

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Criminal Appeal No.284 of 2017

S. Asan : Appellant/Accused  
Vs.

State: Represented by

Inspector of Police

B-8, Verity Hall Road Police Station,

Coimbatore District.

Cr.No.756 of 2011 : Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in connection with judgment dated 13.02.2015 in S.C.No.354 of 2011 on the file of Principal Sessions Judge, Coimbatore and set aside the same and acquit the appellant from the charge levelled against him.

For Appellant : Mr. C. Sivakumar

For Respondent : Mr.V. Arul  
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by N. SATHISH KUMAR, J.,]

1. Aggrieved over the conviction and sentence of life imprisonment and fine of Rs.10,000/- in default to undergo rigorous imprisonment for two months, for the offence under Section 302 I.P.C. the present appeal came to be filed by the appellant.

2. The brief facts of the prosecution in nutshell is as follows:

2. (a) The deceased Fathima Parveen is wife of the accused, daughter of P.W.1 and sister of P.Ws.2 and 4. After marriage, the accused and deceased lived together as husband and wife at Erode. The accused used to torture the deceased. Thereafter, they went to Salem and lived there as husband and wife for sometime. Even there also, the accused used to cause cruelty to the deceased. At the intervention of the family members, the deceased and accused were brought to Coimbatore and made to stay

in a place called Singanallur. There also, the accused used to beat the deceased. As a result, a complaint was also given by the deceased/wife to the police. Police intervened and pacified the husband and wife. Thereafter, the accused and deceased set up a separate residence, which is the place of occurrence, namely, Marakadai, in the house belonging to P.W.9. P.W.1 and P.W.2 were residing in the nearby place.

2.(b) On 18.6.2011 at about 9.00 p.m., when P.W.1 went to his daughter's house, where she saw the accused beating her daughter. However, P.W.1 advised them. Thereafter, she bought some bread and handed over to the deceased and came back. Next day, when P.W.1 went to the house of his daughter (deceased), the house was locked. P.W.1 was under the impression that both the husband and wife were gone to the native place of accused. Even on 20.6.2011, as they have not returned and the house was not opened and after knowing that some foul smell emanated from the house of the deceased, P.W.1 with the help of neighbours broke open the doors and found that the deceased was lying dead. Immediately, she lodged a report Ex.P.1 to P.W.19 Inspector of Police, who registered the crime under Ex.P.24 F.I.R and forwarded copies of the same to the Revenue Divisional Officer and Additional Superintendent of Police P.W.20. P.W.20, on receipt of F.I.R., commenced investigation and went to the place of occurrence on 20.06.2011 at about 00.30 hours and prepared observation mahazar Ex.P.2 and rough sketch Ex.P.25 in the presence of P.W.7 and one Aslam and also seized M.Os.2 to 4 from the place of occurrence and gave a requisition to the Revenue Divisional Officer for conducting Inquest and also sent the body for Post-Mortem. P.W.18 R.D.O. on 21.06.2011 conducted Inquest over the dead body and prepared Inquest Report Ex.P.22. Thereafter P.W.20 gave a requisition Ex.P.23 for conducting post mortem. P.W.14 Medical Officer attached to the Coimbatore Medical College Hospital, conducted autopsy over the dead body and found the following injuries:

1. Contusion 8x4x1 cm noted over mid frontal region, 3x3x1 cm noted over right side cheek and 3x2x1 cm noted over left side cheek.
2. A complete transverse ligature pressure abrasion seen encircling the middle part of neck measuring 36x1 cm.

The anatomical location of the ligature mark is as follows:-

- 7 cms below to right ear
- 8 cms below to chin
- 7 cms below to left ear

On bloodless dissection of neck: The base of the ligature mark is soft and intermittently bruised. Bluish contusion 6x2x1 cm noted over front and sides of neck muscle at the level of thyroid cartilage. Vertical fracture noted on the midline of thyroid cartilage with surrounding tissue found contused. Hyoid bone intact.

On dissection of Scalp, Skull and dural sub scalp contusion 8 x 4 cm noted over mid frontal region and 6 x 4 cm noted over left occipital region and 5 x 4 cm noted over right occipital region. Brain matter found pasty with bloodstains noted over superficial surface of both occipital lobes.

