



BAIL SLIP

The Appellant/Sole Accused namely Rathinakumar, S/o. Mariyappa Chettiyar, was released on bail by this Hon'ble Court made in CRL MP(MD)No.10338 of 2017 in CRL A(MD)No.363 of 2017 dated 09.01.2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2019

Delivered on : 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.363 of 2017

Rathina Kumar

... Appellant/Sole Accused

Vs.

State Represented by
The Inspector of Police,
Thiruchitrambalam Police Station,
Thanjavur District.
(Crime No.100 of 2010)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to call for the records connected to the judgment in S.C.No.378 of 2011 on the file of the Sessions Judge, Mahalir Neethimandram Fast Track Mahila Court, Thanjavur dated 09.08.2017 and to set aside the conviction and sentence imposed against the appellant and against the Appellant of the Charges leveled against him.

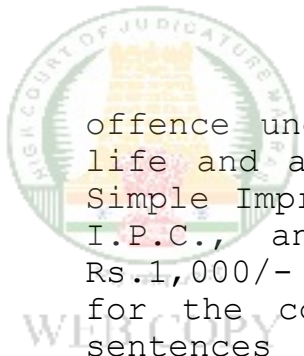
For Petitioner : Mr. Shanmuga Velayutham
Senior Counsel for
M/s.A.Thiruvadi Kumar

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The appellant is the sole accused in S.C.No.378 of 2011 on the file of the Fast Track Mahila Court, Thanjavur and he stood charged and tried for the commission of offences under Sections 498-A, 302 and 201 I.P.C. The trial Court vide judgment dated 09.08.2017, has found him guilty for the commission of offences under Sections 498-A, 302 and 201 I.P.C. and imposed Rigorous Imprisonment for 3 years and a fine of Rs.1,000/- with default sentence of 3 months Simple Imprisonment for the commission of



offence under Section 498-A I.P.C., and Rigorous Imprisonment for life and a fine of Rs.1,000/- with default sentence of 3 months Simple Imprisonment for the commission of offence under Section 302 I.P.C., and Rigorous Imprisonment for 7 years and a fine of Rs.1,000/- with default sentence of 3 months Simple Imprisonment for the commission of offence under Section 201 I.P.C. and the sentences were ordered to run concurrently and set off was also granted to the accused under Section 428 Cr.P.C. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal. It was entertained and pending disposal of the appeal, this Court has also granted suspension of substantive sentence of imprisonment.

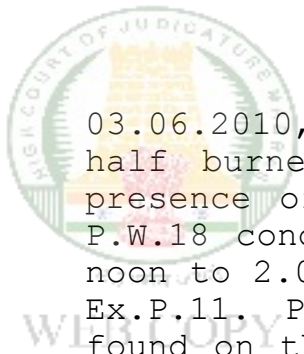
2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated are as follows:

2.1. The deceased is none other than the wife of the appellant/accused. The deceased Parameshwari, got married to the appellant/accused during the year 1999 and out of the wedlock 5 children were born and 3 of them had survived and one among them is P.W.10, who is a minor - child witness.

2.2. It is the case of the prosecution that the appellant/accused is addicted to alcohol and has ill-treated his wife Parameshwari (since dead) with cruelty and he was also in the habit of pledging her jewels frequently and such kinds of harassments were going on for 10 years. The appellant/accused on one occasion inflicted injury upon his wife, for which, she took treatment at Government Hospital and in order to resolve the matrimonial dispute amicably a panchayat was also held and during such panchayat the appellant/accused also attacked one Sethu, which is also lead to registration of F.I.R. The prosecution further alleges that five months prior to the occurrence, one more panchayat was held in which the appellant/accused along with his mother were present and they promised to take Parameshwari to matrimonial home and treat her well.

