

Murugan Vs. the State

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Court : Chennai

Decided On : Aug-10-1990

Reported in : 1991CriLJ1680

Judge : Padmini Jesuddurai and ;S.T. Ramalingam, JJ.

Appeal No. : Criminal Appeal No. 257 of 1985

Appellant : Murugan

Respondent : The State

Advocate for Def. : R. Shanmugha Sundaram, Addl. Public Prosecutor

Advocate for Pet/Ap. : K.A. Panchapagesan, Adv.

Judgement :

1. The accused, who has been convicted by the Sessions Judge, Dharmapuri at Krishnagiri in S.C. No. 129/83 for an offence under section 302, IPC and sentenced to undergo imprisonment for life and convicted for an offence under section 316, IPC and sentenced to undergo imprisonment for a period of two years and the sentences were ordered to run concurrently, has filed this present appeal challenging his conviction and sentence.

2. The gravamen of the charge against the appellant was that on 9-9-1983. at about 11 p.m. he caused the death of his wife Shantha, as well as the five months

old baby in her womb, by hitting Shantha with a Kalikol on her head and also strangulating her neck by means of a rope.

3. The evidence let in by the prosecution is briefly as follows; P.W. 1, the father of the deceased Shantha, belongs to the village Kottavur 10 miles away from Kollapalli the village of the appellant. About 4 years prior to the occurrence, the deceased was given in marriage to the appellant and at the time of the occurrence they had a daughter then aged 3. P.W. 1 at the time of the marriage had given the deceased, gold chain weighing 6 1/2 sovereigns. Though, initially the couple were happy, disputes arose between them since the appellant pledged the above jewel for purchasing cattle and later on redeeming it, along with his father sold the jewel. On the deceased complaining about this to P.W. 1, a panchayat was held in which P.Ws 4 and 5 also participated and it was agreed that the father of the appellant should purchase a land in the name of the deceased in lieu of the jewel. Subsequently, the father of the appellant sold some of his lands to the deceased and had the sale deed registered in her name. Beside this dispute, the deceased suspected the fidelity of the appellant in having undue intimacy with his elder brother's wife and the appellant and the deceased quarrelled over this issue also. The appellant on certain occasions had beaten the deceased and the deceased had gone to her parents' house and was later brought back, being asked to lead a peaceful family life.

4. Though earlier, the father of the appellant and his sons and their families, including the appellant and the deceased, were living together as a joint family, later he partitioned his properties as between the sons and after the partition, the appellant and the deceased took up separate residence in the scene house, while the father of the deceased was living separately in the adjacent house. On the night of 9-9-1983, the appellant and the deceased were alone in the house along with their three year old child. The appellant had returned from the field to his house late at 7-30 p.m. and the deceased had found fault with him and abused him. The appellant had wanted the deceased to serve him food, for which the deceased refused and the appellant on his own took his meals and went to bed. The appellant appears to have been brooding over the quarrel and decided to do away with the deceased. At 11 p.m. he took M.O. 1 which was inside the house

and gave one blow on the head of the deceased, she raised alarm and fell down unconscious, after which the appellant took a rope and strangled her. Hearing the alarm of the deceased, P.W. 2 a neighbour came to the scene house and questioned the appellant, for which the appellant stated that the deceased went on abusing him and he gave one below. P.W. 2 went away and informed this to her husband P.W. 3. They however decided not to interfere. At 5 a.m. when the news of the death of the deceased, became public everyone was informed by the appellant and his family members, that the deceased had committed suicide by hanging herself. News about the death of the deceased was sent to P.W. 1 who received it about 12 noon and he came to the scene house along with his wife Mangammal. P.W. 1 saw the dead body and found both the cheeks swollen and the neck also swollen. He became suspicious and at 5 p.m. he went to police station at Kallavi, which was 5 k.m. from the scene and gave a written complaint Ex.P. 1 to P.W. 9, the Sub-Inspector of Police, Kallavi. P.W. 9 registered Ex.P. 1 as Cr. No. 87/83 of his station under section 174, Cr.P.C. and took up investigation. He visited the scene of occurrence and between 6 p.m. and 9 p.m. held inquest over the dead body, during which he examined P.W. 1, his wife Mangammal, the appellant, his father and one Muthammal. During inquest, he seized M.O. 2 rope under mahazar Ex.P. 10. On the basis of the statements of witnesses examined during inquest, the panchayators gave a verdict that the deceased would appear to have committed suicide by hanging herself with the rope. P.W. 9 sent the dead body through P.W. 10 the police constable to P.W. 6 the Medical Officer, along with the requisition Ex.P. 2 for conducting post-mortem. On 11-9-1983 at 11-30 a.m. P.W. 6 conducted the post-mortem on the dead body of the deceased and found on her the following injuries.

