



Crl.A(MD)No.287 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.02.2025

Pronounced on : 10.03.2025

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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I.Basheer Mohammed

.. Appellant/Accused No.1

Vs.

State represented by,

The Deputy Superintendent of Police,

Melur Sub Division,

Melur,

Madurai District.

(In Crime No.467/2013).

.. Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment of conviction and sentence dated 24.12.2018 in S.C.No.10 of 2016, on the file of the learned Additional District and Sessions Judge, Mahalir Court, Madurai.



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For Appellant

: Mr.M.Karunanithi
for Mr.V.Santhakumaresan

For Respondent

: Mr.S.Ravi
Additional Public Prosecutor

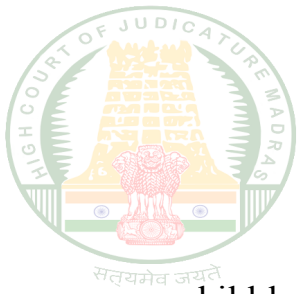
JUDGMENT

Dr.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

The appellant herein is the first accused in S.C.No.10 of 2016 on the file of the Sessions Judge, Mahila Court, Madurai. In connection with the homicide death of his wife on 09.08.2013, the appellant along with 3 of his family members faced trial for offences under Sections 498A, 201, 302 and 302 r/w 34 of IPC. The trial Court found this appellant guilty of charges under Section 498A, 201 and 302 IPC and acquitted rest of the accused for want of proof beyond doubt.

The gist of the prosecution case:

2.1. The appellant-A1/Bhaseer Mohammed and the deceased Rafiyathul Bazaria got married on 07.07.2010. They were living jointly along with A-2 to A-4 at Santhaipettai, Melur Taluk, Madurai. A female

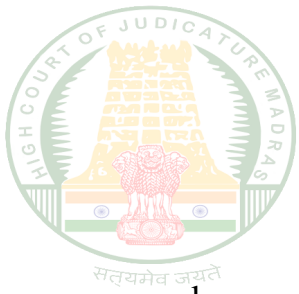


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child born to them. There was frequent demand and obtainment of cash and jewels by the accused and his family members. Lastly, there was an unlawful demand of Rs.50,000/- for the tonsuring ceremony of the baby.

2.2. On 08.08.2013, Nagoorgani(PW-1), the brother of Rafiyathul Bazaria came from Dubai. He along with his wife and mother went to the house of the first accused to see his sister. They were with her for about one hour and returned back after giving gifts to the new born baby of Rafiyathul Bazaria. Next day, being Ramzan, PW-1 called his other sister Abdulabeevi (PW-2) to greet her. At that time PW-2 informed him that in-laws of Rafiyathul are not allowing her and her child to wear the new dress and ring given by him. Sensing trouble, PW-1 desperately called A-1 and A-2, but there was no proper response from them. Later, at about 11.30 am, A-2 called and informed that there was a fire accident in his house and asked to come Santhaipeitai. By the time PW-1 reached the house of the accused, the charred body of his Rafiyathul Bazaria was removed to mortuary at Melur Government Hospital.

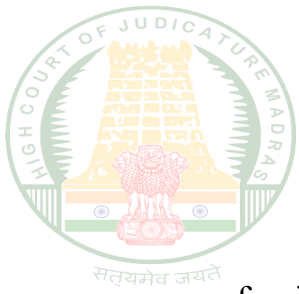
2.3. The mother of the deceased gave a complaint suspecting



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dowry death and same was registered by the Melur Police in Crime No: 467/2013 at 17.00 hrs. The inquest by RDO disclosed dowry harassment, however the report was not conclusive whether it was suicide or homicide. The post mortem report revealed hyoid bone fracture and 100% burn. The doctor opined that the Death due to the burn and asphyxia due to compression of neck. No soot particle seen in larynx and trachea. That eliminated the possibility of suicide. In addition, the confession statement of A-1 and recovery of M.O.1 to M.O 7 based on his confession added support to the prosecution case, that Rafiyathul Bazaria was strangled to death. To make it to believe it as suicide, the appellant had burned the body pouring kerosene.

