

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
P. MUNIAPPAN ETC.

DATE OF JUDGMENT: 02/12/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

THE 2ND DAY OF DECEMBER, 1997

Present:

Hon'ble Mr. Justice M.M. Punchhi
Hon'ble Mr. Justice M. Srinivasan

T.S. Arunchalam, Sr. Adv., V.G. Pragasam, S. Balakrishnan,
(Ms. Revathy Raghavan) Adv. for R.N. Keshwani, A.
Mariputham, Adv. for M/s. Arputham Aruna & Co. K.N. Basha,
P.N. Ramalingam, V. Balaji and A.T.M. Sampath, K.N. Gopal
Singh, Advs. with him for the appearing Parties.

J U D G M E N T

The following Judgment of the Court was delivered:
M. SRINIVASAN, J.

The appeal is by the State Government against the judgment of the High Court of Madras setting aside that of the Additional principal Sessions Judge, Coimbatore and acquitting the respondent of the charges under section 302 and 201 IPC. The Special Leave petition was filed earlier by the brother of the deceased Nagammal against the same judgment of the High Court. At the granting permission to petitioner to file the S.L.P., notice was ordered by this Court in the S.I.P. and later directed to be tagged on to the above appeal.

2. The respondent was working as Assistant Professor of Mathematics in Udumalpet College. He married Nagammal on 2.3.76. After marriage, he got transferred to a college in Tiruppur. Nagammal became an Assistant Professor in Vellalar Collage, Erode.

Though the respondent was highly educated, he was insisting on her resigning her job and living with him as house wife. Besides, he along with his parents was making repeated demands for dowry in the shape of household articles. As regards their marriage life, the High Court has observed thus:

It is true tat the family life of Nagammal proved to be miserable . From the beginning there was misunderstanding between the couple and only for short intermittent periods they had lived together. Besides the jewels and cash

received by him at the time of marriage, the appellant had been insisting that his wife should bring household articles necessary to set up a new family establishment at Tirupur. While the parents of the appellant were adamant that her daughter in law should resign her job, Nagammal very much liked to be a working woman. It is the appellant who initiated divorce proceedings against the deceased. A reading of Ex. P-2 the counter filed by Nagammal would go to show that even though she was not prepared to quit the job, she was equally anxious that she should live with her husband happily. Her statement in the counter that she had not done any wrong to her husband and that she begs him to forget and forgive if he had entered into or found any mistake committed by her reveals her state of mind."

3. In the petition for divorce referred to by the High Court in the above passage, the respondent had stated that his wife left his house on 8.7.76 with her father and alleged that on 14.8.76, her father and brothers came to his house along with her and by using force and violence took away with them jewels worth about 35 1/2 sovereigns after attacking him and his mother. He introduced an innuendo in Para 4 of his petition as follows:

" The marriage for her was obviously intended to enable the respondent to go about with greater freedom as a married woman." That discloses the 'cynic' in him.

4. That petition was filed on 24.11.1978. His wife Nagammal filed her counter on 12.3.79 expressing her anxiety to live with him. The matter was being adjourned number of times on the ground that both counsel were not ready. On 21.6.82, the court after noticing that both sides were not ready adjourned it finally to 8.7.82. On the latter date it was represented to the Court that the respondent therein had committed suicide. However, the petition was dismissed for default as the petitioner therein was absent. It is necessary to note that though the respondent claimed to have taken her back and started living with her from 12.9.81, he did not withdraw the petition. According to PW7, he refused to withdraw the petition. This shows that the respondent had a motive for not withdrawing the petition.

5. It is in evidence that though the respondent and his wife resumed their family life in September 1981, they got separated again in December 1981 and joined Sometime in April. On 27.6.1982, they came to live in the house in which Nagammal was living till then with her friend and colleague, PW 6 Vasanthamani in order to enable the couple to live together, PW 6 shifted to another house nearby. Within five days thereafter Nagammal's life not with an unnatural end.

6. On 2.7.1982, Nagammal's body was found to be hanging from the roof of her kitchen. The High Court has given a clear picture of what happened from 1.7.82 till the conclusion of the post mortem in the following words: .1m16.

