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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.11.2016**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

CRL.A[MD].No.253 of 2015
and
M.P (MD) .No.2 of 2015
and
Cr1. (MP) (MD.No.42 of 2016

Suresh : Appellant/Accused No.1

Vs.

State Rep by
Inspector of Police,
Theni Police Station,
Theni District, Crime No.706 of 2012. : Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 19.08.2015 made in S.C.No.150 of 2013, on the file of the Fast Track Mahila Court, Theni and set aside the same.

For Appellant : Mr.T.Lajapathi Roy

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

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

The appellant is the first accused in S.C.No.150 of 2013, on the file of the Fast Track Mahila Court, Theni. There was yet another accused, by name, Mrs.Murugeshwari, who is the mother of the first accused. The Trial Court framed as many as three charges as against both the accused, as detailed below.

Charge	Accused	Penal Provisions
1	1 and 2	498 (A) IPC
2	2	302 IPC
3	1 and 2	406 IPC



2. By Judgment dated 19.08.2015, the Trial Court acquitted the second accused from all the charges and acquitted the first accused from the charge under Section 406 of the Indian Penal Code, however, convicted the first accused and sentenced him, as detailed below:-

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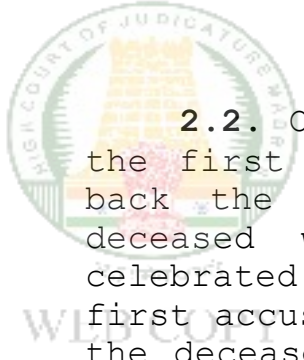
Section of Law	Sentence	Fine amount
498 (A) IPC	To undergo rigorous imprisonment for one year.	Rs.1,000/- in default to undergo simple imprisonment for two months.
302	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for three months.

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.Kalaiselvei @ Ramya, aged about 25 years. The first accused is the husband of the deceased. PW-1 is the father of the deceased. The marriage between the first accused and the deceased was celebrated on 20.08.2012. At the time of marriage, 20 sovereigns of gold jewels, cash of Rs.1,00,000/- and other household articles were all presented by PW-1. After the marriage, the appellant and the deceased were living as husband and wife in a house at Karuppasamy Temple Street, Bodi. The father of the first accused and the second accused, the mother of the first accused, were also living with them. For about one month, the marital life was joyful and very smooth. Thereafter, it is alleged that these two accused and the father of the first accused started demanding money from the deceased for the first accused to start a shop, dealing with Steel. For the said purpose, the first accused had pledged 3¹² sovereigns of gold jewels belonging to the deceased.

2.1. Just before the Deepavali festival of that year, PW-1 had gone to the house of the accused and as per the custom in the community, he took the first accused and the deceased to his house to celebrate Deepavali. On the next day of Deepavali, it is alleged that the first accused had taken five sovereigns of gold jewels from the deceased. In the meanwhile, the deceased had become pregnant, out of the above wedlock. When PW-1 questioned the first accused as to why he had taken the jewels from the deceased, when she was pregnant, the first accused, without giving any reply, simply went to Bodi. The deceased stayed back at the house of PW-1.



2.2. On 18.11.2012, according to the case of the prosecution, the first accused came to the house of PW-1 and wanted to take back the deceased. As per the custom in the community, the deceased was decorated with flowers. The said function was celebrated in a local marriage hall. The family members of the first accused had brought the jewels back and returned the same to the deceased. After the function was over, the second accused and her husband had again taken back the jewels from the hall, where the function was celebrated. The first accused and the deceased were taken to the house of PW-1, as per the custom in the community. Thus, from 18.11.2012 and 19.11.2012, the deceased and the first accused were staying at the house of PW-1. On 19.11.2012, the wife of PW-1, namely, the mother of the deceased, had gone to Paramakudi. PW-1 had gone to the Hotel, where he was working. Thus, the first accused and the deceased alone were in the house of PW-1.

2.3. Around 08.00 AM, the first accused called PW-1 over phone and informed that the deceased was in a serious condition. Therefore, PW-1, immediately, rushed to the house. The first accused informed him that he had already taken the deceased to the Hospital at Nattathi. Therefore, PW-1 went to Hospital at Nattathi. But, the deceased was found dead in the hospital. When he enquired the doctor, the doctor told him that the deceased would have died two hours prior. PW-1 found external injury on the body of the deceased. Therefore, he went to the Police Station, Theni, and made a complaint at 11.45 AM, on 19.11.2012. On the said complaint, a case in Crime No.706 of 2012 was registered by the then Sub-Inspector of Police. EX-P1 is the complaint and EX-P17 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.4. Taking up the case for investigation, at 1215 PM, on 19.11.2012, PW-18 proceeded to the place of occurrence. He forwarded a copy of the First Information Report to the Executive Magistrate cum Revenue Divisional Officer to hold inquest, since the deceased had died within seven years of the marriage. Then, PW-18 prepared an Observation Mahazer and a Rough Sketch. The Revenue Divisional Officer [PW-14] held inquest on the body of the deceased and submitted a report. The dead body of the deceased was sent for postmortem.

