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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.04.2019

PRONOUNCED ON : 30.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL.A.(MD) No.311 of 2017 & Crl.M.P. (MD) No.3054 of 2018

Thirupathi Appellant/Accused
vs.

The State represented by
Inspector of Police
Avaniapuram Police Station
Madurai
(Cr.No.535 of 2011)

..... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment of conviction and sentence dated 19.07.2017 passed by the Principal Sessions Judge, Madurai in S.C.No.62 of 2014.

For appellant ... Mr.AR.L.Sundaresan, Senior Counsel
for M/s. AL. Gandhimathi

For respondent ... Mr. M. Chandrasekaran
Addl. Public Prosecutor

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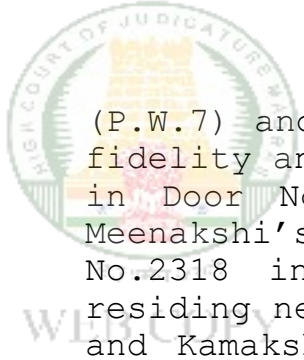
P.N. PRAKASH, J.

This Criminal Appeal has been preferred by the accused assailing the judgment and order of conviction and sentence dated 19.07.2017 passed by the Principal Sessions Judge, Madurai in S.C.No.62 of 2014.

2 The facts leading to the filing of this criminal appeal are succinctly stated as under:

<https://hcservices.ecourts.gov.in/hcservices/>

2.1 Meenakshi (D1) married the appellant/Thirupathi and they were blessed with two daughters, viz. Divya (P.W.6) and Karthika



(P.W.7) and one son Dinesh (D2). The appellant suspected his wife's fidelity and frequently quarrelled with her. The family was residing in Door No.2352, Housing Board Colony, Anupanadi West, Madurai. Meenakshi's (D1's) sister Karpagavalli (P.W.3) was residing in Door No.2318 in the same colony. The appellant's parents were also residing nearby. The parents of Meenakshi (D1), viz. Perumal (P.W.1) and Kamakshi (P.W.2) were residing in Sayalkudi in Ramanathapuram District, which is about 200 kilometres away from Madurai.

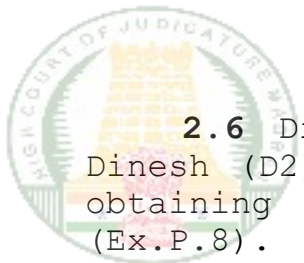
2.2 Four days prior to Deepavali in 2011, Kamakshi (P.W.2), the mother of Meenakshi (D1), tried to speak to her daughter, but, was not able to get her on line. So, she contacted her younger daughter Karpagavalli (P.W.3) and asked her to find out the whereabouts of Meenakshi (D1). Karpagavalli (P.W.3) went to Meenakshi's (D1's) house and found that it was locked. Since there was no news from Meenakshi (D1), her parents suspected foul play and came to Madurai in the evening of 22.10.2011 and went to Karpagavalli's (P.W.3's) house. Then, they all came to Meenakshi's (D1's) house and found that the door was locked. They staved in through the rear door of the house and to their shock, they found the dead bodies of Meenakshi (D1) and Dinesh (D2) with injuries.

2.3 On the written complaint given by Perumal (P.W.1), Uma Shankar (P.W.18), Inspector of Police (hereinafter referred to as "the Investigating Officer") registered a case in Crime No.535 of 2011 on 22.10.2011 at 22.30 hrs. under Section 174 Cr.P.C. and prepared the printed FIR (Ex.P.31), which reached the jurisdictional Magistrate on 24.10.2011 at 05.00 p.m., as could be seen from the endorsement thereon.

2.4 The Investigating Officer (P.W.18) came to the place of occurrence and despatched the two bodies through Mahendran, HC 1785 (P.W.16) to the mortuary in the Government Hospital, Madurai. On 23.10.2011, at the place of occurrence, the Investigating Officer prepared the Observation Mahazar (Ex.P.18) and Rough Sketch (Ex.P.19), in the presence of witnesses Azhagarsami (P.W.5) and Mahendran (P.W.15). At the place of occurrence, the Investigating Officer (P.W.18) seized the following items:

- A screw driver measuring 12 inches (M.O.3);
- A sharp edged metal comb specially used by women for untangling the knots in the tress (M.O.4) and
- A 100ml. box of Endosulfan (pesticide) (M.O.5).

