



Crl.A.No.753 of 2016
and Crl.M.P.No.11662 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.753 of 2016
and Crl.M.P.No.11662 of 2016

Mathiya @ Sundarrajan

... Appellant

Vs.

State by

The Inspector of Police,

Gudalur Police Station,

Udhagamandalam District.

... Respondent

(Crime No.154/2014)

Prayer : Criminal Appeal filed under Section 374(2) Criminal Procedure Code 1973, against the judgement and orders dated 05.01.2016 passed in S.C.No.12/2015 by the Sessions Judge, Fast Track Mahila Court, Udhagamandalam.

For Appellant : Mr.P.V.Balasubramaniam,
Senior Counsel assisted by
Ms.D.Sathya, Legal Aid Counsel
For Respondent : Mr.S.Raja Kumar,
Additional Public Prosecutor.



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JUDGMENT

1. The appellant stood charged for an offence punishable under Section 302 IPC in S.C No.12/2015.

2. The learned trial court Judge, after full trial, convicted and sentenced the appellant, vide her judgment dated 05.01.2016, as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
Section 304 (Part ii) IPC	Rigorous imprisonment for five years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months.
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.	

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. The deceased Sivakumari is the wife of the appellant Mathiya @ Sundarrajan and daughter of Kandasamy (P.W.1) and



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Manikavalli (P.W.2). Kanageshwari (P.W.17) and Vigneshwaran (P.W.18) are her siblings.

3.2. The deceased and the appellant got married ten years prior to the occurrence and they were blessed with three children by name Nishanth (10 years), Nivedha (8 years) and Ashvitha (3 years). The appellant, suspecting the fidelity of his wife (deceased) would beat her frequently and two months prior to the date of occurrence, the appellant lit six camphors on her right palm and asked her to prove her good conduct. Since Sivakumari sustained burn injuries on her right palm she was taken to Vinayaka Hospital, Sulthan Bathery on 24.02.2014.

3.3. Dr.Randhir Krishnan (P.W.28), examined Sivakumari on 24.02.2014 and found that she had sustained burn injuries on her right palm. She was treated as an out patient and was prescribed medicines. The Medical Records of Vinayaka Hospital, Sulthan Bathery, pertaining to the victim was marked as Ex.P1.



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3.4. On 16.04.2014, the appellant started beating his wife suspecting her fidelity and the deceased ran to the house of Padmanaban (P.W.3), her neighbour to take shelter. She knocked the doors of P.W.3's house and when he opened it, Sivakumari ran inside his house and hid under a cot. However, the appellant who came behind her dragged her to his house and started beating her. P.W.3 in fact heard noise from the house of the appellant beating the victim and she crying but tried to sleep as this was not something unusual between the appellant and his wife. He was also afraid that the appellant would abuse him in filthy language if he questions him. However, at about 2.00 a.m. on 17.04.2014, the appellant knocked the doors of Padmanaban (P.W.3) and asked him to bring his Auto to take his wife to the hospital but P.W.3 refused. However, he saw the appellant at about 3.00 a.m. proceeding towards the main road taking his wife on his shoulders. P.W.3 immediately rushed to the house of P.W.1 (father of the victim) and informed him. P.W.1, P.W.2 and P.W.18 came down to the house of the appellant and enquired the children who in turn informed them that the appellant assaulted their



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mother on her abdomen, chest and also hit her head on the wall. The children had seen their mother with bleeding injuries and in fact they were all crying. At about 07.00 a.m. P.W.1 to P.W.3 and P.W.18 came to know that Sivakumari had died.

3.5. Dr.Suresh Rajkumar (P.W.20), examined Sivakumari at about 03.00 a.m. on 17.04.2014. He was informed by the appellant that she fell down from upstairs of their house. According to P.W.20, Sivakumari was unconscious and her blood pressure was very low. He therefore, referred her to Government Head Quarters Hospital, Ooty. The Accident Register was marked as Ex.P15.

3.6. Dr. Karthik Balaji (P.W.21), examined the victim at about 06.00 a.m. on 17.04.2014 and declared her as 'brought dead'. The Accident Register issued by him was marked as Ex.P16. He then sent the body of the deceased to the mortuary of the hospital.



