

BAIL SLIP

That the Appellant / Accused namely Magesh @ Mageshwaran @ Selvan @ Selvaraj, S/o.Kuppusamy was directed to be released on bail dated 27.03.2013 in Crl.MP.1/2013 in Crl.A.150/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 08.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

and

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.150 of 2013

Magesh @ Mageshwaran @ Selvan @ Selvaraj
S/o.Kuppusamy

... Appellant/Sole Accused

vs.

The State,by
The Inspector of Police,
M-1, Periyanaayakkanpalayam Police Station,
Coimbatore District.
(Crime No.1022 of 2010)

.... Respondent/Complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 29.09.2011 passed by the learned Additional District and Sessions Judge, (Fast Track Court No.I) Coimbatore, in S.C.No.177 of 2011.

For Appellant : Mr.T.Muruganantham

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

JUDGMENT

(Judgement of the Court was delivered by **V.Bharathidasan, J.**)

The appellant in this appeal is the sole accused in Sessions Case No.177 of 2011, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.I), Coimbatore. He stood charged for an offence under Section 302 of IPC. The Trial Court by

judgement dated 29.09.2011 found the appellant guilty under Section 302 IPC, convicted him thereafter and sentenced him to undergo life imprisonment and also imposed a fine of Rs.500/-, in default, to undergo rigorous imprisonment for six months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased is the second wife of the accused. Earlier, the accused married one Vasanthamani and got two sons through her. P.W.2 is the second son. The accused left the first wife and married the deceased. The accused, deceased and P.W.2 resided in various places, finally, they settled in a farm house belonged to one Vanitha Mohan. On 15.12.2010, the accused purchased some beef and asked the deceased to cook the same. The deceased refused to do so and there was a quarrel between them. During the quarrel, the accused strangled the deceased with a rope and caused her death. Thereafter, he left the place. P.W.1, Supervisor of Farm House, saw the quarrel between the accused and the deceased on 15.12.2010. On 16.12.2010 morning, the accused and the deceased did not report to duty. Hence, P.W.1 sent somebody to bring them, but they found the door locked. P.W.1, along with other workers, broke open the door and found the deceased lying on the floor, the accused, along with the child missing, and they also found strangulation mark on the neck of the deceased. Immediately, they informed the same to the manager and P.W.1 gave a complaint, [Ex.P1] before the respondent police.

(ii) P.W.11, Sub Inspector of Police, received the complaint and registered a case in Crime No.1022 of 2010 for the offence under Section 174 Cr.P.C. and prepared First Information Report [Ex.P11], sent the same to the Judicial Magistrate Court and copies to higher officials. P.W.12, Inspector of Police, after receipt of First Information Report, commenced investigation, visited the scene of occurrence, prepared an Observation Mahazar, [Ex.P2] and Rough Sketch, [Ex.P12]. He conducted inquest over the dead body in the presence of panchayatdars between 12.15 p.m and 3.15 p.m and prepared Inquest Report, [Ex.P13] and sent the dead body to the Government Hospital, Coimbatore, for postmortem.

(iii) P.W.10, Doctor, working in the Government Hospital, Coimbatore conducted postmortem on the dead body of the deceased and found the following injuries.

1) A Transverse Pressure ligature of the ligature mark:- 23 x 2-1 cm noted on middle of front and sides of the neck. The anatomical landmarks of the ligature mark: 6 cm from right ear lobe, 5 cm from the left ear lobe, 4 cm from the chin. 2) Pressure abrasion 2 x 1 cm noted on right side upper neck, 1 cm below to body of the mandible, 2 cm above the ligature mark. On bloodless dissection of the neck: The underlying

ligature mark found intermittently contused. Transverse contusion, 1 cm right to midline and another contusion 4 x 2 cm noted on left side neck 3 cm left to midline at the level of lower border of thyroid cartilage. A vertical fracture noted on thyroid cartilage at the level of midline with surrounding tissue contused. Hyoid bone intact. On dissection of Scalp, Skull and Dura: Sut Scalped contusion 15 x 10 cm noted on both occipital and postero parietal region and another contusion 10 x 4 noted on bi frontal region. Diffused subarachnoid haemorrhage noted on both cerebral hemisphere. Brane found early decomposed.

