

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.554 of 2015
and
M.P.Nos.1 and 2 of 2015

Meenakshidevi ..Appellant/Accused

Vs

State rep. By
Inspector of Police,
Thiruppur rural Police Station,
Thiruppur district.
(In crime No.1058 of 2012) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the judgment and conviction imposed by the learned Principal Sessions Judge, Thiruppur, in S.C.No.75 of 2013 dated 03.01.2014.

For Appellant : Mr.Swamy Subramanian,
Legal Aid counsel.

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

JUDGEMENT

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

The sole accused, in S.C.No.75 of 2013, on the file of the learned Principal Sessions Judge, is the appellant herein. She stood charged for offences under Sections 302 and 211 I.P.C. By judgment dated 03.01.2014, the trial Court convicted the accused for offences under Sections 302 and 211 IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.15,000/- in default to undergo simple imprisonment for three months for the offence under Section 302

IPC and to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for one month for the offence under Section 211 IPC and the trial Court ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Mahalakshmi, 2 ½ years old, is the daughter of the accused and P.W.1. The accused was married to one Kumar, P.W.1 and out of the wedlock, the deceased child was born. Thereafter, there were frequent quarrel between the accused and P.W.1. Hence, the accused came to her mother's house along with the deceased child and living with her. P.W.1 has taken steps to settle the issue with her and wants to take her back to the matrimonial house. But, the accused refused to return to the matrimonial house stating that she is going to re-marry one Suriya and she asked P.W.1 to take the child with him. On 30.10.2012, at about 7.00 p.m., P.W.1 received information that the child was not well and immediately, he rushed to the Government Hospital, Tirupur and found the child dead.

3. P.W.2 is the owner of the house, where the accused and his mother were residing. According to her, on 30.10.2012, at about 5.00 p.m., when she saw the accused, and the accused told her that the child was not well and something happened to the child. She found the child was totally breathless. Hence, she advised the accused to take the child to the hospital. P.W.3 is also a neighbour and she also saw the accused shouting with the child that something happened to the child and she found the child breathless and there is no pulse. Then, the accused took the child to the hospital, where, the child was declared brought dead.

4. The accused gave a complaint, Ex.P.9, before the respondent police stating that on 30.10.2012, in the morning, the child was not well and at about 3.00 p.m., her condition became worst, hence, the accused took the child to the hospital at 5.00 p.m., where the child was declared dead.

5. Based on the complaint, P.W.11, Sub-Inspector of Police, registered a case in Crime No.1058 of 2012, under Section 174 Cr.P.C. He forwarded First Information Report, Ex.P.10, to the higher officials.

6. P.W.12, Inspector of Police, on receipt of First Information Report, commenced investigation, proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P1

and a Rough Sketch, Ex.P.11 in the presence of witnesses. He recorded the statement of witnesses. Subsequently, on 02.11.2012, at about 10.00 a.m., the accused appeared before P.W.9, Village Administrative Officer and gave an extra judicial confession. P.W.9 after recording the statement of the accused, produced the accused along with his report, Ex.P.8 before P.W.12. P.W.12, arrested the accused and on such arrest, she gave a voluntary confession and based on her disclosure statement, Ex.P.7, P.W.12 recovered Dupatta, M.O.1 under Mahazar, Ex.P.8. Then, he sent the accused for Judicial custody.

7. In the meantime, P.W.5, Doctor, working in the Government Hospital, Tirupur, conducted autopsy on the body of the deceased on 30.10.2012, at 2.20 p.m., and found the following injuries:-

" A knot mark made up of a rope or tie mark seen over the right side of the neck. A wrinkle mark run over the right side neck. Ligature mark starts from right side of the neck and run around the neck above thyroid cartilage. Circumference 24 cms knot mark from right ear lobe 4 cm left ear lobe 4 cm , from chaw 6 cm. Wrinkle 9cm - width 1 ½ cm"

Ex.P.4 is the Postmortem certificate and he gave Final Opinion, Ex.P.5, that the deceased would appear to have died of asphyxia due to throttling causing hyoid bone fracture.