#### OTHER FINDINGS

- Peritoneal & Pleural cavities: empty.
- Larynx and Trachea: cut section -mucosa decomposed.
- Heart: Flabby, cut section decomposed.
- Stomach contains about 200 grams of partially digested food particle with smell of decomposition, mucosa decomposed.
- Lungs, Liver, Spleen, Brain and Kidneys: Identifiable, Cut Section decomposed.
- Urinary Bladder: empty. Uterus normal in size cut section empty."

He issued Post-Mortem Certificate Ex.P.10 and opined that the deceased would appear to have died of VIOLENT COMPRESSION OF NECK by Ligature strangulation and the death would have occurred 2 to 3 days prior to autopsy. He received Viscera Report Ex.P.11 from the Forensic Science Laboratory and has given his final opinion under Ex.P.12.

2.(c) P.W.10 resident of the same locality, in his evidence has stated that on 19.06.2011 at about 3.00 p.m. he had seen the accused going in a panic manner. P.W.13 took the photographs as per the direction of the Investigating Officer. P.W.16 Scientific Officer of the Forensic Science Laboratory examined the material objects and issued Biological Report Ex.P.9 and the report received from the Serology department is Ex.P.20. In the meanwhile, when P.W.8 Village Administrative Officer was in his office along with his menial, the accused appeared before him and gave Extra Judicial Confession and admitted that on

18.06.2011 at about 8.00 p.m. there was quarrel between him and the deceased and thereafter, at about 1.00 a.m. again quarrel started between them. He strangled her and immediately locked the house and left the place of occurrence. Extra Judicial Confession was reduced into writing and the same was marked as Ex.P.4. Thereafter, the accused was handed over to the police station. The Additional Superintendent of Police also examined the accused and recorded his confession statement and seized the key bunch from the accused under Form-95. Key bunch with key chain is M.O.5. He also seized Nylon Rope M.O.6 under Ex.P.7 Mahazar.

2.(d) P.W.5 is the brother of the accused, resident of Erode. According to him, one day prior to the occurrence, the accused came to his house and complained about his wife. However, he pacified him and sent back. Similarly, P.W.6 is also brother of the accused. He has also stated that the accused came to his place prior to the occurrence and complained about his wife. P.W.20 in continuation of his investigation, examined the witnesses, recorded their statements, seized the material objects and sent the same to the Court. After completion of investigation, he laid final report as against the accused under Section 302 I.P.C.

3. The accused was put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 20; marked Exs.P.1 to P.27 and M.Os.1 to 9. After the examination of prosecution witnesses, the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which he denied the complicity. No witness was examined on the side of accused. He has not marked any document on his side. The Trial Court, after analyzing the evidence on record, convicted the accused under Section 302 I.P.C. and sentenced to undergo Life Imprisonment and a fine of Rs.10,000/- in default to pay the same, directed to undergo imprisonment for two months R.I. Aggrieved over the same, the appellant has filed the present appeal.

4. The learned counsel appearing for the appellant would contend that there is no direct evidence available on record, only circumstantial evidence were put forth by the prosecution. All the circumstances have not been established. He further submitted that at any event the offence under section 302 I.P.C. would not get attracted. However, he prayed for some leniency.

5. The learned Additional Public Prosecutor submitted that it is the case of strangulation and the accused is the husband of the deceased both of them were living together as husband and wife in the house belonging to P.W.9. There is no explanation about what has happened inside the house. Burden has not been discharged by the accused. Whereas, evidence of neighbours and

others clearly shows that the accused and deceased were lived in the house as husband and wife at the relevant point of time. Extra Judicial confession also shows that it is the clear case of 302 I.P.C. and this act of the appellant will not fall under the exception of Section 300 of I.P.C. and prayed for the dismissal of the appeal.

6. The accused and deceased are husband and wife. This fact is not in dispute. Similarly, it is also not in dispute that both of them resided as husband and wife in the house belonging to P.W.9. P.W.9, in his evidence, has stated that the accused and the deceased were last residing in the upper portion of his house. P.W.1 is the mother of the deceased. P.W.2 is the sister and P.W.4 is the brother of the deceased. They are in one voice stated that the accused and the deceased lived together in the above house. Similarly P.Ws.5 and 6 sister and brother of the accused also in their evidence have spoken that there were disputes between the husband and wife. They have also deposed that even prior to the occurrence, there were misunderstanding between them. All these facts clearly established that the accused and deceased were not in cordial terms and were resided together as husband and wife in the house belonging to P.W.9. This fact has not been disputed by the accused.

