

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.A.No.137 of 2014

Vandimalayan

... Appellant/Accused

Vs.

The State, rep.by
The Inspector of Police,
E4-Abiramapuram Police Station,
Chennai-18
Crime No.469 of 2004

... Respondent

Criminal appeal preferred under Section 374 Cr.P.C.,
against the judgement dated 28.06.2005, passed by the
Principal Sessions Judge, Chennai, in S.C.No.84 of 2005.

For Appellant : Mr.S.Samuel Raja Pandian

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellant is the sole accused, in Sessions Case.84 of 2005, on the file of the Principal Sessions Judge, Chennai. He stood charged for the offence under Section 302 of the Indian Penal Code, for having committed the murder of his child. By judgement dated 28.6.2005, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one month. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

The case of the prosecution in brief is as follows:

(a) The appellant is the husband of P.W.1. They had four children. The last child was a male, by name, Madhan. They were all residing in Sathya Nagar, Adyar, Chennai. On 15.5.2014, in the evening, the accused took Madhan (the deceased) out of his house under the guise of taking him to the bazaar, to get him bajji. But he did not return for a long time with the child. He came alone very late in the night. P.W.1 asked him where the child Madhan was. The

accused told her that the rest of the children were enough for them. This raised some doubt in the mind of P.W.1. Then she insisted the accused to disclose as to where the deceased Madhan was. But he did not give any satisfactory reply.

(b) P.W.1, therefore, informed the same to P.Ws.4 and 5, who are the neighbours. P.Ws.4 and 5 came to the house of the accused and enquired him as to where the deceased Madhan was. Initially he hesitated to answer the said queries. After a long persuasion, the accused told them that the child had died. When they further enquired as to how did the child died, he told that he would identify the place where the child had been buried. P.W.1 was also present at the time when the accused made such a statement. Then, the accused took P.Ws.4 and 5 and P.W.1 to the Adyar River and identified the place. P.Ws.4 and 5 went into the Adyar River and searched for the child. At last, they found that at the place identified by the accused, the dead body of the child was buried in the river mud. P.Ws.4 and 5 brought the body to the bank. P.W.1 thereafter went to the police station along with P.Ws.2 and 3, the neighbours and made a complaint against the accused, at 6.30 a.m., on 16.5.2004. P.W.9, the then Sub Inspector of Police, on receipt of the said complaint, registered a case, in Crime No.469 of 2004, under Section 302 of the Indian Penal code. Ex.P5 is the First Information Report. He forwarded Ex.P1 and Ex.P5 to the Court and handed over the case diary to P.W.10, the then Inspector of Police, for investigation. P.W.10, took up the case for investigation and at 7.00 a.m., he went to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of P.W.6 and another witness. Between 7.30 and 9.00 a.m., he conducted inquest on the body of the deceased. Then, he forwarded the body for post-mortem. P.W.8, Dr.Selvakumar, conducted autopsy on the body of the deceased at the Government Royapettah Hospital on 17.5.2005 at 12.15 p.m. He found no external or internal injuries on the body of the deceased. So far as the internal organs are concerned, he found the heart normal in size and the chambers contained fluid blood. The lungs were heavy and voluminous, congested and oedematous. The hyoid bone was intact. Larynx and trachea contained black colour mud particles. Stomach contained 120 grams of partly digested food particles, mixed with black colour mud particles. Mucosa was found normal. Spleen and Kidneys were congested. Intestines distended with gas. The bladder was empty and the brain was normal. From these, he gave opinion that the deceased would appear to have died of drowning. Ex.P3 is the post-mortem certificate and Ex.P4 is the visera report. P.W.10 arrested the accused on 17.5.2004 and forwarded him to the judicial remand. He recovered the clothe materials from the body of the deceased and forwarded all the material objects to the Court. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges under Sections 302, 201 and 506(ii) of the Indian Penal Code. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 10 witnesses were examined, 7 documents were marked, besides one material object, vide, M.O.1 (the shirt). Out of the said witnesses, P.W.1 is the wife of the deceased, who has stated that the accused took the deceased with him to the bazaar under the guise of getting him bajji. She has further stated that the accused returned home very late, but he did not disclose as to where the child was. All her efforts to know about the whereabouts of the child went in vain. Therefore, she informed P.Ws.4 and 5 who are the neighbours. She has also spoken about the complaint. P.W.2 is a neighbour of the accused. He has turned hostile and he has not supported the case of the prosecution in any manner. P.W.3 has stated that he went along with P.W.1 to the Police station for the purpose of making complaint by P.W.1. P.Ws.4 and 5 are neighbours, who have stated that P.W.1 came to them and informed about the missing of the child and the failure of the accused to disclose the whereabouts of the child. P.Ws.4 and 5 have stated that after a long persuasion made by them, the accused told that the child was no more and he took P.Ws.4 and 5 to the Adyar river and identified the place, from where the body was retrieved. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.7 has stated that on 15.5.2004, at about 10.00 p.m., when he was passing through the bus stop, near Sathya Studio, Adyar, Chennai, he found the accused sitting there. When he enquired as to why he was sitting, he told that he was very happy on the day, because he had killed his child and buried the body on the Adyar river. He has further stated that he did not believe that there was truth in the said statement and therefore, he did not mind it and left the place. He has further stated that he disclosed the said fact as soon as the dead body was retrieved from the river. P.W.8 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.9 has spoken about the registration of the case and the complaint of the deceased and P.W.10 has spoken about the investigation done and his final report.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side. His defence was a total denial. Having considered all the above, the trial Court convicted the accused, as detailed in the first paragraph of this judgement. That is how he is before this Court with this criminal appeal.

