



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
and
THE HONOURABLE MR. JUSTICE V. S. RAVI

Cr1.A(MD)No.12 of 2014

Syed Abuthakir

.. Appellant/ Accused No.2

Vs.

The Inspector of Police,
Kottaipattinam Police Station,
Pudukkottai District.
(Crime No.27 of 2013)

.. Respondent/ Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the conviction and sentence, dated 28.11.2013, made in S.C.No.82 of 2013, by the District and Sessions Court, Mahila Court, Pudukkottai.

For Appellant : Mr.G.Karuppasamy Pandian

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the second accused in S.C.No.82 of 2013 on the file of the District and Sessions Court, Mahila Court, Pudukkottai. The first accused is one Mr.Feroskhan. The trial Court framed as many as five charges in the case. Both the accused stood charged for the offences under Sections 120(b), 369, 394 read with Sections 302, 302 and 201 read with Section 114 I.P.C. By Judgment dated 28.11.2013, the trial Court convicted both the accused under Sections 120(b), 369, 394 read with Section 302, 302 and 201 read with Section 114 I.P.C. The trial Court sentenced both the accused to undergo rigorous imprisonment for two years for the offence under Section 120(b) I.P.C, to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one year, for the offence under Section 369 I.P.C, to undergo imprisonment for life and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one year for the offence under Section 394 read with 302 I.P.C, to undergo imprisonment for life and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one year for the offence under Section 302 I.P.C, to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for six months for the offence under Section 201 read with 114 I.P.C. Challenging the said conviction and sentence, the appellant/second accused has come up with this appeal.



2. The case of the prosecution, in brief, is as follows:

2.1. The deceased, in this case, was one child, by name, Sahana Begam, aged 2-1/2 years. Sahana Begam was the daughter of P.W.4 and the granddaughter of P.W.1. 28.03.2013 was the marriage anniversary of P.W.4 and her husband and on account of the same, they had a celebration. For the said celebration, P.W.4 had made the deceased to wear four gold bangles, gold anklets, gold ear studs and a covering chain. The total weight of the gold jewels worn by the deceased was 5-3/4 sovereigns. At about 05.30 p.m., the deceased-child was playing in front of the house of P.W.4.

2.2. By around 06.00 p.m., to 07.00 p.m., the child, who was playing in front of the house, was missing. P.Ws.1 to 4 went in search of the child. At that time, it is alleged that P.W.6 informed them that the first accused was found carrying a gunny bag towards the sea shore. All of them rushed to the sea shore, where they found a gunny bag tightly tied with a rope. With anxiety, they opened the same. To their shock, they found the dead body of the deceased inside the gunny bag. The jewels worn by the deceased were also found missing. Immediately, P.W.1 rushed to the police station and made a complaint at about 12.15 a.m., on 29.03.2013.

2.3. P.W.18, the then Sub-Inspector of Police, attached to Kottaiappattinam Police Station registered a case in Crime No.27 of 2013 under Sections 379 and 302 I.P.C. Ex.P.1 is the complaint and Ex.P.11 is the First Information Report. He forwarded both the documents to the Court through a Constable and handed over the case diary to the Inspector of Police for investigation.

2.4. P.W.19 took up the case for investigation at about 01.00 a.m., on 29.03.2013. He proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch in the presence of P.W.7 and another witness. Then, he conducted inquest on the body of the deceased and prepared an inquest report. Thereafter, he forwarded the body for post-mortem. P.W.9, the Headquarters Civil Surgeon at the Government Hospital, Aranthangi conducted autopsy on the body of the deceased on 29.03.2013 at about 09.20 a.m. He found the following injuries:-

- "1) 4 X 4 cm dried, abrasion right face.
- 2) 3 X 3 cm dried abrasion left face below ear.
- 3) 3 X 3 cm contusion left side neck below the ear.
- 4) 1 X 1 cm dried abrasion left forehead.
- 5) 1 X 1 cm dried abrasion left forehead."

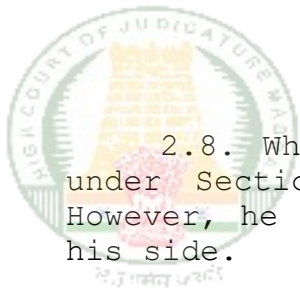
2.5. Ex.P.7 is the post-mortem certificate. He preserved the viscera for chemical analysis. The report is Ex.P.8, which revealed that there was no poison in the internal organs of the deceased. Finally, he gave opinion that the deceased would have died due to asphyxia caused by strangulation and by suffocation. Continuing the investigation, P.W.19 arrested the first accused on 31.03.2013 at about 01.30 p.m., at Kottaiappattinam, Avudaiyar Kovil near E.B.office in the presence of P.W.11 and another



witness. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden the jewels. In pursuance of the disclosure statement, he took P.W.19 and the witnesses to the said place and produced the jewels-M.Os.1 to 4. On returning to the Police Station, he forwarded the accused to the Court for Judicial remand and handed over the material objects to the Court. On 03.04.2013, he arrested the second accused, but no disclosure of any fact was made out of the confession made by him. On completing the investigation, finally he laid charge sheet against the accused.

2.6. Based on the above materials, the trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he denied the same as false. In order to prove the charges, on the side of the prosecution, as many as 19 witnesses were examined, 14 documents and 9 material objects were marked.

