

**In Re: Kandaswamy**

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**Court :** Chennai

**Decided On :** Sep-08-1967

**Reported in :** (1968)1MLJ372

**Appellant :** In Re: Kandaswamy

**Judgement :**

**N. Krishnaswamy Reddy, J.**

1. The appellant who has preferred the appeal from the Jail was committed under Section 304 (Part I), Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years by the Additional Sessions Judge, Coimbatore.
2. The charge against the appellant is that he committed an offence punishable under Section 302, Indian Penal Code, for having caused the death of his wife Arukkani by throttling her at about 1 P.M. on 9th September, 1966 at his house in Nochipalayam.
3. The facts of the prosecution case are briefly these : The appellant married the deceased Arukkani about 10 or 11 months before the occurrence. At the time of her death, she was in advanced stage of pregnancy. The appellant and his wife were living separately in a hut in Nochipalayam village. In the adjacent hut, the appellant's mother, his elder brother Palaniswami and his wife were living. It appears that the appellant gave his share of land to be cultivated on warram basis to his brother Palaniswami and took to weaver's profession. There is some

evidence that there were frequent quarrels between the appellant and the deceased.

4. On the day of the occurrence (9th September, 1966) at about 1 P.M. the appellant and the deceased were in the house. Sometime after that, the appellant went out of the house closing the door and returned to his house at about 5 P.M. The appellant called his mother Muthathal who was working in the field belonging to P.W. 1. Kandaswami Gounder, and she went to the house of the appellant. P.W. 1 Kandaswami Gounder and P.W. 2 Nachimuthu Gounder who were baling water in or Thottam near the house of the appellant saw the mother of the appellant weeping. P.Ws. 1 and 2 went to the house of the appellant and saw Arukkani lying dead. They saw swelling on the neck of Arukkani. Her tongue was protruding, and her eyes were bulged out. There was bleeding from her mouth and nose. The appellant was near her. When P.Ws. 1 and 2 asked the appellant as to how Arukkani died, the appellant told them that at about 11 A.M. he and his wife had a quarrel and that thereupon he had throttled her to death. P.W. 3 Mottayappa Gounder, the junior paternal uncle of the appellant and his wife P.W. 6 Chellammal also saw Arukkani lying dead. They also stated that the appellant told P.W. 1 that in the course of a quarrel with Arukkani in the noon, he had throttled and killed her. P.W. 10 Mara Navithan, a barber of Nochipalayam was asked to bandage the jaws of the deceased stating that she was bitten by a snake; but some of the villagers told him that it was not a case of snake bite but that was due to violence. He refused to bandage the jaws of the deceased.

5. P.W. 1 went to the house of P.W. 11 Subbai Gounder, the Village Munsiff of Sengattusalai Village at about 9 P.M. AS he was told that the Village Munsiff would return late in the night, P.W. 1 stayed there. P.W. 11 returned only at about 11 A.M. on the next day. P.W. 1 gave a report Exhibit P-I. The report from the Village Munsiff was received by P.W. 15, the Head Constable at Kundadam Police Station at about 2 P.M. P.W. 16, K. Muthu, the Sub-Inspector of Police, Kundadam Police Station proceeded to the village at about 4-30 P.M. and found Arukkani lying dead inside the hut. He saw swelling on the neck, eyes bulged and tongue protruding. Underneath the mat on which Arukkani was lying, there were blood stains. P.W. 16 held inquest over the body and examined P.Ws. 1 to 3, 6 and 7.

The appellant who was right through in his house was arrested by P.W. 16. The body of the deceased was sent to the Government Hospital, Dharapuram, at about 7 A.M. on 11th September, 1966 for post-mortem examination. P.W. 4 Dr. E. Gandhi Bai conducted the autopsy on the dead body. The body was in a highly decomposed state. She, however, had stated that she could not give any opinion as to the definite cause of death on account of the highly decomposed state of the body. The details of the observation made by P.W. 4 will be stated presently as they appear to be very material in this case for determining the cause of death.

6. The appellant gave a confession before P.W. 5 Muthuveerappan, the Sub-Magistrate of Udumalpet on 19th September, 1966. The confession which is Exhibit P-7 is as follows:

I belong to Nochipalayam. It is 10 months since I and Arukkani have been married. Ten days before, on a Friday, at 1 P.M. mid-day, I came to my house for meal from the land. I asked my wife to serve meal. She said that she had not cooked food. Saying 'I am going for land, etc. how am I to remain without food?' I slapped her on the left cheek. She at once stretched out and caught hold of my testicles with both hands. I caught hold of her neck and throttled. She was dead. After lying her, I proceeded to go to Kundadam. Legs and hands trembled. After proceeding for 3 furlongs I returned to the village, and told my mother. On Saturday, the Kundadam Police arrested me. I told them what happened.

7. The appellant retracted the confession both in the committal and trial Courts.

8. When questioned under Section 342, Criminal Procedure Code, the appellant denied the offence and stated that he came home from his land at about 5-30 P.M. and found the door of his house closed. He pushed open the door and saw Arukkani lying dead. He called his mother and told her about it. He further stated that he did not see the symptoms on the dead body and he did not tell P.Ws. 1, 2 and 6 that he had throttled the deceased. He further stated that he gave confessional statement as tutored by the police due to pressure and threat.

