

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.Nos.421 and 515 of 2016

Mageswari Appellant in C.A No.421/2016/A2
Mahendran Appellant in C.A No.515/2016/A1

Vs

State by
The Inspector of Police,
Keelkuppam Police Station
(Cr.No.287/2013)

... Respondent in both the appeals

Appeals filed u/s.374(2) Cr.P.C., against the judgment dated 13.4.2016 passed in S.C.No.215 of 2014 by the learned III Additional District and Sessions Judge, Villupuram at Kallakurichi.

For Appellants : Mr.K.V. Sridharan
(Crl.A.421/2016)
(in both Appeals) Mr. M. G. Udayashankar
(Crl.A.515/2016)
For Respondent : Mr.P. Govindarajan
(in both Appeals) Addl. Public Prosecutor

सत्यमेव जयते
COMMON JUDGMENT

[Judgment of the court was delivered by N. AUTHINATHAN, J.]

The accused are the appellants.

2. The appeals are directed against the conviction and sentence imposed in S.C.No.215 of 2014, ordering the accused to undergo life imprisonment and also to pay a fine of Rs.30,000/- each, in default, to undergo further period of rigorous imprisonment of two years each for the offence punishable under Sec.302 r/w 34 IPC (3 counts).

3. Mahendiran (P.W.1) and the deceased are the sons of Mrs.Vasantha (P.W.11) and they are residents of Maniyanoor, Salem. Mahendiran and the deceased Kanagaraj were living in portions of the same house. The deceased was living on the rear side of the house. P.W.11 is residing with P.W.1. Mageswari (A.2) is the wife of the deceased Kanagaraj and they have two children, Sabari, aged about 3 years and Keerthika, aged about 6 years. P.W.6 is the wife of P.W.1.

4. A.1 is related to the family of the deceased. A.1 used to visit the house of the deceased Kanakaraj not only when he was available in the house but also in his absence, when A2 was alone and spent time together chit-chatting. This was brought to the notice of P.W.11 and P.W.1 by P.W.6 Parimala. P.W.11 questioned the propriety of A.1 and A.2 meeting in the absence of the deceased. A.2 confronted P.W.11 and took exception saying "what if". On 30.12.2013 at about 7.00 p.m, the deceased with their children and A.2 left for Thiruvannamalai Temple after informing P.W.11.

5. P.W.2, Balu is related to the family of the deceased. On 31.12.2013, between 7.30 a.m and 8.00 a.m, Mahendiran (A.1) informed P.W.2 over phone that the bodies of the deceased were floating in a Well. A.1 has further told P.W.2 that he (A.1) and A.2 consumed poison. In turn, P.W.2 informed P.W.1 and his relatives over phone. They rushed to the Government Hospital, Kallakurichi, where the accused were taking treatment. Thereafter, P.W.1 and others proceeded to the place of occurrence, where the bodies were floating.

6. P.W.1 lodged Ex.P.1 complaint with Keezhkuppam Police Station. P.W.21, the then Sub Inspector of Police at Keezhkuppam Police Station, on receipt of the complaint, registered a case in Crime No.287 of 2013 at 3.00 p.m. on 31.12.2013 under Sec.174 Cr.P.C. under the caption "suspicious death". Ex.P.30 is the First Information Report. He sent a copy of the Tahsildar, Chinna Salem.

7. P.W.20, the then Inspector of Police, attached to Keezhkuppam Police Station, took up the investigation of the case. He visited the place of occurrence viz., "Well" at about 4.30 p.m and prepared Observation Mahazar Ex.P.24 and Rough Sketch Ex.P.25 in the presence of Ravikumar (P.W.9). Then, P.W.20 visited the Government Hospital, Mundiampakkam, Villupuram. He held inquest over the dead body of the deceased Kanagaraj. Ex.P.19 is the inquest report. He held inquest over the dead body of the male child Sabari. Ex.P.20 is the inquest report. P.W.21 (Sub Inspector of Police) held inquest over the

dead body of the female child Keerthika. Ex.P.21 is the inquest report.

