



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD) No.351 of 2017
and
Crl.M.P.(MD) No.8149 of 2017

M.John Singh

... Appellant/Sole Accused

-VS-

The State of Tamilnadu, Rep.by
The Inspector of Police
Thattarmadam Police Station
Thoothukudi District
(Crime No.391 of 2014)

... Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed under Sections 449 and 302 I.P.C. vide judgment dated 13.04.2016, by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, in S.C.No.458 of 2015 and thereby to set the appellant at liberty forthwith.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

J U D G M E N T

[Judgment of the Court was made by P.N.PRAKASH, J.]

Challenging the judgment of conviction and sentence, dated 13.04.2016, passed in S.C.No.458 of 2015, by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, the accused is before this Court.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The case of the prosecution, in a nutshell, is as follows:

2.1. The deceased Jesmila Annal Rose (for short



"Rose") was the wife of Antony Michael Sahayam (for short "Antony") (P.W.1) and mother of Joe Anto (P.W.4). The family of Antony (P.W.1) comprised his wife Rose, son Joe Anto (P.W.4), daughter Jositha and father Joseph (P.W.2). They were living in a house bearing Door No.16/57 at Annal Nagar, Thattarmadam. The appellant is the maternal uncle's son of Antony (P.W.1) and since his childhood, the appellant was brought up by Antony (P.W.1) and his father Joseph (P.W.2). The appellant was 27 years old at the time of the incident. He was provided a room in the house of Antony (P.W.1) and Joseph (P.W.2) put up a Tea Shop for the appellant in Thattarmadam Bazaar. While that being so, the appellant is said to have blackmailed Rose by saying that he has taken her nude photographs in his mobile phone and that she should satisfy his carnal desire, failing which, he would upload those photographs in public domain. Rose informed this to her husband Antony (P.W.1). On coming to know of it, Antony (P.W.1) and his younger brother George Selvin Sahayam (P.W.3) confronted the appellant and checked his mobile phone, but, they did not find any obscene photograph of Rose. On account of these developments, the appellant was nurturing a grievance against Rose.

2.2. On 06.12.2014, around 08.15 p.m., the appellant came with a wooden pestle (M.O.1) to the house of Rose, when her husband Antony (P.W.1) and father-in-law Joseph (P.W.2) were not there. Rose was lying down on the bed in her bedroom with her younger child Jositha. Joe Anto (P.W.4), the elder son of Rose, was in the house. The appellant asked Joe Anto (P.W.4) to stay out and went into the bedroom of Rose and attacked her indiscriminately on her head with pestle (M.O.1). Incidentally, Antony (P.W.1) and his father Joseph (P.W.2) returned home and saw Joe Anto (P.W.4) standing out. At the same time, they also heard cries from inside the house and so, when they rushed into the house, they saw the appellant attacking Rose and on seeing them, the appellant barged out of the room and fled.

2.3. Rose was carried to Chidambaram Hospital in Thisayanvilai, where, she was examined by Dr.Christopher Samuel (P.W.14), at 09.30 p.m. on 06.12.2014. Since her condition was critical, Dr.Christopher Samuel (P.W.14) gave first aid and referred her to the Government Hospital. Antony (P.W.1) and George Selvin Sahayam (P.W.3) carried



her to Thiraviam Hospital, Nagercoil, where, Dr.Sudhan (P.W.15) examined her and declared brought dead at 10.30 p.m. on 06.12.2014 and asked them to take the body to the Government Hospital. Accordingly, Antony (P.W.1) took the body to the Government Hospital, Sathankulam, where, Dr.Athikumar (P.W.16) examined and kept the body in the mortuary. On the written complaint (Ex.P1) given by Antony (P.W.1), Ravichandran (P.W.20), Head Constable, registered a case in Thattarmadam Police Station Crime No.391 of 2014, at 04.00 a.m. on 07.12.2014, under Section 302 I.P.C. against the appellant and prepared the printed F.I.R. (Ex.P22), which reached the jurisdictional Magistrate at 06.30 a.m. on 07.12.2014, as could be seen from the endorsement thereon.

2.4. Thereafter, the investigation of the case was taken over by Robinson (P.W.21), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P23) in the presence of the witnesses Dhevasahayam (P.W.8) and Michael Raj (not examined). From the place of occurrence, the Investigating Officer collected the spilled blood in a separate cloth (M.O.6) under the cover of mahazar (Ex.P3) and seized the bloodstained pillow cover (M.O.4) and bloodstained bedspread (M.O.5) under the cover of mahazar (Ex.P4) in the presence of the same witnesses.

