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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.70 of 2014

Mrs. Sudha

... Appellant/accused

Vs

State of Tamil Nadu,
Represented by
Inspector of Police,
Mangalam Police Station, Tiruppur
(Crime No.285/2012)

... Respondent/Complainant

Criminal Appeal filed under Section 374 r/w 382 of the Criminal Procedure Code against the judgment of the learned I Additional District and Sessions Judge, Tiruppur, in S.C.No.26 of 2013, dated 03.01.2014.

For Appellant : Mr. G.M.Ramasubramanian

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

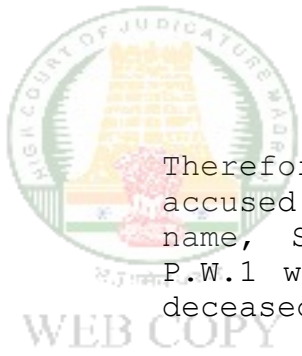
J U D G M E N T

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

The appellant is the accused in S.C.No.26 of 2013 on the file of the learned First Additional District and Sessions Judge, Tiruppur. She was charged for the offence under Section 302 IPC. By judgment, dated 03.01.2014, the trial court convicted and sentenced her to undergo Imprisonment for Life and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for one year. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Gokulraj, hardly aged about four years. P.W.1 is the father of the deceased. The deceased was born to P.W.1 and his first wife, Mrs. Shanthi. After the birth of the deceased, Mrs. Shanthi, deserted P.W.1 and eloped with one Mani @ Iyyappan. P.W.1 was thus struggling to maintain the young child, namely, the deceased.



Therefore, he had decided to go for second marriage. The accused was already married, through whom, she had a son, by name, Saravanakumar. After the marriage, the accused and P.W.1 were living together, as husband and wife, keeping the deceased, Gokulraj and child Saravanakumar with them.

4. Hardly they lived for 20 days. During that period, the accused had a grievance that, P.W.1 was showing more affection and bestowing his best interest only on Gokulraj and not on Saravanakumar. When the accused expressed this to P.W.1, this resulted in a frequent quarrel between them. On 03.06.2012, at about 08.30 am, when all the four were in the house, there arose a similar quarrel between P.W.1 and the accused. At the end of the quarrel and enraged over the said quarrel, it is alleged that the accused took Gokulraj to the nearby well. P.W.1 followed her. P.Ws.2 and 3 also came there incidentally and they also followed. In the presence of P.Ws.1 to 3, it is alleged that the accused threw Gokulraj into the well. P.Ws.1 and 2 suddenly jumped down into the well with a view to rescue the child. But they could not. P.W.3 was waiting outside. Then information was passed on to the Fire and Rescue Services. P.W.9, the Station Officer, along with a team of men, came to the place of occurrence at about 10.15 am on 03.06.2012. They got into the well and searched for the child. After a hectic search for about three hours, the dead body of the child was located in the well and it was brought up. P.W.9 handed over the body of the deceased to his relatives. Thereafter, P.W.1 went to Mangalam Police Station, Tiruppur, and preferred a complaint at 02.30 pm on 03.06.2011 under Ex.P-1. P.W.12, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.285 of 2012 under Section 302 IPC. He forwarded both the documents to the Court, which was received by the learned Judicial Magistrate, Tiruppur, at 09.20 pm on 03.06.2012.

5. The case was taken-up for investigation by P.W.14. He went to the place of occurrence, prepared observation mahazar and rough sketch at 03.30 pm on 03.06.2012, in the presence of P.Ws.6 and 7. He collected water for sampling, in two bottles, from the well and sealed the same. He recovered the same under a mahazar. Between 05.00 pm and 07.00 pm on 03.06.2012, he conducted inquest on the dead body of the deceased and examined P.Ws.1 to 4 and few more witnesses. Then, he forwarded the body for post mortem.

6. P.W.11 conducted autopsy on the body of the deceased on 04.06.2012 at 12.05 pm. He found the following injuries:-

"Ext. Injuries: Abrasion 0.5 x 0.5 cm at
Right Foot.

Eyelids - closed / Nose - no discharge /
Mouth & Lips - closed / Tongue - Kept inside the

mouth



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Ears - no discharge / Ribs - intact / Heart - congested - 5 ml of blood.

Lungs - swollen, while squaring water comes out with air bubbles - (1) 300 gm (2) 250 gm.

Hyoid - intact / Stomach - 50 gms of partially digested food particles.

Liver - congested 100 gm, spleen - congested - 50 gm, Kidneys - congested 60 gms.

Skull - linear # over occipital region / Brain - 1000 gms - Intra cranial Haemorrhage with column and clot over occipital region.

Viscera and Water collected from lungs - sent for chemical analysis.