7. P.W.1 in her evidence has spoken that she has also resided in the same locality. On 18.06.2011 as she went to her daughter's house, she saw the accused beating the deceased and even threatening to kill her. However, she pacified them and she bought bread and handed over to the accused and returned to her house. Thereafter, when she went to the house of deceased on the next day morning, there the house was locked from outside. Again on 20.06.2011 she visited her daughter's house and continued to find the house locked. When she smelt some foul smell, she raised alarm. Soon the neighbours gathered and the door was broke open and she found her daughter Fathima Parveen lying dead. Thereafter, immediately she gave a report Ex.P.1 which was received by P.W.19 Inspector of Police. Based on that investigation was commenced.

8. P.W.9 in his evidence clearly spoken that the accused and deceased resided in his house as husband and wife. P.W.20 Additional Superintendent of Police, after the accused was handed over to him, recorded his voluntarily given confession and pursuant to the same, he has seized bunch of keys with key chain M.O.5 besides Nylon Rope M.O.6. Ex.P.10 Post mortem certificate and the evidence of P.W.14 Medical Officer clearly shows that the deceased died due to violent compression of neck by Ligature strangulation and the death also would have occurred 2 to 3 days prior to autopsy. Visera did not contain any poison. From the evidence of the Medical Officer and documents, the prosecution has established that the death was due to

homicidal violence.

9. Admittedly, the accused and the deceased resided together in the house, where the occurrence took place as husband and wife. When any incident occurred in the dwelling house it is for the accused to explain what has transpired inside the house. The deceased was last seen in the company of the accused on 18.06.2011 by P.W.1. Thereafter, house was found locked and the accused was absconding, only on 20.06.2011 dead body was found inside the house after foul smell. Till such time accused was absconding. The above conduct of the accused creates serious doubt. When the matter stood thus, the accused appeared before P.W.8 V.A.O. and his menial and confessed the crime. The confession of the accused also reduced into writing by P.W.8 and exhibited as document Ex.P.4. No motive was suggested to P.W.8 for the false implication of the accused. The evidence of brother and sister of the accused also clearly shows that there was serious dispute between the husband and wife and they were not getting along and the accused was not happy with his wife. When the accused was seen together with the deceased on 18.06.2011, it is for the accused to establish what has happened within the four corners of the house. But no explanation was forthcoming from the accused. The only explanation by the accused was that at the relevant time he was at Erode with her sister Ms.Sathajee, P.W.6. But P.W.6 has not supported the plea of alibi, in her evidence. Therefore, the plea of alibi that when the occurrence took place he was at Erode falls to ground. Hence, the burden has not been discharged by the accused. Similarly, when the facts are especially within the knowledge of the accused, the burden of proving the facts are upon him as per Section 106 of Indian Evidence Act. This was also not done in this case. The Extra Judicial Confession coupled with the evidence of P.Ws.1, 2 and 4 clearly established the complicity of the accused. There is no circumstance brought on record to doubt the Extra Judicial Confession Ex.P.4. The conduct of the accused absconding from the house till 21.06.2011 is also one of the strong circumstances against the accused.

10. Considering the above evidence, the accused has failed to establish the plea of alibi and also failed to bring any circumstance to explain his exclusive knowledge as mandated under Section 106 of Indian Evidence Act. Considering the entire evidence of P.W.1, neighbours, Extra Judicial Confession and seizure of M.O.6 bunch of keys, we are of the view that only the accused committed such offence. There is no evidence even to suggest that the deceased allegedly committed suicide. The medical evidence clinchingly established the strangulation. Hence we do not find any infirmity or illegality in the judgment passed by the trial Court convicting the accused under Section 302 I.P.C.

11. The contention of the learned counsel for the appellant that the act of the accused would fall under any of the exceptions of Section 300 I.P.C. cannot be countenanced for the simple reason that no material is available on record to bring the act of the accused in any of the exceptions under Section 300 I.P.C. Hence, the conviction and sentence passed by the trial court is liable to be confirmed. The points are answered accordingly.

12. In fine, the criminal appeal is dismissed, confirming the conviction and sentence of the learned Principal Sessions Judge, Coimbatore, in S.C.No.354 of 2011 dated 13.02.2016.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ggs

To

- 1.The Principal Sessions Judge, Coimbatore.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Inspector of Police, Variety Hall road Police station Coimbatore District.

+1 cc to M/s.C.Sivakumar Advocate sr 10894

CrI. A.No.284 of 2017

rr(co)  
aa06/03/2018

WEB COPY