

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.06.2016

CORAM:

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

Crl.A.No.190 of 2015

Senthil

...Appellant/Accused

vs.

State by:Inspector of Police,
Mettur Police Station,
Salem District.
(Crime No.347 of 2012)

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code praying to allow this appeal by setting aside the judgement in S.C.No.334 of 2013 on the file of the Principal Sessions Judge, Salem dated 19.03.2015.

For Appellant : Mr.B.Vasudevan

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

JUDGMENT

(Judgement of the Court was delivered by V.BHARATHIDASAN, J.)

The sole accused in S.C.No.334 of 2013 on the file of the Principal Sessions Judge, Salem is the appellant herein. He stood charged for an offence under Section 302 IPC (2 counts). By judgement, dated 19.03.2015, the trial Court convicted the accused for the offence under Section 302 IPC (2 counts) and sentenced him to undergo Life Imprisonment for each count and also imposed a fine of Rs.1000/- for each count, in default, to undergo one year Rigorous Imprisonment. However, the sentences were ordered to run concurrently. Challenging the conviction and sentence, the appellant/accused is before this Court with this

appeal.

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

The appellant is the father of deceased two minor children viz., Murugan @ Velmurugan and Keethivasan. P.W.2 [Sangeetha] is the wife of the appellant. The appellant was working in a Rig Lorry and P.W.2 was working in a Gold Covering Jewel shop. Suspecting the fidelity of P.W.2, the accused quarrelled with her, hence, P.W.2 took the children and went to her mother's house. On 26.08.2012, the accused took the deceased children from his mother-in-law house to his house at Tiruchengode. Both the children were studying at Weavers Colony Municipal Middle School, Tiruchengode. On 27.08.2012, at about 01.45 p.m., the accused took two children, after obtaining permission from the Teachers [P.W.8] and [P.W.9] under the pretext of providing them lunch, and he took the children on his motorcycle, and after providing them lunch, he took them to Kaveri River Bridge, near Mettur and pushed them into the river and caused their death. Thereafter, on 28.08.2012, at about 07.30 a.m., the accused appeared before P.W.1 [Tr.Karunakaran], who was working as Revenue Inspector, Mettur, and gave an extra judicial confession admitting his guilt. P.W.1 recorded his extra judicial confession, took him to the respondent police, and then, lodged a complaint against the accused before the respondent police, which was marked as Ex.P1.

3. P.W.14-Sub Inspector of Police, working in Mettur Police Station, on receipt of the complaint, registered a case in Crime No.347 of 2012, for the offence under Section 302 of IPC. Ex.P18 is the First Information Report. He sent the First Information Report to the learned Judicial Magistrate No.1, Mettur and also sent to the higher officials. P.W.16-Inspector of Police, working in Mettur, on receipt of the First Information Report, caused the arrest of the accused in the presence of Revenue Inspector and the Village Administrative Officer and other witnesses and on such arrest, the accused has given a voluntary confession statement and based on such voluntary confession [Ex.P2], he recovered School Uniform of the deceased Children [M.Os.4 to 6] and Motorcycle viz., Hero Honda Splendor bearing Reg.No.TN34 K 4403 [M.O.1] and School Identity Card (2 Nos.) [M.O.2] and Black Colour Cellphone [M.O.3], in the presence of the witnesses. Then, he prepared an Observation Mahazar [Ex.P4] and also drew a Rough Sketch [Ex.P19]. Then, he informed Fire Service Department, recovered the bodies of the deceased with the help of Fire Service personnel. P.W.2 and P.W.3, who are the mother and grand-mother of the deceased, identified the bodies of the deceased. Then, P.W.16 conducted inquest on the dead bodies of the deceased in the presence of witnesses and prepared Inquest Reports Exs.P20, and P21, and sent the dead bodies of the deceased to the Government Hospital, Mettur through P.W.13-Head Constable for post-mortem, and he

recorded the statements of the other witnesses.

