

Bail Slip

The Appellant/Accused (Petitioner Namely (Viz) Kaleeswari Female aged 25 years W/O Dharmaraj was directed to be released on bail as per Order of this Court dated 21/04/2016 and made in CrI.M.P.NO. 3398/2016 in CrI.A.NO. 222/16.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CrI.A.No.222 of 2016

Kaleeswari

..Appellant/Accused

Vs

State by

The Inspector of Police
Anamalai Police Station
Anamalai, Pollachi Taluk,
Coimbatore District.

..Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence imposed by the learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.318 of 2012 on 21.12.2015.

For Appellant : Mr.V.R.Balasubramanian
for
Mr.C.Prakasam

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGMENT

The sole accused in S.C.No.318 of 2012 on the file of the learned I Additional District and Sessions Judge, Coimbatore, is the appellant herein. She stood charged for an offence under Section 302 IPC. The trial Court found her guilty of the offence under Section 302 IPC and sentenced her to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment. Challenging the above said conviction and sentence, the appellant is before this Court with this Appeal.

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

(a) The deceased in this case was a child by name Sounderarajan. The accused is the mother of deceased. PW.1 is the husband of the accused.

(b) On 18.12.2010 at about 1.15 p.m, PW.8 , one Kavitha, neighbour of PW.1 informed him that two unknown persons snatched away gold chain with mangalsuthra from the accused and also kidnapped the deceased, at Indira Gandhi Nagar, near Thatthur.

Immediately, PW.1 proceeded to his house and enquired the accused. The accused informed PW.1 that two unknown persons had come in a motorcycle and snatched away her mangalsuthra and chain and also taken away the child. Hence, both PW.1 and the accused searched for the child and found the child in a Well. Thereafter, they took the child to a private hospital, where the child was declared dead. PW.1 went to the police station and gave a complaint (Ex.P1) stating that some unknown persons came in a bike and snatched away mangalsuthra of the accused and also took away the child, subsequently, they found the child dead in a Well and they also found the handbag of the accused near the Well.

(c) Based on the above complaint (Ex.P1), PW.14 - Sub-Inspector of Police registered a case in Crime No.675 of 2010 (Ex.P15) for the offence under Sections 392 and 302 IPC.

(d) On receipt of the complaint, PW.15 - Circle Inspector of respondent police station commenced investigation, proceeded to the scene of occurrence, prepared Observation Mahazar (Ex.P3) and rough sketch (Ex.P16). Then, PW.15 proceeded to the private hospital, where he conducted inquest on the dead body at 5.30 p.m in the presence of panchayatdars and prepared inquest report (Ex.P17) and then, he sent the body for postmortem to Vettaikaranpudur Government Hospital, through the Head Constable Chandran, along with a requisition for postmortem.

(e) On 19.12.2010, the accused appeared before PW.10 - Revenue Inspector of Marchanayakkanpalayam circle and voluntarily gave a confession stating that the marriage between the accused and PW.1 was an intercaste marriage and the parents of the accused had opposed it and when she wanted to join with

her parents, the child was stood as a hindrance, hence, she decided to kill the child, therefore, she throw the child in a Well, subsequently, informed her husband that two unknown persons came in a motorcycle and took the child and also snatched her chain. PW.10 recorded the confession statement (Ex.P4) of the accused and produced the accused before the respondent police with a special report (Ex.P5).

(f) On production of the accused by PW.10 before the respondent police, PW.15 - Circle Inspector of the respondent police station, arrested the accused and on such arrest, the accused voluntarily gave confession and identified the Well and also a covering chain with mangalsuthra. PW.15 seized the mangalsuthra with covering chain and beads under the cover of Mahazar (Ex.P7). Based on the extra-judicial confession, PW.15 altered the charge under Section 302 IPC and sent the altered First Information Report (Ex.P18) to the Court and recorded the statement of witnesses. Then, PW.15 handed over the investigation to PW.16.

(g) PW.13 - Assistant Surgeon working in Vettaikaranpudur Government Hospital conducted autopsy on the dead body and found the following injuries:-

"Tongue inside. Froth present on the mouth and nostrils. Nit marks of violence present on the body.

On opening of the abdomen :

(1) Stomach : congested contains about 50 ml of undigested rice mixed with muddy water about 50 ml present.

(2) Intestines, liver, kidneys, Spleen all congested. No injury present.

On opening of the Chest:

Lungs - congested. Cut Section shows water. No injury.

Heart - congested. No injury.

Hyoid bone intact.

Larynx in Trachea contains water with mud.

On opening of the Skull: No fracture seen.

Membranes intact. Brain congested. No injury."

