

BAIL SLIP

The Petitioner viz. Vijayalakshmi W/O Ramasamy was directed to be released on Bail as per order of this Court dated 17/6/2016 in Crl.MP.No.4383/16 in Crl.A.No.277/16

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-08-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.277 of 2016

Vijayalakshmi ... Appellant /Accused

-vs-

State : Inspector of Police,
Arumbavur Police Station,
Perambalur District.
Cr.No.161/2015.

... Respondent /Complainant

Appeal filed under Section 371 Cr.P.C against the judgment, dated 07.03.2016, made in S.C.No.39 of 2015 on the file of Principal District Sessions, Judge, Perambalur.

For appellant : Mr.A.Padmanaban

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

JUDGMENT

(Judgment of the Court was delivered by S.Nagamuthu,J.)

The appellant is the sole accused in S.C.No.39 of 2015 on the file of Principal Sessions Court, Perambalur. She stood charged for the offence under Section 302 IPC. By judgment, dated 07.03.2016, the trial Court convicted her under Section 302 IPC and sentenced her to undergo imprisonment for life and to pay fine of Rs.1,000/-; in default, to undergo simple imprisonment for six months. Challenging the said conviction and sentence, she is before this Court with this appeal.

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

2.1. The accused Mrs.Vijayalakshmi, hardly aged 18 ½ years, was married to one Mr.Ramasamy on 12.12.2013. Out of the said wedlock, the accused became pregnant. After performing bangle wearing ceremony, as per the village custom, she was taken to the house of her father. Her husband had gone abroad, searching for a job. On 25.05.2014, at the Government General Hospital, Perambalur,

the accused gave birth to a male child. After discharge from the hospital, again she was taken back to her parental home. Her mother had already passed away. Her father was living with his second wife. After returning from the hospital, there arose frequent quarrels between the accused and the second wife of his father. Out of frustration, the accused left the house of her father, came to Thazhuthalai village and stayed at the house of her grandmother. Since her husband was not extending any help for the maintenance of the accused and his child, she found it difficult to maintain the child. In order to eke out her livelihood, the accused joined a readymade store at Perambalur, as a Coolie. She was working in the said shop for about two months. On 29.05.2015, P.W.1, mother-in-law of the accused, and another relative came to Thazhuthalai village to see the child. The accused did not permit them to see the child. This resulted in a quarrel between the accused and her mother-in-law. P.W.1 and other relatives, therefore, left for their village.

2.2. On 30.05.2015, around 09.50 p.m., the accused felt that it was difficult to maintain the nine month old male child. Therefore, she decided to kill the child. Accordingly, around 10.30 p.m., on 30.05.2015, she took the child to a nearby well and threw the child into the well. The child died due to drowning. The accused returned home and did not inform about the same to anybody.

2.3. P.W.1, the mother-in-law, came to know that the dead body of the deceased was floating in the well. Therefore, she immediately rushed to Arumbavur Police Station and made a complaint on 31.05.2015 at 12.00 Noon. P.W.19, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.161 of 2015 for the offence under Section 302 IPC. Ex.P-1 is the complaint and Ex.P-9 is the F.I.R. He forwarded both the documents to the Court and the same were received by the learned Magistrate at 05.05 p.m. on 31.05.2015.

2.4. Taking up the case for investigation, P.W.19 went to the well in question. At 01.00 p.m. on 31.05.2015, he prepared an observation mahazar and a rough sketch at the place of occurrence. He lifted the body from the well and then conducted inquest on the body of the deceased. The body was then sent for post-mortem. P.W.14, Dr.Sivakumar, conducted autopsy on the body of the deceased on 31.05.2015 at 04.45 p.m. He found the following injuries :

"Both nostrils Abrasions present, 1 x 1 cm in size. An abrasion over upper lips, 2 x 2 cm in size. An abrasion over lower lips 2 x 2 cm."

He gave opinion that the death of the deceased was due to asphyxia, due to drowning. Ex.P-6 is the post-mortem certificate and Ex.P-8 is the final opinion. P.W.19 altered the case into one under Sections 302 and 317 IPC.

