

**BAIL SLIP**

S.Raguwaran, aged 31 years S/o, Selvaraj the sole accused was released on bail as per order of this Hon'ble Court dated 30.09.2015 made in MP(MD)No.1/2015 IN CRL.A(MD)No.232/15

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.10.2016**

CORAM:

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

AND

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN****CRL.A[MD].No.232 of 2015**

S.Raguwaran : Appellant/Sole Accused

Vs.

The State Rep by
The Inspector of Police,
Kottaipattinam Police Station,
Pudukkottai District,
Crime No.66 of 2012.

: Respondent/Compalainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 12.12.2014 made in S.C.No.84 of 2013, on the file of the learned Principal Sessions Judge, Pudukkottai.

For Appellant : Mr.M.Karunanithi
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT[JUDGMENT of the Court was delivered by **S.NAGAMUTHU, J**]

The appellant is the sole accused in S.C.No.84 of 2013, on the file of the learned Principal Sessions Judge, Pudukkottai. He stood charged for the offences punishable under Sections 302 and 201 of the Indian Penal Code. By Judgment dated 12.11.2014, the Trial Court convicted the accused and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
302	To undergo imprisonment for life.	Rs.2,000- in default to undergo rigorous imprisonment for one year.



201 r/w 34 IPC

To undergo rigorous imprisonment for seven years.

Rs.1,000/- in default to undergo rigorous imprisonment for six months.

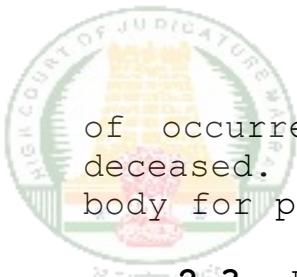
The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mrs.Selvi. The accused is her husband. PW-3, aged about nine years, was her son. All the three were residing at Kottaipattinam, Ram Nagar at the house of the accused. It is alleged that about two years prior to the occurrence, the accused had developed illicit intimacy with another woman, by name Dhanalakshmi. This was objected to by the deceased. On account of the same, there were frequent quarrels between the accused and the deceased. On one occasion, the accused eloped with the said Dhanalakshmi. On the complaint made by the deceased, the police rescued him. Thereafter, the accused gave assurance to the deceased and her family members that he would disconnect all his relationships with the said Dhanalakshmi. Thereafter, the accused, the deceased and their son were living together.

2.1. It is stated that on account of the above said incident, there was a quarrel between the accused and the deceased at 07.00 PM, on 21.11.2012. In the said quarrel, it is alleged that the accused had kicked the deceased on her abdomen. The deceased fell down and died within a short time. Thereafter, with a view to erase the evidence, the accused hanged the dead body of the deceased to make it appear as though the deceased had committed suicide. When the dead body was hanging, he cried, pretending that he saw his wife hanging. This attracted the neighbours. Thereafter, the accused himself removed the dead body from the saree used for hanging. PW-1 is the brother of the deceased. He came to the place of occurrence and saw the dead body. He had suspicion about the cause of death of the deceased. Then, he made a complaint to the Sub-Inspector of Police, Kottaipattinam Police Station, at 08.00 AM, on 22.11.2012. On receipt of the said complaint, a case was registered in Crime No.66 of 2012 for suspicious death. EX-P1 is the complaint and EX-P9 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.2. Taking up the case for investigation, PW-16 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. Then, he recovered the material object at the place



of occurrence. Then, he conducted inquest on the body of the deceased. EX-P6 is the inquest report. Then, he forwarded the dead body for postmortem.

2.3. PW-12 - Dr.K.Kalimuthu conducted autopsy on the body of the deceased, at 12.30 PM, on 22.11.2012. He noticed the following injuries:-

- "Head: - Skull bones are intact.
- No evidences of intracranial bleeding / clot.
- Brain parenchyma normal.

Chest:

- 1.No rib / sternal fracture
- 2.No Hemothorax
- 3.Lungs / Heart - normal.

Abdomen:

- 1.Liver Incision 10 x 6 x 4 cm involving left lobe of liver.
- 2.Large bowel laceration is present.
- 3.Omental rupture is seen.
- 4.Hemoperitoneum around 3 lit of blood / blood clot is present.
- 5.Multiple small bowel contusion is present.

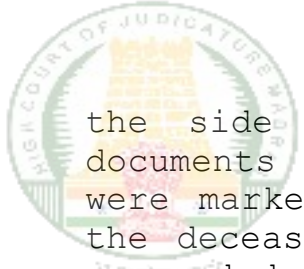
External Genitalia - Normal".

EX-P12 is the postmortem certificate. EX-P7 is the hyoid bone report. EX-P8 is the chemical analysis report. He gave opinion that the deceased would appear to have died due to injuries on the abdomen.

2.4. PW-16 continued the investigation and recovered the cloth from the dead body of the deceased. When the investigation was in progress, the accused appeared before PW-11, the Village Administrative Officer, voluntarily and made a confession. PW-11, after having ascertained that the accused was in a mood to make a confession voluntarily, allowed him to confess and then, he reduced the same into writing. EX-P3 is the extra judicial confession. Along with the said confession, [EX-P3], he took the accused and produced him before PW-16.

