

Bail Slip

The Appellant/Accused namely Bhavani was directed to be released on bail in and by the order of this Court dated 21.09.2004 and made in CrI.M.P.No.9334/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2006

Coram

The Hon'ble Mr. Justice K.RAVIRAJA PANDIAN
and
The Hon'ble Mr. Justice M.CHOCKALINGAM

Criminal Appeal No.1077 of 2004

Bhavani .. Appellant/Accused

Vs.

State rep. by
Inspector of Police,
Cholavaram Police Station,
Chengalpattur District. ... Respondent/Complainant
(Cr.no.172/01)

Criminal Appeal against the judgment of the Additional District and Sessions Judge (Fast Track Court No.I), Chengalpattu in S.C.No.37 of 2004 dated 29.06.2004.

For Appellant .. Mr.S.Shanmuga Velayutham

For Respondent ... Mr.P.Kumaresan,
Addl. Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder, on being found guilty as per the charges was sentenced to undergo life imprisonment under Section 302 I.P.C. by the learned Additional District and Sessions Judge (Fast Track Court No.I), Chengalpattu in S.C.No.37 of 2004, has brought forth this appeal.

2.The short facts necessary for the disposal of the appeal can be stated thus:

(a) P.W.1 Suguna is the sister of the deceased. She is residing at Red Hills. The deceased Badrinath already married P.W.4 Durga Devi and while he was living with her, he developed illicit intimacy with the accused/appellant Bhavani. The said Bhavani was the tenant under P.W.2 and along with the accused, her niece P.W.6 was also staying. The deceased often used to come to the house of the accused/appellant and stay with her and there were wordy quarrels between them. On the date of occurrence i.e. on 26.03.2001 at about 10.00 p.m., there was a wordy quarrel between the accused/appellant and the deceased. The same was witnessed by P.W.3. During night hours i.e. at 1.15 a.m., the accused/appellant took P.W.6 also and all the house hold articles in an auto rickshaw and left the house. She went to the house of P.W.7 and knocked the doors and in turn , he took both of them to the house of P.W.8 and requested P.W.8 to allow them to stay for that night alone.

(b) P.W.3 on the next morning, on seeing the dead body of the deceased informed the same to P.W.1 and in turn, P.W.1 proceeded to the spot and gave a complaint Ex.P1 and on receipt of Ex.P1, P.W.13, Sub Inspector attached to Cholavaram Police Station, registered a case in Crime No.172 of 2001 under Section 174 Cr.P.C. Ex.P10 is the first information report and the same was sent to the Court and higher officials.

(c) The case was taken up for investigation by P.W.14 Inspector of Police attached to Cholavaram Police Station. The investigating officer proceeded to the spot, made an inspection in the presence of witnesses and prepared the observation mahazar Ex.P2, rough sketch Ex.P11. P.W.14 further conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared Ex.P12 inquest report. The dead body was sent to Stanely Hospital, Chennai for the purpose of conducting autopsy, through P.W.9 Head Constable. Accordingly, the body was subjected to post mortem by Dr.Gururaj, Police Surgeon and Professor of Forensic Medicine attached to Stanley Medical College, Chennai, who has given his opinion that the deceased died out of asphyxia.

(d) Following the same, the investigating officer - P.W.14, pending investigation, arrested the accused on 31.03.2001 at about 9.30 a.m. in the presence of P.W.12 and one Ramesh. The accused/appellant gave the confession statement and the same was recorded, on the strength of which, M.O.2 Arivalmanai was recovered from her house under Ex.P9 mahazar. The admissible portion of the confession statement of the accused is Ex.P13 and the case was altered into one under Section 302 I.P.C. from Section 174 Cr.P.C. and the altered first information report Ex.P14 was sent to the Court. On completion of the investigation, the investigating officer filed the final report. The case was committed to Court of Sessions viz., the Additional District and Sessions Judge (Fast Track Court No.I), Chengalpattu and necessary charges were framed.

3. In order to substantiate the charges levelled against the accused, the prosecution examined 14 witnesses and relied on 14 exhibits and 2 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the witnesses. The accused/appellant flatly denied the same as false. No defence witnesses were examined.

4. The learned trial Judge after considering the submissions made and on scrutiny of the materials available, found the appellant/accused guilty of the offence under Section 302 I.P.C. and awarded life imprisonment, which is the subject matter of challenge in this appeal.

5. Learned counsel for the appellant while advancing his argument inter alia contended that only one witness, who was examined to speak about the fact that the accused strangled the deceased on the date of occurrence, was P.W.6. and she turned hostile. P.W.6 has not spoken any fact connecting the accused with the crime in question and hence, the prosecution has not proved the case and the only circumstance relied on by the prosecution was that at about 10.00 p.m. on the date of occurrence, the accused and the deceased were quarrelling with each other but that circumstance cannot by itself be taken as if the prosecution has proved the case.