2.5. Thereafter, the Investigating Officer came to the mortuary and conducted inquest over the body of the deceased and prepared the Inquest Report (Ex.P24). He gave a requisition for postmortem and accordingly, Dr.Sivakami (P.W.17) performed autopsy on the body of the deceased and issued the Postmortem Certificate (Ex.P17). Dr.Sivakami (P.W.17), in her evidence as well in the Postmortem Certificate (Ex.P17), has noted as follows:

"External injuries : 1) Deep lacerated wound A shaped 15 x 5 upto bone depth exposing the brain matter over occipital region. 2) Deep lacerated T shaped wound 10 x 5 cm upto bone depth exposing the brain matter over right parietal region. 3) Deep lacerated wound 5 x 2 cm over left parietal region. 4) Deep lacerated wound 8 x 3 cm over occipital region near the 1st

Internal Exam : Neck : Hyoid intact. Heart 300gm empty. Lungs right 600gm both pale.



Kidneys right 160gm left 160gm both pale. Liver : 1600 gm pale. Spleen : 200 gm pale. Stomach empty. Skull bone : occipital & parietal bone fractured and depressed some parts missing. Brain matter lacerated at that site & some parts missing.

Death would have occurred 12-18 hours prior to postmortem. Viscera sent for chemical analysis.

Visceral analysis report (T.No.8410/2014/TIN/Tox.H/2513/2014) shows poison was not detected in any of them.

Opinion as to cause of death:

The deceased would appear to have died of Hemorrhagic shock due to multiple injuries & injury to vital organs."

2.6. The Investigating Officer arrested the accused at 06.00 a.m. on 09.12.2014 and recorded his confession statement, the admissible portion of which was marked as Ex.P5. Based on the disclosure made by the appellant, the Investigating Officer recovered the bloodstained pestle (M.O.1) under the cover of mahazar (Ex.P6) in the presence of the witnesses Chinnadurai and Saravanan (not examined). Thereafter, on the disclosure of the appellant, a motorcycle bearing registration No.TN02 AR2075 (M.O.2) as well its key (M.O.3) under the cover of mahazar (Ex.P7), in the presence of the same witnesses. From there, on the showing of the appellant, the Investigating Officer recovered a pair of chappals (M.O.7) under the cover of mahazar (Ex.P8) in the presence of the witnesses Ravi and Saravanan (not examined).

2.7. Since there were injuries on the appellant, he was produced before Dr.Athikumar (P.W.16), at the Government Hospital, Sathankulam, on 09.12.2014 at 05.30 p.m. Dr.Athikumar (P.W.16) examined the appellant, who stated that when he was wandering into the forest, he fell down and sustained injuries on his feet and right palm. The Accident Register was marked as Ex.P15. Thereafter, the appellant was sent to judicial custody. The seized articles were sent by the Investigating Officer, through the jurisdictional Magistrate, to the Tamil Nadu Forensic Sciences Department for examination and report. The Biology Report (Ex.P11), dated 16.02.2015 states that blood was



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detected in seven items, including the pillow cover (M.O.4), bedspread (M.O.5), garments of the deceased (M.Os.9, 11 to 13) and wooden pestle (M.O.1). The Serology Report (Ex.P12) shows that the blood group found in the aforesaid examined articles is "Human O". These two exhibits, viz. Exs.P11 and P12 are admissible under Section 293 Cr.P.C.

2.8. After examining the witnesses and collecting various reports, Robinson (P.W.21), Investigating Officer, filed final report in P.R.C.No.16 of 2015, before the learned Judicial Magistrate, Sathankulam, for the offences under Sections 449 and 302 I.P.C. against the appellant.

3. 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.458 of 2015 and made over to the Fast Track Mahila Court, Thoothukudi, for trial.

4. The Trial Court framed two charges against the appellant, as detailed below:

Charge	Penal Provisions
1.	449 I.P.C.
2.	302 I.P.C.

5. When questioned, the appellant pleaded "not guilty". To prove its case, the prosecution examined 21 witnesses and marked 24 exhibits and 13 material objects. No witness was examined nor any document marked on the side of the accused. When the accused was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same.

6. By Judgment dated 13.04.2016, the Trial Court convicted and sentenced the appellant as under:

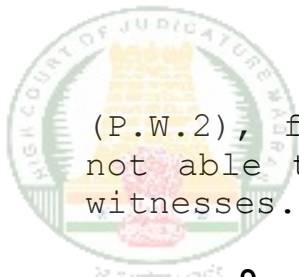
Section of Law	Sentence of imprisonment	Fine amount
449 I.P.C.	To undergo rigorous imprisonment for ten (10) years.	Rs.1,000/- in default to undergo simple imprisonment for six (6) months.
302 I.P.C.	To undergo imprisonment for life.	Rs.4,000/- in default to undergo rigorous imprisonment for one (1) year.

have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this criminal appeal.