4. P.W.11- Dr.M.Radhakrishnan working in the Government Hospital, Mettur, conducted post-mortem on the dead bodies of the deceased on 28.08.2012 at 1.30 p.m., and at 3.40 p.m., respectively and issued Post-mortem Certificates Exs.P9 and 14 respectively, wherein he found the following injuries on the dead bodies of the deceased:-

Appearance found at the Post-mortem in respect of Velmurugan @ S.Murugan:-

Body of male lying on its back, eye closed, tongue kept in, teeth 5/5 , frothy discharge from the 5/5

mouth. Both foot and palm pale in colour. I/E:Hyoid bone preserved. Ribs intact. Heart wt. 200 gms. Chamber empty. Lungs Rt. 300gms Lt. 280 gms. C/s Congested. Squeezing the lung parenchyma watery discharge with air bubble present. Liver 1200 grms. C/s congested, stomach contains 100 grms of undigested food particles present. Intestine empty. Kidney each 100 grms c/s congested, spleen 100 grms. C/s congested. Bladder empty. Skull No #. Membrane intact. Brain 1000 grms c/s pale. The following viscera preserved. 1) Hyoid bone. 2) Sternum for diatoms test. 3) Stomach with contents 4) Intestine 5) Portion of liver. 6) One kidney. 7) Sample of preservative. 8) Sample of H2O.

Opinion:- Deceased would appear to have died about 18 to 23 hrs prior to autopsy. Cause of death reserved.

Pending: Chemical Analysis report.

Appearance found at the Post-mortem in respect of Keerthivasan:-

A body of male lying on its back, eye closed, tongue kept in teeth 5/5 , both foot and palm pale

5/5 in colour. Frothy discharge from the mouth. No External injury. I/E: Hyoid bone preserved. Ribs intact. Heart wt.200 gms. Chamber empty. Lungs Rt. 360gms Lt. 340 gms. Squeezing the lung parenchyma water discharge and bubble present. Liver 1200 grms. C/s congested, stomach contains 100 grms of undigested food particles present. Intestine empty. Kidney each 100 grms

c/s congested, spleen 100 grms. C/s congested. Bladder empty. Skull No #. Membrane intact. Brain 1000 grms c/s pale. The following viscera preserved. 1) Hyoid bone. 2) Sternum for diatoms test. 3) Stomach with contents 4) Intestine 5) Portion of liver. 6) One kidney. 7) Sample of H2O 8) Sample of preservative.

Opinion: Deceased would appear to have died about 19 to 24 hrs prior to autopsy. Cause of death reserved.

Pending: Chemical Analysis report.

5. P.W.11 opined that the death of the deceased was caused due to asphyxia and due to drowning. Further, P.W.16 continued the investigation and recorded the statement of the post-mortem Doctor and other witnesses. On his request, the material objects were sent for Chemical Examination. After completion of investigation, he filed charge sheet against the accused for the offence under Section 302 IPC before the Judicial Magistrate Court I, Mettur.

6. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of this judgment. During questioning, the accused denied the charges. In order to prove the case of prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 32 documents were exhibited besides 6 material objects were marked. On the side of the accused, one witness was examined as D.W.1 and one document was marked as Ex.D2.

7. Out of the prosecution witnesses examined, P.W.1 was working as Revenue Inspector, Mettur. According to him, on 28.08.2012, the accused appeared before him and he has given the extra Judicial Confession. After recording such confession, he produced the accused before the respondent police and lodged a complaint [Ex.P1]. On receipt of the same, the First Information Report was registered in Crime No. 347 of 2012 as against the accused for the offence under Section 302 IPC (2 counts).

8. P.W.2 is the wife of the accused and mother of the deceased children. She deposed that the accused used to quarrel with her and hence, she went to her mother's house along with two children. On 26.08.2012, the accused took the deceased children to his house at Trichengode and she identified the bodies of the deceased. P.W.3 is the mother of P.W.2. In her evidence, she deposed that on 26.08.2012, the accused came her house and took his children in his motorcycle to Trichengode and she also identified the bodies of the deceased. P.W.4, who

is the uncle of PW2, also deposed in his evidence that the deceased took the children in his motorcycle. P.W.5, who is the sister of P.W.2, spoke about the quarrel between the accused and P.W.2.

