

Bail Slip

The Appellant herein/Accused namely Anthony Xavier, S/o.Arputhasamy aged about 34 years was directed to be released on Bail as per order of this court dated 05.08.2014 made in MP No.1 of 2014 in Cr1 A.407 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.A.No.407 of 2014

Anthony Xavier ... Appellant/Accused
.Vs.

State by:
Deputy Superintendent of Police,
Thalavai Police Station,
Ariyalur District. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code praying to set aside the conviction and sentence passed by the learned (Special Judge), Fast Track Mahila Court, Ariyalur dated 21.07.2014 and made in S.C.No.54 of 2013 by allowing the present Criminal Appeal.

For Appellant : Mr.B.Kumarasamy.
For Respondent : Mr.S.Karthikeyan,
Additional Public Prosecutor

J U D G M E N T
सत्यमेव जयते

The matter was heard through "Video Conference".

2.The present Criminal Appeal has been filed to set aside the Judgment of conviction and sentence passed by the learned Special Sessions Judge, Fast Track Mahila Court, Ariyalur dated 21.07.2014 in S.C.No.54 of 2013.

3.The appellant is the sole accused. He stood charged for the offence under Sections 302 and 201 r/w 511 of Indian Penal Code. By judgment dated 21.07.2014, the learned Sessions Judge, Fast Track Mahila Court, Ariyalur convicted the appellant under Section 304 (ii) of Indian Penal Code and sentenced to undergo

five years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default of non-payment of fine, no sentence is awarded. Challenging the said conviction and sentence, the appellant is before this Court by filing the present Criminal Appeal.

4.The case of the prosecution in nutshell is that the deceased Stellamary is the wife of the appellant / accused. PW3 viz., Christu David Raj is the brother of the deceased. On 09.11.2008, the marriage between the deceased and the appellant was solemnized as per the Christian rites and customs. After the marriage, both the appellant and the deceased leads matrimonial life in the staff quarters of M.C.L.Cement Company where the appellant was working. Though both of them stayed in the said staff quarters, everyday the deceased Stellamary went to Thiruvaiyar where she worked as tutor for tailoring. In the meantime, the deceased regularly contacted PW3 through telephone and made complaint against the appellant by saying that the appellant regularly consumes liquor and assaulted her. She specifically stated that by using cigarattes, the appellant is causing injury to her.

5.On 02.01.2010, PW9 viz., Lindamary was informed by the appellant as his wife committed suicide through hanging and in turn, the same was informed to PW3. On receipt of the said information, PW3 ran to the quarters in which the deceased was staying and from there, he went to Vadugarpettai Village wherein the dead body of the deceased was found in the freezer box. On seeing the dead body, PW3 found that there was an abrasion in the neck of the deceased. Therefore, he lodged complaint before the Station House Officer, Kallakudi Police Station, which has been marked as Ex.P.1.

6.PW10 viz., Mr.Basheer, the then Special Sub Inspector of Police, Kallakudi Police Station, on receipt of the complaint given by PW3, registered First Information Report in Crime No.1 of 2010 under Section 174 of Criminal Procedure Code which has been marked as Ex.P.5. After the registration of the First Information Report, PW10 forwarded the same to the Deputy Superintendent of Police, Ariyalur for investigation. On receipt of the First Information Report, the Deputy Superintendent of Police, Ariyalur forwarded the same to the Inspector of Police, Kuvagam Taluk.

7.PW14 viz., Mr.Solaimuthu, the then Inspector of Police, on receipt of the First Information Report in Crime No.1 of 2010, re-registered the same in Crime No.3 of 2010 under Section 174 of Criminal Procedure Code in Thalavai Police Station which has been marked as Ex.P.7. Thereafter, he again forwarded the same to the Deputy Superintendent of Police, Ariyalur for investigation.

