

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.3 of 2013

Aeli @ Lakshmi Narayanan

... Appellant

Vs

State rep. By
The Inspector of Police,
Marakkanam Police Station,
Villupuram District
(Crime No.578/2011)

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the entire records and set aside the order passed in S.C.No.184 of 2012 dated 27.07.2012 on the file of the learned I Additional District and Sessions Judge, Tindivanam dated 27.07.2012.

For Appellant : Mr.V.Perarasu

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.184 of 2012 on the file of the learned I Additional District and Sessions Judge, Tindivanam. He stood charged for offence under Sections 364, 377, 302 & 404 I.P.C. By judgment dated 27.07.2012, the trial Court convicted the accused for offence under Sections 364, 377, 302 & 404 I.P.C., and sentenced him to undergo imprisonment for life for offence under Section 364 I.P.C; imprisonment for life for offence under Section 377 I.P.C; imprisonment for life for offence under Section 302 I.P.C., and imprisonment for three years for offence under Section 404 I.P.C. Considering the financial back ground of the accused, the trial Court has not imposed fine on the accused. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal

Appeal

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

The deceased in this case was an young girl by name Roja @ Kalpana aged 3 years. P.W.1 is her father and P.W.5 is her mother. They were all residing at Karippalayam Village. The accused is also closely related to them. On 11.09.2011, at about 3.00 pm, both P.W.1 and P.W.5 washed the child and got her ready to be taken for a local function. She was wearing silver jewelery. After this, P.W.1 was taking bath and P.W.5 was engaged in some other work in their house. The child was playing at the house of P.W.2. It is alleged that this accused came to the house of P.W.1 and enquired as to where the child was. After knowing that the child had gone out for playing, he went to the house of P.W.2 and took the child with him. P.W.5, after taking bath, came to the house of P.W.2 and found the child missing. Thereafter, P.W.1 & P.W.5 were in search of the child. The accused was also not seen. When they went in search of the child, they met P.W.6 sitting on the Culvert of the main road. They told P.W.6 about the missing of their child. P.W.6 also joined with them in search of the child. While searing, P.W.6, found the child lying dead near the Odai in the same Village. P.W.6, informed P.W.1 and P.W.5 about the same. There were injuries on her body. The silver anklets and silver waist cord worn by the deceased were found missing. Thereafter, P.W.1 rushed to the Police Station and made a complaint under Ex.P.1.

3.P.W.13, the then Sub Inspector of Police received the said complaint from P.W.1 at 11.00 pm on 11.09.2011 and registered a case in Crime No.578 of 2011 for offence under Sections 364, 377, 302 & 404 I.P.C. Ex.P.1 is the complaint and Ex.P.14 is the F.I.R. Then he forwarded both the documents to the Court and then he handed over the case diary to P.W.14, the then Inspector of Police for investigation.

4.P.W.14, the then Inspector of Police took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and rough sketch in the presence of P.W.7 and another witness. The dead body was taken to the hospital where, inquest was held between 9.30 am and 12.30 pm. Then the body was sent for post mortem. P.W.10 conducted autopsy on the body of the deceased on 12.09.2011 at 12.40 pm. He found the following injuries.

"External Injuries

1.Laceration over the inner aspect of the upper and lower of lips with tear of the frenulum

2.Contusion over the outer aspect of the right upper eye lid.

3.Contusion over the outer aspect of the left upper eye lid.

4.Contusion over the upper lip and nose.

5.Contusion abrasion 1 cm x 1 cm over the abdomen 2 cm above the pubis in the midline.

6.Contusion 0.5cm x 0.5cm over the outer aspect of the right thigh 15cm above the knee.

7.Contusion 0.5 cm x 0.5 cm over the outer aspect of right leg 6 cm below the knee.

8.Genitalia: Contusion of the labia majora, labia minora and vaginal orifice with laceration of posterior fornix of the vagina wall."

5.Ex.P.8 is the post mortem certificate. Ex.P.9 is the viscera report and Ex.P.10 is the microbiology report. P.W.10 finally gave opinion that the deceased had not been raped. She gave further opinion that however, her vagina had been meddled with and she also gave opinion that the death was due to suffocation due to closure of mouth and nose.

6.P.W.14 continued the investigation and examined few more witnesses. On 13.09.2011, at about 6.30 pm, he arrested the accused at Marakkanam, Boomiswaran Kovil Street, in the presence of P.W.8 and another witness. On such arrest, the accused gave a voluntary confession and he also disclosed that he had concealed the silver anklets and silver waist thread in a hide out. In pursuance of the said disclosure statement, he took the Police to the said place and identified the place where he buried the silver anklets and silver waist cord worn by the deceased and handed over the same to the Police. Then from the house of the accused, he produced the blood stained panties belonging to the deceased. P.W.14 also recovered the same in the presence of the witnesses.

