

**Bail Slip**

The Appellant/Accused namely Kaliyammal aged about 38 years W/o.Thangavelu was directed to be released on bail as per Order of this Court dated 30.06.2011 and made in MP(MD)No.2 of 2011 in Crl.A(MD)No.177 of 2011 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 08.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL A (MD)No.177 of 2011**

Kaliyammal

... Appellant / Sole Accused

Vs.

The State, rep.by the Inspector of Police,
Rajathani Police Station,
Theni District.
(Crime No.303 of 2008)

... Respondent / Complainant

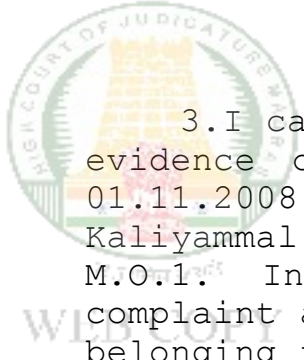
Prayer : This Criminal Appeal is filled under Section 374 of Criminal Procedure Code, against the judgment and conviction passed in S.C No.104 of 2009 dated 05.04.2011 by the learned Additional District Sessions (Fast Track Court) Judge, Periyakulam, Theni District for the offences under Sections 304 (ii) and 203 IPC wherein the appellant was sentenced to undergo five year rigorous imprisonment for the offence under Section 304 (ii) IPC and 2 years rigorous imprisonment for the offence under Section 203 IPC.

For Appellant : Mr.K.Govindarajan
For Respondent : Mrs.S.Bharath,
Government Advocate (crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 304 (II) and 203 IPC. He was sentenced to undergo five years rigorous imprisonment and two years rigorous imprisonment respectively vide judgment dated 05.04.2011 in S.C No.104 of 2009 on the file of the Additional District Sessions Judge, Fast Track Court, Periyakulam. Questioning the same, this criminal appeal has been filed.

2.Heard the learned counsel on either side who reiterated their respective contentions. While the appellant would pray for setting aside the judgment of the court below and acquitting the appellant of all the charges, the learned Government Counsel would want this court to sustain the impugned judgment and dismiss this appeal.

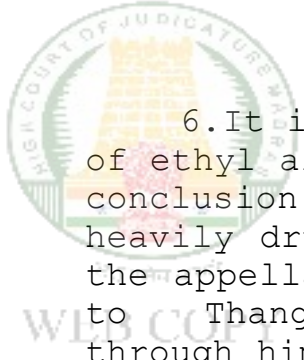


3.I carefully considered the rival contentions and perused the evidence on record. The case of the prosecution is that on 01.11.2008 at about 07.00 P.m in Theppampatti Colony the appellant Kaliyammal had done to death her husband Thangavelu by using M.O.1. In order to screen her crime, the appellant lodged Ex.P18 complaint alleging that her husband was done to death by one Sekar belonging to Chettiyar community. The appellant and the deceased belonged to Scheduled Caste community. Therefore, FIR in Crime No.303 of 2008 on the file of the Rajathani Police Station, Theni District for the offences under Sections 302 IPC r/w. 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Later, the appellant is said to have given an extra judicial confession/Ex.P1 before P.W.1 VAO of Theppampatti Village. Based on the same, an alteration report was filed, Ex.P23. Investigation was undertaken and after recording the statements of various witnesses and completion of the usual formalities, final report was filed before the Judicial Magistrate, Andipatti. The case was committed in PRC No.14 of 2009 to the Sessions Court. It was then made over to Additional District Sessions Judge/Fast Track Court, Periyakulam, Theni District in S.C No.104 of 2009. The appellant pleaded not guilty of the charge and claimed to be tried.

4.The prosecution examined 30 witnesses and marked Exs.P1 to P23. The appellant examined herself as D.W.1. After considering the evidence on record, the learned Trial Judge found the accused guilty of the offence under Section 304 (II) IPC and sentenced her to five years rigorous imprisonment. The accused was also found guilty of the offence under Section 203 IPC and sentenced to two years rigorous imprisonment. Challenging the same, this appeal came to be filed.