"On 1.7.1982 Thursday Nagammal came to the colleague wearing a new yellow sari and jacket. PW 2 Ponnathal was a co-demonstrator with Nagammal in Tirupur Women's College. She and PW6 Vasanthamani asked her why she was wearing new sari on that day while it is customary to wear new clothes only on Fridays. Nagammal told her friend that her husband had presented the sari and jacket commemorating her joining Vellalar College on 1.7.19976. Now he had changed very much and even blessed her for happy life. she was wearing a new sari on that day as per the desire of her husband. Nagammal was very happy and in the evening she returned home from the college with PW-6 Vasanthamani did not notice any injury on her face.

At about 6.00 PM on 1.7.1982, PW6 Vasanthamani left her house on account of some Personal work and returned at about 8.00 PM. She found that doors and windows of the portion where nagammal was residing were closed from inside. There was no light. She did not call Nagammal because after a long time the appellant had come to live with his wife on that day.

PW 11 Kandasamy is the next door neighbour of Nagammal. On 1.7.1982, after attending a marriage he and his wife Renuka came back to their house at about to .30 PM or 11.00 PM. At that time nobody was sleeping on the pial of Nagammal's house. PW 10 Tirupathi is also a resident of Ramasamy Mudaliar compound. On that night he went to a late show movie and returned to the house. Since the door of the compound wall was locked he rang p the call bell and the appellant opened the door. When he wen to his portion this witness found that the appellant took his bed on the pial of the house where he was residing with Nagammal.

On the morning of 2.7.1982 all the residents of Ramasamy Mudaliar Compound purchased their morning mild as usual. At about 6.30 AM the wife of PW 11 Kandasamy informed her husband that Nagammal did not come out of her house to purchase milk even though milkman flew his horn. when PW 11 Kandasamy came out of the house he found the appellant was lying in the pial of his house. When he asked him why he was sleeping outside, the appellant

told hi that because his wife was having her menstrual period he had taken his bed outside. He added that even though he had knocked the door Nagammal did not turn up. PW 11 Kandaswamy told the appellant that he could have slept in a room inside the house. The appellant replied that Nagammal had asked him to sleep replied that nagammal had asked him to sleep outside. PW 6 Vasanthamani also noticed that nagammal did not turn up to get the mild till 6.00 AM. When she wanted to enquire she found the appellant was standing outside the door of his house. One door alone was opened. PW 6 Vasanthamani called Nagammal through that window but there was no reply. There after the residents of that compound gathered there and one Renganathan climbed the roof, removed the tiles and found that Nagammal was hanging.

PW 8 Chanasekhar an is an Assistant Professor of Chikkanna College firupur where the appellant is working. On 2.7.1982 at about 7.00 AM the appellant came there weeping. He told him that his wife had died and asked him to inform this to their colleagues. PW 8 Chanasekharan went to the house or PW 5 Ramanujulu another professor of the same College and passed on the message.

On 2.7.1982 at 10.00 AM the appellant came to Tirupur South Police Station and lodged Ex. p-44 complaint about the death of his wife. PW 21 Sub-Inspector received and recorded it as Crime No. 374 of 1982 of his station under Section 174 of the Criminal procedure Code. He prepared Ex. p-45 the printed copy of the FIR. Then he reached PW 13 Rajalakshmi, Principal of the woman's College where Nagammal was working were present. PW 3 Subramaniam the Principal of the Chikkana College was also there. The front door of the house was found bolted from inside. PW 21 Sub Inspector kicked the door and pushed it with his Inspector kicked the door and pushed it with his hands. M.D.3 the latch of the bolt from inside gave way and fell down. PW 2 Ponnathal also went inside along with PW 21 Sub Inspector. She found Nagammal hanging in a rope. PW 21 Sub Inspector prepared Ex. P. 47 observation mahazar and EX.P. 89 rough sketch of the place. He conducted request to 1.30 PM. EX.

p.46 is the inquest report. He as examined the appellant and others at the time of inquest. He also recovered M.D.4 Rope, M.D. 2 Ball Point Pen and M.D.3 Latch of the Lock and Ex.P. 13 a suicide note dated 1.7.1982 purported to have been written by Nagammal under Nagammal from that place under Ex.p.90 mahazar. Ex. p 13 was shown to PW 3 principal and PW 13 Principal. He also seized the jewels from the body of Nagammal under Ex. P.91 mahazar. On the same day he had examined PW 6, PW 10 and PW 11.

