

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL No.1104 OF 2010

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal is directed against the judgment dated 10.05.2010 passed by the learned I Additional Sessions Judge, Anantapur, in Sessions Case No.676 of 2009, convicting the appellant/sole accused of an offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life.

The case of the prosecution before the Sessions Court:

The Village Revenue Officer, Kanekal Village (PW.6), submitted a report to the Head Constable, Kanekal Police Station (PW.12), at about 3.00 P.M. on 01.09.2009 stating that Munni, the wife of the accused, had died in suspicious circumstances and requested an enquiry into her death. Thereupon, PW.12 registered a case in Crime No.64 of 2009 under Section 174 CrPC. Ex.P7 is the FIR. The Circle Inspector of Police, Rayadurg (PW.14), having received the original FIR (Ex.P7) on 01.09.2009, commenced the investigation. He requisitioned the Mandal Revenue Officer (PW.10) to hold an inquest over the body of the deceased. PW.14 examined PWs.1, 2, 3, 4, 6 and 7 and recorded their statements. He also prepared a rough sketch of the scene of the offence (Ex.P9). On 02.09.2009, he examined PW.5 and Syed Jaffer (LW.6) and recorded their statements. Upon receipt of the post-mortem report (Ex.P6), wherein the doctor certified that the deceased had died due to asphyxia by throttling, PW.14 altered the provision of law to Section 302 IPC and sent copies of the amended FIR (Ex.P8) to all concerned. PW.14 apprehended the accused and arrested him on 08.09.2009 at 4.00 P.M. at Sollapuram Bus Shelter. He was interrogated by PW.14 and a mahazar (Ex.P10) was drafted to that effect. The accused led them to his house where he produced the half saree (chunni) (MO.5), which was used for commission of the offence, and the same was seized under a recovery mahazar (Ex.P11). PW.14 also examined Erikala Nagaraju (LW.9) and PW.13 and recorded their statements on the same day. The accused was sent for remand on

09.09.2009 and thereafter, the charge sheet was laid alleging that the accused, a divorcee, and the deceased had gotten married about two months previously; that the mother of the deceased (PW.1) and the mother of the accused (PW.2) were sisters; that on the night of 31.08.2009, the accused and the deceased were sleeping in the bedroom situated on the western side of the main hall and at about 1.00 A.M., the deceased got up and came out from the bedroom to attend to a call of nature; that as it was the month of Ramzan, P.W.2 told her that there was still some time left and that she would wake up the deceased at 4.00 A.M. to take food before preparing for fasting; that there was a scuffle afterwards between the accused and the deceased in connection with sexual intercourse as the deceased refused to cooperate with the accused; that the accused became wild and throttled the deceased with the half saree (chunni) (MO.5) owned by her and caused her death; that the accused got afraid and absconded through the southern side door of the main hall and was seen running away by P.W.8; that P.W.2 got up at 3.00 A.M., prepared food and went to the room of the deceased and found her dead; that she also found that the southern side door was opened and that the accused was absconding; that she informed her other son (PW.5) who was staying at Anantapur and he, in turn, made calls to various relations.

The prosecution examined PWs.1 to 14 and marked Exs.P1 to P11 in evidence. Case properties were marked as MOs.1 to 5. The defence did not lead any oral or documentary evidence.

The Sessions Court, upon considering the evidence and material on record, opined that it was for the accused to explain as to how the deceased had met her death. As the accused had no explanation to offer and had run away after the death of the deceased without even informing his mother, the Sessions Court concluded that he was guilty of the offence charged and accordingly convicted and sentenced him.

One significant factor that needs to be noticed in this case is that PW.2, the mother-in-law of the deceased, was none other than her maternal aunt. The marriage between the accused and the deceased had taken place just about two months prior to the death of the deceased. The evidence of PW.2 puts it beyond doubt that at the time of the incident on 31.08.2009, the accused and the deceased were alone together in the bed room. PW.2

categorically stated that she was sleeping outside the house along with her sick mother-in-law and other daughter-in-law (PW.4). She also spoke of the fact that when she went to wake up the deceased at 4.00 A.M. and found her dead, the accused was absent and that there were injuries on the neck of the deceased. PW.2 further stated that though she could not say that the accused was responsible for the murder, she entertained a suspicion against him because he was absconding. PW.4, the other daughter-in-law of PW.2, also confirmed that except the accused and the deceased, no other person slept inside the house on that fateful night.

It is no doubt true that PW.1 and PW.2 both stated that there were no troubles in the marital life of the accused and the deceased. But this aspect of the matter is rendered doubtful by the evidence of PW.13, a member of the Mandal Parishad Territorial Constituency, whose wife was the Sarpanch of Kanekal. He stated that he knew the accused and that one month prior to the fatal incident; the accused had come to him and informed him that he and his wife had quarreled with each other. PW.13 further stated that he sent for the wife of the accused and compromised the matter between them and directed them to live happily. In his cross-examination, PW.13 stated that he frequently went to the police station to settle small disputes amongst the villagers.

