

Bail Slip

Annamalai Appellant herein/Accused in S.C.No.111/10 on the file of the Additional District and Sessions Judge, Kancheepuram District was released on bail by the order of this Court dated 28/3/2013 and made in M.P.No.1/13 in Crl.A.181/13 pending on the file of this Court.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.181 of 2013

Annamalai ... Appellant/Accused

-Vs-

State rep by
The Inspector of Police
Semmencherry Police Station
Chennai
(Cr.No.598 of 2009)

... Respondent/Complainant

This Criminal Appeal has been preferred against the judgment dated 28th June 2012 made in S.C.No.111 of 2010 on the file of the learned Addl.District and Sessions Judge, Kancheepuram District, Chengalpattu, convicting and sentencing the appellant to undergo life imprisonment for the offence u/s 302 IPC and a fine of Rs.1,000/- in default to undergo R.I. for three months.

For Appellant : Mr.Venkatesh Mohanraj

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.111 of 2010 on the file of the learned Additional District and Sessions Judge,

Kancheepuram. He stood charged for the offence under Section 302 IPC. By judgment dated 28.06.2012, he has been convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence, the accused/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 Geetha. The accused is her husband. The deceased and the accused were residing together as husband and wife at Door No.208, Semmancheri Village. The accused had suspicion in the chastity of the deceased. This resulted in frequent quarrel between them. It is alleged that on 30.06.2009, in the night, there was a quarrel between the deceased and the accused. The neighbours who witnessed the same had gone to the house of P.W.1 and informed him about the same. P.W.1 is none else than the father of the deceased. P.W.2 is the mother of the deceased. P.Ws.1 and 2, therefore, rushed to the house of the deceased. It was around 12.00 midnight. When they entered into the house of the deceased, they found the deceased lying and the accused was sitting on her chest, holding his hands around the neck of the deceased. When P.Ws.1 and 2 ran to the rescue of the deceased, the accused strangled her so quickly and ran away from the scene of occurrence. When P.Ws.1 and 2 went near the deceased, they found her dead. Then, P.W.1 went to Thuraipakkam Police Station and made a complaint.

[b] P.W.8, the then Sub Inspector of Police of Thuraipakkam Police Station, on receiving the said complaint under Ex.P1, registered a case in Cr.No.598 of 2009 u/s 302 IPC against the accused at 2.00 a.m. on 01.07.2009. He forwarded the complaint [Ex.P10] and the FIR [Ex.P6] to the Court forthwith. They were received by the learned Judicial Magistrate at 10.20 a.m. on 01.07.2009.

[c] The investigation was taken up by P.W.9. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. He immediately forwarded the body to Royapettah Government Hospital for being kept in the mortuary. P.W.6 Dr.Sureshbabu examined the dead body at 4.55 a.m. on 01.07.2009 and kept the dead body in the mortuary after having made an entry in the Accident Register, vide Ex.P3. P.W.9 conducted inquest on the body of the deceased between 9.00 and 11.00 a.m. on 01.07.2009 and forwarded the same for post-mortem. P.W.7 Dr.Baskar conducted autopsy on the body of the deceased on 01.07.2009 at

2.20 p.m. He found the following injuries:

"Injuries:

1. Irregular pressure abrasion 2.5 x 1.5cms over right side of neck 3cms away from midline at the level of thyroid cartilage.

2. Four crescentic pressure abrasions along vertical plane over left side of neck 3.5 cms to 4.5 cms away from midline each measuring 1 x 0.5 cm set about downwards and each set 0.8 to 1.2 cms apart."

Ex.P4 is the Post-mortem Certificate. He preserved the visceral organs for examination. The chemical analysis report revealed that there was no poison found in the internal organs. Finally, he gave opinion that the death was due to manual strangulation.

[d] During the course of investigation, on 01.07.2009 at 2.00 p.m., P.W.9 arrested the accused in the presence of one Anthoni and Selu. Then, he forwarded him to the Court for judicial remand. On 27.08.2009, the investigation was taken up by P.W.10. He collected the medical records, examined the Doctors and recorded their statements. Finally, he laid charged sheet against the accused on 28.12.2009.

3. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 10 documents were exhibited. No material objects were marked on the side of the prosecution.

4. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.Ws.3 to 5 have turned hostile and they have not stated anything in favour of the prosecution. P.W.6 - Dr.Sureshbabu has stated that he examined the dead body on being sent by the police and then, kept the same in mortuary. P.W.7 has spoken about the post-mortem conducted by him and his Final Opinion regarding the cause for death. According to him, the death was due to manual strangulation. P.W.8 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.9 and 10 have spoken about the investigation done and the Final Report filed.

5. 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 he did mark any document in his favour. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused for the lone offence under Section 302 IPC. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

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

8. The learned counsel for the appellant would submit that the presence of P.Ws.1 and 2 at that odd hour at the place of occurrence cannot be true and therefore, the evidence of P.Ws.1 and 2 cannot be believed. He would further submit that there are certain contradictions between these two witnesses and that would also make their evidence unbelievable. The learned counsel would further submit that there was delay in forwarding the FIR to the Court, which also creates doubt in the case of the prosecution. He would also submit that P.W.1 has disowned Ex.P10 - the complaint and therefore, there is doubt about the very origin of the case. He would further submit that the very fact that P.W.1 did not take the deceased to the hospital would go to show that he was not even present at the time of occurrence.

9. The learned Additional Public Prosecutor would however, oppose this appeal vehemently. According to him, the presence of P.Ws.1 and 2 cannot be disbelieved at all and the same cannot be doubted also. P.Ws.1 and 2 have categorically and vividly spoken about the entire occurrence, which is duly corroborated by the medical evidence also. Thus, according to the learned Additional Public Prosecutor, the conviction of the appellant does not require any interference at the hands of this Court.

10. We have considered the above submissions.

11. P.Ws.1 and 2 have stated that on receiving information from the neighbour of the deceased, that there was a quarrel between the accused and the deceased, they had gone to the house of the deceased. After all, they are the parents of the deceased and therefore, it would have been natural to rush to the house of the deceased, on hearing that there was a quarrel between the deceased and the accused. Thus, we do not find any reason to disbelieve the presence of P.Ws.1 and 2 at the time of occurrence.

[a] P.Ws.1 and 2 have vividly spoken about the entire occurrence. They have stated that the accused strangled the deceased. According to the Doctor who conducted autopsy on the body of the deceased, the death was due to manual strangulation.

Thus, the medical evidence also duly corroborates the eye witness account of P.Ws.1 and 2.

[b] The contention of the learned counsel for the appellant that there was inordinate delay in forwarding the FIR to the Court does not persuade us at all. There was no delay in preferring the complaint. After all, there was some delay in forwarding the FIR to the Court, but, on that score, we do not feel that the evidences of P.Ws.1 and 2 deserve to be rejected.

[c] The learned counsel would further submit that Ex.P10 - the complaint, was not marked through P.W.1. Of course, it is true that P.W.1 is an illiterate man. When Ex.P10 was shown to him, since he was not able to read the contents of Ex.P10, he has answered that he does not know about the contents of Ex.P10. Therefore, it was not marked through him. That would not in any manner make his oral evidence given in Court on oath unbelievable. Thus, this argument of the learned counsel for the appellant is also rejected.

[d] The learned counsel would next contend that the neighbours who informed P.Ws.1 and 2 have not been examined. Of course, it is a flaw. But, it is not such a serious flaw, which would create doubt in the evidence of P.Ws.1 and 2. Thus, all the grounds raised by the learned counsel for the appellant are liable to be rejected. We hold that it was this accused who strangulated his wife to death.

12. Having come to the said conclusion, now we have to examine, as to "what was the offence that was committed by the accused by the said act". It is in the evidence of P.Ws.1 and 2 that there was some domestic quarrel between the deceased and the accused for a long time. It was only after receiving information from the neighbours, P.Ws.1 and 2 had gone to the house of the deceased. Until then, the quarrel was going on. It was only at the end of the quarrel, the accused had strangulated the deceased. Considering that there would have been some provocative act on the part of the deceased which would have made the accused to lose his mental balance so as to cause the death of the deceased, certainly, the accused would not have intended to cause the death of the deceased. Similarly, the occurrence was not out of any pre-meditation. It was out of a sudden quarrel. From the evidence available, it is presumed under Section 114 of the Indian Evidence Act, i.e. going by the natural human conduct, that in the sudden quarrel, the deceased would have provoked the accused and in our considered view, the said provocation was so sudden and grave, which would have made the accused to lose his mental balance. It was under those circumstances, the accused had committed the crime. Thus, in our considered

view, the act of the accused would squarely fall within the first exception to Section 300 IPC. Since the act of accused would fall under the fourth limb of Section 300 IPC and also first exception to Section 300 IPC, we hold that the appellant is liable to be punished u/s 304(ii) IPC and not u/s 302 IPC.