2.3. The prosecution further states that at about 7.00 hours on 03.06.2010, the family of the deceased viz., Parameshwari - wife of appellant/accused have received an information about her demise, who died on account of burn injuries. The father of the deceased viz., Chidambaram Chettiar, who died subsequently, proceeded to Thiruchitrambalam Police Station and lodged a complaint under Ex.P.1, based on which P.W.18 has registered a case in Crime No.100 of 2010 under Section 174 Cr.P.C. for suspicious death on 03.06.2010 at about 09.00 hours. The printed F.I.R. was marked as Ex.P9.

2.4. P.W.18 despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and also summoned the services of finger print expert. P.W.18 at about 9.45 a.m. on 03.06.2010 proceeded to the scene of crime in the presence of P.W.5 and another has prepared Observation Mahazar and Rough Sketch marked as Exs.3 and 10 respectively. At about 11.30 a.m. on



03.06.2010, P.W.18 recovered 5 litres white plastic can (M.O.4) and half burned jute bag (M.O.6), half burned lungi (M.O.7) in the presence of the said witnesses under the cover of mahazar EX.P.4. P.W.18 conducted inquest on the body of the deceased between 12.00 noon to 2.00 p.m. on 03.06.2010 and the inquest report was marked as Ex.P.11. P.W.18, in the process has recovered the golden jewels found on the body of the deceased marked as M.Os.8 to 11 under the cover of Mahazar and sent the body along with requisition for postmortem through P.W.15.

2.5.P.W.13 was the Assistant Surgeon attached to Government Hospital, Pattukottai, who received the body of the deceased along with requisition at 4.00 p.m. on 03.06.2010 and he noted the following features:

"Identification and caste marks:

1) Could not be made out due to burns.

The body was first seen by the undersigned at 4.30 p.m. on 3/6/10. Its condition then was cold, Rigor mortis present in all four limbs. Post-mortem commenced at 4.30 p.m. on 03/06/2010."

P.W.13 noted the following appearances found at the post-mortem:

"Appearances found at the post-mortem

Moderately nourished female body lying on its back. Total body surface including head, genitalia hair on head, axilla (NC) - burnt. Bleeding from mouth present, Hyoid bone broken (right horn) All internal organs congested No (NC) particles present in the oral cavity, (NC), trachea and lungs, brain and its coverings intact. Stomach empty. Viscera sent for chemical analysis."

P.W.13 reserved his opinion pending chemical analysis report of viscera. As per Chemical Analysis Report, alcohol or other poison was not detected in the viscera and P.W.13 gave a opinion that the deceased would have died of mechanical asphyxia due to strangulation approximately Twelve to Twenty Four hours prior to postmortem examination. The burns occurred in Post Mortem period. The post mortem report is marked as Ex.P.8.

2.6.P.W.18 recorded the statements of P.Ws.1 to 6, 8, Chidambaram, Amokaraj, Muthiah, Uthirapathi, Anandan under Section 161(3) Cr.P.C. and also examined P.W.13, who conducted autopsy, based on which, the section of offence was altered to 302 I.P.C. The altercation report was marked as Ex.P.15. P.W.18 as per the information received, arrested the accused at 7.45 p.m. on 03.06.2010 and he voluntarily came forward to give confession statement in the presence of P.W.9 and another and as per admissible portion of the confession statement effected recovery of M.Os.1 to 3 and the same was received under cover of mahazar Ex.P.6. P.W.18 found that the accused also sustained burn injuries in one of the fingers in the left hand, left thigh, nose and taken him to police station at 10.30 p.m. and thereafter he was sent for medical examination and remand.

2.7.P.W.18 also recorded the statements of P.Ws.11 and 4 and



others. P.W.18 sent the seized articles under form 95 to the Court of jurisdictional Magistrate and he was transferred on 11.06.2018 and hence he handed over the case diary to P.W.19.

