



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS. JUSTICE R.N.MANJULA

Criminal Appeal No.406 of 2018

Magudeeswaran
S/o.Nataraj

...Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.

...Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 06.04.2017 passed in S.C.No.149 of 2015 on the file of learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore.

For Appellant : Mr.S.Kumara Devan

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

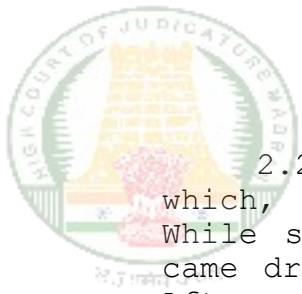
JUDGMENT

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

This criminal appeal is directed against the judgment and order of conviction and sentence dated 06.04.2017 passed by the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, in S.C.No.149 of 2015.

2. The prosecution story runs thus:

2.1. The appellant was married to Anushiyadevi (deceased) and they were blessed with a girl child, who was around 2 years old at the time of the incident. The appellant was running a saloon and the family was residing in a portion of the house bearing door no.21-A, Nehru Street, J.J.Nagar, Thudiyalur, which belonged to Ashokan [PW-2], who was residing in the same address, of course, in another portion.



2.2. The appellant was addicted to liquor, on account of which, there used to be frequent quarrels between the couple. While so, on 16.01.2015 (auspicious Pongal day), the appellant came drunk to his house around 2.30 a.m. and knocked the door. After a little while, his wife Anushiyadevi opened the door and when she questioned him as to why he had taken liquor even on the auspicious day, he quarrelled with her. As the altercation between them reached a certain level, the child started yelling. It is alleged that the appellant took his belt, whipped his wife and thereafter, strangulated her, on account of which, she died. On hearing the loud cries of the child, Ashokan [PW-2] and Nagarathinam [PW-3], a neighbour, came to the appellant's portion and through the window, Ashokan [PW-2] is said to have seen the occurrence. When Ashokan [PW-2] banged the door, the appellant opened it and ran away with the belt. Immediately, Ashokan [PW-2] informed the father of the appellant and father of Anushiyadevi over phone, after which the family members assembled there. 108 ambulance was summoned and the ambulance personnel examined the body of Anushiyadevi and declared that she was dead.

2.3. On a complaint scribed by Ashokan [PW-2] and given by Anbalagan [PW-1], father of Anushiyadevi, in his name, Miadit Mano [PW-11], Sub-Inspector of Police, registered a case in Thudiyalur P.S.Crime No.25/2015 on 16.01.2015 for an offence u/s.302 IPC against the appellant and prepared the printed First Information Report [Ex.P11], which reached the jurisdictional Magistrate at 12.30 noon on the same day, as could be seen from the endorsement thereon.

2.4. The investigation of the case was taken over by Saravanan [PW-12], Inspector of Police, who went to the place of occurrence and prepared the observation mahazar [Ex.P6] and rough sketch [Ex.P12] in the presence of witnesses Ravi [PW-9] and one Krishnasamy (not examined). The Investigating Officer [PW-12] conducted inquest over the body of Anushiyadevi and the inquest report was marked as Ex.P13. The body was sent to the Government Hospital, Coimbatore, for postmortem, where Dr.Jeyasingh [PW-10] conducted autopsy and issued the postmortem certificate [Ex.P8], wherein, he had noted as follows:

'The following ante mortem injuries noted over the body:

- 1) Reddish abrasion 1x1 cm, 1x1 cm noted over back of right elbow, 1x1 cm noted over right knee, 1x1 cm noted over left side wrist and 1x1 cm noted over centre of upper lip.
- 2) Multiple scratch marks of varying sizes and shapes noted over front and right side of the neck.



WEB COPY

3) A faint incomplete transverse ligature pressure abrasion mark measuring 22x3 to 4 cm noted on upper part of the neck in its front and side.

The anatomical landmarks of the ligature abrasion marks are

- 4 cm below to right ear lobe,
- 6 cm below to chin
- 4 cm below to left ear lobe

4) Another deep incomplete transverse ligature pressure mark measuring 20x3 to 4 cm noted over lower part of the neck in its front and side. The lower margin 3 cm from the supra sternal notch.

On bloodless dissection of neck:- The base of ligature mark is intermediately bruised. Reddish contusion 6x4 cm noted over right side neck muscle and 5x3 cm noted over left side of neck muscle. Thyroid cartilage found fractured in its middle with surrounding tissue reddish contusion. Left side greater cornu of hyoid bone found fractured with surrounding tissue reddish contusion.

