



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.10.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A (MD)No.375 of 2018

State represented by,
The Public Prosecutor,
High Court, Madras - 104,
(Puliampatti P.S
Crime No.54 of 2015)

... Appellant/Complainant

-vs-

Chinnadurai

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378(i) of the Code of Criminal Procedure, to set aside the judgment of acquittal of the respondent/accused in S.C.No.222 of 2016, dated 04.12.2017 passed by the II Additional District and Sessions Court, Thoothukudi and convict the respondent/accused.

For Appellant	: Mr.A.Thiruvadikumar, Additional Public Prosecutor
For Respondent	: Mr.C.Mayilvahana Rajendran

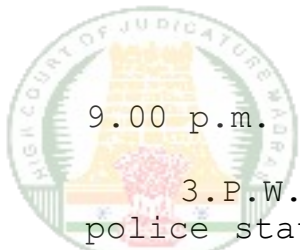
JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The respondent is the sole accused in S.C.No.222 of 2016 on the file of the II Additional District and Sessions Court, Thoothukudi, for the offence under Section 302 I.P.C. The trial Court after considering the evidence, acquitted the accused from the charge. Challenging the order of acquittal, the State is before this Court with this appeal.

2.The case of the prosecution in brief is as follows:-

The deceased by name Umamaheswari is the wife of the accused. The marriage between them took place twelve years prior to the occurrence. Out of wedlock, they were blessed with two children. There was frequent quarrel between the accused and the deceased, six months prior to the occurrence, the deceased left the matrimonial home along with the children and gone to her parental home, after mediation by the well-wishers, she was brought back to the matrimonial home. On 18.09.2015, at about 01.00 p.m., the deceased was found dead in the house and the same was informed to P.W.1, the sister of the deceased and she rushed to the house of the deceased, then she filed a complaint before the respondent police at



9.00 p.m.

3.P.W.14, the Sub-Inspector of Police working in the respondent police station on receipt of the complaint, registered the F.I.R in Crime No.54 of 2015 under Section 174 Cr.P.C and sent the F.I.R to the jurisdictional Judicial Magistrate Court and the copy of the F.I.R to the Investigating Officer and other higher officials for investigation.

4.P.W.15, the Inspector of Police working in the respondent police, on receipt of the F.I.R, proceeded to the scene of occurrence and prepared Observation Mahazar(Ex.P12) and Rough Sketch (Ex.P13) and sent the body for postmortem autopsy to Government Medical College Hospital, Palayamkottai. On the next day, he conducted inquest on the dead body at Government Medical College Hospital, Palayamkottai, Tirunelveli, in the presence of Panchayatars and other witnesses, and prepared the inquest report (Ex.P14). Based on the investigation, he altered the F.I.R into under Section 302 I.P.C and filed the alteration report(Ex.P15). Thereafter, he arrested the accused on 20.11.2015 and on such arrest, he voluntarily came forward to give a confession and based on the admissible portion of the confession, he recovered a Pillow(M.O.1), which was used for smoothening the deceased and sent the accused for judicial custody. In the meantime, P.W.11, an Assistant Professor working in the Government Medical College Hospital, Palayamkottai, Tirunelveli, conducted postmortem autopsy on the dead body and given the postmortem certificate-Ex.P5 and found the following injuries:

THE FOLLOWING ANTEMORTEM INJURIES WERE NOTED:

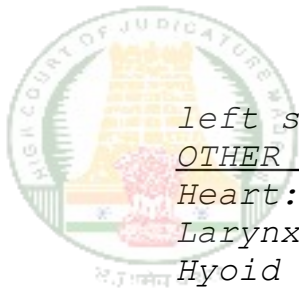
1. Abrasions: 0.5 x 0.5cm over left side of forehead near left eyebrow 0.5 x 0.2cm over tip of nose, 1 x 0.2cm left side of lower part of nose, 4 x 0.2cm seen in lower part of inner aspect of upper lip, 2 x 1cm seen in middle of chin, 1 x 0.5cm in left side of chin, 1 x 0.2cm in left knee and 1 x 0.5cm over outer aspect of left ankle.

