



Crl.A.(MD)No.241 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

RESERVED ON: 03.10.2024

PRONOUNCED ON : 24.10.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HON'BLE Ms.JUSTICE R.POORNIMA**

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Latha @ Sahayalatha

... Appellant

Vs

State through the Inspector of Police,
South Police Station,
Thoothukudi.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the Judgment and order, dated 18.04.2018 in S.C.No.336/2016, on the file of the 1st Additional District and Sessions Judge, Thoothukudi.

For Appellant : Mr.S.Ananthamurugan

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The accused in S.C.No.336 of 2016 on the file of 1st Additional District and Sessions Court, Thoothukudi, wherein, by Judgment, dated 18.04.2018, she had been convicted for offence punishable under Section 302 IPC and sentenced to undergo 10 years rigorous imprisonment and fine of Rs.1,000/- in default to undergo simple imprisonment for one year and also convicted for offence punishable under Section 201 IPC and sentenced to undergo 3 years rigorous imprisonment and fine of Rs.500/- in default to undergo simple imprisonment for 3 months, has filed the present criminal appeal.

2.Even proceeding further, it must be stated that the learned Sessions Judge had made a grievous error in sentencing the appellant herein to undergo 10 years rigorous imprisonment for offence punishable under Section 302 IPC. Any offence which is punishable under Section 302 IPC attracts sentence of either life imprisonment or death. Registry has noted



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that the appellant had been sentenced 10 years rigorous imprisonment and had placed the appeal before the learned Single Judge. The learned Single Judge on 07.08.2024 had recorded as follows:

“Perusal of records shows that the charge framed against the appellant is under Section 302 of IPC. The trial Court found the appellant guilty, convicted him and imposed sentence of 10 years Rigorous imprisonment upon the appellant. Against which, this appeal has been preferred by the appellant. Therefore, the matter must be heard by the Honourable Division Bench of this Court.

2.Hence, Registry is directed to list the matter before the concerned Division Bench of this Court for hearing, after getting appropriate orders from the Honourable Administrative Judge.”

It is under those circumstances, this appeal is placed before us.

3.The appellant Latha @ Sahayalatha is the wife of Sekar @ Gunasekar. They were residing at No.3/38, JJ Nagar, 3rd Mile, Thoothukudi. The deceased is her own husband Sekar @ Gunasekar.



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4 (i).It is the case of the prosecution that the appellant and her minor son had returned back home at around 08.00 p.m., on 22.02.2014 from the Church. They found that an amount of Rs.40,000/- was missing from the almirah. They suspected that the amount would have been taken by the husband of the appellant. The appellant then searched for her husband. She found him in a drunken state lying opposite to the house. The appellant and her minor son asked him about the money. He did not reply. Angered over that, the appellant had assaulted him with a log (உருட்டுக்கட்டை), thereby, causing his death. It is stated that thereafter, they had brought the body of the deceased inside the house and put in a chair and prepared the ceremony for final rites.

4(ii).It is the case of the prosecution that the next day, P.W.1, Sureshkumar, who was the Village Administrative Officer came across the house of the appellant and enquired with the neighbours, who stated that the death was suspicious. He immediately gave a complaint to the respondent. Thereafter, the respondent had taken the appellant into custody. After following due procedure, the trial took place before the 1st Additional



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District and Sessions Judge, Thoothukudi, wherein, as stated above, the appellant had been convicted and sentenced for offence punishable under Sections 302 and 201 IPC.

5.To narrate the facts in little more detail, as stated, the appellant had been charged that she had committed the offence of murder of her own husband, since she suspected that he had taken away Rs.40,000/-, which was kept in the house. There are no direct eye-witnesses for the occurrence. The complaint in this connection was given by P.W.1, Village Administrative Officer. The complaint has been marked as Ex.P.1.

6.On receipt of the complaint, the respondent had registered FIR, Ex.P.15 in Cr.No.365/14 for the offence punishable under Section 302 IPC. This was registered by P.W.14, Ravi Narayanan, who was the Sub Inspector of Police in the respondent Police Station.

7.P.W.12, Murugesan, Police Constable in the respondent Police Station had stated that he had handed over the original FIR and complaint to the Judicial Magistrate No.1, Thoothukudi at 03.09 p.m. The



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FIR had been registered at 09.00 a.m. He also forwarded the body for post mortem.

8.The investigation was then taken over by P.W.15 Sureshkumar, Inspector of Police. He went to the scene of crime at 09.15a.m., and in the presence of witnesses Kumar (not examined) and Ramar (P.W.17) prepared Observation Mahazar, Ex.P.16 and Rough Sketch, Ex.P.17. He then collected blood stains in a thread from the scene of occurrence, which was produced as M.O.1 to M.O.3. He also prepared Seizure Mahazar, Ex.P.18. He then conducted inquest report over the dead body and the Inquest Report was marked as Ex.P.19. He then forwarded the dead body for postmortem.

