

**BAIL SLIP**

The Appellant/Accused namely Andi @ Ananth, S/o.Muniyandi was already released on Bail by the order of this Court dated 23.09.2016 made in Cr1.MP(MD)No.5037/16 in Cr1.A(MD)No.224 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.A.[MD].No.224 of 2016

Andi @ Ananth

.. Appellant/
Sole accused

Vs.

State rep. by the
Inspector of Police,
Utchipuli Police Station,
Ramanathapuram District.
(Crime No.116 of 2013)

.. Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment, dated 18.02.2016, made in S.C.No.94 of 2014, by the learned Sessions cum Fast Track Mahila Court Judge, Ramanathapuram and set aside the conviction and sentence imposed against the appellant.

For appellant : Mr.R.Alagumani for
Mr.M.Daniel Manoharan

For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 18.02.2016, made in S.C.No.94 of 2014 by the learned Sessions cum Fast Track Mahila Court Judge, Ramanathapuram.



2.The appellant stood convicted and sentenced to undergo imprisonment as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.20,000/-, in default to undergo rigorous imprisonment for three years.

3.The case of the prosecution is consciously narrated below:

(a) The accused is the husband of the deceased - Malairani. The accused married the deceased 12 years prior to the date of occurrence. Due to wedlock, the deceased gave birth to a male child by name Rajesh (PW3) and a female child by name Mugila (PW4). Both the accused and the deceased, along with their children, were residing at Agastiarkootam. The accused was suspecting the fidelity of the deceased and on account of the same, there were frequent quarrels between them. On 16.06.2013 at about 7.00 p.m. a quarrel arose between the accused and the deceased in the yard (Mutrum) and at the peak of quarrel, the accused pulled the deceased inside the house and locked the door. On seeing this, the minor children viz., PW3 and PW4, knocked the door continuously. After some time, the accused opened the door. PW3 and PW4 went inside the house and found the deceased lying dead with injuries and blood was oozing from the legs. On seeing the deceased, PW3 and PW4 cried and came out of the house and they took their grandmother inside the house and on seeing the deceased, their grandmother also cried. On getting information about the occurrence through phone, PW1 - the brother of the deceased and PW2, who is the wife of PW1, came to the house of the accused and saw the dead body of the deceased and thereafter, PW1 proceeded to the Police Station at 9.00 p.m. and lodged a complaint - Ex.P1.

(b) PW14 - the Sub Inspector of Police, on receipt of the complaint - Ex.P1, registered a case in Crime No.116 of 2013 under Section 302 IPC and forwarded Ex.P1 - Complaint and FIR - Ex.P9 through PW9 to the Court and a copy of the same to PW15 - Inspector of Police.

(c) PW18 - the Inspector of Police, took up the investigation on 16.06.2013 at 9.30 p.m., proceeded to the place of occurrence, prepared an observation mahazar (Ex.P3) and rough sketch (Ex.P15). PW18 has arranged a photographer - PW17 and took the photographs of the dead body of the deceased. Thereafter, PW18 conducted inquest on the body of the deceased in the presence of panchayatars. Ex.P14 is the inquest report. Then, he forwarded the body of the deceased through PW10 - Head Constable to the hospital for postmortem.

<https://hcservices.ecourts.gov.in/hcservices/> Dr.Govindaraj had conducted postmortem on the dead body of the deceased on 17.06.2013 at 12.05 p.m. He found the following injuries on the dead body of the deceased:



"External appearance:

1) Sutured laceration over the right ear lobe. Size 3 x 1 cm.

2) Ligature mark seen around the neck, more prominently on the entire anterior aspect of the neck.

3) Small punctured wounds over the anterior aspect of both legs. Size 1 x 1 x 0.5 c.m.

Internal Examination:

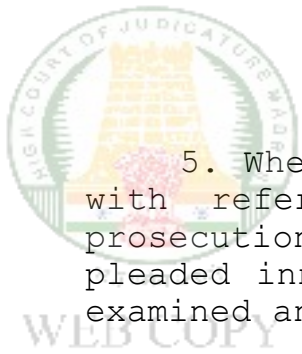
On opening the thorax, no rib fracture seen. Heart appear pale, full of blood in the chamber. Lungs : Pale of normal. Hyoid bone (torn) on opening the abdomen, liver and GB (Torn). Stomach contain well digested food particles. Both kidneys & Spleen appear normal. Bladder and Utrus empty and atrophied. On skull, no skull fracture seen. Haemotoma over the left fronto parietal region."

Ex.P10 is the postmortem certificate. He opined that the deceased would appear to have died of asphyxia approximately 15-18 hours prior to autopsy. Ex.P21 is the final opinion of PW15.

