

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.11.2018

DELIVERED ON: 14.12.2018

CORAM:

THE HONOURABLE Mr.JUSTICE **P.N.PRAKASH**

Crl.A.No.89 of 2014

Sathishkumar, Aged 28 years,
S/o Late Vellingiri,
67, Salavaikalpalayam,
Siruvalur,
Gobichettipalayam Taluk,
Erode Dt.

.. Appellant

Vs

State Represented by
The Inspector of Police,
Siruvalur,
Gobichettipalayam Taluk,
Erode Dt.

..Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C.,
against the judgment of conviction dated 17.02.2014 made in
S.C.No.91 of 2013, on the file of Magalir Needhi Mandram (Fast
Track Court), Erode.

For Appellant : Mr.R.Sankara Subbu

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl. Side)

JUDGMENT

This criminal appeal has been preferred seeking to set aside the conviction made by judgment, dated 17.02.2014 in S.C.No.91 of 2013, on the file of Magalir Needhi Mandram (Fast Track Court), Erode.

2 The facts in brief leading to the filing of this criminal appeal are as under:

2.1 On the statement dated 13.03.2013 (Ex-P1) given by Megala (PW1), Chandrasekaran (PW6), Sub-Inspector of Police, registered a case in Crime No.97 of 2013 under Section 307 IPC and prepared the printed FIR (Ex-P6) which reached the jurisdictional Magistrate on the same day around 8.20 p.m., as could be seen from the endorsement thereon. The investigation of the case was taken over by Elango (PW7), Inspector of Police who went to the place of occurrence and prepared observation mahazar (Ex-P4) and rough sketch (Ex-P7) in the presence of Palanisamy and Ramamani. He also seized a white towel (MO-1) under mahazar (Ex-P5). He recorded the statement of witnesses and obtained the necessary medical certificates from Dr.Chinnasamy (PW4) who treated Megala (PW1). After completing the

investigation, Elango (PW7), Inspector of Police filed final report in P.R.C.No.7 of 2013 before the Judicial Magistrate No.1, Gopichettipalayam under Section 307 IPC, against the appellant herein.

2.2 On the appearance of the appellant, the provisions of 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.91 of 2013 and made over to Mahila Court (Fast Track), Erode for trial. The trial Court framed charge under Section 307 IPC, against the appellant and when questioned, he pleaded "not guilty". To prove the case, the prosecution examined seven witnesses and marked nine exhibits and one material object.

2.3 When the incriminating circumstances were put to the appellant under Section 313 Cr.P.C., he denied the same. On behalf of the appellant, no witness was examined and no document was marked.

2.4 The trial Court, after considering the evidence on record, has, by judgment dated 17.02.2014 in S.C.No.91 of 2013, convicted the appellant under Section 307 IPC and has sentenced

him to undergo five years rigorous imprisonment and pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment, challenging which, the appellant is before this Court.

3 Heard Mr.Sankara Subbu, learned counsel appearing for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent/State.

4 Before advertng to the rival submissions, it may be necessary to state the prosecution case. It is case of the prosecution that on 12.03.2013, the appellant tried to strangle his wife Megala (PW1) with a towel and hearing her cries for help, her father and brother Thirumoorthy (PW2) came there. The appellant ran away on seeing them. Megala (PW1) was taken to the hospital and her life was saved. Hence, the charge for attempt to murder.

5 Megala (PW1), in her evidence before the trial Court, has stated that she got married to the appellant in the year 2006 and two years after marriage, he started suspecting her fidelity and started beating her; on such occasions, she would go to her

parents' house next door and after compromise, she would come back home; on 12.03.2013, around 5.00 p.m., the appellant asked her to give food for him; after giving food to him, she sat next to him; on seeing her, the appellant sarcastically asked, "Applying powder and dressing up like this, with whom are you going to sleep?"; on hearing this comment, she retorted that she was not of that type and added that, he has a mean mentality; irked, he immediately took the towel that was found nearby and put it around her neck and tried to strangulate her to death; when she started crying for help, her father, mother and brother Thirumoorthy (PW2) came there; on seeing them, the appellant/husband ran away; she felt giddy and fell down; she was carried to the hospital; next day, when she regained her consciousness, she found that she was admitted to MRS Hospital in Gopichettipalayam; around 11.00 a.m., the police enquired her and took her statement (Ex-P1).