2.7. Out of the said witnesses, P.W.1 is the grandfather of the deceased child, who has stated about the missing of the child on 28.03.2013 around 07.30 p.m. He has also stated about the fact that the jewels worn by the deceased were all found missing. He has identified M.Os.1 to 4, the jewels worn by the deceased lastly. P.W.2 is a neighbour of P.W.1 and the deceased child. He has also spoken about the same facts. P.W.3 is yet another neighbour, who has stated that he went in search of the child along with P.W.1. He has not stated anything incriminating against the accused and therefore, he was treated as hostile witness. P.W.4 is the mother of the deceased child, who has stated that the deceased child was wearing M.Os.1 to 4. She has further stated that her child was found missing after 06.00 p.m. She has further stated that by about 08.30 p.m., the dead body was found in the gunny bag in the sea shore. P.W.5 also belongs to Kottaipattinam Village. He has stated that on 28.03.2013 at about 05.30 p.m., he found the first accused talking to the deceased child. P.W.6 has stated that on 28.03.2013 at about 04.00 p.m., he found both the accused talking to the deceased. P.W.7 has spoken about the Observation Mahazer prepared and the recovery of material objects. P.W.8 has spoken about the arrest of the first accused and the consequential recovery of M.Os.1 to 4. P.W.9 has spoken about the post-mortem conducted by him and his final opinion and P.W.10 has spoken about the chemical analysis done by him. He has stated that there was no poison detected in the internal organs of the deceased. P.W.11 has spoken about the arrest of the second accused, but there was no discovery of any fact made out of his confession. P.W.12 is another star witness for the prosecution, who has stated that the first accused wanted him to draw money in the ATM centre using his card. Since P.W.12 was not ready to help the first accused, he approached P.W.13. P.W.13 helped the first accused to draw money from ATM centre. P.W.14 is the Head constable, who carried the First Information Report from the police station to the Court. P.W.15 is the constable, who carried the dead body to the hospital for post-mortem. P.W.16 is the head constable attached to police sniffer dog squad. According to him, he brought a police sniffer dog to the place of occurrence and requested the Investigating Officer, but, it did not result in any fruitful clue. P.W.17 has spoken about the photographs taken on the dead body of the deceased in the place of occurrence. P.W.18 has spoken about the registration of the case. P.W.19 has spoken about the investigation done by him.



2.8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same as false. However, he did not choose to examine any witness nor mark any document on his side.

2.9. Having considered all the above materials, the trial Court has convicted the accused as detailed in the first paragraph of the judgment and accordingly, punished him. That is how, the appellant is before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

4. As we have already pointed out, the first accused has not made any appeal against his conviction and sentence. Therefore, we refrain ourselves from making any observation regarding the correctness of the conviction and sentence imposed on the first accused. In this appeal, we are concerned only with the second accused.

5. As rightly pointed out by the learned counsel appearing for the appellant, this is a case based on circumstantial evidence and against the second accused, there are only two circumstances.

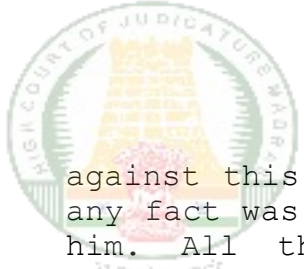
6. The first one is that, according to P.W.6, the accused 1 and 2 were found talking to the deceased at about 04.00 p.m., on 28.03.2013. The second circumstance is that according to P.W.13, on 28.03.2013, these two accused were seen together at Memeesal. Except these two circumstances, there is no other circumstance placed against the second accused.

7. So far as the first circumstance is concerned, even according to P.W.6, these two accused were found talking to the deceased in front of her house at the time of celebration. It is not the case of the prosecution that at about 04.00 p.m., the child was missing. P.W.1 has stated that the child was lastly seen at 06.00 p.m.

8. Even in the chief examination, P.W.1 has stated that the deceased was found playing in front of his house on 28.03.2013 at about 06.00 p.m. Therefore, the fact that this accused was seen with the child at 04.00 p.m., is immaterial. It is not the case that at 06.00 p.m., when P.W.1 saw the child playing, these two accused were anywhere near the said place.

9. The next circumstance is that, according to P.W.13, the accused 1 and 2 were seen at Memeesal. It is unfortunate that nothing was elicited from this witness as to the time at which these two accused were found together on 28.03.2013. If only the moving of the accused together at or about the time of occurrence and somewhere nearer the place of occurrence, is spoken to, it will be an incriminating circumstance.

10. Here in this case, the accused were found together at Memeesal and not at Kottaipattinam. Consequently, even time of their meeting was not spoken to by the witness. These circumstances would not in any manner go to prove the complicity of the second accused. Except these two circumstances, no other circumstance has been placed by the prosecution



against this accused. Even on the arrest of the accused, no disclosure of any fact was made, such as jewels worn by the deceased were recovered from him. All the jewels were recovered, according to the case of the prosecution, only from the first accused. Thus, so far as this accused is concerned, absolutely there is no evidence warranting conviction. We hold that the prosecution has failed to prove the charges against this accused beyond any reasonable doubt.

11. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed against the appellant/second accused is set aside and he is acquitted. The fine amount paid, if any, shall be refunded to the appellant.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The District and Sessions Court,
Mahila Court, Pudukkottai.
- 2.The Judicial Magistrate, Aranthagi.
- 3 The Chief Judicial Magistrate, Pudukottai.
4. The Superintendent, Central prison,Trichy
(in duplicate to communicate the detenu)
- 5.The Inspector of Police,
Kottaipattinam Police Station,
Pudukkottai District.
6. The District Collector, Pudukottai.
7. The Director General of Police, Mylapore, Chennai.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.G.Karuppasamy Pandian, Advocate in SR.No 48825

Copy to

The Section officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

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AAL-MPA/SAR - I