



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.(md).No.145 of 2016

Asaithambi .. Appellant/Accused

Vs.

State rep. By Inspector of Police,
Uppaliyapuram Police Station,
Thiruchirapalli District,
Cr.No.242 of 2014. .. Respondent/Complainant

PRAYER: Appeal filed under Section 378(4) Cr.P.C against the judgment dated 19.02.2016 made in Sessions Case No.140 of 2015 on the file of the Sessions Judge of Tiruchirapalli Division, Tiruchirappalli and set aside the same.

For Appellant : Mr.G.R.Swaminathan for
Mr.T.Antony Arul Raj

For Respondent : Mr.K.S.Durai Pandian
Additional Public Prosecutor.

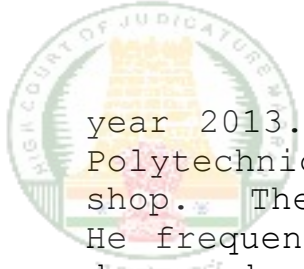
JUDGMENT

[Judgment of the Court was made by N.AUTHINATHAN, J.]

The appellant is the accused. This Criminal Appeal is directed against the conviction and sentence imposed in S.C.No.140 of 2015 on the file of the Principal Sessions Judge, Tiruchirapalli ordering the accused to undergo imprisonment for life and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of one year, for the offence under Section 302 I.P.C.

2.The prosecution case in brief is as follows:

i)The accused is the husband of deceased Uma Maheswari. Uma Maheswari is the daughter of Anbu Selvan/P.W.1.P.W.2-Pasupathi is brother of the deceased. P.Ws.1 & 2 were living on Bajanamada street, Uppaliyapuram. The accused married the deceased in the



year 2013. The deceased was working as a Lecturer in Sudarsana Polytechnic, Perambalur. The accused was running a Photo Copy shop. The accused suspected the moral conduct of the deceased. He frequently quarrelled with her and beat her. The accused and deceased resided in the upstairs portion of the house belonging to P.W.3-Ravi alias Natarajan, situated on Rediyar street, Uppaliyapuram.

ii) On 27.08.2014, the deceased took the accused to a hospital, as he was ill. She, along with the accused visited the house of P.W.1 and left for their house at 09.00 p.m. As the couple quarrelled with each other and in view of the illness of the deceased, P.W.s 1 & 2 went to the house of the deceased at about 11.00 p.m and they lie down on the veranda of the house of the accused. At about 3.45 a.m, P.Ws.1 & 2 heard the screams of the deceased. They opened the bedroom of the accused. They saw the accused throttling the deceased with a spiral binding wire. Immediately, the accused fled from the scene. P.W.2 rubbed the limbs of the deceased in order to give first-aid. P.W.3 also heard the accused yelling 'bfhy;yhky; tplkhl;nld;;'. He immediately rushed to the house of the accused. He saw the accused coming out of his house.

(iii) P.W.4 is a resident of Bajanamada street, Uppalliyapuram. P.W.5 is a resident of Mariamman Kovil street, Uppalliyapuram. P.W.6 is a neighbour of the accused. P.Ws.4 to 6, on hearing the commotion, went to the house of the accused and saw Uma Maheswari lying on the floor. P.Ws.5 and 6 saw the accused coming out of his house. The people gathered at the house of the deceased told that Uma Maheswari was still alive. Hence, P.Ws.1 & 2 took the deceased to the Government Hospital, Thuraiyur.

iv) P.W.8-Dr.Abirami, attached to Thuraiyur Government Hospital examined the deceased at 9.45 a.m and declared her 'brought dead'. She issued Ex.P.3, the wound certificate, she found the following injuries:

i) Small abrasion (1 x 1 cm) over left ear multiple nail marks seen over neck.

ii) Swelling over and around neck mouth bleeding present nasal bleeding present pupils dilated fixed.

Ligature mark seen around the neck.
She sent the body to mortuary.

v) Thereafter P.W.1 lodged a complaint-Ex.P.1 with the Police Station, Uppaliyapuram. On receipt of complaint, Jeya Sub Inspector of Police, registered a case in Cr.No.242 of 2014 under Section 302 I.P.C. She sent the F.I.R (EX.P.9) to the Court of the Judicial Magistrate, Thuraiyur



through P.W.10-Kannusamy/Head Constable attached to Uppaliyapuram Police Station. She also sent copies of F.I.R to all higher officials.

vi) P.W.13-Inspector attached to Thuraiyur Police Station took up the investigation and visited the scene of occurrence at 11.45 a.m and in the presence of Manivannan (P.W.7) and one Ravi, he prepared a sketch (Ex.P.10) and Observation mahazar (Ex.P.2). He held inquest over the dead body of the deceased at the mortuary in the presence of panchayatars and prepared Inquest Report (Ex.P.11). He sent a requisition letter (Ex.P.4) to the hospital for conducting post mortem through a Constable.

vii) P.W.8-doctor conducted post mortem on the dead body. He issued Ex.P.6, Post mortem certificate. She found the following injuries.