8.PW15 viz., Ramalingam, the then Deputy Superintendent of Police, Ariyalur on 06.01.2010 took up the above referred First Information Report for investigation. On the same day, he visited the scene of occurrence and in the presence of PW4 viz., Pethiraj and one Jayapal, he prepared observation mahazar under Ex.P.2 and drawn rough sketch which has been marked as Ex.P.8. Further, in the presence of the same witnesses, he recovered material object viz., Saree which has been marked as M.O.1 under the cover of seizure mahazar as Ex.P.3.

9.In continuance of the investigation, he examined witnesses and recorded their statements. On 07.01.2020, at Pennadam Bus Stop, he arrested the accused and made arrangements for sending him to Judicial Custody. On the same day, he altered the Sections of law from 174 of Criminal Procedure Code to 306 and 201 of Indian Penal Code and the same has been marked as Ex.P.9.

10.In the meantime, since the occurrence had happened within a period of seven years from the date of marriage of the deceased, PW15 sent the records to the Revenue Divisional Officer, Ariyalur for enquiry and in turn, PW13 viz., Mr.Thangavel, the then Revenue Divisional Officer, Lalgudi, on receipt of the request given by PW15 rushed to the accused house at Vadugarpettai and after examining the witness Solaimuthu in the presence of panchayatar, he prepared a inquest report. After completing the inquest, he came to the conclusion that due to the harassment made by the appellant, the deceased by using saree committed suicide by way of hanging.

11.After the preparation of inquest report under Ex.P.6, PW13 sent a requisition through PW11 viz., Aronjenmaragini, who is the then Head Constable, Lalgudi Police Station, to the doctor attached with Government Hospital, Ariyalur for conducting autopsy over the dead body of the deceased Stellamary.

12.On receipt of the same, PW8 viz., Dr.Chezhan attached with Government Hospital, Ariyalur along with Dr.Madhimaraiselvan and Dr.Girija on 03.01.2010 at about 4.50 P.M. conducted autopsy and found the following injuries viz., bleeding from nose and small abrasion of 1/2 cm in the right ear. During the time of postmortem, they collected the viscera and hyoid bone from the deceased and sent the same for chemical examination. In turn, on completion of chemical examination, PW8 received the report from the expert in which it was stated that there is no poisonous substance available in the viscera. Further, PW8 received the report in respect of the hyoid bone under Ex.P.13, in which it has been stated that no opinion could be given in respect of the nature of the hyoid bone. On receipt of the said report, PW8 came to the opinion that no opinion

could be given for the cause of the death of the deceased since the experts have not given any opinion. He issued a postmortem report which has been marked as Ex.P.4.

13. In continuance of the investigation, PW15 collected reports from the doctor and thereafter he altered the sections of law from 306, 201 of Indian Penal Code to Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and 306 of Indian Penal Code. The said report is marked as Ex.P.10. Both the Observation Mahazar and rough sketch prepared by PW13 were marked as Ex.P.11 and Ex.P.12 respectively. Finally, he came to the positive conclusion that the appellant herein committed the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and 306 of Indian Penal Code. He filed final report accordingly.

14. Based on the above materials, the trial Court framed charges for the offence under Sections 302, 201 r/w 511 of Indian Penal Code. The accused denied the same and opted for trial. In order to prove their case, on the side of the prosecution, as many as fifteen witnesses have been examined as PW1 to PW15 and 13 documents were marked as Ex.P.1 to Ex.P.13, besides one material object (M.O.1).

15. Out of the said witnesses, PW1 viz., Thiruthuva Raj is the colleague and neighbour to the appellant / accused. He speaks about the nature of employment having by the accused and the deceased. He also heard about the death of the deceased through one Paneer selvam.

16. PW2 viz., Ramachandran is also the co-employee and neighbour to the appellant. He speaks about the cue and cry of the accused. He informed the death of deceased to his company. He had further deposed that he saw the dead body along with co-employees.