(e) During the course of investigation, on 17.06.2013 at 0.15 a.m. PW18 examined PW1 to PW5, one Rajammal, Lakshmi, Dharmaraj, PW6, PW13, PW7 and one Balakrishnan, and recorded their statements. On 18.06.2013, PW18 examined PW17, PW14, PW10 and PW15 and recorded their statements. On the same day, ie., on 18.06.2013, PW18 arrested the accused at Nochioorani Vilakku in the presence of PW8 - VAO and Village Assistant - Nageshwaran. On such arrest, the accused gave a voluntary confession statement, in which he disclosed the place where he had hidden the weapon used in the occurrence. The admissible portion of the confession statement is marked as Ex.P16. Pursuant to the same, the accused took the Police and the witness - PW8 to his house and produced a red colour saree by which he constricted the neck of the deceased and thereafter, the accused took the Police and PW8 to the agricultural field of one Karuppaiah and produced a knife from the hide out. PW18 recovered the same under a mahazar and forwarded the accused to the Court for judicial remand. At the request of PW18, the material objects were sent for chemical examination through Court. The chemical analysis report - Ex.P7 disclosed bloodstain on MO.1.

(f) PW18, during the course of investigation, collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused under Section 302 IPC.

4. Based on the above materials, the trial Court had framed a charge under Section 302 IPC, against the accused. When the accused was questioned in respect of the charge, he pleaded innocence. In order to prove the charge, on the side of the the prosecution, as many as 18 witnesses were examined as PW1 to PW18 and Exs.P1 to P21 were marked, besides two Material Objects (MOs.1 & 2).



5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, on the side of the accused, no one was examined and no document was marked.

6. The trial Court, after considering the oral and documentary evidence, found the accused guilty of the charge under Section 302 IPC and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant / accused has come up with this appeal.

7. The learned counsel for the appellant / accused would submit that the entire case of the prosecution rests upon the evidences of PW3 and PW4. But, the evidences of PW3 and PW4 are verbatim repetition and parrot like version, which denotes that their evidences are tutored one. Therefore, the evidences of PW3 and PW4 cannot be relied upon for convicting the appellant / accused.

8. The learned counsel for the appellant would next submit that there is a contradiction between evidences of PW1 and PW2, and PW3 and PW4. In this regard, the learned counsel for the appellant drawing the attention of this Court to the evidences of PW1 to PW4 submitted that though PW1 and PW2 have stated in their evidences that they saw the dead body of the deceased at the scene of occurrence, PW3 and PW4 have stated in their evidences that soon after the occurrence, an ambulance took the deceased to the Government Hospital and after some time, PW1 and PW2 came to the scene of occurrence, which would clearly shows that the evidence of PW1 and PW2 that they saw the dead body of the deceased in the scene of occurrence, is false and therefore, their evidences cannot be relied upon.

9. The learned counsel for the appellant would further submit that MO.1 stated to be recovered by the prosecution on the basis of the confession of the accused from his house is artificial and the same was purposely cooked up by the prosecution in order to bring home the offence against the accused. Therefore, the benefit of doubt may be given in favour of the accused and he may be acquitted.

10. Per contra, the learned Additional Public Prosecutor submitted that PW3 and PW4, who are son and daughter of the deceased respectively, have categorically stated that the accused took the deceased inside the house and caused injuries on the body of the deceased and after some time, they saw the deceased succumbed to the injuries. He would further submit that the doctor, who conducted postmortem, has clearly stated that he found a ligature mark on the neck and puncture marks on the legs of the deceased. Thus, the prosecution has categorically proved the guilt of the accused beyond reasonable doubts. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