2.5 On 23.10.2011, the Investigating Officer (P.W.18) went to the mortuary and conducted inquest over the body of Meenakshi (D1) and the Inquest Report qua Meenakshi (D1) was marked as Ex.P.21. After inquest, he despatched the body of Meenakshi (D1) for post-mortem. Thereafter, he conducted inquest over the body of Dinesh (D2) and the Inquest Report qua Dinesh (D2) was marked as Ex.P.22. After the inquest, he despatched the body of Dinesh (D2) for post-mortem.



2.6 Dr.Rajavelu (P.W.11) performed autopsy on the body of Dinesh (D2) and issued the post-mortem certificate (Ex.P.6). After obtaining the Viscera Report (Ex.P.7), he gave the final opinion (Ex.P.8). In his evidence as well in the post-mortem certificate (Ex.P.6), he has stated as follows:

"Appearances found at the post-mortem

Decomposed body of a male child aged about 10 years. Finger & toe nails are blue.

The following ante-mortem injuries are noted on the body

On dissection of scalp, skull & dura :

Contusion of 4cm x 3cm seen on the left temporal region. Contusion of 4cm x 2cm seen on the right mastoid region. Diffused subdural haemorrhage & Subarachnoid haemorrhage noted over both the cerebral hemispheres.

OTHER FINDINGS :

Peritoneal cavity - contains 10ml of decomposed fluid, Pleural cavities - contains 20ml of decomposed fluid, Pericardium - contains 10ml of decomposed fluid; Heart - flabby; Lungs - cut section decomposed; Larynx & trachea - normal; Hyoid bone intact; Stomach - contains 100 gms of partially digested semi solid food materials with smell of decomposition, mucosa - decomposed; Liver, Spleen & Kidneys - cut section decomposed; Small intestine - contains 10ml decomposed fluid with smell of decomposition, mucosa - decomposed; Bladder - empty; Brain - described."

In the final opinion (Ex.P.8), he has stated as follows:

"The deceased would have appear to have died of head injury 24-36 hours prior to post-mortem."

2.7 Dr.Rajavelu (P.W.11) performed autopsy on the body of Meenakshi (D1) and issued the post-mortem certificate (Ex.P.9). After obtaining the Viscera Report (Ex.P.10), he gave the final opinion (Ex.P.11). In his evidence as well in the post-mortem certificate, he has stated as follows :

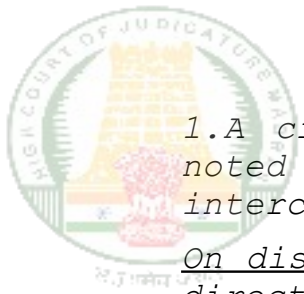
"Appearances found at the post-mortem

Decomposed body of a female aged about 33 years. Face, chest, abdomen are blotted. Finger & toe nails are pale.

The following antemortem injuries are noted on the body.

Injuries :

Following injuries seen on the front of the left side chest around the nipples



1.A circular punctured wound of 0.5cm size cavity depth noted 3cm below and lateral to the nipple in the 5th intercoastal space.

On dissection : The wound margin is irregular and inverted directed inward and upward direction pass through the skin, underlying tissue and muscles enter the pleural cavity, the lung, the pericardium, pierce the cavity of left ventricle of the heart.

2.A circular punctured wound of 0.5cm size, cavity depth 6cm lateral and below to the nipple on the 4th intercoastal space.

On dissection : The wound margin is irregular and inverted, directed horizontally inwards and pass through the skin, underlying tissue pleural cavity and pierce the lung.

3.A punctured wound of 0.5cm x muscle depth seen 5cm above and lateral to the nipple.

On dissection : The wound pass through the skin and underlying tissue.

4.A punctured wound of 0.5cm x muscle deep seen 3cm below and medial to the nipple in the 4th intercoastal space.

On dissection : Wound margin irregular and inverted pass through the skin underlying tissue and muscle.

5.A punctured wound of 0.5cm x muscle deep noted 4cm above and medial to the nipple in the 2nd intercoastal space.

On dissection : Wound margin irregular and inverted pass through the skin, underlying tissue and muscle.