17. PW3 viz., Christu David Raj speaks about the information received in respect of the death of the deceased from one Lindamary who is a nun and also about the lodging of complaint before the police station.

18. PW4 viz., Pethiraj was working as a security in M.C.L.Cement company's staff quarters. He speaks about the preparation of observation mahazar and rough sketch and also about the seizure of M.O.1 by the investigation officer.

19. PW5 viz., Sammanasunadhan is the relative of the deceased Stellamary. He has spoken about the details in respect of the death of the deceased and also about the harassments done by the accused.

20.PW6 viz., Celinmary is the relative of the deceased. She speaks about the details of the marital life of the deceased and about the information received in respect of the death of the deceased.

21.PW7 viz., Arokyamary is the niece of the deceased. She has spoken about the harassment committed by the accused to the deceased. She has specifically stated when at the time she saw the dead body of the deceased, she finds there was contusion in the left cheek.

22.PW8 viz., Dr.Chezhan conducted postmortem over the dead body of the deceased. He speaks about the antemortem injury sustained by the deceased and also about the details in respect to sending of the viscera and hyoid bone for chemical examination. Though he has issued postmortem report, he has not stated any opinion in respect of the cause of death.

23.PW9 viz., Lindamary is a nun, working as training teacher to the Christian sisters at M.N.Kuppam, Villupuram District. She stated about the early marital life of the deceased and also about the harassment committed by the accused.

24.PW10 viz., Basheer, the then Special Sub Inspector of Police, Kallakudi Police Station speaks about the receipt of the First Information Report and about the registration of the case in Crime Number 1 of 2010 under Section 174 of Criminal Procedure Code.

25.PW11 viz., Aronjenmaragini who was working as Head Constable states in her evidence about the entrustment of dead body to the postmortem along with a requisition letter given by the Revenue Divisional Officer.

26.PW12 viz., Selvamary who is a nun, has stated about the early life of the deceased and also about the details of the marriage and about the harassment committed by the accused. She informed the death of the deceased to PW3 and PW9.

27.PW13 viz., Thangavel is the Revenue Divisional Officer speaks about the preparation of inquest report.

28.PW14 viz., Solaimuthu is the Inspector of Police, Kuvagam Taluk and has stated about the registration of the First Information Report in Crime No.3 of 2010 and about the details of investigation conducted by PW15.

29.PW15 viz., Ramalingam is the investigation officer who speaks about the preparation of observation mahazar and sending

of information to Revenue Divisional Officer and recording of statements from the witnesses and about the filing of final report.

30. When the above incriminating evidence, were put to the accused under Section 313 of Criminal Procedure Code, he denied the same as false. In order to prove his case, he neither produced witnesses on his side nor marked any documents. However, he filed a statement stating that on 01.01.2010 after completing the prayer in the Church, both of them returned to the quarters wherein the deceased completed his breakfast by taking fermented rice and when the same was questioned by him as to what is the difficulty in taking idly, the deceased got angry and thereafter went to the bedroom and took rest. Subsequently, on the next day, when at the time the accused returns from his working place, the deceased, without preparing any food, was weaving the wire basket and after seeing the same, the accused at about 11.30 A.M. went to the bank and after taking money, purchased some house hold articles and returned home and was watching TV. Thereafter, when the accused went to the bedroom for seeing his wife, he found that she committed suicide by way of hanging.

31. The learned Sessions Judge, Fast Track Mahila Court, Ariyalur after considering all the material documents and on considering the arguments put forth by either sides, convicted the appellant / accused as stated supra. Aggrieved by the said conviction and sentence, the appellant / accused is before this Court.

32. I have heard Mr.B.Kumarasamy, learned Counsel appearing for the appellant and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State.

