

PETITIONER:
MOHD.ZAHID

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT: 20/07/1999

BENCH:
N.Santosh Hegde, G.B.Pattanaik

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

The appellant in the above appeal was charged with an offence punishable under Section 302 I.P.C. before the Vith Additional Sessions Judge, Madras in S.C. No. 83/86 who found him guilty of the said offence and sentenced him to undergo imprisonment for life. His appeal before the Division Bench of the Madras High Court in Criminal Appeal No. 1054 of 1986 came to be dismissed and he is now in appeal before us by special leave. The prosecution case stated briefly against the appellant is that he was married to one Jabeena on 29th January, 1984 and after the marriage for some time they resided in an independent house. In the year 1985, Jabeena gave birth to a male child in her parents house and thereafter the appellant came to live in the house of his father -in- law Mohd. Ahamed (PW-1) in the house bearing Door No.22, 11th Avenue, Ashok Nagar, Madras. The said house contained one bed room in the ground floor which was occupied by PW-1's elder daughter and her husband. Out of the four bed rooms on the first floor, one bed room was occupied by PW-1 and his wife, the second bed room next to that was occupied by the appellant and Jabeena with their child, the third bed room was occupied by two unmarried sons of PW-1 and the fourth bed room was lying vacant.

On 27.12.1985 at about 6.00 a.m. the wife of PW 1, by name Maliga Ahamed, (PW-3) heard the continuous cries of Jabeena's child, hence, she came to the room of the appellant and knocked on the door of the room. It is alleged that the appellant got up and opened the door and on being asked by PW-3, he gave the child to her and closed the door of his room. A short while after, it is stated that the appellant shouted for PW-3 who went to the room of the appellant, when the appellant pointed out to PW-3 the bathroom where Jabeena was found lying with the upper part of her body having become black on account of burning. The appellant is supposed to have told her that Jabeena suffered the burns while heating the water on the stove. The further case of the prosecution is that on hearing the cries of PW 3, PW 1 came to the said room and he also found Jabeena lying on the floor and when he tried to find her pulse, he found her to be dead. Immediately, thereafter the family tried to call a Doctor by name Dr.Aziz Rehman over the phone but he was not available. It is further alleged by the prosecution that on the persuasion of the appellant, Jabeena was given a bath by her mother PW 3 and her eldest sister,

Abeeda Altaf (PW-4) during which time the appellant was found cleaning the bed and changing the bed-sheet. It is contended by the prosecution, thereafter, PW 1 along with his friend Syed Asim went to Kumaran Nagar, Police Station and gave a report which is marked as Ex. P.1. On the basis of the said report the Officer In-charge of the said Police Station who has been examined as PW 10 registered a Crime No. 981/85 under Section 174 of the Cr. P.C. PW-10 then sent the necessary report to the concerned authorities. On coming to know of the incident, the Inspector of Police PW 11 took up the investigation and reached the scene of occurrence about 9.50 a.m. and prepared an observation Magazar and scene sketch as per Ex.P-18 and 19. PW 11 thereafter held the inquest of the dead body of Jabeena (Ext.P-20) and seized MO's 1 to 4 and 7 to 10. It is the case of the prosecution that on a request made by PW 1, the father of Jabeena, who believed that Jabeena had died due to an accident no post-mortem was conducted and hence PW-11 released the body of Jabeen to PW-.1. On that very day Jabeena's body was buried in the Ammeeerunnissa Begum Muslim Burial ground. The prosecution further states that as per the religious custom, the third day rites of the deceased were conducted. After these rituals, it is alleged that the appellant left the house of PW-1 and went away to his parental house taking all his belongings with him. The prosecution further alleges that the behaviour of the appellant during the third day rites was very peculiar and was not consistent with that of a caring husband. It was also stated that the relatives who attended the last rites as well as the third day ceremony were not convinced that Jabeena had died due to an accident. Through the evidence of PWs.1 to 7 prosecution then alleges that the appellant had earlier demanded money for the purchase of a scooter which was not given by PW-1, and that his relationship with Jabeena was not very cordial because of his perverted sexual habits and also that the appellant was angry the day before the death due to the fact that he was not told about the visit of the other family members to Spencer & Company for the purchase of a washing machine. In view of this background, PW-1 and his family members doubted the cause of the death of Jabeena. Therefore, on 3.1.1986 nearly 7 days after the death of Jabeena, PW-1 approached the Assistant Commissioner of Police (PW-12) around 7 p.m and gave another report which is marked as Ex. P.2. Based on the said report the Assistant Commissioner of Police (ACP) PW-12 requisitioned the file pertaining to Cr.No.989/85 and changed the cause of death as "suspicious death" and sent express reports in the form of Ex. P-23 to the Court and the authorities concerned. PW-12 thereafter requisitioned as per Ex. P-14 the services of Madras City Additional District Magistrate for exhumation of the dead body of Jabeena and for holding a further inquest. PW-12 also requisitioned the services of Medical Officers at the time of exhuming the body and also for conducting the post-mortem examination. On 4.1.86 the concerned Tehsildar was informed of the fact that the post-mortem would be conducted at the burial ground itself. Thereafter, in the presence of witnesses and Panchayatdars the body of Jabeena was exhumed between 4.15 and 5.45 P.M. and the inquest was conducted by the Tehsildar PW-9. The post-mortem itself was conducted by a Medico Legal Expert (PW.8) with the help of one Dr.Balakrishna Rao (not examined). PW 8 was then the Additional Professor of Forensic Medicine, Madras Medical College and the said Dr. Balakrishna Rao was an Assistant Professor in the same college. The post-mortem report (Ex.