7. Heard Mr.R.Alagumani, learned counsel appearing for the appellant and Mr.M.Chandrasekaran, learned Additional Public Prosecutor for the State.

8. Antony (P.W.1), in his evidence, has stated that the deceased Rose was his wife and he has two children, viz., Joe Anto (P.W.4) and Jositha; the appellant is his maternal uncle's son; the appellant was brought up by him and his father Joseph (P.W.2) and was living with him in the house bearing Door No.16/57 at Annal Nagar, Thattarmadam; he (P.W.1) is working in TC-27, Sasthavinallur Primary Agricultural Co-operative Credit Society and his wife was working as a Teacher in St.Annal School; his brother George Selvin Sahayam (P.W.3) is living a little away in the house bearing Door No.16/55 with his family; his mother died in the year 2012 and thereafter, it was the deceased, who was taking care of the appellant and providing him food and other necessities of life; his father Joseph (P.W.2) has put up a Tea Shop for the appellant in Thattarmadam Bazaar; the appellant was also provided a separate room on the western side of the house for his occupation; on 01.12.2014, while he (P.W.1) was at home with his father Joseph (P.W.2) and younger brother George Selvin Sahayam (P.W.3), his wife told them that the appellant was blackmailing her by saying that he has taken her nude photographs and that he would upload those photographs in public domain, if she would not satisfy his lust; on coming to know of this, he (P.W.1) along with his younger brother George Selvin Sahayam (P.W.3), accosted the appellant and questioned him about this; the appellant denied the allegation and on scrutiny of his mobile phone, they were not able to find any nude photograph of the deceased; after this incident, the appellant stopped talking to them; on 06.12.2014, he (P.W.1) went for work and was returning home around 08.30 p.m. via. R.C.Church; at that time, his father Joseph (P.W.2) was also returning home and joined him; when they came near the house, they found Joe Anto (P.W.4) standing outside; when they asked Joe Anto (P.W.4) as to why he is standing outside, he (P.W.4) told them that the appellant asked him to stay out; at that time, he (P.W.1) heard his wife screaming "Don't kill, don't kill" from inside the house; so, he (P.W.1) rushed into the house and saw the appellant attacking his wife with a pestle (M.O.1) saying, "You have brought disgrace to me"; when they tried to catch him, he escaped through the rear entrance of the house; at 09.30 p.m., he (P.W.1) along with his father Joseph (P.W.2) and brother George Selvin Sahayam (P.W.3) took Rose, in their car, to Christopher Hospital, Thisayanvilai, where, she was given first aid and thereafter, she was referred to the Government Hospital; he (P.W.1) brought Rose to Thiraviam Hospital, Nagercoil, where, Dr.Sudhan (P.W.15) examined her and declared that she was brought here, he (P.W.1) took the body of Rose to the Government Hospital, Sathankulam, at 02.00 p.m., on 07.12.2014 and thereafter, gave complaint (Ex.P1). On the same lines, Joseph



(P.W.2), father of Antony (P.W.1), has deposed. The defence was not able to make any dent in the cross-examination of these two witnesses.

9. The most incriminating evidence against the appellant is that of the child witness, viz. Joe Anto (P.W.4). Joe Anto (P.W.4) was 11 years old, when he was examined on 09.02.2016 before the Trial Court. The learned Trial Judge has conducted a thorough preliminary enquiry in order to ascertain the capability of the child to give evidence and thereafter, recorded his evidence. Joe Anto (P.W.4) has stated that on 06.12.2014, at 08.00 p.m., he was watching TV in the house; at that time, the appellant came there and asked him to stay out; the appellant went inside the house and closed the door; soon thereafter, his father Antony (P.W.1) and grandfather Joseph (P.W.2) came there and asked him as to why he is standing out, for which, he told them that the appellant asked him to stand out; his father Antony (P.W.1) and grandfather Joseph (P.W.2) went inside the house and he (P.W.4) also followed them; he (P.W.4) saw the appellant attacking his mother with a pestle (M.O.1); on seeing them, the appellant rushed out of the room and pushed his father Antony (P.W.1) and ran away. In the cross-examination, the child (P.W.4) has stated that after his father Antony (P.W.1) and grandfather Joseph (P.W.2) came to the house, he heard cries from inside the house, however, he (P.W.4) has stated that he had not witnessed the actual attack.

