

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.351/2017

Balakrishnan ...Appellant/ Accused No.1

Vs.

State rep. by,
The Deputy Superintendent of Police,
Kunnur, Kola Kombai Police Station
Cr.No.85 of 2013. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment dated 09.02.2016 passed in SC.No.23 of 2015 on the file of Mahila Court (Fast) Udagamandalam.

For Appellant : Mr.T. Muruganandam

For Respondent : Mr.V.Arul,
Add.Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by C.T. SELVAM, J.,]

Appellant is the first accused in case tried in SC.No.23/2015 on the file of the Mahila Court (Fast Track Court), Udagamandalam, for offence u/s.302 & 201 of IPC. The Trial Court, under impugned Judgment dated 9.02.2016, found the 1st accused alone guilty of offence u/s.302 IPC and sentenced him to imprisonment for life and fine of Rs.10,000/-, acquitted Accused 1 from offence u/s 201 IPC and A2 to A4 of offence u/s

201 r/w 34 IPC, u/s 235(1) Cr.P.C. Aggrieved by the said conviction and sentence, the present appeal has been filed by the appellant/1st Accused.

2 The brief facts of the prosecution case, are as follows:-

[a] Appellant/ 1st accused used to have illicit relationships with many. Since his wife the deceased Suganya disapproved, there occurred frequent arguments between the spouses. On 06.11.2011, at about 11.30 pm, due to one such quarrel appellant/1st accused throttled Suganya by compressing her neck with his right hand, and thrashed her head against a wall, due to which she suffered bleeding injury to the back of her head and died. Appellant/ 1st accused along with the help of A.2 to A.4 who are his parents and brother, in order to escape the clutches of law, has destroyed a diary, clothes, sim card and phone belonging to the deceased Suganya by burning them and by placing the dead body of Suganya in the house of the 2nd accused sought to screen the offence.

[b] P.W.13 Mr.Dhandapani, was on duty as Inspector, when P.W.1 Mrs.Jothi, mother of the deceased Suganya, appeared before him and lodged a complaint under Ex.P.1 raising suspicion over the death of her deceased daughter, Suganya.

[c] P.W.2 Ms.Epsiba Juliet sister of deceased, deposed to altercations between her deceased sister and the 1st accused. She spoke to going over to the accused house after the funeral of her sister, to pick up her niece daughter of deceased and finding the deceased's dairy, photo and clothes burnt, in the backyard of A.1's house. The photo of the deceased is M.O.1. She immediately took photos M.O.2 to M.O.4 of the said place using her cell phone. Her cell phone No is No.9659166582. She returned home with her neice. One Gokul found the cell phone M.O.5 of her deceased sister and handed it over.

[d] P.W.3 Mr.Johi deposed that the deceased Suganya and her husband the 1st accused used to fight often and on 6.11.2013, between 10.00 - 10.30 p.m they were fighting as usual. He went to sleep and on the next day came to know about the death.

[e] P.W.4 Mr.Manikandan and P.W.5 Mrs.Devi, W/o Manikandan, deposed that they knew the accused and they were neighbours of the 1st accused. They spoke to having been out on 06.11.13, they returned on 07.11.13, went to sleep and on hearing a hue and cry they went and saw the body of the deceased and were informed she had hung herself.

[f] P.W.6-Subramani, deposed that the mother of the 1st accused had used his services to rent his brothers house for 1st accused and his wife. He came to know of Suganya committing suicide.