'External Injuries :

1. A Blackish discolouration and bulging of scalp over the right temporal region. Cripitanium present.
2. Blisters around the neck and front of the chest and skin peeled off. Hands empty, Hyoid bone intact.
3. Cord marks could not be traced, cut due to putrification and decomposition.

4. Abrasion over the right little toe.

On Exploration : Fracture of temporal bone on the right side coliquely present. Liquified blood clot present under the right temporal region.

2. Fracture of parietal bone adjacent to the sagital line on the right side. Putrification present all over the body.

Internal Organs : Teath 8/8, 7/7

Heart 160 grams congested. Lung right 480 grams left 429 grams. Hyoid bone in tact. Abdomen distendedfull of gas and partially digested food materials. Live 1100 grams spleen 80 grams. Kidney 90 grams. Each bladder empty. Uterus 20 weeks size baby present male.'

According to P.W. 6, the deceased had died due to shock and haemorrhage due to fracture of skull bone about 40 to 45 hours prior to autopsy. Ex.P. 3 was the post-mortem certificate issued by him. External injury No. I in Ex.P. 3 corresponds to the internal injuries and could have been caused by hitting with a stout stick like M.O. 1. The injuries are sufficient in the ordinary course of nature to cause death.

5. On receipt of Ex.P. 3, P.W. 9 altered the case to one under Section 302, IPC and sent including the Inspector P.W. 11, who took up further express reports to higher officials investigation. On 14-9-1983 P.W. 11 visited the scene of occurrence and drew up rough sketch Ex.P. 12. He searched for the appellant and found him absconding. On 15-9-1983, he examined P.Ws. 4, 6, 10 and others. On 15-9-1983, at 9 p.m. while P.W. 7 the Village Administrative Officer was in his chavadi, the appellant came carrying M.O. 1. P.W. 8 the Secretary of Samalpatti Milk Cooperative society, who was then present with one Jadaiyandi in order to obtain certain certificates from P.W. 7 were also present. The appellant told P.W. 7 that at or about 11 p.m. on 9-9-1983 due to the frequent quarrels between himself and the deceased, he decided to do away with her and gave one blow on her head with M.O. 1 and she become unconscious and thereafter, he hung her up with the rope tied around her neck and had told every one that she had committed suicide by hanging, but he was feeling panicky now and was therefore telling him. P.W. 7

recorded whatever the appellant stated. Ex.P. 4 is the statement in which P.W. 8 and Jadayandi also attested. The appellant produced M.O. 1 which P.W. 7 received under Ex.P. 5 mahazar. P.W. 7 prepared a report Ex.P. 6 and sent it along with Exs.P. 4 and P. 5 to the police station, with copies to the Executive Magistrate, detaining the appellant with, M.O. 1 with him. At about 1.15 a.m. that night (16-9-1983) P.W. 11 went to the village chavadi of P.W. 7 and arrested the appellant and seized M.O. 1 under Ex.P. 7 Form 95. He examined the other witnesses, sent the appellant for remand and after completing investigation, laid charge sheet on 24-10-1983 for offences under Sections 302 and 316, IPC respectively.

