11. We are of the opinion that the evidence on record does not warrant conviction of the Appellant under Section 306 IPC. There is no proximity between the Panchayat held in September, 2001 and the suicide committed by Arvind on 23.02.2002. The incident of slapping by the Appellant in September, 2001 cannot be the sole ground to hold him responsible for instigating the deceased to commit suicide. As the allegations against all the three accused are similar, the High Court ought not to have convicted the Appellant after acquitting the other two accused.

12. We are not in agreement with the findings of the Trial Court that the deceased (Arvind) committed suicide in view of the continuous threats by the accused regarding his being implicated in a false case of demand of dowry. The evidence does not disclose that the Appellant instigated the deceased to commit suicide. There was neither a provocation nor encouragement by the Appellant to the deceased to commit an act of suicide. Therefore, the Appellant cannot be held guilty of abetting the suicide by the deceased.

13. For the aforementioned reasons, the appeal is allowed and the conviction and sentence of the Appellant is set aside. His bail bonds stands discharged.

***Result*:-** Appeal allowed.

ABC 2019 (I) 225 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Mohan M. Shantanagoudar & Dinesh Maheshwari, JJ.)

Criminal Appeal No. 1941/2010
With
Criminal Appeal No. 2153/2013
(From Madras High Court)
Decided On 22 January, 2019

NAWAZ ***- Appellant(s).***

Versus

STATE REP. BY INSPECTOR OF POLICE ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Sections — 302, 304 Pt. I, 300(1) & 201 — Allegation of illicit relation — extra-judicial confession — the deceased called Accused No. 1 & her daughter

as prostitutes — the Accused No. 2 suddenly slapped the deceased — he fell down unconscious and thereafter he was throttled to death— Everything has occurred in the fraction of a minute— Held, calling accused No. 1 and her daughter as prostitute, was deprived of the power of self-control. — sudden provocation by the deceased has resulted in the incident in question— Offence may fall under explanation 1 of Section 300— case may fall u/s 304 Pt. I — the body transported by the accused to a different place in order to hide the offence— conviction u/s 201 upheld — Sentence altered. (Para 12 & 13)

(B) Indian Penal Code, 1860 — Sections — 302 & 304 Pt.I — Provocation by the deceased by uttering the word 'prostitute' — Held, in our society, no lady would like to hear such a word from her husband — Most importantly, she would not be ready to hear such a word against her daughters — conviction altered to 304 Pt.I from 302 — sentence reduced. (Para 12)

Facts:- *As per the brief facts of the case there was alleged illicit relationship of the wife of the deceased (Accused No. 1) with Accused No. 2. The deceased used to suspect the fidelity of Accused No. 1 as well as his daughter's integrity. He was of the opinion that Accused No. 2 not only had an illicit relationship with his wife but also with his elder daughter.*

On the date of the incident the deceased quarreled with his wife and called her a 'prostitute'. He also told her that she has converted the daughter into a prostitute as well. At that point of time, Accused No. 2 came from the first floor and asked the deceased not to quarrel. Since the deceased did not stop, Accused No. 2 slapped the face of the deceased. Immediately, thereafter, both the accused throttled the deceased with the help of a towel and burnt the dead body to try to conceal the offence. Subsequently, they transported the dead body in a Maruti Carand abandoned the body elsewhere. The dead body was found after two days. After about 40 days, extra-judicial confession of Accused No.1 was recorded by PW 8 (teacher of the village) and based on the same and other material collected subsequent thereto, the charge-sheet came to be filed. The Trial Court as well as the High Court convicted both the accused for the offences punishable u/ss 302 and 201 of IPC. However the conviction was altered to one u/s 304 Pt.I by the houb'le Apex Court.

Law of relief:- ***Held, in our society, no lady would like to hear the word 'prostitute' from her husband.***

Held:- Material on record also reveals that Accused No.1 tried to hide the offence for about 40 days by giving false explanation about the whereabouts of her husband. Be that as it may, on going

through the extra-judicial confession carefully, we find that the case may fall under Section 304 Part I of IPC inasmuch as the offence may fall under explanation 1 of Section 300. Immediately, after hearing the deceased calling the Accused No. 1 and her daughter as prostitutes, the Accused No. 2 suddenly slapped the cheek of the deceased. Immediately, after receipt of said assault, the deceased fell down unconscious and thereafter he was throttled to death. Everything has occurred in the fraction of a minute. Since the accused, because of the aforesaid conduct of the deceased calling accused No. 1 and her daughter as prostitute, was deprived of the power of self-control. The sudden provocation by the deceased has resulted in the incident in question. (Para-12)

The deceased provoked the accused No.1 by uttering the word 'prostitute'. In our society, no lady would like to hear such a word from her husband. Most importantly, she would not be ready to hear such a word against her daughters. The incident is a result of a sudden and grave provocation by the deceased. Since the body came to be transported by the accused to a different place in order to hide the offence, the accused are rightly convicted for offence under Section 201 of IPC. (Para-13)

Counsel:- ***For Appellant(s):*** *Rekha Pandey, Adv.*
For Respondent(s): *M. Yogesh Kanna, Adv.*

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.: - The appellants herein were charged, tried and convicted for offences punishable under Section 302 read with Section 34 and Section 201 of the Indian Penal Code (hereinafter 'IPC'). The High Court confirmed the judgment of conviction passed by the Trial Court and hence they are in appeal before us.

2. The brief facts of the case are as under:-

Accused No. 1 – Smt. Ragila had an illicit relationship with Accused No. 2 – Shri Nawaz. The accused No. 1 is the wife of the deceased.

