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Bail Slip:- The appellant/Accused namely Nanda @ Purushothaman S/o. S. Govindaraj was ordered to be released on bail by order of this court dated 5.3.2013 and made in CrI.M.P.No.1 of 2013 in CrI.A.No.8/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
And
THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.8 of 2013

Nanda (a) Purushothaman ... Appellant/ Accused

Vs.

State: Rep. by
Inspector of Police,
J2 Adayar Police Station,
Adayar, Chennai.

... Respondent/ Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment and sentence passed by the learned Sessions Judge (Mahalir Needhimanram), Chennai in S.C.No.329 of 2008 dated 21.11.2012 convicting the appellant for an offence under Section 302 of I.P.C. The appellant is sentenced to undergo Life Imprisonment and to pay a fine of Rs.10,000/- I.D. to undergo 6 months S.I.

For Appellant : Mr.A.Raghunathan
Senior Counsel
for M/s.M.Rajavelu

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

The appellant is the sole accused in S.C.No.329 of 2008 on the file of the Mahila Court at Chennai and he stood charged for the commission of offence punishable under Sections 498 - A and 302 of I.P.C.

2. The Trial Court vide impugned judgment dated 21.11.2012, convicted and sentenced him as follows:



(v) P.W.1 immediately proceeded to the J2, Adyar Police Station and lodged a complaint on 24.04.2008 at about 7.30 hours and P.W.14 was the Sub Inspector of Police attached to the said police station at the relevant point of time. He received the complaint and registered a case in Crime No.463 of 2008 under Section 302 of I.P.C. The printed F.I.R. was marked as Ex.P.11. He sent the F.I.R. to the jurisdictional Magistrate Court and forwarded copies to his higher officials.

(vi) P.W.15 was the Inspector of Police attached to J2, Adyar Police Station and on receipt of the F.I.R. from P.W.14 proceeded to the scene of occurrence and in the presence of P.Ws.5 and 6 prepared Observation Mahazar (Ex.P2) and Rough sketch (Ex.P12). P.W.15 also seized the blood stained grinder stone (M.O.1) and also collected the blood stained earth and also earth without blood stain under Seizure Mahazar (Ex.P3) and conducted inquest on the body of the deceased in the presence of the Panchayatdhars and Inquest Report prepared by him, was marked as Ex.P13 and also examined P.Ws.1 to 4, 8 and three other witnesses and recorded their statements. P.W.15, made a requisition for conducting the post mortem on the body of the deceased and sent the body along with requisition through P.W.12 to the Government Hospital, Royapettah, Chennai.

(vii) P.W.13 was the Professor of Department of Forensic Sciences and on receipt of the body from P.W.12, made arrangements to conduct post mortem and commenced post mortem on 24.04.2008 and noted the following features:

1. Laceration 3 X 2 cms X Bone deep over upper third of nasal bridge
2. Laceration 3 X 2 cms X Cavity deep seen involving left upper eyelid and adjacent eyebrow with fracture of left supra orbital ridge with bruising and laceration of adjacent tissues and sub conjunctival haemorrhage in the left eye.
3. Laceration 4.5 X 1.5 X Bone deep involving the canthus of left ear close to facial attachment.
4. Laceration 3 X 1 cm X Cavity deep over left side of head 6 cms above left ear.
5. Contused abrasion 8 X 4.5 cms over outer aspect of left side of face and lower jaw. The injuries are Fresh and Antemortem in nature.

On Dissection:

Bruising of scalp over right side of head 7x5 cms and over left side of head 11x5 cms. Rest of scalp appear pale.

Comminuted fracture of vault seen involving right temporal, Right mastoid, Left temporal and left side of occipital bones with extension onto the base. Diastatic fracture seen involving the left fronto temporal, left parieto temporal and right lambdoid sutures. Meninges pale. Thin diffuse sub dural haemorrhage seen over both cerebral hemispheres. Cerebral hemisphere appear pale. Haemorrhagic contusion seen involving the mid brain and Brain stem.



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Fracture base of skull seen involving the middle cranial fossa.

Fracture of facial skeleton seen involving the nasal bone and roof and lateral wall of left orbit with bruising of surrounding tissues.

Fracture of right side of lower jaw seen at the level between Canine and outer incisor with bruising of surrounding tissues and at the level of neck of left side of mandible with bruising of surrounding tissues with evidence of lateral compression.