2.8.P.W.19 having found that during the course of his investigation the witnesses have spoken the same as that the statements already recorded, he did not record separate statements and he examined P.Ws.16, 12 and recorded their statements and he also recorded the further statement of P.Ws.13 and P.W.15. On 25.04.2011, P.W.19 examined P.Ws.1 to 3 and recorded their further statements and also the Siddha doctor viz., Ravichandran. P.W.19 also examined P.W.17 and after continuing the investigation, he had filed the Charge Sheet on 30.06.2011 on the file of the Court of Judicial Magistrate, Pattukottai charging the appellant/accused for the aforesaid offences, who took it on file in P.R.C.No.31/2011.

2.9. The Committal Court issued summons to the accused and on his appearance, furnished him with copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Thanjavur, which in turn made over the same to the Mahila Fast Track Court, Thanjavur, who took it on file in S.C.No.378 of 2011. The appellant/accused was issued with summons and on his appearance, charges under Sections 498-A, 302 and 201 IPC has been framed.

2.10.The prosecution, in order to sustain its case, examined PWs.1 to 19, marked Exs.P1 to P16 and also marked M.Os.1 to 11. The appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to incriminating circumstances made out against him and he denied it as false and also gave a statement that it was accidental burn injuries sustained by his wife and he has nothing to do with the offence. The appellant/accused did not examine any witness, but marked one document as Ex.D1.

2.11.The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellant/accused guilty of the offences and sentenced him as stated above, vide impugned judgment dated 09.08.2017 and challenging the same, the present Criminal Appeal is filed.

3. Mr.Shanmugavelayutham, learned Senior Counsel, assisted by Mr.A.Thiruvadikumar, learned counsel appearing for the appellant/accused, made the following submissions:

(i) The sole eyewitness examined by the prosecution was P.W.10, who was the son of the appellant/accused and the deceased and he was aged about 3 years at the time of alleged occurrence and he was examined in chief on 06.09.2016, when he was aged about 9 years and all along he was under the care and custody of the in-laws of the appellant, who were also examined as prosecution witnesses and he was taken care by the sister of the deceased and hence, his testimony should have been evaluated with great circumspection.

(ii) It is further pointed out by the learned Senior Counsel appearing for the appellant by drawing the attention of the testimonies of P.W.10 and the investigation officer, who was



examined as P.W.18 that P.W.10 during the course of his oral testimony made very many improvements from that of the statements recorded under Section 161(3) Cr.P.C. The origin and genesis of the occurrence are highly doubtful and even prior to the registration of the F.I.R., police came to the spot.

(iii) It is further pointed out that though according to P.W.10 the occurrence took place at about 9.30 p.m. on 03.06.2010, according to the prosecution it took place at about 2.30 a.m. on 02.06.2010/03.06.2010, and that immediately after the death of his mother police came to the spot and his father was taken away, whereas, according to the prosecution the appellant/accused was arrested at about 7.45 p.m. on 03.06.2010 and therefore, the admissible portion of the confession and recovery of the incriminating articles and the participation of the appellant/accused with regard to the alleged murder of his wife became highly doubtful and so also the alleged arrest and recovery of incriminating articles.

(iv) Attention of the Court was also drawn to the testimony of P.W.13, the doctor, who conducted autopsy and issued postmortem certificate marked as Ex.P.8. As per the postmortem report, the hyoid bone broken (right horn) and in Ex.P.8, P.W.13 had opined that the deceased died of mechanical asphyxia due to strangulation and in the evidence he deposed that in the trachea no carbon particles were found. P.W.13 in the cross-examination has deposed that the hyoid bone was not sent for chemical analysis and he did not find as to how hyoid bone on the right horn has broken and in the absence of any bone report it cannot be concluded that on account of strangulation by the appellant/accused the deceased had died and further that the opinion of the expert has to be evaluated by any other evidence such as bone report. The learned Senior Counsel appearing for the appellant in support of his defence has cited the judgment of this Court reported in **2019 (2) MWN (Cr.) 300 (DB) [Shanmugam v. State]**, in which one us (Mr.Justice B.Pugalendhi) was a party.