2.5. PW-13 - Dr.Arunkumar conducted autopsy on the body of the deceased, at 04.00 PM, on 19.11.2012. EX-P11 is the postmortem certificate. EX-P12 is his final opinion regarding the cause of death. He noticed the following injuries:-

<https://hcservices.ecourts.gov.in/hcservices/> Red coloured crescentric nail mark of size .5cm x 0.25cm seen over the right side middle part of nose.



1. Red coloured linear abrasion of size 3cm x 0.25 cm seen over the right lower eyelid.
2. Red coloured linear abrasion of size 3cm x 0.25 cm seen over the right side upper part of the nose.
3. Contusion of size 2cms x 1 cm seen over the chin.
4. Contusion of size 3cms x 2 cms seen over the right cheek.
5. Contusion of size 2cms x 1.5 cm seen over the left cheek.
6. Contusion of size 1cm x 0.5 cm seen over the right side lower lip.
7. Red Coloured abrasion of size 2cm x 1cm seen over the below the right lower eyelid.
8. Red Coloured abrasion of size 1cm x 0.25cm seen over the lateral end of right eye.

Multiple superficial surface incisions made all over the body reveals nil other injuries".

He gave opinion that the death of the deceased would have occurred due to smothering by pushing a blanket against her face. According to him, the external injuries, numbering nine, would have been caused, when the deceased was so smothered. Based on the inquest report and the opinion of the doctor, who conducted autopsy, PW-18 altered the case into one under Sections 406, 304(B) and 302 of the Indian Penal Code.

2.6. At 12.15 PM, on 20.11.2012, PW-18 arrested the first accused. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the blanket. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced the blanket. PW-18 recovered the same under a mahazer. On returning to the Police Station, PW-18 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. He examined few more witnesses, recorded their statements and on completing the investigation, he laid charge sheet against the accused.

2.7. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 18 witnesses were examined, 21 documents and two material objects were marked. Out of the said 18 witnesses, PW-1, the father of the deceased, has spoken about the marriage held between the first accused and the deceased, the presentation made at the time of marriage and the fact that the first accused had taken away 8^{1/2} sovereigns of gold jewels from the deceased. He has further spoken about the flower decoration

<https://hcservices.ecm.gov.in/hcservices/> 18.11.2012 for the deceased and the fact that he left the house at 04.20 AM, on 19.11.2012 to the hotel and his wife already left for Paramakudi. He has further stated that the



first accused and the deceased alone were in the house. He has further stated that around 08.00 AM, the first accused informed him over phone that the deceased was so serious and therefore, he had taken the deceased to the Hospital at Nattathi. Therefore, PW-1 went to the Hospital at Nattathi. But, the deceased was found dead in the hospital. Since there were external injuries, PW-1 went the Police Station and made a complaint.

2.8. PW-2 is the wife of PW-1, who has also spoken about the same facts, as spoken by PW-1. PW-3 is a neighbour of the deceased. He has stated that on 19.11.2012, around 05.00 AM, he heard the alarm raised from the house of the deceased. Believing that there was some domestic quarrel, he left his house. Later on, he came to know that the deceased had died. PW-4 is yet another neighbour. He has also stated that he heard the alarm raised at the house of the deceased early in the morning on 19.11.2012. PW-5 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects from the place of occurrence. PW-6, yet another neighbour, has stated that on 19.11.2012, around 07.25 AM, he heard the commotion from the house of PW-1. When he went to the house of PW-1, along with his wife, they found the deceased lying on a coir cot. She was unconscious. At that time, the first accused told that the deceased had fainted. But, PW-6 found that there was no pulse. Then, he, along with the first accused, took the deceased to the hospital. PW-7 is the wife of PW-6. She has also spoken about the same facts.

