on 2.11.2007 at 5.45 p.m. She found the following injuries:-

"Extremities - Pale - Bleeding from mouth and nostrils - present. Following ante mortem injuries seen on the body (1) Curved abrasion 1.5 c.m. X 0.3 c.m. seen on front of upper part of left side neck o/d - Inward compression fracture of left horn of hyoid bone seen with surrounding areas of contusions (2) fracture dislocation of C4-C5 cervical vertebral seen with surrounding areas of contusions (3) Communicated fracture of right and left parietal temporal bones seen with both temporalis bruising. O/d. diffuse subdural and sub-arachnoid haemorrhage seen;

c.s.t - Blood stained; comminuted fracture of anterior and middle cranial fossa seen - stomach - empty - nil specific smell. Mucosa - NAD. All other internal organs - NAD - c/s pale Bladder - Empty. Genitalia - Intact nil discharge seen - Viscera preserved for chemical analysis and blood for grouping."

The Doctor opined that the deceased would have died due to the cumulative effects of manual strangulation and spinal injuries. She further opined that the death would have occurred 18 to 20 hours prior to the post-mortem. P.W.10 examined few more witnesses and recorded their statements. He forwarded the material objects to the Court. The accused was still absconding and he handed over the case diary to his successor in office, for continuation of the investigation.

(e) On 28.08.2008, P.W.11 took up the case for investigation. On the same day, at 6.15 a.m., he arrested the accused at Peramanur, in the presence of P.W.7 and another witness. On such arrest, the accused disclosed the place where he had concealed the nose-screw weighing 2.3 gms. In pursuance of the said disclosure statement, he took the police and the witnesses to the said place of hide-out and produced M.O.1-nose-screw. P.W.11 recovered the same under a mahazar and on returning to the police station, he forwarded the accused to the Court for judicial remand. On 26.11.2008, he examined the Doctor and collected the medical records. At his request, the material objects were sent for medical examination and the report under Ex.P12 revealed that there were blood stains on the material objects. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed a sole charge against the accused under Section 302 of the Indian Penal Code. Since the accused denied the same, to prove the case, on the side of the prosecution as many as 11 witnesses were examined, 28 documents and 3 materials objects were marked. Out of the said witnesses, P.W.1 is the Village Administrative Officer. It is stated that he found the dead body of the deceased at the house of the accused on 2.11.2007 at 10.00 a.m., and then he made a complaint to the police. P.W.2 is the Village Assistant, who informed P.W.1 that the dead body of the deceased was found. P.W.3 is a Villager, who has stated that on the day of occurrence, when she went to the house, though she knocked the door, there was no response. She has further stated that one day prior to the occurrence, there was quarrel between the deceased and the accused. Since there was no response from inside the house, she raised alarm, which attracted the neighbours. They entered into the house and found the dead body of the deceased. P.W.4 has not stated anything incriminating, as he has stated that he heard about the occurrence

subsequently. P.W.5 is the son of the deceased, aged about 20 years. He is not an eyewitness to the occurrence. He stated that the accused was absconding for about 10 months. He has identified M.O.1 as the nose-screw, belonging to the deceased. P.W.6 has spoken about the observation mahazar prepared and the recovery of the blood stained earth and sample earth and the other material objects from the place of occurrence. P.W.7 has spoken about the arrest of the accused on 28.08.2008 and the statement made by him and also the recovery of M.O.1, nose-screw, on the disclosure statement made by the accused. P.W.8 has spoken about the registration of the case. P.W.9 has spoken about the post-mortem conducted by her and her final opinion regarding the cause of death. P.Ws.10 and 11 have spoken about the investigation done.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side nor mark any document.

5. Having considered all the above, the trial Court convicted the accused under Section 302 of the Indian Penal Code, as detailed in first paragraph of this judgement and that is how the accused is before this Court.

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

7. P.W.5 is the son of the deceased and the accused. He has stated that the deceased and the accused alone were living together. P.W.5 and his brother were living separately at Tirukachusoor Village. He has further stated that two weeks before the occurrence, when he came to the house of the deceased, she told him that the accused was frequently quarrelling with her and beating her. He has further stated that when he wanted the deceased to come with him, so that she could be with him, she told him that she was not willing to come with him, as she was prepared to face her fate.

8. From the above evidence of P.W.5, the son of the accused and the deceased, it is crystal clear that the accused and the deceased alone were living together at the house where the occurrence had taken place. The dead body was found on the morning of 2.11.2007. The First Information Report was registered on the complaint of P.W.1, the Village Administrative Officer. The investigation went on and search was made to locate the accused. From 2.11.2007 to 28.8.2008 that is for about 9 months, the accused was absconding. It is not the case of the accused that he was not aware of the un-natural death of his wife. This conduct of the accused in absconding for such a long

period of nine months would quite naturally give rise to a presumption that he had a role to play in the death of the deceased. P.W.9 has given the opinion that the death was due to manual strangulation as well as the injury to the spinal cord. Thus, the death was a homicide. The said opinion of the Doctor was not challenged at all by the accused.