13. Now turning to the punishment, the accused is the sole bread winner of the family. He has got three brothers. He has got a big family to take care. He has no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-mediation for the accused to commit the murder of the deceased. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- would meet the ends of justice.

14. In the result, the appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 302 IPC is set aside and instead, he is convicted u/s 304 (ii) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone shall be set off.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police
Semmencherry Police Station
Chennai.

2.The Addl.District and Sessions Judge,
Kancheepuram District, Chengalpattu,

3.The Public Prosecutor
High Court, Chennai.

4.The Judicial Magistrate,
Alandur.

5.-Do- Thro' the Chief Judicial Magistrate,
Chengalpattu.

6.The Superintendent,
Central Prison,
Puzhal,
Chennai.

7.The Collector,
Chennai District.

8.The Dierector General of Police,
Mylapore, Chennai-4.

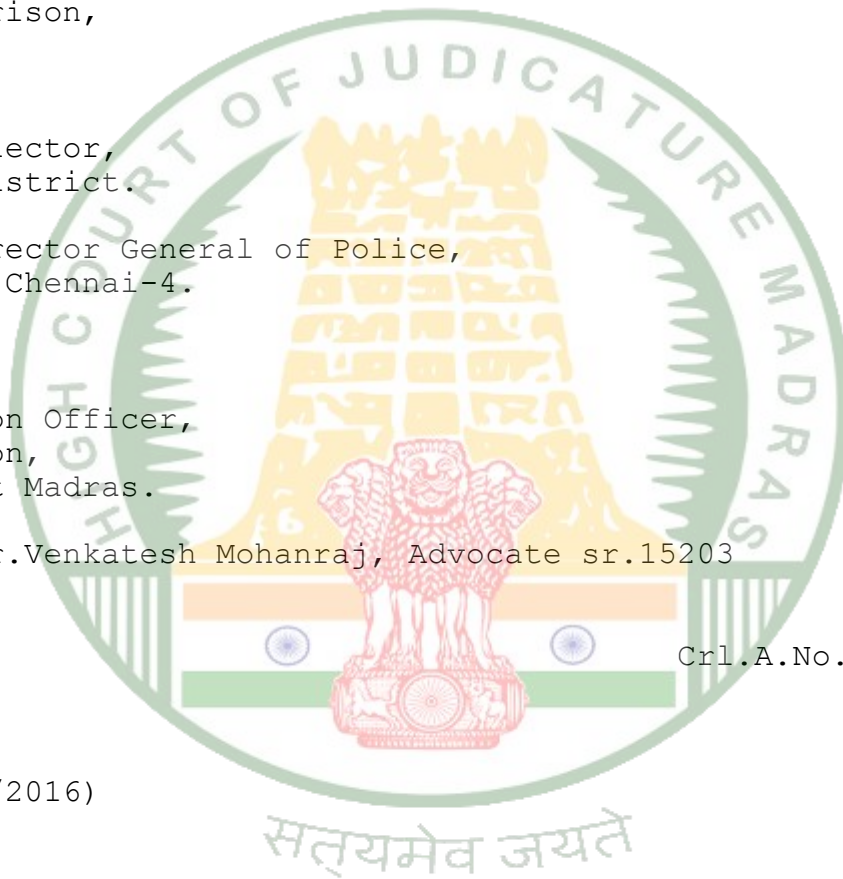
Copy to

The Section Officer,
V.R.Section,
High Court Madras.

+2cc to Mr.Venkatesh Mohanraj, Advocate sr.15203

Crl.A.No.181 of 2013

ksj (CO)
srg(24/03/2016)



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