



Crl.A.(MD)No.228 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 10.08.2023

PRONOUNCED ON : 12.01.2024

CORAM

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

**Crl.A.(MD)No.228 of 2021
and
Crl.M.P.(MD)No.1825 of 2023**

Sundar Raj, S/o.Selvaraj

... Appellant/Sole Accused

Vs.

State, Rep. by the
The Inspector of Police,
Thuckalay Police Station.
(Crime No.1039 of 2011)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction and consequential sentences passed by the learned Sessions Judge, Fast Track Mahila Court at Nagercoil, by judgment, dated 08.12.2020, made in S.C.No.69 of 2015.

For Appellant : Mr.S.C.Herold Singh

For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

JUDGMENT



CrI.A.(MD)No.228 of 2021

M.NIRMAL KUMAR, J.

WEB COPY

This appeal has been filed by the appellant/sole accused as against the conviction and sentence, dated 08.12.2020, made in S.C.No.69 of 2015, by the learned Sessions Judge, Fast Track Mahila Court, Nagercoil.

2. The appellant / sole accused stood convicted and sentenced to undergo imprisonment as detailed hereunder:-

Conviction under Section	Sentence	Fine amount
449 I.P.C.	To undergo two years rigorous imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo three months rigorous imprisonment
498(A) I.P.C.	To undergo two years simple imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment
302 I.P.C.	To undergo life imprisonment	To pay a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment
317 I.P.C.	To undergo one year simple imprisonment	-

The Trial Court further ordered the sentences to run concurrently. The accused/appellant challenging the legality of the conviction and sentence awarded by the Trial Court, vide impugned judgment, has filed this Criminal Appeal.



Crl.A.(MD)No.228 of 2021

WEB COPY

3. The case of the prosecution is that, on 22.09.2011, at about 06.00 p.m., the appellant/accused trespassed into his mother-in-law's house at Sathanvilai with an ulterior motive to harass his wife namely, Vincy on the guise of demanding dowry and murdered his wife and abandoned his six months infant and left from the spot. Based on the complaint given by the de-facto complainant / mother-in-law of the accused, the respondent registered the case in Crime No.1039 of 2011.

4. The facts leading to the filing of this appeal, necessary for the disposal of this criminal appeal, are as follows:-

4.1. P.W.I Sajin Kumar, who is the brother of the deceased, in his evidence deposed that, he is working as a Quality Engineer in a Private Company at Bangalore. Three years before the incident, he and his mother were residing in Sathanvilai. At that time, he was studying second year in an Engineering College and his brother namely, Vijin (P.W.13) was studying B.Sc. Nursing at Bangalore. His father namely, Vincent Raj ran a Textile shop and after his death, his mother used to look after the shop. The accused, who was working as carpenter, was in love with his sister and they got their



CrI.A.(MD)No.228 of 2021

marriage registered. Hence, the family members bitterly opposed the same.

Due to marriage, they got two children namely, Kiruthiga, aged about 2 years and Ashwin, aged about 6 months. Seven months before the incident, when his sister was pregnant with her second child, the accused brought her sister to his house, informing that she was suffering from jaundice. His mother assisted her sister in the delivery. His sister was studying teacher training at Bethel College at Karunkal. At that time, the accused used to come and see his sister once in a week, for demanding money and jewels and used to fight with her. On 20.09.2011, the accused came to his house, stayed there and took back his daughter to his house. On 22.09.2011, while returning from the College his sister had purchased rice in a fair price shop and after leaving it in the textile shop, had returned to her house. Thereafter, when P.W.1 while going to the textile shop, saw the accused coming in an auto on the way. On the same day at 08.30 p.m., after locking the shop, P.W.1 and his mother came to the house and found the door locked from inside. When they had knocked the door there was no response, except the cry of the child from inside. They then found back door was open. When PW1 went inside the house, he saw his sister lying on the floor in the middle of the hall speechless with injuries on her neck, arm joints and foot. The six month old baby was found crying near his sister. They then took her to Paulraj Hospital, where



CrI.A.(MD)No.228 of 2021

the doctor examined her and informed them that she was brought dead.