Opinion: Reserved, pending chemical analysis."

7. Ex.P-8 is the post mortem certificate and Ex.P-9 is the final opinion regarding the cause of the death. He gave an opinion that the death was due to head injury and due to drowning.

8. During the course of investigation, on 04.06.2012 at 01.00 pm, P.W.14 arrested the accused in the presence of witnesses. On such arrest, she gave a voluntary confession. But no discovery of any fact was made out of the same. Then, he forwarded the accused for judicial remand. P.W.14 made a request to the Court to forward material objects for chemical examination. The report reveals that there was no diatom found on the internal organs of the deceased. The investigation was continued by P.W.14 and he laid the charge sheet against the accused.

9. Based on the above materials, the trial court framed a charge under Section 302 IPC, against the accused, as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 14 witnesses were examined and 12 documents were exhibited, besides marking 4 Material Objects.

10. Out of the said witnesses, P.Ws.1 and 2 have spoken about the entire occurrence, as eye-witnesses. P.W.1 has further stated about the complaint made by him to the Police. P.W.4, the neighbour, has stated that, on hearing the alarm raised, he came out of the house, found P.W.2 in front of his house and rushed towards the well. Then he enquired P.W.2. P.W.2 told that, he was going to the well, since he had information that the accused had thrown the deceased into the well. P.W.5 has spoken about the arrest of the deceased and confession made. P.Ws.6 and 7 have spoken about the preparation of Observation Mahazar and Rough Sketch and the recovery of water from the well in two bottles for sampling.

P.W.8, the Head Constable has stated that he had taken the



dead body of the deceased and handed over the same for post mortem.

11. P.W.9, Fire Officer, has stated that on 03.06.2012, at 10.00 am, one Jeyakumari, Grade-I Police Constable, Palladam Police Station, gave intimation to him that the child, by name, Gokulraj, aged about four years, had been thrown into the well. He has further stated that after recording the same, in his Official Registers, along with the Policemen, he rushed to the place of occurrence. He has further stated that he made a search in the well for three hours and finally the body of the deceased was taken. He has further stated that around 01.00 pm, he had handed over the dead body of the deceased to his relatives. P.W.10 the Head Clerk of the Court has spoken about the forwarding of the material objects for chemical analysis. P.W.11 has spoken about the post mortem conducted and final opinion given. P.W.12 has spoken about the registration of the case. P.W.14 has spoken about the investigation done in this case and the final report filed by him.

12. When the above incriminating materials were put to the accused, she denied the same as false. However, she did not choose to examine any witnesses nor marked any documents, on her side.

13. Having considered all the above, the trial Court convicted the accused under Section 302 IPC. Challenging the same, the appellant is before this Court with this Criminal Appeal.

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

15. The learned counsel for the appellant would submit that, in this case, there is enormous delay in forwarding the complaint to the Court, which creates a doubt in the case of the prosecution. He would further submit that P.Ws.1 to 3 would not have seen the occurrence at all and the same would reveal from their own admissions made during cross-examination. He would further submit that the medical evidence does not corroborate the eye-witnesses at all. For these reasons, the learned counsel for the appellant would submit that the accused is entitled for acquittal.

16. The learned Additional Public Prosecutor appearing for the State would vehemently oppose to the submissions made by the learned counsel for the appellant. According to him, P.Ws.1 to 3 have categorically stated about the occurrence, whose evidences have been duly corroborated by the evidence of P.W.4 also. He would further submit that the medical evidence



thoroughly corroborates the eye-witnesses. According to him, the delay in forwarding the complaint to the Court is not enormous. Thus, according to the learned Additional Public Prosecutor, there is no merit in this appeal.

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17. We have considered the above said submissions made by the learned counsel for the appellant as well as the respondent.

18. From the admission made by P.W.1, during cross-examination, it is revealed that the deceased and P.W.1 had lived together as husband and wife hardly for 20 days. It is also in evidence that, most of the time, there was quarrel between these two. It is on account of the fact that the accused was bestowing his interest only on Gokulraj and not on her son's (Saravanakumar's) affairs. To prove this incident, there is no acceptable evidence let in by the prosecution.

19. Next comes the evidence of P.Ws.1 to 3, as eye-witnesses. According to P.W.1, he was very much present at the scene of occurrence and at the end of the quarrel, the accused took the deceased towards the well and threw him into the well. P.Ws.2 and 3 would say that they incidentally, by chance, came in front of the house of the accused and they also rushed along with P.W.1 towards the well and they found the accused throwing the child into the well. But P.W.1, during cross-examination has stated that at the time of occurrence, he was busy in his hand loom work. The fact that the child was thrown into the well was informed to him only by his wife. He has further stated that P.Ws.2 and 3 enquired the accused as to what had happened to the deceased and it was only at that time the accused disclosed that she had thrown the child into the well. This is not at all the case of the prosecution. If this part of the evidence is considered, it is crystal clear that neither P.W.1 nor P.W.2 would have witnessed the occurrence at all. Had they really witnessed the occurrence, they would have had no occasion to enquire the accused as to what had happened to the child.

