



CrI.A.(MD) No.443 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CrI.A.(MD) No.443 of 2022
and
CrI.M.P.(MD) No.8284 of 2022

Pappa @ Dhanalakshmi

... Appellant

-VS-

State rep.by
The Inspector of Police
Ponamaravathi Circle
Karaiyur Police Station
Pudhukkottai District
(Crime No.2 of 2016)

... Respondent

PRAYER: Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment dated 27.03.2018, in S.C.No.127 of 2016, on the file of the Mahila Court, Pudukkottai District.



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For Appellant : Mr.Manickaraj
for Mr.R.Alagumani

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

J U D G M E N T

[delivered by P.N.PRAKASH, J.]

This criminal appeal is filed against the judgment and order dated 27.03.2018 in S.C.No.127 of 2016, on the file of the Mahila Court, Pudukkottai District.

2. The Trial Court framed three charges against the accused *viz.*, Pappa @ Dhanalakshmi (A1) and Nallaiah (A2), as detailed below:

Charge	Penal Provisions
1.	120-B r/w 302 I.P.C.
2.	302 I.P.C.
3.	201 I.P.C.

3. By judgment and order dated 27.03.2018, the Trial Court convicted and sentenced the accused as detailed below:-



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Section of Law	Sentence of imprisonment	Fine amount
120-B r/w 302 I.P.C.	To undergo imprisonment for life	Rs.1000/- in default to undergo rigorous imprisonment for one (1) year.
302 I.P.C.	To undergo imprisonment for life	Rs.1000/- in default to undergo rigorous imprisonment for one (1) year.
201 I.P.C.	To undergo two (2) years rigorous imprisonment.	Rs.1000/- in default to undergo rigorous imprisonment for six (6) months.

The sentences imposed on the accused were ordered to run concurrently and the period of sentence already undergone was directed to be set off under Section 428 of the Code of Criminal Procedure.

4. The prosecution case is as under:

4.1. The deceased Poochi @ Vellaiyan was the husband of Pappa @ Dhanalakshmi (A1) and younger brother of Chinnandi (P.W.1) and Adaikkan (P.W.13). They were all residents of Ammankovil Street, Subramaniapuram Village, Karaiyur Taluk, Pudukkottai District. The siblings [Poochi,



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Chinnandi (P.W.1) and Adaikkan (P.W.13)] lived in adjacent houses, as could be seen from the rough sketch (Ex.P16). Poochi was originally owning a tiled house, next to which, he constructed a concrete roof house.

4.2. It is alleged that while Poochi was abroad, his wife Pappa (A1) developed illicit intimacy with Nallaiah (A2) of the same village. After Poochi returned from abroad, this matter came to his (Poochi's) knowledge and there were frequent quarrels between the spouses [Poochi and Pappa (A1)].

4.3. Two months prior to the date of occurrence, Poochi saw his wife Pappa (A1) and Nallaiah (A2) together and so, he (Poochi) upbraided her (A1). In the quarrel, a scuffle ensued between Poochi and his wife Pappa (A1), in which, Pappa (A1) is said to have bitten on the face of Poochi.

4.4. After this incident, Pappa (A1) went to her parental home and after some days, Poochi brought her back to his (Poochi's) house. After her [Pappa's (A1's)] return, they again



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quarrelled and in one such quarrel, Pappa (A1) is said to have threatened her husband Poochi by brandishing a billhook. Fearing her (A1's) threat, Poochi complained to his brother Chinnandi (P.W.1) and they [Chinnandi (P.W.1 and Poochi] decided to take the matter to the village elders viz., Periyasamy (P.W.4) and Aandi (P.W.5) for panchayat. However, when they [Periyasamy (P.W.4) and Aandi (P.W.5)] summoned Pappa (A1), she refused to come to panchayat.

4.5. On 04.01.2016, Poochi went on a pilgrimage to Melmaruvathur Temple and returned in the evening of the next day i.e. 05.01.2016. He (Poochi) had dinner in Chinnandi's (P.W.1's) house and went to sleep in his house, which is nearby.