While they were in the hospital, the Police had arrived and took a complaint from PW1 and his mother, in which, PW1 signed as a witness. The said complaint was marked as Ex.P.1.

4.2. P.W.2 Ramachandiran, who is the neighbour of P.W.1, deposed that Vincent Raj had three children. The deceased Vincy was in love with the accused and married him. When she was nine months pregnant with the second child, she came to her father's house, where she delivered her second child. The father of the deceased namely, Vincent Raj died four months before the incident. Vincy was undergoing teacher training at Bethlehem School. On 20.09.2011, the accused came to the house and took back his first child. On 22.09.2011 at 06.45 p.m., the brother of Vincy went to the textile shop. Thereafter, P.W.2 heard a noise from Vincy's house. When Vincy's mother knocked the door, she found her daughter with injuries and she raised an alarm. P.W.2 and Justin (P.W.3) then went inside the house and found the deceased lying on the floor, with bruises on her neck, arms, legs and eyebrows. Thereafter, they took the deceased Vincy in an auto to Paulraj Hospital at Palliyadi, where the doctor examined and informed that she was brought dead.



CrI.A.(MD)No.228 of 2021

WEB COPY

4.3. P.W.3 Justin, neighbour of the deceased, in his evidence deposed that, he is an auto driver. The deceased Vincy was in love with the accused and married him. When she was nine months pregnant with the second child, she came to her father's house alone. Her mother informed P.W.3 that the accused used to harass the deceased, asking her to bring jewels. In this background, the father of the deceased died four months before the incident. Since then, the accused used to come to her house and demand money whenever he came, thereafter, second child was born. After a dispute between the husband and wife, the accused took away his eldest daughter, on the evening of 20.09.2011. On 22.09.2011 at about 06.00 p.m., after Vincy's younger brother/PW1 left the house, the accused came there. When the dispute was still going on, at 08.00 p.m., Vincy's mother came to the house from the shop. At that time, when there was a loud noise, P.W.3 and Ramachandran (P.W.2), rushed there and found Vincy lying inside the house with injuries on both legs and forehead. When, P.W.3, P.W.2 and Subin Raj/P.W.1 took Vincy in an auto to Paulraj Hospital, the doctor examined her and informed that she was brought dead.

4.4. P.W.4 Kanakaraj, who is a resident of Palliyadi, in his



CrI.A.(MD)No.228 of 2021

evidence, deposed that three years prior to the incident, Vincy fell in love with the accused and got married and both were living in their matrimonial home. Prior to seven months before the incident, Vincy was nine months pregnant and came to her father's house with her elder daughter Kiruthiga. Her family members informed that the accused sent her to her father's house demanding money and jewels. Thereafter, second child was born to her. After birth of the child, Vincy did not go back to the matrimonial home and stayed at her mother's house, studied Teacher Training Course at Bethlehem School. Her father Vincent Raj died four months prior to the incident. After the death of her father, the accused used to come to her house once in a week and during his visits, he would demand money and jewels. On 22.09.2011 at 08.00 p.m., while he was walking with one Amirthadhas (P.W.5), they saw the accused walking out of the compound. Later, at about 10.00 p.m., he was informed that Vincy died in the hospital and immediately, he went to the hospital.

4.5. P.W.5 Amirthadhas, who is a nearby Villager, deposed in line with P.W.4.

4.6. P.W.6 Dr.Paul Raj, casualty doctor, in his evidence,



CrI.A.(MD)No.228 of 2021

deposed that he is running a hospital in the name of Pradeep Nursing Home at Palliyadi. On 22.09.2011 at 09.00 p.m., one Vincent Raj brought a woman named 'Vincy' to his hospital in unconscious state. He examined her and declared her to be dead.

4.7. P.W.7 Praba Kumar, Line Inspector, T.N.E.B., in his evidence, deposed that on 22.09.2011, his duty was from 05.00 p.m. to 08.00 a.m. The area under his jurisdiction of Sathanvilai Palliyadi Section Control. He had deposed that the electricity was uninterrupted in that area on 22.09.2011.