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3.7. P.W.1 to P.W.3 and P.W.18 went to the Government Hospital, Ooty and saw the body of the deceased. Thereafter, P.W.1 went to Gudalur Police Station and lodged a written complaint (Ex.P2) with Thiru. Arun (P.W.26), the then Sub Inspector of Police, Gudalur Police Station. P.W.26 received Ex.P2 from P.W.1 and registered FIR (Ex.P20) in Crime No.154/2014 against the appellant for an offence punishable under Section 302 IPC. He then placed the records before Thiru. Baskar (P.W.29), the then Inspector of Police, Gudalur Police Station for investigation.

3.8. P.W.29 took up investigation in Crime No.154/2014, went to the scene of occurrence, prepared an observation mahazar (Ex.P6) and a rough sketch (Ex.P23) in the presence of witnesses Bharathi (P.W.4) and Ramesh (P.W.5). He recovered a blood stained green towel (M.O.3) in the place of occurrence and sent the same to the Jurisdictional Magistrate under Form 91 (Ex.P26). He also took photographs of the entire scene of occurrence (M.O.4 and M.O.5). Thereafter, he proceeded



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to the Government Hospital, Ooty, where the body of the deceased was kept in mortuary. He conducted inquest (Ex.P24) on the body of the deceased in the presence of Panchayatdhars. He then handed over the body of the deceased for postmortem through Thiru.Muruganandham (P.W.13), Head constable of police attached to Gudalur Police Station.

3.9. Dr.Poornajith (P.W.19), conducted autopsy on the body of the deceased on 17.04.2014 and recorded the following :

" General appearance :

Bleeding from the ear thin built, lies on its back, colour of skin brown colour, hair black 40-50 cms long, scanty hair in the pubis, moderate amount of hair in both arm bits.

External injuries:

Nail mark of left side of neck, cut injury on left side lower lip (2 cms) cut injury measuring 1.5 cms of middle of chest, abrasion on right elbow and forearm and right leg.

Eyelids closed, brownish black in colour, nasal secretions present, tongue within the mouth, teeth normal.

Internal examination:

Abdomen-normal, peratal cavity - no free fluid, ribs, fracture 4,5 ribs left side, heart liquid blood,



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lungs, congested, contusion on lower lobe of left lung, hyoid bone fracture, stomach - food particles present, liver - congested, spleen - congested, kidneys - congested, intestine - faecal matter present, bladder - full, uterus - empty, skull - swelling on right of head, membrane - subdural, sub - archnoid haemorrhage present, large haemorrhage of both cerebral hemispheres and fracture of brain stem.

Specimens preserved:

Stomach and its contents, intestine and its contents, liver, kidneys, preserved, hyoid bone - preserved.

Opinion:

pending chemical analysis report "

He sent visceral organs and hyoid bone for analysis.

3.10. Dr.Jayasingh (P.W.27), examined hyoid bone of the deceased and found that the deceased had sustained an ante mortem injury on her hyoid bone and his report was marked as (Ex.P12).

3.11. P.W.19 gave his final opinion (Ex.P13) stating that "the deceased would have died due to injuries to internal organs such as (Brain) injury to the hyoid bone suggest possible strangulation".



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3.12. P.W.29 arrested the appellant Mathaiya @ Sundarrajan near petrol bunk and recorded his confessional statement in the presence of the witnesses Indrakumar (P.W.6) and Vinu (P.W.7) and based on his confessional statement, he recovered a blood stained full arm shirt (M.O.6) under the cover of a seizure mahazar (Ex.P25) in the presence of the same witnesses (P.W.6 and P.W.7). He sent all the seized items to the court under Form 91 (Ex.P26 to Ex.P28). He examined the witnesses and recorded their statements individually under Section 161(3) Cr.P.C. He then sent a requisition letter (Ex.P33) to the Chief Judicial Magistrate, Ooty, to record the statements of Kandasamy (P.W.1), Padmanaban (P.W.3) and also Nishanth and Nivetha (children of the appellant and the deceased) under Section 164 Cr.P.C.

