



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A[MD].No.441 of 2016

Kanagaraj : Appellant

Vs.

State through
The Inspector of Police,
Aralvaimozhi Police Station,
Aralvaimozhi, Nagercoil Taluk,
Kanyakumari District,
Crime No.629 of 2011. : Respondent

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction, dated 18.07.2016, made in S.C.No.81 of 2012, on the file of the Mahila Fast Track Court, Nagercoil.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.81 of 2012, on the file of the Mahila Fast Track Court, Nagercoil. He stood charged for the offences punishable under Sections 498(A) and 302 of the Indian Penal Code. By Judgment dated 18.07.2016, the Trial Court has convicted the accused and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
498 (A) IPC	To undergo rigorous imprisonment for three years.	Rs.5,000/- in default to undergo simple imprisonment for four months.



302 IPC	To undergo imprisonment for life.	Rs.10,000/- in default to undergo simple imprisonment for one year.
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The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

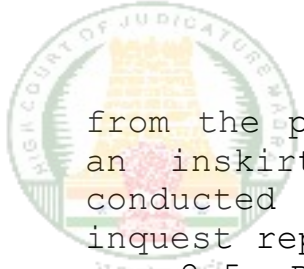
2. The case of the prosecution, in brief, is as follows:-

The deceased, in this case, was one Mrs.Vijayalakshmi. The accused is the husband of the deceased. PW-1 is the father of the deceased and PW-2 is the mother of the deceased. PW-1 was working as a Driver in V.V.Mineral Company. The deceased was given in marriage to the accused, eight years prior to the occurrence. Due to wedlock, the deceased and the accused were blessed with three children. The accused was a coolie by avocation. The accused had developed suspicion over the fidelity of the deceased. On account of the same, there were frequent quarrels between the accused and the deceased. On 01.09.2011, there was a quarrel between the accused and the deceased. The elders of the village intervened, persuaded both of them, pacified and advised the accused to stay at the house of his mother. Accordingly, he was staying in his mother's house.

2.2. At about 10.00 PM, on 06.09.2011, PW-1 and PW-2 were inside of their house. The deceased was in the back side of the house. At that time, the accused came there and picked up a quarrel between them. On hearing the alarm raised by the deceased, PW-1, PW-2, one Mrs.Chandra, W/o.Sankar [PW-3] and one Mrs.Kani, W/o.Thangamuthu came to the backside of the house and persuaded them to stop the quarrel. Suddenly, the accused caught hold of the neck of the deceased and strangulated her. PW-1 tried to prevent the accused from strangulating further, but he could not succeed. The deceased fainted and fell down. On seeing the same, the accused fled away from the scene of occurrence. PW-1, PW-2 and the others found that the deceased had died.

2.3. Immediately, PW-1, the father of the deceased, went to the Aralvaimozhi Police Station and made a complaint. PW-12, on receipt of complaint from PW-1, registered a case in Crime No.629 of 2011, for the offence under Section 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P10 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.4. Taking up the case for investigation, at 03.00 AM, on 07.09.2011, PW-14, proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P3] and a Rough Sketch [EX-P11], showing the place of occurrence in the presence of PW-5 and another witness. He recovered bloodstained earth and sample earth



from the place of occurrence. He also recovered a nighty [MO-1], an inskirt [MO-2] and white colour jacket [MO-3]. Then, he conducted inquest on the body of the deceased. EX-P12 is the inquest report. Then, he forwarded the dead body for postmortem.

2.5. PW-10 - Dr.P.Rajesh conducted autopsy on the body of the deceased. EX-P7 is the postmortem certificate. He noticed the following injuries:-

"1). 2X 1/2 CM oblique abrasion seen over the left side of front of neck. It is 5 CM below the lower end of left ear.

2). 2 X 1/4 CM oblique abrasion seen over the front of left side of neck. It is 1 CM in front of previous injury and 5 CM below the lower end of left ear.

3. 2 X 1/4 CM horizontal abrasion seen in front of neck. It is 7 CM below the lower border of the lower jaw.

4. 1 CM long seminular horizontal abrasion seen in front of left side of neck, 1/2 CM outer to previous injury with the convercity face downwards.

5. Multiple small abrasion of varying sizes measuring 1/4 X 1/4 CM to 1/2 X 1/4 CM seen over the right side of neck over an area of 5 X 3 CM seen 3 CM below the lower border of right side of mandible.

6. 2 X 1/4 CM seminular abrasion seen over the right side of neck. It is 7 CM below the lower border of right side of neck with convercity facing upwards.