4.8. P.W.8 Simson, Auto driver, deposed that on 22.09.2011 at 08.30 p.m., when he was coming in the auto, Vincy's mother and her brother asked him to drop them in the hospital. After dropping them at the hospital and he was waiting there, Vincy's mother had met the doctor, who informed her about Vincy's death.

4.9. P.W.9 Dr.John Grifson, who conducted the postmortem on the body of the deceased, gave his opinion that the deceased would appear to



CrI.A.(MD)No.228 of 2021

have died of shock and haemorrhage due to multiple injuries, in particular to the injury to her lungs and heart. In the postmortem certificate marked as Ex.P.2, he had noticed the following external injuries on the body of the deceased:-

"(i) Bruise 4 x 2 cm on right side of neck obliquely;

(ii) Bruise 3 x 2 cm, 1 x 1 cm and 1 x 2 cm over middle of neck transversely;

(iii) Bruise 4 x 2 cm, 3 x 2 cm, 2 x 1 cm, 2 x 1 cm, 1 x 1 cm obliquely outwards over left side of neck.

(iv) Bruise 3 x 2 cm over the right eyebrow.

(v) Bruise 1 x 1 cm below the right ear.

(vi) Bruise 2 x 1 cm, 1 x 1 cm over back of left elbow.

(vii) Bruise 1 x 1 cm over back of right elbow.

(viii) Bruise 2 x 1 cm and 1 x 1 cm over lateral aspect of left knee.

(ix) Bruise 2 x 1 cm over front of right knee.

(x) Bruise 3 x 1 cm over back of left shoulder.

(xi) Contusion 4 x 3 cm over front of right side of chest. On opening the neck, contusion of muscles of neck."

4.10. P.W.10 Pakkiya Sundar, a resident of Murungavilai,



Crl.A.(MD)No.228 of 2021

Palliyadi, is the witness to the arrest and confession statement of the accused and the admissible portion of the confession statement of the accused is marked as Ex.P.4. Further, the nails of the accused in both the hands were cut and recovered under the cover of Mahazar (Ex.P.5) in his presence and the same was marked M.O.1.

4.11. P.W.11 Murugan, Special Sub-Inspector of Police, Marthandam Police Station, in his evidence deposed that on 23.09.2011 at 11.20 a.m. when he was on duty, he had handed over the express F.I.R. of the case to the learned Judicial Magistrate, Padmanabhapuram and thereafter, to his other higher officials.

4.12. P.W.12 Dr.Vijaya, who is working as a Senior Civil Surgeon at Government Head Quarters Hospital, Padmanabhapuram, conducted postmortem on the body of the deceased along with P.W.9 and issued the postmortem certificate, which was marked as Ex.P2.

4.13. P.W.13 Vijin, who is the brother of the deceased and working as a Male Nurse in Delhi, deposed that, on 22.09.2011 at 09.30 p.m., his younger brother (P.W.1) called him over phone and informed him



Crl.A.(MD)No.228 of 2021

about the occurrence. At that time, he was studying B.Sc., Nursing at Bangalore. Immediately, he left from Bangalore and reached his hometown at 07.00 a.m. He further deposed that in 2008, his sister Vincy fell in love with the accused, eloped with him and got married and later gave birth to two children. His father died four months before the incident. The accused was suffering from jaundice and was alcoholic and harassing his sister by demanding money and jewels and therefore, his mother informed her to come to her house and complete the delivery of her second child. At that time, the accused came to the house once in a week and stayed there. Two days before the incident, the accused came and took away his elder daughter. On the day of incident, when his brother went to the shop to call his mother, they saw the accused in an unregistered auto coming home. After closing the shop, when his mother and his brother came to the house, they saw his sister lying in the middle of the house with injuries on her body. Immediately, they called a nearby auto and took the Vincy to the nearby Paulraj Hospital, where the doctor examined her and declared her to have been brought dead.

4.14. P.W.14 Kanakayan, Head Constable, attached to Thuckalay Police Station, produced the body of the deceased for postmortem and thereafter, handed over the body to his relatives.



