

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.SATRUGHANA PUJAHARI

CrI.A.No.442 of 2017

Selvaraj

... Appellant

.Vs.

State represented by
Inspector of Police,
Thirupur Rural Police Station,
Thirupur District.
(Crime No.117 of 2012)

... Respondent

Prayer: The Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the judgment, conviction and sentence passed by the Learned II Additional Sessions and District Judge, Thiruppur in S.C.No.230 of 2012 dated 28.09.2012.

For Appellant : Mrs.A.Veeramarthini

For Respondent : Mr.R. Ravichandran
Government Advocate [CrI.Side]

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

The sole accused, who stood charged for the commission of the offence of murder of his 2nd wife namely, Lakshmi (deceased), was convicted for the commission of said offence u/s.302 IPC, vide impugned judgment dated 28.09.2012 in S.C.No.230 of 2012 by the Court of II Additional Sessions District Judge, Tiruppur and he was imposed with sentence of Rigorous Imprisonment for life and to pay a fine of Rs.500/- with a default sentence of 3 months Rigorous Imprisonment and the Trial Court has also granted set-off under Section 428 of Cr.P.C.

2 The Appellant / Sole Accused aggrieved by the said conviction of sentence awarded by the Trial Court vide Judgment dated 28.09.2012, has filed this criminal appeal.

3 The facts leading to the filing of this Criminal Appeal and which are necessary for the disposal of the same, briefly narrated, are as follows:

3.1 The deceased namely Lakshmi, was the 2nd wife of the appellant / accused Selvaraj and his 1st wife is Tmt.Saroja (PW2). The case of the prosecution is that the appellant / accused, knowing very well that Lakshmi was suffering due to heart disease, married her. The appellant / accused while under the influence of alcohol, used to physically abuse his wives namely PW2 (1st wife) and Lakshmi (2nd wife / deceased) and just one day prior to the date of occurrence on 12.02.2012, he physically abused his 1st wife (PW2 – Saroja) and she got admitted in the hospital for taking treatment and on 13.02.2012 at about 2pm, the appellant / accused came to his residence and at that time the deceased / Lakshmi/ 2nd wife was lying on the bed and knowing pretty well that if he fists on her chest, as a consequence, she would die, fisted on her chest.

3.2 PW1 is the daughter of the appellant / accused born through PW2 and she was studying B.Com and when she was in the college, she was informed of the attack made by the appellant / accused upon his Junior mother-Lakshmi and when she came to the house she saw one Krishnan (examined during investigation and not cited as a witness) and he told her that the appellant / accused had attacked his Junior mother and thereafter, PW1 took Lakshmi in an Auto and got her

admitted in the Government Hospital at Tiruppur and without responding to the treatment she died at about 11.00 am on the next day morning on 14.02.2012.

3.3 PW1 went to Thirupur police station and lodged a complaint under Ex.P1 to PW11, Inspector of Police who on receipt of the same, had registered a case in Crime No.117 of 2012 at about 18.30 hours on 14.02.2012 under Section 302 of IPC. Printed FIR is marked as Ex.P.7. The original complaint as well as the printed FIR were despatched to Jurisdictional Judicial Magistrate.

3.4 PW11, the Inspector of Police proceeded to the scene of occurrence and in the presence of PW6 and Tamilmani, had prepared the observation mahazar as well as the Rough Sketch marked as Ex.P2 and Ex.P11 respectively. PW11 proceeded to Government Hospital at Tiruppur and conducted inquest on the body of the deceased in the presence of the panchayatdhars and examined PW8-Woman Constable, PW1, PW2, one Krishnan (not examined as a witness), PW3, PW4 and PW5 and recorded their statements and after completing the inquest, he made a requisition for conducting postmortem on the body of the deceased /Lakshmi and

handed over the requisition as well as the body to PW8/Woman Constable namely Thenmozhi.