OTHER FINDINGS:

- Peritoneal and Pleural cavities - empty.
- Heart - right side chambers contain about few cc of fluid blood and left side chambers empty.
- Coronaries - patent.
- Stomach contains about 10 ml of mucous fluid, no specific smell, mucosa congested.
- Small Intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa congested.
- Liver, Spleen, Kidneys, Lungs and Brain - cut section congested.
- Urinary bladder - empty.
- Uterus: Normal in size, cut section empty
- Viscera preserved and sent for chemical analysis

OPINION: The deceased would appear to have died of Asphyxia due to EXTERNAL VIOLENT COMPRESSION OF THE NECK by LIGATURE MATERIAL (STRANGULATION). The death would have occurred 12 to 24 hours prior to autopsy.'

2.5. After getting the viscera report [Ex.P9], Dr.Jeyasingh [PW-10] gave his final opinion under Ex.P10, wherein, he has opined as follows:

'OPINION: As to cause of death is already given in Postmortem Certificate. Viscera does not contain any poison'



2.6. It appears that the appellant surrendered before Anandakumar [PW-8], the Village Administrative Officer, on 16.01.2015 at 03.00 p.m. and gave an extra judicial confession [Ex.P2], wherein, he confessed to the fact that his wife resented to his drinking habits; he came drunk in the early hours of 16.01.2015; his wife did not open the door immediately and only after repeated banging of the door, she opened it; after opening the door, she upbraided him for having drunk even on the auspicious day (Pongal), which infuriated him further; they quarrelled for sometime and thereafter, he removed his belt and put it around her neck and strangled her; she fell down; at that time, his house owner Ashokan [PW-2] and Nagarathinam [PW-3], a neighbour, came running and saw the occurrence; thereafter, he ran away fearing the police and hence, he has appeared before him [V.A.O] for surrendering.

2.7. After recording the extra judicial confession [Ex.P2], Anandakumar [PW-8], V.A.O., produced the appellant with a special report [Ex.P3] to the Investigating Officer [PW-12] on the same day, pursuant to which, the appellant was placed under arrest at 4.15 p.m. Thereafter, the Investigating Officer [PW-12] interrogated the appellant and recorded his confession and based on the disclosure made by the appellant, the Investigating Officer [PW-12] seized the belt [MO-1] from the house of appellant's father under the cover of a mahazar [Ex.P5] in the presence of witnesses Anandakumar [PW-8] and Murugan (not examined).

2.8. After examining various witnesses and collecting the reports of the experts, the Investigating Officer [PW-12] completed the investigation and filed a final report in P.R.C.No.2 of 2015 in the Court of the Judicial Magistrate I, Coimbatore, for the offence u/s.302 IPC against the appellant.

2.9. On 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.149 of 2015 and was made over to the Mahila Court (Sessions level), Coimbatore, for trial.

2.10. The trial Court framed charges u/s.302 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

2.11. To prove the case, the prosecution examined 12 witnesses and marked 16 exhibits and 2 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant,



however Exs.D1 to D4, photographs showing the house of the appellant from various angles, were marked through the prosecution.

2.12. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 06.04.2017 in S.C.No.149 of 2015, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 302 IPC	Life imprisonment and fine of Rs.5,000/-, in default, to undergo three months rigorous imprisonment.

2.13. Challenging the aforesaid conviction and sentence, the accused is before this Court in this appeal.

3. Heard Mr.S.Kumara Devan, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

4. The prosecution has proved the following facts beyond a peradventure:

- (i)the appellant and his wife Anushiyadevi were living with their two year old child in a portion in door no.21-A, Nehru Street, J.J.Nagar, Thudiyalur;
- (ii)the appellant was running a saloon;
- (iii)the portion in which the appellant was living belonged to Ashokan [PW-2], who was residing in another portion of the same house;
- (iv)Anushiyadevi, wife of the appellant, was found dead in the morning of 16.01.2015 in the house of the appellant and the death was not suicide but a homicide.

5. The short question is whether the appellant was the perpetrator of the offence.

6. The entire case rests on the evidences of Ashokan [PW-2] and Nagarathinam [PW-3] and the appellant's extra judicial confession [Ex.P2].

