

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.662 of 2017

Poongodi
W/o.Arumugham

... Appellant

Vs

State represented by
The Inspector of Police,
Vaniyambadi Rural Police Station,
Vellore District.
Crime No.476 of 2013

... Respondent

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned III Additional District and Sessions Judge, Tirupattur, passed in S.C.No.143 of 2014 on 31.07.2017.

For Appellant : Mr.P.Palanikumar

For Respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

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

This appeal arises against the judgment of learned III Additional District and Sessions Judge, Tirupattur, passed in S.C.No.143 of 2014 on 31.07.2017.

2. Case of prosecution is that appellant/accused is the wife of deceased. Deceased, suspecting the fidelity of appellant/accused used to quarrel with her owing to which she left the matrimonial home. PW-1 and appellant's son pacified her and thereafter, she continued to live with the deceased at Purushothamakuppam, Vaniyambadi. Deceased continued to harass her. Angered, accused in the night hours of 01.11.2013, assaulted and injured the genitals of deceased, resulting in death. A case was registered in Crime No.476 of 2013 on the file

of respondent for offence u/s.302 IPC. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.302 IPC, the case, on committal, was tried in S.C.No.143 of 2014 on the file of learned III Additional District and Sessions Judge, Tirupattur.

3. Before trial Court, prosecution examined 18 witnesses and marked 9 exhibits. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, nephew of deceased, spoke to deceased and himself being wood cutters, of usually going to work together and to attending his sister-in-law's marriage on 01.11.2013 and returning home. PW-1 spoke to the usual practice of deceased calling him over phone every morning by 06.00 a.m. towards going to work, of having not received any phone call on 02.11.2013 till 08.00 a.m., of having gone to the house of deceased and asking PW-2 to wake up the deceased, of peeping inside and seeing the deceased lying with a ligature mark on the neck and injuries on his private parts. PW-1 spoke to having been informed by PW-2 of a quarrel between accused and deceased, of deceased informing him about illicit relationship of accused with one Rajendran, of accused residing in her mother's house over a period of 3 years, of pacifying accused and her returning to the matrimonial home and having been in touch with the said Rajendran over phone and of differences between accused and deceased there regards. PW-1 also spoke to informing the villagers of the dispute between accused and deceased and upon their advice, preferring Ex.P1, complaint. PW-2, son of deceased, has spoken on similar lines.

3.2. PW-3, daughter of deceased, spoke to having been informed by PW-2 of accused having done to death the deceased, of arrest of accused, accused having lived separately over a period of 4 years, PWs.1 and 2 pacifying accused, accused returning home 3 to 4 months prior to the occurrence, accused having been in touch with Rajendran over phone and of differences between accused and deceased there regards.

3.3. PW-4, brother of deceased, spoke to having been informed by PW-1 of death of deceased, rushing to the house of deceased, PW-1 preferring Ex.P1, complaint, of quarrel between accused and deceased, of accused returning home upon pacification of PWs.1 and 2 and illicit relationship between accused and Rajendran.

3.4. PW-5, resident of Girisamudram, spoke to knowing the deceased, of conducting auction on 01.11.2013 at about 08.30 p.m. near the house of deceased, of deceased, in a drunken state, quarrelling with the accused, they having pacified them

and of hearing of the death of deceased through PW-1. PW-6, resident of Girisamudram, has also spoken on similar lines.

3.5. PW-7, resident of Girisamudram, spoke to knowing accused and deceased, of visiting the house of deceased upon hearing that he had been done to death and of noticing a ligature mark on the neck of deceased. PW-7 has been treated hostile.

3.6. PW-8, resident of Girisamudram, spoke to knowing accused and deceased, of visiting the house of deceased upon hearing that he had been done to death and of noticing a ligature mark on the neck of deceased and injury to his private parts. PWs.9, 10, 11 and 12 have also spoken on similar lines. PWs.8, 9, 10, 11 and 12 have been treated hostile.

3.7. PW-13, Village Administrative Officer, spoke to having been informed by his Assistant on 02.11.2013 that the deceased had been done to death by his wife, of visiting the house of deceased with his Assistant, seeing a ligature mark on the neck of deceased and bleeding of his private parts, having been informed that PW-1 had gone to prefer a complaint and attesting Ex.P2, observation mahazar and confession of accused.