Heart normal in size; Chambers contained scant fluid blood.

Lungs C/S Pale.

Hyoid bone Intact. Bruising of soft tissues of left side of neck and Para and Retro pharyngeal tissues made out. Fracture of body of Thyroid cartilage made out with surrounding bruising of soft tissues. Stomach contained 30 gms of fresh blood. Mucosa pale.

Liver, Spleen and Kidneys C/S Pale.

Intestine distended with gas.

Bladder empty.

Uterus normal in size; Cervix hypertrophied. Endometrial cavity unhealthy and contains copper 'T' in situ.

Pelvis and Spinal column Intact.

After concluding the postmortem, had issued Post Mortem Certificate under Ex.P10 opining that "the deceased would appear to have died of Cranio facial injuries. The deceased would appear to have died 10 to 16 hours prior to Post Mortem examination."

(viii) P.W.15 arrested the appellant/accused near Raja Annamalaipuram Railway Station and he voluntarily came forward to give confession statement which was recorded in the presence of P.Ws.10 and 11. The admitted portion of the confession statement is marked as Ex.P6. The blood stained shirt worn by him (M.O.13) as well as the blood stained pant worn by him (M.O.14) were seized

under Seizure Mahazar (Ex.P.7) in the presence of the above said witnesses and also sent the appellant/accused to judicial custody for remand.

(ix) The signatures of P.W.11 in confession statement and Seizure Mahazar were marked as Ex.P8 and Ex.P9 respectively. P.W.12 after completion of the post mortem has seized the clothe worn by the deceased and it was forwarded to the Jurisdictional Magistrate under Form 95 and P.W.15 also made a requisition for examining the clothe worn by the deceased under Ex.P14 and on receipt of the chemical analysis report marked as Ex.P15, he examined the Assistant Director of Forensic Lab as well as the Chemical Analyst and recorded their statements. Chemical Analysis Reports were also marked as Ex.P5 and Ex.P15. P.W.15 also made arrangements to take the photographs and photographs were marked as M.Os.2 to 11.



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(x) P.W.15 after completion of investigation, has filed charge sheet on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, charging the accused for the commission of offence punishable under Sections 498 - A and 302 of I.P.C. and the said Court took it on file in P.R.C.No.48 of 2008 and issued summons to the accused and on his appearance, furnished him the copies of documents under Section 207 Cr.P.C. The committal Court having found that the

case is exclusively triable by the Sessions Court, committed the case to the Principal Sessions Court, who in-turn made over the case to the Mahila Court, Chennai who took it on file in S.C.No.329 of 2008. The trial Court, on appearance of the appellant/accused, framed charges under Sections 498 - A and 302 I.P.C. and questioned him, who pleaded not guilty to the charges framed against him.

(xi) The prosecution, in order sustain their case, had examined PWs.1 to 15 and marked exhibits Ex.P1 to Ex.P15 and also marked M.Os.1 to 14.

(xii) The appellant/accused was questioned under Section 313(1) (b) of Cr.P.C. with regard to incriminating circumstances made out against him in the evidence rendered by the prosecution and he denied it as false and would state that a false case has been put up against him. On behalf of the appellant/accused no oral evidence was let in and no documents were marked.

(xiii) The trial Court, on consideration of oral and documentary evidence and other materials, had convicted and sentenced him as stated above and hence this appeal.

4. The learned counsel appearing for the appellant has made the following submissions:

(i) P.Ws.1 and 2 could not have witnessed the occurrence for the reason that they started from Kundrathur and travelled by public transport and it is impossible for them to reach the scene of occurrence at the time stated. There is also inconsistent version between the testimonies of P.Ws.1 and 2 in that regard and hence the Trial Court ought to have rejected their testimonies in all probability.

(ii) P.W.1 did not write the complaint and according to him, it was written by his relative who was not examined and there is also a discrepancy with regard to the place in which the complaint was written, whether outside the police station or in a Temple nearby and therefore, it also pleads grave doubt as to how the complaint came to be given by P.W.1.