7. 1/2 X 1/2 CM abrasion seen over the outer aspect of right below.

8. 1/2 X 1/2 CM abrasion seen over the back of right elbow".

He reserved his opinion regarding the cause of death, awaiting the report of Chemical Examiner. The Police Surgeon and the Professor of Forensic Medicine, Kanyakumari Government Medical College, Asaripallam, gave an opinion that the deceased would appear to have died of palmar strangulation.

2.6. Thereafter, PW-15 took up the case for further investigation. He went to the place of occurrence and recorded the statements of the witnesses. He had also prepared a Rough Sketch and Observation Mahazer. On 08.09.2011, PW-15 arrested the accused before Anchanayar Temple and forwarded him to the Court for judicial remand. On 05.11.2011, PW-15 altered the case into one under Sections 498(A) and 302 of the Indian Penal Code. EX-P13 is the alteration report. He also handed over the material objects to the Court. On completing the investigation, he laid charge sheet against the accused, on 05.11.2011.

2.7. Based on the above materials, the Trial Court framed charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on



the side of the prosecution, 15 witnesses were examined, 15 documents and 9 material objects were marked.

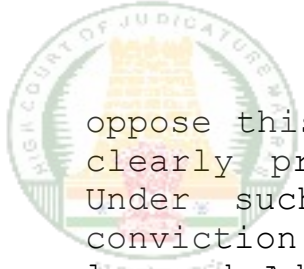
2.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he neither choose to examine any witness nor to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. The learned counsel appearing for the appellant would submit that PW-1 and PW-2 are the father and mother respectively of the deceased, who are interested witnesses and closely related to the deceased and thus, their evidences should not be relied upon. Further, he would submit that no independent witness was examined to speak about the occurrence and thus, in the absence of any corroboration from any other independent source, it is not safe to convict the accused solely based on the evidences of PW-1 and PW-2.

4. The learned counsel for the appellant would further submit that PW-1 has deposed that he put his signature in the complaint and PW-2 put signature as witness in the complaint. However, PW-12, who registered the First Information Report, has deposed that he did not obtain the signature of PW-1. It is further submitted that PW-2 has deposed that the police officials arrived at the place of occurrence and recorded the statement. However, the said earliest complaint was suppressed, which, according to the learned counsel creates doubt in the case of the prosecution. Thus, according to the learned counsel, the prosecution has failed to prove the case beyond reasonable doubts and the appellant is entitled for acquittal.

5. While concluding his arguments, in the alternative, the learned counsel for the appellant would submit that the appellant had no intention to kill his wife. The occurrence took place in a sudden quarrel between the accused and the deceased. There was no premeditation for the accused to commit the crime. It was purely sudden occurrence. Thus, according to the learned counsel for the appellant, if at all this Court believes the evidences of the prosecution, even then, the act of the accused would not fall under the purview of Section 302 of the Indian Penal Code and at the most, his act would fall within the ambit of First Exception to Section 300 of the Indian Penal Code and therefore, the accused is liable to be punished under Section 304(ii) of the Indian Penal

6. The learned Additional Public Prosecutor would, however,

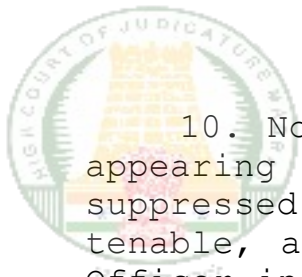


oppose this Criminal Appeal. According to him, the prosecution has clearly proved the case with cogent and convincing evidences. Under such circumstances, no infirmity can be found on the conviction and sentence recorded by the Trial Court. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeal.

7. We have given our anxious consideration to the submissions made by the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

8. In this case, there is no controversy that the deceased was residing with the accused along with their three children at the house of the accused. In order to prove the charges, the prosecution mainly relies on the evidences of PW-1 and PW-2. Since there were frequent quarrels between the accused and the deceased, the elders of the village advised the accused to stay in his mother's house. The accused was staying in his mother's house and the deceased was staying at the house of her parents. At about 10.00 PM, on 06.09.2011, PW-1 and PW-2 were inside of their house. The deceased was in the backside of the house. At that time, the accused came there and developed a quarrel with the deceased. On hearing the alarm raised by the deceased, PW-1, PW-2, PW-3 and one Mrs.Kani, W/o.Thangamuthu came to the backside of the house and pacified them. Suddenly, the accused caught hold of the neck of the deceased and strangulated her. PW-1 tried to prevent the accused from strangulating further, but, he failed. Suddenly, the deceased had fainted and fell down. On seeing the same, the accused fled away from the scene of occurrence. PW-1, PW-2 and the others found that the deceased had died. Thus, the presence PW-1 and PW-2, at the time of occurrence, is quite natural and cannot be doubted.