3.13. Thiru. Arunachalam (P.W.30), the then Judicial Magistrate, Ooty, examined Kandhasamy (P.W.1), Padmanaban (P.W.3), Nishanth and Nivetha and recorded their statements under Section 164



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Cr.P.C. as per the proceedings of the Chief Judicial Magistrate (Ex.P34).

The statements of Nishanth and Nivetha were marked as Ex.P35 and Ex.P36.

3.14. P.W.4 to P.W.12 and P.W14 to P.W.16 did not support the case of the prosecution and were treated hostile.

3.15. P.W.29 after completing investigation laid a final report in P.R.C.No.19/2014 before the Judicial Magistrate, Gudalur, against the appellant for the offence punishable under Section 302 IPC.

3.16. The learned Judicial Magistrate after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Sessions, Nilgiris at Udthagamandalam. The learned District Judge took the case on file in S.C.No.12/2015 and made over the same to Fast Track Mahila Court, Udthagamandalam.

3.17. In order to bring home the guilt of the accused, the



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prosecution examined 30 witnesses, marked 36 documents and 6

Material Objects.

3.18. The accused, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side.

3.19. The learned trial court judge after analysing the oral and documentary evidence on record, convicted and sentenced the appellant as stated in paragraph No.2, vide her judgment and orders dated 05.01.2016, aggrieved over which, the appellant has preferred the present appeal.

4. Heard Mr.P.V.Balasubramaniam, Senior Counsel assisted by Ms.D.Sathya, learned Legal Aid Counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor for the respondent.

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5. Mr.P.V.Balasubramaniam, learned Senior Counsel for the appellant would contend that the prosecution mainly relies on the evidence of P.W.1 to P.W.3 to prove that the appellant used to torture his wife (victim) suspecting her fidelity. However, according to him, P.W.1 to P.W.3 had contradicted each other with regard to the earlier incident which reportedly took place two months prior to the occurrence. P.W.1 in his evidence had deposed that his daughter (victim) informed him that her husband (appellant) forced her to make a promise by lighting a camphor on her right palm and she sustained injuries. However, P.W.1 pacified her daughter and sent her back home as she has three little children but she went missing and after three days he (P.W.1) found her in Government Hospital, Gudalur, taking treatment for her burn injuries and got her discharged and took her to a private hospital where the victim was treated on 24.02.2014 only as an out patient. His contention is that the prosecution has failed to produce the hospital records of Government Hospital, Gudalur. According to him, Ex.P1 the O.P. chit of a private



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hospital has been pressed into service only to show that the appellant used to torture his wife. It is also his contention that all the neighbours of the victim except P.W.3 turned hostile and P.W.3's evidence cannot be accepted as he is an interested witness as he had a dispute over the boundary of his property, with the appellant. One of his neighbours by name Saraswathi (P.W.24) has also confirmed this in her deposition. It is his further submission that the appellant came back home only at 2.00 a.m. on 17.04.2014 and the victim who opened the door fell down and sustained injuries. In fact, Sivakumar (PW.25), the auto driver who took the victim and the appellant to the hospital was informed by the victim that she fell down and sustained injuries. In the circumstances, the conviction and sentence passed by the trial court is liable to be set aside, is the contention of the learned Senior Counsel.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for



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WEB COPY dismissal of the present appeal.

7. On the fateful day, the deceased Sivakumari was reportedly beaten up by her husband at about 10.30 p.m. and she attempted to take shelter in the house of Thiru.Padmanaban (P.W.3) who is her neighbour. P.W.3 in his deposition had stated that the deceased came down to his house at about 11.00 p.m. and knocked the doors seeking help saying her husband is attempting to kill her. P.W.3 opened the door and the deceased ran inside his house and hid under the cot of his mother. However, the appellant who came behind the victim dragged her into his house and started beating her again. According to P.W.3, he did not question the appellant in this regard fearing repercussions in the form of abuses. It is also his contention that this behaviour of the appellant is not something unusual as he used to beat his wife regularly. In fact, he heard the noise from the house of the appellant beating his wife and the victim crying aloud. On 17.04.2014 at about 02.00 a.m. the appellant knocked his door and sought his help to take his wife to the hospital in his auto. Since P.W.3 refused, the appellant carried his wife on his shoulders and