2.4. Demand of dowry and complaint by the deceased about cruelty to her family members is spoken by the family members like the brother of the deceased (PW-1), the sister of the deceased (PW-2), the husband of PW-2(PW-3) and the maternal uncle of the deceased (PW-4). The neighbours examined as PW-5 and PW-7 had deposed about the fire in the accused house and death of Rafiyathul charred in the fire. PW-10 is the witness for observation mahazar and seizure from the scene of crime. The

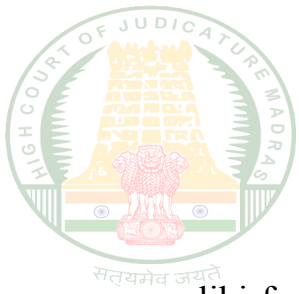


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confession of the accused recorded in the presence of the Village Administrative Officer and his assistant (PW-12).

2.5. From the rough sketch-Ex.P14 and the evidence of PW-6, it is clear that the first accused and his wife Rafiyathul Bazaria (deceased) were residing in one portion of the first floor, his brother's family. The second accused and his wife/the third accused were residing in the other portion of the first floor. The fourth accused who is the mother of the accused 1 and 2 was living with them. The occurrence had happened in the portion where the first accused and the deceased were living. The first accused who is expected to give satisfactory explanation for the homicidal death of his wife, pleaded that it was suicide. Whereas the medical evidence had clearly ruled out suicidal death. However, the demand of dowry or cruelty by other members in the house or their presence at the time of occurrence not established.

2.6. PW-6 had deposed to give Ramzan feast food, A-2 along with his daughter came to his house on that day at about 10.30 hrs. While A-2 was in his house, A-2 got the information about the fire in his house through phone and immediately rushed back to his home. This has provided



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alibi for A-2. Likewise the evidence of PW-5 ruled out the presence of A-4 in the house of occurrence. Hence, the trial Court after acquitting A-2 to A-4 from the charges, had convicted A-1 alone.

2.7. The trial Court sentenced A-1/Appellant as under:

Charge1: Offence u/s 498A IPC	2 years RI. Fine of Rs.1000/. In default 6 months SI.
Charge 2: Offence u/s 320 IPC	Life imprisonment. Fine of Rs 5000/. In default 1 year SI.
Charge 4: Offence u/s 201 IPC	5 years RI. Fine of Rs 3000/. In default 9 months SI.

The trial Court directed the punishment to run concurrently. Challenging the said conviction and sentence the appellant has filed this appeal.

3. The learned counsel for the appellant submitted that, there is absolutely no evidence to prove demand of dowry or dowry harassment. The charge of offence under Section 498A IPC is common to all the four accused. The trial Court, while acquitting the other 3 accused for want of evidence ought to have acquitted A-1 also. For the same set of charge and same set of evidence, there cannot be two different verdict.



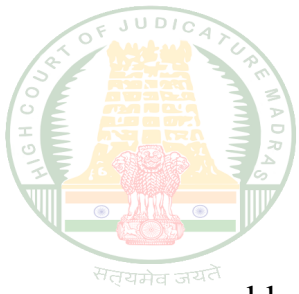
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4. The trial Court omit to consider that PW-16 in his preliminary inquest report not specific about the cause of death. The final inquest report not produced by the prosecution. The explanation given by the Appellant while questioned under Section 313 of Cr.P.C., not considered. Ignoring the explanation, the trial Court erroneously drawn presumption under Section 106 of the Evidence Act.

5. The material objects like the wearing apparels of the deceased found on her body, the plastic can recovered from the scene of crime were not produced before the Court. The call details of the accused and the witnesses were not collected to prove that there was conversation between PW-1 and PW-2 with the deceased soon before the occurrence or to prove PW-1 called A-1 and A-2 earlier on the day of occurrence.

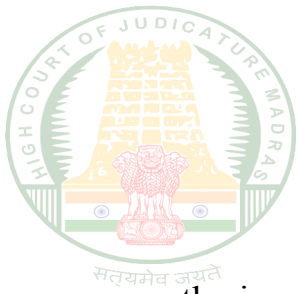
6. The blank in the post mortem report after the words 'died due to asphyxia by compression of neck with, ' and the insertion of 'cordio pulmonary arrest' creates doubt about the credibility of the post mortem report. Further, PW-17, the RDO had deposed in the cross examination that in the post-mortem report the cause of death is mentioned as " the Deceased



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would appear to have died of extensive superficial burns of about 100%” and no other reason stated for the cause of death. Therefore, there must have been two post mortem reports in this case and the one referred by PW-17 is suppressed.