8. P.W.14 Dr.D.Geethanjali, Medical Officer, attached to Medical College, Villupuram, conducted autopsy on the dead bodies of the deceased Kanakaraj, Keerthika and Sabari. She found the following external injuries on the body Kanakaraj: All finger nails cyanised. Marbling seen over the right and left shoulders. Mild swelling of the abdomen seen and external genitalia swollen - due to accumulation of decomposition gases. P.W.14 found the following external injuries on the body Keerthika: All finger nails cynaised. Marbling seen over the right and left shoulder and she has found the following injuries were seen. Left knee reddish brown colour abrasion 1 x 1cm and Upper lip contused and swollen 3 x 2 x 1.5cm. P.W.14 found the following external injuries on the body Sabari: Finger nails cyanised. Patchy areas of marbling seen over the right and left shoulder. Swelling and deformity seen over the left side of the face.

9. The stomach and contents; intestine and contents; Liver & Kidney; Brain and Blood of the deceased were examined by the Regional Forensic Laboratory. Alcohol or other poison was not detected in any of them. Diatom was also not detected. Ex.P.13 to Ex.P.18 are the Viscera Reports sent by the Regional Forensic Laboratory, Villupuram. P.W.14 Doctor opined that Keerthika would appear to have died due to combined effects of died injuries and asphyxia due to drowning (Ex.P.10) Postmortem certificate. According to her, Sabari would appear to have died due to combined effects of died injuries and asphyxia due to drowning (Ex.P.11). She opined that Kanagaraj would appear to have died due to combined effects of died injuries and asphyxia due to smothering and drowning (Ex.P.12).

10. P.W.4 Tmt.Vasanthi, the then Village Administrative Officer of Pethanur Village. She was also incharge of Ulagiyanallore Village. P.W.5 is the Village Assistant of Ulagiyanallore Village. On 03.01.2014 A.2 at about 2.00 p.m A.2 appeared before P.W.4 Village Administrative Officer and confessed that she along with A.1 murdered her husband and children. P.W.4 reduced the statement of A.2 into writing under Ex.P.2. P.W.4 prepared a report under Ex.P.3. He produced A.2 before the Keezhkuppam Police Station along with this report.

11. P.W.20 arrested A.2 at about 4.00 p.m on 03.01.2014 and interrogated A.2. She gave a statement to the effect that if taken, she would produce M.O.1 Shawl. Ex.P.22 is the admissible portion of the statement of A.2. In pursuance of it, A.2 took P.W.20 to a Field situated near the place of occurrence and produced M.O.1 Shawl. P.W.20 recovered the Shawl under Ex.P.23

Mahazar in the presence of Kannan and Palanivel (P.Ws.7 and 8)

12. Thereafter, P.W.20 altered the case into one under Section 302 IPC and sent a report Ex.P.26 to the learned Judicial Magistrate, Kallakurichi. He effected the arrest of A.1 on 06.01.2014 at about 16.15p.m. A.1 gave a statement to the effect that if taken, she would produce a wooden log. Ex.P.28 is the admissible portion of the statement of A.1. In pursuance of it, A.1 took P.W.20 to the place of occurrence and produced M.O.2 wooden log. P.W.20 seized under the cover of Mahazar, marked as Ex.P.29 in the presence of Ilayanpillai and Muthian.

13. P.W.22 Inspector of Police succeeded P.W.21. He took up further investigation case. He collected postmortem certificate and after the completion of the investigation laid a charge sheet against the accused under Sections 120(B), 302 r/w 34 IPC.

14. The Trial Court framed charges for the offences punishable under Sections 120(B), 302 r/w 34 IPC (3 counts). The accused had denied the commission of the offence in the Trial Court. The prosecution examined 22 witnesses and marked Exs.P.1 to P.13. They produced M.Os.1 and 2. The accused did not produce any defense witnesses on their behalf.

