

BAIL SLIP

The Appellant/Accused namely Manigandan @ Manian, S/o.Kittusami aged 28 years, was directed to be released on bail as per the order of this court dated 09.08.2017 in CrI.MP.No.8873 of 2017 in CrI.A.No.412 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2018

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THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CrI.A.No.412 of 2017

Manigandan @ Maniyan ...Appellant/Accused

Vs.

The Inspector of Police,
Vadakipalayam Police Station. ...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed by the learned Sessions Judge, Mahila Court, Coimbatore, in S.C.No.64 of 2014 and 16.04.2015 and allow the above Appeal.

For Appellant : Mr.T.Saravanan

For Respondents : Mr.V.Arul
Additional Public Prosecutor

JUDGMENT

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

Appellant is the sole accused in the case tried in SC.No.13/2014 on the file of the Sessions Judge, Mahila Court, Coimbatore for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 16.04.2015, found him guilty of offence u/s.302 IPC and sentenced him imprisonment for life and a fine of Rs.10,000/-, in default, 6 months simple imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

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

The accused is the husband of the deceased. They are residing in a place called Kuzhichetty Palayam along with P.W.1., mother-in-law of the accused. The accused and the deceased used to quarrel with each other. Similarly, on 19.09.2013 at about 4.00 p.m., a quarrel started between the husband and wife. During the quarrel by saying that the deceased is not having good complexion and by holding their child on his right hand, the accused throttled the neck of the deceased. P.W.1 and others tried to prevent the accused. Before that, the deceased fell down and the accused left the child there and ran away from the place. Immediately, P.W.1 went to the police station and gave Ex.P.1 report.

3. P.W.7, Sub Inspector of Police, on receipt of Ex.P.1 report at 5.30 p.m. from P.W.1, registered a crime in Crime No.188 of 2017 for the offence under section 302 of IPC under Ex.P.7 and forwarded the First Information Report to the Court and a copy to the superior officers.

4. P.W.8, Inspector of Police, took up the case for investigation on 19.09.2013 and went to the place of occurrence at 19.00 hours and prepared Observation Mahazar Ex.P.2 in the presence of P.W.2 and also drawn rough sketch Ex.P.8. Thereafter, he conducted inquest over the dead body of the deceased and prepared Inquest Report Ex.P.9. Thereafter, he sent the body for postmortem. Besides, he also examined the witnesses.

5. P.W.4, Medical Officer attached to the Government Hospital, Coimbatore, conducted autopsy over the dead body of the deceased and found the following injuries :

1. Transversely oblique reddish pressure abrasion 3.5x1cm noted over left side neck at the level of upper part of thyroid cartilage the medial end is starting from 1cm left to mid line.

2. Reddish pressure abrasion 1x0.5cm noted over right neck, 3cm below and medial to the angle of the mandible.

3. A faint curved reddish pressure abrasion measuring about 5x1 to 0.5 cm noted on front of neck at the level of upper border of thyroid cartilage. The concavity of the abrasion facing upwards.

On blood less dissection of the neck: - The base of the pressure abrasion mark is soft and

contused. Reddish contusion 3x1cm noted over subcutaneous tissues of left side neck it corresponding to the wound no.1. Another reddish contusion 0.5x0.5x0.5cm noted on right side neck at the level of C-4 vertebra. Hyoid bone, thyroid cartilage and cricoids cartilage are intact."

and issued Ex.P.3 Postmortem Certificate and also gave final opinion that the deceased appeared to have died of pressing of the neck (throttling).

6. P.W.8 in continuation of the investigation, on 21.09.2013, arrested the accused and recorded his confession and sent him to Judicial custody. After postmortem, he seized the dresses worn by the deceased and on completion of investigation, he laid the final report against the accused.

7. The prosecution examined P.Ws.1 to 8 and marked Exs.P.1 to 9 and M.O.1 to M.O.3 were marked.

8. The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellant/accused.

9. The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced him imprisonment for life and a fine of Rs.10,000/-, in default, 6 months simple imprisonment as against which, the present appeal came to be filed.

10. The learned counsel appearing for the appellant submitted that except P.W.1, mother of the deceased, other witnesses have not supported the case of the prosecution. The evidence of P.W.1 with regard to throttling is not believable and the possibility of the deceased committed suicide cannot be ruled out. At any event, it is the contention of the learned counsel that the occurrence had happened in a quarrel between the husband and wife and there is no premeditation and he has not taken any advantage and left the place immediately. Therefore, the offence under section 302 of IPC will not be made out. Hence, prayed for showing some leniency in this matter.

11. Heard Mr.V.Arul, learned Public Prosecutor and perused the entire materials available on record.

12. It is not in dispute that the husband and wife, namely the accused and the deceased were residing in the same house and

P.W.1, mother of the deceased was also residing with them. It is the evidence of P.W.1 that husband and wife used to quarrel with each other frequently. Similarly on 19.09.2013, while P.W.1 was in her sister's house, in a heated quarrel, the accused by holding his child in his right hand, caught hold of the neck of the deceased and throttled and P.W.1 and others made an attempt to separate them and thereafter, the accused left the place. However, the deceased fell down and died. P.W.1 immediately lodged the report Ex.P.1 at 17.30 hours. The First Information Report also reached the Court immediately on the same day at 7.30 p.m. In view of immediate registration of the First Information Report and no delay in sending the First Information Report to the Court, we have no reason to disbelieve the evidence of P.W.1. Her evidence appears to be natural one. The Medical Officer, in his evidence has clearly stated that the deceased died due to pressing of neck (throttling) on the basis of the injuries found on the neck of the deceased and opined that the deceased died of compression of the neck (throttling) and there is no indication of any suicide. From the evidence of P.W.4, we have no difficulty in holding that the death of the deceased is nothing but homicidal violence.