[g] P.W.7 Mr.Balakrishnan, Village Administrative Officer, deposed that on 11.12.2013 he pointed out house where the deceased Suganya and the 1st accused had resided, to the D.S.P, Coonoor and the police prepared Ex.P.2 Observation Mahazar. Again on 20.12.2013, on the instructions of the D.S.P, he and his assistant went to the place of occurrence where Forensic Laboratory official seized the sample blood from the floor vide Seizure Mahazar Ex.P.3. On 19.01.2014 the D.S.P arrested the 1st accused at Kattery Junction at about 9.30 am when 1st accused volunteered Ex.P.4 the confession statement. As stated in Ex.P.4, the 1st accused took police to his house, produced M.O.5 cell phone without sim card, M.O.6 Cellphone battery, seized under Ex.P.5 Seizure Mahazar. From the backyard of the A.1's house, the police also seized M.O.7 Ashes under Ex.P.6 Seizure Mahazar. Vehicle M.O.8 TATA 407, identified by the 1st accused was also seized by the D.S.P under Ex.P.7 Seizure Mahazar. P.W.7 Balakrishnan, Village Administrative Officer, and his assistant have attested the mahazars.

[h] P.W.8-Sivaraj deposed that the 1st accused was working as a driver of his TATA 407 vehicle which is M.O.8. He asked the 1st accused not to come to work as a criminal case had been registered against him. After two months, police seized his vehicle from Edakkadu.

[i] P.W.9-Selvaraj, PA to the Collector, Udthagamandalam, deposed that on 10.12.2013 when he was on duty as PA to Revenue Divisional Officer he received the [Ex.P.8] F.I.R registered u/s 174 Cr.P.C in Cr.No.101/2013 of Ooty Rural Police Station and thereafter [Ex.P.9] FIR registered on the basis of Ex.P.8 by the Kolakombai police Station in Cr.No.85/2013. Since the body had been buried, he issued necessary orders to exhume the body in the presence of RDO Coonoor and Medical officers. The body of deceased was exhumed on 17.12.2013 and on the same day, from 10.30 am to 1.30 pm, he conducted inquest over the body in the presence of villagers and panchayatars and prepared the Inquest Report [Ex.P.10]. Then he enquired the relatives of the deceased and found that there was no dowry harassment and submitted his report [Ex.P.11] along with the statements of the witnesses.

[j] P.W.10 Mr.Kumaresh, retired Collector, has issued the request letter in Ex.P.12 dated 13.12.2013 to the Coimbatore

Government Hospital Medical Professor to be at the place where the body was buried and to conduct the post-mortem, on the basis of oral orders issued by the RDO Coonoor on 7.12.2013. On 17.12.2013, the body was excavated, identified by the mother and sister of the deceased and post-mortem was conducted.

[k] P.W.11-Venkateshwaran, has received the Ex.P.13 letter issued by the Coonoor Magistrate and Ex.P.14 letter issued by the Police Inspector along with articles for chemical examination, conducted examination and submitted his report in Ex.P.15.

[l] P.W.12-Dr.Jeyasingh, Vice President, Coimbatore Government College Hospital, conducted autopsy on the dead body of the deceased as per the requisition [Ex.P.12], on 17.12.2013 at 1.40 p.m. He noted over the following ante mortem injuries on the dead body:

"- Laceration 2 x 2 c.m. noted over occipital region
On dissection of scalp, skull and Dura : Sub scalp contain 15 x 8 c.m. noted over left parieto temporo occipital region. Brain found pasty.
On dissection of Neck: Contusion decomposed in Nature 4 x 2 cm noted over left side neck muscle at the level of thyroid cartilage and another contusion 6 x 4 c.m. noted on the right neck muscle at the level of upper border of thyroid cartilage. Thyroid cartilage found fractured in its middle with surrounding tissue contusion. Hyoid bone: intact.
Other Findings:
-Peritoneal and Pleural cavities: Empty-Heart : Flabby
Cut Section decomposed.
-stomach contains about 50 grams of early digested rice particle with smell of decomposed, mucosa decomposed - small intestine contains about 10 ml of decomposed fluid with smell of decomposed, mucosa decomposed. - Liver, Spleen, Kidneys and Lungs: identified. Cut Section: decomposed Urinary bladder-empty, Uterus: Normal in size, cut section-empty
-Mud from above, below and sides of the dead body
-Viscera preserved for chemical analysis."

He opined that the deceased would appear to have died of VIOLENT COMPRESSION OF THE NECK BY THROTTLING.