6 In the cross-examination, she was questioned about her religious belief, for which, she has answered that she believes in God and when she falls sick, she would get holy ash from the priest of the local temple. She has further stated that her two children were born in Vasantham Hospital in Gopichettipalayam.

She has admitted that she was first taken to Vasantham Hospital and therefrom, she was carried to MRS Hospital after the incident. It was suggested to her that she had the propensity to commit suicide and attempted to commit suicide by hanging once and rescued by one Venkatasamy (PW3), which suggestion, she denied. She also denied the suggestion that her husband was by her bedside in the hospital after the occurrence. In the course of the cross-examination, she has further stated that the incident occurred when her husband was in the midst of taking his food and in anger, he threw the plate. Ultimately, it was suggested to her that it was not the appellant who had strangled her and that she attempted to commit suicide because the appellant questioned her for beating the children on the previous day, which suggestion, she denied.

7 Thirumoorthy (PW2), in his evidence, has stated that Megala (PW1), his elder sister, got married in the year 2006; two years after marriage, there were problems between her and the appellant since the appellant suspected her fidelity; the problem was resolved on the intervention of elders; ten days prior to the incident, the appellant had beaten Megala (PW1) and on hearing her cry, he along with his father, went there and Megala (PW1)

told them that the appellant had beaten her suspecting her fidelity; he took his sister to his house that night and on the next day, the appellant and his mother came to their house and after compromise talks, Megala (PW1) rejoined the appellant; on 12.03.2013, he heard his sister crying for help and when he reached there, he found the appellant strangulating his sister with a towel (MO1); on seeing him, he ran away leaving the towel (MO1) which he identified; since his sister was breathless, he carried her to MRS Hospital in Gopichettipalayam and admitted her; there, the doctors said that she was in a serious condition and admitted her in the ICU ward for treatment; next day, when his sister regained her consciousness, the police came and enquired them.

8 In the cross-examination, he has stated that he has studied B.Sc., (Chemistry) and was working in a private company in Tirupur in the Inspection Department. He has admitted that he did not file any complaint immediately after the incident and has explained by saying that his attention was mainly on saving the life of his sister and it did not occur to him to go to the police station immediately. Ultimately, it was suggested to him that it was not the appellant who tried to strangle his sister to death,

but it was only Megala (PW1) who attempted to commit suicide by hanging and a false case has been foisted on the appellant, which suggestion, he denied.

9 Dr.Chinnasamy (PW4), in his evidence, has stated that on 12.03.2013, around 6.00 p.m., while he was in the hospital, one Megala (PW1) was brought by her brother Thirumoorthy (PW2) for treatment; she was breathless and unconscious and he also found blood clots around her neck; when questioned, she stated that her husband attempted to strangle her with a towel (MO1); he recorded that in the Accident Register (Ex-P2); he admitted her as in-patient and treated her. Copy of the Accident Register and wound certificate were marked as Ex-P2 and Ex-P3 respectively. In the wound certificate (Ex-P3), it is stated as follows:

"Patient & H/O : patient alleged history of Strangulation by her husband using towel at her residence at about 6.00pm on 12.03.2013.

*List of Injuries : 1. Face – purpuric spots +
2. B/L – Sub conjunctival
haemorrhage +*

3. In front of neck

ill defined horizontal reddish contusion mark about 2 to 3 cm x 8cm present.

