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CrI.A.No.235 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

CrI.A.No.235 of 2019

Waseem

... Appellant

Vs.

State represented by the Inspector of Police,
Kuniyamuthur Police Station,
Coimbatore.

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence passed by the learned II Additional Sessions Judge, Special Court of Bomb Blast Cases, Coimbatore, in S.C.No.113 of 2016, dated 14.10.2017.

For Appellant : Mr.R.P.Ruban Chakravarthy
(Legal Aid Counsel)

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



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J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

This Criminal Appeal has been filed against the judgment of conviction and sentence passed by the learned II Additional Sessions Judge, Special Court for Bomb Blast Cases, Coimbatore, in S.C.No.113 of 2016, dated 14.10.2017. The appellant/sole accused was convicted of the offence under Section 302 IPC and sentenced to life imprisonment and fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.

2.The case of the prosecution is as follows :

The accused is the husband of the deceased. P.W.1 is the mother of the deceased. P.W.2 is the sister of the deceased. P.W.3 is the minor daughter of the deceased and the accused. The accused married the deceased in the year 2006. P.W.3 was born to them. After marriage, the accused and the deceased were residing at Palladam and thereafter, they shifted to Pothanur and thereafter, to Kuniyamuthur. The accused was a drunkard. He did not give any money to the family. In fact, the accused used to take money from the



deceased. Therefore, there used to be quarrel between the accused and the deceased very often. While so, on 21.07.2015 at 06.00 a.m., P.W.1 received a call from her elder daughter P.W.2 that the deceased had died. Immediately, P.W.1, along with her son, rushed to the deceased's house and found the deceased dead inside her house. Thereafter, she lodged a complaint (Ex.P1) before the respondent Police.

3.On receipt of the complaint (Ex.P1), P.W.11 (Sub-Inspector of Police) registered an FIR (Ex.P8) in Crime No.443 of 2015 under Section 174 Cr.P.C. After registration of FIR, he went to the place of occurrence and conducted inquest over the body of the deceased in the presence of panchayatdars and prepared the inquest report (Ex.P9). Thereafter, he prepared Observation Mahazar (Ex.P3) and Rough Sketch (Ex.P10) in the presence of witness P.W.4. Then, he sent the dead body to the hospital for post-mortem through Woman Head Constable (P.W.7) along with requisition letter (Ex.P13).



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4.P.W.8 (Medical Officer) attached to the Coimbatore Medical College Hospital has seen the body of the deceased and sent the same to the mortuary and issued Accident Register (Ex.P6).

5.P.W.12 (Medical Officer) conducted autopsy on the body of the deceased and noted down the following

“Body was first seen by the undersigned at 12.55 p.m. on 21.07.15. the condition of the body then was rigor mortis present all over the body. Postmortem examination was commenced at 12.55 pm on 21.07.15. Appearances found at Post mortem : Moderately nourished body of a female aged about 27 years. Finger and toenails were bluish in colour.

Nil external injuries seen over the body.

On bloodless dissection of Neck : Reddish contusion 2 x 1 cm noted over-lateral aspect of right side neck muscle and 5 x 3 cm noted over left side neck muscle at the level of thyroid cartilage. Posterior part of larynx found contused reddish in colour. Vertical fracture noted over thyroid cartilage with surrounding tissue contusion. Hyoid bone intact.”



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6.P.W.12 issued the Post-mortem Certificate (Ex.P14) opining that the deceased would appear to have died of violent compression of the neck by throttling; the death would have occurred 12 to 24 hours prior to autopsy. After receipt of Viscera Report (Ex.P15) stating that no poison was detected in the viscera, P.W.12 gave his final opinion (Ex.P16).

7.Meanwhile, the Investigating Officer (P.W.11) seized the pillow (M.O.1) from the house of the deceased under Seizure Mahazar (Ex.P4) in the presence of witness P.W.4 and sent the same to the Court under Form-91 (Ex.P11). Since the accused absconded thereafter and as it was a suspicious death, he altered the crime to Section 174(3) Cr.P.C. vide Alteration Report (Ex.P12). Thereafter, he handed over the case file to the Inspector of Police for further investigation.