[m] P.W.13-Dhandapani, was Station House Officer attached to The Nilgiris District, Udhagamandalam Police Station, before whom P.W.1 appeared on 09.12.2013 at 10.00 p.m and lodged the complaint, P.W.13 received the same and registered

Cr.No.101/2013 u/s. 174 (3)(4) Cr.P.C. FIR is marked as Ex.P.8. He submitted the copy of the FIR to the DSP, Udhagamandalam, who visited the Scene of crime on 10.12.2013 and prepared Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.19]. Since the scene of crime fell under the jurisdiction of Kolakombai Police Station, the case was transferred to such Police Station as per Memo dated 10.12.2013. The same was received by P.W.14 Mr. Thangavel, who registered case in Kolakombai police station Cr.No.85/2013 u/s 174(3)(4) Cr.P.C. The FIR is Ex.P.9. He submitted the case file to the D.S.P (P.W.15) for further investigation.

[n] P.W.15 - Ramachandran, Deputy Superintendent of Police (retired), received the Ex.P.9 F.I.R sent by P.W.14; took up further investigation; visited the scene of crime at 9.00 am, prepared (Ex.P.18) Observation Mahazer and (Ex.P.19) Rough Sketch in the presence of P.W.7 and Village Assistant Sundaran; recorded the statement of the complainant; since the death of the deceased had occurred within two years of her marriage and her body had been buried, P.W.15 sent letter of requisition (Copy of letter - Ex.P.20) to exhume the body and to conduct postmortem and the same was conducted by P.W.12.; On 20.12.2013 Scientific expert from Coimbatore reached the place of occurrence as per his intimation and blood stains found in the wooden cot in the bed room and from the place in between the door and wooden shelf of A.1's house were recovered vide Seizure Mahazer in the presence of P.W.7 and Village Assistant Sundaram and forwarded to Court under Form 91 (Ex.P.21). He also seized burnt plastic pieces vide Seizure Mahazer in the presence of the above said witnesses and forwarded the same to Court under Form 91 (Ex.P.22); On 10.01.2015 he received the post-mortem certificate and as per the opinion of the doctor informed therein, he altered the FIR to reflect offence u/s. 302 I.P.C and forwarded the alteration report (Ex.P.23) to Court. He recorded the statements of witnesses, doctor who conducted autopsy, arrested the 1st accused and seized M.O.5 and M.O.6 upon their being produced by him from his house under seizure Mahazer and forwarded the same to Court under Form 91 (Ex.P.24). He also seized the vehicle bearing Reg.No.O.N.43 D 8624 which was used by for taking the body of the deceased from A.1's house to A.2's house under seizure Mahazer and forwarded the same to Court under Form 91 (Ex.P.25). He arrested the accused A2 to A.4 and sent all the accused for judicial custody. He received Ex.P.26 F.I.R concerned in Cr.No.61/2001 u/s 309 IPC filed against A1 and one Pachaammal, as also Ex.P.27 and 28 reflecting their admission and being sentenced to fine and forwarded the same to Court. On 06.06.2015, on promotion, he handed over the case papers to P.W.16- D.S.P.

[o] P.W.16 - Velan, Deputy Superintendent of Police - successor of P.W.15, took up further investigation; recorded the statements of the witnesses, received Serologist Report [Ex.P.30] and on completion of investigation, filed the Final Report against the appellant/ 1st accused and A.2 to A.4 u/s.302 & 201 IPC before the learned Judicial Magistrate, Coonoor, who took it on file in PRC.No.7/2015 and issued summons to the accused and on their appearance, furnished the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively triable by the Sessions Court, committed the same to the Court of the Principal Sessions Judge, Udhagamandalam, who took it on file in SC.No.23/2015 and transferred the case to the Mahila Court (Fast Track Court), Udhagamandalam and on appearance of the appellant /1st accused and A2 to A.4 had framed the charges u/s.302, 201 and 201 r/w 34 IPC and questioned them. The appellant / 1st accused and A.2 to A.4 pleaded not guilty to the charges framed against them.

