

MUNNI @ SYED AKBAR

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v.

STATE OF INSPECTOR OF POLICE, ALL WOMEN
POLICE STATION, GOBICHETTIPALAYAM, ERODE
(Criminal Appeal No. 2475 of 2009)

OCTOBER 29, 2014

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[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860 – ss.302, 498A r/w 201 – Death of married woman due to strangulation with the aid of a cable wire – Conviction of appellant-husband – Justification – Held: Justified – P.W.9- Postmortem Doctor with the aid of Ex.P-6- Forensic Science Laboratory report confirmed that death was due to asphyxia by strangulation and ligature marks were found on the neck of the deceased – Appellant was very much present at the time when the deceased breathed her last – He failed to clear vital circumstances found proved against him – Having successfully killed deceased with the use of a cable, appellant made an unsuccessful effort to make it appear as though the deceased was hanging from the roof top with the aid of a saree.

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Dismissing the appeal, the Court

HELD:1. It has come out in scientific evidence and expert opinion without any scope of ambiguity that there was strangulation marks on the neck of the deceased and that there was also a rope mark which could have been caused with the aid of the cable wire viz., M.Os.7 and 8. The further fact that the appellant was found sitting on the roof top removing certain tiles found to be another well thought out drama played by the appellant to make P.W.4 and his friend to believe as though he was innocent

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- A and he had nothing to do with the killing of his deceased wife. The appellant having successfully carried out his evil design in the killing of the deceased with the use of M.O.8 cable, however, made an unsuccessful effort to make it appear as though the deceased was hanging from the roof top with the aid of a saree. [Para 20] [595-D-H; 586-A]

2. P.W.9- Postmortem Doctor with the aid of Ex.P-6- Forensic Science Laboratory report was able to confirm without any scope for contradiction that the death of the deceased was due to asphyxia by strangulation and ligature marks were found on the neck of the deceased. It was the appellant who was very much present at the time when the deceased breathed her last. Therefore, the best person who could have come forward with appropriate explanation to clear the doubt about the factors found established through expert and scientific evidence could have been only the appellant and none else. The appellant having failed to clear those vital circumstances found proved against the appellant, the ultimate conclusion of the trial Court as well as the confirmation by the High Court of the guilt of the appellant in the killing of the deceased falling under Section 302 of I.P.C could have been the only conclusion, more so, when the appellant was found guilty of the offence under Sections 498(A) as well as Section 201 of I.P.C. [Para 21] [596-D-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2475 of 2009.

- G From the Judgment & Order daed 16.08.2007 of the High Court of Judicature at Madras in Criminal Appeal No. 434 of 2006.

Dr. Sushil Balwada for the Appellant.

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M. Yogesh Kanna, Vanita Chandrakant Giri, Santha Kumaran for the Respondent. A

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal at the instance of A1, who is the appellant herein, is directed against the judgment of the Division Bench of the Madras High Court dated 16.08.2007, passed in Criminal Appeal No.434 of 2006. B

2. Brief facts which are required to be stated are that the appellant is the husband of the deceased Gulsara Banu. Along with the appellant, his parents were also proceeded against, who were arrayed as A2 and A3. All the three accused were charged for offences under Sections 498(A), 302 and 201 of I.P.C. The parents of the appellant viz., A2 and A3 were found guilty of the offences under Section 498(A) of I.P.C. as well as under Section 4 of the Dowry Prohibition Act, 1961. A2 who was also charged under Sections 302 and 201 of I.P.C. was acquitted of those charges. A2 and A3 have already undergone the sentence, even while the appellant's appeal was preferred before the High Court. The High Court therefore dealt with the case of the appellant alone. C D E

3. As far as the occurrence is concerned, the appellant got married to the deceased on 27.07.1997. They were living in a rented premises belonging to P.W.3 at Kurumanthur. It was a portion of the house. The occurrence took place in the morning hours of 12.08.2004. P.W.1 is the complainant who is the father of the deceased. According to him, he received a phone call from the accused at 3.00 p.m. stating that the deceased complained of stomach pain and wanted him to come over to Kurumanthur immediately. Such information was also passed on to P.W.2, uncle of the deceased, by around 3.30 p.m. and he also immediately rushed to Kurumanthur which was just 50 kms away from his place. After P.W.1 reached the place of F G H

A occurrence at around 10.00 p.m., he found strangulation marks on the neck of the deceased. He preferred Ex.P-1-Complaint, before the All Women Police Station, Gobichetipalayam. The Complaint was lodged with P.W.13, the Inspector of Police of the said police station.