Thereafter PW 21 Sub Inspector sent the body for post mortem through PW 20 Constable with Ex. P.74 requisition and Ex. P.77 Printed form. PW 16 Dr. Vijyalakshmi commenced the post mortem in the government Headquarters hospital, Tirupur at 3.30 PM on 2.7.1982 she found that rigor mortis was present in both lower limbs and passed away in both upper limbs. It was moderately nourished body. She found these ante-mortem injuries on the body.

1) Burnt area of the skin about 1/2 cm. in diameter on the bridge of the nose. Skin charred.

2) burnt area of the skin about 1/2 cm in diameter on the left temporat region and left cheek present. Skin charred.

3) Old scar about 2 cm on the medical aspect of the left ankle.

4) Abrasion j cm x 1/2 cm with scab formation on the left knee.

5) A ligature mark which was superficial about 2 cm in breadth, well defined, was seen above the thyroid cartilage running obliquely upwards interrupted at the back reaching mastoid process behind the ears. knot mark was seen on the right side of the neck. On dissection, the subcutaneous tissue under the ligature mark was pale and glistening. Rigor mortis present in both lower limbs. Rigor mortis passed off in both upper limbs. Eye lids were partially opened on both sides. Tongue protruded between the teeth. Dribbling of Saliva from the right angle of the mouth was present. Jaws were clenched. Teeth were complete. Abdomen distended. There was no fracture of ribs. Heart weight 300 grams Congested Hyoid bone intact. Stomach contained 150 grams of digested food particulars.

Liver 1400 grams congested. Spleen 150 grams congested. Kidneys 150 grams each congested. Intestine distended with gas. Bladder empty, Uterus normal. Weight 70 grams. Ovaries normal scalp - no fracture. Brain weight 1300 grams.- Pale. The viscere was preserved and sent for chemical analysis. No poison was detected in the viscera sent. On reviewing the post mortem findings and Chemical Examiner's report, she gave the opinion that the deceased would appear to have died as asphyxia due to suicidal hanging between 11.30 PM of 1.7.1982 and 3.30 AM of 2.7.1982. Ex. P. 48 is the post mortem certificate issued by her Ex.p.51 is the Chemical examiner's report. After the receipt of the same she has given her final opinion in Ex.P. 75 and 876 (sic) that the deceased has died of hanging. According to her external injury Nos. 1 and 2 in Ex. 48 could have been caused by any hot object like cigarette with flame. There is no resisting injuries around those two injuries."

7. In the first instance, the case was registered under Section 174 Cr. P.C. and investigated. Later on the orders of D.I.G., C.I.D. Madras the CBCID took up the investigation. After examination of witnesses the charges were got altered to Sec. 306 IPC and 327 IPC. On 4.7.83, the respondent was arrested. After examining some more witnesses the charges were altered to Section 302 IPC and 201 IPC. On completion of investigation a chargesheet was filed on 6.1.84. The respondent denied the charge and claimed that she committed suicide. The Court of Sessions found him guilty on both counts and convicted and sentenced him to imprisonment for life under Section 302 IPC and one year rigorous imprisonment and fine of Rs. 100/- under Section 201 IPC. On appeal, the High Court has set aside the judgment and order of the trial and acquitted the respondent.

8. As stated by the High Court, the case depends upon circumstantial evidence only. We have already pointed out that the respondent was never interested in living with his wife. He was not only making demands for various household things but also insisting on resigning her job. There is ample evidence to show that he was treating her cruelly. PW 6, PW 7 and PW 9 have deposed that the respondent was demanding the consent of Nagammal either for divorce or for his second marriage. PW 2 and PW 12 have stated that the beat her in public in front of lip Top Lodge and Jeevabai School one day when she was going to the College. PW 6 and PW 12 have stated that nagammal had told them about his drinking and compelling her to drink against her will. In this regard, we are eschewing from consideration the evidence of PW 1. PW 9 is a friend of the respondent's mother told him that Nagammal should give consent for second marriage of the respondent. Nothing has been placed on record to discredit the aforesaid witnesses. The trial court has accepted their evidence and the High Court has not

disbelieved them.