2.5. At 11.30 AM, on 23.11.2012, on being produced by PW-11, the accused was arrested by PW-16. While in police custody, the accused gave a voluntary confession, in which he disclosed the place, where he had hidden the saree. However, in pursuance of the said confession, no saree was recovered. On completing the investigation, he laid charge sheet against the accused.

2.6. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on



the side of the prosecution, 18 witnesses were examined, 13 documents and a saree in two pieces, which was used for hanging, were marked. Out of the said 18 witnesses, PW-1, the brother of the deceased, has spoken about the earlier occurrence, where the accused had eloped with the said Dhanalakshmi. He has further spoken about the earlier complaint made by the deceased before the police. He has also spoken about the present complaint made by him. PW-2, the mother of the deceased, has also spoken about the same facts.

2.7. PW-3, the son of the deceased, aged about nine years, has stated that on the day of occurrence, the accused was speaking to somebody over his phone, which was witnessed by PW-3. The deceased was not in the house at that time. As soon as the deceased returned home, PW-3 told the same to her. She questioned the accused as to whom did he speak. This resulted in a quarrel. Further, according to him, the accused wanted PW-3 to go outside the house. Accordingly, he went outside the house. Within a short while, when he returned, he found the deceased hanging. PW-5 to PW-7 have turned hostile and they have not supported the case of the prosecution in any manner. PW-8 is the brother of the deceased. He has stated about the earlier occurrence, in which the accused eloped with the said Dhanalakshmi. However, he has not stated anything else incriminating against the accused. PW-9 has also not stated anything incriminating against the accused. PW-10 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material object from the place of occurrence.

2.8. PW-11, the then Village Administrative Officer, has spoken about the extra judicial confession given by the accused, at 10.00 AM, on 23.12.2012. He has further stated that he produced the accused before PW-16 along with the confession [EX-P3] given by him. PW-12 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-13 has spoken about the earlier complaint made in respect of the elopement of the accused with the said Dhanalakshmi. PW-14 has spoken about the registration of the case on the present complaint made by PW-1. PW-15, a Head Constable, has stated that he handed over the dead body to the hospital for postmortem, as directed by PW-16. PW-16 and PW-17 have spoken about the investigation done by them and the filing of final report. PW-18 has spoken about the forwarding of the complaint and the First Information Report to the Court, as directed by PW-16.

2.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as a fact. However, he did not choose to examine any witness nor to exhibit any document. Having considered all the above materials,



the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. In this case, there is no controversy that the deceased was residing with the accused and PW-3 at the house of the accused. According to the accused, the deceased committed suicide by hanging. However, according to the case of the prosecution, the accused had kicked the deceased on her abdomen. The deceased fell down and died within a short time. Thereafter, in order to erase the evidence, the accused hanged the dead body of the deceased to make it appear as though the deceased had committed suicide. When the dead body was hanging, he cried, pretending that he saw his wife hanging. This attracted the neighbours. Thereafter, the accused himself removed the dead body from the saree, which was used for hanging. The doctor, who conducted autopsy on the body of the deceased, found a ligature mark on the neck of the deceased. On internal examination, he found that there was a rupture in the liver and also a rupture in the omentum. He gave opinion that the death of the deceased was due to the said injuries. He has further stated that the said injuries could have been caused by a kick by legs. Thus, from the medical evidence, the prosecution has clearly established that the deceased had not committed suicide, but the death of the deceased was due to injuries on the abdomen.

5. In order to prove the charges, the prosecution mainly relies on the evidence of PW-3. PW-3, the son of the deceased, has stated that on the day of occurrence, the accused was speaking to somebody over phone. The deceased was not at the house of the accused. On her returning home, PW-3 informed her that the accused was speaking to somebody over phone. She questioned about the same. This resulted in a quarrel between the accused and the deceased. Thus, the evidence of PW-3, in our considered view, deserves to be accepted. It is in evidence that the accused had illicit intimacy with the said Dhanalakshmi. On one occasion, the accused eloped with the said Dhanalakshmi. Thereafter, on a complaint made by the deceased, the accused returned home and gave assurance that he would disconnect all his relationships with the said Dhanalakshmi.

6. As we have already pointed out, on the day of occurrence, PW-3 informed her that the accused was speaking to somebody over phone. The deceased would have felt that the accused was speaking to the said Dhanalakshmi. The deceased questioned as to whom did he speak. This, according to PW-3, resulted in a quarrel. Then,



the accused wanted PW-3 to go out of the home. PW-3 did accordingly. Within a short while, PW-3 returned back home and found the deceased hanging. Thus, from the evidence of PW-3, it is crystal clear that the accused had caused injuries to her abdomen and then, he only hanged the deceased by using her saree. In the house, except the accused and the deceased, nobody was available. Thus, the prosecution, in our considered view, more particularly from the evidence of PW-3, has clearly established that it was this accused, who caused injury to her abdomen and after the deceased died, he hanged the dead body by using her saree.