2. Contusions: 12 x 4cm seen in inner aspect of right upper arm, 3 x 2 cm over outer aspect of middle of left upper arm, 6 x 4cm over back and lower part of left upper arm and 2 x 1cm over lower part of left forearm.

3. Abraded contusion of size 5 x 4cm over back of upper part of left forearm.

Oral Cavity: Soft tissue contusion seen in inner aspect of lower part of lower lip.

On dissection of Neck: Soft tissues contusion of size 6 x 4cm seen in right side of middle of neck and 4 x 2cm in



left side of middle of neck.

OTHER FINDINGS:

Heart: Normal and coronary vessels patent.

Larynx & trachea: Filled with forth.

Hyoid bone: Intact.

Stomach: Contains 20ml of brown colour fluid, nil specific smell and mucosa congested.

Lungs, Liver, Spleen & Kidneys: Normal, c/s congested.

Bladder: Contains 20ml of urine.

Uterus: Normal, c/s empty.

Brain: Normal, c/s congested & oedematous.

Viscera preserved for chemical analysis.

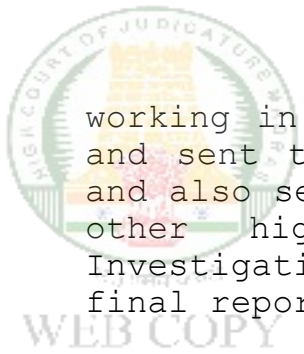
Skin bit from right side of neck, heart, bits of lung, liver, spleen, kidney and brain preserved for histopathological examination.

He was of the opinion that the deceased would appear to have died of Asphyxia due to smothering with soft material. P.W.15, recorded the statement of other witnesses and on completion of investigation, filed the final report.

5. Considering the above materials, the trial Court framed the charge under Section 302 I.P.C and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 15 witnesses, marked 15 documents and also produced three material objects.

6. Out of the witnesses examined, P.W.1 is the sister of the deceased. She spoke about the quarrel between the deceased and the accused and after coming to know about the death of the deceased, she filed the complaint. P.W.2 is the another sister of the deceased. She also spoke about the earlier quarrel between the deceased and the accused. P.W.3 is the neighbour of the deceased, she has turned hostile. P.W.4 is also a neighbour. She has also turned hostile. P.W.5 is the minor daughter of the deceased. She has also turned hostile and according to her, there was no quarrel between her father and mother. P.W.6 is the Village President, he has turned hostile. P.W.7 and 8 are the neighbours, they were also treated as hostile. P.W.9, is the maternal aunt of the deceased. According to her, immediately after the occurrence, she saw that the accused rushed to his father's house, thereafter, she came to know that the deceased was murdered by him.

7. P.W.10 is a Head Constable, who handed over the F.I.R to the Judicial Magistrate Court. P.W.11 is the Postmortem Doctor. He conducted the postmortem autopsy on the dead body and given a report Ex.P5. P.W.12 is the Village Administrative Officer of Alantha Village. He spoke about the arrest of the accused and recovery of material objects. P.W.13 is a Grade-II Constable. He identified the dead body for postmortem. P.W.14 is the Sub-Inspector of Police



working in the respondent police station. He registered the F.I.R and sent the same to the jurisdictional Judicial Magistrate Court and also sent the copy of the F.I.R to the Investigating Officer and other higher officials for investigation. P.W.15 is the Investigation Officer. He conducted the investigation and filed the final report.

8.The above incriminating materials were put to the accused under Section 313 Cr.P.C., and the accused denied the same as false. On the side of the accused, he has not examined any witnesses and marked any documents.

