

Bail Slip

The Appellant/Accused was enlarged on bail and in by the Order dated 18.09..2014 made in Mp. 1/2014 in Crl A.393/2014 on the file of High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.393 of 2014

B.Sathiyaveni ... Appellant/Accused

Vs

State rep. By
Inspector of Police,
Ayilpatti Police Station,
Namakkal District,
Cr.No.436 of 2011

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Namakkal, by judgment dated 12.04.2013, passed in S.C.No.67 of 2012.

For Appellant : Mrs.S.Nirmala Daisy

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The sole accused in S.C.No.67 of 2012 on the file of Principal District and Sessions Court, Namakkal, is the appellant herein. She stood charged for the offences under

Sections 302 (2 counts) and 309 IPC. After trial, by judgment dated 12.04.2013, the trial court convicted the appellant for the offences under sections 302 (2 counts) and 309 IPC and sentenced her to undergo imprisonment for life for each count and also imposed a fine of Rs.5000/-, in default to undergo rigorous imprisonment for 3 months for each count for the offence under Section 302(2 counts) and to undergo simple imprisonment for 6 months for the offence under Section 309 IPC. All the sentences were directed to run concurrently. Challenging the above said conviction and sentence, the appellant is before this Court with this appeal.

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

The appellant is the mother of two deceased children, namely, Sabthagiri, aged about 3 years and Girimurugan, aged about 1 ½ years, in this case. The appellant was married to one Sivasankar (P.W.14) in the year 2007. After the wedlock, they had been blessed with the above two children. They were living at Hospital street at Senthamagalam in Namakkal Taluk. P.W.14 was working as a driver. There were frequent quarrels between the appellant and P.W.14. P.W.14 is a drunkard and used to beat the accused, regularly. On 05.10.2011, being Ayuthapooja day, there was a quarrel between the appellant and P.W.14. Unable to bear the harassment of P.W.14, on 06.10.2011, at about 10.30 a.m., the appellant left the matrimonial home, with her two children and went to Rasipuram. At Rasipuram, she boarded a bus bound for Thambampatti and at about 12.00 noon, she got down at Metala village, along with her children. There she decided to end her life along with children. Then, she took both the children near a well and first threw the elder son and thereafter threw her second son. Thereafter, she also jumped into the well. After that, she tried to save the children, but, she could not do it. Hence, she came out of the well and started shouting and asking for help to save the children. P.W.1, an agriculturist, who was working in his field near the well, on hearing the alarm, along with others, rushed to the well and found one child floating in the well and they brought the child out of the well. But, they could not find the second child. Then, they enquired the appellant and she informed the entire story to them. Immediately, P.W.1 went to the Ayilpatti Police Station and lodged a complaint (Ex.P.1).

3. P.W.18, Sub Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.436 of 2011 for the offences under Sections 302 and 309 IPC. Then, he sent the First Information Report (Ex.P.12) to the jurisdiction Court and copies of the same to the higher police officials.

4. P.W.19, Inspector of Police, working in the respondent

police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2) and drew a Rough Sketch (Ex.P.13) in the presence of witnesses. Near the place of occurrence, P.W.19 found the body of the child Girimurugan and with the help of others he also found the body of the other child Sabthagiri from the well. He conducted inquest on the dead body of the deceased child Sabthagiri, between 7.00 a.m. and 09.00 a.m., in the presence of panchayathars, and prepared an Inquest Report (Ex.P.14). He also conducted inquest on the dead body of the deceased child Girimurugan between 9.00 a.m. and 11.00 a.m., in the presence of panchayathars and prepared another Inquest Report (Ex.P.15). Thereafter, he sent a requisition to the hospital for postmortem of the deceased children through Head Constable.

5. P.W.16, Professor in the Mohan Kumaramangalam Medical College Hospital, Salem, conducted autopsy on the body of the children, namely, Sabthagiri and Girimurugan and gave postmortem certificates, Ex.Ps.5 & 8. She gave opinion that both the children died of asphyxia due to drowning.

6. P.W.19 arrested the appellant at Chelliyampalayam bus-stop, Aathoor to Rasipuram Main Road, and on such arrest, she voluntarily gave a confession. She also identified the well, where she threw the children. Then, he examined the doctor, who conducted postmortem on the dead body of the deceased children and other witnesses. After completion of investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 19 documents were exhibited.

