



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2017

CORAM:

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

Crl.A.[MD].No.323 of 2016

Jeyaguruvammal

.. Appellant/
Sole accused

Vs.

State rep. by the
Inspector of Police,
Puliankudi Police Station,
Sivagiri,
Tirunelveli District.
(Crime No.228 of 2013)

.. Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment, dated 18.06.2013, made in S.C.No.235 of 2014, by the learned Principal Sessions Judge, Tirunelveli.

For appellant : Mr.E.Somasundaram

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

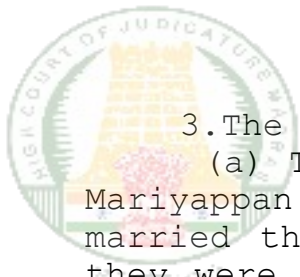
JUDGMENT

[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 18.06.2013, made in S.C.No.235 of 2014 by the learned Principal Sessions Judge, Tirunelveli.

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.1,00/-, in default to undergo further three months rigorous imprisonment.



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

(a) The accused is the wife of the deceased - Ganesan. PW1 - Mariyappan is the brother of the deceased. The deceased Ganesan married the accused 12 years prior to the date of occurrence and they were blessed with three children and the accused was residing on the northern side of the house of PW1, along with her children. The deceased was mason by profession. There was a matrimonial dispute between the accused and the deceased. While so, six years prior to the occurrence, the deceased married one Mariammal - PW6 as second wife and due to the said wedlock, PW6 delivered two female child. PW6 was residing at Thevar Kinattru Theru, T.N.Puthukudi, along with her children. After the second marriage, the deceased, occasionally, came to the house of the accused and gave money for family expenses. Whenever the deceased visited the house of the accused, a quarrel would arise between the accused and the deceased. In such a situation, the deceased did not come to the house of the accused for three months prior to the date of the occurrence ie., on 18.06.2013. On 18.06.2013 at 3.30 to 4.00 p.m. the deceased came to the house of the accused and at that time, PW1 was in his house. On hearing the noise of falling of vessels from the house of the accused, he rushed to the deceased's house, but the door was closed and hence, he looked through window and saw the accused constricting the neck of the deceased with a stabilizer wire attached to TV. On seeing this, the accused raised an alarm. On hearing the alarm, the accused opened the main door of the house and ran away, and at the same time, PW2 and PW3 appeared before PW1 and when they entered into the house, they found the deceased lying dead. Thereafter, PW1 went to the Puliyanankudi Police Station and lodged a complaint.

(b) PW13 - the Sub Inspector of Police, on receipt of the complaint - Ex.P1, registered a case in Crime No.228 of 2013 under Section 302 IPC and forwarded Ex.P1 - complaint and FIR - Ex.P12 through PW11 to the Judicial Magistrate Court, Sivagiri and copy of the same to PW15 - Inspector of Police.

(c) PW15 - the Inspector of Police, took up the investigation on 18.06.2013 at 6.15 p.m., proceeded to the place of occurrence, prepared an observation mahazar (Ex.P14) and rough sketch (Ex.P15) in the presence of PW7 and PW8. Thereafter, PW15 recovered black colour wire attached blue colour UTS stabilizer (MO.1), Sansui Colour TV (MO.7), Orange Colour pillow (MO.4), another pillow (MO.5) and a bedsheet (MO.6) under a mahazar in the presence of the very same witnesses. Thereafter, PW15 recorded the statement of PW1, PW2, PW3, PW4, PW5, PW7, PW11 and PW13. On 19.06.2013 at 07.30 a.m., PW15 conducted inquest on the body of the deceased in the presence of panchayatars. Ex.P16 is the inquest report and thereafter, he forwarded the dead body to the hospital for postmortem.

(d) PW10 - Dr.Paramasivam had conducted postmortem on the dead body of the deceased on 19.06.2013 at 10.30 a.m. He found the following injuries on the dead body of the deceased:



"External appearance:

- 1) Rigor mortis present in all four limbs.
- 2) Abrasion present in right ala of nose, right ear helix.
- 3) Ligature mark seen in (NC) way in front of neck starting from right side of neck to left side of neck absent in back of neck. (0.5 to 1 cm breath) Right side neck mark move prominent left side neck depression only present mark seen below the level of hyoid bone just above the (NC) front of thyroid region. Bite mark seen in left hip."

Ex.P9 is the postmortem certificate. He opined that the deceased would appear to have died of asphyxia leads to respiratory cardiac arrest.

(e) During the course of investigation, on 19.06.2013 at 12.30 p.m., PW15 arrested the accused near one Kuthus's shop at Puliyankudi Velloorani Street and then, he forwarded the accused to the Court for judicial remand. At the request of PW15, all the material objects were sent for chemical examination through Court. Thereafter, due to transfer, PW15 handed over the investigation to his successor - PW16.

