

BAIL SLIP

The Appellant herein/sole Accused Viz; M.Perumal S/o.Mariyappan was released on bail by order of this Court dated 26/04/2013 made in MP.No.1/13 in CA.285/13 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.285/2013

M.Perumal

.. Appellant/Sole
accused

Vs

State by
The Inspector of Police,
Anthiyur Police Station,
Erode District.

.. Respondent/
Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence made in S.C.No.179 of 2010 dated 08.03.2013 by the learned IV Additional District and Sessions Judge, Erode District at Bhavani.

For Appellant : Mr.K.S.Rajagopalan
for M/s.P.Ezhilnilavan
For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.179 of 2010 on the file of the learned IV Additional District and Sessions Judge, Erode District at Bhavani. He stood charged for offences under Sections 302 and 201 of I.P.C. By judgment dated

08.03.2013, the trial court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 302 of I.P.C. and to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 6 months for the offence under Section 201 of IPC. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) P.W.1 Sivagami is the wife of the accused. The marriage between them was celebrated 3 years before this occurrence. Out of the said wedlock, a female child was born to them. At the time of occurrence, the child was hardly aged at 1 year and 9 months. The child by name Janani is the deceased in this case. All the three were residing at Anthiyur Brammadhesam Kattur Village. According to the further case of the prosecution, within 3 months from the marriage between P.W.1 and the accused, the accused developed suspicion over the fidelity of P.W.1. After the birth of the child (the deceased), the accused was under the severe suspicion that the deceased was not born to him and the accused did not have any love and affection for the child, due to the said impression.

(b) On 21.01.2009 at about 05.30 a.m., the accused returned to his house after his work. The child was sleeping in the cradle. After the arrival of the accused, the child cried. The accused went near the child and told P.W.1 that the child had passed motion. Therefore, P.W.1 lifted the child from the cradle, cleaned the cradle, gave water to the child and again put the child in the cradle. The child went asleep. The accused normally after returning to house from work used to sleep. But, on that date, the accused did not sleep unusually. P.W.1 prepared breakfast. The accused went out to his mother's house and returned within a short time. He had his breakfast and wanted P.W.1 also to have breakfast. P.W.1 told the accused that she would take breakfast after the child took breakfast. At that time, the sister of the accused also came to the house of the accused. P.W.1 went near the cradle to lift the child. To her shock, she found that there was no temperature in the body of the child. The child was almost motionless. She immediately cried. The accused and his sister immediately lifted the child and rushed her to a nurse who was residing somewhere near the house of the accused. P.W.6, the Nurse, after examining the child declared her dead. Therefore, the accused and his sister brought the dead body of the child to the house. Then, information was passed on to the parents of P.W.1 also. The parents of P.W.1 and other relatives also came to the house of the accused. Thereafter, following the rituals, the body of the child was laid to rest by burring the child.

(c) Thereafter, P.W.1 suspected that the death of the child was not natural and she would have been done to death. Therefore, she went to Anthiyur Police Station and made a complaint to the police at 01.30 p.m. on 21.01.2009. P.W.13, the then Sub-Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.31 of 2009 under Section 174 of Cr.P.C. (suspicious death). Ex.P.8 is the First Information Report. He forwarded Ex.P.1 and Ex.P.8 to court which were received by the learned Magistrate at 08.45 a.m. on 22.01.2009.

(d) The case was taken up for investigation by P.W.16. He forwarded a copy of the F.I.R. to P.W.14 with a request to him to conduct exhumation of the dead body of the deceased. He also made a request to P.W.15 to visit the spot to conduct autopsy. Accordingly, P.W.14, came to the burial ground at 02.00 p.m. on 22.01.2009 and exhumed the body of the deceased. P.W.1 identified the dead body. P.W.15 conducted autopsy on the dead body of the deceased on the spot itself. P.W.16 prepared an Observation Mahazar and a Rough Sketch at the place of exhumation in the presence of witnesses.

(e) P.W.15, who conducted autopsy on the dead body of the deceased, found the following on the dead body of the deceased:

'Moderately nourished body of an exhumated female baby lies on the back. Arms close to the sides. Eyes and Mouth closed. Body covered with sand. No external injuries made out.