6. During trial, on behalf of the prosecution, P.Ws. 1 to 11 were examined and Exs.P. 1 to P. 13 were marked. The appellant when questioned, admitted that there were frequent quarrels between himself and the deceased over the gold jewel, as well as the deceased suspecting his fidelity with reference to his elder brother's wife. He denied having committed the murders. Though it is stated that the appellant filed a written statement along with his statement under section 313, Cr.P.C. and though a summary of it appears to be extracted in para 12 of the judgment of the trial Court, no such written statement is available in the records. From para 12 of the judgment of the trial Court, it is seen that in the written statement, the appellant has stated that on 9-9-1983 after taking his food at 8.00 p.m. he sent for (night watch) 'kaval' work to his field and on 10-9-1983 at dawn, he saw a crowd in front of his house and people talked that his wife had consumed some herbal poison and committed suicide by hanging herself and he did not know how his wife had died. He denied having made any statement to P.W. 7 and having produced M.O. 1. He had no oral evidence to offer and had Ex.D. 1 a report sent by P.W. 7 to the Judicial Magistrate, marked on his side. On the learned Sessions Judge accepting the prosecution case and convicting and sentencing the appellant as stated earlier, this appeal has been filed by the aggrieved accused.

7. Thiru K. A. Panchapagesan, learned counsel for the appellant would contend that there being no direct evidence for the crime, the circumstantial evidence on which the trial court had based the conviction are themselves not proved and are

insufficient to render conviction. According to the learned counsel, the evidence regarding the motive was discrepant and flimsy and the prosecution had not established that on the night of the occurrence, the appellant was alone in the house along with the deceased and the child, and that the conduct of the appellant in associating himself with the inquest and the subsequent happenings, were inconsistent with his guilt, that the extra judicial confession made to P.Ws 7 and 8 as per Ex.P. 4 was neither admissible nor of any probative value, that the production of M.O. 1 was false and the circumstances relied on by the prosecution were unsafe to render a conviction.

8. Per contra, the learned Public Prosecutor by referring to the salient features of the prosecution case sought to sustain the conviction.

8-A. The question that arises for consideration is whether the judgment of the trial Court be sustained.

9. Learned counsel for the appellant would initially submit that there were two versions regarding the cause of death of the ' deceased, the one rendered by the panchayators as found in the inquest report Ex.P. 9 and the other that of P.W. 6 the Medical Officer Dr. Natesan, and that the visera of the deceased ought to have been preserved in order to render a conclusive opinion regarding the cause of death. It is true that in Ex.P. 9 the inquest report, the panchayators have offered opinion that the deceased would appear to have committed suicide by hanging herself with the rope. No significance can be attached to this verdict of the panchayators, since their opinion is merely based upon their observation of the dead body and the scene and on the statement of witnesses examined during inquest. It is only when the body is subjected to post-mortem that the real cause of the death could be ascertained. In this case in particular, the inquest, not having been held in a way in which it ought to have been done, as we shall later point out, the opinion of the panchayators would not establish that the deceased had committed suicide by hanging herself but suggest as to how the panchayators mind have been diverted. When P.W. 1 arrived at the scene, he had been told that the deceased had committed suicide by hanging herself. But that there were injuries on the deceased and that therefore he was suspicious on the cause of

death stated to him and had prevented the body from being buried and was making a report to the police to have a post-mortem conducted to determine the real cause of death and that he suspected the appellant and his father in this matter. P.W. 9 therefore, had to find out whether death was due to suicide by hanging or whether it was due to homicidal violence on the basis of the injuries found on the dead body. However, P.W. 9 during inquest has chosen to examine only five witnesses namely, P.W. 1 and his wife Mangammal, the appellant and his father who were shown as suspects in the FIR and one Muthammal, who speaks about what the appellant had told her the next morning. P.W. 1 and his wife Mangammal knew nothing about the cause of death. Mangammal has no direct knowledge. They only two persons, who could have stated anything about the circumstances under which the deceased died are the appellant and his father, who were shown as suspects in the FIR. It is on the statement of these two witnesses that the panchayatdars have rendered the verdict, that the deceased had committed suicide by hanging herself.

10. P.W. 6, the Medical Officer has described the injuries, external as well as the internal. According to him death was due to shock and haemorrhage due to fracture of skull bone. These injuries could have been caused by a blow with M.O. 1. He has also added that due to the impact on the skull with a weapon like M.O. 1, there will be extravasation of blood in the cheeks, on account of which, swelling would be caused on the cheeks. According to him, the blisters he had noted around the neck and chest, are due to heat and prolongation of time. It was nobody's case at any point of time, that the deceased had died of poisoning. The failure to have the viscera examined chemically therefore, is of no significance in this case. P.W. 6 had found partially digested food particles in the stomach. It is therefore, clear that the deceased had died as a result of homicidal violence caused by a blow on the head and death was not due to suicide by hanging as projected to the Panchayatdars.

