



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2016

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CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.[MD].No.310 of 2015

P.Balamurugan

.. Appellant/
Sole accused

Vs.

The Inspector of Police,
Theni Police Station,
Theni District.
(Crime No.618 / 2011)

.. Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 28.08.2014, made in S.C.No.88 of 2012, by the Sessions cum Fast Track Mahila Court, Theni.

For appellant : Mr.A.Jayaramachendran

For respondent : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by **S.NAGAMUTHU, J.**)

The appellant is the sole accused in S.C.No.88 of 2012 on the file of the Sessions cum Fast Track Mahila Court, Theni. He stood charged for the offences under Sections 302 and 201 IPC. By judgment dated 28.08.2014, the trial Court convicted the appellant/accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC and to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 201 IPC. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.



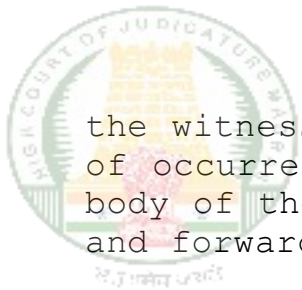
2. The case of the prosecution in brief is as follows;

(a) The deceased in this case was one Mrs. Jeyalakshmi. The accused is her husband. The deceased and the accused were living in a house at 3rd street, Sivaram Nagar, Theni. After some time of the marriage, the accused stopped going for any work. Thus, the family went into poverty. The deceased managed to do small business to earn for her livelihood. The accused also became drunkard. He used to snatch money from the deceased for his drinking. On account of this conduct of the accused, there arose frequent quarrel between them. On few occasions, the deceased had also abused the accused in filthy language as she was unable to bear the torture. Two days prior to the occurrence, it is stated that the accused had gone to the extent of snatching away the talisman (Thali) worn by the deceased.

(b) It is stated that on 21.11.2011 around 10.30 p.m., the accused returned home in drunken state. He wanted the deceased to serve food for him. The deceased told that she had not prepared dinner for him, because she had no money and that the accused was just roaming around as a spendthrift without earning anything for livelihood. The accused also scolded the deceased in filthy language and shouted that since she had come from a family of bad character, she could not accept any good from him. At the end of the quarrel, provoked by the words of the deceased, it is alleged that the accused strangulated the deceased and the deceased died instantaneously. Immediately thereafter, in order to cause disappearance of the evidence, he poured kerosene on the dead body of the deceased and set fire. On noticing smoke emanated from the house of the deceased, PW2, a neighbour, rushed to the house of the accused. He found the deceased in flames. He, along with other neighbours, broke open the door and barged into the house. They extinguished the fire. The accused was very much in the house. The son of the deceased was also inside the house.

(c) On getting information about the above occurrence, PW1, the father of the deceased, rushed to the house. He found the deceased lying dead. The tongue was protruding out. When he questioned the accused as to how the deceased died, he told that she herself poured kerosene and set fire. PW1 had suspicion over the said statement, because he found the tongue protruding out. It would not have occurred in a simple case of fire. Therefore, he went to Theni Police Station and made a complaint at 12.15 a.m. on 22.11.2011. PW10, the then Head Constable, on receipt of the complaint, registered a case in Crime No.618 of 2011 under Section 174 Cr.P.C. (suspicious death). Ex.P1 is the complaint. Ex.P7 is the FIR.

<https://hcservices.ecourts.gov.in/hcservices/> The then Inspector of Police, took up the case for investigation, He went to the place of occurrence at 10.00 a.m. on 22.11.2011 and prepared an observation mahazar in the presence of



the witnesses. He recovered a plastic kerosene cane from the place of occurrence under a mahazar. Then, he conducted inquest on the body of the deceased between 2.00 a.m. and 3.30 a.m. on 22.11.2011 and forwarded the same for postmortem.

(e) PW11 - Dr. Juliyana Jeyanthi conducted autopsy on the body of the deceased at Government Theni Medical College Hospital, on 22.11.2011. She found the following injury:

"Appearance found at the postmortem : -

Moderately nourished body of a female aged about 31 years. Finger and toe nails were blue. Tongue protruded out. Sub conjunctival haemorrhage 0.5 cms x 0.5 cms., 0.75 cms x 0.5 cms seen over the both eyes.

Postmortem burns seen all over the head, face, neck whole of the both upper limbs, front and back of the chest and abdomen, front and back of the both lower limbs.

"On dissection of the neck:

Fracture of size 0.5 cms. X 0.5 cms through the and through seen over the left greater horn of hyoid with the surrounding bruise injuring the surrounding muscles, vessels and nerves."

Ex.P8 is the postmortem certificate. She opined that the death of the deceased was due to asphyxia due to strangulation. She further opined that the burn injuries found on the body of the deceased were all postmortem.

