

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM:

THE HONOURABLE MR . JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.162 of 2013

Anandan ... Appellant/Sole Accused

-Vs-

State rep. by  
Inspector of Police  
Thevur Police Station  
Sankagiri Division  
Salem District  
(Cr.No.3/2008)

... Respondent/Complainant

This Criminal Appeal has been preferred against the judgment passed in S.C.No.85 of 2008, on the file of Additional District and Sessions Court, (Fast Track Court No.1, Salem) dated 28.07.2009, convicting and sentencing the appellant to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default of payment of fine amount, to undergo further 10 months of R.I. and set aside the same.

For Appellant : Ms.G.Priya  
for Mr.Philip Ravindran Jesudoss  
For Respondent : Mr.M.Maharaja  
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.85 of 2008 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.1, Salem. He stood charged for offence under Section 302 IPC. By judgment dated 28.07.2009, the trial

Court convicted him under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for ten months. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

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

[a] The deceased in this case was one Mr.Appasamy @ Appusamy. P.W.1 is the daughter of the deceased. P.W.1 was residing with her father at Puliyampatti Govindankaattu Village. She has two children by name Ilavar Poovarasan and Girija. The accused is a neighbour of P.W.1. Some time before the occurrence, the accused had kept thorns just by the side of his house. P.W.1 objected to the same, because there was likelihood of thorns injuring the children. This resulted in a quarrel. The accused attempted to manhandle P.W.1. But, the neighbours intercepted and persuaded the parties not to fight. This is stated to be the motive for the occurrence. Because of the said enmity, the accused used to throw a challenge on the deceased that one day or the other, he would die at his hands.

[b] On 03.01.2008, at about 8.00 a.m., the deceased had gone to the nearby lake, to facilitate his grandchildren to answer nature's call. Accordingly, the deceased took his grandchildren, namely Poovarasan [P.W.2] and Girija to the lake. It is alleged that at that time, the accused came there and near the lake, strangled the deceased with a rope by his neck. The deceased, died on account of strangulation. Poovarasan [P.W.2] and Girija rushed to the house of P.W.1 and informed P.W.1 about the same. P.W.1 immediately went to the place of occurrence and found the deceased lying dead. Then, P.W.1 went to Thevur Police Station and made a complaint at 12.00 noon on 03.01.2008. P.W.8, the Sub Inspector of Police, on receipt of the said complaint under Ex.P1, registered a case in Cr.No.3 of 2008 under Section 302 IPC. Ex.P7 is the FIR. Then, he forwarded the complaint [Ex.P1] and the FIR [Ex.P7] to the Court, which were received by the learned Judicial Magistrate at 3.30 p.m. on 03.01.2008.

[c] P.W.10 took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. He conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.4-Dr.Panneerselvam, conducted autopsy on the body of the deceased on 04.01.2008 at 10.00 a.m. He found the following injuries:

"INJURIES:

I : Abrasion : Dark reddish brown in colour seen over

(1) 0.5 x 0.5 cm over the outer aspect of upper 3rd of right leg.

(2) 2.5 x 2.5 cm over the outer aspect of middle 3rd of right leg.

(3) 0.75 x 0.75 cm ; 0.25 x 0.25 cm ; 0.5 x 0.5 cm over right lateral malleolus.

(4) 2.5 cm x 1.5 cm over back of lower aspect, lower end of left arm

(5) 0.25 x 0.25 cm over back of left sole.

II A faint transverse interrupted dark brown ligature mark over mid neck and extending on both sides measuring 13 cm long. It is situated 7 cm above the supra sternal notch and 8 cm below the mid chin and 10 cm below right mastoid process and 7 cm below left mastoid process.

III (1) Contusion over left side of upper lip measuring 0.5 x 0.5 x 0.5 cm

(2) Contusion over right side of lower lip measuring 0.5 x 0.5 cm."

Ex.P4 is the Post-mortem Certificate. He gave opinion that the deceased would appear to have died of manual strangulation by neck.

[d] On the same day, at 2.30 p.m., in the presence of P.W.5 and another witness, he arrested the accused near the bridge at Puliampatti Village. On such arrest, the accused made a voluntary confession, in which, he disclosed the place where he had hidden the rope. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.2 - rope. P.W.10 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused to the Court and handed over all the material objects, including the cloth recovered from the body of the deceased. On completing the investigation, he laid the charge sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge u/s 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 11 documents were exhibited, besides 7 Material Objects.