B 4. P.W.13 registered the said complaint in Crime No.5 of 2004 for the offences under Section 498(A) of I.P.C. and Section 174 of Cr.P.C. and sent the Express Report to the Judicial Magistrate No.II, Gobichetipalayam. She stated to have
C inspected the place of occurrence and conducted the Inquest over the dead body between 2.30 a.m and 5.30 a.m. in the presence of Panchayatdars and prepared Ex.P-17-Inquest report. She recorded the statements of P.Ws.1 to 4 and other witnesses and sent the dead body of the deceased along with
D Ex-P-4 requisition through P.W.11 woman police constable to the Government Hospital, Gobichetipalayam for postmortem. She recovered M.Os.1 to 4 and M.O.7 in the presence of witness P.W.7. She forwarded M.Os.9 to 14 along with Form-95 through P.W.11. After examining P.W.1, P.W.3, P.W.4 and P.W.5 on 15.08.2004 and after recording their statements it
E came to light that it was not a case of suicide and therefore P.W.13 altered the offences under Sections 498(A), 302 r/w 201 of I.P.C. and prepared Ex.P.18-Special Report and forwarded the same to the Court again. The accused were arrested thereafter on 16.08.2004 at 9.45 p.m. With the
F admissible portion of the confession of the appellant in Ex.P-9, P.W.13 recovered T.V.S.50 brake cable wire M.O.8 from the workshop of the appellant. She also recovered green colour wire M.O.7 at the instance of the appellant in the presence of P.W.10.

G 5. P.W.9 who conducted the postmortem, issued Ex.P-8-Postmortem Report on 13.08.2004. In Ex.P-8, P.W.9 reserved his opinion awaiting chemical analysis report. Chemical analysis report Ex.P-6 was issued by the Professor of Forensic
H Medicine and District Police Surgeon, Coimbatore in which

inter alia it was stated "*HPE poison was detected Hyoid Bone intact. Death may be due to Asphyxia due to Straglets.*" After the receipt of the aforesaid report, P.W.9 expressed his opinion that the death was due to strangulation. The appellant along with A2 and A3 were charged for offences under Sections 498(A), 302 read with 201 as well as Section 4 of the Dowry Prohibition Act, 1961. As stated earlier, we are concerned only with the appellant who was the first accused.

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6. The trial Court based on the evidence placed before it, convicted the appellant for offences under Sections 302, 498(A) read with Section 201 of I.P.C. He was sentenced to life imprisonment for an offence under Section 302 of I.P.C. apart from fine of Rs.1,000/- and in default to undergo rigorous imprisonment for one year. He was sentenced to undergo 3 years imprisonment for an offence under Section 201 apart from fine of Rs.500/- and in default to undergo rigorous imprisonment for six months. He was also sentenced under Section 498(A) to undergo two years rigorous imprisonment and to pay a fine of Rs.500/- and in default to undergo six months rigorous imprisonment. The sentences were to run concurrently.

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7. On appeal the Division Bench of the High Court having confirmed the conviction and sentence imposed on the appellant, the appellant is before us.

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8. We heard Dr.Sushil Balwada, learned counsel for the appellant and Mr. M. Yogesh Kanna, learned standing counsel for the respondent State.

9. Dr. Balwada, learned counsel in his submissions, after referring to the evidence of P.W.13 the investigating officer submitted that there was great doubt as to whether the occurrence had taken place as narrated by the prosecution before the Courts below, in as much as, though P.W.1 stated to have lodged the complaint at 11.00 p.m. on 12.08.2004, the

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A case was registered for offence(s) under Section(s) 498(A) I.P.C. and Section 174 of Cr.P.C. and for no reason, much later on 16.08.2004, the case was altered as one under Section(s) 302 r/w Section 201 of I.P.C. and Section 498(A) of I.P.C.