Crl.A.(MD)No.228 of 2021

WEB COPY

4.15. P.W.15 Mohana Chandran, while he was working as Revenue Divisional Officer in Padmanabhapuram, had received the first information report in Crime No. 1039 of 2011 from the Thuckalay Police Station on 23.09.2011 at 10.00 a.m. and at 10.35 a.m. Thereafter, he had conducted inquest on the body of the deceased in Thuckalay Government Hospital and recorded the statement of the witnesses and others. He submitted a report to the Deputy Superintendent of Police, Thuckalay, stating that there was no proof for demand of dowry, which was marked as Ex.P.6.

4.16. P.W.16 Subin and P.W.17 Sajin are witnesses to the Observation Mahazar (Ex.P.7).

4.17. P.W.18 Sundarraj, Investigating Officer, in his evidence deposed that on receipt of the F.I.R. [Ex.P.10], he took up investigation, proceeded to the place of occurrence, in the presence of Subin [P.W.16] and Sujin [P.W.17] and therein, he had prepared Observation Mahazar and Rough Sketch, marked as Exs.P.7 and P.8, respectively. Thereafter, P.W.18 had enquired the witnesses and recorded their statements. On 23.09.2011 at about 01.00 p.m., P.W.18 had arrested the appellant/accused near Thingal Santhai Bus Stand in the presence of Pakkiya Sundar (P.W.10) and one



Crl.A.(MD)No.228 of 2021

Christhudhas and recording his confession statement, he recovered his nails under the cover of Mahazar (Ex.P.5) and sent the same to the Court under Form – 95 (Ex.P.9). After completion of investigation, he had filed the final report against the appellant/accused for having committed the offences under Sections 498(A), 449, 302 and 317 I.P.C. before the jurisdictional Court.

4.18. Thereafter, the learned Sessions Judge, Fast Track Mahila Court, Nagercoil, took the case on file in Sessions Case No.69 of 2015 and issued summons to the appellant/accused. On his appearance, charges for the offences under Sections 498(A), 449, 302 and 317 I.P.C. were framed and the appellant/accused was questioned. The appellant/accused pleaded not guilty for the charges levelled against him.

4.19. The prosecution, in order to prove their case, examined the witnesses namely, P.W.1 to P.W.18 and marked Exs.P.1 to P.12 and M.O.1.

4.20. The appellant/accused was questioned under Section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidences rendered by the prosecution and he denied it as false. The appellant/accused did not file any documents nor let in any oral evidence.



CrI.A.(MD)No.228 of 2021

WEB COPY

4.21. The Trial Court, on consideration and appreciation of oral and documentary evidences and other materials, convicted and sentenced the appellant/accused as stated above and hence, this appeal.

5. The learned counsel for the appellant submits that there is no direct eyewitnesses to the incident. The prosecution failed to examine the de-facto complainant, namely, the mother of the deceased, who was available during the course of trial. He further submitted that P.W.1 and P.W.13 are the sons of the de-facto complainant/brothers of the deceased. P.W.1 in his deposition admitted that he only informed the appellant/accused that the deceased was in a serious condition at the hospital, and when the appellant/accused reached the hospital, the Police brought him to the Police Station from the Hospital, whereas, P.W.18 Investigating Officer, who conducted enquiry and filed the charge sheet, in his evidence, deposed that on 23.09.2011 at about 01.00 p.m., he arrested the appellant near Thingal Santhai Bus Stand in the presence of the witnesses Pakkiya Sundar (P.W. 10) and one Christhudhas and the said Christhudhas was not examined by the prosecution. Further, it is alleged that the appellant voluntarily cut his nails and produced before P.W.18 in the presence of P.W.10 and the said



Crl.A.(MD)No.228 of 2021

Christhudhas. He further submits that it is an admitted fact that the appellant's relationship with his wife's family was not cordial, since the marriage between them was against the wishes of his wife's family members.