Internal Examination :

Abdomen : Uniform; Thoracic Cavities : No fractured ribs; Heart : Full; Lungs : Normal Right Lung and Left Lung Normal; Liver : Normal; Spleen : Normal; Right and Left Kidney : Normal; Intestine : Bloated; Stomach : Empty; Skull : No fracture; Brain : Liquified partially; Hyoid bone : intact.'

Ex.P.12 is the Postmortem Certificate and Ex.P.13 is her final opinion regarding cause of death. According to her final opinion, the death of the deceased was due to asphyxia.

(f) P.W.16, recovered the dress materials from the dead body of the deceased.

(g) When the investigation was in progress, the accused appeared before P.W.9, the Village Administrative Officer of Anthiyur Village on 23.01.2009. His Assistant one Mr.Ganesan was also present at that time. On such appearance, the accused wanted to voluntarily confess in respect of the death of the deceased. Accordingly, he gave a voluntary confession which was reduced into writing by P.W.9. Then, he prepared a Special

Report. Along with the Extra Judicial Confession recorded and the Special Report, P.W.9 produced the accused before P.W.16 at 01.30 p.m. On such production, P.W.16 arrested the accused in the presence of the witnesses. On arrest, the accused gave a voluntary confession in which he disclosed the place where he had hidden a Towel measuring 50 cms. at length. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the M.O.1 Towel. P.W.16 recovered the same under a Mahazar. Then, he forwarded the accused to the court for judicial remand and forwarded the material object also to the court. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 13 documents and 1 material object were also marked. On the side of the accused, 3 documents were marked as Ex.D.1 to Ex.D.3. Ex.D.1 is the letter given by the Inspector of Police on 22.01.2009 to the Government Hospital for conducting postmortem. Ex.D.2 is the request made to the Doctor. Ex.D.3 is the report of the Hyoid Bone Test.

4. Out of the said witnesses, P.W.1 is the mother of the deceased who has stated that when the child was sleeping in cradle, she found the child motionless. She has further stated that just before that, the child wept as the child had passed motion. She cleaned and gave water to the child and then, put the child in the cradle. She has also stated that the accused and his sister rushed the child to the local nurse and since the nurse told them that the child dead, they brought the dead body of the child. P.W.2 is the mother of P.W.1. She has not stated anything incriminating against the accused. She has further stated that she heard about the occurrence and then, went to the house of P.W.1. P.W.3 has also spoken on hearsay information and she has also not stated anything incriminating against the accused. P.W.4, who is a neighbour, has also not stated anything incriminating against the accused. She has also spoken only on hearsay information. P.W.5 is also a neighbour of the accused. She has stated that on hearing the cry of P.W.1, she went to the house of P.W.1 where she found the deceased lying dead. P.W.6 is a Nurse to whom the child was taken by the accused and his sister. She has stated that she opined that the child would have died an hour before her examination. P.W.7 has stated that he exhumed the body as directed by the Revenue Divisional Officer. P.W.8 is a neighbour who has stated that the accused and P.W.1 were living happily and he did not know the cause for the death of the deceased.

5. P.W.9, the Village Administrative Officer has spoken about the Extra Judicial Confession given by the accused. P.W.10 is the Head Clerk of the Magistrate Court who has stated that he forwarded the material object for chemical examination. P.W.11 is the Head constable to took the F.I.R. and handed over the same to the learned Magistrate. He has stated that he handed over the same at 08.25 a.m. on 22.01.2009. P.W.12 is yet another Police Constable who has stated that he handed over the letter of the Tahsildar to the Doctor for conducting postmortem at the place of exhumation. P.W.13 has spoken about the registration of the case. P.W.14 is the then Tahsildar, who conducted exhumation on the body of the deceased. He has vividly spoken about the same and about his report. P.W.15 has spoken about the postmortem conducted and her final opinion regarding cause of death. P.W.16 has spoken about the investigation done and his final report.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness on his side. His defence was a total denial. According to the defence, the deceased died a natural death. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant/sole accused 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. This is a case, based on circumstantial evidence. According to P.W.1, on the day of occurrence i.e. on 21.01.2009, the accused returned to his house at 05.30 a.m. after his work. After his arrival, the child, who was sleeping, started weeping. The accused noticed that the child had passed motion. Therefore, he wanted P.W.1 to clean. Accordingly, P.W.1 cleaned the child and put the child in the cradle. This conduct of the accused is consistent with his innocence. Thereafter, P.W.1 started cooking breakfast. The accused went out to his mother's house and returned thereafter. P.W.1 served food. The accused had his breakfast and wanted P.W.1 to take breakfast. P.W.1 told that she would take breakfast after the child took breakfast. This conduct of the accused is also not inconsistent with his innocence.