7. Ashokan [PW-2], in his evidence, has stated that he is the owner of the portion, in which the appellant and his wife were residing; he was residing with his family in another portion; the appellant had taken a vow on a pilgrimage to Manthralayam that he will not drink; after completion of the pilgrimage, he continued his drinking habit, which was the cause of the quarrel between the appellant and Anushiyadevi; the appellant was running a saloon in the area; during the Pongal



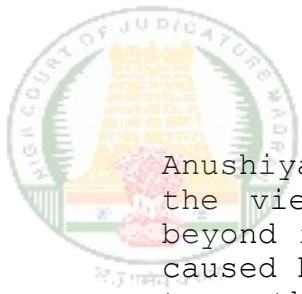
WEB COPY

festival, on 16.01.2015, between 2.30 and 3.00 a.m., the appellant came to his house and was banging the door for his wife to open; the appellant's child was yelling and this attracted the attention of his (PW-2's) mother, who was living with him; his mother woke him up and asked him to find out as to what was happening in the appellant's house; similarly, Nagarathinam [PW-3], a neighbour, also heard the cries of the child and she also came near the appellant's house; when he [PW-2] went to appellant's portion, suddenly, the yelling of the child stopped; so, he knocked the door of the appellant's house, but, no one opened; therefore, he peeped through a window of the house and saw the appellant standing with a belt in his hand; seeing him, he [PW-2] shouted at him and asked him to open the door; the appellant opened the door and ran away with the belt; thereafter, he went inside the house and saw Anushiyadevi lying motionless; he informed this to the appellant's father as well to Anushiyadevi's parents; he also called 108 ambulance; the ambulance personnel examined Anushiyadevi and declared her as dead; after Anushiyadevi's father Anbalagan [PW-1] came, he went along with him and lodged a complaint to the police; he also identified the belt [MO-1].

8. Similar is the evidence of Nagarathinam [PW-3], who, by and large, has corroborated the testimony of Ashokan [PW-2]. Ashokan [PW-2] and Nagarathinam [PW-3] were subjected to grilling cross-examination by the defence, but to no avail. Ashokan [PW-2] was cross-examined on two dates viz., 03.02.2016 and 22.12.2016 and through him, the photographs of appellant's house were marked as defence exhibits. Even in the cross-examination, Ashokan [PW-2] has clearly stated that there is a window on the lateral wall of the house, through which, he had seen the appellant standing with the belt near Anushiyadevi.

9. We find that the testimonies of Ashokan [PW-2] and Nagarathinam [PW-3] are natural and they had no reasons to falsely implicate the appellant. That apart, the extra judicial confession [Ex.P2] that was given by the appellant to Anandakumar [PW-8] is relevant as against the appellant. That apart, in the house of the appellant, there were only three persons, viz., the appellant, his wife Anushiyadevi and their two year old child. Of the three, Anushiyadevi was found dead in the house at the early hours of 16.01.2015. No one can possibly say that she was done to death by the child. Therefore, the only other person, who could explain the circumstances under which Anushiyadevi died, was the appellant.

10. The onus u/s.106 of the Indian Evidence Act is on the appellant to speak about the facts that were exclusively to his knowledge. Even in the questioning u/s.313 Cr.P.C., the appellant had not given any explanation as to how his wife



Anushiyadevi was found dead in his house. Therefore, we are of the view that the prosecution has proved the facts in issue beyond reasonable doubt. However, we find that the death was not caused by any premeditated act of the appellant. No doubt, it is true that the appellant came drunk, on account of which, a quarrel ensued. The evidences of Ashokan [PW-2] and Nagarathinam [PW-3] are that they were quarrelling for a long time, on account of which, the child started crying. The appellant had not carried with him any deadly weapon like knife, etc. for causing the death of his wife. He appears to have taken out his belt and strangled her in a fit of fury. Therefore, the proved facts may not attract commission of an offence u/s.302 IPC but, they would attract an offence u/s.304(I) IPC.

11. For the foregoing reasons, the conviction and sentence imposed on the appellant for the offence u/s.302 IPC are set aside. Instead, the appellant is convicted u/s.304(I) IPC and sentenced to ten years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo three months rigorous imprisonment. If the fine amount has already been paid pursuant to the judgment and order of the trial Court, it is not necessary for the appellant to pay once again. Period of incarceration thus far undergone by the appellant shall be set off in keeping with Section 428 Cr.P.C.

In the result, the Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Sessions Judge,
Magalir Neethimandram (Mahila Court),
Coimbatore.
2. The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.
3. The Superintendent,
Central Prison,
Coimbatore.



4. The Public Prosecutor,
High Court, Madras.
5. The Judicial Magistrate No.I,
Coimbatore.
6. The Chief Judicial Magistrate
(for Information),
Coimbatore.
7. The District Collector,
Coimbatore.
8. The Director General of Police,
Chennai.

+1cc to Mr.S.Kumara Devan, Advocate, Sr.42923

Criminal Appeal No.406 of 2018

AK-II[co]
NSK 21/09/2021