10. Mr.R.Alagumani, learned counsel for the appellant, contended that when the child had not witnessed the attack, his testimony loses significance.

11. We carefully considered the evidence of Antony (P.W.1), Joseph (P.W.2) and Joe Anto (P.W.4). From the evidence of these witnesses, the following facts stand established beyond cavil:

- (i) The family of Antony (P.W.1) comprising his wife Rose, son Joe Anto (P.W.4), daughter Jositha and father Joseph (P.W.2) was residing in the house bearing Door No.16/57 at Annal Nagar, Thattarmadam.
- (ii) The appellant is the maternal uncle's son of Antony (P.W.1) and since his childhood, he grew in the house of Antony (P.W.1).
- (iii) On the complaint made by Rose that the appellant was blackmailing her with her nude photographs, the appellant was questioned by Antony (P.W.1), Joseph (P.W.2) and George Selvin Sahayam (P.W.3) and his mobile phone was checked. This had strained the relationship between the appellant and the family of Antony (P.W.1).

- (iv) On the fateful day, at 08.00 p.m., Joe Anto

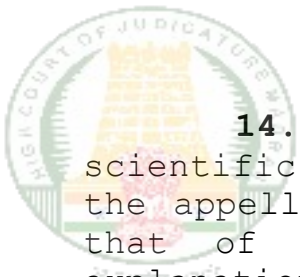


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(P.W.4) was watching TV in the house; at that time, the appellant came to the house and asked him to stay out; thereafter, the appellant went inside the house and closed the door; when the appellant was inside the house, incidentally, Antony (P.W.1) and Joseph (P.W.2) returned home and found Joe Anto (P.W.4) standing out; thereafter, when they questioned Joe Anto (P.W.4), he told them that the appellant had asked him to stand out; thereafter, when they heard cries, they went inside the house and saw the appellant attacking Rose with a pestle (M.O.1); on seeing them, the appellant pushed Antony (P.W.1) and ran away through the rear entrance.

12. In the teeth of such overwhelming materials, the stray statement of Joe Anto (P.W.4) that he did not actually see the attack will not demolish the prosecution case. We have no reason to disbelieve the testimony of Joe Anto (P.W.4) that he was watching TV in the house at 08.00 p.m. on 06.12.2014 and at that time, the appellant came there and asked him to stay out. The fact that the child (P.W.4) was standing outside the house stood corroborated by the evidence of Antony (P.W.1) and Joseph (P.W.2). May be, after hearing the cries, when Antony (P.W.1) and Joseph (P.W.2) rushed into the house, the child (P.W.4), who had followed them, might not have actually seen the attack. However, inside the bedroom, there were only three persons, viz. Rose, her daughter Jositha and the appellant. The appellant rushed out of the bedroom on seeing Antony (P.W.1), who found Rose with injuries on her head. Obviously, the child Jositha would not have inflicted the injuries nor are the injuries self-inflicted.

13. Mr.R.Alagumani, learned counsel for the appellant, contended that the complaint (Ex.P1) in this case was belatedly given and the F.I.R. (Ex.P22) itself was registered only at 04.00 a.m. on 07.12.2014 and therefore, the case of the prosecution itself becomes suspect, inasmuch as there was a delay of 7 ½ hours. In this case, after the incident, Rose was carried to Chidambaram Hospital, Thisayanvilai and from there, she was carried to Thiraviam Hospital, Nagercoil, and only thereafter, she was taken to the Government Hospital, Sathankulam, where she was examined by Dr.Athikumar (P.W.16) at 02.00 a.m. on 07.12.2014. Therefore, the lodging of complaint (Ex.P1) by Antony (P.W.1) at 04.00 a.m. on 07.12.2014 cannot be said to be delayed. It may be relevant to state here that the printed F.I.R. (Ex.P22) reached the jurisdictional Magistrate at 06.30 a.m. on 07.12.2014. Hence, we are unable to agree with this contention put forth by Mr.R.Alagumani, learned counsel for the appellant.



14. Apart from the ocular evidence, we also have the scientific evidence, which shows that the pestle (M.O.1) used by the appellant was found with human blood of "O" Group, which was that of the deceased, for which there is no satisfactory explanation by the appellant.