8.P.W.13 (Inspector of Police), in continuation of the investigation, went to the place of occurrence and seized the mobile phone of the accused and its battery (M.O.2 and M.O.3) under Seizure Mahazar (Ex.P5) in the



presence of witness P.W.5 and sent the same to the Court under Form-91 (Ex.P17). P.W.9 has identified that M.O.2 is the cell phone used by the accused. Thereafter, the Investigating Officer recorded the statements of the witnesses.

9.P.W.2, who is the sister of the deceased, has seen the accused taking her wife (deceased) and child (P.W.3) to their house on 20.07.2015. The next day morning, the minor P.W.3 came to P.W.2's house crying and informed that her mother is not waking up. Therefore, when she went to the house of the deceased and opened the door, she found the deceased dead.

10.According to P.W.3, the minor daughter of the deceased and the accused, on the date of occurrence, there was a quarrel between her father and mother and her father throttled her mother's neck and thereafter, pressed a pillow against her face. Out of fear, she slept, and on the next day, on hearing the sound of bureau, she woke up and saw the accused leaving the house with his dresses packed in a bag. Then she noticed that her mother was not waking up and therefore, she cried. On hearing her cry, the neighbours



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gathered and thereafter, she informed P.W.2 about the same. However, the minor child informed about the occurrence to the Inspector of Police after one week. Thereafter, she gave her statement before the Judicial Magistrate.

11.P.W.6 has seen the accused leaving the house at early morning on 21.07.2015 and even on the previous day, while he was returning to his house, there was a quarrel between the accused and the deceased. The next day morning, i.e., on 21.07.2015, he also found the deceased dead.

12.The Investigating Officer (P.W.13), on investigation, came to know that the accused had throttled the deceased and murdered her, and therefore, he altered the case into one under Section 302 IPC vide Alteration Report (Ex.P18). The accused voluntarily surrendered before the Court on 06.08.2015 at 2.30 p.m. The Investigating Officer filed an application before the Judicial Magistrate, Tharapuram, to take the accused on Police custody for examination. However, the same was dismissed. Thereafter, he submitted a requisition to the Court for recording the statement of the minor daughter of the deceased (P.W.3) under Section 164 Cr.P.C.



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13.P.W.10 (Judicial Magistrate No.5, Coimbatore) summoned the minor daughter of the deceased and on 17.08.2015, recorded her statement under Section 164 Cr.P.C., which is marked as Ex.P2.

14.Since P.W.13 was transferred to other place, he handed over the case records to P.W.14 (Inspector of Police) for further investigation. P.W.14, in continuation of the investigation, examined the witnesses and after completing the investigation and collecting various reports, filed a final report before the Judicial Magistrate No.7, Coimbatore, for the offence under Section 302 IPC in P.R.C.No.VII/2016 as against the accused.

15.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.113 of 2016 and made over to the Special Court for Bomb Blast Cases, Coimbatore, for trial.



16.The trial Court framed a charge for the offence under Section 302

IPC as against the accused. When questioned, the accused pleaded “not guilty”.

17.To prove the guilt of the accused, the prosecution examined P.W.1 to P.W.14, marked Exs.P1 to P18 and produced M.Os.1 to 3.

18.When the incriminating materials were put to the accused and questioned under Section 313 Cr.P.C., he denied the same. On the side of the defence, no witness was examined nor any document marked.

19.The trial Court, after appreciating the oral and documentary evidence and materials on record, by its judgment dated 14.10.2017, convicted the accused of the offence under Section 302 IPC and sentenced him to life imprisonment and fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months.



20.Challenging the conviction and sentence, the accused has filed the present appeal.

21.Learned counsel for the appellant/accused would submit that the entire prosecution case rests on circumstantial evidence. The explanation of the accused is that, since there was a quarrel between the husband and wife, the accused left the house in the early morning on 21.07.2015 and his wife (deceased) committed suicide. However, the case has been projected as if the accused had committed murder of his wife. It is the contention of the learned counsel that absolutely, there is no evidence to show that the accused has caused the murder. According to him, the evidence of P.W.3 (child witness) is a tutored version. She has been examined for the first time before the Judicial Magistrate (P.W.10) on 17.08.2015. If really P.W.3 (minor daughter) had seen the occurrence, her normal conduct would be to inform the same to P.W.1 and P.W.2, whereas, she has not informed the same at the first instance. Even P.W.2, in her evidence, says that, only after P.W.3 informed her that her mother is not waking up, she rushed to the spot and found the deceased dead. Neither P.W.1 nor P.W.2 have stated in their evidence that the minor child



disclosed to them as to what she had witnessed last night.