5.The learned counsel appearing for the appellant drew my attention to Ex.P.13 viscera report. The relevant columns in the said report would read as under : "

1	Stomach and contents	Detected one hundred and Forty Five (145) mgs of ethyl alcohol but not other poison
2	Intestine and contents	Detected sixty nine (69) mgms of ethyl alcohol but not other poison
3	Liver	Detected eighty three (83) mgms of ethyl alcohol but not other poison
4	Kidney	Detected sixty two (62) mgms of ethyl alcohol but not other poison
5	Blood	Detected seventy six (76) mgms % w/v of ethyl alcohol but other poison
6	Preservative	Did not detect ethyl alcohol or other poison

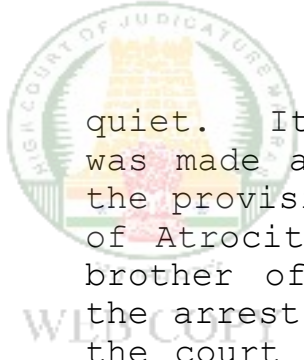


6. It is seen that no poison has been detected but heavy amount of ethyl alcohol has been detected. One can thus come to the safe conclusion that at the occurrence time the deceased Thangavelu was heavily drunk. This clearly probablises the defence projected by the appellant. The appellant clearly states that she was married to Thangavelu a long time back and that she begot two children through him and that the deceased Thangavelu came to home daily in a drunken mode and demanded money from her. On the fateful day also, the deceased Thangavelu came drunk and picked up a violent quarrel with her and the appellant pushed him away and locked the door. Thereafter, on hearing the noise she came to know that her husband was dead.

7. This testimony of the appellant that when the deceased Thangavelu fell on the washing stone has not been challenged by the prosecution in the cross examination. It is further admitted by P.W.26 scientific expert that she had visited the occurrence spot and she found the stones stacked in front of the house. P.W.29, the Investigation Officer also stated that stones were stacked outside the house of the deceased. P.W.25, the postmortem doctor had stated that one of the injuries found on the head of the deceased was capable of being caused by a fall on the stones. He categorically asserted that the injury found on the centre of the head could be caused definitely by M.O.1.

8. The court below had chosen to convict the appellant on the strength of the extra judicial confession said to have been given before P.W.1 VAO of Theppampatti. This Court went through the original Ex.P.1. It is seen that there is only one thumb impression attributed to the appellant on the last page of Ex.P.1. It is not in dispute that the appellant is a woman and she is an illiterate. Even in Ex.P.18 only the left thumb impression of the appellant is found. When it comes to fastening guilt on an illiterate person, this Court must be deeply conscious that it would be most unsafe to find her guilty on the strength of thumb impression affixed on the last page of the extra judicial confession. This Court went through the testimony of P.W.1 and the contents of Ex.P.1 and they do not inspire the confidence of this Court.

9. On the other hand, the testimony given by the appellant as D.W.1 appears to be substantially true. Of course, the appellant is guilty of having not gone to the police at the very inception. The deceased Thangavelu as could be seen from the medical evidence was heavily drunk. He obviously picked up a quarrel with the appellant. During the said quarrel, it is quite possible that she assaulted the deceased with M.O.1. But, there is nothing on record to indicate that she had such an intention to kill him. ~~But, the court below noted that the Thangavelu died only on account of the injury suffered by him during the quarrel, she was obliged to have gone to the police immediately. Instead she chose to keep~~



quiet. It is obvious that one Sekar who had no role whatsoever was made an accused not only in a case of murder but also under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. In fact, the political party to which the brother of the deceased belonged also staged Dharna for causing the arrest of Sekar who was utterly innocent. Be that as it may, the court below could not have found the accused/appellant guilty of the offence under Section 304(II). I am of the view that the conviction has to be altered to one under Section 325 of IPC. It is accordingly altered from Section 304(II) IPC to 325 IPC. However, I sustain the conviction imposed on the appellant under Section 203 of IPC. The local community leaders have chosen to obtain her thumb impression on a empty paper and used it for blackmailing Sekar.

10. Now, comes the question of sentence. The learned counsel for the appellant states that the appellant was in prison for about six months. The appellant had led a married life with a drunken character for about 18 years. This I think is sufficient sentence. Therefore, even while modifying the conviction to one under section 325 IPC and while sustaining the conviction under Section 203 IPC, the sentence of imprisonment imposed on the appellant is reduced to the period already undergone by her. In other words, the conviction imposed on the appellant is confirmed and the sentence of imprisonment alone is reduced to the period already undergone.

11. This Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Additional District Sessions (Fast Track Court) Judge, Periyakulam, Theni District.
2. The Principal District and Sessions Judge, Theni.
3. The District Munsif-Cum Judicial Magistrate, Andipatti, Theni District.
4. The Chief Judicial Magistrate, Theni.



5.The Superintendent,
Special Prison for Women,
Trichy

6.The Inspector of Police,
Rajathani Police Station,
Theni District.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

8.The District Collector,
Theni District.

9.The Director General of Police,
Mylapore, Chennai -04.

10.The Superintendent of Police,
Theni District.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

CRL A (MD) No.177 of 2011
08.07.2019

CS (14.08.2019) P C