11. The next point to be seen is whether the appellant had committed the crime. In case of this type relating to the murder of the spouse committed often in places of privacy, wherein the spouses alone reside, direct evidence would be lacking. The evidence would only be of a circumstantial type. The Supreme Court in a recent

decision in *Gurbachan Singh v. Satpal Singh*, : 1990 CriLJ562 wherein the husband and his family members had been convicted for an offence under section 306, I.P.C. for having abetted the suicide of the wife, taking note of the circumstances under which these crimes are committed observed that the trial court had rightly held that in such cases, direct evidence would be hardly available and it is the circumstantial evidence and the conduct of the accused, which are to be taken into consideration for adjudicating upon the trustfulness or otherwise of the prosecution case. We shall first consider whether the prosecution has satisfactorily proved each of the circumstances on which the conviction rests, and then proceed to find out, whether the proved circumstances lead to the inescapable inference, that the appellant had committed the crime.

12. The motive for the crime is spoken to by P.Ws. 1, 2, 4 and 5. The deceased had been given a gold chain weighing 6 1/2 sovereigns at the time of her marriage, which the appellant had initially pledged to purchase some cattle and later, on redeeming it, both the appellant and his father had sold the jewel at Tiruppathur for Rs. 5,000/- and P.W. 1 on coming to know about it through the deceased had convened a panchayat, in which the appellant and his father agreed to purchase a land in the name of the deceased and in pursuance of the decision, the father of the appellant sold one of his properties to the deceased and had the sale deed executed in her name. There had been frequent quarrel between the deceased and the accused over these happenings. The appellant had beaten the deceased and she had gone to her parents' house. Though the learned counsel for the appellant pointed out a discrepancy that P.W. 1 earlier had stated that the jewel had belonged to his eldest daughter Chinnammal and that the deceased had only borrowed it temporarily, it is needless to go into all these, since the appellant himself when questioned under section 313, Cr.P.C. has admitted that at the time of the marriage a gold chain weighing 6 1/2 sovereigns was given to his wife and that the jewel was sold and a land was purchased and that after the quarrel the deceased was brought to his house by P.W. 1 with an advise to both of them, not to quarrel. According to the prosecution, the deceased was aggrieved with the appellant for being too free with his elder brother's wife and there were frequent quarrels between them over this issue also. P.W. 1 has stated that the deceased used to complain about her husband's conduct towards his sister-in-law and had

stated that there were quarrels between them on this account as well. Even the hostile witness P.W. 2 has stated that the deceased used to question the appellant, as to why he was often going to his brother's house and staying there and on account of this, there were quarrels between them. Here again, we find that the appellant when questioned under Section 313, Cr.P.C. has admitted that part of the evidence of P.W. 1, that the deceased had complained to P.W. 1 about his relationship with his sister-in-law and there were frequent quarrels between them on that account. A detailed reference is made to this in Ex.P. 4 also. It is therefore, clear that the relationship between the appellant and the deceased was far from cordial and the appellant had on certain occasions, beaten the deceased, who had gone to her parents house and had been brought back and the quarrel had continued.

13. The next circumstance relied on by the prosecution is that on the night of the occurrence, the deceased and the appellant were alone in the house along with their three year old child. Though earlier, the appellant and the deceased were living together with the father of the appellant and the other sons as a joint family, later there had been a partition and thereafter, the appellant and the deceased had set up separate residence in the scene house. This is not seriously challenged and is spoken to by P.W. 2 herself. The father of the appellant was residing in the opposite house. When questioned under Section 313, Cr.P.C. the appellant has admitted that at the time of the occurrence, they were living separately together. P.W. 2 has further stated that at the time of the occurrence, the appellant and the deceased were in the house and the father of the appellant and others had gone to attend a marriage. No doubt, P.W. 2 has been treated hostile, since she has contradicted from certain portions of her earlier statement made to P.W. 11 implicating the accused. However, even the appellant has admitted that P.Ws. 2 and 3 are his immediate neighbours. It is settled law that the evidence of a hostile witness need not necessarily be rejected in full. Courts could believe a part of the testimony, depending upon the circumstances of each case. This has been held to be so by the Supreme Court in *Gurbachan Singh v. Satpal Singh*; : 1990 CriLJ562 wherein the law laid down in an earlier decision in *Sat Paul v. Delhi Administration*, : 1976 CriLJ295 has been extracted and reiterated. When a prosecution witness is cross-examined and contradicted with the leave of the Court, his evidence cannot, as a

matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider each case, whether as a result of such 'cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. In this case we believe the testimony of P.W. 2 to the extent to which she has supported the prosecution, since her evidence stands corroborated on many particulars by the evidence of her husband P.W. 3 whom the appellant himself admits as his immediate neighbours and also because the appellant has not chosen to cross-examine P.W. 2, even on those matters which incriminate him. P.W. 2 has stated that at the time of the occurrence; the appellant and his wife were in the house.

The learned counsel for the appellant would submit that would not mean at the time of the actual occurrence. We are unable to accept the above contention. P.W. 2 earlier had stated, that originally it was a joint family but later about one year prior to the occurrence, the appellant and his wife, had set up separate residence and the father of the appellant was living- in the opposite house. She has then referred to the frequent quarrels between the appellant and the deceased over the sister-in-law, and the succeeding paragraph begins with a statement that at the time of the occurrence, the appellant and the deceased were in the house, while the father of the appellant and others had gone for a wedding. It is therefore, clear that on the night of the occurrence, the appellant and the deceased were alone in the house, along with their child.

14. The next incriminating circumstances would be the conduct of the appellant in telling others, that the deceased had committed suicide by hanging while as a matter of fact, the deceased had met with a homicidal death. P.W. 1, on arriving at the scene house had been told that the deceased had committed suicide by hanging herself. As stated earlier, the two witnesses examined during inquest, who could have spoken about the circumstances under which the deceased died are the appellant and his father. On their statements, the panchayatars had rendered a verdict of suicide by hanging and that it was the appellant, who had last seen the deceased alive and had first seen her dead. M.O. 2 rope had been seized by the Sub-Inspector of Police P.W. 9 under Ex.P. 10 Mahazar. P.W. 3 the husband of P.W. 2 had gone to the scene house at 5 a.m. the next day and had

found the appellant and his father there. Even according to the appellant by about dawn, he learnt about the death of the deceased and yet no one had gone to the police station, which is, only 5 k.m. away, to give a report. Instead it appears, that the preparations were being made to bury the body. It was left to P.W. 1 to stop the burial and go to the police station to make the complaint. Even P.W. 7 during Cross-examination has stated that at 4-30 p.m. when he visited the scene house, the appellant told him that his wife had committed suicide by hanging herself. The Supreme Court in *Prabhakar Jasappa Kanguni v. State of Maharashtra*, : 1982 CriLJ1572 which too was a case, where the husband murdered his wife inside the house, had relied strongly upon the circumstance that the accused had told others that the deceased had consumed poison and died, when the medical evidence showed that the death was due to asphyxia by throttling. Similarly in *Smt. Basant v. State of Himachal Pradesh*, : 1987 CriLJ1869 which was a case of a wife committing the murder of her husband along with her paramour inside the house, the Supreme Court strongly relied upon the conduct of the wife in setting others on the wrong track, that the deceased had gone away from the village and had not returned, when the court found that the deceased had been murdered and the body buried in the field. The conduct of the wife in setting others on the wrong track was admissible under section 8 of the Evidence Act, as part of *res gestae*, as evidence of conduct immediately after the occurrence.

15. The final piece of circumstantial evidence against the appellant is the extra judicial confession made by him to P.W. 7 in the presence of P.W. 8, as recorded in his report. The initial objection of the learned counsel for the appellant is that this extra-judicial confession is not admissible in view of R. 72 of the Criminal Rules of Practice framed by this court, which prohibits the village Magistrate from recording confession from the accused after the commencement of investigation. This contention cannot be upheld in view of the consistent view taken by this court, the last of which is expressed in *Valonjiya Chinnammal v. State* 1987 MLW 375 by a Division Bench, referring to and relying upon the earlier decisions to the effect that a combined reading of the above rule as well as S. 26 of the Indian Evidence Act would show that, the confession made by the accused before he comes into the custody of the police Officer, if made to a village munsif is admissible but that, that piece of evidence is a very weak piece of evidence as against the accused

and the weight to be attached to such a confession, depends upon the facts of each and every case. On the facts of that case, the learned Judges declined to accept the extra-judicial confession.