Other Findings:

Peritoneal and pleural cavities empty; Heart: Floppy, all chambers contains about few cc of fluid blood. Stomach contains about 100 grams of partially digested food particles, no specific smell, mucosa shows early decomposed. Small intestine; contains 20 ml of bile stained fluid, no specific smell, mucosa shows early decomposed. Liver, Spleen, Lungs, and Brain ; cut section mucosa shows early decomposed. Urinary bladder empty. Uterus normal size cut section empty. Viscera preserved and sent for chemical analysis.

He opined that the deceased would appear to have died of violent compression of the neck, by a ligature material (Strangulation). He issued Postmortem Certificate, [Ex.P9].

(iv) Based on the postmortem report, on 18.12.2010, P.W.12, altered the FIR into Section 302 IPC, prepared altered FIR [Ex.P14] and sent the same to the Judicial Magistrate Court. Subsequently, on 07.01.2011, the accused appeared before P.W.8, an agriculturist at Madhukarai and gave a extra judicial confession. P.W.8 recorded the extra judicial confession, [Ex.P6] given to the accused and produced the accused before P.W.12. P.W.12 arrested the accused. On such arrest, the accused voluntarily gave a confession and based on the disclosure statement, P.W.12 took the accused to the farm house and seized 6 ft. rope. [M.O.1], used to strangle the deceased. Thereafter, P.W.1 sent the accused to the judicial custody. P.W.12 examined witnesses and recorded their statements, recovered the materials objects and after completion of investigation, on 02.02.2011 he filed charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 12 witnesses were examined and 14 documents were exhibited and one material object was marked.

4. Out of the said witnesses examined, P.W.1, Supervisor of

the Farm House, where the accused and the deceased were residing lastly, has deposed that on 14.12.2010, both the accused and the deceased approached him for employment and he permitted them to stay in a shed put up in the farm house and asked them to join duty on 16.12.2010. On that day itself, both the accused and the deceased quarrelled with each other and on 16.12.2010, both of them did not report duty and when he saw the house found locked, he broke opened the door and saw the deceased lying on the floor with ligature mark around her neck, immediately, he gave a complaint before the respondent police. P.W.2, son of the accused through his first wife, aged about 11 years is a child witness. Even though in the chief examination, he had said that there was a quarrel between the accused and the deceased and the accused beat the deceased and also strangulated her, in the cross examination, he stated that he was playing outside and after some time he went inside the house, he saw the deceased in a sitting position without any movement and immediately called the accused and thereafter found the deceased dead. P.W.3 is an agricultural coolie working in the farm house. According to him, on 14.12.2010, both the accused and the deceased came to the farm house and sought for employment and they were asked to stay in the shed put up in the farm house. Next day, on 15.12.2010, the accused came for work and on 16.12.2010 they did not report duty and he saw the body of the deceased inside the house. P.W.4, Manager, working in the Farm house has stated that on hearing the news from P.W.1, he came to a Farm House and saw the dead body of the deceased. P.W.5, driver, working in the farm house is a witness to the Observation Mahazar. P.W.6 is a witness to recovery of M.O.1 rope under Ex.P4 seizure mahazar. P.W.7 is the learned Judicial Magistrate No.IV, Coimbatore, who has spoken about recording the statement of P.W.2 under Section 164 of Cr.P.C. P.W.8 is a resident of Nachipalayam at Madhukarai, before whom the accused appeared on 07.01.2011 and gave extra judicial confession,[Ex.P6]. P.W.9 is the sister of the deceased. She has spoken about the quarrel between the deceased and the accused. P.W.10 is the Doctor, who conducted posrtmortem on the dead body and issued Postmortem certificate,[Ex.P9]. P.W.11 is the Sub Inspector of Police, who received the complaint and registered a case in Crime No.1022 of 2010 for the offence under Section 174 Cr.P.C. P.W.12 is the Inspector of Police, who conducted investigation, examined the witnesses and recorded their statements, altered the FIR into Section 302 IPC, arrested the accused and recovered materials objects and after completion of investigation, filed charge sheet before the jurisdictional Judicial Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.T.Muruganantham, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor, appearing for the State and we have also perused the records carefully.