2.9. PW-8, the Village Administrative Officer, has stated that on 20.11.2012, at 10.00 AM, when he was at his office, the first accused appeared before him on his own and voluntarily made a confession. In the said confession, according to him, the first accused confessed that he smothered the deceased to death by pushing a blanket against her face. EX-P5 is the extra judicial confession given by the first accused. Then, he produced the accused, along with EX-P5 to the police. PW-9 is a neighbour of the deceased. She has stated that on hearing the commotion, he went to the house of PW-1 and found the deceased unconscious. PW-10, yet another neighbour, has spoken about the same facts. PW-11, Dr.Renuga Devi, has stated that at 08.00 AM, on 19.11.2012, the deceased was brought to the Nattathi Hospital, Theni. She found her dead. PW-12 has stated that at 11.00 AM, on 19.11.2012, the dead body of the deceased was brought to the Government Medical College Hospital at Theni and she kept the dead body in the mortuary. PW-13 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-14, the Revenue Divisional Officer, has spoken about the inquest held by him on the body of the deceased. PW-15, a Head Constable, has spoken about the handing over of the internal organs to the Forensic Lab Services examination. PW-16, the then Judicial Magistrate, Periyakulam, has spoken about the recording of the statements from some of the witnesses under Section 164 of the Code of Criminal



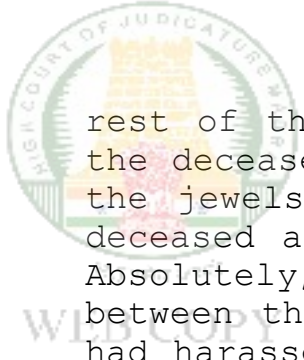
Procedure. PW-17 has spoken about the registration of the case, on the complaint made by PW-1. PW-18 has spoken about the investigation conducted by him and the filing of final report.

2.10. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Their defence was a total denial. Having considered all the above materials, the Trial Court acquitted the second accused from all the charges, however, convicted the first accused, 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. There is no denial of the fact that the marriage between the first accused and the deceased was celebrated on 20.08.2012, whereas the death of the deceased was on 19.11.2012. Thus, hardly within a period of three months of the marriage, the deceased had died. There is also no denial of the fact that at the time of her death, the deceased was pregnant. From the evidence of PW-1 and PW-2, the prosecution tries to prove that the first accused had committed an offence under Section 498(A) of the Indian Penal Code. They have stated that at the time of marriage, 20 sovereigns of gold jewels, cash of Rs.1,00,000/- and other household articles were presented. It is not their evidence that these properties were demanded by the accused. They have admitted that it is the custom in the community to make presentation at the time of marriage. Such presentation made out of love at the time of marriage cannot be stated to be dowry. It is the evidence of PW-1 and PW-2 that for the purpose of starting business, the first accused had taken 3/12 sovereigns of gold jewels from the deceased and pledged the same. Again, he had taken another five sovereigns of gold jewels. They have stated that for about one month, the marital life between the deceased and the first accused was very smooth and joyful. There is no evidence at all that the first accused ever harassed the deceased demanding any property.

5. It is their evidence that as per the custom prevailing in their community, the bride and the bridegroom were taken to the house of PW-1 for celebrating Deepavali. They accordingly celebrated Deepavali in a happy mood. After Deepavali was over, since the deceased was then pregnant, as per the custom prevailing, flower decoration function for the deceased was also celebrated. This was done in a marriage hall. For the said function, the parents of the first accused had agreed to give the



rest of the jewels and accordingly, they handed over the same to the deceased to wear. After the function was over, they have taken the jewels. After the function was over, as per the custom, the deceased and the first accused stayed back at the house of PW-1. Absolutely, there is no evidence that there was any quarrel between the first accused and the deceased and the first accused had harassed the deceased in any manner. Thus, we do not find any reason even to remotely infer that the first accused had committed an offence under Section 498(A) of the Indian Penal Code. Thus, we hold that the conviction of the first accused under Section 498(A) of the Indian Penal Code is not sustainable.

6. Now, turning to the conviction under Section 302 of the Indian Penal Code, it is the evidence of PW-1 and PW-2 that on 18.11.2012, the first accused and the deceased stayed at their house. On the night intervening 18.11.2012 and 19.11.2012, the first accused and the deceased stayed together in the house of PW-1. On 19.11.2012, early in the morning, around 03.50 AM, PW-2, namely, the mother of the deceased, left for Paramakudi to attend a function. PW-1 also left for the hotel, where he was working at 04.20 AM. Thus, lastly in the house of PW-1, the first accused and the deceased alone were left.