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22.Further, it is the contention of the learned counsel for the accused that the evidence of P.W.13 (Investigating Officer) clearly indicates that the deceased has already attempted to commit suicide earlier. Therefore, the possibility of suicide cannot be ruled out. It is his further contention that the Medical Officer has not noted any external injuries on the body of the deceased. If really it is a case of throttling, there must be external injuries around the neck, etc. Absolutely, there is no such injury. Even the evidence of the Investigating Officer (P.W.13) clearly indicates that the body of the deceased has been altered and kept on the table by P.W.1 and P.W.2 and others. Therefore, he would submit that the accused is entitled to benefit of doubt and the judgment of the trial Court has to be set aside.

23.Whereas, learned Additional Public Prosecutor would submit that the minor child (P.W.3) has implicated her father. Therefore, the evidence of the child is reliable. It is his further contention that P.W.6 has also lastly seen the accused in the house along with his wife (deceased). In the absence of



any explanation as to what has happened to his wife, the burden is on the accused to prove his innocence as per Section 106 of the Evidence Act and it has be presumed that only the accused had committed the murder of his wife. In support of his argument, he relied upon the judgment of the Hon'ble Supreme Court in *State of Madhya Pradesh v. Balveer Singh* reported in *(2025) 8 SCC 545*. Therefore, he opposed the appeal.

24.We have perused the entire materials available on record.

25.The fact that the body of the deceased was found inside the house on 21.07.2015, is not disputed. It is the specific case of the prosecution that there was a quarrel between the husband and wife on the date of occurrence and the deceased was throttled and murdered by the accused, which was witnessed by their minor daughter (P.W.3). Though the evidence of the child witness (P.W.3) cannot be ignored altogether unless there is a case of tutoring, it is relevant to note that P.W.2 (aunt of the child) has clearly stated that, only after P.W.3 informed her that her mother is not waking up, she (P.W.2) went to the house of the deceased and found the deceased dead inside



the house. But, the fact remains that the child has not informed her (P.W.2) about the alleged throttling which is said to have been seen by the child (P.W.3) in the night.

26.The child P.W.3 was aged about 8 years at the relevant point of time. Her evidence clearly indicates as if she has seen her father throttling her mother and out of fear, she slept and on the next day morning, she saw her father leaving the house. Thereafter, since her mother did not wake up, she informed P.W.2. Though the statement of the child (P.W.3) was recorded under Section 164 Cr.P.C., if really the child P.W.3 had seen the occurrence in the night, when her mother was found dead in the next day morning, and when her grandmother, aunt and others had gathered at the place, the normal conduct of any child would be to come out with truth immediately to her grandmother or aunt. Whereas, the child has not informed this aspect to anyone. It is stated as if the child has spoken about the occurrence only after one week, which is highly improbable. Admittedly, the child (P.W.3) is in the custody of P.W.1 (mother-in-law of the accused). These facts clearly show that the possibility of tutoring at the later point of time, cannot be ruled out in



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this case. Though the Investigating Officer has stated that the statement of the child under Section 161(3) Cr.P.C. was recorded on 03.08.2015, the said statement has reached the Court only on 10.08.2015. This aspect also strengthens our inference that the statement of the child was improved later as a result of tutoring.

27.Though P.W.6 would state that he had seen the accused and deceased in the same house on the previous day night, he has not stated that the child (P.W.3) was also in the care of the deceased as well as the accused at the relevant point of time. P.W.2's evidence shows that the child was in her house on the previous day of occurrence till 9 p.m. Though she has stated that, later, the child and the deceased went to their house, if really the child (P.W.3) was also inside the house, it would have been noticed by P.W.6 at the time of alleged quarrel between the couple.

