

BAIL SLIP

The accused Viz, Jayalakshmi was released on bail as per order of this court dated 25.03.2013 and made in MP.No.1 of 2013 in CrI.A.NO.441/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10..02.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.441 of 2012

Jayalakshmi

... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Karipatti Police Station,
Salem District.
[Crime No.460 of 2008]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.I, Salem, in S.C.No.237 of 2010 dated 02.02.2012.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

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

The appellant is the mother of three young children aged 7 years, 4 years and 5 months respectively. Her story, as projected by the prosecution, goes like this. When she was in the womb of her mother, her father deserted her mother and disappeared. Within one year of her birth, her mother also disappeared. Her grand-mother, an old lady, struggled to bring her up. Quite naturally, the family was in utter poverty. When she attained marriageable age, she was given in marriage to one Mr.Krishnan of Mettuppatty Village. Searching for coolie work,

the young couple went to Allikuttai Village. Two children were born to them at Allikuttai Village. Since they did not continue to get coolie work, they returned back to Nesavalur Colony in Mettupattai Village and they were residing in a rented house. Her husband was working in a handloom. His income was not sufficient to maintain the family. Her husband, therefore, went for cooking also. Then, the third child was born. The poverty became more aggressive and severe. They could not even feed the children. On 02.09.2008, her husband went for cooking. He had no money to give to the appellant to purchase rice and other essential commodities to feed the children. Greatly affected by hunger, the children started crying. People from whom they had borrowed small amount of money also brought pressure upon the family for repayment with interest.

2. On 03.09.2008, for the whole night the hungry children were crying for food. The small quantity of cow milk, which the appellant had kept for the third child, also got spoiled. The mother feeding became impossible as her breast had dried up as she herself did eat nothing. The whole night the appellant was weeping, cursing her inability to feed her children who were crying for something to eat or drink. Nobody came forward to help her family. The entire world appeared to be so dark for her and her future was obviously bleak. She was fully depressed, like Nallathangal [The deity of Nallathangal in the Temple at Vatraviruppu Village in Virudhunagar District, Tamil Nadu]. It is alleged that she decided to end her life after killing all her three children. At about 2.45 a.m. on 04.09.2008, she took all the three children to a nearby well and threw the children into the well one after the other and at last, she also jumped into the well. However, she fortunately survived as the water in the well was not sufficiently deep. All the three children perished in the well. On seeing the dead bodies of all the three children in the well, P.W.1, a Village Administrative Officer made a complaint to the police. A case was registered on the same. The dead bodies were lifted and after inquest, they were sent for postmortem.

3. Meanwhile, the appellant/accused appeared before P.W.1, the Village Administrative Officer on 04.09.2008 at 04.30 p.m. and made an extra judicial confession. P.W.1 produced her before the police. She was arrested and later on remanded to judicial custody. The autopsy conducted on the dead bodies of the children revealed that all the three died due to drowning.

4. In the mean while, the appellant/accused was subjected to medical examination by a psychiatrist from the Department of Psychiatry, Government Mohan Kumaramangalam Medical College Hospital, Salem, for psycho motor activity retardation, a kind mental illness. After a prolonged treatment, the Doctor certified that the appellant/accused was fit to stand trial.

She was put up for trial to face charges for offences punishable under Section 302 of IPC [Three counts] and 309 of IPC.

5. In order to prove the same, on the side of the prosecution, as many as 17 witnesses were examined, 22 documents and 8 materials objects were marked. P.W.1, the then Village Administrative Officer of Mettupattikaranoor Village, has spoken about the extra judicial confession given by the appellant. P.W.2, who is the owner of the well, has stated that the dead bodies of three children were found on 04.09.2008 at 07.00 a.m. itself. P.W.3 to P.W.5 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 Dr.Meenakshi, Assistant Professor, Department of Psychiatric, GMK Medical College Hospital, Salem, has stated that the appellant was produced by the police before her between 18.10.2008 to 05.11.2008. On examining, she diagnosed that the appellant was suffering from "psycho motor activity retardation" which is a kind of mental illness. The appellant under went treatment for the same. P.W.6 has extensively spoken about the effects of the said mental illness. She has stated that any person suffering from the said disease would have depression, loss of trust in life and urge to commit suicide.

6. P.W.16, Dr.Panneerselvam, has spoken about the postmortem conducted and P.W.17 about the entire investigation done by him and the filing of the charge sheet against the appellant/accused before Judicial Magistrate No.II, Salem.

7. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, she denied the same. However, she did not choose to examine any witness on her side nor did she mark any document. Her defence was a total denial.

8. Having considered all the above, the trial court convicted the accused under sections 302 [Three counts] and 309 of IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.1,000/- for each count in default to undergo rigorous imprisonment for one year for offence under Section 302 of IPC (Three counts) and to undergo simple imprisonment for one year for offence under Section 309 of IPC. Challenging the said conviction and the sentence, the sole accused is now before this court with this criminal appeal.

9. The trial court convicted her solely based on the extra judicial confession said to have been given by her to P.W.1 on 04.09.2008 at 04.30 p.m. at his office. The narration of the events in the earlier paragraphs of this judgement are precisely found in Ex.P.2-Extra-Judicial Confession said to have been given by the appellant/accused to P.W.1. The appellant denied having given any such extra judicial confession. But, the trial

court found her guilty under both the charges and accordingly, punished her. That is how, she is now before this court with this criminal appeal.

10. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

11. From the evidence of P.W.6 Dr.Meenakshi, who had treated the appellant/accused for psycho motor activity retardation, which is a very serious mental illness, we are of the view, assuming that the appellant/accused had thrown her children into the well, it is not an offence in the eye of law. Her act would squarely fall within section 84 of IPC. But, the learned Additional Public Prosecutor would submit that the above stated disease is not of such a nature to make the appellant incapable of knowing the act that what she was doing was either wrong or right in law. We find no force in the said argument for the simple reason that the medical records coupled with the evidence of P.W.6 would go to establish that the appellant/accused was incapable of knowing the nature of her act on account of the above unsoundness of mind.

12. Assuming that the appellant is not entitled for the benefit of Section 84 of IPC, even then, in our considered view, the conviction of the appellant cannot be sustained solely based on the extra judicial confession said to have been given by her to P.W.1 on 04.09.2008 at 4.30 p.m. in the light of the evidence of P.W.2, the owner of the well, who has stated that early in the morning on 04.09.2008, the appellant/accused was taken from her house by the police into custody and by 07.30 a.m. she was taken to the police station in connection with the present case after the dead bodies were found in the well. Therefore, it is highly unbelievable that at 4.45 p.m. on 04.09.2008, the accused would have gone to P.W.1 and made a voluntary confession as it is projected by the prosecution. Thus, Ex.P.2, the extra judicial confession is liable to be rejected. If it is so rejected, then, we find no evidence against the appellant/accused to sustain the conviction. Thus, we hold that the prosecution has miserably failed to prove the case beyond reasonable doubt and, therefore, the appellant/accused is entitled for acquittal.

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13. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused by the trial court, by judgement dated 02.02.2012 in S.C.No.237 of 2010, is hereby set aside. The appellant/accused is acquitted from both the charges. Fine amount, if any, paid by the appellant/accused shall be refunded to her. Bail Bond executed by the appellant/accused shall stand cancelled.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Additional Sessions Judge, Fast Track Court No.I,Salem.
- 2.The Inspector of Police, Karipatti Police Station,Salem District.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Judicial Magistrate NO.II Salem

+1 cc to Mr.M.Pari, Advocate sr.8978

Criminal Appeal No.441 of 2012

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