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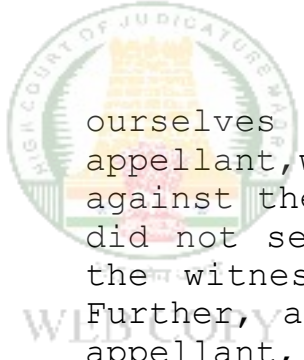
15. Mr.R.Alagumani, learned counsel for the appellant, contended that even according to Joe Anto (P.W.4), the door was not locked, but, strangely, he did not enter into the house, even after hearing the cries and therefore, the very presence of Joe Anto (P.W.4) in the place of occurrence becomes doubtful.

16. On a careful scrutiny of the evidence of Antony (P.W.1), Joseph (P.W.2) and Joe Anto (P.W.4), it is seen that the child Joe Anto (P.W.4) was made to stay out by the appellant and while the child Joe Anto (P.W.4) was standing out, Antony (P.W.1) and Joseph (P.W.2) came there and only thereafter, the shrieks emanated from inside the house. That apart, for the incident that had taken place on 06.12.2014, the child Joe Anto (P.W.4) gave evidence two years later on 09.02.2016. These factors are also to be borne in mind by the Court while appreciating the evidence of a child witness. Even assuming for a moment that the child heard the shrieks from inside the house, even before Antony (P.W.1) and Joseph (P.W.2) came there, his conduct of not going inside the house cannot be faulted because, every person would not react uniformly in a given situation. After all, he was a 9 year old small boy. That apart, the appellant had specifically asked Joe Anto (P.W.4) to stay out and he (P.W.4) implicitly obeyed the appellant's bidding.

17. Mr.R.Alagumani, learned counsel for the appellant, contended that someone could have also committed the offence. We are unable to countenance this submission, because, there is no reason for Antony (P.W.1), Joseph (P.W.2) and Joe Anto (P.W.4) to falsely implicate the appellant, who according to the witnesses, was part and parcel of their family and having grown up in their house since his childhood.

18. It may also be pertinent to mention here that the bloodstained pestle (M.O.1) was recovered after the arrest of the accused pursuant to the disclosure statement made by him and the same was identified by Antony (P.W.1) in the witness box.

19. Mr.R.Alagumani, learned counsel for the appellant, further contended that Joe Anto (P.W.4) has not stated that the appellant had entered into the house armed with a weapon and that the appellant had also suffered injuries, which shows that some struggle must have taken place inside the house and therefore, the conviction of the appellant should have been under Section 304 I.P.C. and not under Section 302 I.P.C. We are unable to persuade



ourselves to agree with this submission, because, the appellant, who was a 27 year old robust person, pitted himself against the deceased, who was a defenceless lady and the appellant did not set up such a defence either in the cross-examination of the witnesses or in the examination under Section 313 Cr.P.C. Further, after the arrest, when the Police found injuries on the appellant, they promptly produced him before Dr.Athikumar (P.W.16), who examined the appellant. At that time, the appellant has told the Doctor that he had sustained the injuries when he fell down in the forest, while he was in hiding. That apart, there were four injuries on the occipital and parietal regions (head region) of the deceased, which show the intensity with which the attack was mounted.

20. At this juncture, Mr.R.Alagumani, learned counsel for the appellant, contended that the conviction and sentence of the appellant for the offence under Section 449 I.P.C., cannot be sustained, because, even according to the prosecution, the appellant was living in the house of Antony (P.W.1) and therefore, there is no question of the appellant trespassing therein. We are in agreement with this submission. Therefore, we find the appellant not guilty of the offence under Section 449 I.P.C.

21. In fine,

- This Criminal Appeal is partly allowed;
- The judgment dated 13.04.2016, passed in S.C.No.458 of 2015, by the Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, is hereby modified;
- The appellant is acquitted of the charge under Section 449 I.P.C;
- The conviction and sentence imposed on the appellant for the offence under Section 302 I.P.C. are hereby confirmed;
- Consequently, the connected CrI.M.P.(MD) No.8149 of 2017 is closed.

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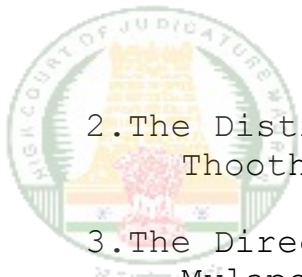
Assistant Registrar (ADI)

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Sub Assistant Registrar (CS)

To:

1.The Sessions Judge,
Fast Track Mahila Court,
Thoothukudi.



2.The District Collector,
Thoothukudi

3.The Director General of Police,
Mylapore, Chennai

4.The Superintendent of Central Prison
Palayamkottai, Tirunelveli District

5.The Inspector of Police,
Thattarmadam Police Station,
Thoothukudi District.

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

7.The Section Officer,-2 COPIES
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-63572[F] dated
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