20. P.W.3 during cross-examination has stated that, when he was busily engaged in his hand loom work, he heard the alarm raised, he came to the place of occurrence and then he came to know about the same. Therefore, his evidence that he witnessed the occurrence (made before the Court) is only an after-thought and it was not his original version, as stated by him before the Police. Therefore, P.W.3 also would not have witnessed the occurrence. Thus, the presence of P.Ws.1 to 3 at the scene of occurrence and the evidence of P.Ws.1 to 3, as eye-witnesses to the occurrence, are highly doubtful.

21. Then comes the First Information Report. According to P.W.12, P.W.1 came to the Police Station at 02.30 pm on



03.06.2012 and presented Ex.P-1, which was a written complaint. But, during cross-examination, he has admitted that Ex.P-1 itself is in his handwriting. If that is so, his version that the written complaint had already been brought by P.W.1 deserves consideration. It is not explained to Court as to what had happened to the written complaint, which was already presented by P.W.1 to P.W.12. Then, according to him, till 02.30 pm, it goes as though the occurrence was not known to the Police. But, P.W.9, the Fire Officer has stated that when he was at his office at 10.00 am, on 03.06.2012, one Jeyakumari Grade I, Police Constable, Palladam Police Station, gave intimation that the child, Gokulraj, aged 4 years, had been thrown into the well. He recorded the same at his Office Registers and then rushed to the place of occurrence, along with the policemen and reached the place of occurrence at 10.15 am. He has further stated that after search for three hours, the body was lifted out from the well and the same was handed over to the Police. This means that the dead body was handed over to the Police, around 01.00 pm itself. It is not explained to the Court as to what was the information that the Police Constable Jeyakumari was given and it is also not explained as to why that information has been suppressed. When the evidence of P.W.9 goes to show that the dead body was handed over to the Police around 01.00 pm itself, it is highly unbelievable that till 02.30 pm, the police were not informed of the occurrence. Thus, Ex.P-1 cannot be the earliest information, in this case. As we have already discussed, the earlier information, in this case, has been suppressed and in its place, Ex.P-1 has been substituted.

22. Above all, there is an admission made by P.W.13 that the distance between the Police Station and the Court and the house of the learned Judicial Magistrate could be covered within 45 minutes. But, here, though it is alleged that the First Information Report was registered at 02.30 pm, it has reached the hands of the learned Magistrate only at 09.20 pm. The person, who carried the First Information Report and handed over the same to the learned Magistrate, has also not been examined. Absolutely, there is no explanation for this delay also.

23. In this regard, we may refer to a judgment of the Hon'ble Supreme Court in the case of Thulia Kali v. State of Tamil Nadu, reported in 1973 AIR 501, wherein, the Supreme Court, in an identical situation has held that, if there is an unexplained delay in preferring the complaint and forwarding the same to the Court, it would naturally create a doubt in the case of prosecution. Here, in this case, as we have already pointed out, no attempt has been made by the prosecution to explain the delay. This also creates doubts in the mind of the Court. Apart from that, there is no other evidence available on record to clinchingly prove the case of



the assailant. As we have already concluded, it is not safe to rely on the evidence of P.Ws.1 to 3 as their evidences are highly doubtful. Such doubt has been further strengthened by suppression of the original information.

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24. For the aforesaid reasons, we hold that the accused is entitled for acquittal, as the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned First Additional District and Sessions Judge, Tiruppur, in S.C.No.26 of 2013, by the judgment, dated 03.01.2014, are hereby set-aside. The appellant / accused is acquitted of all the charges levelled against her and she is directed to be set at liberty, forthwith, unless her presence is required in connection with any other case. Fine amounts, if any, paid by the appellant, shall be refunded to her. Bail bonds, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

- 1.The Judicial Magistrate,
Tiruppur.
- 2.The Chief Judicial Magistrate,
Tiruppur.
- 3.The I Additional District and
Sessions Judge, Tiruppur.
- 4.The Superintendent,
Central Prison,
Vellore.
- 5.The District Collector,
Tiruppur.
- 6.The Director General of Police,
Mylapore Chennai 04.
- 7.The Inspector of Police,
Managalam Police Station,
Tiruppur.



8.The Public Prosecutor,
Madras.

9.The section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.G.M.Ramasubramanian, Advocate, S.R.No.29741

Crl.A.No.70 of 2014

SAI (CO)
CA(04/07/2016)