

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.248 of 2016

and Crl.M.P.No.4046 of 2016

Jothi, W/o Sathyaraj ... Appellant/Accused
Vs.

State rep. by
The Inspector of Police
Ammapettai Police Station,
Bhavani Taluk,
Erode District.
Crime No.202 of 2014. . Respondent/Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 09.12.2015 in S.C.No.120 of 2015 on the file of the Sessions Court, Mahila Court (Fast Track Court), Erode.

For appellant : Mr.C.S.Saravanan
For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 09.12.2015 in S.C.No.120 of 2015 on the file of the Sessions Court, Mahila Court (Fast Track Court), Erode, convicting the appellant/accused for the offence under Section 304 (Part-2) IPC and sentencing her to undergo seven years rigorous imprisonment and to pay a fine of Rs.100/-, in default, to undergo six months simple imprisonment.

2. The gist of the prosecution case leading to conviction of the appellant/accused is that on 19.10.2014 at about 6.30 a.m., P.W.1 Myilsamy went to see the Panchayat Water Tank, since there was no flow of water in the Village. While he was so proceeding, he saw the appellant/Jothi sitting in the pial of her house and crying. When P.W.1 enquired, she said that her husband left the house four days before and he has not come back. The appellant further said that very often her husband used to come to house after consuming alcohol and her husband has also taken away household articles from the kitchen and sold the same, with which money, he used to drink alcohol. Hence, she said that she has no money even to buy milk for her

children. While so, when her second child was continuously crying, the accused, out of frustration, picked up a knife/M.O.7 and assaulted the second child on her head, aged about 1-1/2 years, and the child succumbed to injuries. Hence, out of fear, she rolled the body of the deceased child in a towel and by pouring kerosene, she set fire on the towel. On hearing this, P.W.1 went inside and saw near the kitchen the half-burnt body of the child. Immediately, P.W.1 informed the same to her brother-in-law. Thereafter, P.W.1 went to the Police Station and lodged Ex.P-1 complaint. P.W.10 Special Sub-Inspector of Police received Ex.P-1 complaint and registered the complaint in FIR Crime No.202 of 2014 for the offences punishable under Sections 302 and 201 IPC. Thereafter, the FIR was sent to the learned Judicial Magistrate, Bhavani and he also forwarded the copies of the FIR to the higher authorities, apart from sending one copy to the Inspector of Police for investigation. Thereafter, on receipt of the FIR, P.W.11 Inspector of Police took up the case for investigation on 19.10.2014. He went to the scene of occurrence and prepared Ex.P-2 observation mahazar and drew Ex.P-10 rough sketch in the presence of P.W.4 VAO and one Veeramani. P.W.5 photographer took photograph of the body of the deceased child and handed over the same to P.W.11 Inspector of Police. P.W.11 conducted inquest over the body of the deceased child between 14 and 16 hours and prepared Ex.P-11 inquest report. Subsequently, he sent the body of the deceased child to Government Hospital for post-mortem through Head Constable. He collected various material objects like the blood stained cement ash and plain cement ash from the place of occurrence. He also recovered the half-burnt towel, stove, match-box, dhothi, etc. He arrested the appellant/accused at about 17.45 hours and recorded her confession statement and recovered M.O.7 knife from her. Thereafter, P.W.11 forwarded the material objects in Form-91 to the jurisdictional Magistrate. He recorded the statement of the witnesses on 28.10.2014. On 29.10.2014, P.W.11 sent the material objects to the Forensic Laboratory through the order of the jurisdictional Magistrate. Then, P.W.12 Inspector of Police continued the investigation and after completing all formalities, P.W.12 filed charge-sheet against the appellant/accused. The case was taken on file by the trial Court in S.C.No.120 of 2015. During the course of trial, on the side of prosecution, P.Ws.1 to 12 were examined, Exs.P-1 to 13 were marked and M.Os.1 to 7 were produced. When the appellant/accused was questioned under Section 313 Cr.P.C., she denied her complicity in the crime and she neither examined any witness nor marked any document. The trial Court, upon hearing both sides and on an analysis of the oral and documentary evidence, convicted and sentenced the appellant/accused as stated supra. Challenging the same, the appellant has preferred this appeal.

3. Learned counsel for the appellant/accused submitted that except P.W.1's evidence, there is no other corroborative piece of evidence in the case. Though P.Ws.2 and 3 are independent witnesses, they have turned hostile. He further stated though nearly 20 persons were present at the scene of occurrence, none of them were examined. The chemical analysis/serologist report was not obtained to connect M.O.7 knife with the crime. He further contended that the trial Court convicted the accused merely on the solitary evidence adduced by P.W.1 and in the absence of corroborative piece of evidence, the trial Court ought to have rejected the evidence of P.W.1 and acquitted the appellant/accused. As an alternative plea, learned counsel for the appellant/accused submitted that if ultimately this Court comes to a conclusion of confirming the conviction, he prayed that taking into consideration the plight of the accused, as she has to look after another child, leniency may be shown to the accused by reducing the period of sentence of imprisonment imposed on her by the trial Court.

4. Per contra, learned Additional Public Prosecutor appearing for the respondent-Police submitted that the evidence of P.W.1 itself is sufficient to convict the accused, as P.W.1 has no motive to speak against her. Further, pursuant to the confession statement of the accused, M.O.7 knife was recovered. Learned Additional Public Prosecutor further submitted that the trial Court by well-considered and valid reasons, convicted the appellants, and no interference is called for in the same.

5. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

6. It is the main submission of the learned counsel for the appellant/accused that except P.W.1, no other independent witness was examined to substantiate the version of the prosecution. It is to be noted that P.W.1 has categorically stated the occurrence in his evidence, as also in Ex.P-1 complaint, and hence, from his evidence, it could be inferred that there is no motive for him to speak against the appellant/accused. Even in P.W.1's cross-examination, not even a suggestion was put forth to the effect that out of personal motive, he was adducing evidence against the appellant. This itself is evident to come to the conclusion that P.W.1 has no motive against the appellant. Further, pursuant to the confession statement of the appellant/accused, M.O.7 knife was recovered.

7. However, I find that this is a fit case for reducing the sentence, because, it is the case of the prosecution that the husband of the appellant/accused, who is a drunkard, left four days prior to the date of occurrence and used to come back and

go again. The pitiable situation that made her to assault the child was that the child was crying continuously, and she being in a state of despair and that too, without money, due to frustration, she took the knife and assaulted the child, which is nothing but out of fury, she did such an act. Thereafter, as she felt bad and guilty of her conduct, she was crying while sitting in the pial of her house. Further, in this case, there is no mens-rea for the appellant/accused to commit such a brutal act of killing the innocent child. The entire episode has happened only due to desperate unavoidable frustration, which had an impact on the situation, that too in poverty, which made her to commit such inexcusable act. Moreover, it is evident that she has got another child to look after. Though the sole evidence of P.W.1 inspires the confidence of this Court, this Court is of the view that the conviction imposed on the appellant/accused is liable to be confirmed, while taking a lenient view to reduce the sentence of imprisonment.

8. Accordingly, while confirming the conviction imposed on the appellant/accused for the offence under Section 304 (Part-2) IPC, this Court modifies the sentence of imprisonment from seven years rigorous imprisonment to three years rigorous imprisonment and this Court is not interfering with the fine amount awarded by the trial Court. The appeal is partly allowed with the above observations. Crl.M.P. is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cs
Copy to

- सत्यमेव जयते
1. The Sessions Judge, Mahila Court (Fast Track Court), Erode.
 2. The Judicial Magistrate, Bhavani
 3. -do- Thro The Chief Judicial Magistrate Erode
 4. The Inspector of Police
Ammapettai Police Station,
Bhavani Taluk,
Erode District.
Crime No.202 of 2014.

5.The Superintendent Central Prison,
Coimbatore

6.The Superintendent of Police Erode

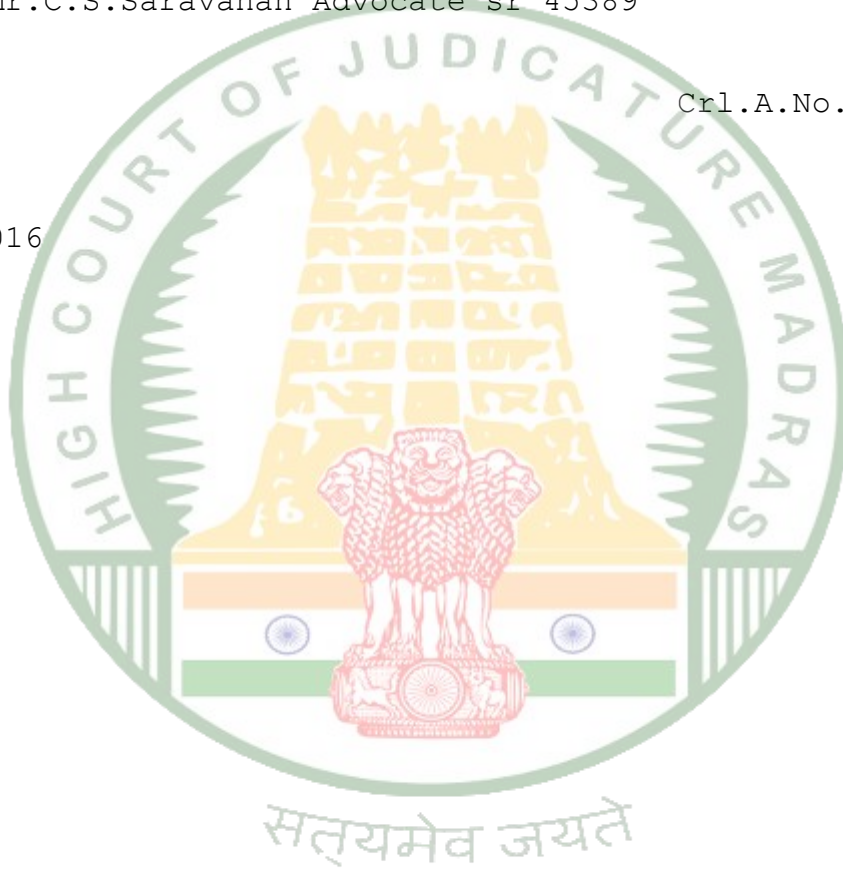
7. The Public Prosecutor, High Court, Madras.

8. The Record Keeper, Criminal Section, High Court, Madras.

+1 cc to Mr.C.S.Saravanan Advocate sr 45389

Crl.A.No.248 of 2016

aa09/09/2016



WEB COPY