9. Immediately, thereafter, with a view to feed the child, P.W.1 had gone near the cradle and attempted to lift the child. At that time, she found that the child was motionless and there was chillness in the body of the child. She

immediately cried. The accused and his sister immediately rushed the child, in an attempt to revive the child, to the local nurse. The nurse after examining the child declared her dead already. Therefore, the child was brought back to the house of the accused. This conduct of the accused in rushing the child to the nurse with an attempt to save the child is also consistent with his innocence.

10. Thereafter, message was sent to the parents of P.W.1. P.W.1's parents and other relatives arrived and after following the religious rituals, they buried the body ceremoniously. The accused was all along there participating in all the rituals. This conduct of the accused is also consistent with his innocence.

11. It was only thereafter, P.W.1 suspected some foul play and she made a complaint upon which investigation was commenced.

12. Now, according to the case of the prosecution, the child died due to asphyxia. The doctor, who conducted autopsy, has admitted during cross-examination that the cause for asphyxia could not be ascertained by her. She has further stated that since the child had passed motion and on account of diarrhea, there would have been dehydration and due to dehydration also, the child would have died. Thus, according to the Doctor, the death due to natural cause cannot be ruled out. Similarly, even the cause for asphyxia could not be ascertained by the Doctor as asphyxia may result due to various natural causes. Thus, the Doctor, who conducted postmortem, was not in a position to ascertain positively that the asphyxia was due to smothering or by means of any other violence. The Doctor has admitted that the death of the child due to natural cause, cannot be ruled out.

13. In a case based on circumstantial evidence, it is absolutely necessary to rule out the possibility of death due to natural cause. Here, in this case, as we have already dealt with elaborately, all through, the conduct of the accused is consistent with his innocence and coupled with the medical evidence, we are of the view that the prosecution has failed to prove that it was this accused, who caused the death of the deceased and then caused disappearance of the evidence. As a matter of fact, according to P.W.1, the body was buried only by her parents after making all the rituals. The accused had never made any attempt to bury the dead body of the deceased in an attempt to cause disappearance of any evidence. Thus, we hold that the prosecution has failed to prove the case beyond all reasonable doubts.

14. The life and liberty of the individual can be deprived of, as enshrined in Article 21 of the Constitution of India,

only by following the procedure established by law. The procedure established is a fair, just and reasonable procedure. Convicting an accused on mere surmise will not satisfy the fair procedure as mandated under Article 21 of the Constitution of India. Here in this case, there is no evidence against the accused so as to convict him. The trial court has convicted the accused on mere surmise, which is illegal. Therefore, we are inclined to set aside the conviction and sentence imposed by the trial court on the appellant.

15. In the result, the conviction and sentence imposed on the appellant/sole accused by the trial court are set aside and he is acquitted from all the charges. The bail bond, if any, executed by him shall stand discharged. The fine amount, if any, paid, shall be refunded to him.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Anthiyur Police Station,
Erode District.
2. The IV Additional District and Sessions Judge,
Erode District at Bhavani.
3. The Public Prosecutor,
High Court, Chennai.
4. -do- Thro The Principal Sessions Judge,
Erode
5. The Judicial Magistrate, Bhavani
6. -do- Thro The Chief Judicial Magistrate Erode
7. The Superintendent Central Prison, Coimbatore
8. The District Collector Erode
9. The Director General of Police, Mylapore Chennai-4
10. The Section Officer, Criminal Section
High Court Madras-104

+1 cc to Mr.P.Ezhil Nilavan Advocate sr.24385

Cr1.A.No.285/2013

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