7. Apart from the evidence of PW-3, the prosecution relies on the evidence of PW-11. He has stated that the accused appeared before him, at 10.00 AM on 23.11.2012 and made extra judicial confession under EX-P3. The learned counsel for the appellant would submit that the extra judicial confession, being a weak piece of evidence, no reliance could be made on the same. We do not find any force at all in the said argument. It is not the law that the extra judicial confession should be rejected for want of corroboration. It is the settled law that if the extra judicial confession fully inspires the confidence of the Court, then, without there being any doubt, even in the absence of any such corroboration from any other independent source, the said extra judicial confession could be used as the sole foundation for conviction. Here, in this case, in our considered view, absolutely, there is no reason to reject EX-P3. Therefore, this could be sufficient to convict the accused. As we have already pointed out, the prosecution has not only relied on the extra judicial confession made by the accused to PW-11, but, also the evidence of PW-3 to prove the guilt of the accused.

8. From the above, in our considered view, the prosecution has clearly established that it was this accused, who kicked the deceased on her abdomen, which resulted in injuries to the internal organs of her abdominal, which consequently, resulted in her death. He would not have anticipated that she would die. After realising that the deceased had died, the accused, with a view to cause disappearance of evidence, had hanged the dead body.

9. Now, the next immediate question is as to what was the offence that the accused had committed by his act. From the evidence available on record, the prosecution has clearly established that the accused, the deceased and PW-3 were residing together in the same house. On the day of occurrence, the deceased was not at home and she came sometime later. PW-3 informed her that the deceased was speaking to somebody over phone. Probably, the deceased would have felt that the accused was speaking to the said Dhanalakshmi and therefore, the deceased questioned him. This resulted in a quarrel between them, as it has been spoken by PW-3. PW-3 had gone out thereafter. In the meanwhile, it is inferable



that out of loss of self-control, due to the quarrel, the accused had attacked the deceased on her abdomen. The said kick had caused injury on her abdomen, which resulted in her death. From the above narration, it is also inferable that the accused had no intention to cause the death of the deceased. Neither he had any intention to cause injury nor had he knowledge that his act would result in death. Thus, the act of the accused would not fall under any of the limbs of Section 299 of the Indian Penal Code. The said act of the accused, in causing injuries on her abdomen, in our considered view, though is a homicide, it would not amount to culpable homicide. In law, it is not every homicide which is punishable, but, it is only a culpable homicide, which is punishable.

10. In this case, since the culpability of the accused as enshrined in Section 299 of the Indian Penal Code has not been established, the accused cannot be held liable for punishment either for an offence under Section 302 of the Indian Penal Code or under Section 304 of the Indian Penal Code. For having voluntarily caused grievous hurt to the deceased, by kicking her on her abdomen, the accused could be punished only under Section 325 of the Indian Penal Code and 201 of the Indian Penal Code.

11. It is stated that the accused was in jail for about two years. The occurrence was not a premeditated one. It was in a sudden quarrel. Thus, having regard to these mitigating as well as the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for six weeks, for the offence under Section 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for six months for the offence under Section 201 of the Indian Penal Code and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for two weeks would meet the ends of justice.

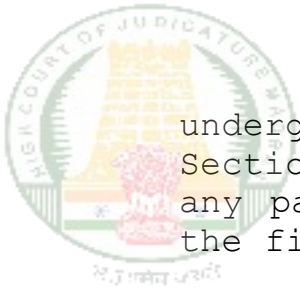
12. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed on the appellant/accused under Section 302 of the Indian Penal Code is set aside and instead, the appellant/accused is convicted under Section 325 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for six weeks.
- The conviction of the appellant/accused under Section 201 of the Indian Penal Code is confirmed. However, the sentence of imprisonment imposed by the Trial Court is reduced to six months rigorous imprisonment and the fine amount imposed by the Trial Court of Rs.1,000/- is confirmed. However, the default sentence is reduced to four weeks.

■ It is directed that all these sentences shall run concurrently.

<https://hcservices.ecourts.gov.in/hcservices/>

■ It is further directed that the period of sentence already



undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure. Fine amount, if any paid by the appellant/accused, shall be adjusted towards the fine amount now imposed.

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Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub Assistant Registrar

NB

To

1. The Principal Sessions Judge, Pudukkottai.

2 The Sessions Judge, Mahila Court,
Pudukkottai

3. The Inspector of Police,
Kottaipattinam Police Station,
Pudukkottai District.

4 The Superintendent, Central Prison,
Trichy

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

6 The Director General of Police,
Chennai

7 The Secretary to Government,
Home Department,
Secretariat, Chennai - 9

8 The Inspector General of Prison, Chennai

+1cc to Mr. M. Karunanithi, Advocate Sr. No. 63862

JAM/08.12.16/SK-SKN/ 8p-10c

**JUDGMENT MADE IN
CRL.A[MD] .No.232 of 2015
24.10.2016**