

BAIL SLIP

CRL A. NO.261 OF 2006

The Appellant/Accused namely p.rajendiran, was directed to be released on bail vide order dated 21.08.2006 in Cr1 Mp.1972 of 2006 and vide order dated 16.02.2015 made in CRL A.261 of 2006 and in MP No.1 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2018

Pronounced on : 18.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.261 of 2006

Rajendiran ... Appellant/Accused

Vs.

State of Tamil Nadu,
Rep. by Inspector of Police,
Srimushnam Police Station,
Cuddalore Dt.

(Ref: Crime No.132/2005)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment and order passed by the learned Additional District Sessions Judge (Fast Track Court - III), Virudhachalam, convicting the appellant in S.C.No.290 of 2005 on 21.02.2006, for an offence under Section 304(I) IPC and sentencing the appellant to suffer rigorous imprisonment for a period of ten years and to deposit a sum of Rs.1,00,000/- in the name of each of his two minor children as compensation.

For Appellant : Mr.G.Prabhakaran
for M/s.G.Anabaya Chozhan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Criminal Side)

JUDGMENT

The appellant herein suffered by the Judgment of conviction pronounced by the learned Additional District Judge (FTC No.III), Virudhachalam, Cuddalore District on 21.02.2006 in S.C.No.290 of 2005 holding the Appellant guilty of offence under Section 304(1) IPC and convicting him to undergo 10 years Rigorous Imprisonment has preferred the present appeal.

2.As per the final report laid by the Inspector of Police, Srimushnam Police Station, Cuddalore District in Crime No.132 of 2005, the Appellant herein and another accused by name Selva Seemathipathy were charged for an offence under Section 304 read with Section 34 of I.P.C. besides, the appellant was also charged for an offence under Section 498(A) of I.P.C. By the judgment referred above, the trial Court acquitted both the appellant and A-2 in respect of charge under Section 302 read with Section 34 of I.P.C. However, as stated earlier, the appellant was convicted for an offence under Section 304(1) of I.P.C. Though the appellant was also found guilty of an offence under Section 498(A) of I.P.C., no separate conviction was passed for the said offence for the reason that the allegations in respect of charge under Section 302 of I.P.C. is one and the same in respect of charge under Section 498 also.

3.As per the final report, the appellant is ranked as A1 and A2 is his friend. The deceased victim of the case is the wife of the appellant. The appellant married the deceased 9 years prior to occurrence and out of the wedlock they were also blessed with 2 children. Though the marital life between the spouses is cordial for some years, later severe mis-understanding and domestic quarrels arose between the appellant and one of his colleague. This mis-understanding stooped to the level of registration of the criminal case against the appellant at the instance of the deceased in Crime No.2 of 2004 for the offence under Section 498(A) of I.P.C. Subsequently, the deceased left the marital home started staying at her parental home and later during the first week of May 2005, the appellant visited to the parental home of the deceased and pacified the deceased and assured her to lead cordial life and brought her back to the marital home.

4.It has been further alleged by the prosecution that on 17.05.2005 the appellant along with A2 started quarreling with the deceased as she refused to withdraw the complaint pending in Crime No.2 of 2004. It has been further claimed the deceased informed the trouble some situation to her relatives over the phone. Receiving such information, the PW1 to PW4 who were

happens to be her brother, sister, elder sister's husband and brothers friend respectively rushed to the house of the appellant by car from their native place and reached the house at about 10.00 a.m. and they have found that the doors of the house was bolted inside and they have heard the alarm of the deceased and witnessed the happenings through the window of the house and found that the appellant and the 2nd accused assaulting the deceased by hands and iron pipe and the neck of the deceased was constricted and compressed with the use of iron pipe and hands by the appellant and the 2nd accused and thereupon they have shouted and somehow managed to open the door and gained entry to the house. On seeing the PW1 to PW4, the appellant and the 2nd accused ran away from the house. Later the PW2, sister of the deceased enquired the deceased as to what had happened and the deceased said to have stated to them that she was assaulted by the appellant and the A2 on account of her refusal to withdraw the complaint pending in Crime No.2 of 2004 and later the deceased demanded for a cup of water from them before bringing the water the deceased has breached her last and met her instant death.