8. Out of the witnesses examined, P.W.1 is an agriculturist residing in Chelliyampalayam Village. According to him, on 06.10.2011, at about 12.00 noon, while he was working in his agricultural field, he heard the alarm from the neighbouring land of his brother, he, along with P.Ws.2, 3, 4 and others, rushed there and saw a child floating in the well, P.W.2 brought the child out of the well and they found the child dead, then, when they enquired the appellant, the appellant told them that she belong to Serthamangalam village, unable to bear the harassment of her husband, she came to Metala village and threw her two sons into the well and she also attempted to commit suicide and thereafter, she changed her mind and tried to

save the children and came out of the well and raised alarm and then, he lodged a complaint. P.W.2 is a resident of Metala village and working as Grade II Constable, Tamilnadu Police. According to him, on 06.10.2011, when he was on leave, he was sitting in his house and at that time, he heard the alarm and rushed to the place of occurrence and there, he saw a child floating in the well and he got into the well and brought the body of the child out of the well. He has further stated that when he enquired the appellant, she told him that her husband was a drunkard and he used to quarrel with her frequently and hence, she decided to die and thereafter, she changed her mind and cried for help to save her children and also requested him to save her children. P.W.3 is also a resident of Metala village and he is an agricultural coolie. He has stated that he was working in the agricultural field at the time of occurrence and he, along with P.W.1 and others rushed to the place of occurrence and saw the child floating and the appellant was standing there and the appellant also told them that due to harassment meted out by her at the hands of her husband, she decided to die along with her children.

9. P.W.4 is also an agriculturist, who was working in the agricultural field at the time of occurrence. According to him, he, along with P.Ws.1 to 3 rushed near the well and P.W.2 got into the well and took the children out of the well. P.W.5 is the owner of the well, in which the occurrence took place. He is only a hearsay witness. P.W.6 is a witness to the Observation mahazar. P.W.7, Village Administrative Officer, who is also a witness to the arrest of the accused and also a witness to the confession given by the accused. P.W.8 is a Head Constable, working in the respondent police, submitted the express First Information Report to the Judicial Magistrate court and to higher officials.

10. P.W.9 is another Head Constable, working in the respondent police, identified the dead body for postmortem in the Government Hospital, Senthamangalam. P.W.10 and P.W.11, who are neighbours of the accused, have turned hostile. P.W.11 and P.W.12, who are doing business in the street, where the accused was residing, also turned hostile. P.W.13 also turned hostile. P.W.14, husband of the appellant and father of the deceased children, also turned hostile. P.W.15, sister of the appellant, also turned hostile.

11. P.W.16 is the Doctor, who conducted autopsy on the dead body of the deceased children and issued postmortem certificates and also gave opinion with regard to the cause of death of the children. P.W.17 is the Junior Scientific Officer, working in the Regional Forensic Lab, Salem. He conducted diatom test and gave a positive report Ex.Ps.10 and 11. P.W.18 is the

Sub Inspector of Police, who registered the complaint. P.W.19 is the Inspector of Police, who conducted investigation and laid charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. She has filed a statement stating that she took the deceased children to her mother's house and on the way, they got down from the bus to answer nature call and at that time, both the children, accidentally, fell down in the well and died. However, She did not choose to examine any witness or mark any documents.

13. Having considered all the above, the trial Court found the accused guilty under both the charges and accordingly, sentenced her as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

14. We have heard Mrs.S.Nirmala Daisy, learned counsel appearing for the appellant and Mr.E.Raja, learned Additional Public Prosecutor, appearing for the State and we have also perused the records carefully.

15. It is a case based on circumstantial evidence. The first and the foremost circumstance relied on by the prosecution is the extra judicial confession said to have been given by the accused before P.Ws.1 to 4. Admittedly, the accused is the mother of the two children, deceased in this case and the wife of P.W.14. She was a permanent resident of Senthamangalam village in Nammakkal district. The occurrence has taken place at one Metala Village in Senthamangalam Taluk and it is far away from the permanent resident of the accused. P.W.1 is an agriculturist in the Senthamangalam village. According to him, on 06.10.2011, at about 12.00 noon, while he was working in the agricultural field, he heard somebody shouting seeking help to rescue her son from the nearby agricultural land, which belongs to the brother of P.W.1. P.Ws.3 and 4 were also working in their agricultural field near the scene of occurrence. Immediately, they rushed there and saw a child floating in the well. P.W.2, working as a Grade II constable in the Tamilnadu Police, who is residing in the nearby place of the scene of occurrence, on hearing the alarm, has rushed to the scene of occurrence and seen the accused standing there and also saw the child floating in the well. He has immediately got into the well and brought the child to the ground and found the child dead. When P.Ws.1 to 4 had questioned the accused, she has told them that her name was Sathyaveni, W/o. Sivasankar and a native of Senthamangalam village, her husband was a drunkard and there were frequent quarrels between them, her husband used to beat her regularly and unable to bear the harassment, she decided to

end her life, along with her children and hence, she came to Rasipuram with her children and boarded in a bus bound for Thambampatti at Rasipuram and got down at Metala village, then, she went near the well and threw the children into the well and thereafter, she also jumped into the well. She has further told to P.Ws.1 to 4 that then, she changed her mind and in order to save the children, she came out of the well and raised alarm. It is first statement of the accused before P.Ws.1 to 4. Even though P.Ws.1 to 4 are strangers to the accused, we considered the circumstances under which the appellant came out with the extra judicial confession. At that time, she was at the mercy of P.Ws.1 to 4 to save her children and P.Ws.1 to 4 have rightly questioned the appellant what had happened. Hence, naturally, the appellant has come out with truth and stated what had happened, spontaneously, without any second thought and obviously, the truth has come out from the mouth of the appellant. Immediately, P.W.1 has lodged the complaint, narrating the above said facts before the respondent police. The medical evidence also corroborates the above said theory.