B 10. According to the learned counsel, there was nothing to show that the Express Report was immediately forwarded to the Judicial Magistrate. Learned counsel further submitted that going by the evidence of P.W.3 and P.W.4 since the body of the deceased was found hanging with the aid of a saree and there being no eye witness to the occurrence, the case of the
C appellant that the deceased committed suicide by hanging herself should have been accepted and the appellant should have been acquitted from all the charges.

D 11. The learned counsel also contended that there were variations in the statement of Postmortem Doctor P.W.9 and Forensic Science Laboratory report which also disclose that there was no overt act to be attributed to the appellant for the alleged killing of the deceased by strangulation with the aid of a cable wire.

E 12. As against the above submissions, Mr. M. Yogesh Kanna learned standing counsel for the respondent State by drawing our attention to the evidence of P.W.9-Postmortem Doctor and Ex.P-6, the report of the Forensic Science
F Laboratory as well as that of P.Ws.1 to 4 contended that the offence alleged against the appellant of homicidal death by strangulating his wife with the aid of a cable wire was conclusively proved and there was no reason to doubt the said conclusion reached by the trial Court as well as the High Court.

G 13. The learned counsel also drew our attention to M.O.5-the photographs which were marked through P.W.8-the photographer which also disclose the case of the prosecution that the appellant strangled his wife with the aid of a cable wire and the cause of her death was fully established.
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14. The learned counsel submitted that merely because a mark was noted on the neck of the deceased, which did not have a full circle on the neck, it cannot be concluded that the appellant did not cause her death. The learned counsel was at pains to show that the cable mark was visible to the naked eye as noted by the Postmortem Doctor P.W.9 as well as Ex.P-6- Forensic Science Laboratory report apart from strangulation mark found on the neck of the deceased which all show without any iota of doubt that it was a case of murder and that all the other attendant circumstances conclusively prove that it was the appellant who had caused the death of the deceased.

15. Having heard the learned counsel appearing for the appellant and the learned standing counsel for the respondent State and having perused the impugned judgments of the High Court and the trial Court as well as the material documents marked in the case, at the very outset, it will be relevant to note the incriminating circumstances which were found established against the appellant.

16. The appellant and the deceased were living together in a portion let out by P.W.3. On the fateful day in the early morning around 3.00 a.m. according to P.W.3, he heard shrieking noise of the deceased and when the wife of P.W.3 went and tapped the door, she heard the appellant uttering something in Urdu to the deceased and the deceased herself informed that she suffered a minor electric shock. Thereafter, the deceased was seen by P.W.4 in the godown where he was working, to which place, the deceased went and enquired about the owner of the godown which is a tobacco godown. Subsequently, P.W.4 along with one of his friends heard the shouts of the appellant and rushed to the house of the appellant and the house was locked from inside and they saw the appellant crying and also shouting that his wife hanged herself from the roof with the aid of a saree. According to P.W.4, they saw her hanging from the roof and she was in a kneeled down position. P.W.4 and his friend called upon the appellant to open

- A the door to enable them to get inside in order to rescue the deceased. After they entered, they brought the body of the deceased to the floor and found that she was already dead, though the appellant claimed that she was alive. It was also stated by P.W.4 that before entering the house, they saw the
- B appellant on the roof top removing some of the tiles.

17. P.W.2 who is the uncle of the deceased stated that he was living 50 kms away from the place of appellant and the deceased and that he got information from the appellant that the deceased was suffering from stomach pain. On hearing the
- C said information, he along with his wife rushed to the place of the appellant where they found the deceased lying dead on the floor. P.W.2 also stated that his wife on seeing the body of the deceased noted strangulation marks on her neck, because of
- D which P.W.2 developed some suspicion and upon the arrival of P.W.1, the father of the deceased, they decided to lodge a complaint and that is how the Ex.P-1 came to be lodged through P.W.1 at around 10.30 p.m. on 12.08.2004.