P.12) along with the inquest report was dispatched by PW-11 to the concerned authorities which ultimately reached the Commissioner of Police on 26.2.1986. Based on the post-mortem and inquest reports, the Commissioner of Police altered the Section of the offence in the concerned record to Section 302 I.P.C. Based on the investigation conducted thereafter, the prosecution charged the appellant of having committed the murder of Jabeena. Before the Trial Court the prosecution examined 12 witnesses and produced 25 exhibits including Ext.P.12, the post-mortem report. Both the Trial Court as well as the High Court accepted the case of the prosecution and found the appellant guilty of the offence charged against him. The High Court while dismissing the appeal of the appellant and affirming the judgment of the Trial Court has accepted as many as 14 circumstances pointed out by the prosecution against the accused which are as follows : "(1) Motive evidence plus the temperament/conduct of the appellant at various stages. (1a) Appellant and the deceased were seen last together inside the bed room, the bolt of which room from inside, was opened by the appellant to help PW 3 to take away his crying son plus facial expression of the appellant anguished and terrifying at that juncture; (2) Appellant having shouted for help calling his mother-in-law, a little later after she left, with her grand-son. The conduct of the appellant pushing the unbolted bath room door and pointing out the fallen down deceased inside the bath room with her hands on her back and burn injuries on her fore-head; cheeks, ears, neck and chest together with burned cloth sticking on to her right thigh and left knee; (3) The availability of M.O.5 stove and M.O. 6 stand with a brass vessel and bucket inside the bath room of the appellant, though these articles would normally be found in the kitchen; (4) The reply of the appellant, when PW.3 questioned him as to what had happened, that the deceased had lifted boiled water and poured in into the bucket, before filling more water into the vessel, to boil it over again, in which process, accidentally her saree caught fire; (5) P.W.1 having found the body of his daughter chill without possibility of feeling the pulse, together with injuries already noticed, and the position in which the body was lying. Chillness of the body was sufficient proof, that death must have occurred quite some time ago and not at or about the time when PW. 3 went out, with the infant; (6) The conduct of the appellant in having informed PW 4 when questioned, that the deceased had slipped and fell down resulting in her saree getting engulfed in flames. This version is contrary to what the appellant had told to his mother-in-law; (7) The conduct of the appellant in insisting that Jabeena should be given a bath, since she was not clean and it was a Friday and successfully persuading both the witnesses to accede to this unusual request; The conduct of the appellant in refusing to help PWs. 3 and 4 to clean up his wife, stating that the link between him and his wife had got snapped. (8) The activity of the appellant in cleaning the bed room by removing old sheets and replacing them with fresh sheets within the short-while when the body of his wife was taken inside the bath room, in pursuance of his request. The subsequent conduct of the appellant in cleaning the bath room and coming out fresh after bath, soon after his wife was laid on the cleaned bed; (9) The information furnished by PWs 3 and 4 to PW. 1 when the latter scolded them for having bathed the body when it was a police case, that they indulged in such activity on the cringing request of the appellant; (10) Seizure of M.Os. 1 to 10 from the bath room and the