9. P.W.6 is a Fisherman and residing near Kaveri Bridge at Mettur. On 27.08.2012, he saw the accused along with deceased children near Kaveri Bridge. When he questioned him, the accused said that all of them came for taking bath, and he told him to leave the place immediately. On the next day, he assisted Fire Service personnel to recover the dead bodies of the deceased children. P.W.7 is a Shepherd, residing at the place of occurrence. On 27.08.2012 at about 07.00 p.m., he saw the accused, who came out from the bush near Kaveri River and took his motorcycle and he also identified the motorcycle [M.O.1].

10. P.W.8 is the Teacher, who was working in the Weavers Colony Municipal Middle School, Tiruchengode, where the deceased children were studying. According to her, on 27.08.2012, the accused took the children from the School under the pretext of providing lunch to them. P.W.9 is another Teacher, she also corroborated the evidence of P.W.8. P.W.10 is the Head Master in-charge of the Weavers Colony Municipal Middle School, Tiruchengode, she has given permission to the accused for taking his children, also marked school attendance register (Ex.P6), in which both the deceased children were mentioned 'absent' from 27.08.2012 afternoon onwards and they were present on the date of occurrence i.e. 27.08.2012 in the forenoon. Thereafter, they did not attend the school.

11. P.W.11 is the Doctor, who conducted post mortem on the dead bodies and issued post mortem certificates. P.W.12 is working as a Scientific Officer in Forensic Science Department, Villupuram and he has examined the material objects and given a report.

12. P.W.13 is the Head Constable, who carried the bodies to the hospital and identified the dead bodies for conducting post-mortem. P.W.14 is the Inspector of Police, who registered the First Information Report in Crime No.347 of 2012 for the offence under Section 302 IPC[Ex.P18]. P.W.15-Head Constable submitted First Information Report to the Judicial Magistrate Court I, Mettur. P.W.16-Investigating Officer conducted the investigation, recovered the dead bodies, arrested the accused and seized the material objects. After completion of investigation, he has filed a final report before the concerned Judicial Magistrate Court.

13. When the above incriminating materials were put together against the accused, the accused denied the same as false. On the side of the accused, he examined one witness as

D.W.1-Noon Meal Organiser working in Weavers Colony Municipal Middle School, Tiruchengode, where the deceased children were studying and she has maintained attendance marking their presence in the attendance register. According to her, both the children were present at 12.40 p.m., and she further said that from the attendance register she cannot say whether the children were present on the whole day. Ex.D1 is the Attendant Register.

14. Having considered the above materials, the Trial Court convicted and sentenced the accused as mentioned in the first para of this judgment. Challenging the conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

15. We have heard Mr.B.Vasudevan, learned counsel for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. It is a case of circumstantial evidence. According to the prosecution, the appellant took the children from the house of P.W.3 to Tiruchengode on 26.08.2012. The next day viz., 27.08.2012, the deceased children were attending the school and it was established by examining the School Teachers [P.Ws.8 & 9] and Head Master [P.W.10]. According to P.Ws.8 and 9, School Teachers, on 27.08.2010, in the lunch time, the appellant took the deceased children under the pretext of providing lunch for them. P.W.10 the Head Master in charge of the School, through whom the attendance register was marked, has also stated that she has given permission to the appellant to take the children from the school. Hence, the prosecution established that before the occurrence, the appellant took the children from the school. P.W.6 a Fisherman residing near the scene of occurrence deposed that on the date of occurrence the appellant was standing near the Kaveri River Bridge along with the deceased children. When he questioned the accused, he said that they came there for taking bath, and P.W.6 told the accused not to stand there during night hours and to leave the place immediately. P.W.7 Shepherd, who is having a residence near the scene of occurrence, at about 07.00 p.m., saw the accused alone coming out from the bush near the River Bridge and took his motorcycle [M.O.1] and he went towards Mettur. He also identified the motorcycle [M.O.1]. From the evidence of P.Ws.6 and 7, the prosecution clearly established that on at or about occurrence the accused and his two children were standing together near Kaveri River Bridge. Thereafter, on the next day morning at about 07.30 a.m., the accused appeared before P.W.1 and gave an extra Judicial confession admitting his guilt. There is no reason to reject the extra judicial confession given by the accused.