5. Thereupon, the PW1 has lodged a complaint to the Inspector of Police, Srimushnam Police Station by 2.00 p.m. on the same day and receiving the same a case was registered in Crime No.132 of 2005 for an offence under Section 302 of IPC and PW20, I.O. has taken up the investigation and after completing the investigation, he has laid positive final report as stated above, for an offence under Section 302 read with Section 34 of IPC and 498(A) IPC as against the appellant and the 2nd accused before the learned Judicial Magistrate No.II, Virudhachalam, who in turn committed the case to the Court of learned Principal District and Sessions Judge, Cuddalore vide PRC.No.10 of 2005. The learned Principal District and Sessions Judge took the case on file in S.C.No.290 of 2005 and on consideration of the case records, was pleased to frame charges for the offences punishable under Section 302 read with Section 34 and 498(A) of IPC and later made over the case for trial to the learned Additional District Judge, Fast Track Court No.III, Virudhachalam and accordingly the appellant and the 2nd accused were tried.

6. In the course of the trial, the prosecution with an object of proving the charges has examined 20 witnesses as PW1 to PW20 and during the examination of prosecution witnesses, 13 records were came to be marked as Exs.P1 to P14 and articles were marked to the occurrence and PW5 is the daughter of the appellant and the deceased, the PW6 to PW9 and PW14 are the

witnesses who have deposed about the domestic quarrels and misunderstanding prevailed between the appellant and the deceased, the PW10 and PW11 are the attesting witnesses who have attested mahazar and confession, PW12 and PW13 are the witnesses who have heard about the occurrence. PW14 is one of the resident of the SOC house and happened to be the cousin brother of the appellant. PW16 and PW17 are the Police Constables and Sub-Inspector of Police, who have assisted the investigation. PW18 is the Sub-Inspector of Police attached to All Women Police Station who registered the earlier case in Crime No.2 of 2004. PW19 is the P.M. Doctor who was conducted the Autopsy over the dead body of the deceased. The PW20 is the Investigation Officer, who has carried out the entire investigation right from the registration of the case till laying the final report.

7. On conclusion of trial, the trial Court predominately accepting and believing the evidence of the PW1 to PW4 and by holding that their evidence stands corroborated by the evidence of the PW5 and PW19 P.M. Doctor, arrived at the conclusion that the deceased has met homicidal death at the hands of the appellant and further concluded that the evidence of the PW6 to PW9, PW14 and PW18 would prove the domestic quarrels between the couples which gave rise to the motive to commit the murder of the deceased. However, the trial Judge on a premise that the occurrence is not a premeditated one and ensued in the course of domestic quarrels has concluded that the occurrence took place on sudden provocation, falling under the exceptional clause of Section 300 and thereby held the appellant guilty under Section 304(1) of IPC. The trial Judge vide discussion found in later part of the Para-12 of the judgment held that the evidence of the PW3 and PW4 stands contradictory the evidence of the PW1 and PW2 in respect of role assigned to the 2nd accused and arrived at a conclusion that the evidence of the PW1 and PW2 is not believable against the 2nd accused. The learned trial Judge also dis-believing the alleged recovery of the iron pipe at the instance of the 2nd accused recorded acquittal of the 2nd accused from the case.

8. The learned counsel for the appellant towards canvassing the appeal and assailing the judgment of conviction would submit and put forth the following submissions:-

(1) The approach of the trial Court of holding the appellant guilty in the light of the evidence of PW1 to PW4 after dis-believing their evidence in respect of second accused is not at all justified.

(2)The trial Court miserably failed to consider the evidence of PW5 i.e. the daughter of the appellant and the deceased in proper parlance and perspective and not justified in holding that the evidence of the PW5 would corroborated the evidence of PW1 to PW4.

(3)The trial Court failed to take note of crucial aspect that the evidence of the PW1 to PW4 as to the manner of the occurrence is completely falsified by the medical evidence deposed by the PW19 P.M. Doctor and the evidence of the PW19 was not properly considered by the trial Court.

(4)The evidence of the PW1 to PW4 is completely unbelievable in the light of the further cross examination of the PW19 P.M. Doctor.

(5)The Ex.P14 which came to be marked as additional evidence would dis-proved the entire prosecution case.

(6)There was an undue delay in lodging and dispatching the F.I.R. and such delay was not explained and the same is the fatal to the prosecution case. By placing the above submissions, the learned counsel for the appellant would urge this Court to interfere with the judgment of the trial Court and prayed to set aside the same.

9.Per contra, the learned Government Advocate (Criminal Side) would submit that the judgment of the trial Court is well reasoned and there is no rhyme or reason prevails to discard the consistent evidence deposed by the prosecution witness and the trial Court properly appreciated the evidence placed on record and prayed to maintain the conviction.