7. The learned counsel appearing for the appellant submitted that the case of the prosecution suffers inherent improbabilities which goes to the root. The first information report registered on the complaint alleged to have been given by the mother of the deceased itself highly doubtful. There is more than 4 hours delay in registering the FIR. PW.18-Ramakrishnan, the Inspector of Police admits that he received information at 12.00 noon and immediately went to the house of the accused and saw the charred body of Rafiaythul Bazaria. The presence of the police at the place of occurrence soon after the fire spoken by the other witnesses for prosecution, while so, FIR registered based on Ex.P-12-complaint, is not the first information. The earlier information and the accident register containing the true cause of death been suppressed. He also submitted that the photographs of the scene of crime not produced before the Court. Had it been produced, the real cause of death would have come to light. The trial Judge has recorded the lapse of



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the investigation. Though the investigation found to be perfunctory, the trial Court has taken those lapses and omission as trivial and on surmises the appellant been convicted.

8. The learned Additional Public Prosecutor for the State submitted that, the prosecution has established through PW-1 to PW-4 that before the death of Rafiaythul Bazaria, there was unlawful demand of Rs.50,000/- by the appellant for the tonsuring ceremony of the child. The occurrence took place on the day of Ramzan. The appellant had prevented the deceased wearing the dress given by her brother. This is the immediate cause for quarrel between the appellant and the deceased. There was no two post-mortem reports as alleged by the appellant. The only post mortem report is Ex.P-9 marked through PW.15-Velmurugan, the doctor who conducted autopsy along with Doctor Senthilkumar. He, in his cross examination had denied the suggestion that the words 'compression of neck with cardio pulmonary arrest' was inserted later. He has also clarified that, he cannot say certainly the compression of neck was with hands.



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9. The unimpeachable medical evidence and the failure of the appellant to explain his innocence inspite of the admission that he was at the house along with the deceased at the relevant point of time, necessitated the trial Court to rely on Section 106 of the Evidence Act. The learned Additional Public Prosecutor also pointed that the accused had come with different explanation at different point of time. To the RDO, he had told that, he and his wife suffer mental illness. Later by way of suggestions to the witnesses, he tried to project it was an accident. In his answer to Section 313 of Cr.P.C., he had pleaded that the deceased committed suicide. For none of his explanation, he had produced evidence.

10. This Court has given its anxious consideration to the rival submissions as extracted above.

11. The pivotal point for consideration is whether Rafiyathul Bazaria could have been died committing suicide. If it is not suicide, whether the appellant could be held guilty of committing the murder based on the evidence?



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12. For deciding the above point, the post mortem report-Ex.P-9

is the document which requires deep scrutiny. Two injuries and two observations noted in the post-mortem report are most relevant in this case to arrive at a conclusion regarding the nature of the death. They are:-

- i) 3 x 3 cm contusion on the right temporal region.
- ii) Hyoid bone-fracture compression.
- iii) No soot particles in the Larynx and trachea.
- iv) Tongue protruded, scalp hairs not burnt.

The injuries (i) and (ii) proves violence before death. Observations (iii) and (iv) are factors sufficient to arrive at a conclusion without any doubt that the body was burnt after the respiration stopped.

13. The doubt about the prosecution case, it is contended that PW-18 had deposed that he arranged to take photograph through a private photographer, however, the photos were not produced before the Court. This omission will not be of any assistance to the defence. The charred body of the deceased speaks for itself. “*Res ipsa loquitur*” principle to be applied in this case.