9. Though the learned counsel appearing for the appellant would submit that PW-1 and PW-2 are interested witnesses and therefore, their evidences has to be rejected, we are not persuaded by the said argument at all. It is not the law that the evidence of an interested witness should be rejected under all circumstances. It all depends upon the facts and circumstances of each case. In this case, since the evidences of these witnesses inspire the confidence of the Court, there cannot be any legal impediment to act upon the said evidence. Prudence requires only close scrutiny of their evidences. In this case, a close analysis of the evidences of PW-1 and PW-2 would go to show that there is nothing on record to create doubt in respect of the credibility of PW-1 and PW-2. Their evidences are duly corroborated by the medical evidence as well. Furthermore, their evidences are also corroborated by the evidence of PW-3, who is an independent witness.



10. Now, coming to the submission made by the learned counsel appearing for the appellant that the earlier complaint was suppressed, in our considered view, the said submission is not tenable, as no such suggestion was put forth to the Investigating Officer in this regard and thus, no significance could be attached to the above submission made by the learned counsel appearing for the appellant. Thus, from the above, the prosecution has clearly established that it was this accused, who strangulated the deceased, which resulted in her death.

11. Now, turning to the medical evidence, PW-10 - Dr.P.Rajesh, who conducted autopsy on the body of the deceased, has reserved his opinion, awaiting the report of Chemical Examiner and the Police Surgeon and the Professor of Forensic Medicine, Kanyakumari Government Medical College, Asaripallam, gave opinion that the deceased would appear to have died of palmar strangulation. We do not find any reason to reject the said opinion given by the doctor. Thus, from the above medical evidence also, it has been clearly established by the prosecution that it was this accused, who strangulated the deceased, which resulted in her death.

12. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the accused had committed by his act. As we have already narrated, the accused and the deceased are husband and wife. The occurrence took place in a sudden quarrel between the accused and the deceased. There was no premeditation for the accused to commit the crime. It was purely a sudden occurrence. When the accused and the deceased were alone in the backside of the house, the quarrel went on for some time. Thus, there is every possibility that the deceased would have provoked the accused. It is highly improbable that but for the said provocation, the accused would have strangulated the deceased. After all, there was no motive for the accused to commit the murder of his wife. Therefore, we are able to presume under Section 114 of the Indian Evidence Act, 1872, that there would have been provocation at the end of the quarrel emanating from the deceased and in our considered view, the said provocation was grave enough to make the accused to lose his mental balance. The accused was not armed with any weapon already. He did not make any further attempt to cause any more injury on the body of the deceased. Thus, in our considered view, though the act of the accused would squarely fall within the Third Limb of Section 300 of the Indian Penal Code, the same would fall within the First Exception to Section 300 of the Indian Penal Code and thus, the accused is liable to be punished under Section 304(ii) of the Indian Penal Code.

13. Now, turning to the quantum of punishment, the learned counsel appearing for the appellant submitted that the accused is a coolie by avocation. He was hardly aged about 30 years at the time of occurrence. The occurrence was not a pre-meditated one. After all

accused to
a fine of

the following terms:-

- The conviction and sentence imposed on the appellant/accused under Section 498(A) of the Indian Penal Code is confirmed.
- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.15,000/- [Rupees Fifteen Thousand only], in default to undergo rigorous imprisonment for four weeks. Fine amount, if any paid by the appellant/accused, shall be adjusted towards the fine amount now imposed.
- It is directed that both the sentences shall run concurrently.
- The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure.

Assistant Registrar (CO)

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Sub Assistant Registrar

To

- 1.The Mahila Fast Track Court, Nagercoil.
- 2.The Judicial Magistrate, Boothapandi.
- 3.The Chief Judicial Magistrate, Nagercoil.
- 4.The Inspector of Police,
Aralvaimozhi Police Station,
Aralvaimozhi, Nagercoil Taluk,
Kanyakumari District.
- 5.The Superintendent,
Central Prison, Palayamkottai.
- 6.The District Collector, Kanniyakumari at Nagercoil
- 7.The Director General of Police,
Nagercoil.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



9.The Record Keeper,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.ALAGUMANI, Advocate, SR.86211

CRL.A[MD].No.441 of 2016
07.11.2017

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