18. The evidence of P.W.9-the Postmortem Doctor who issued Ex.P-8-Postmortem Report deposed that initially when he examined the body of the deceased, he could not offer any definite opinion as he wanted to verify the Forensic Science Laboratory report. Subsequently, after receipt of Ex.P-6, the report from Forensic Science Laboratory, P.W.9 gave the
- E opinion that the death of the deceased was due to asphyxia. In other words, the theory of hanging by the deceased on her own, propounded by the appellant was found to be not true. The report of the Forensic Science Laboratory also confirmed that there was strangulation marks on the neck of the deceased and
- F that substance like cable was used for such strangulation. Based on the appellant's information, M.Os.7 and 8 cable wires were also recovered. When the above circumstances were all put to the appellant, there was only a simple denial and nothing more was stated on behalf of the appellant.

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19. In the above stated background, when we consider the contention of the appellant, it was mainly two fold. In the first instance, it was contended that as per the medical evidence what was noted on the neck of the deceased was a cable mark from the right side to the left side of the neck and not all around the neck of the deceased which would not support the theory of strangulation. It was then contended that even as per the version of P.W.4 and his friend who helped the appellant to lower down the body, which was hanging from the roof top, they found the deceased hanging with the aid of a saree around her neck. By referring to the said evidence, it was contended that it was a definite case of suicide and not a homicidal death. Though in the first blush such a contention appears to be appealing, on a deeper scrutiny, we find that the same was wholly unbelievable and does not merit any consideration.

20. It has come out in scientific evidence and expert opinion without any scope of ambiguity that there was strangulation marks on the neck of the deceased and that there was also a rope mark which could have been caused with the aid of the cable wire viz., M.Os.7 and 8. When such scientific evidence was found to be existing the story spun by the appellant that his wife was hanging from the roof with the aid of a saree has been found to be nothing but a concocted one designed to escape from his culpability. The further fact that the appellant was found sitting on the roof top removing certain tiles found to be another well thought out drama played by the appellant to make P.W.4 and his friend to believe as though he was innocent and he had nothing to do with the killing of his deceased wife. On the whole the episode was attempted by the appellant to show as though his wife committed suicide while it has come out in evidence through P.W.4 that the deceased was found in a kneel down position as there was hardly four feet gap in between the top of the cot and the roof. The appellant having successfully carried out his evil design in the killing of the deceased with the use of M.O.8 cable, however, made an unsuccessful effort to make it appear as though the

A deceased was hanging from the roof top with the aid of a saree.

21. If really the deceased had hanged herself with the aid of a saree, there was absolutely no scope for a cable mark on her neck. There was also no breaking of the hyoid bone or the trachea. As far as the contention that there was only a strangulation mark from the right side of the neck to the left side of the neck on the front side alone and therefore there would have been no scope for the appellant to have used a rope to tie around the neck to strangle the deceased is concerned, the said contention has to be rejected at the very threshold since if the appellant had used the cable from behind the deceased on her neck and thereby suffocated the deceased, there would have been no scope at all for any cable mark on the backside of the neck. P.W.9- Postmortem Doctor with the aid of Ex.P-6- Forensic Science Laboratory report was able to confirm without any scope for contradiction that the death of the deceased was due to asphyxia by strangulation and ligature marks were found on the neck of the deceased. It was the appellant who was very much present at the time when the deceased breathed her last. Therefore, the best person who could have come forward with appropriate explanation to clear the doubt about those factors found established through expert and scientific evidence could have been only the appellant and none else. The appellant having failed to clear those vital circumstances found proved against the appellant, the ultimate conclusion of the trial Court as well as the confirmation by the High Court of the guilt of the appellant in the killing of the deceased falling under Section 302 of I.P.C could have been the only conclusion, more so, when the appellant was found guilty of the offence under Sections 498(A) as well as Section 201 of I.P.C.

G 22. We have, therefore, no hesitation in confirming the conviction and the sentence imposed on the appellant. The appeal fails and the same is dismissed.

H Bibhuti Bhushan Bose

Appeal dismissed.