(v) The learned Senior Counsel also invited the attention of this Court to EX.P.3 - Observation Mahazar and would submit that smoke residues found in the scene of occurrence upto the height of 5 feet and the finger print was found in 4 feet height, which means the deceased was burned while she was standing. If really she died due to mechanical asphyxia due to strangulation, she would have been lying down and smoke residues should have been found only on the floor of the house or adjacent portion of the wall to the minimal height. Therefore, the theory projected by the prosecution in that regard is highly improbable and un-sustainable.

(vi) It is the further submission of the learned counsel appearing for the appellant/accused by drawing the attention of this Court to the testimonies of P.Ws.5 and 6 that according to P.W.5, M.O.7, half burned lungi was found in the scene of occurrence and admittedly it was worn by the accused and P.W.6 also deposed similarly. Even according to P.W.18, the accused was treated as in-



patient for 15 days and in the cross-examination he deposed that the accused was also found with burn injuries on his hand and he also pleaded that when he attempted to save his wife he sustained injuries. In the light of the said submissions, the case of the prosecution that the accused strangled his wife to death and thereafter burned her by pouring kerosene is not believable.

(vii) Attention of this Court was also drawn to the evidence of P.W.11, who says that immediately the police came to the spot and took the appellant/accused, which means, P.W.18 would not have arrested the accused at about 7.45 p.m. on 03.06.2010.

(viii) As regards conviction and sentence of accused under Section 498-A I.P.C. is concerned, P.W.19 has admitted that the witnesses during the course of investigation deposed that the appellant/accused purchased a house in the name of the deceased and gave her 100 sovereigns of jewels and if it is so, he would not have abused his wife on the pretext of dowry.

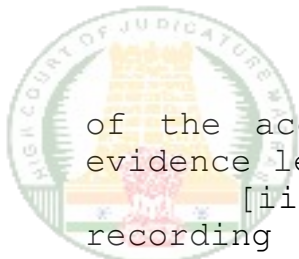
In sum and substance, it is the submission of the learned Senior Counsel appearing for the appellant/accused that in the light of the gaps and holes and very many infirmities, the case projected by the prosecution against the appellant/accused is not proved beyond any reasonable doubt and therefore, prays for setting aside the impugned judgment of conviction and sentence.

4.Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the respondent/State would submit that the testimony of P.W.13, the doctor, who conducted autopsy coupled with the postmortem report Ex.P.8 would show that no carbon particles noted in the trachea, which means that on account of strangulation the said particles could not get in. The postmortem report Ex.P.8 shows that the deceased died on account of strangulation and the accused himself strangled her and thereafter burned her for the reason, admittedly she died in the matrimonial home. It is his further submission that P.W.10, who is none other than the son of the appellant/accused, has amply sustained the case of the prosecution as to the act of commission of offence on the part of the appellant/accused. His evidence has been amply corroborated by the other witnesses and scientific evidence. The trial Court on proper appreciation of oral and documentary evidence rightly reached the conclusion to record the conviction and sentence and in the absence of any infirmities in the judgment of the trial Court, in exercise of its appellate jurisdiction, this Court may not interfere with the impugned judgment and prays for dismissal of this appeal.

5.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

6.The following questions arise for consideration:-

[i] Whether the prosecution was able to prove the guilty



of the accused beyond any reasonable doubt in the light of the evidence let in?

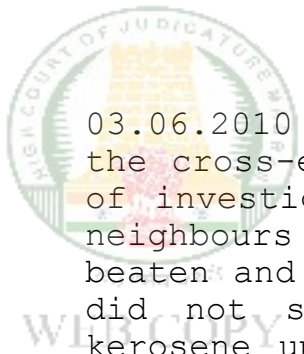
[ii] Whether the reasons assigned by the trial Court for recording conviction and sentence in the impugned judgment are sustainable?