6.A punctured wound of 0.5cm x bone deep noted 5cm above and medial to the nipple.'

On dissection : Wound margin irregular and pass through the skin and underlying tissue.

OTHER FINDINGS :

Peritoneal cavity - empty, Pleural cavities - left side 1500ml of blood with clots, right side empty, Pericardium - contains 100ml of fluid blood with clots seen, Heart - both chambers empty, Coronaries - patent, Lungs - cut section pale, Larynx & trachea - normal, Hyoid bone - intact, Stomach - contains 100gms of partially digested food, nil specific smell, mucosa - normal, Liver, Spleen & Kidneys - cut section pale, Small intestine - contains 20ml of bile stained fluid, nil specific smell, mucosa - pale, Bladder - empty, Uterus - normal, cut section empty, Brain - surface pale, cut section pale."



opinion (Ex.P.11), Dr.Rajavelu (P.W.11) has stated as follows:

"The deceased would appear to have died of external injury No.1 and its corresponding internal injuries along with cumulative effect of all other injuries, sustained by her 24-36 hours prior to post-mortem."

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2.8 Based on the post-mortem certificates (Exs.P.6 & P.9), the Investigating Officer (P.W.18) altered the case from one under Section 174 Cr.P.C. to one under Section 302 IPC and prepared the Alteration Report (Ex.P.23) on 24.10.2011. Even in the Alteration Report (Ex.P.23), it is stated that the appellant and his two daughters Divya (P.W.6) and Karthika (P.W.7) are in abscondence.

2.9 During the course of investigation, the Investigating Officer (P.W.18) came to know that the appellant had taken away his two children, viz., Divya (P.W.6) and Karthika (P.W.7) and absconded and therefore, the case was altered to one under Section 302 r/w 363 IPC and the Alteration Report (Ex.P.24) was prepared and sent to the jurisdictional Magistrate on 27.02.2012, as could be seen from the endorsement thereon.

2.10 Meanwhile, Perumal (P.W.1) filed H.C.P.(MD) No.40 of 2012 on 09.01.2012 alleging that his two grandchildren Divya (P.W.6) aged 15 years and Karthika (P.W.7) aged 12 years, are in the illegal custody of the appellant, who has committed the murder of Meenakshi (D1) and has absconded with his two children.

2.11 A Division Bench of this Court entertained the habeas corpus petition and issued notice to the police. The Investigating Officer (P.W.18) formed a special team to nab the appellant and rescue the children. On 14.06.2012, the appellant surrendered before the Judicial Magistrate, Aruppukkottai, which was not the jurisdictional Court. The police secured the two children from Kerala and produced them before this Court on 15.06.2012. A Division Bench of this Court enquired the two children and they stated that they would prefer to stay with their paternal grandparents and not with their maternal grandparents. The paternal grandparents who were present in the Court, were given custody of the two children with a direction that the maternal grandparents would have visiting rights.

2.12 The Investigating Officer (P.W.18) has stated in his evidence that pursuant to the directions of this Court in H.C.P. (MD) No.40 of 2012, the children were produced on 15.06.2012. However, strangely, the order that is said to have been passed by this Court was not marked before the Trial Court. Therefore, we are marking the certified copy of the order dated 15.06.2012 in H.C.P. (MD) No.40 of 2012 as Ex.C.1, in exercise of the powers under Section 391 Cr.P.C. No prejudice will be caused to the appellant, because, even in the cross-examination of the Investigating Officer, it has been suggested that he has deliberately suppressed the order passed in H.C.P. (MD) No.40 of 2012, which, of course, he has denied. Therefore, the defence also wanted the order to be brought on record. We are also aware that the relevancy of a previous



judgment or order is covered by Sections 41 to 43 of the Evidence Act. We are not going to rely upon the allegations and the counter allegations referred to in the order dated 15.06.2012 (Ex.C.1). But, the order being a public document, is marked only to prove the following facts :

- Perumal (P.W.1) filed H.C.P. (MD) No.40 of 2012 for production of his two grandchildren;
- The police produced Divya (P.W.6) and Karthika (P.W.7) before this Court on 15.06.2012;
- The children were enquired by this Court and at their request, were handed over to their paternal grandparents and not to their maternal grandfather, Perumal (P.W.1).