8. Then, P.W.12, continued the investigation and recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased. Then, after completion of investigation, he laid the charge sheet against the accused on 28.02.2013 for the offences under Sections 302 and 211 IPC.

9. 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 its case, on the side of the prosecution, as many as 12 witnesses were examined and 11 documents were exhibited, besides 3 Material Objects.

10. Out of the said witnesses, P.W.1 is the husband of the accused and father of the deceased. P.W.2 is the house owner, where the accused along with her mother and deceased child were residing. P.W.3 is a neighbour of the accused. Both P.Ws.2 and 3 saw the accused carrying the child and shouting that something happened to the child and they found the child is breathless and asked the accused to take the child to the hospital. P.W.4 is a witness to the Observation Mahazar. P.W.5,

Doctor, conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.6 is the mother-in-law of the accused and mother of P.W.1. She speaks about the marriage between P.W.1 and the accused and quarrel between them. She has also spoken about the motive that the accused told them that she is going to marry one Suriya and asked them to take the child, otherwise, she will kill the child.

11. P.W.7 is a witness to the arrest of the accused and recovery of Dupatta, M.O.1. P.W.8 saw the accused standing near school gate with the child and she was crying. The accused informed one Paramasivam, who is known to the accused, that the child is not well and the said Paramasivam asked P.W.8 to take the accused with child to the hospital and he dropped the accused and deceased in the hospital.

12. P.W.9 is the Village Administrative Officer, before whom the accused gave an extra judicial confession. P.W.10, police constable, identified the dead body of the deceased for postmortem and after postmortem, she handed over the dead body to P.W.1. P.W.11, Head Constable, registered the First Information Report. P.W.12, Inspector of Police, conducted investigation, recorded the statement of the witnesses, arrested the accused and recovered the material objects. After completion of investigation, he laid charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. On her side, she examined her mother one Nagarathinam as DW1. She did not choose to mark any documents.

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

15. We have heard Mr. Swamy Subramanian, learned Legal Aid Counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. It is a case of circumstantial evidence. The prosecution mainly relied upon the extra judicial confession given by the accused before Village Administrative Officer, P.W.9. According to P.W.9, on 02.11.2012, at about 10.00 a.m., the accused appeared before him and voluntarily gave a confession admitting her guilt. After recording the statement of the accused, he produced her to the investigating officer,

P.W.12 and P.W.12 arrested the accused. But, according to P.W.1, husband of the accused, on 30.10.2012, after hearing the news, went to the hospital and saw the deceased child and then, he went to the police station for giving complaint. At that time, the accused and her mother, D.W.1 were present in the police station and police also enquired them. According to DW.1, on the date of occurrence, P.W.1 came to her house and quarreled with the accused and at about 4.00 p.m., she saw the child suffering from some problem and she immediately informed the same to the accused and the accused came to the house and took the child to the hospital. Hence, from the evidence of P.W.1, it is clear that on 30.10.2012 itself the accused was in the custody of the police. Therefore, the alleged extra judicial confession given before P.W.9, on 02.11.2012, cannot be believed and it cannot be relied upon.

17. The next circumstance, namely, motive, alleged by the prosecution is that the accused wanted to marry one Suriya and for that purpose, she murdered the child. It can only be an invented story of the prosecution, as there is no evidence to show that the accused had any connection with the above said Suriya. As far as the medical evidence is concerned, the doctor who has conducted postmortem has given an opinion that the deceased died of asphyxia due to throttling and that alone is not sufficient to connect the accused with the murder.

18. Now turning to the conduct of the accused, according to P.W.2, house owner, on 30.10.2012, at about 5.00 p.m., the accused herself carried the child from her house, shouting that something happened to the child and she saw the child breathless and P.W.2 gave money and asked the accused to go to the hospital. P.W.3, neighbour also corroborates the evidence of P.W.2. P.W.8, saw the accused standing with the child in her arms and crying and one Paramasivam, who is known to the accused, asked P.W.8 to drop the accused and the child, in the hospital. Hence, P.W.8 took the accused and the deceased child to the hospital. It is only the accused who has given a complaint to the respondent police on the next day of the death of the deceased. Hence, the conduct of the accused is quite natural, and the conduct of the accused is only consistent with her innocence.