13. The evidence of P.W.1 clearly show that there used to be quarrel between the husband and wife frequently. On the date of occurrence also, a quarrel started between the accused and the deceased. In the quarrel, the accused suddenly caught hold of the deceased in the left hand, though he was holding their minor child on the right hand, and throttled her neck, as a result of which the deceased died. Though there is no evidence to show which was the root cause for the quarrel at the relevant point of time, the fact remains that the quarrel started between the husband and wife. It is the version of the prosecution that as the deceased did not lift the child, which was crying, quarrel started between them, and during the course of the quarrel, the accused throttled her neck. Though there is no evidence available on record to prove their version, from the evidence of P.W.1, it can be seen that the entire occurrence was a result of a sudden quarrel between the husband and wife.

14. From the materials placed before us, we are not able to gather anything about premeditation on the part of the accused. Except pushing the deceased on the wall, and pressing her neck, the accused immediately left the place and had not taken any advantage. Unfortunately the deceased succumbed to the injuries. The nature of the injuries noted by the medical officer and the photographs exhibited by the prosecution clearly show that the accused has in fact pressed her neck which caused the instant death of the deceased without any premeditation. Therefore, we are of the view that the act of the accused will certainly fall under exception iv of the Section 300 of IPC and not under section 300 IPC. Therefore, when the accused

committed such an offence, with knowledge the offence and the said act of the accused can be brought under section 304(ii) of IPC. Taking into consideration the contention of the learned counsel appearing for the appellant that the accused is having a minor child and that he has to take care of the minor child, we are of the view that awarding sentence of 7 years Rigorous Imprisonment, would meet the ends of justice.

15. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C. is set aside and instead, he is convicted for offence under Section 304(ii) I.P.C. and sentenced to undergo Rigorous Imprisonment for seven (7) years. In all other aspects, the judgment of the trial Court remain unaltered. The period of sentence already undergone by appellant/accused shall be set off under Section 428 Cr.P.C. The Trial Court is directed to issue warrant to commit the accused to prison to suffer the remaining portion of sentence.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Mahila Court, Coimbatore.
2. The Superintendent, Central Prison,
Coimbatore.
3. The Inspector of Police,
Vadakipalayam Police Station.
4. The Public Prosecutor, High Court, Madras.
- 5.The Judicial Magistrate No.I Pollachi
- 6.The Chief Judicial Magistrate Court
Coimbatore
7. The Superintendent of Police
Coimbatore

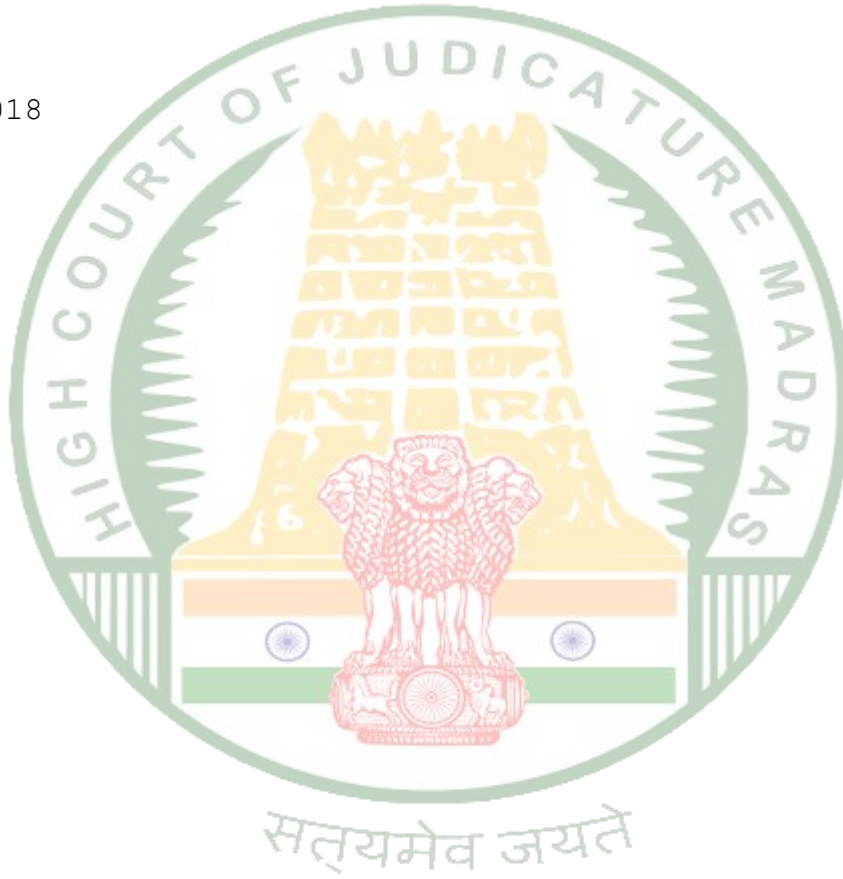
copy to

The Section Officer
Criminal Section
High Court, Madras

+1 cc to Mr.T.Saravanan Advocate sr 14740

Crl.A.No.412 of 2017

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