9. Apart from the oral evidence, there is documentary evidence in the shape of letters written by Nagammal, the genuineness of which cannot be assailed. We are not referring here to the doubtful letters Exs. P 27, P 29, P30, P 31 and p 32 written to PW 7 and Ex.P. 38 written to PW 9 whose genuineness has not been challenged bear ample testimony to the extent to which the respondent was prepared to go to make her life miserable. Ex. P 27 shows that the respondent had taken her signatures on blank papers. It also shows that he viewed her with suspicion when she returned one day late from the college. In spite of the fact that all the jewels and F.D. receipts were entrusted to him in October, 1981, nagammal was sent to her parents' house shortly thereafter. All the above evidence leads to the conclusion that the respondent did not at any time have a genuine desire to live with Nagammal.

10. learned counsel for the respondent has argued before us that the marriage was a happy one and there was no hitch between nagammal and the respondent. According to him her parents wanted to enjoy her earnings and book all steps to keep her away from her husband. The contention is not acceptable. It goes against the teeth of the evidence referred to by the High Court which we have already extracted. We have no doubt that the respondent was responsible for Nagammal's suffering. it is in this background the evidence relating to her death should be appreciated.

11. There is no dispute that the death of Nagammal is unnatural. Admittedly, the respondent was the only other occupant in the house where her death occurred in the night. Admittedly, the respondent had supper with her in the night. According to Ex.p-44, he slept in the outside Verandah as there was no ventilation inside (Vide Ex. P. 44). In Ex. p-66, he has stated that nagammal wanted him to sleep outside as she wanted to wake up at 4.30 AM next morning, clean the house, wash the clothes and go to temple and that he could sleep undisturbed till 7.00 AM. The third version is in the written statement filed by him under Section 313 Cr. P.C.. It is stated thus: "After husband and wife relations I used to come outside and sleep for want of air and my wife used to sleep inside by bolting the door from inside." PW 11 has deposed that the respondent told him to because Nagammal was in her periods she told him to sleep outside. In the oral examination under Section 313 Cr. P.C. a specific question was put to him that he told PW 11 that Nagammal wanted him to sleep outside. The respondent simply denied it. Thus the respondent has given different explanations for his sleeping outside separately within a few days after joining his wife.

12. The respondent has given a reason for Nagammal committing suicide. According to him she was having acute stomach pain during her period and during coitus. This cannot be true on the face of it because of her written statement under Section 313 Cr. P.C. There is no evidence to support his version excepting his own statement. Reliance is placed on Ex. p. 35 issued by one Dr. S. Balakrishnan on 3.6.1988 that she had 'pelvic infection' since the previous day. The doctor has not been examined. The colleagues of Nagammal have not heard of her stomach pain. The post mortem examination of the body of the deceased has not disclosed any infection. According to P-35, the doctor devised her to take rest for three weeks only. there is no evidence to show that she was taking any medicine. In any event, there is absolutely no evidence to show that Nagammal was suffering from such acute pain or far that matter any other ailment

which could goad her to commit suicide.

13. According to the High Court, the mental and physical torture endured by Nagammal in the hands of her husband made her desperate to put an end to her life. The said inference is wholly unreasonable and unwarranted. The High Court has after referring to the circumstances that Nagammal accepted a lower post after resigning a higher post in order to facilitate her living with her husband and that the evidence of PWs 2 and 6 proved that Nagammal was very happy on 1.7.1982 observed: "But we do not know what transpired between the husband and wife after 6.00 PM on that day". The High Court has completely over looked the letters written by Nagammal which prove clearly that Nagammal was not such a weak-minded person to commit suicide on a sudden provocation of which we have no evidence whatever. The evidence makes out clearly that Nagammal had a strong mental frame and was keen on living with her husband. The sequence of events does not lead to any inference that something happened during the night which made her commit suicide immediately.