3.8. PW-14, Assistant Surgeon, who conducted postmortem, stated that the deceased appeared to have died of 'strangulation neck'.

3.9. PW-15, Head Constable, spoke to accompanying the Investigation Officer, handing over the body of deceased to Doctor towards conduct of postmortem and forwarding the viscera to Forensic Sciences Department for chemical examination.

3.10. PW-16, Scientist, spoke to examining the viscera of deceased, of not finding any poisonous substance and submitting Ex.P4, Chemical Examination Report.

3.11. PW-17, Sub-Inspector of Police, spoke to registering a case, on the complaint of PW-1, in Crime No.476 of 2013 on the file of respondent for offence u/s.302 IPC and forwarding the same to Court and higher officials. Ex.P5 is the First Information Report.

3.12. PW-18, Investigation Officer, spoke to visiting the scene of crime, preparation of exhibits, examining witnesses and recording their statements, conducting inquest in the presence of panchayatdars and witnesses, arrest of accused and recording her confession, forwarding the body of deceased towards conduct of postmortem, forwarding the accused to judicial custody,

obtaining reports and upon completion of investigation, filing of charge sheet informing commission of offence u/s.302 IPC.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of materials before it, trial Court, convicted appellant/accused for offence u/s.302 IPC and sentenced her to life imprisonment and fine of Rs.5,000/- i/d 3 months S.I., under judgment dated 31.07.2017. Hence, this appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor. Perused the materials on record.

6. It is the consistent prosecution case that the accused had parted ways with the deceased, her husband, owing to his suspecting her fidelity and had stayed at her mother's home over a period of 3 to 4 years. On being pacified by PWs.1 and 2, nephew and son of deceased, she had returned to the matrimonial home, 3 to 4 months prior to the occurrence and the deceased, being given to drink, continued to harass her owing to suspicion. Such aspect of the prosecution case continuously reverberates in the evidence of PW-1, nephew of deceased, PW-2, his son, PW-3, daughter, PW-4, brother of deceased and PWs.5 and 6, residents of the same village. The body of the deceased has been found at the matrimonial home occupied by the deceased and accused and the evidence on record makes clear that the other inmate, their son, had gone away to a cinema theatre on the night of occurrence. PW-2's suspicion would not have been aroused on finding his father ostensibly asleep on his return and therefore, his coming to know that his father had died, only upon PW-1, who had come to fetch the deceased towards going for work and upon PW-1 asking him to awake the deceased, is quite natural and acceptable. There is no denial by the accused, even in her questioning u/s.313 Cr.P.C., of her not having been at the matrimonial home at the time of occurrence. The deceased had been done to death at their residence and Section 106 of the Indian Evidence Act would require her to explain how this was so. As the accused had no explanation to offer, she is to be found guilty which the trial Court rightly has done. However, given the ample evidence on record of the deceased being given to drink and having continuously harassed the accused on suspicion regards her fidelity, we are of the view that the appellant/accused would attract punishment not u/s.302 IPC but under 304(ii) IPC.

7. Accordingly, even as we confirm the finding of conviction we alter the same to one u/s.304(ii) IPC and direct sentence of 8 years R.I. Fine imposed by trial Court is confirmed. Period of incarceration thus far undergone by appellant/accused shall be set off in keeping with Section 428 Cr.P.C.

The Criminal Appeal is disposed of with the above modification.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Judicial Magistrate,
Ambattur.
- 2) - do - through The Chief Judicial Magistrate,
Vellore.
- 3) The III Additional District and Sessions Judge,
Tirupattur.
- 4) The Principal Sessions Judge,
Vellore.
- 5) The Principal District Munsif cum Judicial Magistrate,
Vaniyambadi.
- 6) The District Collector,
Vellore.
- 7) The Director General of Police,
Mylapore, Chennai.
- 8) The Inspector of Police,
Vaniyambadi Rural Police Station,
Vellore District.
- 9) The Superintendent of Police,
Central Prison,
Puzhal, Chennai.
- 10) The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Palani kumar, Advocate, S.R.No.72596

Criminal Appeal No.662 of 2017

GMR(CO)
SSM(05/03/2019)