5.1. The learned counsel for the appellant further submits that P.W.1 in his chief examination, at the time of his departure from the house to their textile shop he saw the appellant coming in an Auto, but does not state the time and place where he saw the appellant. He further submits that P.W.2 and P.W.3 are neighbours of P.W.1. P.W.2 has not stated the presence of the appellant in the vicinity after the departure of P.W.1 from his house and there are many discrepancies regarding the time of the incident, and the time when de-facto complainant and P.W.1 reached their house.

5.2. The learned counsel for the appellant further submits that P.W.4 and P.W.5, who were alien to the place of occurrence and they belong to different Village, from their deposition, nothing was elucidated as to why and for what reason both of them had come near the place of occurrence. He further submits that P.W.8, Auto driver, in whose auto, the deceased was brought to the hospital of P.W.6, deposed that in his auto, the de-facto complainant, P.W.1 and a person accompanied with the deceased, whereas,



CrI.A.(MD)No.228 of 2021

P.W.4 in his chief examination, deposed that the de-facto complainant, P.W.1 and P.W.2 alone travelled in his auto.

5.3. The learned counsel further submits that P.W.9 doctor, who conducted the postmortem, had categorically deposed in his cross examination that if any abrasions are caused by the nails of a human, it will be incorporated in the postmortem report. As such, in this case, there were no abrasions caused by human nails in the corpse, since, there was no mention about the same in Ex.P2. On the other hand, the respondent Police removed the nails of the appellant and sent the same for forensic examination and the outcome of the said examination was marked as Ex.P.12. A perusal of the same reveals it is seen blood detected on the nails and no finding whether the blood detected is of the deceased. The Expert, who conducted the said examination, was neither inquired by the investigating officer nor arrayed as a witness to the case. P.W.12, who conducted postmortem along with P.W.9, categorically deposed during cross examination that there were no abrasion caused by the human nail on the corpse of the deceased. The postmortem report and the doctors' final opinion marked as Exs.P.2 and P.3 respectively.



CrI.A.(MD)No.228 of 2021

5.4. The learned counsel further submits that P.W.15, the Revenue Divisional Officer, who conducted inquest, came to the conclusion that there was no dowry harassment meted out to the deceased and his report that marked as Ex.P.6, was not considered by the Trial Court.

5.5. The learned counsel submits that P.W.16 and P.W.17, who are Mahazar witnesses, never deposed anything regarding the incident. As such, other than the family members and neighbours of the deceased, no one supports the case of the prosecution. He further submits that there were discrepancies in place and time in the lodging complaint to the respondent Police by the de-facto complainant, however, the person, who spoke about the same, not examined by the prosecution.

5.6. The learned counsel submits that P.W.18 admits that the F.I.R. was registered on 23.09.2011 at about 02.00 a.m. and from the deposition of P.W.11, it is revealed that the F.I.R. was submitted to the Judicial Magistrate Court, Padmanabhapuram, on the same day at 11.20 a.m. only and since the Court is only 500 meters away from the respondent Police Station, there is an unexplained delay in submitting the F.I.R. to the Court.



CrI.A.(MD)No.228 of 2021

5.7. In fine, the learned counsel for the appellant submits that the appellant lost his wife and is surviving with his two children. Since he was convicted and sentenced, his children are literally on the streets for the past 2 ½ years and since there are no others to take care of them, he prays that the conviction and sentence awarded by the Trial Court are liable to be set aside.

5.8. In support of his contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in the case of **Shatrughan vs. The State of Chhattisgarh** reported in **2023 0 Supreme (SC) 645**, wherein the Hon'ble Supreme Court held that when there is no eyewitness for the incident, the prosecution will have to establish a motive for the commission of crime, inasmuch as in a case of direct evidence, motive may not have a major role.

6. The learned Additional Public Prosecutor submits that the appellant/accused trespassed into his mother-in-law's house at Sathanvilai with an ulterior motive to harass his wife namely, Vincy demanding dowry, he murdered his wife and abandoned his six months infant and he left the spot without any conscience.



