

---

**(2009) 12 MAD CK 0132**

**Madras High Court**

**Case No:** Criminal A. No. 577 of 2009

Amudha

APPELLANT

Vs

State

RESPONDENT

---

**Date of Decision:** Dec. 4, 2009

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 174, 313
- Penal Code, 1860 (IPC) - Section 120(B), 302, 34

**Hon'ble Judges:** V. Periya Karuppiyah, J; M. Chockalingam, J

**Bench:** Division Bench

**Advocate:** C.D. Johnson, for the Appellant; Babu Muthu Meeran, Additional Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

---

**Judgement**

M. Chockalingam, J.

Challenge is made to a judgment of the Sessions Division, Nagapattinam, made in S.C. No. 5 of 2005 whereby the appellant ranked as A-1, along with other ranked as A-2, stood charged, tried and found guilty under Sections 120(B) and 302 of IPC and awarded life imprisonment along with a fine of Rs. 1000/- and default sentence each, while A-2 was acquitted of the charges.

2. Short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W. 1 is the Village Administrative Officer (VAO) of Thirumakottai and also in charge of Palayakottai. On 7.6.2004 at about 7.00 A.M., his Assistant informed that the deceased Vadivelu died under suspicious circumstances, P.W. 1 went to the house of Vadivelu, found his dead body and enquired P.Ws. 16 and 17 who are the sisters of Vadivelu. He was informed that Vadivelu was murdered. Then P.W. 1 lodged a complaint to the respondent police which is marked as Ex. P1. P.Ws. 12 and 18 also came to the scene of occurrence since they were informed by A-1.

(b) Before the arrival of P.W. 1, A-1, the wife of the deceased Vadivelu along with the other accused namely the deceased Raja took hurriedly Vadivelu to the Government Hospital, Mannargudi, in a car driven by P.W. 18. P.W. 2, the Doctor, who was on duty, medically examined Vadivelu and declared him dead. Then the dead body was brought to his house. On coming to know about the death of Vadivelu, P.W. 14, the Village Committee President, visited the house at about 5.00 A.M. on 7.6.2004. A-1 and the deceased accused Raja objected all the visitors to go nearby the dead body. The visitors were able to go nearby the dead body only after the arrival of the sisters namely P.Ws. 16 and 17.

(c) On receipt of the complaint from P.W. 1, P.W. 23, the Sub Inspector of Police of the respondent police station, at about 11.00 A.M., registered a case in Crime No. 79 of 2004 u/s 174 of Cr.P.C. The printed FIR, Ex. P13, was despatched to the Court.

(d) P.W. 25, the Inspector of the Circle, on receipt of the copy of the FIR, took up investigation, proceeded to the scene of occurrence, made an inspection and prepared an observation mahazar, Ex. P19, and also a rough sketch, Ex. P20. Then, he conducted inquest on the dead body of Vadivelu in the presence of witnesses and panchayatdars and prepared, Ex. P21, the inquest report.

(e) On receipt of the requisition, made by the Investigator, P.W. 20, the Assistant Surgeon, attached to the Government Hospital, Mannargudi, conducted autopsy on the dead body of Vadivelu and found a ligature mark at the level of cricoid cartilage encircling the neck in a horizontal fashion completely except for 3 cm gap in the right side. The Doctor has issued a postmortem certificate, Ex. P8, and gave his opinion under Ex. P12 that the deceased would appear to have died of shock due to asphyxia due to obstruction to the airway caused by a ligature strangulation.

(f) Pending investigation, on 16.6.2004, A-1 and the deceased accused Raja volunteered to give confessional statements in the presence of the VAO and his menial. The same were recorded, and the admissible parts are marked as Exs. P3 and P4 respectively. Then the case was altered to Sections 120(B) and 302 read with 34 IPC. The altered report Ex. P22, was sent to the Court. The Investigator gave a requisition to the Court to send all the material objects for the purpose of analysis. Accordingly, they were sent.

(g) P.W. 28, the Inspector of Police, took up further investigation. He visited the scene of occurrence and prepared an observation mahazar, Ex. P23, and a rough sketch, Ex. P24. On completion of investigation, the Investigator filed the final report.