15. The Trial Court disbelieved the theory of conspiracy and found the accused not guilty under Section 120(B) IPC. However, it has come to conclusion that the prosecution has proved the charge under Section 302 read with 34 IPC and convicted and sentenced as aforesaid.

16. The learned counsel for the accused / appellants would submit that the prosecution failed to prove that there was illicit relationship between the accused, that P.Ws.1, 2, 6 and 11 are interested witnesses, that no identification parade was conducted to identify the accused by P.Ws.10 and 12, that A.2 could not have reposed confidence in P.W.4, and that the alleged extra-judicial confession cannot be relied upon to render a finding of guilt and that the Trial Court was wrong in convicting the accused.

17. The learned Additional Public Prosecutor would submit that the prosecution has placed dependable evidence to prove its case and that therefore, the appeals are liable to be dismissed.

18. P.W.1 and the deceased Kanagaraj are the sons of P.W.11 and P.W.6 is the wife of P.W.1. Mageswari A.2 is the wife of the deceased Kanagaraj. Keerthika and Sabari are the children of A.2 and deceased. They are all residents of Maniyanoor, Salem. The deceased and P.W.1 were living in portions of the same house and the deceased occupied rear portion.

19. Admittedly, there is no eye witness on account of the occurrence. The whole case of the prosecution is based on circumstantial evidence, the extra-judicial confession alleged to have been made by P.W.2 and the recovery of M.Os 1 and 2.

20. It is well settled rule of circumstantial evidence that each one of the circumstance has to be established beyond doubt and all the circumstances put together must lead to the only one inference, and that is of the guilt of the accused. Since the case at hand is a case of circumstantial evidence, it is necessary to find whether the circumstances, on which, the prosecution relies are established.

21. The case of the prosecution is that A.1 developed illicit intimacy with A.2 and in the said context they felt that if the deceased are done away with both A.1 and A.2 could live happily without any hindrance. The prosecution has examined P.Ws.1, 6 and 11 to prove the motive. P.W.1 would state that A.1 used to visit deceased Kanakaraj. It is the evidence of P.W.6, that A.1 used to visit the house of the deceased Kanakaraj not only when he was available in the house but also in his absence, when A.2 was alone and spent time together chit-chatting. She brought this matter to the notice of her husband P.W.2 and her mother-in-law P.W.11. P.W.11 would state that A.1 is their distant relative and she questioned the propriety of A.1 and A.2 meeting in the absence of the deceased Kanakaraj.

22. A close consideration of the evidence of P.Ws.1, 6 and 11 would not persuade us to come to a definite conclusion that there had been a strong motive to commit the crime inasmuch as only a cloud of suspicion on the fidelity of A.2 as distinguished from concrete proof of it. Suspicion, however strong cannot take the place of proof. The evidence of P.Ws.1, 6 and 11 does not suggest that there was quarrel or displeasure as between the deceased Kanagaraj and his wife A.2. There is, thus, no concrete proof as regards the motive part propounded by the prosecution.

23. According to the prosecution, the first accused snatched Keerthika from the deceased Kanagaraj and throw her into the Well, the first accused immobilised Kanagaraj after hitting him on his leg with M.O.2 wooden log, that the second accused smothered him with M.O.1 shawl and pushed the deceased into the well, thereafter, A.2 throw Sabari into the Well. The murder had taken place on 31.12.2013 at about 2.00 a.m. The postmortem was conducted on 01.01.2014 at about 3.00 p.m. According to the Doctor, the deceased would appear to have died about 36-48 hours prior to postmortem. P.W.14 Doctor opined that

Keerthika and Sabari would appear to have died due to combined effects of head injuries and asphyxia due to drowning. Exs.P.10 & 11 are the Postmortem Certificates. She opined that Kanagaraj would appear to have died due to combined effects of head injuries and asphyxia due to smothering and drowning. Ex.P.12 is the Postmortem Certificate. It remains to be seen whether the accused were responsible for the death of Kanagaraj and his children.