3.5 PW7, Dr.Dinesh Kumar was the Assistant Civil Surgeon at Government Head Quarters Hospital at Tiruppur and he had seen the body at about 1.30 pm on 15.02.2012 and found the presence of rigor mortis in all limbs and commenced the Postmortem at about 1.35pm on 15.12.2015 and noted the following features :

"A female body aged about 45 years lies on its back and is moderately built and nourished. No external injuries found. Both eyelids closed. No discharge from ears and nostrils. No external injuries found around external genitalia. Brownish liquid discharged found in and around mouth which comes out more on pressure over abdominal Tongue kept inside mouth. All ribs found to be intact. Anterior wall of appears pale clotted blood – 20ml found in heart chambers. Pleura intact. ..found to be congested and have greyish colour and are to pleura. About 200ml brownish fluid of same colour as found around mouth present in stomach cavity. No abnormal odour detected. Multiple varicose veins found in stomach wall. Wreer enlarged and weighs 150g spleen and weighs 150g R Kidney weighs 150g left kidney urinary bladder is empty. Uterus normal in

size, cavity empty. Skull bones intact. Meninges found intact. No intracranial haemorrhage found. Brain 1300g. No fractures found in base of skull. Following viscera were sent for an analysis :- 1) stomach and its contents 2) intestine and contents 3) sample of ..4) sample of kidney 5) sample of preservative used (saturated NaCl). Autopsy was at 2.35pm 15.02.2012. Opinion regarding cause of death kept pending chemical analysis report. Deceased appears to have died about twenty to 26 hours prior to autopsy. Toxicology report. RT 490/12 CBE Tox H 462/12 dated 14.03.2012 Viscera not found have poison."

PW7 after concluding the postmortem, pending the report, had given the opinion that *"the deceased would appear to have died of shock due to haemorrhage from rupture of oesophageal varices in stomach. The deceased appears to have died about 20 to 26 hours prior to autopsy"*. The postmortem certificate issued by PW7 was marked as Ex.P4 and his final opinion was marked as Ex.P5.

3.6 PW11 continued with the investigation and through identification of the accused by the witness, had effected the arrest of the appellant / accused in the presence of Dhandabani and Velliyangiri, at about 11.30 am on 13.02.2012 and the appellant / accused voluntarily

came forward to give the confession statement and it was recorded in the presence of PW10 and thereafter, the appellant / accused was sent for remand / judicial custody. On 11.03.2012, PW11 examined PW7- the Doctor Mr.Dinesh Kumar, who conducted the autopsy and also examined PW8- Thenmozhi/Woman constable who took the body for postmortem and he also examined PW9/Special Sub-Inspector of Police, who registered the FIR and PW11, after completing the investigation filed the final report / charge sheet on 29.03.2012 on the file of the Court of Judicial Magistrate NO.II, Thiruppur who took it on file in PRC No.32 of 2012 and the Committal Court has issued summons to the accused and on his appearance, furnished him with the copies of documents under Section 207 of Cr.P.C and having found that the case is exclusively tried by the Court of Sessions, committed the same to the Principal Sessions Judge, Thirupur under Section 209 of Cr.P.C who in turn, made over the case to the learned II Additional Sessions Judge in SC No.230 of 2012.

3.7 The Trial Court on appearance of the accused had framed charges against him under Section 302 of IPC and questioned him u/s.313[1][b] Cr.P.C. with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and the

accused pleaded not guilty to the charges framed against him and on behalf of accused, no oral and documentary evidence let in.

3.8 The prosecution in order to sustain their case, examined P.Ws.1 to 11 and marked Exs.P.1 to 11 and no material objects were marked.

3.9 The Trial Court, on consideration and appreciation of oral and documentary evidences, had convicted the accused for the commission of the offence u/s. 302 IPC and sentenced him as stated above and challenging the legality of the said conviction and sentence, the appellant / accused has preferred this appeal.

4 Mrs.A.Veeramarthini, the learned counsel appearing for the appellant / accused attacking the reasons assigned by the Trial Court made the following submissions :

[i] The prosecution has miserably failed to prove that the deceased was suffering due to heart disease.

[ii] PW3 and PW4 were cited as eye-witnesses and PW3

was the neighbour and in the chief examination, he had deposed that he saw the appellant / accused fisting his 2nd wife / Lakshmi on her chest and in the cross examination, he had stated that he was not at all aware of the case and other eyewitness namely PW4 is closely related to PW2, and she is an interested witness and in the absence of corroboration and material particulars, her testimony cannot be believed.