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proceeded towards the main road. P.W.3 had immediately gone over to the house of the parents of the victim and informed them around 03.00 a.m. P.W.1, P.W.2 and P.W.18 rushed to the house of the appellant and the children informed them that their father beat their mother, hit her head on the wall and subsequently took her to the hospital. At about 07.00 a.m. they all came to know that Sivakumari died. They rushed to the Government Hospital, Ooty and saw the dead body of the victim. P.W.1, P.W.2, P.W.17 and P.W.18 corroborated the versions of P.W.3 in all material particulars.

8. The learned Senior Counsel contended that P.W.1 in his deposition had stated that he was informed by P.W.3 that the appellant threw photos and nighty of the victim in front of his house and lit fire to them. However, P.W.3 did not speak anything in this regard in his deposition. It is to be pointed out that P.W.3 was examined more than a year after the occurrence and he may not be remembering every minute detail. On the other hand, P.W.1 and P.W.2 are the parents of the victim and they would not miss out on anything of whatever they were



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informed. However, P.W.3 had narrated the sequence of events cogently and had also withstood the testimony of cross examination. Nothing useful was suggested to him during the course of cross examination to discredit or disbelieve his versions.

9. It was also argued that P.W.3 is an interested witness on account of boundary dispute between him and the appellant. But it is to be pointed out that no evidence was adduced by the appellant to substantiate this contention. Tmt.Saraswathi (P.W.24), a neighbour of the appellant had in fact turned hostile to the prosecution and during the course of cross examination, the defence counsel had put a suggestion to her that there was a boundary dispute between the appellant and P.W.3 for which P.W.24 answered in the affirmative. It is not known as to wherefrom she got this information. Therefore, based on the evidence of P.W.24 alone, this court cannot conclude that P.W.3 is an interested witness.

10. Another contention of the learned Senior Counsel is that



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the appellant came down to his house only at about 2.00 a.m. on 17.04.2014 and his wife (deceased) who opened the door in drowsiness fell down and sustained injuries. The appellant did not explain as to where he was till 2.00 a.m. All his answers to 313 Cr.P.C. questioning were of simple denial. As per Section 103 of the Indian Evidence Act, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. In the instant case, as already observed the appellant had not proved his contention that he was away from his house till 2.00 a.m. and that his wife fell down and sustained injuries. Moreover, the injuries found on the body of the deceased does not suggest that the victim sustained the injuries on account of fall. Apart from that, the appellant had stated before the doctor that his wife fell down from the upstairs of his house. The rough sketch (Ex.P23) does not show the existence of another floor in the house of the appellant. As already observed, the appellant who was with his wife at the time of occurrence had not explained the injuries on his wife. The evidence of P.W.1 to P.W.3 is convincing and there is no



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good ground to discard their evidence. Moreover P.W.1 and P.W.2 are the parents of the deceased and there is no reason for them to implicate their own son-in-law leaving the real assailant especially when they have three little grand children.

11. The trial court had in fact convicted the accused for the offence punishable under Section 304(Part ii) IPC and had given cogent reasons for the same. The trial court had also shown leniency in sentencing the appellant and in the circumstances, the present appeal fails and is therefore dismissed.

12. In the result,

- i. The Criminal Appeal is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.
- ii. The judgement and orders dated 05.01.2016 passed in S.C.No.12/2015 by the Fast Track Mahila Court, Udhagamandalam, is confirmed.
- iii. The accused shall surrender before the Fast Track Mahila Court,



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Udhagamandalam, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure his presence for undergoing the remaining period of sentence.

iv. This Court places on record its appreciation to the learned Senior Counsel Mr.P.V.Balasubramaniam and Ms.D.Sathya, learned Legal Aid counsel, for their valuable assistance in deciding this case. The Legal Service Authority is directed to pay fee in accordance with rules.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai 104.

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To

1. The Fast Track Mahila Court, Udhagamandalam.
2. The Inspector of Police, Gudalur Police Station, Udhagamandalam District.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R. HEMALATHA, J.

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