4.6. On 06.01.2016, around 05.00 in the morning, Pappa (A1) woke up Meena (P.W.2), a neighbour of hers, and told her (P.W.2) that her (A1's) husband Poochi has committed suicide by hanging. When Meena (P.W.2) went to the house of Poochi, she (P.W.2) found the body of Poochi in the pial of the tiled house. She (P.W.2) Meena informed this to Lakshmi



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WEB COPY (not examined), who is the wife of one of the brothers' of Poochi and mother of Ramu (P.W.3). Chinnandi (P.W.1), brother of Poochi, was also informed about the same and they [Chinnandi (P.W.1), Meena (P.W.2), Lakshmi and Ramu (P.W.3)] came to the place, where the body of Poochi was found and when they questioned Pappa (A1), she (A1) said that her husband (Poochi) committed suicide by hanging.

4.7. While so, it appears that some altercation appears to have ensued between Pappa (A1) and the family members of her husband Poochi, pursuant to which, Pappa (A1) attempted to commit suicide by hanging with her (A1's) saree, but the saree gave way and she (A1) suffered injuries. She (A1) was carried to the Government Hospital, Karaiyur, for first aid and therefrom, she (A1) was taken to the Government Hospital, Pudukottai, for better treatment.

4.8. Based on the complaint (Ex.P1) given by Chinnandi (P.W.1), Muthukannu (P.W.14), Sub Inspector of Police, registered a case in Karaiyur Police Station Crime No.2 of



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WEB COPY 2016, under Section 302 I.P.C., against Pappa (A1) and Nallaiah (A2), on 06.01.2016 at 09.00 hours and prepared the printed first information report (Ex.P13), which reached the jurisdictional Magistrate at 05.40 p.m., on the same day, as could be seen from the endorsement thereon.

4.9. At this juncture, it may be relevant to state here that the averments in the complaint (Ex.P1) are indeed very intriguing. From the above narration, what had come to light was that Pappa (A1) woke up Meena (P.W.2) and told her that her (A1's) husband had committed suicide by hanging, pursuant to which, all the others gathered there and found the body of Poochi in the pial of the tiled house. They only suspected the involvement of Pappa (A1) in the offence as they found some bloodstains in the wall of the new house. However, the complaint (Ex.P1) clearly states that after Poochi had dinner in Chinnandi's (P.W.1's) house; he (Poochi) went to his new house and slept in the southwestern bedroom; while he (Poochi) was asleep, Pappa (A1) and Nallaiah (A2) throttled him (Poochi) and banged his head on the wall and thereby, caused his (Poochi's)



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death. This is the information, which could not have been known to any of the witnesses at that point of time, because they all came only after Pappa (A1) woke up Meena (P.W.2) at 05.00 a.m., on 06.01.2016.

4.10. Now, to continue the narration, the investigation of the case was taken over by Karthigaisamy (P.W.16), Inspector of Police, who went to the place of occurrence and prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P16). In the observation mahazar (Ex.P2) and rough sketch (Ex.P16), the body of Poochi has not been shown in the pial of the tiled house, but, it has been shown on a cot beneath a neem tree. The Investigating Officer seized the bloodstained tiles (M.O.1) and the tiles without bloodstain (M.O.2) from the southwestern bedroom of the new house under a cover of mahazar (Ex.P3) and under the same cover of mahazar (Ex.P3), he (Investigating Officer) is said to have recovered a bloodstained mat (M.O.3), bedsheet (M.O.4) and T-shirt (M.O.5) of Poochi.



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4.11. The Investigating Officer conducted inquest over the body of Poochi from 11.30 a.m., to 01.30 p.m., on 06.01.2016 and the inquest report was marked as Ex.P17. In column No.9 of the inquest report (Ex.P17), the manner in which the murder is said to have been committed by Pappa (A1) and Nallaiah (A2) finds a place.

4.12. Dr.Arunagiri (P.W.11) performed autopsy on the body of Poochi and issued postmortem certificate (Ex.P8). In the postmortem certificate (Ex.P8), he has noted the following injuries:

“Appearance found at the post-mortem:

Condition of clotus – dry. Surrounded by PM shed. Lies on back. Moderately built, symmetrical, black colour skin, 1 ½ inch. Black and white colour over scalp. External injury: 1) Ligature mark of size 6x1cm over neck below thyroid cartilage. 2) Contusion of size 2x1cm over right temporal area. Scalp: Contusion of size 3x2cm over occipital area. Eyelid-closed. Nose, Mouth, Tongue, ear-Normal. Abd: Soft. Generative organ, Scrotum Abrasion of size 2x1cm over right elbow. Internal Examination: Abdomen soft, peritoneal cavity empty. Ribs-intact.