16. The learned counsel for the appellant relied upon the decisions of the Supreme Court in *Sonia Bahera v. State of Orissa* : 1983 CriLJ829 and in *Makhan Singh v. State of Punjab*, : AIR 1988 SC1705 for the proposition that extra-judicial confession is a weak piece of evidence. Indeed it is so. On the facts of those cases, the courts held that no reliance could be placed upon the extra-judicial confessions. Those were oral confessions made to persons of little value and the Judicial confession did not inspire confidence to the court. In the instant case as we have already discussed above, the extra-judicial confession has been reduced to writing and it is corroborated by an independent witness of some status, namely P.W. 8. The confessions is spoken to not only by P.W. 7 but also by P.W. 8. P.W. 8 is the Secretary of a Milk Co-operative Society and had gone to see P.W. 7 in connection with the function of that society. He is totally an independent witness, whose evidence cannot be rejected on any account. The value to be attached to an extra-judicial confession would depend upon the reliability of the person to whom it is made, the interval between the occurrence and the confession, the reproduction of the exact words of the accused confessing to the crime and the follows up action, which the person to whom the confession is made and other factors. It cannot be said as a proposition of law that an extra-judicial confession as always a weak piece of evidence. Quite Contrary, the Supreme Court has held that a conviction can be based, depending upon the facts and circumstances of the case, solely on an extra-judicial confession. In *Maghar Singh v. State of Punjab*, : AIR 1975 SC1320 , it was held that evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required, it is only by way of abundant (caution).If the Court believes the witness, before whom the confession is made and it is satisfied that the confession was voluntary. Then in such a case, conviction can be founded on such evidence alone. The extra-judicial confession in this case is coupled with the production of M.O. 1. No doubt, there is no direct evidence to connect M.O. 1 with the Crime yet P.W. 6 the Medical Officer has stated that the external and internal head injuries on the deceased, could have

been caused by a blow with a heavy stick like M.O. 1. The extra-Judicial confession is reduced to writing and M.O. 1 is also seized and the appellant is taken into custody by P.W. 7. Copy of Ex.P. 4 has been sent to the Executive Magistrate as well. Under these circumstances, we see no reason to reject the evidence of P.Ws. 7 and 8 that the appellant confessed to P.W. 7 that he had beaten the deceased with M.O. 1 and strangled her with a rope and had told everyone that the deceased had committed suicide by hanging. In Smt. Basanti v. State of Himachal Pradesh, : 1987 CriLJ1869 already referred to, the Supreme Court based its conviction for offences Under Section 302 and 201 also on the Extra-Judicial confession made by the wife.

17. The learned counsel for the appellant challenged the production of M.O. 1 by the appellant to P.W. 7 on the ground that P.W. 5, the Medical Officer had stated during cross-examination, that when he was examined by the Investigating Officer under Section 161, Cr.P.C. M.O. 1 was shown to him and that this could not be so, since the Medical Officer was examined on 15-9-1983 while M.O. 1 came to the possession of the police only at 1-15 a.m. on 16-9-1983. No undue significance need be given to this, since the Medical Officer P.W. 6 has stated that he did not tell the police that M.O. 1 was shown to him during examination. On the contrary the definite suggestion to P.W. 6 during cross-examination is that M.O. 1 was shown to him for the first time only in the court.

17A. On an assessment of the entire evidence we find that the prosecution has proved the following pieces of incriminating circumstances against the appellant :-

(1) There had been frequent quarrels between the appellant and the deceased to the extent of even the neighbour P.W. 2 being aware of them. The relationship between the appellant and the deceased was not cordial.

(2) The appellant and the deceased were living together alone in the scene house, along with their child and at the time of the occurrence the the appellant and the deceased were alone in the house. There were no one else in the house, besides the child.

