

PETITIONER:
G. SELVARAJ, M. SUSEELA ETC.

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT: 16/09/1997

BENCH:
M. M. PUNCHHI, S. P. KURDUKAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:
M. Suseela etc.
V.
State of Tamil Nadu
Present:

Hon'ble Mr. Justice M.M. Punchhi
Hon'ble Mr. Justice S.P. Kurdukar
Hon'ble Mr. Justice M. Jagannadha Rao

S. Muralidhar, Adv. for the appellants
V.G. Pragasam, Adv. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

M. Suseela
V.
State of Tamil Nadu

WITH
CRIMINAL APPEAL NO 502 OF 1994
J U D G M E N T

S.P. KURDUKAR, J.

For committing the murder of Seethalakshmi, her husband Selvaraj (A-1) and Suseela (A-2) - the wife of elder brother of A-1 were out up for trial for the offences punishable under Section 302/34 and 201 of the Indian Penal Code. The Sessions Court. West Thanjavur at Thanjavur vide its judgment dated March 23, 1987 convicted both the accused under Section 302/34 and 201 IPC and sentenced both of them to suffer life imprisonment and RI for three years respectively. Two separate appeals were filed by A-1 and A-2 in the High Court of Judicature at Madras and on scrutiny of the oral and documentary evidence on record, the High Court by its common judgment dated July 22, 1993 dismissed the same. It is against this judgment of the High Court, A-1 and A-2 by Special Leave have filed two separate Criminal Appeals Nos. 502 of 1994 and 501 of 1994 respectively to this Court. Since both these appeals arise out of a common judgment, they are being disposed of by this judgment.

2. A marriage between A-1 and Seethalakshmi (since deceased) which took place on or about October, 1984 was proved to be unhappy within a short time. The elder brother of A-12, A-2 and her two minor children and Seethalakshmi were staying in one room tenement at village Ariyathidal,

Taluka Kumbakonam in Thanjavur district. A-1 at the relevant time was doing the work of rickshaw puller and was earning his livelihood. It was alleged by the prosecution that within ten days of marriage, A-1 sold away the gold ring presented to him at the time of wedding and soon thereafter, he also disposed of all jewellery items given to Seethalakshmi during her marriage. On query made by Seethalakshmi about her jewellery items, A-1 got annoyed and beat her with the belt. It appears that on a complaint by Seethalakshmi to the Gram Panchayat in respect of ill treatment meted out to her, a meeting was held and a fine of Rs.15/- was imposed on A-1. Seethalakshmi also suspected the conduct of A-1 as it was rumoured that he was having illicit relations with A-2. Being fed up with this atmosphere, Seethalakshmi came to her parents house. Vijayalakshmi (PW 1) and Thyagarajan (PW 3), parents of Seethalakshmi consoled her and sent her back to the house of A-1 with an advice not to get depressed by such incidents and things would be set right in due course. It was further alleged by the prosecution that a week prior to the date of incident, Seethalakshmi along with A-1, his brother Subramaniam and A-2 came to the house of parents of Seethalakshmi to celebrate a local festival called "Thali" (the sacred thread tied on the brides neck at the time of marriage). At that time, A-1 insisted that his mother-in-law should give money on this occasion. Due to financial constraints, Vijayalakshmi (PW 1) could not meet the said demand which according to the prosecution widened the strained relations further between the couple. Seethalakshmi thereafter returned to her matrimonial house but within a week her parents received a message that A-1 was always quarreling with her for not satisfying his demand. Seethalakshmi during her stay at her parents house complained to them that A-1 was ill treating her for money and causing a lot of harassment to her. The quarrels between Seethalakshmi, A-1 and A-2 were known to the persons residing in the adjacent houses. Shanmugham (PW 3) and his wife Pushpavalli (PW 4) were the neighbours and were residing on the backside of the house of A-1.