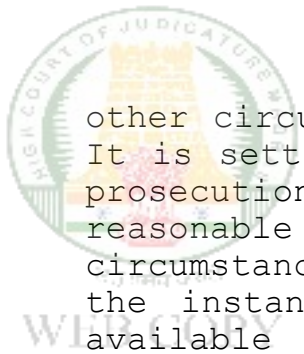
9.Having considered the above materials, the trial Court acquitted the accused and challenging the order of acquittal, the State is before this Court with this Criminal Appeal.

10.We have heard the learned Additional Public Prosecutor appearing for the State, the learned counsel appearing for the respondent and also perused the records carefully.

11.It is a case of circumstantial evidence. The deceased is the wife of the accused. The primordial circumstances relied upon by the prosecution is motive. According to the prosecution, there were frequent quarrels between the husband and wife, six months prior to the occurrence, the deceased left the matrimonial home along with the children, went to her parental home, there was a mediation and she has returned to the matrimonial home. Thereafter, again there was a quarrel between them and on the date of occurrence, the accused smothered the deceased with a pillow and caused her death. The motive alleged by the prosecution is very trivial and it cannot be held as strong circumstance for committing murder. Except that, there is no other circumstance available to prove the guilt of the accused. The other witnesses examined by the prosecution including the daughter of the deceased have turned hostile.

12.The learned Additional Public Prosecutor appearing for the State would contend that the occurrence is taken place inside the house of the accused where both the accused and the deceased were residing and it is in the exclusive knowledge of the accused. In those circumstances, under Section 106 of the Evidence Act, the burden is on the accused to explain as to how the occurrence had taken place, but there is no explanation from the accused and it is a strong circumstance against him. It is settled law that Section 106 Evidence Act, cannot be applied directly. It is the primary duty of the prosecution to prove the guilt of the accused and make out a *prima facie* case against the accused, then only, the burden shifts on the accused and the accused has to explain the cause of murder.

13.In the instant case, except a trivial motive that there was
<https://hcservices.mca.gov.in/services/> between the deceased and the accused, there is no



other circumstance available pointing out the guilt of the accused. It is settled law that in the case of circumstantial evidence, the prosecution has to prove the each and every circumstances beyond any reasonable doubt and the proven circumstances would form a chain of circumstances unerringly pointing out the guilt of the accused. In the instant case, except motive, there is no other circumstance available to prove the guilt of the accused. The trial Court considering all those materials, has rightly acquitted the accused.

14.It is settled law that in an appeal against acquittal, there is a double presumption in favour of the accused, the presumption of innocence, which was strengthened by the acquittal by the trial Court, and unless it is found that the judgment of the trial Court admittedly perverse, legally erroneous, and based on wrong appreciation of evidence, the appellate Court cannot interfere with the order of acquittal.

15.In the instant case, the trial Court after considering all the materials rightly acquitted the accused and we find no reason to interfere with the same.

16.In the result, this Criminal Appeal is dismissed and the acquittal of the accused is hereby confirmed.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2021

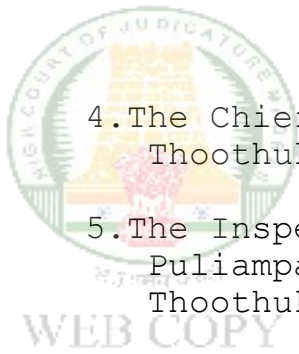
Sub Assistant Registrar(CS)

pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The II Additional District and Sessions Judge,
Thoothukudi.
- 2.The Principal District Judge,
Thoothukudi.
- 3.The Judicial Magistrate No.I,
Kovilpatti.



4.The Chief Judicial Magistrate,
Thoothukudi.

5.The Inspector of Police,
Puliampatti Police Station,
Thoothukudi.

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

Copy to

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

Judgment in
Criminal Appeal No.(MD) No.375 of 2018
05.10.2021

NSN (CO)

RS/JGB (02.11.2021) 6P 9C