(iii) Immediately after the attack said to have been inflicted by the appellant/accused, P.W.1 went near his sister and lifted her and got blood stained in the clothes worn by him. But, however those clothes were not seized and sent to chemical analysis. Hence the presence of P.W.1 at the time of occurrence was highly doubtful and in all probability would not have been present at all. There is material contradiction between the alleged eye witness namely, P.Ws.1 and 2 and therefore, the Trial Court ought to have rejected the testimonies in toto.



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(iv) The testimonies of P.W.3 - Junior mother of the deceased was only hearsay and therefore, ought to have been issued from consideration. The alleged arrest, confession, recovery spoken to by P.Ws.10 and 11 were stage managed only with a view to implicate the appellant/accused falsely and that apart, there is not even an iota of evidence regarding harassment on account of dowry. Therefore, it is contended that conviction under Section 498 - A of I.P.C. is wholly unsustainable.

(v) There was no investigation as to when the deceased had called her brother namely, P.W.1 and no call records have been seized by the Investigation Officer and infact there was no investigation at all and the sum and substance, it is the submission of the learned counsel appearing for the appellant that in the light of all infirmities pointed out above, it had taken the very foundation laid by the prosecution. The Trial Court in any event ought to have awarded the benefit of doubt and acquitted him and prays for setting aside the conviction and sentence and prayed for allowing of this appeal.

5. Per contra, learned Additional Public Prosecutor would submit that though P.Ws.1 and 2 are related witnesses, the fact remains that they have witnessed the occurrence and the complaint was given by the brother of the deceased namely, P.W.1 without any loss of time and it also reached the jurisdictional Magistrate at the earliest point of time and the testimonies of P.Ws.1 and 2 would corroborate with each other and all material particulars and there is scientific evidence. The prosecution has sustained its case beyond all reasonable doubt and therefore, the trial Court, on consideration of oral and documentary evidence, has rightly convicted and sentenced the appellant/accused and prays for dismissal of the appeal.

6. This Court paid its best attention and anxious consideration to the rival submissions and also perused the oral and documentary evidence, the other materials and also the original documents.

7. The primordial question that arises for consideration in this appeal is whether the prosecution has proved the fact that it was the appellant/accused alone has committed the murder of his wife on 24.04.2008 morning hours beyond any feel of doubt?

8. The chief examination of P.W.1 is in consonance with the complaint lodged by him under Ex.P1 and in cross examination, P.W.1 would depose that on seeing the murder, he became emotionally charged and the complaint was written in a Temple which is adjacent to the Adyar Police Station, but he does not remember the name of the Temple and at that time, his elder brother Udayakumar, junior father Gunamani and Bommi (P.W.3) were present. P.W.1 would further depose that if he wants to reach Adyar, he should board the bus at Kundrathur let down at Porur and thereafter from there get a bus to Adyar. P.W.1 would further state that his sister does not have any mobile phone and made his suggestion that on the date of the occurrence, the appellant/accused was not at all present and went out in connection with his job and further denied his version that he and his mother did not come to the spot.



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9.P.W.2, the mother of P.W.1 and deceased on the chief examination would state that on 24.04.2008 at 6 a.m., she and her son (P.W.1) went to the house of the deceased and saw the occurrence. In the cross-examination, P.W.2 would depose that with regard to the family dispute between her son-in-law and her daughter no police complaint was lodged and would further depose that she reached the house of her daughter at about 6.30 a.m. itself. It was further deposed by P.W.2 that the complaint Ex.P1 was written in the police station and it was written by the police as per the dictation and denied the statement that at the time of the occurrence, the appellant was not present.

10.P.W.3 has spoken about the motive aspect and the torture and the ill-treatment inflicted by the appellant/ accused. P.W.10 spoken about the arrest and recovery. So also P.W.11. The Doctor who conducted autopsy was examined as P.W.13 and he would depose that the injuries would have been sustained by the deceased in the manner spoken by the prosecution. P.W.14 who registered the F.I.R. would depose that the written complaint was given by P.W.1 based on which he registered a case and he prepared the F.I.R. marked as Ex.P11 and denied the suggestion that it was the appellant/ accused who lodged the complaint with regard to the death of his wife at the earliest point of time.

11.P.W.15, the Investigation Officer in the cross-examination would depose that he did not enquire P.Ws.1 and 2 as to how they reached Adyar from Kundrathur and also with regard to the contact made by the deceased to her brother P.W.1. P.W.15 denied the suggestion that the appellant/ accused was not present as he went out in connection with his work and somebody trespassed into the house outraged the modesty of his wife and committed the murder.