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Question No. [i] :

7. The prosecution in order to sustain its case as to the motive examined P.W.1, the elder brother of the deceased, P.W.2, the brother of P.W.1, P.W.3, another brother of P.Ws.1 and 2 and P.Ws.4 to 6 also. The motive for the commission of offence is that the accused used to ill-treat and abuse his wife on the pretext of demand of dowry and that is why he was prosecuted for the commission of offence under Section 498-A I.P.C. also. P.W.19 the second investigation officer in the cross examination would depose that the witnesses during the course of the investigation had stated that the appellant/accused has constructed a multi-storey house at Thiruchitrampalam and executed a gift in favour of the deceased on 01.03.2000 and it is worth Rs.25,00,000/- and that apart he purchased one more tiled house on 21.10.2003 in the name of the deceased and that apart about 10 years prior to the alleged occurrence the appellant/accused gave 100 sovereigns of jewels and asked his father-in-law/defacto complainant (since dead) that it may be given to his children in future. In the light of the said testimony, it cannot be stated that the appellant/accused harassed the deceased on the pretext of demand of dowry and though there appeared to be matrimonial discard between the appellant/ accused and his wife - deceased, in the light of the testimony of the above cited witness, in the considered opinion of this Court, the prosecution was not in a position to prove the charge of Section 498-A I.P.C. framed against the appellant/accused.

8. Now coming to the question as to the sustainability of the conviction under Section 302 I.P.C., the prosecution projected the sole testimony of P.W.10, the child witness, who is the son of the appellant/accused and the deceased. When the occurrence took place, P.W.10 was aged about 2½ years old and at the time of his examination on 06.09.2016, he was aged about 9 years. P.W.10 in the chief-examination would state that at about 9.30 p.m. on 03.06.2010, his father appellant/accused beat his mother and pushed her down and thereafter, poured kerosene on her and dragged her to kitchen and also closed the door and burned her. In the cross-examination he deposed that immediately after the occurrence the neighbours came to the house and his mother was found dead and the police also immediately came to his house and took his father. P.W.18 was questioned with regard to the material contradictions with regard to the testimony of P.W.10 and in the course of cross-examination he deposed that other witnesses did not speak as to the witnessing of the occurrence by P.W.10 and as per the F.I.R. on the early hours on



03.06.2010 the occurrence took place. P.W.18 further deposed during the cross-examination that he examined P.W.10 and during the course of investigation he did not state that after pouring kerosene the neighbours came and prior to pouring of kerosene his mother was beaten and pushed down. It is further deposed by P.W.18 that P.W.10 did not state during the investigation that his father poured kerosene upon his mother and that she was dragged to the kitchen. P.W.10 did not state during his investigation that the police immediately came to the scene of occurrence and has taken away his father. At the time of occurrence, P.W.10 was 2½ years and he has deposed after 6 years and even after giving some allowance on account of passage of time, it is difficult to sustain the conviction based on the testimony of P.W.10 for the reason that the above cited contradictions elicited through the testimony of P.W.18 shows that P.W.10 made material improvements from that of the statement recorded during the course of investigation and therefore, it is highly doubtful whether he has really witnessed the occurrence at all.

9. It is to be noted at this juncture that according to P.Ws.5 and 6, they saw the accused with burn injuries and the lungi worn by him M.O.7 was also found to be half burned. P.W.18 - the investigation officer in the cross-examination would admit that after arrest of the accused he was produced before the Court of jurisdictional Magistrate and by showing the burn injuries in various part of his body, he stated before the Judicial Magistrate that he made an attempt to rescue his wife and he sustained injuries and the said statement was recorded by the Judicial Magistrate in the remand report. P.W.18 further deposed that he did not seize the records for the treatment taken by the accused as in-patient for 15 days with regard to the injuries sustained by him. Even as per the evidence of P.W.18, the appellant/accused has sustained serious injuries and in the light of his statement made by him to the learned jurisdictional Magistrate at the time of remand coupled with the testimonies of P.Ws.5, 6 and 11, the prosecution is bound to explain as to how the appellant/accused sustained serious injuries and unfortunately the medical records relating to the treatment taken by the appellant/accused as in-patient have not been seized at all.