2.5. When the investigation was in progress, the accused appeared before P.W.10, the Village Administration Officer. On 31.05.2015, at 02.00 p.m., she made a voluntary confession to P.W.10. P.W.10 reduced the same into writing. In the said confession, she disclosed that she had killed the deceased and thrown the dead body into the well. Then, she took the accused and the extra-judicial confession to the police station and produced the accused before

P.W.19. While in custody, the accused gave a voluntary confession. P.W.19 recorded the statement. Then, he forwarded the accused to the Court for judicial remand. On completing the investigation, he laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed the lone charge under Section 302 IPC against the accused. The accused denied the same. In order to prove the case, on the side of prosecution, as many as 19 witnesses were examined and 12 documents were marked. No material objects were marked. Out of the said witnesses, P.W.1 is the mother-in-law of the accused. She has stated about the fact that she heard about the lying of the body of the deceased in the well and then she made a complaint to the police. She has also spoken about the fact that the deceased was in the custody of the accused and the accused was residing with her grandmother at Thazhuthalai village. P.W.2 has stated that on the date of occurrence around 10.00 p.m., she found the accused carrying her child towards Sivan Koil and on the next day she found the dead body of the child in the well. P.W.3 has also stated that around 10.30 p.m, on the date of occurrence, he found the accused carrying the child towards the temple. On the next day, according to him, he came to know that the dead body of the child was floating in the well. P.W.4 has stated that on 31.05.2015 at 06.30 a.m., he found the dead body of the deceased in the well. He enquired about the child and came to know that it was the child of the accused. Then, he informed the same to others. P.W.5 is the father-in-law of the accused. He has also stated about the fact that he found the dead body in the well. P.W.6 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.7 has turned hostile and she has not supported the case of the prosecution in manner. P.W.8 has also stated that she came to know that the dead body was lying in the well. P.W.9 has not stated anything incriminating against the accused. He has stated that he saw the child in the custody of the accused a few days before the occurrence. P.W.10 has spoken about the extra-judicial confession given by the accused and also the confession made to the police. P.W.11 has stated that she conducted diatom examination in respect of the internal organs of the deceased and the water sample taken from the well. She found that there were no micro-organisms found in the internal organs of the deceased. P.W.12 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.13 is the proprietor of Raja Readymade Store. He has stated that the accused worked in the said shop between 01.04.2015 and 30.05.2015. P.W.14 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.15 has spoken about the examination of the visceral organs. He has stated that there was no poison found in the internal organs of the deceased. P.W.16 has stated that he was a Constable attached to the respondent police station and he assisted the Inspector of Police during the investigation. P.W.17 has stated that he took the dead body from the place of occurrence and handed over to the doctor for post-mortem, as directed by P.W.19. P.W.18 has stated that he handed over the F.I.R. and the complaint to the learned Judicial Magistrate at 05.00 p.m. on 31.05.2015. P.W.19 has spoken about the registration of the case and the investigation done.

4. When the above incriminating materials were put to the accused, she denied the same as false. However, she did not choose to examine any witness or to mark any document on her side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. That is how, she is before this Court with this appeal.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

6. This is a case based on circumstantial evidence. It is well settled that in cases of this nature, the prosecution is expected to prove the circumstances projected by it beyond all reasonable doubts and all such proved circumstances should form a complete chain without any missing link so as to unerringly point to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now analyse the circumstances projected by the prosecution.

7. There is no denial of the fact that the deceased in this case was a male child, hardly aged about nine months. There is also no denial of the fact that the child was exclusively in the custody of the accused at the house of her grandmother at Thazhuthalai village. On 29.05.2015, P.W.1, along with her relatives, had gone to the house of the grandmother of the accused to see the child, but the accused refused to permit them to handle the child. Therefore, they returned. There is no dispute, that on 29.05.2015, the child was alive. The dead body of the child was found on 31.05.2015 in the well. It would strike the common sense of anyone that this child, on its own, would not have gone to the well and jumped into it. Undoubtedly, the child should have been carried by somebody and pushed into the well. According to the medical evidence, the child died only due to drowning. From these circumstances, the prosecution has clearly established without any doubt that the child was carried by someone, dropped into the well and, as a result of the same, the child died and, thus, it is a homicide.