CrI.A.(MD)No.228 of 2021

6.1. The learned Additional Public Prosecutor further submits that the appellant's relationship with his wife's family was not cordial, since the marriage was solemnized against the wishes of his wife's family members. The appellant frequently used to quarrel with the deceased and drove her from the matrimonial home, by demanding money and jewels, which facts have been clearly spoken to by P.W.1, P.W.3, P.W.4 and P.W.13.

6.2. It is the contention of the learned Additional Public Prosecutor that P.W.1, who is the brother of the deceased, had seen the appellant/accused before the occurrence in a nearby place while travelling in an Auto and his recovered nails were found with blood stains, which confirm that the appellant/accused is the perpetrator of the crime and who also abandoned his baby of tender age and therefore, no leniency should be shown to him.

6.3. In fine, it is submitted by the learned Additional Public Prosecutor that the appellant/accused has not given any valid explanation. The Trial Court, on cogent and convincing reasons based on oral and documentary evidence, had held that the facts and circumstances were connected undoubtedly, confirming the accused to be reason and cause of the death of



Crl.A.(MD)No.228 of 2021

Vincy, and thereby found the appellant/accused guilty of the charges levelled against him and rightly convicted and sentenced him and, hence, no interference is called for with the conviction and sentence recorded by the Court below and prayed for dismissal of the Criminal Appeal.

7.This Court has carefully considered the submissions made on either side and had also perused the oral and documentary evidences, to which its attention was drawn.

8. In this case, the admitted fact is that the appellant and his wife Vincy had a love marriage during the year 2008 and their daughter Kiruthiga was born in the year 2009. Till such time there was no relationship between the Vincy's family and the appellant. When the said Vincy conceived for the second child, during the ninth month of the pregnancy she was suffering from jaundice and hence the parents of the Vincy had taken her to their house for better care and treatment. The delivery of her second baby was taken care by them. After the birth of the second child, Vincy was staying with her parents. She had also joined Teacher Training course. Four months prior to 22.09.2011, Vincy's father passed away and the appellant had attended the ceremony. When the second child Ashwin was six months old,



CrI.A.(MD)No.228 of 2021

the appellant used to visit his wife and children during the week ends. On 20.09.2011 the appellant forcibly took his daughter Kiruthiga with him. On 22.09.2011 at about 8.30 p.m., Vincy was found dead inside the locked house of her parents, with multiple irregular injuries, viz., bruises on the right side of neck, middle of neck, outwards over left side of neck, right eyebrow, below the right ear, back of left elbow, back of right elbow, left and right knee, back of left shoulder and contusion on the right side of chest and the cause of her death was due to shock, haemorrhage and multiple injuries, mainly due to the injury to lungs and heart. The death being homicidal, the issue that arises for consideration is as to whether the appellant had committed the crime or not?

9. PW1 is the brother of the deceased. His evidence is that on 20.09.2011, the appellant had forcibly taken his elder daughter Kiruthiga to his house, without his sister Vincy's approval. On 22.09.2011, his sister after returning from the college, purchased rice from the fair price shop and after leaving the bag in the textile shop, she returned home. At about 6.00 p.m. when PW1 and his sister were alone, Vincy informed her brother PW1 that the appellant had called her mobile, informing that he will be coming home. Thereafter, PW1 left the house and went to the textile shop, when he saw the



CrI.A.(MD)No.228 of 2021

appellant coming in an Auto to his house. At about 8.30 p.m., after locking the shop, PW1 and his mother came back home, to find the front door locked from inside and there was no response. When they heard the cry of the child from inside the house, PW1 entered the house through the open back door and found his sister with blood injuries. He then opened the front door, when his mother on seeing her daughter in such a state, started wailing. On hearing the screams, PW2 and PW3, who are neighbours, came there and found Vincy with injuries. Immediately they took Vincy in an Auto to Pradeep Nursing Home, where PW6/Doctor Paulraj examined Vincy on the same day at 9.00 p.m., and declared her as brought dead. PW4 and PW5, who were the residents of a nearby village, saw the appellant coming out from the house of the deceased, while they walking nearby.