9.The Postmortem was conducted by P.W.16, Dr.Yogesh Kumar. In his evidence, he stated that the following injuries were found in the body:

- “1) An abrasion of size 1cm x 1cm seen in the occipital region.*
- 2) An abrasion of size 2cms x 1cm seen in the right shoulder.*
- 3) An abrasion of size 14cms x 8cms seen in the right lateral chest.*



- 4) *An abrasion of size 12cms x 7cms seen 4cms below injury no.3*
- 5) *An abrasion of size 4cms x 2cms seen in the right arm.*
- 6) *An abrasion of size 8cms x 5cms seen in the right hand.*
- 7) *An abrasion of size 15cms x 13cms seen below the right buttock.*
- 8) *An abrasion of size 13cms x 3cms seen 4cms below injury no.7*
- 9) *An abrasion of size 13cms x 8cms seen in the right thigh.*
- 10) *An abrasion of size 2cms x 1cm seen in the right leg.*
- 11) *An abrasion of size 4cms x 2cms seen 10cms below injury no. 10.*
- 12) *An abrasion of size 12cms x 5cms seen in the left leg.*
- 13) *An abrasion of size 12cms x 12cms seen in the left buttock.*
- 14) *An abrasion of size 3cms x 2cms seen in the left hand.*
- 15) *An abrasion of size 1cm x 0.5cm seen in the left side of neck.*
- 16) *A contusion of size 16cms x 1cms x 1 cm seen in the right side of back.*
- 17) *A contusion of size 17 cms x 11cms x 1 cm seen in the life side of back.*
- 18) *A split laceration of size 5cms x 2cms x bone deep seen in the left parietal region.*
- 19) *A split laceration of size 6cms x 3cms x bone deep seen in the right parietal region.*
- 20) *A split laceration of size 2cms x 1cm x bone deep seen in the left leg.*
- 21) *A split laceration of size 2cms x 1cm x bone deep seen 5cms below injury no.20*
- 22) *A split laceration of size 1cm x 1cm x bone deep seen in the*



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left elbow

23)A split laceration of size 1cm x 1cm x muscle deep seen in the right lower hip.

Both forearms shows deformity and the underlying bone found fractured.”

10.P.W.16 had issued Post-mortem Certificate, Ex.P.23 and final opinion, Ex.P.24. He had stated that the deceased had died of complications due to multiple injuries. He also stated that Ethyl Alcohol was deducted in the Viscera.

11.P.W.15, thereafter continued with his investigation and recorded the statements of Suresh Kumar (P.W.1), Periya Nayagam (not examined), Chinnadurai (P.W.2), Saroja (P.W.4), Ajitha (P.W.6), Selvam (P.W.7, Shanthi (P.W.8), Jothi (not examined) and Sudharsan (P.W.9) and recorded their statements. He thereafter, arrested the accused on 23.04.2014 at 03.00 p.m., in her house itself. He also took into custody of minor son. He then recorded the confession statement of accused in the presence of Balusamy (not examined) and Shankar (P.W.10). The admissible portion of confession was marked as Ex.P.20. He then seized M.O.4 wooden log used



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for the spade. He also seized M.O.5 and M.O.6, dress of the deceased under Seizure Mahazar Ex.P.21. He then recorded the statements of Murugesan (P.W.12), Ramakrishnan (P.W.13), Ravinarayan (P.W.14) and Vijayalatha (not examined). He also examined the Head Clerk of Judicial Magistrate No.I Court, Thoothukudi (P.W.11). After receiving the Post-mortem Certificate, he also recorded the statement of Dr.Yogesh Kumar (P.W.16). He completed his investigation and filed final report on 18.08.2014 against the accused for commission of offence under Sections 302 and 201 IPC.

12.During cross-examination, P.W.15 stated that the delay in lodging the complaint had not been explained in the FIR. He also stated that Ex.P.20, the admissible portion of the confession was dated 24.04.2014, though the accused had been arrested on 23.04.2014 and on 23.04.2014, he had remanded the accused into custody. He further denied that the confession was prepared on a later date.

13.P.W15 also admitted that the copy of the FIR reached the Court with a delay of 6 hours. He also stated that the reason had not been given for such delay.



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14.The final report was taken cognizance by the Judicial Magistrate No.1, Thoothukudi as P.R.C No. 14 of 2016. After completing the required formality, it was committed to the Sessions Court and made over to I Additional District and Sessions Court, Thoothukudi, for trial. It was taken on file as S.C No. 336 of 2016. The charges under Sections 302 and 201 IPC were framed against the accused. The accused denied the charges and claimed to be tried.