3. Prosecution then alleged that on 11th April, 1985, at about 11.00 a.m., A-1 and A-2 picked up a quarrel with Seethalakshmi. Shanmugham (PW 3) went and inquired with A-1 and A-2 as to what the matter was and thereafter he left for Kumbakonam. Pushpavalli (PW 4), a house wife also heard the quarrels between Seethalakshmi, A-1 and A-2. At about 12.00 noon, Krishnamurthi (PW 6), a close relative came to meet Seethalakshmi and on inquiry with the accused, he was told that she had gone to Kumbakonam. Soon thereafter, A-1 and A-2 left on a bicycle. Shanmugham (PW 3) at about 1.30 p.m. returned to his house and at that time, A-1 told him that Seethalakshmi committed a suicide and her body was hanging to the ceiling. A-1 requested to help him in lowering down the dead body but he refused to do so. On 11th April, 1985, at about 8.00 p.m., A-1 lodged the FIR stating that Seethalakshmi had committed a suicide. A crime was accordingly registered under Section 174 of the Criminal Procedure Code. On 12th April, 1985 at about 4.00 a.m., the First Information Report was received from Sub Inspector Mr. Rosario (PW 10), who then went to the spot immediately and held the inquest on the dead body. He seized the incriminating articles which were found in the room. The dead body was sent to the Govt. Hospital at Kumbakonam for post-mortem. After completing the investigation, both the accused came to be charge sheeted for the offences punishable under Sections 302/34 and 201 IPC. Both the accused were arrested on 28th April, 1985 at Swami Malai bus

stand.

4. Both the accused denied the allegations levelled against them and according to them, they were not present at the time of alleged incident. According to them, when they returned home late in the afternoon, they saw the dead body of Seethalakshmi hanging and therefore, A-1 went to the police Station and lodged the First Information Report. They have been falsely implicated in the present crime and, therefore, they be acquitted.

5. The prosecution case entirely rested on the circumstantial evidence and in order to prove the same, it examined as many as 15 witnesses of whom Sunder Raj (PW 5) turned hostile. Prosecution also produced and relied upon the post mortem examination report and the piece of cloth and a nylon saree (MOS 1 and 2) which were seized under seizure panchanama from the place of incident.

6. A serious challenge to the finding of the courts below that seethalakshmi died a homicidal death was made before us. According to the learned counsel for the appellants, Seethalakshmi had committed suicide and the medical evidence on record also supports the theory of suicide propounded by the accused. We will deal with this issue little later.

7. Coming to the first circumstance, namely, the marriage between Seethalakshmi and A-1 was a totally unhappy affair is proved by Vijayalakshmi (PW 1), Tyagarajan (PW 2), Shanmugham (PW 3) and Pushpavalli (PW 4). Vijayalakshmi (PW 1) and Thyagarajan (PW 2) are the parents of Seethalakshmi who had stated that within ten days of the marriage. A-1 had started disposing of the ornaments given to Seethalakshmi and on resistance by her, A-1 used to beat her. They further deposed that at the time of "Thali" ceremony, A-1 demanded money but due to financial constraints, they could not meet the said demand. Whenever Seethalakshmi used to come to their house, she used to narrate various painful incidents including beating and use of abusive language by A-1. For no rhyme or reason, A-1 used to pick up quarrels with Seethalakshmi. This evidence of Vijayalakshmi (PW 1) and Thyagarajan (PW 2) was accepted by the courts below and despite strenuous efforts, Mr. Murlidhar, learned counsel was unable to persuade us to hold contract. The evidence of the parents stood corroborated from the testimony of two neighbours, namely, Shanmugham (PW 3) and Pushpavalli (PW 4). They testified that there used to be often quarrels between Seethalakshmi on one hand and A-1 A-2 on the other. After going through the evidence of these witnesses, we have no manner of doubt that there used to be quarrels in the house of A-1 and Seethalakshmi was required to face the ill treatment meted out to her by the appellants.