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Heart, lungs, liver, spleen, kidney-congested. Hyoid-sent for analysis. Stomach: Partially digested food of 0.5 litre. Intestine: filled with gas. Head-Normal. Spinal cord-intact. Brain-congested.

1)Stomach and its content, 2)Intestine and its content, 3)Liver, 4)Kidney, 5)Preservative, 6)Hyoid bone, 7)Ligature mark.”

4.13. The hyoid bone of Poochi was sent for examination and the bone case report (Ex.P9) shows presence of inward compression fracture in the hyoid bone. The viscera report (Ex.P10) did not disclose the presence of poison in the internal organs of Poochi. After obtaining all the reports, Dr.Arunagiri (P.W.11) gave his final opinion (Ex.P12) as to the cause of death as under:

“The deceased would appear to have died of ASPHYXIAL CAUSE OF DEATH DUE TO ANTEMORTEM FRACTURE OF HYOID BONE.”

4.14. The Investigating Officer arrested Pappa (A1) on 10.01.2016 and based on her (A1's) confession statement, he (Investigating Officer) recovered a saree (M.O.6) that was alleged



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to have been worn by her (A1) at the time of occurrence, but no bloodstain was found in the saree (M.O.6). On 11.01.2016, the Investigating Officer arrested Nallaiah (A2) and based on his (A2's) confession statement, he (Investigating Officer) recovered a lungi (M.O.7) and a half sleeve shirt (M.O.8) that were alleged to have been worn by him (A2) at the time of occurrence. The serology report (Ex.P15) shows that the saree (M.O.6), lungi (M.O.7) and half sleeve shirt (M.O.8) do not show the presence of "human blood".

4.15. After examining various witnesses and collecting reports from the experts, the Investigating Officer completed the investigation and filed a final report in P.R.C.No. 15 of 2016, before the learned Judicial Magistrate, Thirumayam, for the offence under Sections 120-B r/w 302, 302 and 201 I.P.C., against Pappa (A1) and Nallaiah (A2).

5. On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session, Pudukkottai, in S.C.No.127 of 2016 and



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was made over to the Mahila Court (Sessions Level), Pudukkottai, for trial.

The Trial Court framed charges against the accused, as detailed in Paragraph No.2 supra.

6. The sum and substance of the charges are that Pappa (A1) and Nallaiah (A2) were having illicit intimacy; this was objected to by her (A1's) husband Poochi; therefore, they (A1 and A2) conspired to get rid of him (Poochi); in pursuance of the conspiracy, while Poochi was sleeping in the southwestern bedroom of his new house, his wife Pappa (A1) and Nallaiah (A2) entered into the bedroom; Nallaiah (A2) caught hold the legs of Poochi and Pappa (A1) throttled him (Poochi) with her hands and smothered him (Poochi) with a pillow and banged his head on the wall of the bedroom; after Poochi fell dead, they (A1 and A2) carried the dead body to the pial of the tiled house and made it appear as if he (Poochi) had committed suicide by hanging.

7. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 16 witnesses and marked 18 exhibits and 08 material objects. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the same and Nallaiah (A2) alone appears to have



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filed a written statement under Section 313 Cr.P.C. But, no witness was examined from the side of the accused nor any document marked.

8. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 27.03.2018, convicted and sentenced the accused, as detailed in Paragraph No.3 supra.

9. Challenging the above said conviction and sentence, Nallaiah (A2) filed CrL.A.(MD) No.209 of 2018, which has been allowed by a Division Bench of this Court on 10.02.2020. Only thereafter, Pappa (A1) has filed the present criminal appeal with a delay of 767 days, which was condoned by this Court on 15.07.2022 in CrL.M.P.(MD) No.8083 of 2022 and the appeal was thereafter directed to be numbered and posted for final hearing.

10. Heard Mr.R.Manickaraj, learned counsel representing Mr.R.Alagumani, learned counsel on record for the appellant and S.Ravi, learned Additional Public Prosecutor appearing for the respondent.

11. Admittedly, this case is based on circumstantial evidence. The most important circumstance, which the prosecution has projected is that



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Pappa (A1) had not given any satisfactory explanation as to how her (A1's) husband Poochi died and that she (A1) has given a false explanation that her husband (Poochi) had committed suicide by hanging. As stated in paragraph No.4.9 above, between 05.00 a.m. and 09.00 a.m., on 06.01.2016, the witnesses, who gathered in the place of occurrence, only suspected that the death of Poochi could not have been a suicide, but a murder. However, there was no possibility for the witnesses to exactly know how the murder was committed.