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

6. This is a case based on circumstantial evidence. The first and foremost circumstance relied on by the prosecution is that late in the evening on 15.5.2004, the accused took the deceased with him under the guise of taking him to the local bazaar and getting him bajji. P.W.1 has stated that since the deceased was the 4th child to them, the accused was not happy with him. P.W.1 has vividly spoken about the fact that the deceased was lastly found alive when he was taken by the accused to the bazaar. P.W.1 has not been cross-examined, disputing the above facts spoken by her. Thus, the above facts spoken by P.W.1 remain unchallenged by the accused. From these facts, we are of the view that the prosecution has clearly established that the deceased was lastly in the custody of this accused.

7. The accused did not return home till late in the night. In normal course, he used to return home immediately. When he returned late in the night, the child was not in his custody. When P.W.1 enquired him repeatedly, he did not disclose as to what had happened to the child. This only made P.W.1 to come and inform P.Ws.4 and 5. Thus, the conduct of the accused in not disclosing about the whereabouts of the child and not offering any explanation as to what had happened to the child is a very strong incriminating circumstance against the accused, which would go to establish the guilt of the accused.

8. The next circumstance is the evidence of P.W.7, who has stated that at 10.00 p.m. on 15.4.2004, when he was passing through the bus stop at Sathya studio, the accused was found sitting in the bus stop. In a casual manner P.W.7 enquired as to why he was sitting at that odd hours. The accused told him that he was very happy because he had killed his child and put the body into the Adyar River. P.W.7 did not take it seriously as he did not believe that he was telling the truth. There is no reason to reject the evidence of P.W.7. From the evidence of P.W.7 it has been clearly established that the accused made a voluntary confession before P.W.7, admitting his guilt. This is yet another circumstance against the accused.

9. The next circumstance has been spoken by P.Ws.4 and 5. According to them, since P.W.1 came and informed that the accused was not telling about the whereabouts of the deceased, they spoke to the accused and wanted to know from him as to what had happened to the deceased. The accused was very adamant and he did not say anything. After a long persuasion, according to these witnesses, he told them that the child was already dead. Then, he took P.Ws.4 and 5 and went to the Adyar River, where he identified the place, from where the body was retrieved. It is also in evidence that water was not flowing in the river and it was only muddy. From this

circumstance, the prosecution has clearly established that the accused had exclusive knowledge that the dead body of the child was buried in the mud in the river. The accused had no explanation as to how he came to know that the dead body was in the mud, if really he was innocent. The failure of the accused to explain the source of his knowledge as to how the dead body had come to the mud in the Adyar River would again go to prove the guilty mind of the accused.

10. From these circumstances, in our considered view the prosecution has unerringly proved that it was this accused, who killed the deceased by throwing him into the Adyar River. The Doctor, who conducted post-mortem, had found that there were mud particles in Larynx and Trachea and also in stomach, which would go to show that the child had consumed and inhaled the mud from the river. This would further establish that the child was thrown alive into the mud in the river. Thus, the prosecution has clearly established that it was this accused, who had thrown the deceased into the mud in the river and killed him. This act of the accused, in our considered view would squarely fall within the ambit of Section 302 of the Indian Penal Code.

11. The learned counsel for the appellant would submit that the evidences of P.Ws.4 and 5 cannot be believed. We find no merit at all in this argument, because, P.Ws.4 and 5 have no axe to grind against the accused. Similarly P.W.1 had also no axe to grind against the accused, after all she is the wife of the accused. She has also stated that the place where the dead body was found was identified only by the accused and thereafter P.Ws.4 and 5 gone into the river and retrieved the body, after search from the mud. Thus, we do not find any reason to reject the case of the prosecution.

12. The trial Court has considered and analysed the entire evidence let in by the prosecution in their proper perspective to come to a right conclusion that the accused committed murder, for which he is liable to be punished with imprisonment for life and fine of Rs.100/-. This conclusion arrived at by the trial Court, does not warrant any interference at the hands of this Court.

13. In the result, the criminal appeal fails and the same is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
E4-Abiramapuram Police Station,
Chennai-18.

2.The Principal Sessions Judge,
Chennai.

3.The Superintendent,
Central Prison,
Puzhal, Chennai.

4.The District Collector,
Chennai.

5.The Director General of Police,
Chennai 04.

6.The XXIII Metropolitan Magistrate,
Saidapet, Chennai 45.

7.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S.Samuel Raja Pandian, Advocate, S.R.No.26047

Crl.A.No.137 of 2014

KS(CO)
CA(01/06/2016)



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