

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2016

CORAM:

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE P.KALAIYARASAN

Criminal Appeal No.513 of 2013

Ranjith @ Ranjithkumar ... Appellant/Accused

-Vs-

The State rep by
Inspector of Police
M3, Puzhal Police Station
Chennai.
(Crime No.181/2009)

... Respondent/Complainant

This Criminal Appeal has been preferred against the sentence and conviction made in judgment in S.C.No.105/2012 dated 25.06.2013 on the file of the Principal Sessions Judge, Thiruvallur.

For Appellant : Mr.R.Kishore Kumar

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.105 of 2012 on the file of the learned Principal Sessions Judge, Tiruvallur. He stood charged for offence under Section 302 IPC. By judgment dated 25.06.2013, the trial Court convicted him under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo simple

imprisonment for six 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 Mrs.Selvi. The accused is her husband. The marriage between the accused and the deceased was celebrated approximately seven years prior to the date of occurrence. They had two children, by name Sarojini and Buvaneswari. Buvaneswari is P.W.3 in this case. They were all living together at Mathura Mettupalayam, Puzhal, Chennai. In course of time, the accused had developed suspicion over the fidelity of the deceased. This resulted in frequent quarrels between the deceased and the accused.

[b] On 11.04.2009, at about 8.00 a.m., the deceased was sleeping in her house. P.W.3 also was there. The accused returned to his house in drunken state. On account of the above suspicion over the fidelity of the deceased, the accused strangled her by neck, by using a plastic wire as a ligature. The deceased died instantaneously. The occurrence was witnessed by P.W.3 also. The accused fled away from the scene of occurrence.

[c] P.W.2, a neighbour, while passing through the house of the deceased found the deceased lying unconscious. There was a ligature around her neck. She immediately informed P.W.1, the brother of the deceased, about the same. P.W.1 reached the place of occurrence and found that the deceased was dead. The mother of the deceased also accompanied P.W.1. P.W.1 and the mother of the deceased by name Mrs.Latha, immediately went to M-3 Puzhal Police Station and made a complaint at 11.00 a.m. on 11.04.2009. On the said complaint, P.W.13, the then Sub Inspector of Police registered a case in Cr.No.181/2009 u/s 302 IPC against the accused. Ex.P11 is the FIR. He forwarded the complaint [Ex.P10] and the FIR [Ex.P11] to the Court, which were received by the jurisdictional Magistrate at 1.30 p.m. on 11.04.2009.

[d] P.W.14 took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.10 and another witness. Then, he recovered the broken bangles, a torn saree and another piece of saree from the place of occurrence under a mahazar. Then, he conducted inquest on the body of the deceased between 12.30 p.m. and 3.30 p.m. and forwarded the same for post-mortem. P.W.9 - Dr.Santhakumar, conducted autopsy on the body of the deceased on 12.04.2009 at 12.15 p.m. He found the following injuries:

"An incomplete, horizontal, ill defined, brown ligature abrasion 37 x 2.2-1 cm on the front, sides and on the right side of the back of the neck with a 3.5 cm gap on the left side of the back of the neck; on the front of the neck the ligature abrasion was below the level of the thyroid cartilage and was 9cm below the chin and 6 cm above the suprasternal notch; on the right side of the neck the ligature abrasion was 5 cm below the right mastoid process and on the left side of the neck the ligature abrasion was 5.5 cm below the left mastoid process; on the right side of the back of the neck the ligature abrasion was 2.5 cm below the hair line."

Ex.P4 is the Post-mortem Certificate. He gave opinion that the death was due to asphyxia on account of ligature strangulation.

[e] During the course of investigation, on 12.04.2009, P.W.14 recovered the cloth materials from the dead body of the deceased. On the same day, at 7.00 p.m., he arrested the accused in the presence of P.W.11 near Kavangarai bus stop. On such arrest, the accused gave a voluntary confession, in which he disclosed the place where he had hidden a rope. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced two plastic wires [M.Os.4 and 5]. P.W.14 recovered the same under a mahazar. On returning to the police station, P.W.14 forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court. On his request, the material objects were sent for chemical analysis. The investigation was thereafter taken over by P.W.15. He collected all the relevant materials and finally laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge u/s 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 15 witnesses were examined and 13 documents were exhibited, besides 8 Material Objects.

4. Out of the said witnesses, P.W.1, the brother of the deceased has stated that he received intimation from P.W.2 about the death of the deceased and when he reached the place of occurrence, he found the body of the deceased at her house and then he went to the police station along with his mother, where his mother made a complaint under Ex.P10. Ex.P1 is the signature of his mother. P.W.2, a neighbour has stated that she found the dead body of the deceased and immediately, informed the same to P.W.1. P.W.3, the child of the deceased has vividly spoken about the entire occurrence. P.Ws.4 to 7 are the