dead body; (11) The conduct of the appellant creating an impression that the death of his wife was accidental which was implicitly believed, leading to a request not to send the body for post-mortem; (12) Conduct of the appellant on the 3rd day ceremony, his happy movements and care free eating, smoking and singing habits noticed by P.W.5. The further conduct of the appellant duping PW 5 as though he was looking for the Quran inside the Godrej bureau, when the Quran was easily available at its usual place and needed no search. Appellant leaving the house of his father-in-law with his clothes soon after the 3rd day; (13) The interest exhibited by the appellant in a film exhibited in the Television relating to an Army Officer getting himself equipped with information to murder his wayward wife by compressing her neck without the possibility of her raising her voice to attract attention. Appellant having keenly visited a picture-house to see the same film, when it was screened. The connection between the manner of murder in the film and the death of deceased Jabeena; and (14) Medical evidence indicating homicide and excluding possible suicide;"

A careful perusal of these circumstances would show that circumstances 1 to 13 either taken together or independently would not assist the case of the prosecution to prove conclusively that the death of Jabeena is homicidal and is not either suicidal or accidental. As observed by the High Court itself the sheet anchor of the prosecution case is the medical evidence which is noticed as the 14th circumstance by the High Court. If the medical evidence is accepted, as has been done by the courts below, then reasons 1 to 13 would provide materials to establish that it is the appellant and the appellant alone who could have caused the death of Jabeena. On behalf of the appellant, it is strongly contended by Mr. U.R. Lalit, learned senior counsel, that the prosecution has not been able to establish that Jabeena's death was homicidal. It is contended, at any rate the evidence of PW-8 creates a reasonable doubt as to the real cause of death of Jabeena. It was further contended that from the material available at the time of the post-mortem, it would not have been possible for a doctor to establish the real cause of death in view of the high stage of decomposition of the body. On behalf of the State, Mr. R. Mohan, learned senior counsel, supported the judgments of the courts below and contended that there was no reason whatsoever why the evidence of PW- 8 should not be accepted. Since the entire prosecution case rests on the evidence of PW-8, we will examine the said evidence in detail. During the course of the post mortem examination, PW- 8 noticed high decomposition of the body. She noted the following injuries on the dead body :

1. Singeing of scalp hair over middle of frontal and parietal regions 8 cm x 6 cm.

2. Reddish black discolouration of skin over face, front of chest, left breast, right shoulder, right side of abdomen front of upper and middle third of left leg, front of left leg, front of left thigh, inner aspect of left thigh and upper, middle and lower part of back. 3. Deep splitting of the skin over lower part of right breast and upper third of front of right thigh exposing the underlying fatty tissue.

4. Blackening of skin over front and both sides of neck, the skin on the back of the neck did not show any discolouration. The skin on front of neck showed a horizontal and uniformly hardened and thickened area. 1 Å« cm. In width, 0.5 cm in thickness and 0,5 cm in length, situated 5 cms. below the right ear lobe on right side of front of neck, 6 cm, below the left ear lobe on left side of front of neck. On dissection of the tissue of neck, a contusion reddish black in colour 4 cm x 3 cm was seen on right side over the right side of hyoid bone and a contusion 3 cm x 2 cm on left side near the left lobe of thyroid.

5. Dark reddish black contusion 14 cm x 12 cm x 1 cm was seen on front of right side of chest. 6. There were no burns on left shoulder below the neck and back of neck, upper part of right breast middle of chest between the breasts, left side of abdomen, genitals, outer aspect of chest and abdomen on both sides, both upper and lower limbs fully, middle and lower part of right thigh, both ankles and feet, buttocks and back of both lower limbs fully."

On an internal examination of the body, PW-8 noticed that the lungs were decomposing. Mucosa reddish black in colour was found in the trachea. Very teeth. few black soot particles were seen inside the Hyoid bone was intact. Stomach was empty. Mucosa in the stomach did not show any discolouration.