8. The next circumstance relied upon by the prosecution was that A-1 had every opportunity to commit the crime in question as she was staying in the house of A-1 along with A-2, her husband and two children. On the fateful day of occurrence, viz., 11th of April, 1985, at about 11.00 a.m., Shanmugham (PW 3) and Pushpavalli (PW 4) heard the noise of quarrel from the house of A-1. Shanmugham (PW 3) when went to inquire from the inmates of the house of A-1, he was not given proper reply and it is his positive evidence that at that time, A-1 and A-2 on the one hand and Seethalakshmi on the other were quarreling. He then left for Kumbakonam. Pushpavalli (PW 4) who was in her house came out and saw the quarrels between Seethalakshmi on one hand and A-1 and A-2 on the other. She then returned to her house. At about the same time, Krishnamurthi (PW 6) who happened to be the close relative of Seethalakshmi came to the house of A-1 to

enquire about her and he was told that she had left for Kumbakonam. Sometime thereafter, Pushpavalli (PW 4) saw A-1 and A-2 going on a bicycle. On careful consideration of the evidence of these witnesses, the courts below found the same as trustworthy and accordingly reached a conclusion that on 11th April, 1985 at about noon time, quarrel was going on between Seethalakshmi on one hand and A-1 and A-2 on the other and soon thereafter both the accused left on bicycle. We have perused the evidence of these witnesses and we see no reason to upset the said finding.

9. The next vital circumstance is that Shanmugham (PW 3) and Pushpavalli (PW 4) saw Seethalakshmi alive at about 11.00 or 11.30 a.m. in the company of A-1 and A-2 when they were quarreling. Within two hours when Shanmugham (PW 3) returned from Kumbakonam at about 1.30 p.m., A-1 told him that Seethalakshmi has committed a suicide. It is, therefore, clear that Seethalakshmi died during this period of two hours. Shanmugham (PW 3) then testified that A-1 met him near his house and he requested him to help him in lowering down the dead body but, however, he refused to oblige him.

10. Now what we are required to consider is whether death of Seethalakshmi was homicidal or suicidal? In this behalf, a very crucial circumstance pressed into service and proved by the prosecution was that Seethalakshmi was seen alive in the company of A-1 and A-2 and within two hours, she was found dead. A-1 and A-2 therefore, were expected to give a reasonable explanation as to how Seethalakshmi died. They however pleaded alibi and feigned ignorance as to what happened in the afternoon. The only explanation given by A-1 and A-2 was that when they came home; they saw the dead body of Seethalakshmi hanging to the rafter of the ceiling. A very crucial point that needs to be considered is whether the plea of suicide could fit in the facts and circumstances of this case. the height of the roof and rafter from the floor as 12'. A kerosene tin was seized from the place of occurrence but the height of it could not be more than 2. Having regard to these circumstances, it appears to us an almost a difficult task for Seethalakshmi to tie a nylon saree to the rafter in the ceiling at such a height and then hang herself. In view of these circumstances, we rule out the probability of Seethalakshmi committing a suicide.

11. The next circumstance relied upon by the prosecution was the disappearance of A-1 and A-2 who were arrested on 28th April, 1985 at the bus stand. Although, both the accused had denied that they were not in the town but this denial has no meaning and was rightly rejected by the courts below.

12. The next circumstance relied upon by the prosecution was the medical evidence of Dr. Swaranlata (PW 9) and the post mortem examination report to establish that death of Seethalakshmi was a homicidal. Dr. Swaranlata (PW 9) held the post mortem examination on the dead body of Seethalakshmi and report is Ex.P-4. She testified that on both sides of the front region of the neck, several nail scratch marks were seen. A contusion of about 4' x 3' was seen below the jaw which was on the hyoid bone. The said injury, however, did not extend sideward and backwards. The hyoid bone was fractured. On dissection, the extravasation of the blood was found in many parts of the tissues beneath the skin. The right chamber of the heart was filled with blood whereas the left chamber was empty. The lungs were clotted with blood. The stomach was found empty and the small intestine were filled with gas. The liver and spleen were clotted with blood. The cause of death was that the

deceased was strangled and died due to the resultant suffocation of breath. The nail scratch marks on the neck and the fracture of the hyoid bone were due to strangulation. The doctor then opined that indications for suffocation were seen. There was swelling of the face and the blood vessels on the neck. Frothing blood was seen coming out from mouth and nose. She then opined:

"When a person hangs herself while alive there will marks on the neck region to indicate this. Those marks were not present in this case. The swelling did not extend to the rear of the neck. If it is a death by suffocation, the left chamber of the heart will be empty and the right chamber will be full of blood. If it is death due to suffocation by hanging, all chambers of the heart will be empty. For the above reasons, it cannot be said that this is a case of death by hanging".

Dr. Swaranlata (PW 9) admitted during cross-examination that saliva was not dripping from the mouth. Mr. Murlidhar while disputing the medical evidence drew our attention to a Treatise by Lyons Medical Jurisprudence 10th Edition page 353. He heavily relied upon the passage at page 353 which reads thus:-

"Marks of saliva trickling down from one or other angle of the mouth indicate that the body was hanged during life; their absence does not show that death had taken place before the body was hanged."

We have gone through the evidence of Dr. Swaranlata (PW 9) and the post mortem report (Ex.P-4) and we find that there are certain loopholes but one thing is certain that deceased and nail marks around the neck and in case of suicide; there could not have been any possibility of any such nail marks. We are, therefore, of the considered view that the theory of suicide set up by the appellants was an afterthought. We, therefore, hold that Seethalakshmi died a homicidal death.

13. Now the important question that falls for our determination is as to whether on the basis of the above circumstances and the material on record, could it be said beyond reasonable doubt that both the appellants were responsible for causing the death of Seethalakshmi. As far as the complicity of A-2 is concerned, the only evidence on record is that a quarrel was going on in the house of A-1 between him and A-2 on one hand and Seethalakshmi on the other. Neither Shanmugham (PW 3) nor Pushpavalli (PW 4) had stated that they inquired from A-2 as to what was the matter and why the quarrel was going on. All that their evidence indicated was that they heard the noise of quarrel assuming that A-2 was in the house that by itself would not lead to a conclusion that she had also participated in committing the crime. The only circumstance used by the courts below against A-2 was that A-1 was having illicit relations with A-2 and it was because of this A-2 had participated in the said crime. Except the bare words, in the nature of hearsay evidence of Vijayalakshmi (PW 1), Thyagarajan (PW 2), Shanmugham (PW 3) and Pushpavalli (PW 4), there was no other reliable evidence on record. Even these witnesses stated that they overheard about the illicit relations for which

there might not be any foundation. The evidence of Vijayalakshmi (PW 1), Thyagarajan (PW 2), Shanmugham (PW 3) and Pushpavalli (PW 4) also did not indicate that A-2 had at any time caused ill treatment for money from the parents of Seethalakshmi. In our considered view, the prosecution has failed to prove beyond reasonable doubt that A-2 has shared a common intention to commit the murder of Seethalakshmi and/or cause disappearance of the evidence to screen away the offender. It is in these circumstances, we give the benefit of doubt to A-2 and acquit her of all the charges. On careful consideration of the oral and documentary evidence on record, we are of the considered view that the order on conviction and sentence of G. Selvaraj (A-1) suffers from no infirmity and therefore, calls for no interference.

14. For the foregoing conclusions, we allow Criminal Appeal No. 501 of 1994 filed by M. Suseela (A-2). The orders of conviction and sentence passed against her by both the courts below are quashed and set aside and she is acquitted of all the charges. The bail bonds of M. Suseela (A-2) to stand cancelled. Criminal Appeal No. 502 of 1994 filed by G. Selvaraj (A-1) is dismissed.