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MURUGAN

v.

STATE OF TAMIL NADU

(Criminal Appeal No. 997 of 2008)

JULY 7, 2008

B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

C

Penal Code, 1860 – s. 376(1) r/w s. 511 and s. 302 – Rape and murder – Conviction under – Husband found accused lying over his wife and strangulating her resulting in her death – Conviction u/s. 376(1) r/w s. 511 and s. 302 by courts below – Justification of – Held: Justified – Courts below analysed the evidence in detail and rightly concluded with regard to involvement of the accused.

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According to the prosecution case, PW-1 was engaged in business and had employed accused as an assistant. The business was carried out in the ground floor and accused was also residing therein whereas PW-1 and his family were residing at first floor. On the fateful day, PW-1 heard an alarming noise from the ground floor and tried to open the door but found it locked from inside. PW-1 then peeped through the window and found the accused taking position on his wife who was lying on the ground and strangulating her. Thereafter, the accused opened the door from inside and ran away. PW-1 along with PW-2 chased the accused. PW-1 went to the church and informed the people over there about the occurrence. He came back to his house and found his wife dead. PW-1 lodged a complaint. Investigation was carried out. The doctor conducted post mortem. Witnesses were examined. The trial court convicted the appellant u/s. 376(1) read with s. 511 and s. 302 IPC and imposed rigorous imprisonment for ten years and life imprisonment. High Court upheld the order. Hence the present appeal.

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Dismissing the appeal, the Court

HELD: 1. The trial court and the High Court analysed the evidence in great details and came to the right conclusion about involvement of the accused. There is no infirmity in the reasoning of the trial court and the High Court to warrant any interference. [Para 11] [84-B]

2.1 PW 1 chose to chase the accused along with PW 2 and having found some people in the church, which is nearby, informed them about the occurrence and thereafter came back to his house to verify the fate of his wife. PW 1 obviously was in a state of shock having seen the accused strangulating his wife. It is quite common for a person under shock to share his grief to the persons who are found close by. It is not as if PW 1 rushed straight to the police station after informing certain persons in the church without even verifying the fate of his wife. [Para 8] [83-A,B & C]

2.2 The accused was arrested on 6.9.2000 and only on the basis of his confessional statement his apparels had been recovered. It is not as if the door was opened by PW 1 immediately after witnessing the occurrence through the window. The accused, who was inside the house, would have had time to remove his apparels, which were found blood stained, to put it in a safe place in the house. Further it will not take much of a time to remove the clothes by a person who was in a hurry to escape from the scene of crime. In view of the above, there is nothing to doubt the recovery of the apparels of the accused made by the investigating officer. The recovery at the instance of the accused raises presumptions of guilt as against him. [Para 9] [83-C,E & F]

2.3 It is an unfortunate case where the accused came out with a repulsive counter version that he had some affairs earlier with the victim, and when he was found embracing the wife of PW 1, it was witnessed by PW 1. He has stated that he was not the author of the murder. If at

A **all the victim had an affair with a stranger residing at a far off location, it would not have come to light. But stand of the accused, who lived in the ground floor for five years to be having an affair without being noticed is too hollow to be accepted.[Para 10] [83-G,H; 84-A]**

B **CRIMINALAPPELLATE JURISDICTION : Criminal Appeal NO. 997 of 2008**

C From the final Judgment and Order dated 14.6.2006 of the High Court of Judicature at Madras in Criminal Appeal No. 1547 of 2003

Prasanthi Prasad, (SCLSC) for the Appellant.

R. Shunmugasundaram, S.J. Aristotle and V.G. Pragasam for the Respondent.

D The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

E 2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court upholding the conviction of the appellant for offences punishable under Section 376(1) read with Section 511 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 302 IPC. The appellant was sentenced to undergo rigorous imprisonment for ten years and Life Imprisonment for two offences. As noted above, fine was also imposed with default stipulation.

F 3. Sans unnecessary details the prosecution version in a nutshell is as follows:

G Tamilselvi (hereinafter referred to as the 'deceased') is none other than the wife of Andrews (PW1). They had been blessed with three children. Except Romeo (PW 10) the other two children were staying in a hostel.

H PW 1 was carrying on groundnut cake business in the ground floor of his house at Gandhi Nagar, Chennai. PW 1, the victim and their daughter Romeo were staying in the upstairs of

the said house. The accused Murugan was employed as an assistant in PW1's shop and he was staying in the ground floor itself where the business was carried on. The deceased used to get his ration of food from PW 1. A

On 3.8.2000 at about 1.30 p.m. the victim went to the ground floor for the purpose of handing over the ration of food to the accused. P.W.1 waited for some time, but the victim had not returned. He came down to the ground floor and heard an alarming noise. When he attempted to push the outer door of the ground floor, he found that it was locked from inside. P.W. 1 went around the house and peeped through the window. He found to his shock that the accused, taking position on his wife who was lying on the ground, attempted to strangulate her. Thereafter the accused opened the door from inside and sped away from the scene of occurrence. B C