It would also be relevant to refer to the evidence of PW.3, the sister of the deceased. In her examination-in-chief, PW.3 stated that about four days prior to her death, the deceased had informed her that her husband beat her on the ground that she was insisting upon living separately and that after returning to Kanekal, she had phoned about two days later and informed her that the accused was harassing her.

The evidence of these two witnesses demonstrates that all was not well between the couple though their respective mothers were unaware of the same. It must be kept in mind that relations between a husband and wife, unless shared with others, would normally remain utterly private and confidential. The mere fact that PWs.1, 2 and 4 were ignorant of the discord between the couple is therefore of no significance.

PW.8 stated in his evidence that his house was situated at a distance of 100 feet from the house of the accused. Though he was cited as an eye witness to the act of the accused absconding, he turned hostile and he was

not confronted with any specific part of his Section 161 CrPC statement. His evidence is therefore of no real utility. P.W.11 was the Civil Assistant Surgeon, Government Hospital, Rayadurg, who conducted the autopsy over the dead body of the deceased. He confirmed that the deceased had died of asphyxia due to throttling and that Ex.P6 was his post-mortem report to that effect.

Ms. A.Gayatri Reddy, learned counsel for the appellant/ accused, would assert that there was no eye witness to the offence and therefore, the possibility of one of the other inmates of the house doing away with the deceased cannot be ruled out. In the alternative, she would submit that this was not a case of premeditated and planned killing whereby an offence punishable under Section 302 IPC could be made out.

It is clearly brought out in the evidence that on the night of 31.08.2009, only the accused and the deceased were sleeping inside the house. Further, given the close relationship amongst all the parties, without at least an iota of proof that there was enmity or animosity between the deceased and the other inmates of the house, the possibility of one of the other inmates causing her death cannot be inferred. The most significant irrefutable fact is that the accused, who was alone with the deceased inside the house at the relevant point of time, chose to abscond without even informing his mother of the death of the deceased. As he was alone with the deceased during the night hours of 31.08.2009 and if there was any other explanation to account for her death, it was for the accused to come forth with the same. Section 106 of the Indian Evidence Act, 1872, would stand attracted in this regard and this burden squarely rested upon the shoulders of the accused. As rightly pointed out by the Sessions Court, he had no alternate explanation as to how the deceased could have met with her death.

Though it is established beyond doubt that the accused alone could have caused the death of his wife, the next question that arises is as to the classification and nature of this act of killing. The offence was committed on the spur of the moment, as per the prosecution also, due to a scuffle between the couple after the deceased returned to the bed room upon answering a call of nature at about 1.00 A.M. on the fateful night. According to the prosecution, the accused resorted to this act of violence which resulted in the death of the deceased owing to her failure to co-operate and

participate in sexual intercourse. Therefore, there was no planning or premeditation by the accused to kill his wife. The issue is whether such an act of unplanned and sudden killing would qualify as murder under Section 300 IPC. It would be relevant at this stage to refer to Exception 4 to Section 300 IPC:

‘Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.’

There was admittedly no prior planning or premeditation on the part of the accused and his act of violence was sudden and in the heat of the moment. The accused therefore cannot be held guilty of the graver offence of murder under Section 300 IPC. Even if the case of the prosecution is to be accepted in toto and going by the facts established, the aforestated Exception would stand attracted. We are therefore of the opinion that the appellant/ accused cannot be held guilty of an offence punishable under Section 302 IPC and that the case would fall within Exception 4 to Section 300 IPC. He would therefore be liable to be punished for culpable homicide not amounting to murder.

The question that would then arise is whether Section 304 Part-I IPC would stand attracted or Section 304 Part-II IPC. It is a matter of record that the deceased was done to death by throttling with a half saree. Such an act would require not only conscious effort but would also consume some time. It cannot therefore be said to be a case of mere ‘knowledge’ that the act was likely to cause death. Throttling inevitably imputes clear intention and purpose to cause death. The present case would therefore attract Section 304 Part-I IPC and not Section 304 Part-II IPC.

The conviction of the appellant/accused under Section 302 IPC is accordingly modified to conviction for culpable homicide not amounting to murder under Section 304 Part-I IPC. The sentence of life imprisonment is also modified to rigorous imprisonment for a term of ten years along with payment of a fine of Rs.1,000/-. In default of payment of the fine, the appellant/accused shall undergo simple imprisonment for a further period of two months.

The appeal is allowed to the extent indicated above.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

28th JULY, 2016

PGS/Svv