10. The evidences of PW2 and PW3 are that they had seen PW1 leaving the house and the appellant entering the house and after some time had heard some noise from the house of the deceased. The incidents of PW1 and his mother entering the house, raising an alarm and crying for help on seeing the state of Vincy, were established through the evidences of PW1, PW2 to PW5. According to the prosecution, the occurrence was between 6.30 to 8.30 p.m. Vincy was taken to Pradeep Nursing Home at about



CrI.A.(MD)No.228 of 2021

9.00 p.m., which was confirmed by PW6/Doctor Paulraj. Thereafter information sent to the police from the Nursing Home, who arrived there and conducted an enquiry. PW1 along with his mother had gone to the police station and lodged a complaint, which was registered as an F.I.R./Ex.P10 on 23.09.2011 at about 2.00 a.m. During the early hours, the body was shifted from Pradeep Nursing Home and kept in the mortuary of Government Hospital, Thakkalai. Since the death had taken place within seven years of the marriage, the case was referred to PW15/R.D.O., who commenced the inquest at 11.20 a.m., of the next day, (i.e.,) 23.09.2011. During the inquest, PW15 had examined 13 persons, including PW1 to PW3, and came to the conclusion that there was no demand of dowry. However, he had recorded that further investigation was required to find out the cause of death of Vincy. As regards the demand of dowry, though during the RDO enquiry, Mary Sicily, the mother of Vincy, as well as PW1, PW2, PW3 and PW13 had stated about the demand of dowry, the harassment and cruelty meted out to Vincy, the RDO had found that there was no demand of dowry. The Trial Court on the strength of the evidences of the witnesses, had rejected such a finding and held that there was a demand of dowry and that, Vincy was subjected to cruelty by the appellant.



Crl.A.(MD)No.228 of 2021

11. The defence of the appellant is that the police came to the hospital of PW6/Doctor Paulraj, where they received a complaint, which was suppressed, since it was in favour of the appellant. Thereafter a second complaint was received in the police station and Ex.P10/FIR was registered. It was their further defence that since it is a case of suspicious death, the registration of the FIR, under Section 302 IPC and naming the appellant, was not proper. It was also contended that there was a delay in sending the FIR to the Court, as well as to the higher officials. With regard to evidences of PW2 and PW3, it was contended that since their houses were far away, they could not have seen the appellant entering the house. Likewise, since PW4 and PW5 hail from a different village, the possibility of witnessing the appellant coming out of the house of deceased, was remote. The alternate theory put forth was that the appellant had a love marriage with the deceased against the wishes of her family and hence has been falsely implicated. All the witnesses who are relatives to PW1, are interested witnesses. The Trial Court had rejected these contentions by finding that PW1 had clearly spoken about his sister informing him of the arrival of appellant and he had also seen the appellant coming in an Auto to his house. PW2 and PW3, who are the neighbours had clearly spoken about seeing the appellant entering the house of PW1 and hearing a loud noise thereafter. Added to it, when PW1 and his



Crl.A.(MD)No.228 of 2021

mother Mary Sicily/de-facto complainant, had come back to their house, they heard the cry of the six month old baby and despite knocking the door, there was no response. Hence, PW1 went through the opened back door of the house and saw his sister motionless, with injuries and bloods. Thereafter, with the aid of the Auto driver/PW8, they took her to the hospital of PW6, who informed them that they had brought the deceased dead. The events narrated by these witnesses are natural and proximate to the time and hence, there is no delay.

12. The de-facto complainant, mother of PW1 lodged a complaint/Ex.P1 in which PW1 had also signed. The Mother of PW1 could not be examined as witness, since she had suffered a stroke and lost her speech and movements and finally passed away. The relevant medical certificates were produced and recorded in the Trial Court's judgment. Hence, the non examination of Mary Sicily was due to medical reasons only. PW13 is the brother of the deceased, who corroborates the testimony of PW1. PW13 was studying B.Sc. Nursing at Bangalore. Immediately after the occurrence on 22.09.2011 at about 9.30 p.m., when he was informed about his sister's death, he had rushed to his native. In this case, the FIR was registered on 23.09.2011 at about 2.00 a.m., and then sent to RDO/PW15 at



CrI.A.(MD)No.228 of 2021

10.00 a.m., for conducting the inquest. Meanwhile the body was shifted from Pradeep Nursing Home to the Government Hospital, Thakkalai. On conclusion of the inquest, the body was sent for post-mortem. PW9 and PW12 are the post-mortem Doctors who had conducted the post-mortem at about 2.00 p.m. and had recorded the injuries. The progress of investigation was recorded with contemporary documents.