10.I have carefully gone through the entire evidence consisting the deposition of the PW1 to PW20 and the Exs.P1 to P14 before adverting the acceptably of the findings it is pertinent to note here that this Court vide order dated 22.09.2015 Suo-moto directed the re-call of the PW19 P.M. Doctor by the trial Court and directed the prosecution to mark Ex.P14 namely, the Hyoid Bone examination report and also granted liberty to the defence to conduct the further cross examination. Accordingly, the PW19 P.M. Doctor Thamizharasi was re-called by the trial Court on 05.11.2015 and examined by the prosecution and the Hyoid Bone examination report dated 03.06.2005 was marked as Ex.P14 and subjected to further cross examination by the defence.

11.The learned counsel for the appellant during the submission has submitted that this Court on perusal of the evidence of the PW19 P.M. Doctor has expressed it's dissatisfaction over the medical testimony of the case and that is why this Court vide Suo-moto order directed the re-call of PW-19 P.M. Doctor for further examination in the nature of the additional evidence. The learned Government Advocate (Criminal Side) was unable to place any different or contrary in this regard.

12.As, it is the main thrust of the defence case that the medical evidence of the case was not properly considered by the trial Court, I have keenly perused the evidence of the PW-19 P.M. Doctor recorded during the original and further examination.

13.The charge framed by the trial Court specifically runs as if both the accused have constricted and strangulated the neck of the deceased was use of hands iron pipe. The Ex.P1 complaint and Ex.P13 the inquest report also confirms that the deceased was done to death by constriction and strangulation of her neck with the use of iron pipe and hands. The PW1 to PW4 have also manfred the same standing during trial that, the deceased was subjected to throttling of her by the appellant. Therefore, it is the definite case of the prosecution that the deceased was done to death by throttling and strangulated her neck by the hands and iron pipe. But, the PW19 P.M. Doctor vide her final opinion opined that the deceased has met her death due to smothering. The P.M. Doctor consistently conceded both in the original and further cross examination that the causing death by "Smothering" and causing death by "Throttling" are two different kinds of violence and further explained that when the breathing organs viz. mouoth and nostrils were forcibly covered towards resulting stoppage of breathing process, such kind of violence would be called as smothering and she further states that throttling or strangulation would mean constricted of neck to stop breathing process. The distinction between the violence of smothering and throttling was well explained by the Dr.Modi in his text of Modi's Medical Jurisprudence and his views in this regard were also judicially approved by the Hon'ble Apex Court in i.e. Mulakh and others v. Satish Kumar and others reported in (1992) 3 SCC Pg.43 which run as follows:

Para-7 "At p.286 it was also stated of the distinction between suffocation and strangulation that conditions associated with mechanical asphyxia include suffocation where the interference with the process of breathing is at the level of the nose or mouth;

strangulation where there is compression of neck, either by (a) the human hand (manual strangulation or throttling); (b) a ligature. In paragraph 6 he stated that in each of these categories the obstructive process at the various level will result in the development of the symptoms and the signs associated with asphyxia previously described"

14.The P.M. Doctor further clarified that is no signs of any violence found over the neck part of the deceased such as nail, cross examination that she has conducted dissection of the neck and sourinly muscles and she did not found any confusion or other kind of damage or injury in the neck and it's muscles. She has also admitted that absolutely that there was no signs present to claim constricted or throttling of the neck and also confirmed that the even soft tissues, cartilages, bones and muscles of the neck part of the deceased remained unaffected without any damage or injury. Thus, it is clear as per the medical evidence of the case, the deceased was not subjected to any kind of strangulation or throttling to result her death. In such circumstances, the evidence of PW1 to PW4 that the deceased was subjected to throttling with the use of hands and iron pipe cannot be believed at any rate. Further, the conclusion of the P.M. Doctor that the deceased would died out of smothering would not assault or advance prosecution of the case in proving the guilt of the appellant for the reason that it is not the case of the prosecution as per the evidence of the PW1 to PW4 and the core sample records of the prosecution case including the F.I.R., that at the time of occurrence the accused has forcibly covered the mouth and nose of the deceased as resulting the stoppage of her breathing process. In nut shell, the conclusion of the P.M. Doctor that the deceased has died due to smothering was not supported by the prosecution witnesses and version of the occurne witnesses that the deceased was strangulated by means of hands and iron pipe was not supported by the P.M. Doctor. Thus, the major contradiction and a material inconsistency prevails between the material and oculart testimony even in respect of the core aspect of the case touching the manner in which the deceased was done to death.