33. The learned Counsel appearing for the appellant would contend that though the charge has been framed for the offence under Section 302 of Indian Penal Code, the learned Sessions Judge convicted the accused for the offence under Section 304 (ii) of Indian Penal Code. In the Judgment rendered by the learned Sessions Judge, he has not narrated the necessary ingredients which are essential for proving the offence under Section 304 (ii) of Indian Penal Code. In fact, the evidence given by the doctor who conducted postmortem is very clear that he cannot say anything about the cause of death. Further, none of the witnesses have been examined on the side of the prosecution, for stating about the act committed by the accused which is in the form of culpable homicide, not amounting to murder and further the said act is done with the knowledge that it is likely to cause death.

34.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent would contend that the evidence given by the prosecution witnesses are cogent in respect of the offence committed by the appellant. He has specifically made a submission that during the time of occurrence, the appellant stayed along with the deceased in the quarters which was allotted to him. Further, after finding out the fact that the deceased committed suicide, he transported the dead body to the native village and attempted to bury the same. Therefore, the conduct of the accused will prove the fact that he committed the offence under Section 304 (ii) of Indian Penal Code and therefore, he prayed to dismiss the appeal. According to him, interference of this Court is not necessary in the conviction and sentence awarded by the trial Court.

35.I have considered the rival submissions put forth by either side and carefully perused the materials available on record.

36.Admittedly, when at the time, the deceased was in childhood, her parents have committed suicide and died. Thereafter, under the custody of PW9 viz., Lindamary and PW12 viz.,Selvamary, the deceased was grown up and the said nuns had given necessary food, shelter and other things. Resultantly, the deceased joined as a tutor for tailoring in Thiruvaiyar. Only in the said circumstances, the marriage between the deceased and the appellant was solemnized and thereafter, both of them lead a matrimonial life in a quarters which was allotted to the appellant / accused by his employer.

37.In respect of the matrimonial life having by the deceased, out of the 15 witnesses examined, PW3, PW5 to PW7, PW9 and PW12 alone stated in their evidences that the accused came to his house regularly in drunken mood, also he made attack and causing injuries to the deceased by using cigarettes. Though the said evidences are cogent and convenient in respect of the harassment committed by the accused, no direct evidence has been produced on the side of prosecution. However, the above referred witnesses are all being the relatives of the deceased, they should be considered to respect the testimony based on what the deceased person said.

38.In otherwise, when going through the charges framed by the trial Court, it seems that Section 302 of Indian Penal Code has been framed against the accused along with 201 read with 511 of Indian Penal Code. But during the time of disposing the said case, the accused was convicted for the offence under Section 304 (ii) of Indian Penal Code. Therefore, the prosecution must prove that during the time of occurrence, the accused, without any intention, but with the knowledge that it is likely to cause

death had attacked the deceased. Here it is the case that witnesses examined on the side of prosecution did not say anything about the said act committed by the accused.

39. Therefore, the breath fullness of the occurrence has to be decided only by considering subsequent conduct of the accused. It is admitted on the side of the accused that during the time of committing suicide by the deceased, the appellant stayed in the neighbouring room and was watching TV and the statement filed by the accused at the time of questioning him under Section 313 of Criminal Procedure Code proves the same. In the said circumstances, without any evidence to show that the accused alone has committed the act of culpable homicide, this Court cannot approve the findings awarded by the trial Court.

40. Moreover, this is a pitiable case in which the doctor examined on the side of the prosecution who conducted postmortem, has given evidence that he is not in a position to give any opinion about the cause of the death of the deceased. When there was no ligature mark found in the neck over the dead body of the deceased, in the 'Text book of Forensic Medicine and Toxicology' written by Anil Agarwal, it was mentioned that 'the ligature mark may disappear after several hours following removal of the ligature. Decomposition obliterates the ligature mark.' Further, in the text book of 'The Essentials of Forensic Medicine & Toxicology' written by Dr.K.S.Narayan Reddy and Dr.O.P.Murthy, it was mentioned that 'If the ligature mark is absent, it does not exclude hanging. Causes of absent [or indistinct] ligature mark - (a) Soft ligature material eg. scarf, towel etc., (b) Beard, or a piece of clothing getting caught between ligature and skin (c) Decomposition - may obliterate mark (d) when pressure is applied only on the front of the neck, eg. by arm of a chair or rung of a ladder.'