17. The next strong circumstance is that based on the disclosure statement of the appellant, the body of the deceased children were recovered from the Kaveri River, until then the whereabouts of the deceased was not known, it is within the exclusive knowledge of the accused.

18. We are conscious of the legal position that the case is based on the circumstantial evidence. The circumstances relied on by the prosecution, should be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused.

19. Keeping this principle in mind, if we analyse the facts of the present case, the circumstances narrated above have been clearly established by the prosecution and these circumstances unerringly pointing one the guilt of the accused. Hence, we are of the considered view that the prosecution has proved the guilt of the accused beyond all reasonable doubt.

20. In view of the above circumstances, the criminal appeal fails and consequently, the same is dismissed.

21. In fine, this Criminal Appeal is dismissed. The conviction and sentence passed on 19.03.2015 in S.C.No.334 of 2013 by the learned Principal Sessions Judge, Salem stands confirmed.

Sd/-
Asst.Registrar

/true copy/

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Sub Asst. Registrar

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To

1.The Principal and Sessions Judge,
Salem.

2.The Judicial Magistrate No.1,
Mettur.

3. Inspector of Police,
Mettur Police Station,
Salem District.

4. The Director General of Police
Mylapore Chennai-4

5. The Superintendent Central Prison,
Coimabto

6. The District Collector Salem

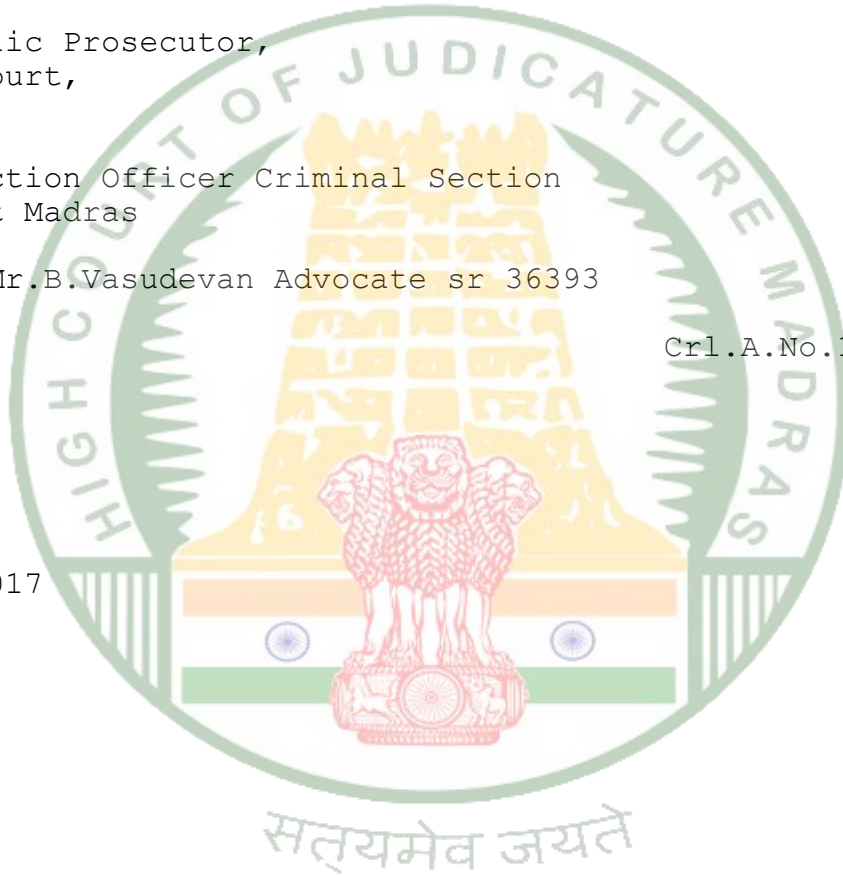
7. The Public Prosecutor,
High Court,
Madras.

8. The Section Officer Criminal Section
High Court Madras

+1 cc to Mr.B.Vasudevan Advocate sr 36393

Crl.A.No.190 of 2015

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