7.On returning to the Police Station, P.W.14 forwarded the accused for judicial remand and handed over the Material Objects to the Court. Then he forwarded the accused to Dindivanam Government Hospital for examination. Ex.P.11 is the certificate issued by the Doctor which revealed that there was no injury on his private parts. Then P.W.14 made a request to the Court for sending the Material Objects for

chemical analysis. The report revealed that there are blood stains on the panties of the deceased. On completing investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 23 documents were exhibited, besides 8 Material Objects.

9. Out of the said witnesses, P.Ws.1,2, 3 and 5 have spoken about the fact that the deceased was lastly seen alive at 6.30 pm on 11.09.2011 at the house of P.W.2. From their evidence, it has been further proved that the accused visited the house of P.W.1 at the same time and enquired about the deceased and then visited the house of P.W.2. P.W.4 has stated that on the same day, when he met the accused at about 7.45 pm in the village, he started running and thus, from 7.45 pm onwards, he was absconding. P.W.6 was the one who found the dead body of the deceased near the Oodai. P.W.7 has spoken about the observation mahazar. P.W.8 has spoken about the arrest of the accused on 13.09.2011 at 6.30 am, and the consequential recovery of Material Objects, including the silver anklets and the silver waist cord of the deceased and the blood stained panties belonging to the deceased. P.W.10-Dr Sanjai Kumar (PIMS Hospital) has spoken about the post mortem conducted by him and he has given his final opinion regarding the cause of death of the deceased. P.W.11-Jayanthi, Scientific Officer has spoken about the chemical examination conducted by her. P.Ws.9, 12, 13, 14 & 15 have spoken about the investigation done in this case.

10. 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 of the witnesses on his side.

11. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

12. 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.

13. This is the case based on circumstantial evidence. The deceased was an young child aged about 3 years against whom, the accused would not have any motive at all. It is the

further case of the prosecution that the child was taken by the accused to exploit her sexually. From the evidences of P.Ws.1,2, 3 and 5 it has been proved that the child was lastly taken by the accused from the house of P.W.2 at 6.30 pm on 11.09.2011. Though, these witnesses have been cross examined at length, nothing has been elicited so as to disbelieve them. Then comes the evidence of P.W.4. He has stated that at about 7.45 pm on the same day, he found the accused in the Village and on seeing him, the accused started running. Thereafter, the accused was not seen in the Village at all. There is no reason to reject the evidence of P.W.4. From the evidence of P.W.4, the conduct of the accused has been clearly established. Had he been innocent, he would not have escaped from the Village and instead, he would have joined with the P.Ws.1, and 5, in search of the child. This unnatural conduct of the accused would go to only prove his complicity in the crime.

14. Thereafter, the dead body was found by P.W.6 near the Odai in the Village. The Doctor who conducted post mortem has opined that there were injuries on the vagina of the deceased and there was also discharge of blood from the vagina. The Doctor has given clear opinion that the death was due to suffocation due to closure of mouth and nose of the deceased. Thus, the prosecution has clearly established that the death of the deceased was due to homicide. The accused was thereafter arrested on 13.09.2011 at 6.30 am near Boomiswaran Koil Steret. P.W.8 and P.W.14 have spoken vividly about the same. On such arrest, he had given voluntary confession, in which, he had disclosed about the place where he had hidden the silver jewels belonging to the deceased i.e., silver anklets and silver waist cord of the deceased. In pursuance of the same, he had taken the Police to the said place and in the presence of witnesses, he handed over the said Material Objects to the Police. After that, the accused has produced the blood stained panties belonging to the deceased. These articles have been proved to be that of the deceased by P.Ws.1 and 5. Thus, the prosecution has clearly proved that soon after the commission of offence, the personal belongings of the deceased were in the possession of the accused.

15. Under Section 114 of the Indian Evidence Act, in this case, since, the murder and the removal of the belongings of the deceased had taken place, in one and the same occurrence, it is to be presumed that the person who was found to be in possession of the articles alone had committed murder of the deceased. The said presumption under Section 114 of the Evidence Act, in this case, is to be necessarily drawn against the accused. Because, soon after the commission of offence, he was found in possession of the belongings of the deceased for which, he had no plausible explanation at all. Thus, the said presumption remains un-rebutted.

16.From the above circumstances, the prosecution in our considered view, has clinchingly proved the offences committed by the appellant. We do not find any reason to find fault with the judgment of the trial court convicting the accused. Regarding the quantum of punishment also, the trial Court has imposed only reasonable quantum of punishment. The trial Court has directed the sentence imposed on the accused to run concurrently. We do not find any reason to interfere with the judgment of the trial Court and thus the criminal appeal deserves to be dismissed.

17.In the result, the criminal appeal is dismissed and the conviction and sentence imposed by the trial Court is confirmed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The I Additional District and Sessions Judge,
Dindivanam.
- 2.The Judicial Magistrate No.II,
Tindivanam.
- 3.Through The Chief Judicial Magistrate,
Villupuram.
- 4.The Inspector of Police,
Marakkanam Police Station,
Villupuram District.
- 5.The Superintendent,
Central Prison,
Cuddalore.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.V.Perarasu, Advocate, S.R.No.7620

Cr1.A.No.3 of 2013

VSN(CO)

CA(29/02/2016)

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