2.13 Now, reverting to the narration of facts, the Investigating Officer (P.W.18) took custody of the appellant on 20.06.2012 for three days and interrogated him. He recorded his confession statement, based on which, he recovered a gold thali (M.O.1) and a pair of gold stud (M.O.2) belonging to Meenakshi (D1) from Muthoot Finance in Kerala, under the cover of mahazar (Ex.P.26). From the confession statement of the appellant, the Investigating Officer (P.W.18) came to know about one Ameen (P.W.9) and recorded his statement.

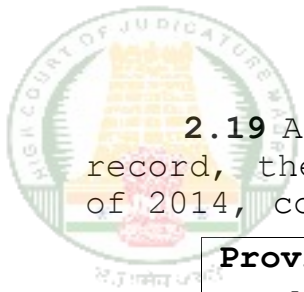
2.14 The material objects, viz. screw driver (M.O.3) and iron tress untangler (M.O.4) were sent through the Court to the Tamil Nadu Forensic Science Laboratory for examination. The articles were examined and blood was detected in the screw driver (M.O.3) and tress untangler (M.O.4) vide Biology Report (Ex.P.29). However, the Serology Report (Ex.P.30) states that the blood found in the tress untangler (M.O.4) was human blood, but the result of grouping test was inconclusive.

2.15 After examining the witnesses and obtaining various reports, the Investigating Officer (P.W.18) completed the investigation and filed final report in P.R.C.No.11 of 2012 before the Judicial Magistrate No.VI, Madurai, under Section 301 (2 counts) and 404 IPC against the appellant.

2.16 On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.62 of 2014 and was tried by the Principal District and Sessions Judge, Madurai. The trial Court framed charges under Section 302 (2 counts) and 404 IPC against the appellant and when questioned, the appellant pleaded "not guilty".

2.17 To prove the case, the prosecution examined 18 witnesses and marked 31 exhibits and 6 material objects.

2.18 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same and gave a written explanation which will be discussed later.



2.19 After hearing both sides and considering the evidence on record, the trial Court, by judgment dated 19.07.2017 in S.C.No.62 of 2014, convicted and sentenced the appellant as under:

Provision of law under which convicted	Sentence
Section 302 (2 counts) IPC	Imprisonment for life and fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of six months, for each count.
Section 404 IPC	Six months rigorous imprisonment and fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of three months.

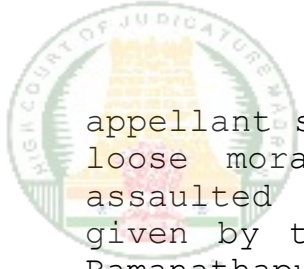
2.20 The aforesaid sentences were ordered to run concurrently. Challenging the conviction and sentence, the accused has filed the present appeal.

3 Heard Mr.AR.L.Sundaresan, learned Senior Counsel representing M/s.AL.Gandhimathi, learned counsel on record for the appellant Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the State.

4 The prosecution case, in a nutshell, is that the appellant suspected his wife's fidelity; on 21.10.2011, the appellant was in the house of his parents nearby and his two daughters were with him; his wife Meenakshi (D1) was with her son Dinesh (D2) in Door No.2352 house nearby; the appellant got up in the midnight and saw lights burning in his house at Door No.2352; he thought that his wife's paramour was there; he rushed there and assaulted his wife; on seeing this, his son Dinesh (D2), aged about 10 years, intervened; the appellant violently pushed him to the wall; Dinesh's (D2's) head banged on the wall and he fell dead; the appellant indiscriminately stabbed Meenakshi (D1) with the iron tress untangler (M.O.4) and caused her death; thereafter, he absconded with his two daughters and went to Kerala; he surrendered before the Judicial Magistrate, Aruppukkottai on 14.06.2012; in the habeas corpus proceedings initiated by Perumal (P.W.1), the father of Meenakshi (D1), the police traced the children and produced them in the High Court on 15.06.2012.

5 This case is founded upon circumstantial evidence. The relationships between the appellant, the two deceased, Perumal (P.W.1), Kamakshi (P.W.2), Karpagavalli (P.W.3), Umayaraj (P.W.4), Divya (P.W.6) and Karthika (P.W.7) are not denied.

