

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.621/2015

Nandhagopal @ Manikandan .. Appellant/sole accused

Vs

State by  
The Inspector of Police,  
B.6 Mappedu Police Station,  
Thiruvallur. ... Respondent/ Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional Sessions Judge, Thiruvallore, made in S.C.No.121 of 2014, dated 23.09.2015.

For Appellant : Mr.S.Ananthanarayanan,  
Senior Counsel  
for M/s.S.M.Nandhie Devhan

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

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.121 of 2014 on the file of the learned I Additional Sessions Judge, Thiruvallur. He stood charged for offences under Sections 364-A and 302 of IPC. By judgment dated 23.09.2015, the trial court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 6 months for the offence under Section 302 of IPC and to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 6 months for the offence under Section

364-A of IPC. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Priyadarshan, aged about 7 years. He was a son of P.W.7. According to the case of the prosecution, on 28.11.2012, the deceased was playing in front of his house. Around 08.15 a.m., the accused kidnapped him from the said place to Vayaloor Village, strangled him to death and then, threw the body into a Well situated in the land belonging to one Ravi. Then, the accused vanished away from the scene of occurrence. The occurrence was not witnessed by anyone. P.W.1 is the uncle of the deceased. On 28.11.2012, from 8.15 a.m. onwards, since the deceased was missing, he rushed to Mappedu Police Station and made a complaint at 04.30 p.m. One Tamilselvi, the then Sub-Inspector of Police of the said police station on receipt of the said complaint, registered a case in Cr.No.408 of 2012 for 'boy missing'. Ex.P.14 is the First Information Report. He forwarded both the documents to court.

(b) P.W.17 took up the case for investigation. He went to the place of occurrence, namely, Surakapuram Village and examined P.Ws.1 to 3. But, there was no clue about the child. He made all arrangements to search for the child. The child was found dead in a Well on 30.11.2012. Therefore, he altered the case into one under Section 302 of IPC. He prepared an Observation Mahazar and a Rough Sketch at the place of occurrence on 30.11.2012 in the presence of P.W.13 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(c) P.W.16 conducted autopsy on the body of the deceased on 30.11.2012 at 02.00 p.m. He found the following :

'External Examination :Blood bleeding from the mouth, skin all over the body found cyanosed and saddened. the body of the deceased found peeled due to immerse in. The skin found peeling on the left arm.

Internal Examination : Stomach contains about 300 ml colourless liquid. Intestines, liver, spleen, kidneys are soft and congested. Bladder empty. No ribs. Heart and lungs are soft and congested. On cross section lungs floats in water. Skull : no skull bores. Membranes intact. Brain substances soft and congested. Other internal organs are found ordinary and pale.'

Ex.P.5 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to asphyxia due to drowning.

(d) On 27.12.2012 at 11.00 a.m., P.W.17 arrested the accused in the presence of P.W.14 and another witness. On such arrest, he gave a voluntary confession in which he disclosed the

place where he had hidden a Nylon Rope and a Chappal. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the said material objects. P.W.17 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused to court for judicial remand and also handed over the material objects to court. At his request, the material objects were sent for chemical examination. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined and 14 documents and 2 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the uncle of the deceased. He has stated that the deceased, who was playing in front of his house at 08.15 a.m. on 28.11.2012, was found missing. In this regard, he made a complaint at 04.30 p.m. on the same day. Thereafter, the child was found lying dead in a Well on 30.11.2012. P.W.2 has stated that the accused was residing in the house opposite to her house. According to her, he also went in search of the child along with P.W.1. P.W.3 has stated that the accused also searched for the child along with P.W.1 and others. P.W.4 has stated that the dead body of the child was found in a Well. P.W.5 has stated that two days prior to the date of death when the dead body of the child was found, he found the accused and the deceased were coming to the house. P.W.6 has stated that on 28.11.2012 at 10.00 a.m., the deceased was playing in front of his house and thereafter, the child was found missing. P.W.7 the father of the deceased has stated about the missing of the child. He has also stated that the accused had illicit intimacy with few women in the village. Since it was known to the deceased, apprehending that the deceased would disclose the same to others, according to him, the accused would have killed the deceased. P.W.8 has not spoken anything incriminating against the accused. P.W.9 has also spoken only about the missing of the child. P.W.10 has also spoken about the same. P.W.11 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.12 has stated that he found the dead body of the deceased at the place of occurrence. P.W.13 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.14 has spoken about the arrest of the accused and the consequential recovery made based on his disclosure statement. P.W.15 has spoken about the fact that he found the dead body of the deceased in a Well at 04.00 p.m. on 30.11.2012. P.W.16 has spoken about the postmortem conducted and her final opinion regarding cause of death. P.W.17 has spoken about the investigation done and his final report.



5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. We have heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. As we have already pointed out, this is a case based on circumstantial evidence. At any rate, in a case based on circumstantial evidence, the prosecution is expected to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain, without any break so as to unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which would be inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now go into the circumstances projected by the prosecution in this case.