Ex.P12 is the postmortem report and the Doctor was of the opinion that the child appeared to have died of asphyxia due to drowning.

(h) PW.16 - Inspector of Police, continued investigation, recorded statements of other witnesses and also the Doctor, who conducted autopsy and after completion of investigation, on 12.07.2011, he filed charge sheet.

3. Considering the above materials, the trial Court has framed charges against the appellant as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 16 witnesses, marked 18 documents and 8 material objects.

4. Out of the witnesses examined, PW.1 is the husband of accused and also father of deceased child. According to him, as per the statement of accused he has given complaint (Ex.P1). PW.2 is the mother of PW.1. PW.3 is the co-brother of PW.1. According to him, after hearing the news, he along with PW.1 and accused went to the police station and lodged the complaint (Ex.P1). PW.4 has turned hostile. PW.5 is the witness to Observation Mahazar (Ex.P3). PW.6 has turned hostile. PW.7 has also turned hostile. PW.8 has also turned hostile. PW.9 - Photographer took photographs of the dead body. PW.10 was the then Revenue Inspector, before whom the accused appeared and voluntarily gave confession. PW.11 was the Assistant Director in Regional Forensic Lab, Coimbatore, and he examined the visceral parts of the child and gave opinions Exs.P8 and P9 and also conducted diatom test. PW.12 - Doctor then working in the private hospital, where the deceased child was taken and declared dead. PW.13 - Assistant Surgeon conducted autopsy and gave postmortem report (Ex.P12). PW.14 - Sub-Inspector of Police registered the complaint. PW.15 - Circle Inspector, commenced investigation, arrested the accused and recorded the statements of witnesses. PW.16 - Inspector of Police, continued investigation and after completion of investigation, filed charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. The accused neither examined any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced her as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the appellant before this Court.

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

8. It is the case of circumstantial evidence. It is settled principle of law that in a case of circumstantial evidence, the prosecution should prove all the circumstances beyond any reasonable doubt and the proved circumstances should form a chain unerringly pointing the guilt of the accused.

9. The prosecution mainly relied on the extra-judicial confession given by the accused before PW.10 - Revenue Inspector. The trial Court disbelieved the extra-judicial confession said to have given by the accused and the subsequent recovery of material objects by PW.15 and also held that the motive was not proved. Considering the conduct of the accused, viz., the accused failed to explain the circumstances under which the deceased child parted company of the accused and what had happened to the child when the child was under her custody, the trial Court held that the onus is on the accused to explain the above circumstances under Section 106 of the Evidence Act. Since there is no explanation on the part of the accused, the trial Court, considering the same, convicted the accused.

10. So far as presumption under Section 106 of the Evidence Act is concerned, it is a rebuttable presumption. From the records, it could be seen that the accused came up with an explanation that on 18.12.2010 while the accused was going to her mother's house, two unknown persons came in a motorcycle and snatched her chain with mangalsuthra and taken away the child along with them. Subsequently, on hearing the news, PW.1 also came to the house and she went to the police station along with PW.1 to gave complaint. But there is no investigation by the respondent police on that aspect. The accused has also accompanied PW.1 to the police station and she has given the complaint and her handbag was also recovered near the Well. Considering the overall circumstances and the conduct of the accused, we are of the considered view that the accused has given plausible explanation and thereby, she has rebutted the presumption lies on her head under Section 106 of the Evidence Act. As the trial Court has already disbelieved the extra-judicial confession said to have been given by the accused, there is no other circumstance available to prove the guilt of the accused. Hence, we are of the considered view that the prosecution has failed to prove the circumstances beyond reasonable doubt pointing to the guilt of the accused. Hence, the accused is entitled for acquittal.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant on 21.12.2015 in S.C.No.318 of 2012 on the file of the learned I Additional District and Sessions Judge, Coimbatore, are set aside. The appellant is acquitted and fine amount already paid, if any, shall be refunded to her. Her bail bonds shall stand terminated.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The I Additional District and Sessions Judge,
Coimbatore.

1a. The Principal Sessions Judge,
Coimbatore.

2. The Inspector of Police
Anamalai Police Station
Anamalai, Pollachi Taluk,
Coimbatore District.

3. The JUDicial Magistrate;
NO.1, Pollachi.

4. The Chief Judicial Magistrate,
Coimbatore.

5. The Superintendent,
Central Prison (WWomen)
Coimbatore.

6. District Collector,
Coimbatore.

7. Director General of Policie,
Chennai.

8. The Public Prosecutor,
High Court, Chennai.

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

+1cc to Mr.C. Prakasam Advocate SR. 43964

Crl.A.No.222 of 2016

PK(CO)
VR(27/02/2017)

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