6 The motive projected by the prosecution is that the appellant suspected the fidelity of his wife. Perumal (P.W.1), Kamakshi (P.W.2), Karpagavalli (P.W.3) and Umayaraj (P.W.4), who is the husband of Karpagavalli (P.W.3), have all stated that the appellant was living with his family in Door No.2352, Housing Board Colony, Anupanadi West, Madurai. This property stands in the name of the appellant and his wife. They have further stated that the



appellant suspected his wife's fidelity and believed that she was of loose morals and therefore, quarrelled with her frequently and assaulted her. They have also stated that on account of torture given by the appellant, Meenakshi (D1) went to her natal home in Ramanathapuram District and a police complaint was also lodged in A.W.P.S., Madurai Town and the police advised the couple to live away from each other for six months.

7 To corroborate this, the prosecution examined Kameswari (P.W.17), the then Sub Inspector of Police, A.W.P.S., Madurai, who has stated that on 06.10.2007, Meenakshi, W/o.Thirupathi, lodged a complaint that her husband would come drunk and torture her; the complaint was received and assigned petition No.254 of 2011. She has further stated that she (P.W.17) called Meenakshi (D1) and her husband for enquiry and in the enquiry, Meenakshi (D1) agreed to re-join her husband in the interests of her children. In the cross-examination, it was suggested to her that the A.W.P.S., Madurai, does not have jurisdiction to deal with the complaint from a person who lives in Anupanadi West area and only the A.W.P.S., Thirupparankundram will have jurisdiction, for which, she stated that, for conducting a petition enquiry on the complaint given by a woman, territorial jurisdiction is not relevant and only if a regular FIR is registered, the aspect of territorial jurisdiction will be examined by the police. It was further suggested to her that the petition No.254 of 2011 relates to some other person and not to the complaint of Meenakshi (D1), which, she denied.

8 Thus, on an overall reading of the evidence of Perumal (P.W.1), Kamakshi (P.W.2), Karpagavalli (P.W.3) and Kameswari (P.W.17), we find that the prosecution has proved the alleged motive satisfactorily. The most powerful circumstance against the appellant is that, after the incident, he had absconded with his two daughters viz. Divya (P.W.6) and Karthika (P.W.7) and did not even attend the funeral of his wife (Meenakshi-D1) and son (Dinesh-D2).

9 Mr.ARL.Sundaresan, learned Senior Counsel, took this Court through the written explanation given by the appellant under Section 313 Cr.P.C., wherein, he has stated that he had a very cordial relationship with his wife; there was no dispute between them; they had purchased a house in Door No.2352, Housing Board Colony, Anupanadi West in their joint names in the year 2008 and were living happily; his job is to make steel almirah, for which, he would go frequently to various places and remain there for two to three months continuously; he informed his wife and children and went to Ganga Bureau Company in Tuticorin, where, he was employed, during which time, the unfortunate incident had taken place; his parents-in-law had taken a loan of Rs.2,00,000/- from him; when he asked them to return the amount, they developed ill feeling towards him and that is why, they have falsely implicated him in this case; he came to know that the police were on the hunt for him and fearing that, he will be tortured, he remained in Tuticorin itself; he did not take with him Divya (P.W.6) and Karthika (P.W.7); he did not go to Kerala; since his parents-in-law wanted to usurp the property, this case has been foisted on him.



10 Relying upon the above statement of the appellant, Mr.AR.L.Sundaresan, learned Senior Counsel contended that the appellant has given a satisfactory explanation, as to where he was, at the time of the incident and that, he did not make himself available to the police, because, he feared of torture at their hands. He relied upon the judgment of the Supreme Court in **SK. Yusuf vs. State of West Bengal**¹ and contended that mere abscondence, without anything more, cannot be construed as an incriminating circumstance against the accused.

11 It is true that abscondence, by itself, without anything more, cannot lead to the inference of guilt. In this case, the deceased were none other than the appellant's wife and son. The appellant may have many a grievance against his wife and therefore, he would have decided to remain away from her funeral. But, there is no plausible explanation, as to why, he did not even come to see the dead body of his son Dinesh (D2). Yet another powerful circumstance against the appellant is that, after the incident, his two daughters Divya (P.W.6) and Karthika (P.W.7), who were school-going children had also gone missing. That is why, the case was altered from one under Section 302 IPC to one under Section 302 read with Section 363 IPC vide Alteration Report (Ex.P.24).