10. Now coming to the medical evidence, admittedly no chemical examination of hyoid bone was done and P.W.13, who conducted autopsy would admit that he found out that hyoid bone (right horn) broken and further recorded the opinion that the deceased died on account of mechanical asphyxia. The observation mahazar marked as Ex.P3 would disclose that smoke residues were found upto 5 feet height and print of palm was also found in 4 feet height. As rightly pointed by the learned Senior Counsel appearing for the appellant/accused if the testimony of P.W.10 was to be believed that the appellant/accused pushed her down and thereafter, poured kerosene



and lighted it, then smoke residues should not have reached the height of 5 feet and the print of the palm should not have found at four feet height and as such residues would have been found at the floor or wall close to the place, where the body was lying.

11. In **2019 (2) MWN (Cr.) 300 (DB) [Shanmugam v. State]**, similar defence put forth by the accused was considered and it is relevant to extract paragraphs 19, 21, 22 and 23:

"19. Dr. Mohan (P.W.21) and Dr. Suganthi (P.W.26), who performed autopsy have not stated that the 100% burn injuries suffered by the deceased were Ante-mortem or Post-mortem in nature. That apart, they have also not noted any injury around the neck region of the deceased. Even in a case where murder is committed by throttling the neck and if the body is burnt thereafter, still, in the internal examination of the neck region, there will be signs of compression. Based merely on the Bone Case Report (Ex.P-10), the Post-mortem surgeons have opined that Manimekalai would appear to have died of asphyxia due to throttling. At the risk of repetition, it is necessary to state that the Post-mortem surgeons have not given any opinion as to whether the burns were ante-mortem or post-mortem in nature.

...

21. That apart, the Bone Case Report (Ex.P-10) shows that the hyoid bone was found fractured only on the left side, which is normally termed as unilateral fracture. When both sides of the hyoid bone get fractured, it is called bilateral fracture. Unilateral fracture of hyoid bone by itself will not lead to the death of a person. It is only an indication that some pressure was mounted on the left neck region.

22. In this context, we may profitably refer to the following paragraph from the treatise "Forensic Pathology" (2nd Edn.) by Bernard Knight by Arnold Publications, wherein at Page-371, it is found thus :-

"When a fracture of a laryngeal horn is found, it must first be proved to be Ante-mortem in origin. Post-mortem fractures undoubtedly occur, either from mishandling the body during transit or from incorrect autopsy techniques - though the frequency of the latter has been overestimated. It is certainly possible to damage the larynx Post-mortem by allowing the neck to fall against a hard surface or sharp edge during removal from the place or death, or during handling in the mortuary. Such damage, however, is more likely to occur to the laryngeal plate of the thyroid cartilage or to the cricoid, rather than to the laterally placed horns, though these can be broken. Damage at autopsy is usually caused by an inexperienced pathologist or autopsy-room technician, especially when forensic expertise is lacking. Clumsy removal of the tongue and neck



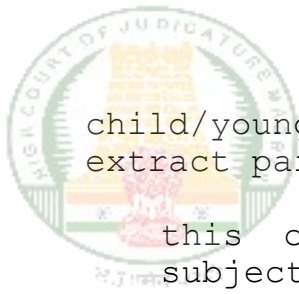
structures can break the thyroid or hyoid cornuae, especially in old persons where they are calcified and brittle and when any natural joints are ankylosed. This may be one justification for radiography before autopsy, but probably the danger of artefactual breakage has been overestimated, especially where a gentle removal technique is employed."