15.Though it is not the trite of law that whenever the medical evidence varies to version deposed in evidence of the occurrence witnesses, the medical evidence alone should be preferred, it is well settled that when medical evidence completely rules out version of the occurrence witnesses as to the very manner and mode of the occurrence, the medical evidence has to be preferred. It appears that the trial Court has not

focused its attention in this regard and upon erroneous consideration arrived at a finding that the strangulation includes smothering. The part of the evidence of the P.M. Doctor that she never found any signs of strangulation over the neck of the deceased cannot be simply viewed as mere opinion evidence but, it is a substantial evidence in respect of moral fact. In such circumstances, I have no hesitation to accept the evidence of the P.M. Doctor and to hold that the occurrence could not have happened in the manner as deposed by the PW1 to PW4.

16. The yet another crucial aspect deposed by the P.M. Doctor also would expose apparent falsity of the evidence to the PW1 to PW4. In further examination dated 05.11.2015 recorded in the nature of the further evidence as per the orders of this Court, the PW19 P.M. Doctor categorically admitted that the asphyxial death happens due to the complete stoppage of breathing process and in such eventuality there would be no inhailiation and exhailiation process and human being would be able to speak only when the inhailiation and exhailiation process is on and continuing and the P.M. Doctor further confirmed that if a person was able to talk even after causing smothering, it was meant that there is no smothering to result asphyxial death was caused. Whiles, the PW1 to PW4 in their evidence deposed that after strangulation the neck of the deceased, the appellant ran away from the SOC on seeing them and later the PW2 enquired the deceased said to have explained back ground of the quarrel and also sought for cup of water. This is humanly impossible. If such version of the PW1 to PW4 is accepted, then the irresistible conclusion would be, that the act of the appellant does not result asphyxial death of the deceased by smothering. Otherwise, the evidence of the PW1 to PW4 is absolutely false and cannot be acted upon. In either case, the benefit of doubt should go to the appellant. But, the trial Court failed to properly examine these aspects and hurriedly arrived at the guilty of the appellant.

17. The Hon'ble Court also while dealing similar situation in CrI.R.C. (MD) No. 508 of 2008 was pleased to sever as follows:-

Para-3 and 4 "The learned counsel appearing for the petitioners would submit that the death in this case was caused only by mechanical violence made by these accused and the same has been clearly proved.

I find it difficult to accept the said argument for more than one reasons. First of all,

according to the case of the prosecution, the accused No.2 had pushed the pillow against the face of the deceased until he breathed his last. If that is true, when PW1 and PW2 had come to the house of deceased, that too after a long time, the deceased would not have been alive. It is in evidence that after their arrival, on their request, PW5 had also rushed to the house of the deceased and found that the deceased was in a serious condition. PW5, therefore, advised them to take him to the hospital. Thus, it is crystal clear that the death was not accused by smothering. It is common knowledge that if once windpipe is opened after smothering for some time, the patient would survive, if he had not already breathed his last. It is in evidence that the deceased was alive until the arrival of PW1 and PW2. Thus, the death would not have been due to smothering."

18.I find much force and substance in the submission if the learned counsel for the appellant that, the Ex.P14 namely the Hyoid Bone examination report which came to be marked as additional evidence as per the orders of this Court also casts serious doubts as to the veracity of the prosecution case and its evidence. First of all, why the Ex.P14 was not marked during the trial was not explained by the prosecution. On perusal of the Ex.P14 it shows that there was Postmortem dis-location of both greater horns of Hyoid Bone at its junction with the body. There is no explanation as to how dis-location of Hyoid Bone happened after the death of the deceased. The P.M. Doctor on her further examination was unable to deny the suggestion of the defence that only to suppress the postmortem dis-location of Hyoid Bone (injury caused after death of the deceased). The same was not marked in the trial. By referring this admission of the P.M. Doctor and the contents of Ex.P14 has submitted that the deceased has met her natural death and such death was later portrayed as a homicidal death and that is why the Ex.P14 showing vital after death injury to the Hyoid Bone was suppressed. The learned counsel for the appellant also drawn an attention of this Court that even the other injuries found over the body of the deceased were also not declared by the P.M. Doctor as anti-mortem injuries. By drawing the attention of this Court to various parts of evidence of P.M. Doctor, the learned counsel for the appellant has submitted that even essential signs of death by smothering were also not found and absent during the postmortem and asphyxial death may occur evidence to various natial disease also and the dis-location of greater horns could have dis-located due to constriction of neck of the deceased after the death. It is be seen that there was no

explanation offered by the prosecution to explain this anomaly. Though the fact remains that the defence has not conclusively proved that the deceased has met her natural death and later the death was portrayed as a homicidal death, the contents of the Ex.P14 the withholding of the same, and various admissions of P.M. Doctor, causes serious doubt over the prosecution version as to the occurrence and the version of the defence may be a probable one.