28.Further, it is also to be noted that the Medical Officer (P.W.12), in



his post-mortem certificate (Ex.P14), as extracted *supra*, has not even noted

any external injury on the body of the deceased. However, he has opined that

the death was due to violent compression of the neck by throttling. If it was

really a case of violent throttling, in fact, there must be atleast some marks

found around the neck or some strangulating injuries be present on the body

of the deceased. Normally, if the neck is compressed violently, there must be

atleast marks of pressure by thumb or finger clearly found on the neck.

However, the Medical Officer has not noted any such external injury on the

body of the deceased. Though vertical fracture has been noted over the

thyroid cartilage with surrounding tissue contusion, the hyoid bone was found

intact. It is relevant to note that, in case of strangulation or manual throttling,

normally, fracture of larynx, trachea and hyoid bone would occur. However,

it is totally missing in this case. If really there was a violent compression on

the neck, there must be atleast some abrasions or ligature mark on the neck of

the deceased, however, no such external injury, whatsoever, found by the

Medical Officer (P.W.12). This clearly creates a doubt about the homicidal

death. No doubt, the Medical Officer has given his opinion that it is only a

homicidal death. However, in the absence of any external injury or



strangulation mark or fracture of larynx or hyoid bone, in the present case, the possibility of violent compression is very remote, which forces us to entertain a doubt about the homicidal death.

29.It is pertinent to note that the evidence of the Investigating Officer (P.W.13) also clearly shows that, even on an earlier occasion, the deceased made an attempt to commit suicide which had ended in Police complaint and which was later compromised. The Investigating Officer (P.W.13) has admitted this aspect in his evidence. Therefore, it is clear that the deceased had a tendency of committing suicide.

30.No doubt, it is the accused who has to explain the circumstances under which his wife had died, which is especially within his knowledge. The only explanation of the accused is that, as his wife quarrelled with him, he went out of house to Darga. Thereafter, he came to know that his wife had died. As his family and Police were searching him, he surrendered. In normal circumstances, as per Section 106 of the Evidence Act, the burden has to be discharged by the accused and he has to explain as to what had



transpired inside the house on the date of occurrence. However, to apply the presumption under Section 106 of the Evidence Act, the prosecution has to initially establish the foundational facts. When the question as to whether the death is homicide or suicide itself, is doubtful, as held by this Court *supra*, the burden cannot be placed on the accused. Even in the judgment relied upon by the learned Additional Public Prosecutor in ***Balveer Singh's case (supra)***, the Hon'ble Supreme Court has held that, if the requisite chain of circumstances is not established by the prosecution, the failure of the accused to discharge the burden under Section 106 of the Evidence Act, will be immaterial.

31.To sum up, admittedly, the deceased had the tendency to commit suicide; the body of the deceased was altered to some other place by the family members, which is also admitted in their evidence, and the fact as to how the body was found initially, is totally suppressed by the prosecution; the evidence of post-mortem Doctor (P.W.12) also creates a doubt on the case of throttling, since normally, in the case of throttling, particularly violent throttling, there must be external injuries as explained above, which are



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totally absent; it is not the case of the Medical Officer that the deceased had
only due to smothering, whereas, his opinion indicates that the death was
due to violent compression of the neck, which creates a serious doubt on the
homicidal death itself. In such view of the matter, possibility of death by
suicide also cannot be ruled out. When there are two views, one view in
favour of the accused has to be adopted. Therefore, we are inclined to extend
the benefit of doubt to the accused.

32. Accordingly, this Criminal Appeal is allowed and the judgment of
conviction and sentence passed by the trial Court, is set aside. The accused is
acquitted of the charge framed against him. Bail bond executed by the
accused, if any, shall stand discharged. Fine amount paid by the accused, if
any, shall be refunded to him.

(N.S.K., J.) (M.J.R., J.)
06.11.2025

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Speaking order
Neutral Citation : Yes

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To

- 1.The II Additional Sessions Judge,
Special Court of Bomb Blast Cases,
Coimbatore.
- 2.The Inspector of Police,
Kuniyamuthur Police Station,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

N. SATHISH KUMAR, J.
and



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M. JOTHIRAMAN, J.

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