13. From the medical evidences, it is seen that bruises were found in the neck, hands, elbow, knee and eyebrow, indicating the struggle for life by the deceased Vincy. The contusion on the right side of the chest and injuries to the lungs and heart, have been caused only by external force. The post-mortem Doctors PW9 and PW12, had opined that the deceased had died due to multiple injuries and mainly of the injuries to the lungs and heart and thus, the murder of Vincy stands confirmed. The evidences of PW1 to PW5 establishes the appellant entering the house after 6.00 p.m. on 22.09.2011 and thereafter leaving the house by 8.00 p.m. PW1 and his mother Mary Sicily had reached their house by 8.30 p.m. PW2 and PW3 came for help, immediately after hearing the cry of Mary Sicily. Vincy was then taken to the hospital of PW6 at 9.00 p.m., from where information was sent to the police, who had registered the FIR. Thereafter, inquest was conducted by PW15,



Crl.A.(MD)No.228 of 2021

followed by an autopsy by PW9 and PW12, all of which were recorded with contemporary documents, connecting each link of the circumstances, leaving no reason for any doubt. It is seen that PW1, PW2 and PW3 are witnesses to the inquest.

14. Ex.P7 observation mahazar and Ex.P8 rough sketch were prepared in the presence of PW16 and PW17. In both exhibits the house of PW2 and PW3 are shown and the same is not disputed. The appellant's contention of delay, doubting the presence of witnesses at the relevant point of time and the motive to implicate the appellant, were all clearly discussed in detail by the Trial Court and the appellant was convicted.

15. The blood stains found in the M.O.1/Nails of the appellant were confirmed through the Serology Report/Ex.P12 and the appellant/accused had not given any explanation during remand or any time thereafter for the presence of blood. Though no nail marks were found on the deceased, the same depends upon the force used. The non grouping of the blood will in no way affect or dent the case of the prosecution. In view of the above, we find that the chain of events are well connected with each other, confirming the



CrI.A.(MD)No.228 of 2021

double test and hence we are of the affirmed view that, it is the appellant, who had committed the murder of Vincy.

16. However, the conviction of the appellant under Section 449 of IPC for trespassing into his mother-in-law's house is not sustainable, since as per the admission of PW1, his sister had informed him that appellant would come to their house on that fateful day, as well as the appellant coming to the house on weekends to visit his wife and children. These statements are also confirmed in the evidences of PW2 and PW3. Hence, the entry of the appellant to the house of his wife cannot be termed as trespass for committing murder and hence, the conviction of the appellant by the Trial Court for the offence of trespass warrants interference.

17. In view of the same, the conviction of the appellant under Section 449 of I.P.C. alone is set aside. The conviction of the appellant for offences under Sections 498(A), 302 and 317 of IPC and the consequential sentence imposed by the learned Sessions Judge, Fast Track Mahila Court at Nagercoil in S.C.No.69 of 2015 dated 08.12.2020, are hereby confirmed.



Crl.A.(MD)No.228 of 2021

18. Accordingly, the Criminal Appeal is partly allowed. Consequently,
connected Criminal Miscellaneous Petition is closed.

(M.S.R., J.) (M.N.K., J.)

12.01.2024

Index : Yes
Speaking order
Neutral Citation: Yes
smn2/rsi



Crl.A.(MD)No.228 of 2021

WEB COPY

To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Nagercoil.
- 2.The Inspector of Police,
Thuckalay Police Station.
Kanniyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD)No.228 of 2021

M.S.RAMESH, J.
AND
M.NIRMAL KUMAR, J.

smn2/rsi

Pre-delivery judgment made in
Crl.A.(MD)No.228 of 2021

12.01.2024