[iii] It is the admitted case of the prosecution that the deceased was admitted in the Government Head Quarters at Thirupur and she was examined by Dr.Lakshmi Shanthi, Casualty Medical Officer who issued the Accident Register (marked as Ex.P9) and admittedly, she was not examined and her non-examination is fatal to the case of the prosecution for the reason she had initially treated Lakshmi/2nd wife of the appellant / accused and she could have deposed whether the deceased was, prior to the alleged attack, suffering due to heart disease or not. The prosecution through the medical evidence has miserably failed to establish that Lakshmi/deceased had died only on account of alleged attack inflicted by the appellant / accused.

[iv] In sum and substance, it is the submission of the

learned counsel appearing for the appellant / accused that since the case of the prosecution is bristled with very many infirmities and inconsistencies, the Trial Court in any event ought to have awarded benefit of doubt and acquitted the appellant / accused and made a submission that even as per the case of the prosecution, the appellant / accused was under the influence of alcohol and with that state of mind, he was not aware of the consequence of his act which comes under Exception 4 to Section 300 of IPC and prayed for modification of conviction and sentence.

5 Per contra, Mr.R.Ravichandran, learned Government Advocate [Crl. Side] appearing for the State would submit that no doubt PW3 in the cross examination had deposed that she was not aware of the case and the testimony of PW4 who was also an eyewitness, is sufficient to convict the appellant / accused. It is further submitted by the learned Government Advocate (Criminal Side) that the sole testimony of the eyewitness is sufficient to record conviction if her testimony is per se believable and in the cross examination of the said witness nothing useful was elicited in favour of the appellant / accused. It is also submitted by the learned Government Advocate (Criminal Side) that non examination of

the Chief Medical Officer who prepared the Accident Register marked as Ex.P9 is not fatal for the reason the said document is maintained during the normal course of the business and even otherwise, the fact of the appellant / accused attacking the deceased has been recorded. It is the further submission of the learned Government Advocate (Criminal Side) that the prosecution has proved the motive through the testimonies of PW1 and PW2 coupled with the testimony of the eyewitness PW4 and it is also supported by the Scientific evidence in the form of the testimony of the doctor who conducted Autopsy namely PW7 coupled with Exs.P4 and P5 [Post-mortem Certificate and the Final Opinion]. It is also contended by the learned Government Advocate that there is not even a suggestion put to the material witness that the appellant /accused was not present in the scene of the occurrence and in his submission recorded under u/s.313[1][b] Cr.P.C., the accused merely denied the incriminating circumstances made out against him in the evidences rendered by the prosecution and the accused pleaded not guilty to the charges framed against him and on proper appreciation and consideration of the oral and documentary evidence, the Trial Court has rightly reached the conclusion to convict and sentence the appellant/accused and in the absence any infirmities, this Court may not interfere with the well considered judgment

recorded by the Trial Court and prays for dismissal of this Criminal Appeal.

6 This Court paid its best attention and anxious consideration to the rival submission and also perused the oral and documentary evidence and other materials as well as the original records.

7 The following questions raised for consideration in this appeal:-

1. Whether the prosecution was able to prove guilt on the part of appellant / accused beyond any reasonable doubt through the fact testimony of the witness especially PW4?
2. Whether the alternate plea made by the appellant / accused for modification of the conviction and reduction of sentence is to be considered?

QUESTION No.1:-

8 A perusal of testimonies of PW1 - the daughter of the PW2 as well as PW3-1st wife of appellant / accused would disclose that the

deceased Lakshmi right from her young age was suffering due to heart disease and the appellant / accused married her as his second wife. It is also their testimonies that under the influence of alcohol, the appellant / accused used to physically abuse PW1 as well his 2nd wife, the deceased. According to PW2, one day prior to the occurrence, i.e., on 12.02.2012, she was attacked by the appellant / accused and in order to take treatment she got admitted in Tiruppur Headquarters Hospital. PW1 is the daughter of the appellant / accused was a college student and on receipt of the information that her Junior mother was attacked by his father at about 5.00 pm., and she was informed by her brother Ramakrishnan and immediately she took her Junior mother in an Auto to Government Headquarters Hospital at about 5.30 pm on 13.02.2002 and the deceased without responding to the treatment died on the next day at about 11.am on 14.02.2012. The testimonies of PW1 and PW2 as to the heart disease of the deceased Lakshmi has also been amply corroborated by the testimony of PW4 – sister of PW1.

