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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.09.2016

CORAM:
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.171 of 2015
and
MP (MD) No.1/2015

Raja ... Appellant/Sole Accused

Vs.

State through the Inspector of Police,
Musiri Police Station,
Trichy District. .. Respondent/Complainant
(Crime No.320 of 2011)

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records of the learned Principal Sessions Judge, Thiruchirappalli, in S.C.No.16 of 2013 by the order dated 10.01.2014 and to set aside the conviction and sentence order dated 10.01.2014 by acquitting the Appellant herein.

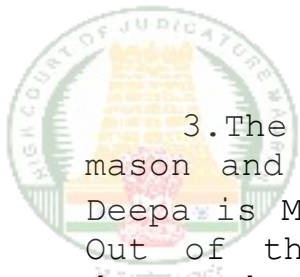
For Appellant : Mr.N.Ananthapadmanabhan
For Respondent : Mr.C.Ramesh
Assistant Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.16/2013 on the Principal Sessions Judge, Tiruchirappalli. The trial court framed charges for the offence under Section 302 and 201 of I.P.C against this Appellant/Accused.

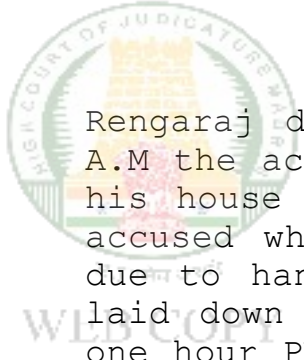
2.The Trial Court by Judgment dated 10.01.2014 convicted the appellant under Section 302 and 201 of I.P.C to undergo Life Imprisonment and to pay a fine of Rs.1,000/- in default further undergo six months of rigorous imprisonment, under Section 201 of I.P.C to undergo three years of Imprisonment and to pay a fine of Rs.1,000/- in default further undergo three months of rigorous imprisonment. The sentences shall run concurrently. Challenging the said conviction and sentence passed against him, the present appeal has been filed by the appellant/accused.



3.The case of the prosecution is that the accused Raja is a mason and he married one Deepa, daughter of PW1, Raju, and said Deepa is M.Com., graduate. The Accused Raja studied upto 12th Std. Out of their marriage, they blessed with a female child. The deceased Deepa was working as a clerk in an Auditor office. The Accused became addicted to liquor and used to quarrel with the deceased frequently. The deceased Deepa tried to mend the Accused on several occasions, but the Accused has not changed his habits. When that being the case, on 29.05.2011 the Accused consumed liquor excessively and the same was condemned by the deceased wife. On the same day at 9.30 P.M. when the deceased was taking dinner, the accused dashed her head on the wall and caused severe injury on her head and due to the injury she died. Thereafter, the accused having realized that his wife Deepa died due to the head injury with an intention to screen the offence of commission, has murdered by strangulating on her neck with "Thali rope" as if she has committed suicide by hanging and also placed her Saree hanging over the beam. Immediately, thereafter the accused informed the same to PW-3 about the death of the Deepa and absconded from the house. For the above said occurrence, PW1 Raju, father of the deceased Deepa, gave a complaint to the Respondent Police and the same was registered in Crime No. 320 of 2011 for the offences under Sections 302 and 201 of IPC. After completion of the investigation, the Respondent police has filed a final report against the accused for the offences under Sections 302 and 201 of IPC.

4.The PW1 Raju is the father of the deceased Deepa deposed that the accused is his son-in-law and the husband of her daughter Deepa. Five year prior to the occurrence, his Daughter Deepa was given marriage to the accused. Due to the wed-lock, they have one female child. Two years back, in the early morning at 4.30 A.M, P.W-3 Rengaraj who is the cousin brother of PW-1, informed to P.W.1 over phone that his daughter Deepa died at her husband's house. Immediately, PW1 and his wife PW-2 and other relatives rushed to the place of occurrence. Where his daughter Deepa was lying on the floor. When PW-1 has lifted the deceased Deepa, he found injuries on the back side of her head. PW1 and PW-2 also found ligature marks on the neck and saree was hanging over the beam. PW-1 further deposed that the accused is having frequent quarrel with his daughter Deepa due to his drinking habit. PW1 have suspicion over the death of her daughter and that PW1 given complaint to the Respondent Police. He deposed that on receipt of his complaint, PW10 has registered a case in Crime No. 320 of 2011 under Section 174 of Cr.P.C. He also identified M.O. one Saree before the Court.