9. Then comes the recovery of M.O.1, nose screw. On the arrest of the accused on 28.8.2008, he gave a disclosure statement, in which he disclosed the place where he had hidden M.O.1, nose screw. In pursuance of the same, the same was recovered. P.W.5 has identified the same as that of his mother, namely, the deceased. We do not find any reason to reject the evidence of P.W.5 in this regard, as P.W.5 has got no axe to grind against the accused. Further, the accused has got no explanation as to how he came to possess the nose screw of the deceased. This would give rise to a presumption that he was the one who committed the murder, because the murder and removal of nose screw had taken place in one and the same occurrence. This presumption has not been rebutted by the accused at all. As we have already pointed out, the accused has not offered any explanation in respect of the possession of M.O.1 nose-screw. This circumstance along with the conduct of the accused i.e. for nine months continuously he was absconding and hiding, which is a very strong circumstance, would all go to conclusively prove that it was this accused, who committed the murder of the deceased. We do not find any other circumstance, which is consistent with the guilt of the accused. Thus, in our considered view, the trial Court has rightly convicted the accused under section 302 of the Indian Penal Code.

10. So far as the quantum of punishment is concerned, the trial Court has imposed only a minimum punishment, which does not require any interference at the hands of this Court.

11. In the result, the appeal fails and the same is dismissed. The conviction and sentence passed by the trial Court is hereby confirmed.

-s/d-

Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

msk

To

1.The Inspector of Police,
Maraimalai Nagar Police Station,
Maraimalai Nagar, Kancheepuram Dt.

2.The Additional District and Sessions Judge,
Fast Track Court No.1, Chengalpattu,
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras

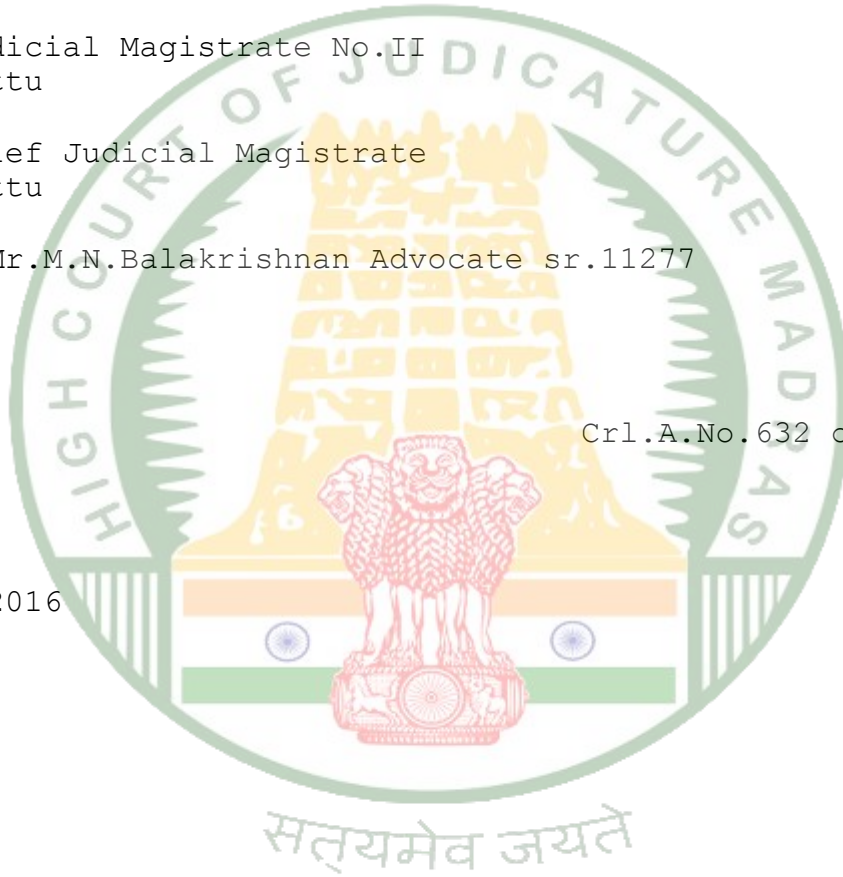
4. The Judicial Magistrate No.II
Chengalpattu

5. The Chief Judicial Magistrate
Chengalpattu

+1 cc to Mr.M.N.Balakrishnan Advocate sr.11277

Cr1.A.No.632 of 2010

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