14. If it is a case of suicide, there is no explanation for burn injuries. The High Court has held that she chose to terminate her life of her own accord perhaps on account of the torture she had undergone in the hands of her cruel husband'. Does the High Court refer here to torture before 27.6.1982. or on 1.7.1982? There is no doubt that the torture or the conduct of the respondent prior to 27.6.1982 could not have persuaded Nagammal to commit suicide. Thus the cause of her death could have sprung up only on 1.7.1982 night. According to the respondent he had coitus with her and she wanted to get up early in the morning, clean the house and go to the temple. Obviously she had no reason to commit suicide. it is in that background, the following circumstances in the case should be considered:

I) The respondent had strong motive to put her out of the way before the petition for divorce fixed for 8.7.2 finally was taken up for hearing. The respondent had developed hatred towards her and drove her out of the house (vide Ex.p-2 Para 5). He refused to withdraw the petition for divorce though she came to live with him. he was repeatedly insisting upon her consent for his second marriage of divorce.

II) He was the only other occupant of the house in which she met with the unnatural end.

III) His Varied explanations for sleeping separately outside the house are totally unbelievable.

IV) The burn injuries on the body of Nagammal which were not in existence on the evening of 1.7.1982. There being no resist injuries the only inference possible in the circumstances is that the respondent caused them before or after her death.

V) The dishevelled hair and the disturbed dress with the jacket and bra being open show that there was a struggle before her death. The witnesses who saw her body have deposed that the saree was just put around the body. Her feet were touching the floor. There is no evidence to show that the cardboard box alleged to have been by the side of the body could have borne her weight.

VI) The conduct of the respondent in rushing to the police station without going inside the house and finding out whether she was dead is also relevant.

VII) The "thali'(mangalsutra) was not on the neck of the deceased but it was with the respondent.

The above circumstances lead to only one conclusion, that is, the respondent is guilty. We have taken care to omit disputed pieces of evidence. Unfortunately, the High

Court has failed to consider the above evidence on record before upsetting the judgment of the trial court and thus its judgment is vitiated.

15. The High Court has observed that when the doctor has expressed two views, the one that is favourable to the accused must be taken into account. As a general proposition, it may be true. But medical evidence cannot be considered in isolation. After all, medical opinion is based on inferences drawn from various facts present. It is not as if homicide is completely ruled out by the doctors. Hence, their evidence must be taken in conjunction with all the circumstantial evidence on record. The entire circumstantial evidence points to homicide only, and the medical evidence is not to the contrary. Thus we have no doubt that the death of Nagammal was homicidal only.

16. The trial court has referred to Ex.P-13, the slip of paper purporting to be a 'suicide note' and held that it was fabricated by the accused. The High court has opined that the read note has been suppressed and another has been substituted in its place after C.B.C.I.D. Police came into the picture. There is no support in the evidence for this opinion is based on the statement of PW 1 that the writing in the note was in red ink and the signature was in blue ink but in Ex.p 13 the writing as well as the signature are in blue ink. PW 1 has stated that the Sub-Inspector of police refused to show the note to him when he asked for it. PW 1 claims to have been told by his father that the writing was in light red colour ink and signature was in blue ink. Hence his evidence is of no use. If the original note was in two different inks, that itself could be a circumstance against the accused as it would show that the writing was by one person and the signature was by another. On the other hand, if the writing and the signature were by the same person but in two different inks it would mean that the writing and signature were at a different times. There was only one ball point pen at the spot. We have referred to the above aspects only to show that a definite conclusion that there was a substitution of the note is not possible. However, we are prepared to omit Ex. P-13 completely from consideration in this case. The other evidence on record is sufficient to prove the guilt of the accused on both counts 17. As we have rested our conclusion on the evidence on record, it is unnecessary to refer to S. 113-A of the Evidence Act or the judgments in Gurbachan Singh Versus Satpal Singh and others, (1990) 1 S.C.C 445 and Lakhjit Singh and Another Versus State of Punjab 1994 Supp. 1 S.C.C. 173 relied on by learned counsel for the appellant. Nor is it necessary to advert to the judgments in Sangarbania Sreenu Versus State of A.P. A.I.R. 1997 S.C. 3233 and State of Maharashtra Versus Ashok chotalal Shukla 1997 S.C.C. (Cr l.) 1186 cited by learned counsel for the respondent.

18. Thus we hold that the judgment and order of the trial court are correct. The appeal is allowed. The judgment of the High Court is set aside. He conviction and sentence imposed by the trial court are restored. The bail stands cancelled and respondent shall be taken into custody for forthwith.