8. Now, the question is, who carried the child to the well and dropped him into the well? In order to prove that it was this accused who did so, the prosecution mainly relies on the extra-judicial confession, allegedly given by the accused to P.W.10, who is the V.A.O. of Thazhuthalai village. According to her, around 02.00 p.m., on 31.05.2015, the accused came on her own to the house of P.W.10 and wanted to confess. After having ascertained that the accused was willing to confess voluntarily, she allowed her to confess orally. P.W.10 reduced the same into writing. Having accepted the contents of the reduced statement as correct, the accused signed the same. The accused has not retracted the said confession. The retraction came only during trial.

9. The learned counsel for the appellant would submit that the accused had no reason to go over to P.W.10 to have confidence in her and to confess. We find no force at all in this argument, for, in the confession itself, she has stated that out of fear for police,

she had chosen P.W.10 to confess, with fond hope that P.W.10 would help her to take her to the police station, so that there may not be any harassment. This explanation is acceptable. A reading of the confession would go to show that the accused had made a complete narration of the entire occurrence, which led to the death of the deceased. In our considered view, Ex.P-4 is a voluntary confession made by the accused and the same cannot be doubted at any cost.

10. It is too well settled that if the extra-judicial confession of the accused inspires the confidence of the Court, the said confession, by itself, can be the sole foundation for conviction and, in such event, the Court need not look for any corroboration. It is only in cases where the extra-judicial confession is shrouded with some doubt, then, as a rule of caution, the Court has to look for corroboration from independent source. Here, in this case, though there is no need for any corroboration from any independent source, there are circumstances, which would duly corroborate the extra-judicial confession also. Admittedly, in this case, the dead body of the deceased was found in the well on 31.05.2015 by P.W.9 at 06.30 a.m. Had it been true that the accused was innocent, till 06.30 a.m. on 31.05.2015, she would not have kept silent without making a search for the child, after the missing of the child from the house. The very fact that only the dead body of the deceased was noticed by somebody in the well and the accused had not made any murmur to anyone about the missing of the child would go to show her guilty mind. This is yet another strong circumstance against the accused. This would duly corroborate the extra-judicial confession. From these evidences, in our considered view, the prosecution has clinchingly and unerringly proved that it was this accused, who had carried the child and dropped the child into the well and, consequently, caused the death of the child.

11. Having come to the said conclusion, we have to now consider as to what was the offence that was committed by the accused by the said act. As we have already narrated, the accused was highly depressed, because, her husband, who had gone abroad, was not extending any helping hand to maintain the child. In order to maintain the child, she had to join a private readymade shop. She was eking out her livelihood out of coolie paid by her employer. In such a depressed mood, the accused had dropped the child into the well. It cannot be said that the act of the accused in dropping the child into the well was unintended. We hold that the accused, driven by the depression, did consciously all what she was doing. She had dropped the child into the well. This act of the accused in causing the death of the deceased by dropping the child into the well would clearly fall within the first limb of Section 300 IPC. Her act would not fall under any of the exceptions to Section 300 IPC. Therefore, she is liable to be punished only for the offence under Section 302 IPC. Thus, we concur with the conclusion arrived at by the trial Court in convicting the accused under Section 302 IPC.

12. Now, turning to the sentence to be imposed on the appellant, admittedly, the accused was an adolescent offender, as defined in Sub-section (1) of Section 2 of Madras Borstal Schools Act, 1925. As per the birth certificate issued by the competent authority, and the school transfer certificate, the date of birth of the appellant/accused is 10.06.1995. As on the date of conviction

i.e., 07.03.2016, she was hardly aged 20 years and 9 months. From the evidence available on record, it is crystal clear that she had no bad antecedents. As we have already pointed out, her husband had deserted her and he was not extending any helping hand either to her or to the child. Her mother had already passed away. Her father was living with his second wife. The accused was not able to live with her father, because, his second wife quarreled with the accused. Therefore, the accused had to go over to her grandmother's house at Thazhuthalai village, where she lived with the old lady and the child. Out of poverty, she was not able to go out. In order to eke out her livelihood, she joined a private readymade shop and was getting a meagre sum, with which she was maintaining her life. Certainly, these facts would go to show that she was highly depressed in her life and, out of such depression, she had decided to end the life of the child. Though the act of the accused was intentional in technical sense, we are able to perceive the pain she would have undergone while taking such a decision to end the life of the child. After the occurrence also, she has not committed any other crime. The certificate issued by school authorities, which has been produced before this Court, would go to show that she exhibited both good character and conduct. The school certificate also shows that in XII Standard, she had secured 72% marks, which shows her discipline. There is also no report from the authorities about any bad antecedents. In our considered view, there are a lot of chances for reformation. This, in our considered view, is a fit case, where the trial Court ought to have invoked its power under Section 8 of the Madras Borstal Schools Act to pass a sentence of detention in Borstal School, in lieu of the sentence. Therefore, we deem it appropriate to set aside the sentence imposed by the trial Court and, instead, we deem it appropriate to pass a sentence of detention in a Borstal School for a term till she completes 23 years of age.