19. In the case of circumstantial evidence, the circumstances projected by the prosecution are to 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. Keeping the above principle in mind, we carefully analyze the facts of the present case and we are of the considered view that

the prosecution has failed to prove the circumstances beyond any reasonable doubt. Hence, the appellant is entitled for acquittal.

20. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Principal Sessions Judge, Tiruppur, in S.C.No.75 of 2013 by the judgment dated 03.01.2014 are hereby set aside. The appellant/accused is acquitted of 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 amount, if any, paid by the appellant, shall be refunded to her. Consequently, connected miscellaneous petitions are closed.

21. While parting with the case, we appreciate the services rendered by Mr.Swamy Subramanian, learned counsel, who appeared on behalf of the appellant/accused, as legal aid counsel. The legal services authority is directed to pay his remuneration.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Tiruppur,

2 The Judicial Magistrate II
Tiruppur

2a Thro Chief Judicial Magistrate,
Tiruppur

3 The Inspector of Police
Thiruppur Rural Police Station,
Thiruppur District

4 The Secretary
Tamil Nadu Legal Services Authority
High Court, Madras

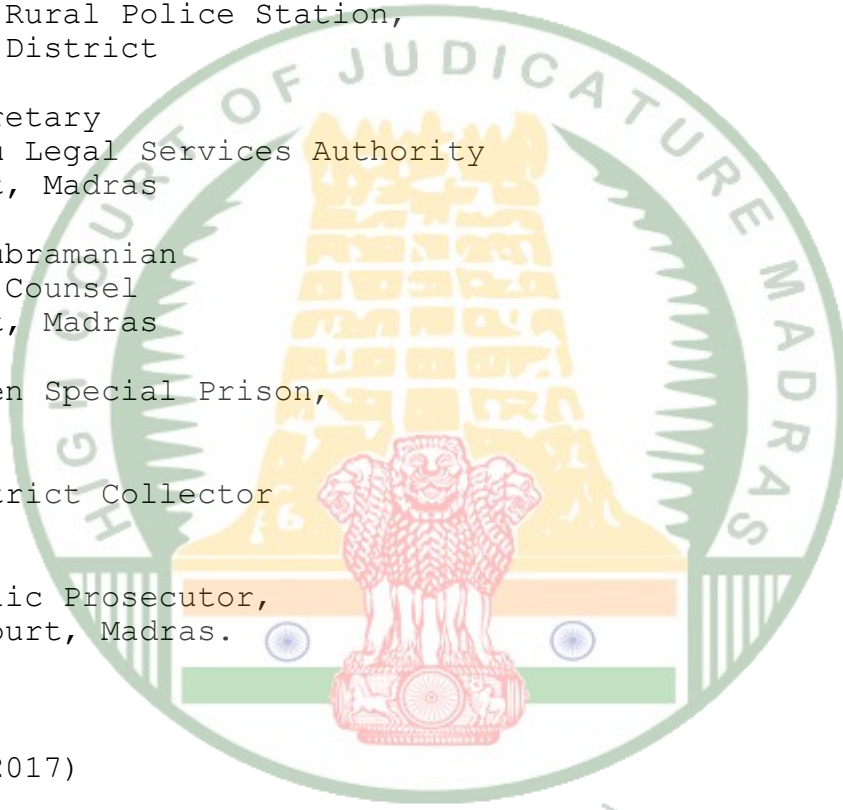
5 Swamy Subramanian
Legal Aid Counsel
High Court, Madras

6 The Women Special Prison,
Vellore

7 The District Collector
Tiruppur

8.The Public Prosecutor,
High Court, Madras.

sr(CO)
md(30/01/2017)



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