8. The first and foremost circumstance projected by the prosecution is that the deceased was playing in front of his house at 08.15 a.m. on 28.11.2012 and thereafter, he was found missing. This has been spoken by P.W.1 and other witnesses. There is no denial to the said fact. Thereafter, the dead body of the child was found on 30.11.2012 in the Well. According to the Doctor, the death of the deceased was due to drowning. The prosecution has thus established beyond any doubt that the deceased had died sometime between 08.15 a.m. on 28.11.2012 and 04.00 p.m. on 30.11.2012.

9. Next, the prosecution has to prove that the death of the deceased was a homicide. But, in this case, the Doctor (P.W.16), who conducted autopsy, has stated that the death of the deceased was due to asphyxia due to drowning. Thus, in an accidental fall of the deceased into a Well which resulted in his death due to asphyxia cannot be ruled out. Thus, as projected by the prosecution that the deceased was strangulated to death and then, the dead body was thrown into the water has not been proved and as a matter of fact, the medical evidence goes contrary to the case of the prosecution.

10. There is no other evidence connecting the accused with the alleged crime. The recovery of the Nylon Rope and Chappal at the instance of the accused, would not be in any manner

advance the case of the prosecution. Thus, here is the case where even the prosecution has even failed to prove that the death of the deceased was a homicide, there is no other evidence incriminating against the accused. Thus, in our considered view, the trial court has convicted the accused on mere surmise which is not permissible in law.

11. Article 21 of the Constitution of India guarantees the life and personal liberty of an individual only by following the procedure established by law. It is not possible to deprive of the life and personal liberty of the individual on mere conjectures or surmises. Here, in this case, the prosecution has not even succeeded in establishing a strong suspicion against the accused. At any rate, the prosecution has failed to prove the case beyond all reasonable doubts. Therefore, we are bound to interfere with the conviction and sentence imposed by the trial court on the accused. We hold that the appellant is entitled for acquittal.

12. In the result, the appeal is allowed and the appellant is acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bond, if any executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the accused.

Sd/-  
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

tsi

To

1. The Inspector of Police,  
B.6 Mappedu Police Station,  
Thiruvallur.
2. The I Additional Sessions Judge,  
Thiruvallur.
3. do thro the Principle Sessions Judge  
Thiruvallur
4. The Superintendent  
Central Prison, Puzhal, Chennai

5. The District Collector  
Thiruvallur

6. The Director General of Police  
Mylapore, Chennai

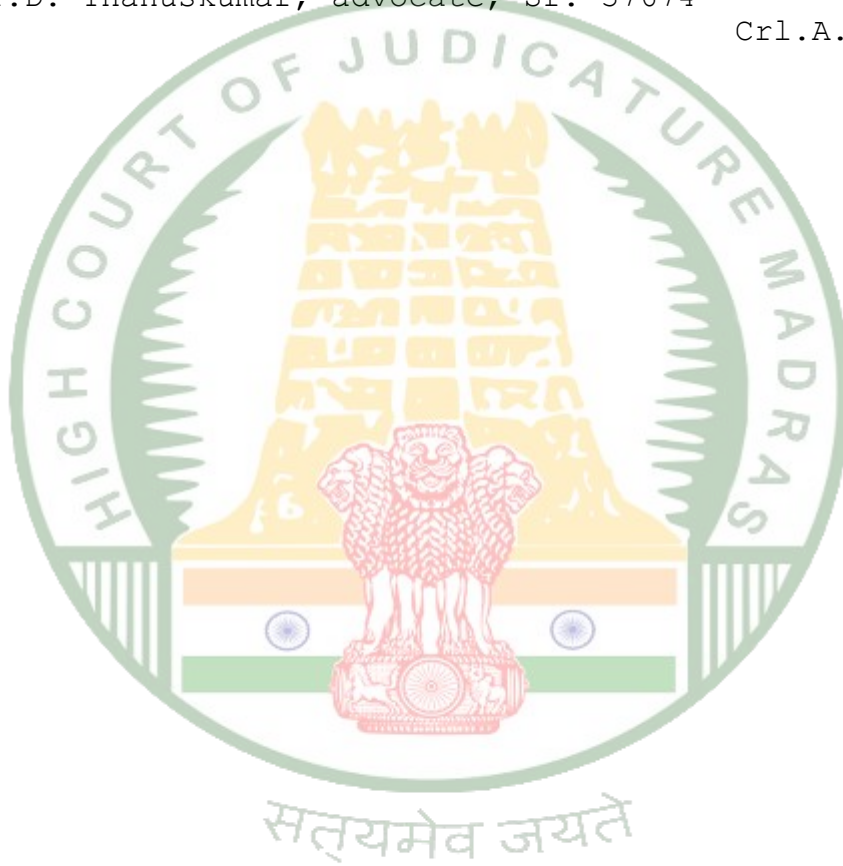
7. The Judicial Magistrate No.II  
Tiruvallur

8.The Public Prosecutor,  
High Court, Chennai.

1 cc to Mr.D. Thanuskumar, advocate, Sr. 37674

CrI.A.No.621/2015

UG (CO)  
kk 23/7



WEB COPY