8. In the instant case, even though P.W.2 is a child witness and in his chief examination he has stated that he saw the occurrence, in his cross examination, he has stated that he was playing outside and after some time, when he went inside the house, he saw the deceased in a sitting position without any movement, immediately he called the accused, and thereafter he came to know that she was dead. Hence, it is very difficult to believe his evidence.

9. The next circumstance relied on by the prosecution is that the accused and the deceased were living together along with P.W.2. On 14.12.2010, when they came to the farm house seeking for job, P.W.1 asked them to stay in a shed in the farm house. P.W.3, a co-employee has also corroborated the same. Hence, it is clear that both the accused and the deceased were residing in the same house.

10. The next circumstance relied on by the prosecution is motive. On 15.12.2010, there was a quarrel between the deceased and the accused. P.W.1, Supervisor of the farm house has seen the accused and the deceased quarrelling with each other and he has asked them not to quarrel. P.W.2 has also said that there was a quarrel between the accused and the deceased before the occurrence. P.W.3, a co-worker and P.W.9, sister of the deceased have also spoken about the quarrel between the accused and the deceased. According to P.W.2, on the date of occurrence, the accused brought some beef and asked the deceased to cook, but she refused and suddenly there was a wordy quarrel between them and the accused was do in a drunken mood.

11. The next important circumstance is the conduct of the accused. The occurrence has taken place on 15.12.2010. Immediately, the accused was absconding, along with P.W.2 and only after 22 days, on 07.01.2011, he appeared before P.W.8 and gave extra judicial confession. There is no explanation on the side of the accused for absconding for 22 days. When the accused and the deceased were residing in the same house and the occurrence has taken place inside the house, the burden is on the accused to explain the reason for the death of the accised. Hence, an adverse inference could be drawn against the accused under Section 106 of the Indian Evidence Act. Even though it is a rebuttable presumption, there is no explanation on the side of the accused to rubut the same. Apart from that the extra judicial confession given by the accused to P.W.8 is also another strong circumstance against the accused. Hence, taking into consideration the totality of circumstances, we are of the considered opinion that the prosecution has clearly proved that the accused only caused death of the deceased, by strangulating her.

12. Now, the question is what was the offence that was committed by the accused by the said act. It is the evidence of

P.W.1 that on 15.12.2010, there was a wordy quarrel between the accused and the deceased. According to P.W.2, a child living along with the accused and the deceased, on the date of occurrence, the accused brought some beef and asked the deceased to cook, but, the deceased refused and due to that there was a quarrel between them. It is further evidence that the accused was quarrelling with the deceased in a drunken mood. From the above evidence, it is clear that due to the quarrel, out of sudden provocation. The accused lost his self control and strangulated the deceased. Thus, the act of the accused would squarely fall within the first exception to Section 300 of IPC and fall within the 3rd limb of Section 300 IPC., and therefore, the accused is liable to be punished under Section 304(i) IPC.

13. Turning to the quantum of punishment, considering the mitigating as well as aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for 7(seven) years and pay a fine of Rs.1000/- would meet the ends of justice.

14. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant in S.C.No.177 of 2011, dated 29.09.2011, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.I), Coimbatore, under Section 302 IPC is set aside and instead, he is convicted under Section 304 part-I IPC and sentenced to undergo rigorous imprisonment for 7(seven) years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone by the appellant/accused shall be given set off as required under Section 428 Cr.P.C.

rrg

Sd/-

Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

- 1.The Judicial Magistrate, No.VI, Coimbatore.
- 2.The Chief Judicial Magistrate, Coimbatore.
- 3.The Additional District and Sessions Judge,
Fast Track Court No.I,
Coimbatore.
- 4.The Principle Sessions Judge, Coimbatore.
5. The Superintendent, Central Prison, Coimbatore.

6.The District Collector, Coimbatore.

7.The Director General of Police,
Mylopore, Chennai

8.The Inspector of Police,
M-1, Periyayanayakanpalayam Police Station,
Coimbatore.

9.The Public Prosecutor,
High Court, Madras.

+1 CC Mr.T.Muruganantham Advocate SR.No.3330

Crl.A.No.150 of 2013

MG [CO]

MSI 04/01/2017



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