9. The prosecution depends mainly on the extra-judicial confession made by the appellant to P.Ws. 1 and 2 and the judicial confession made by him to P.W. 5.,

The other circumstantial evidence let in by the prosecution is that both the appellant and the deceased were seen entering their hut at about noon and that again at about 5 P.M. the appellant was found in his hut when he called out his mother and informed about the death of his wife. This circumstance may not be very material because it is natural for a husband and wife to be together in their hut. The question is as to how far and to what extent the extra-judicial confession and the judicial confession made by the appellant can be acted upon. It is necessary that the prosecution should establish the offence by independent evidence. If once the offence is established, the confession can be taken into consideration to find out as who the offender is. The prosecution cannot depend upon the confession alone to prove the offence. In this case, we have to see whether the prosecution proved that the deceased Arukkani met her death by homicidal violence. In this context, we have to note the details of the observation and the opinion given by P.W. 4 as to the cause of death. P.W. 4, as already stated, found the body of the deceased in a highly de-composed state. She saw the eyes bulging, the tongue protruding and the face showing greenish discoloration. She did not detect any external injury. On dissection, she found the following : The heart was putrefied. The lungs were liquefying. There was no injury detected either to the trachea or blood vessel in the neck. The hyoid bone was intact. The stomach was putrefied and contained 6 1/2 ozs. of cholam choru. The liver and kidneys were putrefied and the spleen was liquefied. The brain was also liquefied. In the uterus there was the foetus of a dead male child of full term growth. She stated that an account of the highly decomposed state of the body, she could not give her opinion as to the definite cause of death. According to her, the deceased woman would have died not less than 36 hours and not more than 72 hours before autopsy. Apart from the opinion of the doctor, even the observations made by her on the body of the deceased do not conclusively show that the deceased must have died only due to throttling as stated by the appellant in his confession. In manual strangulation, normally thumb impression and nail marks will be found on and around the area of neck indicating the pressure used on the neck. It is also common feature that in such cases, the hyoid bone and the tracheas will be fractured and there will be injury to the muscles of the neck.

10. Glaister, in Medical Jurisprudence and Toxicology, Ninth Edition, page 192 has stated as follows:

In cases of manual strangulation.... As a rule there is extensive bruising of the tissues, which is frequently accompanied by fracture of the laryngeal structures, and, commonly, the hyoid bone. Further, there may be bruising or laceration of the tongue as the result of it having been pressed against, or caught between, the teeth. In some cases, there may be practically no evidence of bruising on the surface of the neck, although fairly extensive bruising of the deeper tissues may be found, together with fracture of the hyoid bone. The bruising of the deeper tissues is usually discrete in character and frequently the muscular tissues are involved.

11. It is clear from this statement by Glaister that in manual strangulation though there may not be external marks, in certain cases bruising of the deeper tissues together with fracture of the hyoid bone will generally be found. Even if the body was highly decomposed, if the muscular tissues were involved, the Medical Officer would have noted it. In the absence of such conclusive evidence, it is very difficult to find that the deceased Arukkani must have met her death only by manual strangulation.

12. It is true that the witnesses P.Ws. 1, 2, 3 and 6 found swelling on the neck, eyes bulging, tongue protruding, etc. These symptoms will not be sufficient to determine that she died of strangulation. The death, in all probability, may be due to asphyxia; but was the death due to strangulation or by any other means is in doubt. Even on facts, it is not known whether she died at 1 P.M. or at any time before 5 P.M. It is the evidence of P.Ws. 3 and 6 that both the appellant and the deceased were in the house at about 1 P.M. and half an hour later, the appellant left the house and returned to the house at about 5 P.M. If the confessional statement is excluded, we do not know as to what happened after the appellant left the house at about 1 P.M. and before he returned to his house. The time of death also is not established by independent evidence. The medical evidence may not be of much use because P.W. 4 puts it generally that the deceased could have died not less than 36 hours and not more than 72 hours before autopsy which was

conducted at about 10 A.M. on 11th September, 1966. It may be noted here that the prosecution witnesses came to know about the death of the deceased at about 5 P.M. on 9th September, 1966.

13. In the circumstances of this case, it may not be safe to rely on the extra-judicial and judicial confessions. The appellant retracted from the judicial confession and stated that because of pressure by the police, he made the statement before P.W. 5. In respect of the extra-judicial confession he stated that the witnesses were not telling the truth. Apart from the statement of the appellant, to my mind, it appears that the confession made by the appellant is not full and complete. Intrinsically, there is no indication from the confession that the appellant has come out to speak the truth and the whole truth voluntarily. The confession is crisp and short and devoid of details. He had not even stated the details of the quarrel and what really transpired between himself and the deceased and even the act of throttling he had not described. If the appellant had come with a voluntary statement without any mental reservation, he would have described fully as to how and in what manner he happened to throttle the deceased, if true. Similarly, he had not given the details of the quarrel and the manner of throttling even to the prosecution witnesses. It is strange that the prosecution witnesses did not ask the appellant as to the nature of the quarrel and as to why he should have throttled her. I am unable to place much reliance upon the extra-judicial confession or judicial confession. There may be a grave suspicion against the appellant that he might have caused her death; but it cannot take the place of proof.

14. For the foregoing reasons, the appellant will be entitled to the benefit of doubt. He is acquitted and directed to be released forthwith. The appeal is allowed.

15. I place on record the valuable assistance rendered by Kumari A. Venkatasubbamma who appeared as amicus curiae.