3. The deceased used to suspect the fidelity of Accused No. 1 as well as his daughter's integrity. He was of the opinion that Accused No. 2 Nawaz not only had an illicit relationship with Accused No. 1 but also with the elder daughter of the deceased.

4. On the date of the incident at about 9.00 a.m., the deceased quarrelled with Accused No.1 and called her a 'prostitute'. He also told her that Accused No. 1 has converted the daughter into a prostitute as well. At that point of time, Accused No. 2 came from the first floor and asked the deceased not to quarrel with Accused No. 1 and her daughters. Since the deceased did not stop, Accused No. 2 slapped the face of the deceased. Immediately, thereafter, both the accused throttled the deceased with the help of a towel and burnt the dead body to try to conceal the offence. Subsequently, they transported the dead body in a Maruti Car owned by PW 15 and abandoned the body elsewhere.

5. The dead body was found after two days following the incident by PW 1, who lodged the First Information Report. After about 40 days, extra-judicial confession of Accused No.1 was recorded by PW 8 (teacher of the village) and based on the same and other material collected subsequent thereto, the charge-sheet came to be filed.

6. The Trial Court as well as the High Court convicted both the accused for the offences punishable under Section 302 and Section 201 of IPC.

7. Shri S. Nagamuthu, learned senior counsel appearing on behalf of the appellants, taking us through the material available on record contends that the entire case is built up on the extra- judicial confession which is a weak piece of evidence. He further submits that there is no reason for Accused No.1 to confess before PW 8 who is a teacher of a school and stranger to the family and that too after 40 days. He further draws our attention that the dead-body was not identified even after superimposition test. The aspect of motive is deposed by PW 17, who is the maid servant working in the house of accused. According to him, if the extra-judicial confession is disbelieved, the accused are entitled to get acquitted. Alternatively, he submitted that even assuming that extra-judicial confession is believed in its entirety, the case may fall under Section 304 Part I of the IPC.

8. Mr. M. Yogesh Kanna, learned counsel appearing for the State argued in support of the judgments of the Trial Court and the High Court.

9. Both the Courts below have relied upon the extra-judicial confession which is said to have been made by Accused No.1 before

PW 8 who is a teacher of the school. We have perused the extra-judicial confession, read over to us by Shri Nagamuthu, learned senior counsel, and translated by him in English.

10. It is no doubt that the extra-judicial confession is recorded by PW 8 who is a teacher after about 40 days of the incident in question. Admittedly PW 8 is not the relative of the deceased nor the relative of the accused. If one goes through the extra-judicial confession, it is clear that the same is recorded as if it is a statement recorded under Section 161 of the Code of Criminal Procedure, 1973.

11. Be that as it may, both the Courts below on facts have relied upon the extra-judicial confession and we find that the extra-judicial confession in all probability might have been made by Accused No. 1 implicating herself and other accused. In other words, we also subscribe to the views of the Trial Court as well as by the High Court that such a confession was made by Accused No.1

12. Material on record also reveals that Accused No.1 tried to hide the offence for about 40 days by giving false explanation about the whereabouts of her husband. Be that as it may, on going through the extra-judicial confession carefully, we find that the case may fall under Section 304 Part I of IPC inasmuch as the offence may fall under explanation 1 of Section 300. Immediately, after hearing the deceased calling the Accused No. 1 and her daughter as prostitutes, the Accused No. 2 suddenly slapped the cheek of the deceased. Immediately, after receipt of said assault, the deceased fell down unconscious and thereafter he was throttled to death. Everything has occurred in the fraction of a minute. Since the accused, because of the aforesaid conduct of the deceased calling accused No. 1 and her daughter as prostitute, was deprived of the power of self-control. The sudden provocation by the deceased has resulted in the incident in question.

13. The deceased provoked the accused No.1 by uttering the word 'prostitute'. In our society, no lady would like to hear such a word from her husband. Most importantly, she would not be ready to hear such a word against her daughters. The incident is a result of a sudden and grave provocation by the deceased. Since the body came to be transported by the accused to a different place in order to hide the offence, the accused are rightly convicted for offence under Section 201 of IPC.

14. Having regard to the totality of the facts and circumstances of the case, the following orders are made:-

(A) The judgments of the Trial Court in S.C. 10/2005 and the High Court in Criminal Appeal Nos. 563/2007 and 599/2007 convicting the accused for offence punishable under Section 302 of IPC stands modified and the accused are hereby convicted under Section 304 Part I of IPC and sentenced to rigorous imprisonment for a term of ten years. Sentence imposed on the accused under Section 304 Part I and Section 201 IPC shall run concurrently. The accused will have the benefit of set off of the period already undergone in prison.

(B) The appeals are accordingly allowed in part.

Result:- Appeals partly allowed.

ABC 2019 (I) 230 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Mohan M. Shantanagoudar & Dinesh Maheshwari, JJ.)

Criminal Appeal No. 1932 of 2010
(From Madras High Court)
Decided On 23 January, 2019

MALAICHAMY & ANR. ***- Appellant(s).***

Versus

STATE OF TAMIL NADU ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 302 & 449 r/w 34— No eyewitness — Circumstantial Evidence — Case based on — Last seen circumstance — not reliable — Motive — not directly connected to the victim — Recovery of the weapon — not proved — benefit of doubt — Acquittal. (Para 11, 13 & 15)***

(B) Criminal trial — Circumstantial Evidence — Basing conviction on — Duty of the Court — the Court should satisfy itself that the various circumstances in the chain of evidence must have been established clearly and that the completed chain is such as to rule out a reasonable likelihood of the innocence of the accused. (Para 8)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Last seen circumstance — Conduct of witness — delay of one week in giving their statements — Held, highly unnatural conduct — contradiction in statements — vital improvements— Evidence unreliable— Acquittal. (Para 11)