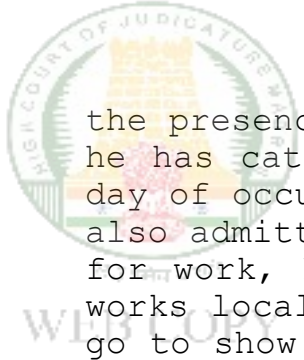
(f) PW16, during the course of investigation, collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused under Section 302 IPC.

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, she pleaded innocence. In order to prove the charge, on the side of the the prosecution, as many as 16 witnesses were examined as PW1 to PW16 and Exs.P1 to P16 were marked, besides eight Material Objects (MOs.1 to 8).

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 her 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, has 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 trial Court convicted the appellant / accused only based on the solitary evidence of PW1 and medical evidence of PW10. It is the submission of the learned counsel for the appellant that



the presence of PW1 in the place of occurrence is highly doubtful as he has categorically admitted in his cross examination that on the day of occurrence, he went out of station for work. Further, PW1 has also admitted in his cross examination that if he goes to outstation for work, he would not come to the house for lunch and only if he works locally, he would come to his house to take lunch, which would go to show that he would not have been present at that time, at the place of occurrence.

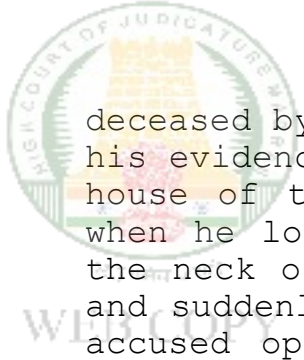
8. The learned counsel for the appellant would further submit that the occurrence is said to have happened at 3.30 to 4.00 p.m. and the complaint was lodged at 5.30 p.m., though the Police Station was situated just $\frac{1}{2}$ kilometer from the place of occurrence. Hence, there is a delay of 1-1/2 hours in lodging the complaint by PW1 and the same has not been properly explained by the prosecution.

9. The learned counsel for the appellant would further submit that there is no fracture of hyoid bone, cervical vertebrae, wind pipe and there is also no damage to the veins or arteries which carries blood from the heart to the brain and hence, it is not a homicidal death. Therefore, the benefit of doubt may be given in favour of the accused and she may be acquitted.

10. Per contra, the learned Additional Public Prosecutor submitted that the presence of PW1 has been clearly spoken by PW3 and PW4 and therefore, the presence of PW1 at the time of occurrence cannot be doubted. Through the evidences of PW1 and PW5, the prosecution has clearly proved that it was this accused who caused the death of the deceased. The doctor - PW10, who conducted postmortem, has clearly stated about the possibility of death by strangulation of wire without breaking of hyoid bone. 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. Admittedly, the occurrence happened in the house of the deceased and accused. PW1 is the brother of the deceased and he resides adjacent to the house of the accused. PW1 is the sole eyewitness in this case. Merely because PW1 is the brother of the deceased, his evidence cannot be brushed aside. But, it requires a close scrutiny. According to PW1, after the second marriage of the deceased with PW6, the deceased was occasionally visiting the house of the accused and giving money for the maintenance of the accused and her children. PW1 has stated in his evidence that whenever the deceased visited the house of the accused, there would be a quarrel between the accused and the deceased, and on the fateful day of the occurrence, the accused went to the extreme level and murdered the



deceased by constricting his neck by a wire. PW1 has also stated in his evidence that on hearing the noise of falling utensils from the house of the accused, he went there, but the door was locked and when he looked through the window, he saw the accused constricting the neck of the deceased by using a stabilizer wire attached to TV and suddenly, he raised an alarm and that on hearing the alarm, the accused opened the main door of the house and ran away from the place of occurrence and when he went inside, he found the deceased lying dead. PW5, who is stated to have been sitting in the corner of the street after taking lunch, has stated in his evidence that he saw the accused coming out of her house, after the occurrence. PW3 and PW4 have stated in their evidences that on hearing the alarm raised by PW1, they rushed to the place of occurrence and saw the deceased lying dead with a wire constricted on his neck. The doctor - PW10, who conducted postmortem, has also clearly stated about the possibility of death by constriction of neck by using wire without breaking of hyoid bone.

13. From the above evidences, the prosecution has clearly proved that it was this accused, who caused the death of the deceased by constricting the neck of the deceased by using a stabilizer wire attached to TV. Now, let us analyse the submissions of the learned counsel for the appellant.

14. The first and foremost submission of the learned counsel for the appellant is that the presence of PW1 is doubtful, as he has categorically stated in his evidence that on the fateful day of the occurrence, he went out of station for work and that generally, he would not come to his house for lunch, if he goes out of station for work. But, the presence of PW1 in the place of occurrence and the alarm raised by him, have been clearly spoken by PW3 and PW4, and hence, the presence of PW1 cannot be doubted. More over, the profession of PW1 is mason. According to the nature of the work, hour of work differs in the profession of mason. The possibility of returning back home, after half day work, also has not been ruled out. Thus, the first and foremost contention of the learned counsel for the appellant is rejected.