5.PW-2 who is the wife of PW-1 and mother of the deceased has stated the same version as that of her husband PW-1. The PW-3



Rengaraj deposed that on 29.5.2011 in the early morning at 4.30 A.M the accused contacted him over phone and asked him to come to his house immediately. Therefore PW-3 rushed to the house of the accused where the accused informed him that his wife Deepa died due to hanging. At that time Deepa was not hanging and she was laid down on the floor. Thereafter PW-3 informed PW-1 and after one hour PW-1 and PW-2 came to the house of the accused. PW-1 and PW-2 cried and when they lifted Deepa they found a bleeding injury on the back of her head. There was a ligature marks on the neck and saree was hanging over the beam.

6.The PW-5 Ravikumar, the brother of the accused has turned hostile. The PW-8 Lakshmi, the mother of the accused deposed that she was not there on the date of occurrence and she went to her daughter's house at Karur.

7.PW-12 Kalairaj, Inspector of Police deposed that he received complaint from PW-1 at 7.00 A.M on 29.05.2011 and registered a case in Crime No. 320 of 2011 under Section 174 of Cr.P.C. He prepared Ex-P5, First Information Report and sent the same to the R.D.O for investigation and copy to the D.S.P.

8.PW -13 Dr.Senthilkumar who conducted autopsy on the dead body deposed that during postmortem he found (1) ligature mark on the front of neck over the thyroid cartilage 2 cm in break and (2) laceration on the left temporo-parietal region of scalp. Ex-P7 is the postmortem certificate. He stated that the deceased would appear to have died on the asphyxia due to hanging.

9.PW-14, Regunathan, RDO deposed that on receipt of F.I.R, he went to the place of occurrence at 9.00 A.M. and conducted inquest over the dead body. Thereafter he sent the dead body for postmortem. Then he examined the father and mother of the deceased, her husband and also the brother of the accused and examined the neighbours and recorded their statements. PW-14 further deposed that he prepared Ex.P12 report that the death was not due to dowry harassment and sent Ex-P14 letter to the Police to proceed with the case as suspicious death.

10.PW15, K. Baskaran, DSP deposed that while he was working as DSP at Musiri Division, on receipt of information from the Inspector of Police, Musiri over phone, on 29.5.2011, he commenced the investigation of Crime No:320/2011 and went to the place of occurrence at 7.15 and examined the witnesses in the presence of PW-9, VAO and Village Assistant Thangaraj and prepared Ex-P3 observation mahazar. He also drawn Ex-P15, rough sketch. PW15 has



recovered M.O.1 saree and M.O.2 blood stained Pillow Cover from the place of occurrence under Ex-P4. He also examined witnesses in the place of occurrence and has recorded their statement. On 31.05.2011 at 6 p.m. on information, PW-15 went to Musiri, arrested the accused at Thuraiyur branch road in the presence of PW-7 Ramchandran. PW-15 further stated that after examination of the postmortem report and on the basis of the opinion of Doctor and statement of the witnesses, he altered the case into Sections 302 and 201 of IPC. Ex. P 17 is the alteration report.

11.PW16, Thangavelu, DSP, Musiri deposed that he has taken investigation of Crime No.320 of 2011 on 21.12.2011 from his counter partner. He examined the witnesses already examined by the previous investigation officer. He received pathology report Ex-P19. He went to Government Hospital and examined Dr.Senthilkumar and obtained his final opinion and also recorded his statement. He examined PW-11 Ravindran, Scientific Assistant and received report from him which is Ex-P20. He also examined PW-12 Kalairaj, Inspector of Police and after obtaining the alteration of Charge Sheet, he filed final report under Sections 302 and 201 of IPC.

12.In this case, the Lower Court has convicted the accused on medical and circumstantial evidence. On careful perusal of the evidence of PW1 to PW9 would disclose that they are not eye witnesses to the crime. It is the case of the prosecution that on 29.05.2011, the accused alleged to have dashed the head of the deceased Deepa on the wall under the influence of alcohol. But the prosecution has not referred the accused for medical examination as to whether the accused was under intoxication. In this regard, there was no explanation by the prosecution.