"1) Ligature mark seen below the thyroid cartilage encircling the neck completely, breadth 0.5 cm.

ii) 1 x 1 cm abrasion over left ear present.

iii) Multiple nail marks seen in front of neck.

iv) Swelling in the base of neck and around the ligature mark present.

v) Nail mark present over right side nose and left side face near angle of eye and right side face near angle of eye.

vi) Swelling 3 x 3 x 1 cm present over left side temple." Ex.P.5 is viscera report, issued by the Forensic Science Department, Trichirapalli stating that 'poison was not detected in any of the internal organs'. P.W.8, doctor opined that the deceased would appear to have died of "Hypoxia due to strangulation and injury to vital organs namely brain".

viii) P.W.13 effected arrest of the accused at about 11.00 p.m on 29.08.2014 in the presence of P.W.9-then Village Administrative Officer, Uppaliyapuram Police Station and Ethiraj-Village Assistant. When P.W.13 examined the accused, he voluntarily gave a statement to the effect that if taken, he would produce Material Objects viz., M.Os.1 & 2. Ex.P.8 is the admissioned portion of the statement of the accused. In pursuance of that, the accused took the Investigating Officer and other witnesses to his house and produced M.Os.1 & 2, an Iron box and a spiral binding wire respectively, in the presence of the P.W.9-then Village Administrative Officer. The Investigating Officer seized them under the cover of mahazar and marked Ex.P.7. He sent the accused for remand. He sent the seized articles in the case to the Court



under Ex.P.12. He examined other witnesses and after completing the investigation, he laid the charge-sheet.

3. When examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing against him in the prosecuting evidence, the accused reiterated his innocence.

4. The accused has filed a written statement, wherein, he has stated he was depressed over the conduct of his wife/deceased, that he took medicines for depression, that on 27.08.2014, since he was ill both physically and mentally, he along with his wife went to a hospital, that the deceased alone went to her mother's house. During night, he took the medicines as advised by the doctor and also regular medicines for depression. He did not know when the deceased returned home. On the next day morning, he found his wife lying dead. Immediately, he went to his father-in-law's house and informed his mother-in-law. She, in turn, informed P.Ws.1 & 2 over phone. P.Ws.1 & 2 returned to their house at about 8.30 a.m. He explained them what had happened. They are not prepared to believe his version. They took him to his house. Police personnel came to his house. P.Ws.1 & 2 took the deceased to Thuraiyur Government Hospital. He was taken to the Police Station. According to him, he has been falsely implicated. He has produced discharge summary and out-patient slips, issued by the Government Hospital, Perambalur by the statement.

5. The trial Court has accepted the case of the prosecution and come to convict the accused as aforesaid.

6. The point that arises for consideration is whether the conviction and sentence imposed on the appellant are just and proper ?

7. P.W.1 is the father of the deceased. P.W.2 is the brother of the deceased. The deceased is the wife of the accused and their marriage was solemnized in the year 2013. They are all residents of Upalliyapuram. The deceased was working as a temporary Lecturer in Sudharsana Polytechnic at Perambalur and the accused was running a photocopy Centre. It is not in dispute that the accused and the deceased were living on the upstairs portion of the house belonging to P.W.3 situated at Rediyar street, Upalliyapuram.

8. It is seen from the evidence of P.Ws.1 & 2 that the accused suspected the moral conduct of the deceased and used to quarrel with her frequently. Their evidence clearly shows that the marital relationship between the accused and his wife was not harmonious. It is also seen from the written statement of the accused that he has all along been displeased with her wife.



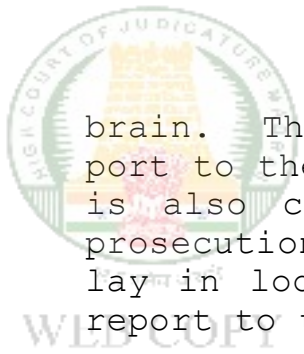
9.The motive part is not of very much significance in this case inasmuch as there is eye witness account of the actual occurrence. It is the evidence of P.W.1 that the deceased took the accused to hospital on 27.08.2014 and both visited their house, took food and left their house at 9.00 p.m. The brother of the deceased P.W.2 would say that as the accused was suffering from fever and there was quarrel between the spouses, he and his father went to the house of the deceased at about 11.00 p.m and slept in the veranda of the house. The accused and the deceased were in the bedroom.