(f) PW12 recovered the bloodstained clothes from the body of the deceased and forwarded the same to the Court. When the investigation was in progress, on 23.11.2011 at 01.00 p.m., the accused on his own went to the office of PW6 - the Village Administrative Officer, Allinagaram Village, Theni and he wanted to confess. PW6, having ascertained that the accused was in a mood to give voluntary confession, allowed him to confess. Then, PW6 reduced the same into writing. Ex.P3 is the said confession. Then, along with Ex.P3, he took the accused to the Police Station and produced him before PW12. At 02.30 p.m. on 23.11.2011, PW12 arrested him. While in custody, he gave a voluntary confession. Then, PW12 altered the case into cone under Section 302 IPC and forwarded the accused to the Court for judicial remand. He examined many more witnesses and recorded their statements. He collected the postmortem certificate and examined the Doctor and finally, on completing the investigation, he laid charge sheet against the accused.

g) Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. He ~~devised the charges~~. In order to prove the charges, on the side of the prosecution, as many as 12 witnesses were examined and 11 documents and one material object were marked.



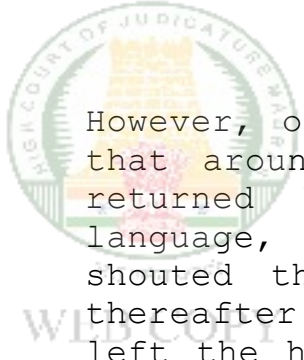
(h) Out of the said witnesses, PW1, the father of the deceased, has stated about the previous occurrences and the frequent quarrel between the accused and the deceased. He has further stated that the accused in drunken state used to quarrel with the deceased. He has also stated that the two days prior to the occurrence, the accused snatched away the talisman of the deceased. He has further stated that on the date of the occurrence, having come to know that the deceased was no more, he rushed to the house of the deceased and found the deceased with flames and her tongue was protruding out. When he enquired about the same, the accused has stated that the deceased self-immolated and then, he made a complaint. PW2, a neighbour, has also spoken about the frequent quarrels between the accused and the deceased. He has stated that on the date of the occurrence around 10.00 p.m., he heard continuous quarrel between the accused and the deceased. He shouted at them and warned them to stop quarrel. Then, around 11.00 p.m. he found smoke emanating from the house of the deceased. He rushed to the house of the deceased and broke open the doors along with other neighbours and extinguished the fire. Then, he informed PW1 about the occurrence.

(i) PW3, the son of the deceased, at the time of occurrence was hardly 11 years old. He has stated about the quarrel between the accused and the deceased. He has further stated that the deceased wanted him to go and sleep, and accordingly, he went to sleep. He has further stated that the quarrel between the accused and the deceased going on continuously by which the accused was abused by the deceased. Finally, he heard about the commotion and when he woke up, the deceased was in flames. PW4, yet another neighbour, has also spoken about the same fact as spoken by PW2. PW5 is yet another neighbour. He has also stated that he found smoke emanating from the house of the deceased, went to the house, joined PW2, broke open the doors and extinguished the fire. PW6, the Village Administrative Officer, has spoken about the extra-judicial confession given by the accused at 01.00 p.m. on 23.03.2011.

(j) PW7 has spoken about the preparation of the observation mahazar and a rough sketch and recovery of the plastic cane from the place of occurrence. PW8 has turned hostile and he has not supported the case of the prosecution in any manner. PW9, a Constable, has stated that he took the dead body and handed over the same to the Doctor for postmortem. PW10 has spoken about the registration of the case on the complaint of PW1. PW11 has spoken about the postmortem conducted and his opinion regarding the cause of death. PW12 has spoken about the investigation done and the final report filed.

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

(k) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false.



However, on his side, he examined himself as DW1. He has stated that around 10.00 p.m. on the date of the occurrence, when he returned home, the deceased started abusing him in filthy language, but he was very patient. The deceased in the quarrel shouted that she would die so that the accused can be happy thereafter. Because of the said quarrel, according to him, he left the house. After one hour, he returned and found a crowd of people in his house and his wife was in flames. He joined the others to extinguish the fire, but the deceased died. He has further stated that he was taken into the Police custody immediately. Thus, the defence of the accused was a total denial. Having considered all the above, the trial Court convicted him, as detailed in the first paragraph of this judgment. That is how he is before this Court with this appeal.

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

4. In this case, PW.1 has stated that the accused was a spendthrift and he was earning nothing towards livelihood and that the deceased was doing small and sundry work for livelihood. This resulted in frequent quarrel between the accused and the deceased. The deceased also used to abuse the accused in filthy language. On the date of the occurrence, according to PW2, from 10.00 p.m. onwards the deceased abused the accused, because he came late to the house without earning anything. This has been spoken so by PW3, son of the deceased, also. From these evidences, it has been clearly established by the prosecution that from 10.00 p.m. onwards, the quarrel between the accused and the deceased was going on, in which the deceased used all sorts of abusive and obscene words against the accused.