15.The prosecution has examined the witnesses P.W.1 to P.W. 17 and marked documents Ex.P.1 to Ex.P.26. They also produced M.O-1 to M.O-6. On conclusion of trial, the learned I Additional District and Sessions Judge had convicted the accused for the offence punishable under Sections 302 and 201 IPC, but sentenced the accused for 10 years rigorous imprisonment for the offence punishable under Section 302 IPC, i.e., an irregularity. Questioning such sentence, the present appeal had been filed.

16.Heard Mr. S.Ananthamurugan, learned counsel for the Appellant and Mr. A. Thiruvadikumar, learned Additional Public Prosecutor for the Respondents. We had carefully perused the materials and

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records.

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17.The prosecution case is rest on circumstantial evidences. It is the case of the prosecution that the appellant and her minor son came home at 08.00 p.m., on 22.04.2014. They found that Rs.40,000 was found missing in the almirah. They suspected that the deceased, who is the husband of the appellant herein, would have taken away the money. However, they found him lying drunk, opposite to the house. They questioned him. He did not answer. It is stated that getting agitated, the appellant had hit him with a handle of spade. The injuries were caused and he died. It is stated that to cover up the nature of death, the appellant had brought him inside the house and made him sit in the chair and then, she prepared for final rites on the next day on 23.02.2014.

18.It is the case of the prosecution that P.W.1 Suresh Kumar, Village Administrative Officer, came to that spot and enquired with the neighbours. They told him that the death was suspicious. He saw the body and found blood in the face. Therefore, he gave a complaint, Ex.P.1 before the Police Station.



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19.In his evidence, P.W.1 did not give the names of persons from whom he enquired and found that the death was suspicious. The prosecution had examined P.W.2 to P.W.9 as the neighbours. All of them were declared hostile. They did not support the case of the prosecution.

20.The prosecution has no evidence, whatsoever, that there was Rs.40,000 available in the house of the appellant and that the sum of Rs.40,000 was missing and that it was the appellant, who actually committed the offence.

21.It is also seen that P.W.10 Shankar, who was the witness for recovery of the weapon, wooden log said to have been used for the offence and the dress of the deceased, namely M.O.4 to M.O.6, had also turned hostile. Therefore, no credible evidence to prove the recovery of the weapon.

22.Further, in the FIR, Ex.P.15, the reason for the delay had not been stated. The FIR had been registered in the morning at 08.00 a.m. It was however handed over to the Judicial Magistrate only at 03.09 p.m. The



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reason for the delay has not been given. P.W.12 Murugesan, the Constable in the respondent Police Station had stated that the distance between the Police Station and the Court was just 5 minutes. He stated that since the Court proceedings were going on, he is not able to serve to the Judicial Magistrate. That is the false reason, since the Court shall commence at 10.30 a.m., and the FIR had been registered even at 08.00 a.m., though witness stated at 09.00 a.m., it would not have taken 1 ½ hours to reach the Court. The delay in forwarding FIR to the Court is not at all explained. The importance and purpose of forwarding the FIR has been explained by the Apex Court in ***Rajeevan and another vs. State of Kerala*** reported in ***[2003] 3 SCC 355*** and the Apex Court in paragraph 15 held as follows:

*“15.This Court in **Marudanal Augusti v. State of Kerala** [(1980) 4 SCC 425 : 1980 SCC (Cri) 985] while deciding a case which involves a question of delayed dispatch of the FIR to the Magistrate, cautioned that such delay would throw serious doubt on the prosecution case, whereas in **Arjun Marik v. State of Bihar** [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] it was reminded by this Court that: (SCC p. 382, para 24).*



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“[T]he forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word ‘forthwith’ occurring in Section 157 CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.”

23.Further, in this case, there are no direct eyewitnesses to the scene of occurrence. The motive has not been established. The prosecution has not established that a sum of Rs.40,000 was available in the house of the appellant. The investigation officer admitted that there has been delay in forwarding FIR to the Court.

24.It is clear that the learned trial Judge based on the extraneous materials, after convicting the accused under sections 302 IPC, had proceeded to impose punishment of 10 years of rigorous imprisonment.



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The judgment under appeal is extremely perverse in nature. There is no evidence against the appellant. We are of the firm opinion that the appellant deserves to be acquitted on all charges.

25. Accordingly, this Criminal Appeal is allowed and the Judgment of the I Additional District and Sessions Court in SC No. 336 of 2016, dated 18.04.2018 is set aside and the appellant is acquitted from the charges under Sections 302 and 201 of I.P.C. The fine amount paid, if any, shall be refunded to the appellant.

[C.V.K., J.] & [R.P., J.]
24.10.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
PNM



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To

1.The 1st Additional District and Sessions Judge, Thoothukudi

2.The Superintendent, Central Prison for Women, Trichy

3.The Inspector of Police,
Thevaram Police Station,
Theni District,
Cr.No.95 of 2016.

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

5.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



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AND

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**Pre-delivery Judgment made in
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