4. Out of the said witnesses, P.W.1, the daughter of the deceased has stated that by about 8.00 a.m. on the day of

occurrence, the deceased had taken P.W.2 and Girija to the lake for facilitating them to answer the nature's call. She has further stated that around 8.30 a.m., P.W.2 and Girija came and told that the accused had strangled the deceased. She has further stated that when she went to the place of occurrence, she found the dead body of the deceased. She also spoke about the complaint made. P.W.2 is the child witness, who was hardly aged about 8 years at the time of occurrence. He has spoken about the entire occurrence as an eye witness. P.W.3 has only spoken on hearsay information and his evidence is of no use to the prosecution. P.W.4 has spoken about the post-mortem conducted and his Final Opinion regarding the cause of death. P.W.5 has spoken about the preparation of Observation and Rough Sketch; the arrest of the accused and consequential recovery of M.O.2 on his disclosure statement. P.W.8 has spoken about the registration of the case on the complaint of P.W.1; P.W.10 has spoken about the investigation done and others are official witnesses.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor he did mark any document in his favour. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused for the lone offence u/s 302 IPC. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

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

8. In this case, the prosecution relies on the evidence of P.W.2, the child witness. Admittedly, at the time of occurrence, he was hardly aged 8 years. It is common knowledge that a child is prone to tutoring. It is the duty of the prosecution to prove, that the child was free to speak the truth and there was no possibility for tutoring. But, in this case, during cross examination, P.W.2 has tacitly stated that before taking him to Court to depose, a Police Officer read out something which was written in a paper. He has further stated that he told the Court in chief examination as to what was told by the Police Officer to tell the Court. He has further stated that he has spoken only those facts which were tutored to him by the police. That is the positive evidence of P.W.2. In view of the said admission and in the absence of any other corroboration from any other source, in our considered view, it is not safe to solely rely on the evidence of P.W.2.

9. Apart from the said evidence, there is no other evidence available. In such view of the matter, we are of the view that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled to acquittal.

In the result, the appeal is allowed. The conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant is acquitted of all the charges. The fine amount, if any paid, by the appellant shall be returned to him.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gms

To

1.The Additional and Sessions Judge,  
Fast Track Court No.I Salem

2.The Judicial Magistrate No.1  
Sankagiri

3.The Chief Judicial Magistrate,  
salem

4.The Principal Sessions judge salem  
(for information)

5.Inspector of Police  
Thevur Police Station  
Sankagiri Division  
Salem District

6.The District Collector  
Salem

7.The Superintendent  
Central Prison,  
Coimbatore

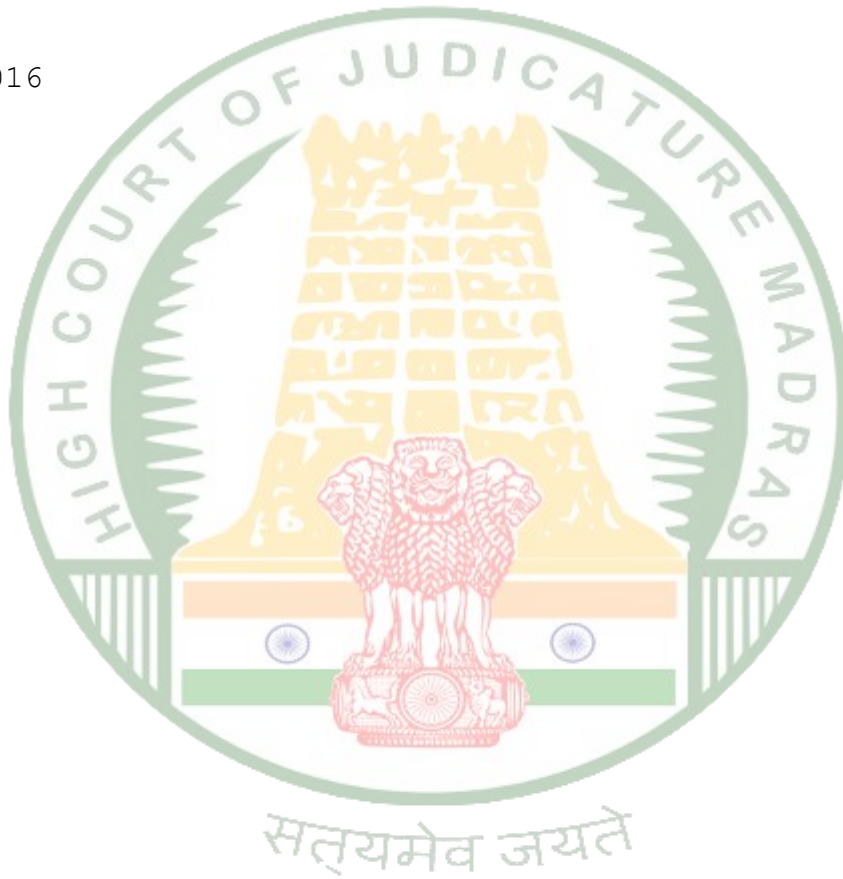
8.The Public Prosecutor  
High Court, Chennai.

9.The Superintendent of Police  
Salem

+1 cc to Mr.Philip Ravindran Jesudoss Advocate  
vide sr.17269

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