15. The second contention of the learned counsel for the appellant is that there is a delay of 1-1/2 hours in lodging the complaint by PW1 and the same has not been properly explained by the prosecution. The distance between the place of occurrence and the Police Station is half kilometer. According to PW1, the occurrence had happened at 4.00 p.m. The complaint was lodged at 5.30 p.m. PW2 has specifically stated in his evidence that on 18.06.2013 at 3.30 to 4.00 p.m. PW1 came to his house and asked him to come to the Police Station for giving complaint about the death of the deceased. PW2 has further stated in his cross examination that when they went to Police Station, the Police asked them to bring a written complaint and hence, they came out of the Police Station and as PW1 did not know as to how to write, they approached a person and the said person wrote the complaint. From the above evidence, it is



clear that some time had been spent for travelling and preparing the complaint. Thus, the delay of 1-1/2 hours in lodging the complaint has been clearly explained by the prosecution. Further, in our opinion, the said delay of 1-1/2 hours in lodging the complaint cannot be said an inordinate delay so as to infer any suspicion.

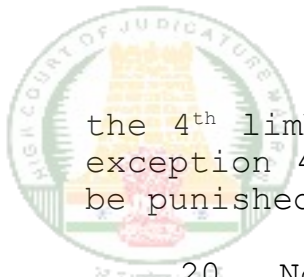
WEB COPY

16. So far as the third contention of the learned counsel for the appellant is concerned, PW10 has clearly stated in his evidence that he found ligature mark on the neck of the deceased and such mark was 0.5 to 1 c.m. Breadth, below the level of hyoid bone and just above the (NC) front of thyroid bone. PW10 has further opined that the death of the deceased was due to asphyxia which leads to respiratory cardiac arrest. PW10 has also opined that there is every possibility of death by constriction without the hyoid bone being broken. PW10 has also found abrasion in right ala of nose and right ear helix, and a bite mark on left hip. PW10 has further stated that there was alcohol in the stomach of the deceased.

17. PW1, who is residing adjacent to the house of the accused, has stated in his evidence that after the arrival of the deceased, there was a quarrel between the accused and the deceased, and on hearing the noise of falling utensils, he came out of the house and saw the occurrence through window in the house of the accused. The abrasions, bite mark and alcohol found on the body of the deceased, coupled with the evidence of PW1 would go to show that in an inebriated mood, the deceased came to the house of the accused and after his arrival, there was a quarrel between the accused and the deceased, which would lead to scuffle and at the peak of quarrel, the accused constricted the neck of the deceased by using the stabilizer wire, attached to TV. Even assuming that the deceased committed suicide, the accused, who was in the house, did not give any explanation to the injuries on the body of the deceased and she did not even take any efforts to prove her innocence or to rebut the presumption or shift the burden Under Section 106 of the Indian Evidence Act. Therefore, the third contention is also rejected.

18. At this juncture, the learned counsel for the appellant put forth an alternative plea that in the event of the Court holding that the appellant had committed the homicide, it could be only in the nature of culpable homicide not amounting to murder.

19. Having come to the conclusion that it was this accused, who caused the death of the deceased by constricting the neck of the deceased by using wire, now we have to examine as to what was the offence that was committed by the accused. Admittedly, the accused and the deceased were the persons inside the house. 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 and scuffle, having lost her mental balance, the accused had constricted the neck of the deceased by using the stabilizer wire attached to TV. Even such an action was not an intended one. Thus, though the act of the accused would fall within



the 4th limb of Section 300 IPC, her act would squarely fall under exception 4 to Section 300 IPC. Therefore, the accused is liable to be punished only under Section 304(ii) IPC.

20. 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. She has not involved in any other crime subsequent to this occurrence also. She has to take care of her three children. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing her to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- for the offence under Section 304(ii) IPC would meet the ends of justice.

21. 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.235 of 2014 for the offence under Section 302 IPC are set aside and instead, she is convicted under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.100/-, in default to undergo simple 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.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Tirunelveli.

2. The Judicial Magistrate, Sivagiri,
Tirunelveli District.

3. -Do- Through The Chief Judicial Magistrate,
Tirunelveli.

4. The District Collector,
Tirunelveli.

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



6. The Superintendent,
Special Prison for Women,
Trichy. (In duplicate for communication to the accused)

7. The Inspector of Police,
Puliankudi Police Station,
Sivagiri, Tirunelveli District.

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

9. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (Two Copies)

+1CC TO M/S.E.SOMASUNDARAM, ADVOCATE, SR NO.91257

Judgment made in
Crl.A. [MD].No.323 of 2016
Dated: 06.12.2017

gcg

MS/RSK/SAR-4/21.03.2018/8P.13C