9

It is the primordial submission of the learned counsel appearing for the appellant / accused that PW2 who was examined on 17.09.2012 in the chief examination has supported the case of the prosecution and however, while examining on 29.09.2012 pleaded for

ignorance as to the case and as such her testimony cannot be considered for the reason that she has taken different stand in the chief examination as well as in the cross examination and insofar as the testimony of PW4 is concerned, she is closely related to PW1 and having found that her sister was attacked by the appellant / accused one day prior to the date of commission of offence, she has supported the case of the prosecution and in the absence of any corroborative material, her testimony cannot be believed at all.

10 In the considered opinion of this Court, the said submission lacks merits and substance for the reason that PW4 is also the Sister in law of the appellant / accused and in the chief examination she has clearly stated about the fact of the disease suffered by Lakshmi and also spoken about the physical abuse made by her brother in law / the appellant / accused under the influence of alcohol. In the cross examination she would disclose she did not make attempt to take her sister to the hospital, but she reiterated her stand in the cross examination that she was present while the deceased was attacked by the appellant / accused and she asked him not to do so.

11 It is also the submission of the learned counsel appearing for the appellant that since the testimony of PW4 has not been corroborated by any other eyewitness, viz., PW3, who did not support the case of the prosecution while he was cross-examined, the said testimony cannot be believed on account of the fact that she is an interested witness. The Hon'ble Supreme Court of India in the decision reported in **2015 [2] SCC 662 [Selvaraj @ Chinnapaiyan Vs. State represented by the Inspector of Police]**, has considered the issue relating to hostile witness and in Paragraph 19, observed as follows :-

"19 *It is settled principle of law that benefit of reasonable doubt is required to be given to the accused only if the reasonable doubt emerges out from the evidence on record. Merely for the reason that the witnesses have turned hostile in their cross-examination, the testimony in examination-in-Chief cannot be outright discarded provided the same (statement in examination-in-chief supporting prosecution) is corroborated from the other evidence on record. In other words, if the courts finds from the two different statements made by the same accused, only one of the two is believable and what has been stated in the cross-examination is false, even if the witnesses have turned hostile, the conviction can be*

recorded believing the testimony given by such witnesses in the examination-in-chief. However, such evidence is required to be examined with great caution”.

12 No doubt PW3 while he was examined on 17.09.2012 has fully supported the case of the prosecution ; but while he was cross examined on 26.09.2012, he would depose that he was not directly aware of the illness and thereby implying that he is an hearsay witness. In the considered opinion of the Court, the testimony of PW4 has been amply corroborated through the scientific evidence in the form of testimony of PW7 coupled with the postmortem certificate [Ex.P.4] and the final opinion [Ex.P5] and not even a suggestion has been put to the concerned witness with regard to the non-presence of the appellant / accused at the time of the commission of the offence and nothing was suggested that he was not aware of the illness of his second wife namely the deceased /Lakshmi.

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13 This Court on an independent application of mind to the entire materials placed before it, is of the considered view that PW4 had spoken to the truth and her testimony is believable and trustworthy

and motive aspect has also been spoken to by PW1 and PW2, apart from PW4.

Therefore, question No.1 is answered in negative against the appellant / accused.

14 The learned counsel appearing for the appellant / accused/pleaded for lenience by altering the conviction and reduction of sentence of imprisonment and further submitted that the case of the prosecution would fall within Exception [1] or Exception [2] to section 300 IPC.