7. Around 05.30 AM, on 19.11.2012, the neighbours have heard commotion from the house of the deceased. As a matter of fact, PW-6 and his wife - PW-7, residing in the first floor of the same building, heard commotion and rushed to the house of the deceased. They found the deceased lying on a coir cot. She was unconscious. The first accused alone was there. He informed them that the deceased had fainted. Since the deceased and the accused alone were in the house of PW-1 and since they were staying together as newly married couple, it must have been within the knowledge of the first accused as to how the deceased sustained injuries and fainted. The doctor, who conducted autopsy on the body of the deceased, had found number of external injuries. The doctor had further opined that the death of the deceased was out of smothering. Certainly, the death of the deceased was not due to any natural cause. When the deceased had died of smothering, the earliest explanation offered by the first accused to PW-6 and PW-7 that the deceased had fainted is absolutely false. Thus, the false statement given by the first accused to PW-6 and PW-7 is a very strong circumstance to give rise to a presumption that it was this accused, who smothered the deceased to death.

8. The learned Additional Public Prosecutor would submit that the first accused appeared before the Village Administrative Officer [PW-8], on 20.11.2012 and made a voluntary confession. In the said confession, the first accused had allegedly confessed

https://hdservices.ecourts.gov.in/fcser015es/ since around 05.15 PM, on 19.11.2012, with an intention to cause the death of the deceased, he smothered her to death, since the



deceased had complained to her parents that the first accused had snatched away the jewels belonging to her.

9. In our considered view, the said extra judicial confession allegedly made by the first accused cannot be believed. We are of the considered view that the first accused would not have made such a voluntary confession before PW-8. It is the admitted case that the first accused only took the deceased to the hospital along with the others. Thus, the first accused was all along at the place of occurrence and then, he was with her parents in the hospital. When that be so, it is difficult to believe that suddenly the first accused would have gone to the Village Administrative Officer to make the said confession. Further, it is not as though PW-8 was already known to the first accused. It is unbelievable that the first accused would have chosen a total stranger to give such a confession. Therefore, we reject the evidence of PW-8.

10. As we have already narrated, from the fact that the deceased and the first accused alone were in the house of PW-1, the fact that at the earliest point of time, the first accused made a false explanation that the deceased had fainted and the fact that the doctor, who conducted autopsy on the body of the deceased, has stated that the death of the deceased was due to smothering, would all go to prove that it was this accused, who caused the death of the deceased.

11. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the accused had committed by his act. As we have already narrated, absolutely, there is no evidence that the first accused had ever harassed the deceased. It is the positive evidence of PW-1 and PW-2 that the first accused and the deceased were happily living for one month. On 18.11.2012, as a matter of fact, there was a flower decoration function for the deceased, in which the first accused also participated happily. Thus, it is crystal clear that there was no reason for the first accused to cause the death of the deceased. Going by the natural human conduct, it is inferable that when the deceased and the first accused alone were in the house of PW-1, there would have been some quarrel, in which the deceased would have provoked the first accused. It is further inferable that the first accused in the sudden quarrel, having lost his mental balance, had pushed some material object, like, cloth against the face of the deceased, which, unfortunately, resulted in the death of the deceased. Thus, though the act of the first accused would squarely fall within the Fourth Limb of Section 300 of the Indian Penal Code, the same would fall within the Fourth Exception to Section 300 of the Indian Penal Code. Therefore, the first accused is liable to be punished under Section 304(ii) of the Indian Penal Code.



12. Now, turning to the quantum of punishment, the first accused, at the time of occurrence, was hardly aged about 26 years. Either prior to the occurrence or subsequent to the occurrence, he was not involved in any crime. The occurrence was not a premeditated one. Having regard to all the mitigating and the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks would meet the ends of justice. Insofar as the conviction and sentence imposed on the first accused for the offences under Section 498(A) of the Indian Penal Code is concerned, it is liable to be set aside.

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

- The conviction and sentence imposed on the appellant/accused under Section 498(A) of the Indian Penal Code is set aside.
- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default to undergo rigorous imprisonment for four weeks.
- It is 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.

Consequently, connected Miscellaneous Petitions are closed.

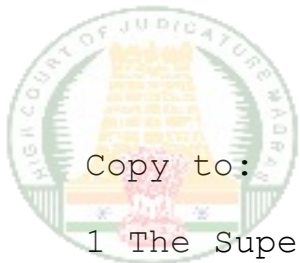
Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Inspector of Police,
Theni Police Station,
Theni District.
- 2.The Fast Track Mahila Court, Theni.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,



Copy to:

1 The Superintendent of Central Prison,
Central Prison, Madurai

2 The Principal District Judge,
Theni

+1 cc to MR.S.BALAJI, Advocate SR.NO.65901

+1 cc to MR.B.Jameel Arasu, Advocate SR.No.65240

**JUDGMENT MADE IN
CRL.A[MD].No.253 of 2015
02.11.2016**

SMA/SS-3/09.12.2016:10P/8C