19. That apart the contention of the learned counsel for the appellant that the evidence of the PW5 was not properly considered and the trial Court erroneously held as if her evidence would corroborated evidence of the PW1 to PW4 also deserves consideration. The PW5 in a very clear terms deposed in the cross examination that she after playing in the streets went home to take her medal around 12.00 p.m. and at the time it was informed that her mother is died and thereafter lapse of 1 hour, the PW1 to PW4 came to SOC after hearing the news as to the death of her mother. But, the trial Court simply brushed aside this crucial evidence deposed in the cross examination by adducing a reason that the child would have mistakenly deposed about the timings. There is no reason prevails to come to such conclusion. The PW5 being a school child is expected to be aware of the timings. The approach of the trial Court in giving much importance to her chief examination cannot be legally countenanced. It is a basic corn on of appreciation of evidence that velocity of evidence is always refund to be adjudged in the light of the cross examination also keeping the same on touch stone. Thus, it is clear the evidence of PW5 also stands against the prosecution case and the evidence of the PW1 to PW4.

20. The fact that Ex.P1 complaint came to be lodged with 4 hours unexplained delay by PW1 although the Police Station situated in short distance of 6 kms. and the F.I.R. registered there on was sent to the concerned Jurisdictional Magistrate Court only by 05.30 p.m. during the evening hours also creates suspicious over the acceptability of the prosecution case. Further, the PW1 chose to inform the father of the deceased as to the occurrence only by 12.00 p.m. after lapse of 2 hours is also one of intrinsic circumstance of suspicious nature.

21. The learned Government Advocate (Criminal Side) strenuously contended that the prosecution by placing the evidence of PW6 to PW9, PW14 and PW18 successfully proved the mis-understanding dispute, quarrels between the couples for the

appellant to do away the life of the deceased and hence the appellant should be deemed as another of the crime. It is true that the prosecution in this case successfully to the extend of proving the quarrels and mis-understandings and disputes prevailed between the couples which may be sufficient to entertain a motive to do away the life of the deceased. But mere proof of motive is not sufficient to arrive at guilty of the appellant. The motive is always double edged weapon. It is well settled that mere proof of motive would not tant amount to proof of crime and proving or failure to prove motive in case of direct evidence would not assume importance in judging the guilt of the accused. Further, when the evidence touching occurrence cannot be believed by this Court and stands falsified by the medical evidence, mere proof of circumstances showing the motive is of no consequences and would not advance of the prosecution at any rate.

22. In the result, I am of the considered opinion that the prosecution miserably failed to prove the case beyond reasonable doubts and accordingly the Criminal Appeal is allowed and the judgment of conviction passed by the learned Additional District Judge (FTC-III), Virudhachalam, dated 21.02.2006 in S.C.No.290 of 2005 is hereby set aside. The sureties and bail bonds executed by the appellant shall stand discharged. Though the order of the trial Court set out in the judgment under Section 357(3) of Cr.P.C. directing the payment of compensation of Rs.1,00,000/- each to the minor children of the deceased and the appellant, cannot be maintained in view of the acquittal of the appellant, the same shall be treated as a maintenance given to the children by the appellant, shall not refunded to the appellant.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vs

To

- 1 THE ADDITIONAL DISTRICT AND SESSIONS COURT,
FAST TRACK COURT, VIRUTHACHALAM
- 2 THE JUDICIAL MAGISTRATE II, VIRUDHACHALAM.

3 DO THRO THE CHIEF JUDICIAL MAGISTRATE, CUDDALORE
4 THE JUDICIAL MAGISTRATE, CUDDALORE.
5 THE INSPECTOR OF POLICE,
SRIMUSHNAM POLICE STATION, CUDDALORE DISTRICT.
6 THE PUBLIC PROSECUTOR HIGH COURT, MADRAS.
7 THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI 4.
8 THE DISTRICT COLLECTOR, CHENNAI.
9 THE SUPERINTENDENT, CENTRAL PRISON, CUDDALORE.

COPY TO

THE SECTION OFFICER CRIMINAL SECTION,
HIGH COURT, MADRAS

Pre-delivery Judgment made in
CRL.A.No.261 of 2006

GJ II(CO)
TR(07/05/2018)



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