Opinion : In my opinion the injuries 1 to 3 are dangerous injuries (grievous in nature)"

10 He was extensively cross-examined as to why he did not inform the police immediately. He has stated that the injuries noted by him can also occur if a person attempts to commit suicide by hanging using a saree. However, he has clearly added that in this case, injuries were found in the neck of Megala (PW1). He denied the suggestion that such injuries can happen when someone attempts to rescue a person committing suicide by hanging with a saree. He has admitted that he did not inform the police immediately. It was suggested to him that Megala (PW1) attempted to commit suicide and in order to cover it up, he has colluded with her family members by issuing Accident Register copy (Ex-P2) and wound certificate (Ex-P3) with false averments, which suggestion, he denied.

11 Venkatasamy (PW3), in his evidence, has stated that he lives near the house of Megala (PW1); on 12.03.2013 (Tuesday), around 5.00 p.m, there was a commotion in Megala's (PW1) house; when he went there, he saw Thirumoorthy (PW2) and his father and mother; he also saw the accused/appellant going out from the

house; when he asked Thirumoorthy (PW2) as to what had happened, he told him that the appellant strangled his sister with a towel and tried to kill her. Though, this piece of evidence is hearsay, yet, it can be admitted as *res gestae* under Section 6 of the Evidence Act. It was suggested to him that Megala (PW1) was not taken to the hospital immediately and she was taken to the nearby temple and only from there, she was taken to the hospital which, he denied. He denied the suggestion that he did not see the appellant on the place of occurrence as deposed by him and he has falsely deposed.

12 Elango (PW7), Inspector of Police, in his evidence, has spoken about the steps taken by him like preparation of the observation mahazar (Ex-P4) and rough sketch (Ex-P7), recovery of towel (MO1), etc, he has stated that he arrested the appellant on 13.03.2013 around 5.00 p.m. near Palani Mariammam Temple and after recording his statement, had him produced before the jurisdictional Magistrate for remand.

13 Mr.Sankara Subbu, learned counsel for the appellant contended that Megala (PW1) was in the habit of committing suicide for flimsy reasons and that a case of suicide has been converted into a case of attempt to murder. Except putting this suggestion to all

these witnesses, there is no credible material to show that Megala (PW1) attempted to commit suicide earlier, for this Court to reject the prosecution theory and accept the defence theory.

14 Mr.Sankara Subbu, learned counsel for the appellant further contended that Megala (PW1) was taken to Vasantham Hospital and only thereafter, she was taken to MRS Hospital and the prosecution has suppressed this aspect. However, on a reading of the evidence of Megala (PW1), she has stated that her two babies were born in Vasantham Hospital; therefore, they would have first taken her to Vasantham Hospital and that being a maternity hospital, she would have been taken to MRS Hospital for better treatment and this, by itself, cannot lead to the conclusion that the prosecution have foisted the case.

15 Mr.Sankara Subbu, learned counsel for the appellant further contended that in the chief-examination, Megala (PW1) has stated that after she had fed the appellant, the incident took place, whereas, in the cross-examination she has stated that while he was in the midst of having food, the incident had taken place. In the opinion of this Court, this is too trivial a discrepancy to disbelieve the testimony of Megala (PW1) and discard the prosecution case in total.

clearly shows that on hearing the cries for help, he rushed to Megala's (PW1) house and found the appellant strangulating her with the towel (MO1). He has given a satisfactory explanation as to why he did not go to the police station immediately by saying that he was more concerned about saving the life of his sister by taking her to the hospital and giving her treatment rather than going to the police station.

16 Mr.Sankara Subbu, learned counsel for the appellant further contended that in this case, Accident Register copy (Ex-P2) has been registered only on 13.03.2013 and the FIR (Ex-P6) has also been registered only on 13.03.2013 and the delay has not been explained. The evidence of the witnesses shows that after Megala (PW1) was admitted as in-patient, she was under treatment and after regaining full consciousness, the police came to the hospital and recorded her statement. The Accident Register (Ex-P2) is a document which is maintained by the hospital over which Megala (PW1) can have no say. Dr.Chinnasamy (PW4) has stated that he has examined her on 12.03.2013, around 6.00 p.m. and in the Accident Register (Ex-P2), it is recorded as follows:

"Patient alleged history of Strangulation by her husband using towel at her residence at about 5.00pm on 12.03.2013 and admitted on 12.03.2013 at about 6.00pm in MRS Hospital.