23. When the victim is throttled, air supply to the lungs will be disconnected and that will result in petechial haemorrhage on the surface of the heart and lungs and other parts of the body. Whereas, no recording has been made about petechial haemorrhage in the Post-Mortem Report. Similarly, during throttling, the soft tissues around the hyoid bone would suffer contusion, which will be observable during Post-mortem even in a case where the body is burnt after death. No recording of this condition has been noted either in the Post-Mortem Report or in the Bone Case Report. When a person suffers intense burning, it is possible for the hyoid bone to become brittle and get fractured even with mild blunt force. Therefore, in the absence of any aforesaid symptoms, the mere fracture of the left side of the hyoid bone without anything more to substantiate throttling, cannot lead us to infer that the Appellant had throttled the deceased to death and, thereafter, burnt her body, especially in the light of the evidence of the ocular witnesses that they saw Manimekalai on her legs when she was ablaze. Had she died immediately after she was throttled, where is the question of the eyewitnesses seeing her standing with fire on her?"

12. In the above cited decision, despite the availability of Bone Case Report, it was held that in the absence of any aforesaid symptoms, the hyoid bone got fractured has become brittle and it cannot lead to infer that the deceased had throttled. In the case on hand, admittedly, chemical analysis of hyoid bone was not done and P.W.13, who did the autopsy did not found out the reason as to the breakage of the hyoid bone and that apart bone report was also not available and as such the prosecution has failed to establish that the deceased died due to strangulation and breaking of hyoid bone (right horn).

13. The arrest, alleged confession statement and recovery of incriminating articles are also doubtful for the reason that according to P.W.10, immediately after the occurrence the police came to the spot and his father appellant/accused was taken, whereas P.W.18 - the investigation officer deposed that the appellant/accused was arrested at about 7.45 p.m. on 03.06.2010 and denied suggestion as to the said aspect.

14. In (2012) 3 SCC (Cri) 795 : (2012) 8 SCC 73
[K. Venkateshwarlu v. State of A.P.], the appreciation of the
<https://hcservices.ecourts.gov.in/hcservices/>



child/young witness has been considered and it is relevant to extract paragraph No.9:

"9. Several child witnesses have been relied upon in this case. The evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it."

15.The prosecution has placed reliance on the sole testimony of P.W.10 and in the light of the infirmities noted in his testimony, we have to look for corroboration of his evidence and unfortunately the prosecution did not let in any evidence corroborating the testimony of P.W.10 as to the commission of murder on the part of the appellant/accused.

16.In the considered opinion of this Court, the prosecution was unable to prove the commission of the offence on the part of the appellant/accused beyond any reasonable doubt.

Question No.[ii] :

17.In view of the above, the benefit of doubt shall enure to the benefit of the accused. The reasons assigned by the trial Court, in the light of the findings given in this appeal, are unsustainable.

18.In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused vide judgment dated 09.08.2017, made in S.C.No.378 of 2011 by the Fast Track Mahila Court, Thanjavur is set aside and the appellant/accused is acquitted of all the charges framed against him. The appellant/accused has already been granted suspension of substantive sentence of imprisonment and therefore, the bail bonds executed by



him shall stand terminated. Fine amount paid, if any, is ordered to be refunded.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

sj

To

- 1.The Sessions Judge,
Mahalir Neethimandram Fast Track Mahila Court,
Thanjavur.
 - 2.The Judicial Magistrate,
Pattukottai.
 - 3.The Inspector of Police,
Thiruchitrambalam Police Station,
Thanjavur District.
 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 - 5.The Chief Judicial Magistrate, Thanjavur District at Kumbakonam
 - 6.The Superintendent of Police,
Thanjavur District.
 - 7.The District Collector,
Thanjavur District
 - 8.The Superintendent,
Central Prison, Trichy.
- Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)
- +1 cc Mr. A.THIRUVADIKUMAR ,Advocate, SR.No.81907

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