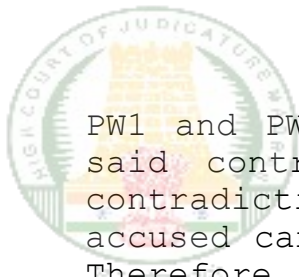


11. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

12. The accused and deceased are husband and wife respectively. PW3 and PW4 are the minor son and daughter respectively of the deceased and accused. Naturally, they were residing under one roof. PW3 and PW4, who were aged about 15 and 10 respectively, have categorically stated in their evidences that when they were, along with the deceased and their grandmother, in the yard (Mutrum), the accused was inside the house and a quarrel arose between the accused and the deceased, and that the accused pulled the deceased inside the house and locked the door. PW3 and PW4 have further stated in their evidences that they knocked the door and after some time, the accused opened the door and they went inside the house and found the deceased lying dead and blood was oozing from the legs, however, they did not see the ligature mark on the neck. They have further stated that it was also seen by their grandmother. PW5, who visited the place of occurrence immediately after the occurrence, has clearly stated in her evidence that she is residing in the nearby house of the accused and the accused used to quarrel with the deceased suspecting her fidelity. PW5 has further stated in her evidence that she knocked the door of the house of the accused and the accused opened the door and when she went inside the house, she found the deceased lying dead. PW15, who conducted postmortem on the dead body of the deceased, has categorically stated that he found ligature mark on the neck and small punctured wounds on the legs. Even assuming that the deceased herself committed suicide by hanging, according to PW3 and PW4, the accused and the deceased alone were inside the house and the accused has failed to explain the injuries on the dead body of the deceased under Section 106 of the Indian Evidence Act. From these evidences and other medical evidences, the prosecution has clearly proved that it was this accused, who caused the death of the deceased. Now, let us analyse the submissions of the learned counsel for the appellant.

13. The first and foremost submission of the learned counsel for the appellant is that the evidences of PW3 and PW4 are parrot like versions and tutored one, and therefore, the same cannot be believed. At the time of giving evidence, PW3 and PW4 were aged about 15 and 10 years respectively and they were also studying in the schools. Though the evidences of PW3 and PW4 appears to be similar, they inspire the confidence of the Court. PW3 and PW4 have also stated in their evidences that their father viz., the accused was taking care of them well. There is no reason for them giving any false evidence against their own father. Moreover, the defence has failed to bring anything in their favour by cross examining PW3 and PW4. Therefore, the first contention is rejected.

14. The second contention of the learned counsel for the appellant is that there is a contradiction between the evidences of



PW1 and PW2, and PW3 and PW4. This Court is of the view that the said contradiction projected by the appellant is only a minor contradiction. Even eschewing the evidences of PW1 and PW2, the accused can be convicted based on the evidences of the PW3 and PW4. Therefore, this contention is also rejected.

WEB COPY

15. The third contention of the learned counsel for the appellant is that the recovery of MO.1 is artificial. The occurrence had happened inside the house and hence, the possibility of hiding the saree, which was used for constricting the neck of the deceased, among the sarees used by the deceased to wear, cannot be ruled out. Therefore, the said recovery cannot be stated to be artificial one. Thus, this contention is also rejected.

16. Having come to the conclusion that it was this accused, who caused the death of the deceased, now we have to examine as to what was the offence that was committed by the accused. Admittedly, the accused and the deceased alone were inside the house at the time of occurrence. On the day of the occurrence, admittedly, there was a quarrel. The accused was not armed with any weapon. It was not a premeditated one. It was only at the peak of quarrel, having lost his mental balance, the accused had constricted the neck of the deceased by using the saree of the deceased and also made punctured wounds on the legs by using a knife. Even such an action was not intended one. More over, the stab was not on vital part. Thus, the act of the accused would clearly fall within the third limb of Section 300 IPC. The same would also fall under the first exception to Section 300 IPC. Therefore, the accused is liable to be punished only under Section 304(i) IPC.

17. Now turning to the quantum of punishment, as we have already pointed out, there was no premeditation. The accused did not use any weapon and the occurrence was out of sudden quarrel. The accused has got no bad antecedents. He has not been involved in any other crime subsequent to this occurrence also. He has to take care of his children and aged mother. Having regard to all 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.2,000/- for the offence under Section 304(i) IPC would meet the ends of justice.

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

(a) The conviction and sentence imposed on the appellant / sole accused in S.C.No.94 of 2014 for the offence under Section 302 IPC are 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.2,000/-, in default to undergo rigorous imprisonment for four weeks.

(b) The period of sentence already undergone by the appellant / accused shall be given set off under Section 428 Cr.P.C.



Fine amount, if any, paid by the appellant / accused shall be duly adjusted and balance amount, if any, may be refunded.

19. The trial Court is directed to take steps to incarcerate the accused in prison, so as to serve out the remaining period of sentence.

/True Copy/

Sd/-
Assistant Registrar (CSI)

Sub-Assistant Registrar

To

1. The Sessions cum Fast Track Mahila Court Judge,
Ramanathapuram.
2. The Principal District Judge, Ramanathapuram
3. The Judicial Magistrate, Ramanathapuram
4. The Chief Judicial Magistrate, Ramanathapuram
5. The District Collector , Madurai
6. The Director General of Police, Mylapore
7. The Superintendent , Central Prison, Madurai
8. The Inspector of Police,
Utchipuli Police Station,
Ramanathapuram District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
10. The Record Keeper, (2 copies)
Criminal Records
Madurai Bench of Madras High Court, Madurai.

Gcg
RL/12C/7P/SV/MMS/SAR4/23/2/2018

Judgment made in
Cr1.A.[MD].No.224 of 2016

Dated : 12.12.2017