(3) The appellant made no attempt to report about the occurrence to the police or to any one also and instead falsely represented that the deceased had committed suicide by hanging and had produced M.O. 2 rope during inquest.

(4) The appellant had appeared before P.W. 7 and had made extra-judicial confession to him in the presence of P.W. 8. He had also produced M.O. 1.

18. All these proved circumstances lead to only one inference that nobody else could have committed the homicide. They exclude every another hypothesis of the innocence of the appellant. The prosecution has proved its case beyond all reasonable doubt.

19. Finally the learned counsel for the appellant submitted that even if the prosecution had proved its case, the offence would not fall under Section 302, IPC but would fall under section 304, IPC, in that the accused had given only a single blow with M.O. 1 on the head of the deceased under grave and sudden provocation. We are unable to accept this contention in view of Ex.P. 4 wherein the appellant had stated that the quarrel between himself and the deceased as at 7-30 p.m. and that both of them went to bed and he was brooding over the insult and then decided to murder her and the occurrence actually took place at 11 p.m. There has therefore been an interval of 3 1/2 hours between the quarrel and the assault. The provocation even if grave, is not sudden. The offence cannot reduce itself to S. 304, IPC.

20. P.W. 6, the Medical Officer has stated that in the uterus of the deceased there was a male baby 20 weeks old and that after 12 weeks of conception, foetus gets life. The charge for offence under section 316, IPC also stands proved. The conviction and sentence therefore have to be confirmed.

21. Before concluding the judgment, we are painfully forced to comment upon the callous manner in which P.Ws. 9 and 11 the investigating officers, have handled the case. It is common knowledge that in cases of this type, attempts are always be made to make the homicide, appear to be suicide, in order to save the culprit. The Supreme Court in *Shri Bhagvant Singh v. Commission of Police, Delhi* : 1983 CriLJ1081 . While dealing with the request of the father of the deceased bridge,

victim of a dowry death, to have the investigation transferred from the Administration of Delhi to the Central Bureau of Investigation, observed the need for a searching, a thorough and an expeditious investigation in such matters since, when the incident is the result of the Crime by the husband or his family, the Problem of ascertaining the truth is burdened by the privacy in which the incident has occurred. In the instant case. P.W. 9 had before him, a first information report that the complaint was informed by the husband's people that it was a case of suicide but that there were injuries on the deceased and he was suspicious about it and had stopped the burial, that he suspected the appellant and his father and wanted a post-mortem to be conducted and an investigation into the matter. P.W. 9, therefore had to find out, even during inquest; whether it could be a case of homicide or suicide. If it was a case of suicide by hanging, as was then stated; P.W. 9 had to find out the place where the suicide was said to have been committed, whether it could have been possible for the deceased to hang herself to death inside the house, how the deceased was brought down and several other details. According to P.W. 9 when he visited the scene, the body was found lying on a bench. Yet no observation mahazar is prepared. In the interests of justice, we have perused the case diary. Nowhere do we found any reference made, either by P.W. 9 or even by P.W. 11, to these aspects. Even during inquest, the only persons whom P.W. 9 has examined, besides the parents of the deceased, are the two persons shown as suspects in the FIR and one Muthammal, whose evidence is based upon what the appellant is said to have told her. None else is examined. P.W. 9 has been investigating the case on 10-9-1983. 11-9-1983 and 12-9-1983. Besides the four witnesses examined during inquest and two mahazar witnesses for the recovery of M.O. 2 rope, he has not examined even a single witness to test the theory of suicide. It is seen from the records a bloodstained sarri, a bloodstained blouse and a bloodstained dhoti which were found on the dead body had been seized. These clothes have not been sent for chemical examination. Similarly, M.Os. 1 and 2 are also not sent for chemical examination. Despite the strang pronouncement of the Supreme Court, in the judgment referred to above, if Investigating Officers handle spouse-murders in the way in which P.Ws. 9 and 11 have done, courts would feel helpless to do justice. We do hope that the higher officials in the Police Department, would take note of the the way in

which in investigation has been handled by P.Ws. 9 and 11 in this case.

22. In the result, we confirm the conviction as well as the sentence and the appeal is dismissed.

23. Appeal dismissed.

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