41. Therefore, applying the above definitions to the said information of the experts, only because of the reason that ligature mark is not found around the neck, it cannot be held that the accused has murdered the deceased. The evidence of the doctor is very clear that except an abrasion in the size of 1/2 cm near the right ear, no other injuries was found on the dead body of the deceased. More than that, the evidence given by the doctor and also the information given by the experts in postmortem report, had made clear that during the time of postmortem, the hyoid bone of the deceased is intact. The said situation had arisen only in the circumstances wherein the deceased has committed suicide.

42. In otherwise, if the accused killed the deceased there would be the possibility for forming of external injury particularly for dislocating the hyoid bone. But in this case,

information given by the expert is found contradictory to the case of the prosecution. More than that, the witnesses examined on the side of prosecution did not say anything about the motive having by the accused for killing his wife. The motive in the correct sense is an emotion supposed to have lead to the act. It is often proved by the conduct of the person. The question of motive is immaterial only in the cases of direct ocular ground of eye witnesses.

43. But, here it is the case which is upon the circumstantial evidence. Therefore, for proving the said offence, the proof of presence of motive, preparation, opportunity or the previous attempts would be relevant as they come to show not only mens rea in committing crime but also provide sufficient information in establishing the commission of crime. When the motive is not proved by way of direct evidences, the prosecution must prove the same by circumstantial evidence. But here it is the case where the evidences given by the relatives of the deceased establishes the fact that before the occurrence, both the accused and the deceased are having some unhappiness in their matrimonial life. However, only because of the same, we cannot come to the conclusion that the accused alone committed the offence of culpable homicide as stated by the prosecution.

44. It is an admitted fact that after the occurrence, dead body of the deceased was brought by the accused to his native wherein the witnesses who are all the relatives of the deceased were permitted to see the dead body of the deceased. In regular course, all the employees who are working in different places are having the habit of bringing the dead body for burial to their native places. Therefore, subsequent conduct of the accused herein is not sufficient to hold that the accused alone committed the offence as stated by the trial Court.

45. Even assuming that only due to the harassment and cruelty committed by the accused, the deceased gone to the extent of committing suicide, in order to prove the same, the prosecution has to prove the abetment of thing committed by the accused. But in the present case, evidences given by the prosecution witnesses did not constitute the necessary ingredients which is necessary for 107 of Indian Penal Code (abetment of thing). Therefore, at any event, in the absence of evidence for establishing the fact with respect to the act committed by the accused before the occurrence, we cannot say that the accused alone is liable for the death of the deceased.

46. The trial Court without considering the same in perspective manner, came to the conclusion that only the accused / appellant had committed the offence which is punishable under Section 304 (ii) of Indian Penal Code. Visualizing the entire

circumstances, it seems that the prosecution fails to prove the cause of death and about the mensria having by the accused. Therefore, this Court is of the considered opinion that the prosecution fails in its attempts to prove its case beyond reasonable doubt.

47. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial court are set aside and he is acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the appellant/accused.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. Deputy Superintendent of Police,
Thalavai Police Station, Ariyalur District.
2. The Special Sessions Judge,
Fast Track Mahila Court, Ariyalur.
3. The Prinicipal District and Sessions Judge,
Ariyalur. (For Information)
4. The Judicial Magistrate, Jayamkondan.
5. The Chief Judicial Magistrate,
Perambalur (For Information)
6. The Superintendent, सत्यमेव जयते
Central Prison, Trichy.
7. The Public Prosecutor, High Court of Madras, Chennai.

+1cc to Mr.B.Mumarasamy, Advocate, Sr.No.39712

Crl.A.No.407 of 2014

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