24. It is seen from the evidence of P.W.11 that the deceased Kanagaraj along with his wife and children left for Thiruvannamalai Temple after informing her (P.W.11) from their house at about 7.00 p.m. on 30.12.2013. According to the prosecution, the deceased and the accused travelled from Kallakurichi to the place of occurrence on the date of occurrence by a bus driven by P.W.10. P.W.10 and 12 are the driver and conductor respectively of the bus. It is the evidence of P.W.10 that on 31.12.2013 at about 12.30a.m., he saw A.2 with two children and two others in his bus bound for Ulagiyanallore from Kallakurichi. According to him, they have alighted at Villukottai Village. However, he would not say that it was the deceased and A.1, who accompanied A.2. P.W.12, conductor initially stated that he has seen A.1 in the bus on the date of occurrence, however, on a subsequent date during cross examination he has stated that what he was saying in the box was nothing but what he was asked to say by the Police. The accused and the deceased are strangers to P.Ws.10 and 12. No identification parade was conducted to identify the accused by P.W.10 and 12. P.W.12 has not been treated as hostile witness. It appears quite incomprehensible that the movement of the husband and wife together with their children is necessarily to be construed strange and also viewed with suspicion. The evidence of last seen together in the absence of convincing the evidence as to the occurrence would not by itself sufficient to hold that the accused are the perpetrators of the crime.

25. P.W.2, Balu would state that the first accused informed him over phone between 7.30 a.m. And 8.00 a.m. on 31.12.2013 that the bodies of the deceased were floating in a Well. According to him, A.1 had also informed that he (A.1) and A.2 consumed poison. Admittedly, the Investigating Officer did not collect the call details of P.W.2 and A.1 to substantiate that A.1 informed P.W.2 about the death of the deceased.

26. The case of the prosecution is that the accused after committing the offence squat in the vicinity till dawn. If only the accused had committed the crime the natural course of human conduct would be flee from the place of occurrence. But the accused are claimed to have stayed back in the same place, consumed poison remained there till the arrival of Ambulance.

This projected sequence of events does not command credence. The non-examination of the driver of the Ambulance or the paramedical staff in the Ambulance would make serious in-roads into the prosecution case. No explanation is forthcoming. This is a serious infirmity affecting the case of the prosecution.

27. The prosecution mainly relies on the extra-judicial confession alleged to have been made by A.2 to P.W.4 (V.A.O.). P.W.4 would state that A.2 confessed that she along with A.2 pushed the deceased into the Well and they were responsible for the death. P.W.4 would state that P.W.5 was also present at the time of confession. However, P.W.5 would state that A.2 stated that her husband and children fell into the Well and died. P.W.4 in her evidence would admit that A.2 is a stranger to her. Admittedly, A.2 belongs to a different Village (Maniyanoor, Salem). There was no history of previous association between A.2 and P.W.4 as to justify the inference that A.2 could repose confidence in her (P.W.4). The alleged confession was recorded on 03.01.2014. A.2 is said to be in the Hospital to the knowledge of the Investigating Officer (P.W.20) after the occurrence. P.W.4 had only taken and produced the accused (A.2) before the Police. The production of the accused (A.2) before the Police does not require the help of P.W.4. A.2 herself could have surrendered before the Police. If really A.2 had intended to confess her crime prompted by guilty conscience, she could have done so, either on the same day or atleast on the next day. In these circumstances, it appears to us to be highly improbable that the accused (A.2) had approached P.W.4 and made a confession.

28. The Investigating Officer claims to have effected the arrest of the accused and in pursuance of their statements recovered M.O.1 Shawl and M.O.2 Wooden log. However, the evidence on record does not show the employment of these materials in the course of commission of offence. It is to be recounted that there is absolutely no direct evidence in regard to the manner and circumstances in which the crime has been committed. Therefore, it is not safe to act solely upon the arrest and the alleged statement of the accused (Ex.P.22) and the recovery of M.Os.1 and 2 in pursuance thereof and enter a finding of guilt against the accused.