12.The torture and ill-treatment suffered by the deceased at the hands of the appellant/ accused was spoken to by P.W.3 and also corroborated by P.Ws.1 and 2. It is the version of P.Ws.1 and 2 that prior to the occurrence, the victim suffered torture at the hands of her husband and went to the parental home and she was pacified and was taken back to the matrimonial home by P.W.3 and within a short span of time the appellant/ accused once again started torturing her and immediately, the deceased contacted her brother P.W.1 over phone expressing her intention to come back once again to the matrimonial home. P.W.1 in turn told her that he will come on the next day for that purpose and when he and his mother went there, they saw the commission of the murder by the appellant/ accused. However it is to be pointed out that prosecution has failed to adduce any tenable evidence as to the demand of dowry and therefore, conviction under Section 498 - A cannot be sustained.

13.As regards the overtact on the part of the appellant/ accused, the testimonies of P.Ws.1 and 2 corroborate with each other and all material evidence.

14. It is the submission of the learned counsel appearing for the appellant/ accused that with regard to the telephonic call made by the deceased to her brother, one day prior to the occurrence, no



15.P.W.15, Investigation Officer would state that he did not investigate as to how the deceased contacted her brother P.W.1 through telephone, but his investigation revealed that the deceased did not possess any mobile phone. As already pointed out, the prosecution has established the fact of ill-treatment and physical abuse suffered by the sister of P.W.1 at the hands of her husband - the appellant/ accused and P.W.3 the junior mother of the deceased has also deposed that on 22.04.2008, she took the deceased from her parental home to the matrimonial home and she met the cruel fate on 24.04.2008 at the hands of her husband. However, the prosecution had failed to prove that torture and ill treatment suffered by the deceased at the hands of her husband was on account of demand of dowry as none of the witnesses had deposed as to the alleged demand of dowry.

17.The Serology Report marked as Ex.P15 and the Forensic Report would also indicate that the grinder stone used for the murder was tainted with human blood and so also the shirt and trouser worn by the deceased.

19. At this juncture, learned counsel appearing for the appellant/ accused would submit that even as per the version of the prosecution, there used to be wordy altercation between the appellant/ accused and his wife and even according to P.W.1, his sister contacted him over phone with regard to the said position and asked him to take her back immediately to the parental home and since the occurrence took place in emotion, leniency has to be shown to him and further the appellant/ accused has to maintain his daughter also.

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21.As pointed out by the learned counsel appearing for the appellant/ accused, there used to be frequent quarrel between the appellant/ accused and the deceased also used to leave frequently to her paternal home. According to P.W.1 on 23.04.2008 at about 9.00p.m., he received a telephonic call from his sister with regard to the torture inflicted by the appellant/ accused in an inebriated condition and asked him to come and take her to the matrimonial home and the occurrence took place on the next day early morning hours after altercation.

22.In the considered opinion of this Court, the act of the appellant/ accused falls within the exception 4 under Section 300 of I.P.C. and therefore, the conviction and sentence require modification.

23.In the result, the criminal appeal is partly allowed. The conviction and sentence imposed by the learned Sessions Judge (Mahalir Needhimanran), Chennai in S.C.No.329 of 2008 under the judgment dated 21.11.2012, on the appellant for the offence punishable under Section 302 and Section 498 - A of I.P.C. are set aside and instead, the appellant/ accused is convicted for the commission of offence under Section 304 (i) I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of six years and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for four weeks. The appellant/ accused is acquitted of the charge under Section 498 - A of I.P.C

24.This Court during the pendency of the appeal, has suspended the substantive sentence of imprisonment. In the light of the modification of the conviction and sentence, the bail bonds executed by him, shall stand terminated/ discharged and the Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellant/accused to undergo the remaining part of the sentence.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1.The Sessions Judge (Mahalir Needhimanram),
Chennai.

2. The IX Metropolitan Magistrate
Saidapet, Chennai-15

3.The Inspector of Police,
J2 Adayar Police Station,

Adayar,
Chennai.



4. The Superintendent
Central Prison, Puzhal, Chennai

5. The Public Prosecutor,
Madras High Court, Chennai.

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The Section Officer
Criminal Section,
High Court, Madras

Criminal Appeal
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