On admission, patient restless/irritable

Now, patient conscious/oriented

Face – purpuric spots +

B/L - Subconjunctival haemorrhage +

In front of neck – Ill defined horizontal contusion mark about 2 to 3cm x 8 cm present”.

17 Dr.Chinnasamy (PW4) has further stated that when Megala (PW1) was brought to the hospital, she was breathless and unconscious and he admitted her; after she regained her consciousness, he questioned her and recorded whatever she stated in the Accident Register (Ex-P2). This cannot be faulted. Similarly, failure of Dr.Chinnasamy (PW4) to inform the police on 12.03.2013, cannot, by itself, be a reason to disbelieve the prosecution case.

18 Mr.Sankara Subbu, learned counsel for the appellant placed consistent reliance on the judgment of the Supreme Court in ***Thulia Kali Vs. State of Tamil Nadu, (1972) 3 SCC 393***, wherein, the importance of registration of FIR promptly has been emphasized. It is not an inexorable rule that in every case where there is a delay in registration of FIR, the accused should have to be perforce acquitted. In this case, the incident had taken place on 12.03.2013, around 5.00 p.m. and after intimation from the hospital, the police

have gone to the hospital, recorded the statement of Megala (PW1) and has registered the FIR (Ex-P6) about 12.00 noon on 13.03.2013. Thus, within 24 hours of the occurrence, FIR (Ex-P6) has been registered. In ***Ravinder Kumar and another Vs. State of Punjab, (2001) 7 SCC 690***, the Supreme Court has discussed the aspect of delay in the registration of FIR and has held that the delay in lodging FIR is not fatal in every case. In fact, the Supreme Court has further held that just because the FIR has been promptly lodged, that does not mean that the case is genuine and conversely, if the FIR is lodged with delay, the case cannot be said to be a false one.

19 Mr.Sankara Subbu, learned counsel for the appellant further contended that the opinion of Dr.Chinnasamy (PW4) that the injury was grievous need not be accepted by the Court and it is always open to the Court to reject it on facts. In support of this contention, he placed strong reliance on the unreported judgment ***dated 25.10.2016*** of this Court in ***Crl.R.C.No.176 of 2011, Mariappan Vs. State***. This Court can have no quarrel on this point. The charge in this case not under Section 325 IPC but one under Section 307 IPC for which injury is not always relevant. For instance, if 'A' opens fire at 'B' and 'B' ducks thereby avoiding the bullet, no injury will be there on 'B'. Can 'A' be acquitted for attempt to murder? The answer is an emphatic "no".

20 The evidence of Megala (PW1) and Thirumoorthy (PW2), coupled with the evidence of Dr.Chinnaswamy (PW4) are not incompatible or at variance for this Court to reject the testimonies and acquit the accused.

21 Coming to the question of sentence, taking into consideration the nature of the attack and the relationship between the parties, this Court is of the view that interests of justice will be subserved, if the sentence of five years rigorous imprisonment is reduced to three years rigorous imprisonment and it is ordered accordingly. The sentence of fine and the default sentence stand maintained.

In the result, this Criminal Appeal is partly allowed. The trial Court is directed to secure the custody of the appellant and send him to prison to undergo the remaining period of sentence.

nsd
Index: Yes/No
Internet: Yes/No

To

1. The Inspector of Police,
Siruvalur,
Gobichettipalayam Taluk,
Erode Dt.

P.N.PRAKASH, J.
nsd

2. Magalir Needhi Mandram
(Fast Track Court), Erode.
3. The Public Prosecutor,
Madras High Court,
Chennai – 104.



Pre-delivery judgment in
Crl.A.No.89 of 2014

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