13. In the result, this Criminal Appeal is partly allowed in the following terms :

The conviction of the appellant for the offence under Section 302 IPC is hereby confirmed, but, the sentence of imprisonment for life and fine of Rs.1,000/- imposed on her for the said offence are set aside and, instead, she is sentenced to be detained in a Borstal School until 10.06.2018 and, thereafter, she shall be set at liberty. The trial Court shall take steps to commit her to the Borstal School for her detention till 10.06.2018.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

dixit

To

1.Principal District Sessions Judge,
Perambalur.

2. The Judicial Magistrate,
Perambalur.

3. The Chief Judicial Magistrate,
Perambalur. (For Information)

4. The Superintendent,
All Women Prison,
Trichirapalli.

5.The Inspector of Police,
Arumbavur Police Station,
Perambalur District. (Crime NO.161/15)

6. The Director General of Police,
Mylalore, Chennai-4.

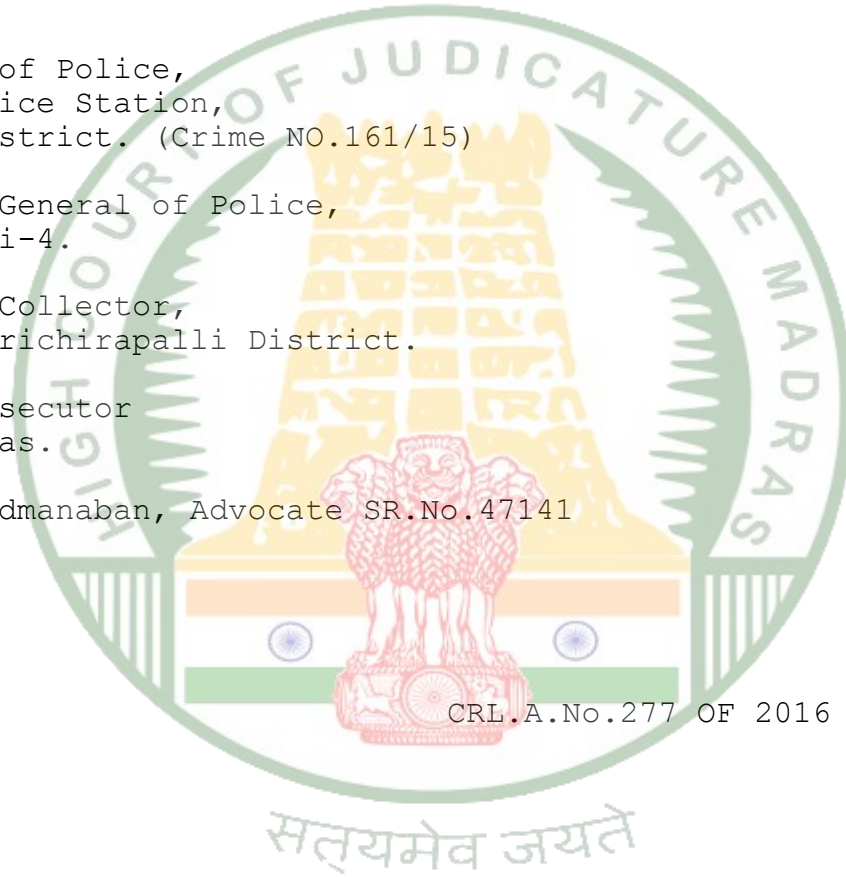
7. The District Collector,
Trichirapalli, Trichirapalli District.

8. The Publi Prosecutor
High Court, Madras.

+1 CC to Mr.A.Padmanaban, Advocate SR.No.47141

CO-RV

ths : 04.11.2016



CRL.A.No.277 OF 2016

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