3. The case was committed to Court of Session. Pending trial, the accused Raja died, and hence the Court proceeded against the other two accused. Necessary charges were framed. In order to substantiate the charges, the prosecution examined 28 witnesses and also relied on 25 exhibits and 5 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned u/s 313 of

Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced on either side and took the view that the prosecution has proved the case beyond reasonable doubt insofar as A-1 and hence found her guilty under the above provisions of law and awarded life imprisonment and made an order of acquittal of A-2. Hence this appeal has arisen.

4. Advancing arguments on behalf of the appellant, the learned Counsel Mr. C.D. Johnson would submit that in the instant case, the prosecution had no direct evidence to offer; that it relied on the circumstantial evidence; and that even the circumstances placed were neither proved nor sufficient to record a finding that the appellant/A-1 was involved in the crime or to sustain a conviction.

5. The learned Counsel would further submit that in the instant case, the specific motive attributed to the appellant was that she had got illicit intimacy with one Raja, the deceased accused, and when they found the deceased, the husband of A-1, as a hurdle, they conspired to finish him off, and as per the plan, it was the deceased accused Raja who strangled her with a nylon rope, and in that process, both A-1 and A-2 had a role to play; that the prosecution mainly relied on the confessional statements alleged to have been given by the deceased accused Raja and also the appellant/A-1 before P.W. 27, the Inspector of Police; that it was a confessional statement given to the police; that it was also claimed by the Investigator that M.Os. 1 and 2 were produced; that P.W. 19 is the witness for the alleged confessional statement; that there is no reason for both the accused to appear before the Police Officer to make a confession directly, and it is highly unnatural; that apart from that, the evidence of P.W. 19 at the time of the cross-examination became shaky, and they are all nothing but cooked up documents.

6. The learned Counsel would further add that it is not the case of the prosecution that the appellant was absent at the time of the death of her husband; that further it was the appellant who along with Raja immediately took the deceased to the Government Hospital where he was declared dead; that had it been true that the appellant had got any role in the commission of murder of her husband, there was no need for her to take the deceased to the hospital, and she did so since she was only with an intention to rescue her husband.

7. Added further the learned Counsel that in the instant case, the prosecution has thoroughly failed to prove either the motive or the conspiracy theory put forth; that there is no direct or indirect evidence to prove the conspiracy theory; that what was available for the prosecution was the medical opinion; that the medical opinion even assuming to indicate that the ligature mark was found, it would not by itself indicate that it was an act of murder; that according to the prosecution, the occurrence has taken place on the night of 6.6.2004, and the complaint was given on 7.6.2004 at about 11.00 A.M., and the FIR has reached the Court on 8.6.2004 at 1.30 P.M., and

thus huge delay is noticed in every stage.

8. Added further the learned Counsel in the second line of argument that even as per the prosecution case, it was the deceased accused Raja who strangled the deceased with the nylon rope and caused the death by asphyxia; that as far as the role of the appellant is concerned, the case of the prosecution was that she was actually placing a towel on the face of her husband, and then she went outside the room; that even if she was living with him, it was only the act of the deceased accused Raja in causing the death in which the appellant had no role to play; that this was not considered by the trial Court; that the same has to be considered by this Court; that under the circumstances, the prosecution has miserably failed to prove the motive or conspiracy or the act of the accused which led to the death of the deceased Vadivelu, and hence she is entitled for acquittal in the hands of this Court.

9. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

10. It is not in controversy that one Vadivelu the husband of the appellant/A-1, died following an incident that had taken place at 11.30 P.M. on 6.6.2004. Following the registration of the case by P.W. 23, the Sub Inspector of Police, u/s 174 of Cr.P.C., it was pending investigation. Subsequently the same was converted to Section 302 IPC on the confessional statement made by the appellant and also the deceased accused Raja. In the instant case, the prosecution had no direct evidence to offer. But, the prosecution, in the considered opinion of the Court, had placed necessary circumstances and proved them also. To start with, the prosecution rested its case on the conspiracy hatched up between the appellant/A-1 and also her paramour the deceased accused Raja. It is not in controversy that the appellant before this Court was ranked as A-1 before the trial Court, and she was the wife of the deceased Vadivelu. They were living in the residence during the relevant time, and she was also staying with him on that night. On the night of 6.6.2004 i.e., at about 11.30 P.M., Vadivelu died. Under the circumstances, one would naturally expect reasonable explanation from the appellant, who was the wife of Vadivelu and was staying with him, how the death was caused. Immediately, after the causing of the death, as per the evidence available, at the place of occurrence both the appellant and also the deceased accused Raja were very well available. It is also admitted by the appellant in the grounds made in the appeal and also seen from the submission made by the learned Counsel that both the deceased accused Raja and the appellant took Vadivelu to the government Hospital and brought him back as he was declared dead. Had the death ensued in the natural manner, there was no need for taking him to the hospital. It is pertinent to point out that the medical opinion canvassed would clearly indicate that the ligature mark was found horizontally around the neck except for 3 cm, and also the death has been caused due to asphyxia by strangulation. In such circumstances, the only person who could give explanation

how the death was caused and how the ligature mark was actually found on the dead body of Vadivelu was the appellant before the Court; but, she had no explanation to offer. It is not the case of the appellant that he committed suicide, and even if to be so, she should have brought to the notice of the police or family members immediately, but that was not done so.

11. Two circumstances pointing to the guilt of the appellant/accused strongly, are the availability of the appellant along with the deceased accused Raja in the house where the death has occurred, and the non-explanation how the ligature mark was actually found on the neck of the deceased. While the medical opinion was to the effect that it was due to asphyxia by strangulation, it is for the appellant to explain how it happened. Added circumstances are that on the day i.e., 16.6.2004, both the appellant/A-1 and also the deceased accused Raja appeared before the police officer and gave confessional statements. At this juncture, the learned Counsel made a comment that the confessional statement could not have been given at all. This contention cannot be accepted in view of the evidence given by P.W. 19. At the time of investigation, it was the appellant/A-1 and also the other deceased accused Raja appeared before the Police Officer and gave the confessional statements, pursuant to which they produced the nylon rope with which, according to the Medical Person, death would have been caused. The recovery of the nylon rope at the instance of the appellant/A-1 pursuant to the confessional statement, would also indicate the nexus of the crime with the appellant.

12. The contention put forth by the learned Counsel for the appellant is that immediately it was the appellant/A-1 along with the deceased accused Raja took Vadivelu to the Government Hospital in order to save him, and hence she could not have committed the crime at all. In the considered opinion of the Court, after the death was caused, it was only a drama enacted by the appellant along with the said Raja. It is settled principles of law that a conspiracy in a given case can be proved by direct evidence, or it could be inferred from the proved circumstances. It is true that no one witness has come forward to speak that the appellant had illicit intimacy with the said Raja. But, on the date of occurrence, both were available in the house along with the deceased, and the deceased was actually strangled, and death has been caused. Hence, without the assistance or connivance of the wife, the appellant herein, and that too pursuant to the conspiracy hatched up between both of them, such an occurrence could not have taken place at all. It is quite inferable from the proved circumstances that there could have been a conspiracy between the appellant and the said Raja prior to the occurrence in order to finish her husband Vadivelu off, and accordingly it was done.

13. The other contention put forth by the learned Counsel for the appellant that the act of causing the death was actually done by the deceased accused Raja, and it was not done by the appellant cannot be countenanced even for a moment. As could be seen from the evidence, the appellant was available in the house, and pursuant to

the conspiracy, it has been done. It can be well stated that she has shared the common intention along with the deceased accused Raja. Hence the trial Court was perfectly correct in finding the appellant/A-1 guilty. The contentions put forth by the learned Counsel for the appellant do not carry any merit whatsoever. They are liable to be rejected and accordingly rejected. The judgment of the trial Court does not require disturbance both factually and legally, and it is affirmed.

14. In the result, this criminal appeal fails and the same is dismissed.