12 Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the defence submitted that Divya (P.W.6) and Karthika (P.W.7) did not support the case of the prosecution and turned hostile and therefore, there is no material to show that they were with the appellant. No doubt, Divya (P.W.6) and Karthika (P.W.7) turned hostile. However, the evidence of a hostile witness need not be completely thrown aboard, in view of Section 154(2) of the Indian Evidence Act, 1872. Karthika (P.W.7), who was 14 years old, when she was examined on 02.06.2014, has stated that on the night when her mother and brother died, she and her elder sister were sleeping in the house of her paternal grandfather, which is three houses away. In the charge that was framed against the appellant, it is clearly stated that on 21.10.2011, while the appellant and his two daughters were sleeping in the house of the appellant's father, around 12.30 midnight, he saw light burning in the house, where his wife Meenakshi (D1) was staying and suspecting her, he went there and held her by her tresses and assaulted her; at that time, when Dinesh (D2) intervened, he (appellant) pushed Dinesh (D2) with such force that he dashed against the wall and fell dead; thereafter, the appellant took the iron tress untangler (M.O.4) and stabbed Meenakshi (D2) around her chest, resulting in her death.

13 According to Karthika (P.W.7), her father was not there with them on that night and that, he did not take them with him. She has further stated that after the incident, she went to her junior paternal uncle's house. We are unable to believe this part of evidence of Karthika (P.W.7), because, both Divya (P.W.6) and Karthika (P.W.7) were produced by the police before this Court only



on 15.06.2012 and that too, after Perumal (P.W.1) filed H.C.P.No.40 of 2012. Unfortunately, the Trial Court Prosecutor had merely confronted the two children with their Section 161 Cr.P.C. statements mechanically, instead of questioning them deeply, as to whether, they went to school or in which school they were studying, etc. Had such questions been posed, the children would have come out easily with the truth. Many Trial Court Prosecutors firmly believe that their duty ends with confronting a hostile witness with his previous police statement.

14 Divya (P.W.6) and Karthika (P.W.7) have stated in their evidence that there was no misunderstanding between their parents. Even in the Section 313 Cr.P.C. statement of the appellant, he had stated so. Had that been true, he would not have stayed away from the funeral of his wife and son. His explanation that he had given Rs.2,00,000/- to his parents-in-law and when he asked them to return the amount, they developed animosity towards him and therefore, they had foisted this case against him appears incredible, because, in the cross-examination of Perumal (P.W.1), no such suggestion has been put. The story of the appellant extending loan of Rs.2,00,000/- to his parents-in-law surfaced for the first time only in the Section 313 Cr.P.C. statement. The appellant has not denied the fact that he voluntarily surrendered before the Judicial Magistrate, Aruppukkottai on 14.06.2012, which is not the jurisdictional Court and the children were produced by the police before this Court on 15.06.2012, one day after his surrender. Further, the explanation given by the appellant under Section 313 Cr.P.C. is palpably false and therefore, such a false explanation is an additional circumstance incriminating the appellant in view of the judgment of the Supreme Court in **Mani Kumar Thapa vs. State of Sikkim**². Hence, we are in complete agreement with the following finding of the trial Court returned in paragraph 57:

"The reason for P.W.6 and P.W.7 for not attending the funeral of their brother and mother though they were in Madurai is also doubtful. If they have attended the funeral, there might not be any necessity for P.W.1 to file the Habeas Corpus Petition before the High Court. From the evidence of P.W.9, P.W.10, P.W.18, it is clear that the accused has left the place of occurrence immediately after the occurrence."

15 As regards the recovery of gold jewels from Muthoot Finance, Mr.AR.L.Sundaresan, learned Senior Counsel contended that Ganesh (P.W.10), Manager of Muthoot Finance, has not stated that it was the appellant who had pledged the jewels (M.Os.1 and 2), but, has stated that it was one Ameen (P.W.9). Ameen (P.W.9) has stated that he is a native of Shencottah and works for a steel almirah company in Kollam, Kerala; he knows the appellant, who is also an almirah craftsman; the appellant approached him for a job and he got him a job in his company; the appellant approached him with his two children and asked to arrange an accommodation for him and that, he

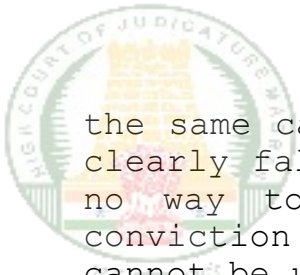


got him a place to stay in Kollam; the appellant gave him a pair of ear rings (M.O.2) and a gold thali (M.O.1) and wanted a loan; he pledged those items with Muthoot Finance and obtained loan and gave him. However, in the cross-examination, he was not able to properly identify M.Os.1 and 2.