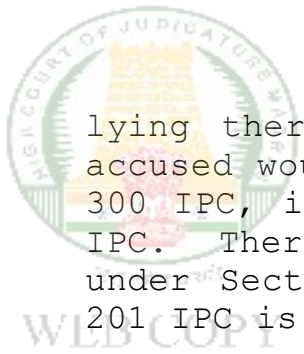
5. It is the further case of the prosecution that the accused caused the death of the deceased by strangulating her neck. As DW1, the accused has deposed that she self-immolated her. The evidence of the Doctor and DW1 is quite contrary to the same. The doctor had found marks of violence on the body of the deceased and based on the condition of the internal organs, more particularly lungs, she has opined that the death was due to asphyxia due to strangulation. We do not find any reason to reject the said opinion of PW1. Thus, the defence of the accused that the deceased self-immolated herself cannot be accepted. The doctor further opined that the burn injuries were all postmortem injuries. There is no reason to reject this opinion of the Doctor also. The very fact that the tongue was protruding out would go to clearly show that it was not simple case of self-immolation. If it is a simple case of self-immolation, there would have been no chance at all for the tongue protruding out. Protruding tongue is a clear indication that the deceased was strangulated. Thus, we hold that the deceased died due to strangulation and thereafter, the dead body was burned.



6. In order to prove that it was this accused who strangled the deceased, the prosecution relies on the extra judicial confession given by the accused to PW6. The learned counsel for the appellant would submit that PW1 has stated that when he went to the house of the deceased, the accused was very much available. PW2 has also stated that the accused and their son (PW3) were very much available inside the house. The house was bolted from inside. PW2 and others broke open the door and entered into the house and extinguished the fire. This would go to show that inside the house, except the accused, PW3 and the deceased, there was nobody else. But, the learned counsel would submit that since the accused was very much present in the house, the submission of the prosecution that the accused went to the house of VAO and made a confession cannot be true. We are not persuaded by the said argument at all. PW1 has stated that after his arrival, the accused absconded from the place of occurrence. Thus, he went to the Office of PW6 and made extra-judicial confession. Thus, we hold that the extra-judicial confession given by the accused to PW6 was a voluntary one and the same inspires the confidence of this Court.

7. The learned counsel would further submit that the said extra-judicial confession is a weak piece of evidence and therefore, the same cannot be relied upon. In this regard, we have to state that the extra judicial confession, if inspires the confidence of the Court, that by itself can be resolved as confession, even if there is no corroboration from any other independent source. In the instant case, we have already concluded that the extra-judicial confession of the accused inspired the fullest confidence of the Court and therefore, the said extra-judicial confession by itself can be the sole foundation for the conviction. Further, the very presence of the accused in the house would falsify the defence taken by the accused that the deceased self immolated herself. From these evidences, we hold that the prosecution has proved that it was this accused who caused the death of the deceased.

8. Having come to the said conclusion, now, we have to examine as to what was the offence committed by the accused by the said Act. As already narrated, it is in the evidence of PWs.2 & 3 that there was quarrel between the deceased and the accused at 10.00 p.m. It is also in evidence that the deceased abused the accused and used obscene language and shouted at him. The obscene words hurled by the deceased would have provoked the accused. PW3 has stated that after the arrival of the accused, the deceased started abusing him and even when he went for sleep, the quarrel was going on and his mother was scolding the accused in filthy language. <https://hcservices.ecourts.gov.in/hcservices> This is categorical evidence to prove that the accused was provoked by the deceased and in the said quarrel, the accused had strangled her neck and after her death, he took kerosene cane



lying there, poured and set fire. Thus, though the act of the accused would squarely fall within the ambit of 3rd limb of Section 300 IPC, it squarely falls within the 4th exception to Section 300 IPC. Therefore, he is liable to be punished only for the offence under Section 304(i) IPC. So far as the offence under Section 201 IPC is concerned, it needs to be confirmed.

9. Now turning to the quantum of punishment, the accused is aged 38 years. He has to take care of PW3. He has got no other bad antecedent. After the occurrence, he has not shown any defiance from law. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- for the offence under Section 304(i) IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for the offence under Section 201 IPC would meet the ends of justice.

10. In the result, this Criminal Appeal is partly allowed in the following terms:

(a) The conviction and sentence imposed by the appellant/accused for the offence under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

(b) The conviction of the appellant/accused for the offence under Section 201 IPC is confirmed, however, the sentence is reduced to rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

(c) The sentences shall run concurrently. The period of sentence already undergone by the appellant shall be given set off under Section 428 Cr.P.C. The fine amount, if any, already paid shall be adjusted.

Sd/-

Deputy Registrar(Accounts)

/True Copy/

Sub Assistant Registrar.

To

1.The Sessions cum Fast Track Mahila Court Judge,
Theni.

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

2.The Director General of Police, Mylapore, Chennai.



3.The Superintendent, Central Prison, Madurai.

4.The Superintendent of Police, Madurai.

5.The District Collector, Theni.

6.The District and Sessions Judge, Theni.

7.The Chief Judicial Magistrate, Theni.

8.The Inspector of Police,Theni Police Station,
Theni District.

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

10.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

gcg

CSL/SKN/SAR-2/06.01.2017 : 8P-11C

Judgement made in
Crl.A.[MD].No.310 of 2015
Dated: 15.11.2016