P.W.1 gave a chase accompanied by Elumalai-P.W.2. The accused took shelter in a nearby bush. He went to the church and informed the people over there. He came down to his house and found his wife dead. Thereafter P.W.1 went to Kolathur Police Station and lodged a complaint (Ex.P1) to the sub-Inspector of Police, P.W.9, who was present over there. The latter registered a case in Crime No.1050/2000 for the offence under Section 302 IPC and prepared printed FIR Ex. P9 and despatched the same to the learned Judicial Magistrate concerned and the copies thereof to the higher officials. D E

The Inspector of Police, Mr. Natrajan-P.W.13, who was Incharge of the said police station when Varadarajan, the regular Inspector of Police P.W.14 was on leave, took up the case for investigation on receipt of a copy of the FIR and rushed to the scene of occurrence and prepared the rough sketch-Ex.P-12. He also prepared the observation Mahazar-Ex. P-2 in the presence of Chellaiah, P.W.4 and another witness. He held inquest on the dead body and prepared the inquest report, Ex. P13. At about 8.30 p.m. on the said day, in the presence of the aforesaid witnesses, P.W.13 recovered thali Chain M.0.4 and F G H

A packing material-M.O.7 under relevant mahazar, Ex. P-3. He entrusted the dead body to the Head Constable Mohan, P.W.8 for the purpose of taking the same to the doctor for conducting postmortem examination.

B Dr. Deivasigamnai, P.W.7, conducted autopsy on the dead body of the victim at about 11.40 a.m. on 4.9.2000 and found the following injuries and symptoms on the dead body:

C "A well defined incomplete oblique ligature abrasions mark in front of the neck at the level of thyroid cartilage, 16 x 1 cms on the front, the ligature abrasion was 6 cms below the chin and 6 cms about the suprasternal noted and the ligature abrasion was absent on the back of the neck. The subcutaneous soft tissues underlying the ligature abrasion were found congested.

D 2) Inward compression fracture of right horn of the hyoid bone found with extravasations of blood in the surrounding soft tissues.

E Heart: Intact. Normal Trachea: Empty. Stomach contained 200 ml. of brown fluid with partly digested cooked rice particles. No definite smell."

4. After investigation charge sheet was filed. As the accused pleaded innocence, he was put on trial.

F 5. In order to establish the prosecution version 14 witnesses were examined. Placing reliance on the evidence of PWs. 1 & 2, the trial court found the accused guilty and convicted and sentenced. The High Court upheld the conviction and the sentence.

G 6. In support of the appeal, learned counsel for the appellant submitted that the defence version has been erroneously discarded by the High Court. He has stated that the conduct of PW1 after allegedly having seen the accused with his wife unnatural and should not have been relied upon. The presence of PW2 at the spot had also not been explained

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7. Learned counsel for the respondent-State supported the judgment of the High Court. A

8. PW 1 has chosen to chase the accused along with PW 2 and having found some people in the church, which is nearby, informed them about the occurrence and thereafter came back to his house to verify the fate of his wife. PW 1 obviously was in a state of shock having seen the accused strangulating his wife. It is quite common for a person under shock to share his grief to the persons who are found close by. It is not as if PW 1 rushed straight to the police station after informing certain persons in the church without even verifying the fate of his wife. B
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9. The accused had been arrested on 6.9.2000 and only on the basis of his confessional statement his apparels had been recovered. It is contended by the learned counsel for the accused that the accused, who was spotted committing the crime, would not have taken some time to hide his apparels at a safe place. It is the case of the prosecution that PW 1 having witnessed the occurrence by peeping through the window came down to the doorway with a view to open the door. The door was opened from inside by the accused. It is not as if the door was opened by PW 1 immediately after witnessing the occurrence through the window. The accused, who was inside the house, would have had time to remove his apparels, which were found blood stained, to put it in a safe place in the house. Further it will not take much of a time to remove the clothes by a person who was in a hurry to escape from the scene of crime. In view of the above, there is nothing to doubt the recovery of the apparels of the accused made by the investigating officer. The recovery at the instance of the accused raises presumptions of guilt as against him. D
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10. It is an unfortunate case where the accused has come out with a repulsive counter version that he had some affairs earlier with the victim, and when he was found embracing the wife of PW 1, it was witnessed by PW 1. He has stated that he was not the author of the murder. If at all the victim had an affair G
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A with a stranger residing at a far off location, it would not have come to light. But stand of the accused, who lived in the ground floor for five years to be having an affair without being noticed is too hollow to be accepted.

B. 11. Trial court and the High Court have analysed the evidence in great details and have come to the right conclusion about involvement of the accused. We do not find any infirmity in the reasoning of the trial court and the High Court to warrant any interference.

12. The appeal fails and is dismissed.

N.J.

Appeal dismissed.