16. P.W.16, Doctor, who conducted autopsy of the dead bodies of the children has opined that the deceased appear to have died of asphyxia, due to drowning. P.W.17 has conducted diatom test and also given a positive report. Hence, it is proved that both the children had died due to drowning. P.Ws.1 to 4 are strangers and they have no axe to grind against the appellant and there is no reason to disbelieve their evidence. Hence, their evidence as to the extra judicial confession given by the appellant is trustworthy and reliable. Even though the appellant has come out with a different story while questioning under Section 313 of Cr.P.C., that the children were accidentally fell into the well, the same cannot be accepted as a truth, in view of the above said extra judicial confession given by the appellant. In the said circumstances, we are of the considered view that it is only this accused, who threw the children into the well and caused their death and she has also attempted to commit suicide.

17. Now, the next question that we have to decide is as to the nature of the offence what was committed by the appellant. This Court, had an occasion to consider the nature of offence that could be attributed to an accused in a similar circumstance in *Suyambukani Vs. State of Tamilnadu*, reported in 1989 Law Weekly (Criminal) Page 85 David Annoussamy, J. speaking on behalf of the Division Bench, has elaborately considered the scope of the exemptions provided under Section 300 IPC and held as follows :

“ Now that it is clear that the exceptions under Section 300, I.P.C, are not limitative, we

have to examine whether Nallathangal's syndrome can be considered as one of the exceptions. Since the Code in its structure makes the Exceptions limitative, Courts have to show restraint on circumspection in adding Exceptions and such additions should be ejusdem generis. In this connection, it is necessary to examine what is the true nature of the Exceptions. The Exceptions are in the nature of important excusing circumstances and they have the following characteristics:

Nature of excusing circumstance	Premeditation	Ill-will towards the victim
Exception 1 sudden provocation	No	Yes
Exception 2 Private defence	No	Yes
Exception 3 Discharge of public duty	Yes	No
Exception 5 Consent of the victim	Yes	No

One thing is clear from the above analysis viz., in all the Exceptions either premeditation or ill-will is absent. Therefore, when both are present; it will be impossible to counter the matter as an exception.....

27. As pointed out earlier, ill-will and premeditation should be both present in a case of murder. The absence of one of them coupled with an important excusing circumstance would transform the offence into a culpable homicide. In the present case, there is no course premeditation, but obviously no ill-will. The extreme course of family suicide, the mother along with her children, is clearly in our opinion an excusing circumstance equivalent to those enumerated in the Exceptions to S.300 IPC and will be therefore in the nature of an Exception, when the mother escapes and children die, bringing the offence to one punishable under S.304, Part I, I.P.C."

18. Another Division Bench of this Court in Gurusamy Pillai Vs. State, reported in 1991(1) Madras Weekly Notes (Crl)

page 153, in similar circumstances, considering the above judgement convicted the accused under Section 304(i) IPC. The instant case also a similar one. Being unable to bear the harassment, the appellant, being highly depressed, decided to put an end to her life and also decided to put an end to the life of her children, for their benefit, but not with an intention to kill them. It is also to be seen that after throwing the children into the well, she also jumped into the well, and then she changed her mind. She immediately came out of the well and raised alarm to save the children. Hence, the conduct of the appellant also proves that she had no ill-will against the children and she only wanted to save the children. Hence, the judgment of the Division Bench of this Court squarely applicable to the fact of this case also. Hence, the appellant is liable to be punished only under Section 304(i) of IPC.

19. Turning to the quantum of sentence, the learned counsel for the appellant would submit that already she was in custody for more than 1-½ years. Now, she is in the process of reconciliation, and she has suffered lot. Hence, considering the pathetic condition of the appellant, who has undergone a severe mental agony, sentencing her to the period already undergone for the offence under Section 304(i) IPC would meet the ends of justice.

20. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302(2 counts) I.P.C., is set aside and instead, she is convicted for offence under Section 304(i)(2 counts) I.P.C., and the period of sentence is reduced to the period of sentence already undergone by the appellant. The conviction under Section 309 IPC stands confirmed. It is stated that the appellant is on bail. Bail bond, if any, executed by her shall stand cancelled.

sd/

Assistant Registrar(CCC)

/true copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Namakkal

2.The Public Prosecutor,
High Court, Madras.

3.The Inspector of Police,
Ayilpatti Police Station,
Namakkal District.

4.The Judicial Magistrate,
Rasipuram.

5.Do-Thro-The chief Judicial Magistrate,
Namakkal.

6.The Superintendent,
Special Prison for Women,
Vellore.

7.The Section Officer,
Criminal Section,
High Court, Madras.

8.The Judicial Magistrate No.I,
Salem.

9.The Director General of Police,
Mylapore, Chennai.

10.The District collector,
Vellore.

+1cc to Mr.G.Bala & Daisy, Advocate SR.No.46585

Cr1.A.No.393 of 2014

AK(CO)
GN(24/02/2017)

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