Liver, spleen and kidney were decomposing. Bladder and Uterus were empty. Brain was found liquefied."

On the basis of the above observations, PW-8 recorded her opinion of Jabeena's death as follows :- "Died of asphyxia and cerebral anoxia due to cumulative effects of compression of neck and burns."

In her oral evidence, she opined that injury No.4 noticed by her could be caused by compression of neck with minimal pressure and the said injury, according to her, was ante-mortem in nature. She opined that the hyoid bone was not fractured because the pressure on the neck was minimal. She further opined that injury Nos.1 to 3 and the changes found in the trachea along with the presence of soot particles inside the trachea could have been due to burns and that these burns would have been ante-mortem. She was very specific that neither the injury to the neck nor the burn injuries could have been accidental or suicidal. Thus, it is seen that as per the evidence of PW-8, there are two causes of death, namely, asphyxia and cerebral anoxia which cumulatively caused the death and this was due to compression of neck and burns. During her cross-examination the defence has suggested to her, that the contusion noticed by her as injury No.4, was not caused by external pressure but due to swellings that were caused during the process of decomposition of the body. Hence, she could have wrongly concluded that the death was partly due to asphyxia. To establish that there was a reasonable possibility of PW-8 mistaking the swelling caused by decomposition as contusions, the defence confronted her with certain well-recognised text-books on the subject. Firstly, PW-8 was confronted with the statement appearing in the text "Lyon's Medical Jurisprudence" wherein, at pp. 149 and 150

(1953 Edn.), the following statement was found : "Other effects of pressure of gas are : "Distension of the tissues of the neck resulting in accentuation of the natural groove and frequently giving rise to appearances suggestive of strangulation." PW-8 accepted the fact that "Lyon's Medical Jurisprudence" was one of the authoritative books on the subject. But, she still disagreed with the statement extracted from the said book without assigning any reasons. However, she did not support her opinion with any other acceptable material. This opinion of PW-8 has to be scrutinised in the following background : Firstly, the fact that she had not seen any external injury corresponding to the internal contusion which, according to her, was the basis of her opinion that asphyxia by strangulation was caused. Secondly, in view of the specific statement made by her in the course of her evidence that she had not seen any ligature marks. Thirdly, that the hyoid bone which ordinarily would be damaged if external pressure is applied, was found to be intact. During further cross-examination, PW-8 recognised Keith Simpson as a world authority on medical jurisprudence. But she did not agree with the said Keith Simpson's opinion that Parikh's book is a comprehensive and outstanding book on reference for court work. This reference to Keith Simpson's opinion in Dr. Parikh's book was put to PW-8, to suggest to her that if the hypostasis extends to the head, it may be mistaken as a violence to the neck or smotherings as found at page 159 of Dr. Parikh's text-book (4th Edn. 1995). She disagreed with this statement as found in Parikh's book, solely based on her personal experience and not supported by any other authority. While so disagreeing with Parikh's book, she insisted on stating that the horizontal and uniformly hardened and thickened area mentioned by her as injury No.4 must be due to ligature, even though according to her post mortem report and evidence in the court, she had not seen any ligature marks on the body of Jabeena. The defence has further confronted PW-8 with the statement found in the book "The Essentials of Forensic Medicine" by Dr. K.S. Narayana Reddy to establish the fact, that on decomposition of a body, the gas collects in the subcutaneous tissue and becomes emphysematous. This would then create a false impression of ante mortem obesity (stout). PW-8 disagreed with this opinion also, without supporting her opinion on the basis of any other authority. From the statements found in various text-books referred to above, notwithstanding the disagreement of PW-8, we will have to conclude that there is a possibility of the existence of swellings occurring in a decomposing body, similar to the one noticed by PW-8 which give rise to appearances suggestive of strangulation. There is a reasonable possibility that the contusions noticed by PW-8 are those swellings which could have been caused due to decomposition of the body of Jabeena. Therefore, these suggestions of the defence made to PW-8 cannot be lightly brushed aside. More so, in the background of the fact that PW-8 had conducted the post mortem on Jabeena's body nearly 8 days after it was buried, and admittedly even according to PW-8, the body of Jabeena had decomposed considerably at the time of the post mortem examination. This is coupled with the fact that she has admitted in her evidence that she has no other authoritative text to contradict or support her, as against the statements found in the text books like the "Lyon's Medical Jurisprudence", Parikh's text book on Medical Jurisprudence, The Essentials of Forensic Medicines by Dr. K S Narayana Reddy. The second cumulative cause of death as per the opinion of PW-8 is cerebral anoxia caused