15 This Court has already recorded the finding that the appellant / accused being the husband of the deceased-Lakshmi was well aware of her heart ailment and knowing pretty well, fisted her on her chest and in the result she had died on the next day of the occurrence and the postmortem certificate under Ex.P4 issued by PW7 also amply supports the case of the prosecution. Therefore, this Court unable to show any leniency with regard to the said plea made by the learned counsel appearing for the appellant / accused.

Therefore question No.2 is also answered negative in

against the appellant / accused.

16 In the result, Criminal Appeal is dismissed, confirming the judgment of the Trial Court, viz., the II Additional District and Sessions Judge, Tiruppur, made in SC.No.230/2012 dated 28.09.2012.

17 It is reported that the appellant/accused is on bail. The respondent Police shall secure the custody of the appellant/accused to undergo the remaining period of sentence of imprisonment. The period already undergone by him, shall be given set-off u/s.428 Cr.P.C.

[MSNJ]

[SPIJ]

23.11.2017

Index : No/Yes
Internet: No /Yes

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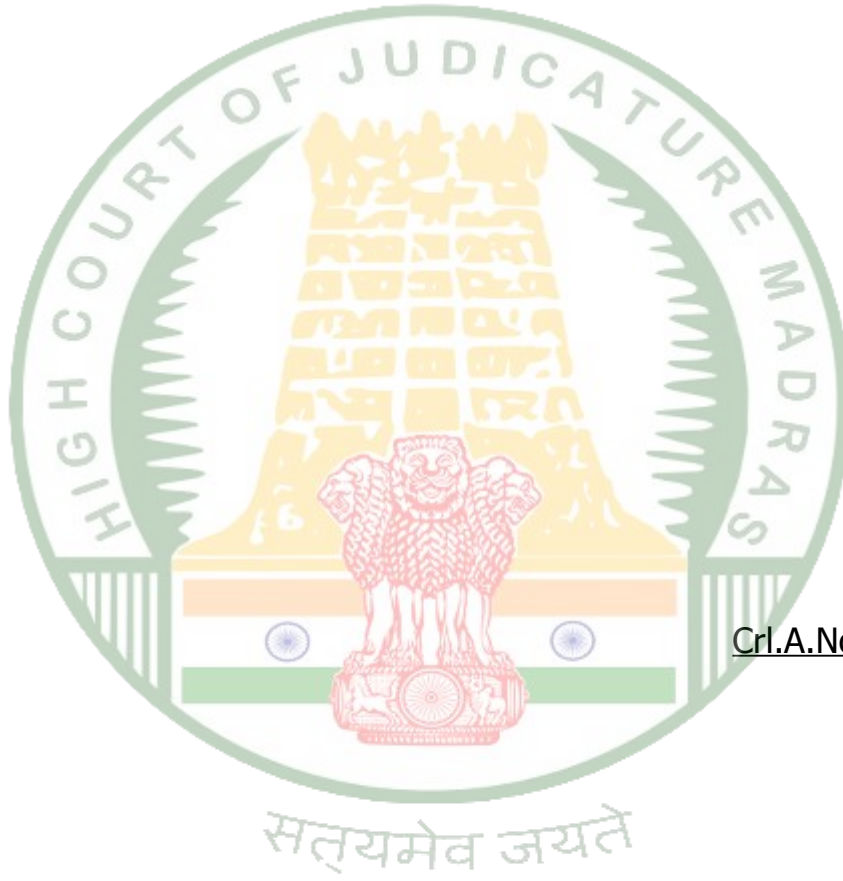
- 1.The II Additional District and Sessions Judge
Tirupur.
- 2.The Principal District and Sessions Judge
Tirupur.
- 3.The Judicial Magistrate No.2,
Tirupur.
- 4.The Chief Judicial Magistrate
Tirupur.
- 5.Inspector of Police,
Thirupur Rural Police Station,
Thirupur District.
- 6.The Superintendent of Police
Tirpur District.
- 7.The Superintendent of Central Prison
Coimbatore.
- 8.The Director General of Police
Mylapore, Chennai-4.
- 9.The District Collector
Tirupur District.
- 10.The Public Prosecutor
High Court, Madras.



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M.SATHYANARAYANAN, J.,
AND
SATRUGHANA PUJAHARI, J.,

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