12. In the complaint (Ex.P1), Chinnandi (P.W.1), who had not witnessed the occurrence at all, has graphically stated as to how Pappa (A1) and Nallaiah (A2) had committed the murder. The complaint (Ex.P1) also states that Pappa (A1) attempted to commit suicide by hanging, but she was saved and was admitted in the Government Hospital, Pudukkottai, for treatment. Strangely, the Investigating Officer has not placed any material to show as to when Pappa (A1) was admitted in the hospital and when she was discharged from the hospital. The prosecution has completely suppressed this vital aspect from the gaze of the Court.



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13. According to the prosecution, Pappa (A1) was arrested only on 10.01.2016. But, it is not their case that Pappa (A1) was in abscondance during the period. The presence of Pappa (A1) at the place of occurrence has been spoken to by Chinnandi (P.W.1), Meena (P.W.2) and Subramanian (P.W.7). In fact, Subramanian (P.W.7) has stated that Pappa (A1) was taken to the Government Hospital, Pudukkottai, for treatment. The attempt by Pappa (A1) to commit suicide can be interpreted in two ways, either (i) on account of feeling of guilt, or (ii) on account of the allegation of murder thrown at her (A1) by the relatives of her (A1's) husband Poochi, when he (Poochi) had actually committed suicide.

14. The postmortem report (Ex.P8) clearly shows that the hyoid bone had suffered a fracture. Dr.Arunagiri (P.W.11), in his cross-examination, has admitted that he did not find any nail scratch or finger pressing mark around the neck of Poochi. On the contrary, the evidence of Dr.Arunagiri (P.W.11) and the postmortem report (Ex.8) show that ligature mark was present around the neck of Poochi. This, undoubtedly, probablizes the explanation of Pappa (A1) that her husband had, in fact, committed suicide. As regards injury on the back of the head of Poochi, it is only a swelling, and not a bleeding injury.



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15. Coming to the recovery of the material objects, the prosecution has not explained as to how the body travelled from the new house to the pial of the tiled house and from there, to the cot, beneath the neem tree. That apart, the recovery of bloodstained mat (M.O.3), bedsheet (M.O.4) and T-shirt (M.O.5) of Poochi has not been satisfactorily established, inasmuch as, both the Investigating Officer and the independent witness *viz.*, Murugesh (P.W.8) have stated that these items were recovered along with the bloodstained tiles (M.O.1) and the tiles without bloodstain (M.O.2) from the place of occurrence, namely, new concrete house, whereas, the recovery mahazar (Ex.P3) shows that only the bloodstained tiles and the tiles without bloodstain (M.Os.1 and 2) were recovered from the new concrete house and other items were recovered from the tiled house. Of course, mat, bedsheet and T-shirt (M.Os.3, 4 and 5) belonged to Poochi and there is nothing to link them with Pappa (A1).

16. To satisfy our judicial conscience, we called for the case diary, from which, we found that Pappa (A1) was admitted in Karaiyur Government Hospital at 07.30 a.m., on 06.01.2016 and discharged from the hospital only on 09.01.2016, which means that she Pappa (A1) also must have suffered serious injuries. We do not know why the prosecution has burked this.



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17. In such view of the matter, we are of the view that the circumstances proffered by the prosecution to mulct criminal liability on the appellant have not been satisfactorily established for sustaining the conviction and sentence slapped on her.

18. In fine, this criminal appeal is allowed; the conviction and sentence imposed on the appellant, by judgment and order dated 27.03.2018, made in S.C.No.127 of 2016, on the file of the Mahila Court, Pudukottai District, are set aside and the appellant is acquitted of all the three charges. Fine amount, if any, paid by the appellant shall be refunded to her. Since the appellant is in jail, she is directed to be set at liberty forthwith, unless her detention is required in connection with any other case. Consequently, connected miscellaneous petition is closed.

[P.N.P., J.]

[R.H., J.]

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Internet : Yes / No

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To:

- 1.The Sessions Judge,
Mahila Court,
Pudukottai District.
- 2.The Inspector of Police,
Ponamaravathi Circle,
Karaiyur Police Station,
Pudhukottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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