13.Further, the PW1, father of the deceased Deepa gave Ex.P1 complaint wherein he has not stated that the accused has murdered his daughter Deepa. On the other hand, he has stated that he is having suspicion over the death of his daughter Deepa. But on the contrary to Ex.P1, the PW-1 Raju, the father of the deceased gave statement before the learned RDO, wherein he stated that his daughter Deepa would have been murdered by his son-in-law, the accused and his brother Ravi. Therefore his evidence is not having trustworthy and the same can't be relied on to convict the accused.

14.It is the case of the prosecution that the Accused used to have consumed liquor and due to that there was frequent quarrel between the accused and his wife deceased Deepa. If the version of the prosecution is admitted, there might have been previous complaint in that regard. Admittedly there is not even a single



complaint with regard to the question of drinking habit of the accused and he is having the habit of assaulting or treating his wife cruelly. Therefore, the prosecution has failed to prove the above said aspect.

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15. The witnesses PW-1 to PW3 are interested witnesses and they are close relatives of the deceased Deepa and therefore their evidence cannot be relied upon to come to the conclusion that the accused has committed crime. That apart, no independence witness was examined to establish the fact that the accused was addicted to alcohol.

16. When the entire records, oral and documentary evidence are taken up for perusal, this court finds that this is a case of suspicious death. Neither any oral or documentary evidence are available that the head of the deceased was dashed on a wall by the accused. However, when the learned trial judge discussed the case of the prosecution, it was found that the head of the deceased was dashed on a wall by the accused. Ironically absolutely no allegation was made by any of the witnesses including the defacto-complainant that the deceased was inflicted upon head injury by the act of the accused as aforesaid. So this court is not able to understand as to how and where the learned trial judge traced out this allegation as if the head of the deceased was dashed on the wall. So, the discussion of the learned trial judge that the deceased was inflicted upon head injury is nothing but a surmise. No charge of the offence punishable under section 302 could be proved on surmise. Therefore the allegation as if the deceased was dashed on the wall and sustained head injury is to be rejected in total. At the same time, it is bitter to express here that the head injury found on the deceased was not properly investigated which is having great impact to give benefit of doubt to the appellant / accused.

17. The Trial Court failed to take note of the evidence of PW-13, Postmortem Doctor who admitted the injury on the head of the deceased is not of the serious nature, but only a superficial laceration without any corresponding internal injury to the skull or brain. On coming to the evidence of Post-mortem Doctor, it is found that the ligature mark was formed only in a semicircle in the anterior aspect of the neck. Further the ligature mark was not completed around the neck by forming a total circle. So, it could easily be ascertained that the non-completion or semicircle of ligature mark in the neck would probabalise the suggestion put forth by the appellant that the deceased committed suicide on account of the insult experienced from her parents two days prior to death.



18. But in order to corroborate the evidence of PW-13, no other independent witness was examined to prove the fact that the accused has committed crime and he dashed the head of his wife Deepa on the wall. If the contention of the prosecution is to be true, there should be blood stain on the wall. In this case, admittedly the prosecution has not collected any such blood stain from the wall of the accused house. PW15 Investigation Officer has prepared Ex.P15 rough sketch wherein he has not mentioned any blood stain on the wall and PW-15 has admitted during his cross examination that there was no blood stain on the wall of the accused while he visited the place of occurrence.

19. Thus in view of the inherent improbabilities, the serious omissions and infirmities, the interested or inimical nature of the evidence and other circumstances pointed by us, we are clearly of the opinion that the prosecution has miserably failed to prove the case against the appellant beyond reasonable doubt. Therefore the accused/appellant is acquitted from all the charges by giving him the benefit of doubt.

20. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Fine amount paid if any by the appellant shall be refunded to him. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Sessions Judge, Thiruchirappalli.
 2. The Judicial Magistrate, Musiri
 3. Do through the Chief Judicial Magistrate, Tiruchirappalli
 4. The Commissioner of Police, Tiruchirappalli
 5. The District Collector, Tiruchirappalli
 6. The Superintendent, Central Prison, Tiruchirappalli
 7. The Inspector of Police, Musiri Police Station, Trichy District
 8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
 9. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai
- +One cc to Mr.N.Anandhapadmanaban, Advocate, SR.No.55410

vsa/skn

RL/11C/7P/MR/SAR2/23.2.2017

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AND MP(MD)NO.1 OF 2015

23.09.2016