16 Assuming for a moment that the prosecution was not able to satisfactorily prove the fact of the appellant giving two jewels to Ameen (P.W.9) for pledging them with Muthoot Finance, yet, the evidence of Ameen (P.W.9) that he is an almirah craftsman and that, he knows the appellant who is also an almirah craftsman and that, the appellant came with his two daughters in search of a job to Kollam in Kerala, where, he got him a job and also accommodation, cannot be disbelieved.

17 As regards the conviction of the appellant under Section 404 IPC, except the police confession of the appellant, there is no other material to establish the charge. Regarding the recovery of two jewels (M.Os.1 and 2), Ganesh (P.W.10) has stated that the jewels were pledged by Ameen (P.W.9) on 24.10.2011 and they were redeemed on 21.06.2012, which is after the surrender of the appellant on 14.06.2012. That apart, Ameen (P.W.9) was not able to identify M.Os.1 and 2. Under such circumstances, the conviction and sentence slapped on the appellant for the charge under Section 404 IPC cannot be sustained and accordingly, he is acquitted of the said charge.

18 The learned Senior Counsel appearing for the appellant contended that even if the prosecution case is accepted in toto, the conviction of the appellant under Section 302 IPC cannot be maintained, because, the death of Dinesh (D2) occurred accidentally and not due to premeditation and only after that, in sheer frustration, the appellant had caused the death of Meenakshi (D1). In support of this contention, the learned Senior Counsel drew the attention of this Court to the police confession of the appellant. In our opinion, the police confession which came into being after registration of the FIR and during investigation cannot be looked into, even in favour of the accused, save as provided under Section 27 of the Indian Evidence Act, in the light of the judgment of a Division Bench of this Court in **Sudalaimani vs. State, represented by the Inspector of Police, Chromepet Police Station, Chennai**³, wherein, one of us (PNPJ) was a member. That apart, there are six stab injuries around the chest portion of Meenakshi (D1), which shows the intensity with which the offence was committed. However, we are in agreement with the submission of Mr.AR.L.Sundaresan that the death of Dinesh (D2) was a sheer accident, even according to the charge and therefore, the conviction of the appellant under Section 302 IPC for the death of Dinesh (D2) may not be appropriate. The act of the appellant, qua Dinesh (D2) would fall within the third limb of Section 299 IPC and would not graduate to Section 300 IPC. However,



the same cannot be said qua the death of Meenakshi (D1), which will clearly fall within Section 300 Thirdly or Fourthly and there being no way to invoke any of the five exceptions, the appellant's conviction under Section 302 IPC for the death of Meenakshi (D1) cannot be unsettled.

19 In the result, this appeal is partly allowed. The conviction and sentence slapped on the appellant under Section 404 IPC are set aside. Further, the conviction and sentence of the appellant under Section 302 IPC for causing the death of Dinesh (D2) are also set aside and in lieu of that, the appellant is convicted under Section 304(II) IPC and sentenced to undergo seven years rigorous imprisonment and pay a fine of Rs.1,000/-. The conviction and sentence imposed on the appellant under Section 302 IPC for the murder of Meenakshi (D1) stand affirmed. The sentences shall run concurrently. Connected Crl.M.P. stands closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS-)

gya/cad

To

1. The Principal Sessions Judge, Madurai.
2. The Inspector of Police,
Avaniapuram Police Station, Madurai.
3. The Judicial Magistrate No.6, Madurai.
4. The Superintendent, Central Prison, Madurai.
5. The District Collector, Madurai
6. The Director General of Police, Mylapore, Chennai-4.
7. The Chief Judicial Magistrate, Madurai.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

CRL.A. (MD) No.311 of 2017

30.04.2019