neighbours of the deceased, who turned hostile and they have not stated anything incriminating against the accused. P.W.8, the Assistant Director of Forensic Science Department has spoken about the chemical analysis conducted on the material objects and his report. According to him, there was no poison found in the internal organs of the deceased. P.W.9 has spoken about the post-mortem conducted and his Final Opinion regarding the cause of death. P.W.10 has spoken about the preparation of Observation Mahazar and Rough Sketch and also recovery of material objects from the place of occurrence. P.W.11 has spoken about the arrest of the accused on 12.04.2009 and the recovery of plastic wires. P.W.12 is the Constable who took the dead body to the hospital for post-mortem. P.W.13 has spoken about the registration of the case on the complaint of the mother of P.W.1. P.Ws.14 and 15 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 u/s 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. In this case, the prosecution relies only on the eye witness account of P.W.3 - the child of the deceased. At the time of deposition, she was hardly aged nine years. The learned counsel for the appellant would submit that since P.W.3 is a child witness, her evidence should be rejected. But, we are not persuaded by his argument, because, it is not the law that the evidence of a child witness should be rejected under all circumstances. The law requires that the evidence of a child witness needs close scrutiny, because a child is prone to tutoring. Applying the said test to the evidence of P.W.3, we find that absolutely there is nothing on record, even to infer that P.W.3 would have been tutored by somebody and there are no circumstances to disbelieve her. The presence of P.W.3 cannot be doubted. After all, P.W.3 is a child, who would have been by all probabilities at the house, with her mother. Though P.W.3 has been cross examined at length, nothing has been elicited from her, so as to create any doubt in the evidence of the child. Thus, we are of the view that the evidence of P.W.3 has

passed the test of close scrutiny and therefore, that itself can be the sole foundation for conviction.

9. Apart from that, the medical evidence also duly corroborates the eye witness account of P.W.3. Above all, the conduct of the accused assumes much importance in this case. It is not the case of the accused that he was not present at the house at all. After the occurrence, i.e., after the accused came to know that his wife was no more, he had not shown any natural conduct to take steps to take the deceased to the hospital or to be present there to participate in the other rituals. The very fact that the accused was absconding and he was arrested later on by the police at a different place, would only show his guilty mind. Thus, the conduct of the accused is inconsistent with the innocence pleaded by him. This also duly corroborates the eye witness account of P.W.3. From these evidences, we conclude that the prosecution has clearly established that it was this accused who caused the death of the deceased.

10. Now the question is, "what was the offence that was committed by the accused by his act? The medical evidence shows that the accused strangled the deceased by using a ligature. The death was due to the strangulation. This act of the accused would squarely fall within third limb of Section 300 IPC. There is no material on record to bring the act of the accused under any one of the exceptions of Section 300 IPC. Thus, the act of the accused squarely falls u/s 302 IPC.

11. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which calls for no interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant by the trial Court are hereby confirmed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Inspector of Police
M3 Puzhal Police Station
Chennai

2. The Principal Sessions Judge,
Thiruvallur.

3. The Judicial Magistrate
Thiruvottiyur

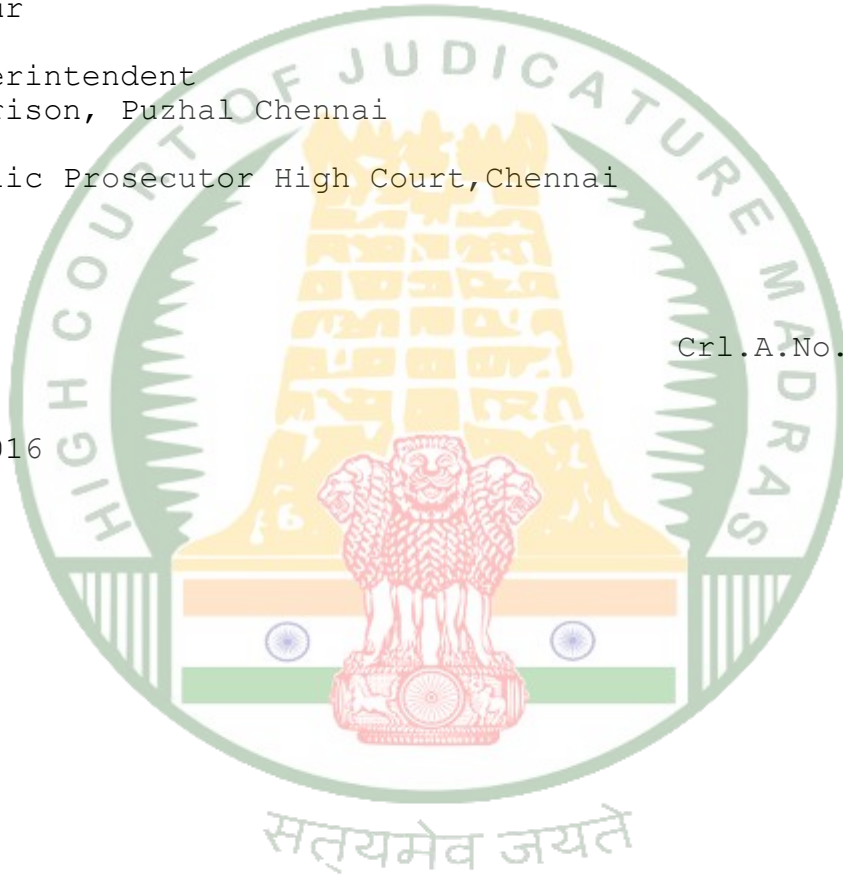
4. -do- Thro The Chief Judicial Magistrate
Thiruvallur

5. The Superintendent
Central Prison, Puzhal Chennai

6. The Public Prosecutor High Court, Chennai

Crl.A.No.513 of 2013

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