29. On an analysis of the entire facts and circumstances of the case, we hold that the prosecution has failed to establish its case beyond all reasonable doubt. No amount of suspicion could form the basis for conviction of the accused. The Trial Court had not analyzed the facts and circumstances of the case in its proper perspective. Therefore, we hold that the judgment of the Trial Court dated 13.04.2016 in S.C.No.215 of 2014 passed by the learned III Additional Sessions Judge, Villupuram at

Kallakurichi, is liable to be set aside. Accordingly, the same is set aside.

30. In the result, these Criminal Appeals are allowed and the conviction and sentence imposed on the accused / appellants by the learned III Additional Sessions Judge, Villupuram at Kallakurichi in S.C.No.215 of 2014 dated 13.04.2016 are set aside and the accused / appellants are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the accused / appellants shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr/sri
To

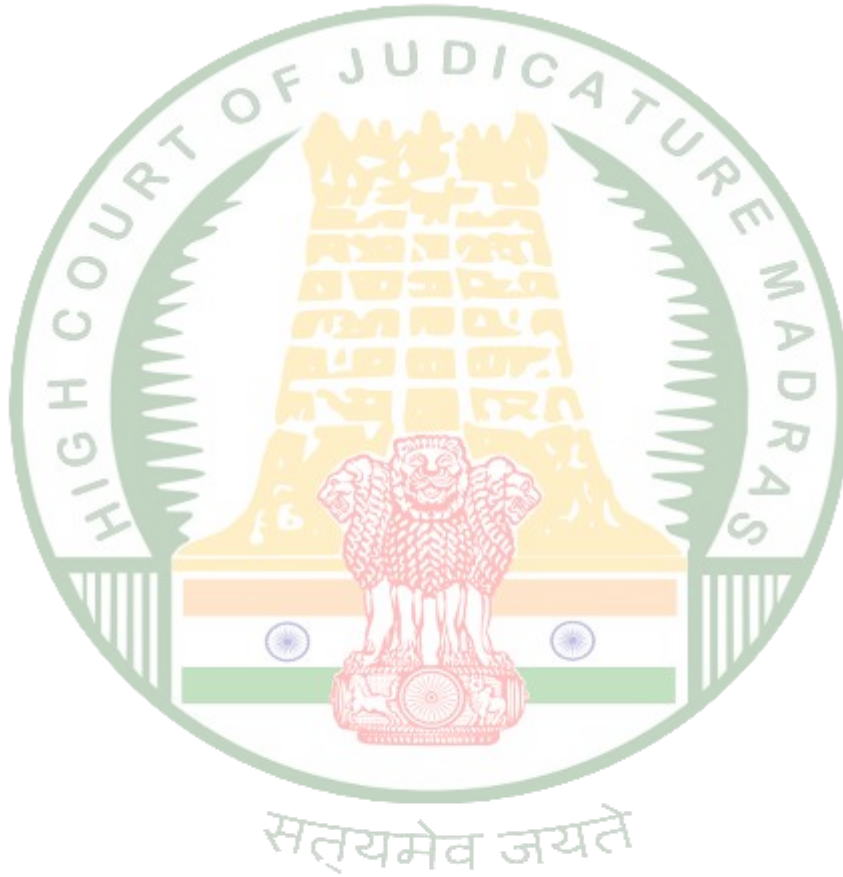
1. The III Additional District and Sessions Judge,
Villupuram at Kallakurichi.
- 1a -do- Thro The Principal Sessions Judge, Villupuram District
- 2 The Judicial Magistrate
Kallakurichi
- 3 The Chief Judicial Magistrate
Villupuram at Kallakurichi
- 4 The Superintendent
Central Prison, for Women, Vellore
- 5 The Director General of Police
Mylapore Chennai
6. The Inspector of Police,
Keelkuppam Police Station
- 7 The District Collector Chennai
- 8 The Section Officer, Criminal Section,
High Court, Madras

9.The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.K.V. Sridharan, Advocate, S.R.No.72750

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md(09/02/2017)

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