10.It has been clearly spoken to by P.Ws.1 & 2 that on hearing the skirmishes of the deceased, they opened the door of the bedroom and saw the accused throttling the deceased. In view of the fact that P.Ws.1 & 2 are father and brother respectively of the deceased, we have cautiously scrutinized their evidence. Their evidence draws strength from the evidence of P.W.3-neighbour. P.W.3 has stated that he saw the deceased lying in the bedroom at about 3.30 a.m on 28.02.2014. He confirmed that P.Ws.1 & 2 were present in the house of the deceased at that time. P.Ws.4 to 6, on hearing the commotion, visited the house of the deceased. It is the evidence of P.Ws.5 and 6 that they have seen the accused coming out of the house. They have also confirmed that P.Ws.1 & 2 were present in the place of occurrence at about 3.45 a.m.

11.The learned counsel for the appellant/accused would submit that the presence of P.Ws.1 & 2 at the time of occurrence is highly doubtful and their presence has not been proved by any acceptable evidence, as the deceased was examined by the doctor at 9.45 a.m. If really, P.Ws.1 & 2 were present at the time of occurrence, they would have immediately taken the deceased to the hospital. Learned counsel would also point out that the occurrence is said to have taken place at about 3.45 a.m, however, the complaint was lodged only at 11.00 a.m and it reached the Court at 02.00 p.m.

12.The evidence of witnesses cannot be discarded on the ground that they did not react in a particular manner. As already pointed out, the presence of P.Ws.1 & 2 at the place of occurrence was confirmed by P.Ws.3 to 6. P.Ws.1 to 6 have corroborated each other in all the material features of the case. P.Ws.3 to 6 are not shown to be partisan witnesses to concoct a theory of their own. Therefore, we are of the considered view that the incident had taken place in the manner and circumstances spoken to by P.Ws.1 & 2.

13.The medical evidence given by the doctor/P.W.8, who conducted a post mortem on the dead body of Uma Maheswari and as revealed from the post mortem certificate, Ex.P.6, issued by her, shows that the death was due to throttling and the injury to the



brain. The medical evidence given by the doctor lends great support to the case of the prosecution. The evidence of P.Ws.1 & 2 is also corroborated by the medical evidence. Therefore, the prosecution case cannot be doubted on the basis that there is delay in lodging the complaint and sending the first information report to the Court.

14.The learned counsel for the appellant would submit that the doctor in his evidence has stated that it is not possible to strangle using M.O.2-wire. The Honourable Supreme Court in Ram Swaroop Vs. State of Rajasthan (AIR 2008 Supreme Court 1747) has pointed out that oral evidence is to get primacy and medical evidence is basically opinionative. In the light of the said decision, the testimony of the eye witnesses cannot be discarded on the basis of opinion expressed by doctor (P.W.8).

15.We shall now examine the defence version put forward by the accused in his statement under Section 313 Cr.P.C. He has stated that he was suffering from depression and taking medicines. He has produced discharge summary and out-patient slips. The discharge summary would show that he was admitted to the hospital on 19.11.2013 and discharged on 22.11.2013. The O.P chits are dated 08.12.2014, 07.01.2015, 27.03.2015, 27.04.2015 and 21.12.15. The occurrence had taken place on 27.08.2014. It is seen from his statement that the death occurred in the house, where the deceased resided with the accused. Presence of the accused at the time of occurrence was also not disputed. His explanation is that he took medicines for depression and for fever during night on 27.08.2014 and after that, he felt drowsy and he fell fast asleep. He found the deceased lying dead only in the morning. The injuries sustained by the deceased would indicate that she struggled with her assailant. In these circumstances, it is impossible to believe the version of the accused that he was not in full possession of his faculties. It is important to note that the accused has chosen not to examine any doctor to speak about the medicines he has taken and the effect of those medicines. In the absence of such evidence, the explanation offered by the accused cannot be accepted. The version of the accused, in our considered view, is not reasonable and it does not accord with probabilities.

16.Having regard to the above said facts and circumstances of the case, we hold that the prosecution has sufficiently and satisfactorily established its case against the accused beyond all reasonable doubts. The trial court analysed the case in its proper perspective. The judgment of the trial court, therefore, deserves to be upheld.



17. In the result, the appeal is dismissed. The conviction and sentence imposed on the appellant are confirmed. Consequently, connected CRL MP(MD) No. 3815 of 2016 is also dismissed.

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Sd/-

Assistant Registrar (Crl. side)

Sub Assistant Registrar

To

1. THE SESSIONS JUDGE, TIRUCHIRAPPALLI.
2. DO THRO THE PRINCIPAL SESSIONS JUDGE, TIRUCHIRAPPALLI.
3. THE DISTRICT COLLECTOR, TIRUCHIRAPPALI.
4. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI-4
5. THE INSPECTOR OF POLICE, UPPALIYAPURAM POLICE STATION, TIRUCHIRAPPALLI DISTRICT.
6. THE SUPERINTENDENT OF PRISON, CENTRAL PRISON, TRICHY.
7. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE SECTION OFFICER
V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

Judgment MADE IN
CRL.A. (MD) .No.145 of 2016
20.03.2017

vs

AM/SKN RSK/SAR-4/11.04.2017/7P/9C