due to burns. It is true that PW-8 noticed certain burn marks on the face and chest of Jabeena. It is seen from the text books and from the evidence of PW-8 that anoxia of the brain is caused due to lack of supply of oxygen to the brain which could be due to burning as found in the body of Jabeena. PW-8 in her statement before the court stated thus : "Cerebral anoxia means the stoppage of blood supply to the brain. In the event of cerebral anoxia in the post mortem examination except the pale appearance of the brain, there will not be any other change in the brain. As the brain had been liquefied in this case, it cannot be stated whether brain becomes pale or not. There was no other sign by which I could say that there was cerebral anoxia. Cerebral anoxia in my opinion or conclusion based on my observation and findings in the post mortem examination. It is not correct to say that no opinion of cerebral anoxia could be given or arrived at in the case of liquification of the brain." A cautious reading of this part of PW-8's evidence shows in one part PW-8 admits that the one and only method by which a medical examiner can conclude that cause of death was due to cerebral anoxia is by noticing pale appearance of the brain. She also specifically admits that there will not be any other change in the brain in the case of cerebral anoxia and since the brain had become liquefied, it cannot be stated if the brain had become pale or not. She is also specific in her statement that there was no other sign by which she could say that was cerebral anoxia. Stopping for a while at this stage and examining PW-8's evidence, one finds that at the time of the post mortem examination, Jabeena's brain had liquefied and there was no way by which PW-8 could have noticed the paleness in the brain. However, in the latter part of her evidence, she deviates from her earlier opinion and states that it is not correct to say that no opinion of cerebral anoxia could be given or arrived at in the case of liquification of the brain. These two statements are diametrically opposed to each other and we find it rather difficult to accept this part of her evidence which is so self-contradictory. In our view, the opinion of PW-8 that the cause of death as recorded by her is due to the cumulative effect of asphyxia and cerebral anoxia, is rather difficult to accept. We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has conducted the post mortem, as compared to the statements found in the text books, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. This is one such case where we find that there is a reasonable doubt in regard to the cause of death of Jabeena and we find it not safe to rely upon the evidence of PW-8, solely for the purpose of coming to the conclusion that Jabeena's death is proved by the prosecution to be homicidal. We have examined the evidence of PWs.1 to 7 who speak of the factum of the relationship of the appellant with Jabeena and various possible motives the appellant could have had for causing the death of Jabeena. First of all, we should notice the fact that on the date of the death of Jabeena, none of these witnesses entertained any doubt as to the complicity of the appellant in the death of Jabeena. They proceeded on the basis that Jabeena died an accidental death and even persuaded the investigating authorities to release the body without a proper post mortem. Therefore, the court will have to be very cautious while appreciating this evidence. Assuming that the evidence of PWs.1 to 7 can be accepted by the courts, it

would only conclude that the appellant had a motive to kill Jabeena, but then it could also give a reason for PWs.1 to 7 to depose falsely against the appellant, in view of the tragic death of a loved one. Motive being a double-edged weapon, could cut both ways - helping or harming both the prosecution and the defence. Hence, we are of the considered view that if we are unable to place reliance on the evidence of PW-8, then the evidence of PWs.1 to 7 will not be sufficient to convict the appellant of the prosecution charge. Of course, the prosecution has established that the appellant was the only person in the company of Jabeena and her child at the relevant time on the fateful day. But this again stops the prosecution case in the realm of suspicion, which by itself cannot be substituted for hard evidence. Aware as we are of the fact, a budding life came to an unfortunate premature end, our jurisprudence will not permit us to base a conviction on the basis of the evidence placed by the prosecution in this case and the benefit of a reasonable doubt must be given to the appellant. For the reasons stated above, this appeal succeeds and is hereby allowed, setting aside the conviction and the sentence. The appellant is on bail. His bail-bonds shall stand cancelled.