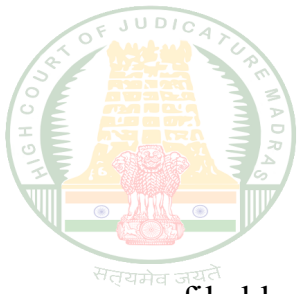


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14. The RDO who conducted inquest in his preliminary report had recorded his opinion that though the enquiry reveals harassment, there are contradictory version for the cause of death, which requires probe. Inquest under Section 174 of Cr.P.C, is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concern with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details. (Refer: Radha Mohan Singh @ Lal Saheb and others –vs- State of UP reported in 2006(2) SCC450).

15. In this case, since the death of Rafiyathul was within 7 years of her marriage, the inquest is conducted by RDO as required under the law. The interim inquest report-Ex.P10 dated 10.08.2013 contains the information gathered from the panchaythars as well as the accused. PW-16 had concluded that there is evidence for dowry harassment and cruelty. Hence, the police to investigate and find out whether it was suicide or homicide. The report of the Executive Magistrate cannot be a substitute to the final report



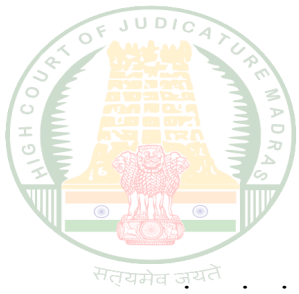
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filed by the Police after completion of investigation. Any observations in the inquest report has to be tested with the other evidence collected in the course of investigation. In fact, in the instance case, the inquest report the accused is not given a clean chit, contrarily his role in causing cruelty is observed and had raised doubt about the theory of suicide by observing that the deceased a staunch muslim was of the view committing suicide is against the Islamic principles. Hence his defence that the deceased committed suicide due to mental illness not found favour with RDO and he left it to the police to probe. The accused in turn had not produced any medical record to substantiate that the deceased was suffering from mental illness. His other defence that it was suicidal death also been disproved through medical evidence.

16. The last limb for consideration is whether, the ‘seen together’ theory to be applied in this case.

17. It is an uncontroverted fact that the wife of the appellant found death in the bed room shared with the appellant. Evidence establish without any pale of doubt that it was a homicidal death. When the



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incriminating material evidence put to the appellant under Section 313 CrPC., he had come out with an explanation that he went out to purchase meat at 10.30 a.m, on that day, on his return to home at 11.00 a.m, he came to know that his wife has self immolated herself.

18. If this explanation is to be accepted, then this explanation is for his absence from home between 10.30 am to 11.00 am. The prosecution witnesses claim that the incident happened between 11.30 a.m to 12.00 noon. In any case, this explanation is first of all not an explanation for the homicide death. It is a very weak and un-corroborated piece of statement as against the strong medical evidence. The ante mortem injuries on the body of Rafiathul rules out the defence of suicide. Once the prosecution has established the fact that it is homicide committed within four walls, it becomes the onus of the appellant who was the only person share the bedroom with his wife. He had not come with any explanation sufficient to presume he might have not committed the offence. The circumstance and the own admission, only indicate the appellant must and should have committed the offence of murder by strangulation and screening of evidence by burning the body.



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19. In ***Trimukh Maroti Kirhan –vs- State of Maharashtra*** (2006(10 SCC 681), the Hon’ble Supreme Court has held that,

“ para 21: *In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstances is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete*”

20. At this juncture, it is profitable to cite the above dictum of the Hon’ble Supreme Court which buttresses the conclusion of the Court holding the appellant guilty of charges.

21. Therefore, we hold that, the trial Court judgement is based on the evidence appreciated appropriately in accordance to law. The well considered judgment both on facts as well as on law needs no interference.

22. In the result,



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(i) The criminal appeal stands **dismissed**. The judgment of conviction and sentence, dated 24.12.2018 in S.C.No.10 of 2016, on the file of the learned Additional District and Sessions Judge, Mahalir Court, Madurai stands confirmed.

(ii) The respondent police is directed to secure the appellant forthwith and committed him to the prison to undergo the remaining period of sentence. Bail bond if any, stands cancelled.

[G.J.,J] & [R.P., J]
10.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Additional District and Sessions Judge,
Mahalir Court, Madurai.

2.The Section Officer,
V.R.Section,



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Madurai Bench of Madras High Court,
Madurai.



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**DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.**

PJL

**Judgement made in
Crl.A(MD)No.287 of 2020**

10.03.2025