6. Added further, learned counsel for the appellant in the instant case, submits that the recovery of M.O.2 Arivalmanai has nothing to do with the case in question. Even the Doctor's opinion also did not support the prosecution case. According to the prosecution, the deceased died of asphyxia due to strangulation but according to the Doctor's opinion, it was due to hanging and even the statement given by the accused as per Section 313 Cr.P.C., she left the house at 1.15 a.m. and the death of the deceased was not known to her. It is quite clear that she stayed only with the deceased on the date of occurrence and thus it was the case of hanging by committing suicide, which was also supported by the medical evidence. The lower Court in the absence of any circumstances whatsoever found the accused guilty and sentenced her to life imprisonment.

7. We have heard the Additional Public Prosecutor for State on the above contentions.

8. We have paid our anxious consideration to the rival submissions made on either side.

9. It is not disputed that the deceased Badrinath, who is the husband of P.W.4 and brother of P.W.1 died due to asphyxia and the dead body was also subjected to post mortem and the inquest made by the investigating officer and also the opinion in the post mortem certificate that the deceased died out of asphyxia as a result of hanging was never questioned by the accused/appellant.

10. The prosecution in order to substantiate the case that it was the accused who caused the death of Badrinath by strangulation, examined P.W.6 as eye witness. P.W.6 is the niece of the accused and she turned hostile. She did not support the case of the prosecution. This Court is of the considered opinion that there are sufficient circumstances in the instant case to prove the guilt of the accused. Admittedly, the said Badrinath even after marriage with P.W.4 Durga Devi, was having illicit intimacy with the accused Bhavani and used to stay in her house and even according to P.W.3, who is residing in the opposite house, on the date of occurrence at 10.00 p.m., she found both the accused and the deceased quarrelling with each other and she thought it as usual.

11. According to the evidence of the other witnesses, it is quite clear that at night hours i.e. at 1.15 a.m. the accused took her niece P.W.6 and along with her, she went in an auto rickshaw directly to the house of P.W.7 and thereafter to the house of P.W.8. At this juncture, it has to be pointed out that the occurrence had taken place after 10.00 p.m. and before 1.30 a.m. and from the evidence of P.W.3, it is quite clear that at the time of death of the accused, the accused and the deceased are in the house and the accused shifted the house at 1.15 a.m. The death has occasioned during the intervening period.

12. Had it been true that the deceased died out of hanging, there is no need for her to escape from the house that too during the night hours along with P.W.6 and house hold articles and this aspect alone clearly proves that it was the act of the accused and she was arrested on the next day and she has also given confession statement. Further there is medical opinion in favour of the prosecution and the doctor has opined that the death has been caused due to asphyxia and in these circumstances, this Court is of the opinion that following the quarrel between the accused and the deceased, it was the accused who strangulated him and caused his death and that was the reason why she shifted the house along with P.W.6 and hence the prosecution by the said circumstance proved the act of the accused.

13. Now coming to the question of nature of the act of the accused, this Court is able to see sufficient force in the contention of the counsel for the appellant that it would not attract the penal provision of murder and according to P.W.3, there was a wordy quarrel between the accused and the deceased at about 10.00 p.m., and even in the confession statement, she has spoken that the deceased is a drunkard and he used to come to her house often and he threatened the accused that if she did not give money he will commit suicide and provoked by such circumstances, she has caused the death of the deceased by strangulation and hence, the act of the accused would not be one of murder but would be of culpable homicide.

14. Taking into consideration the above fact, this Court is of the opinion that ends of justice would be met if the offence under Section 302 I.P.C. is modified to one under Section 304 (Part I) I.P.C., for which, the appellant/accused shall undergo seven years rigorous imprisonment. Accordingly, the judgment of the trial Court convicting the appellant and awarding a sentence of life imprisonment for the offence under Section 302 I.P.C. is set aside and in its place, the accused is convicted under Section 304 (Part I) I.P.C. carrying a sentence of seven years rigorous imprisonment.

15. In the result, with the above modification in conviction and sentence, this Criminal Appeal is dismissed.

16. It is reported that the accused is on bail. The Learned Sessions Judge shall take steps to commit the accused to undergo the remaining period of sentence.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

- 1.The Judicial Magistrate No.II, Ponneri.
- 2.The Chief Judicial Magistrate, Chengalpattu.
- 3.The Additional District Sessions Judge (FTC I), Chengalpattu.
- 4.-do-thro' The Principal Sessions Judge, Chengalpattu.
- 5.The Chief Judicial Magistrate, Trichy.
- 6.The Inspector of Police, Cholavaram Police Station, Chengalpattu District.
- 7.The Public Prosecutor, High Court, Madras.
- 8.The Superintendent, Special Prison for Women, Vellore.

1 cc To Mr.S.Shanmughavelayutham, Advocate, SR.46471.

Crl.A.No.1077 of 2004

BV(CO)
RVL 17.10.2006