[p] The prosecution examined P.Ws.1 to 16 and marked Exs.P.1 to 30 besides marking M.Os.1 to 8.

[q] The appellant/1st accused and A.2 to A.4 were questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and they denied it as false. No witness was examined and Ex.D.1 and Ex.D.2 were alone marked on the side of accused.

[r] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/1st accused as above stated and hence, this appeal.

3 M/s.T. Muruganantham, learned counsel for the appellant/ 1st accused submitted that there was a delay of one month in lodging the complaint which was not properly explained and hence FIR was rendered highly suspicious. He submitted that towards avenging appellant/1st accused non payment of maintenance for the child as decided by a Panchayat, the case has been falsely foisted against the appellant/1st accused. The Revenue Divisional Officer in his enquiry did not find any harassment by the appellant and his family members. P.W.7-VAO, stated that the cell phones and battery were recovered from behind the house of A1 but P.W.2 stated that the same were given to her by a boy. One further version is that they were recovered from the house of appellant and upon his confession after his arrest. Learned counsel further submitted that as the position of there being frequent quarrels between deceased and appellant was admitted, the possibility of occurrence having been occasioned owing to

sudden provocation could not be ruled out and hence offence u/s.302 IPC would not stand attracted. Learned counsel contended that a finding of conviction had been wrongly arrived at by the Trial Court.

4. Heard Mr.V.Arul, learned Additional Public Prosecutor for the State on the above submissions and perused the material on record.

5 The law was set in motion on 07.11.2013 when Ex.P.1 complaint was lodged by P.W.1 mother of the deceased. According to P.W.1, 1st accused used to have illicit relationships with many girls and when the same was questioned by the deceased wife, there were frequent quarrels between the couple. On 06.11.2011, at about 11.30 p.m., due to one such quarrel, 1st accused/husband throttled deceased by compressing her neck with his right hand, and also thrashed her head against the wall near the wooden shelf, due to which she suffered bleeding injury to the back of her head and died. P.W.2 sister of the deceased spoke in affirmation of P.W.1. P.W.3 to P.W.5 neighbours of the 1st accused have also deposed to frequent quarrels between the spouses and that on 6.11.2013, they heard a hue and cry from the appellant's house. P.W.3 to P.W.5 are independent witnesses, they have no motive whatsoever to falsely implicate the accused.

6 The evidence of P.W.12 Doctor and post mortem report, Ex.P.16, clearly show that the deceased had died due to violent compression of the neck by throttling. The Material Objects M.O.2 to 5 seized and the blood stains found in the house of the accused and the evidence of P.W.1 and P.W.2 prove that the death was not due to suicide.

7 Prosecution, through evidence of P.W.1 to P.W.5, immediate relatives of the deceased as also neighbours of the accused and deceased has established that there were frequent quarrels between the appellant/accused and his wife/deceased. Prosecution has further established through the evidence of Doctor-P.W.12 , his postmortem report in Ex.P.16, as also the recovery of blood stains within the house of the accused and deceased by the Forensic expert in Ex.P.15. Prosecution has thus proved that the deceased has been done to death within the residential house shared by the appellant/accused and the deceased. Should the accused plead that he was not responsible for the death or that he was provoked into the act resulting in death, it is for him to establish the facts in support of such plea. Appellant/accused having failed to do so, the finding of conviction for offence u/s.302 IPC is well founded .

8 In the result, the criminal appeal shall stand dismissed. The conviction and sentence passed by the learned Sessions Judge, Mahila Court (Fast), Udagamandalam passed in S.C.No.23 of 2015 dated 09.02.2016, are confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge,
Mahila Court (Fast),
Udagamandalam.

2.The Principal Sessions Judge,
Nilgiris @ Udagamandalam.

3.The Director General of Police,
Chennai, Tamil Nadu.

4.The District Collector,
Udagamandalam.

5.The Deputy Superintendent of Police
Kunnur, Kola Kombai Police Station
Nilgiri District

6.The Public Prosecutor
High Court, Madras.

+lcc to Mr.T.Muruganantham, Advocate sr.9439

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