

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29..03..2016

CORAM

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

Criminal Appeal No.302 of 2013

Venkatappa

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
SIPCOT Police Station,
Mathigiri Police Circle,
Krishnagiri District.
[Crime No.44 of 2011]

... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District, in S.C.No.58 of 2011 dated 19.12.2012.

For Appellant : Mr.L.Baskaran

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

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

The appellant is the sole accused in S.C.No.58 of 2011 on the file of the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District. He stood charged for offences under Sections 302 of IPC [Two counts] and 309 of IPC. The trial court, by judgement dated 19.12.2012, convicted the appellant under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.250/- for each count in default to undergo simple imprisonment for one month for offence under Section 302 of IPC [Two counts] and to undergo simple imprisonment for one year for offence under Section 309 of IPC. Challenging the above said conviction and sentence, the sole accused has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:-
The appellant/accused was residing at No.3/302, Govinda Agraharam, Krishnagiri, Krishnagiri District. He had a wife by name Mrs.Muniamma and two children by name (1) Umesh, aged 6 years and (2) Uma aged 4 years respectively. On 02.02.2011, there was a domestic quarrel between the accused and his wife. His wife Mrs.Muniamma depressed over the said quarrel, consumed poison on 31.01.2011. In a serious condition, she was taken to Jegadeva Hospital at Bangalore and admitted as inpatient. The appellant only took her and admitted her in the hospital in an attempt to save her life. When Mrs.Muniamma was undergoing treatment in the hospital for having consumed poison, the accused returned home. It is alleged that he told the neighbours that in the event his wife dying in the hospital, he would also commit suicide. Mrs.Muniamma died in the hospital at 06.30 p.m. on 02.02.2011. On hearing the same, it is alleged that around 07.00 p.m. on 02.02.2011, the accused administered poison to both of his children at the house of his brother at No.3/486 , Govinda Agraharam, Krishnagiri and killed them. It is further alleged that he consumed poison in an attempt to commit suicide. He was taken to the Government Hospital at Denkanikottai at 07.20 p.m. on 02.02.2011 by his brother Mr.Ramesh. At that time, the accused was conscious. He told the Doctor that he had consumed rhodenticide [a rat poison] at 04.00 p.m. on 02.02.2011 at his house and also caused injury on his throat to himself with a sharp edged weapon. P.W.6 Dr.Bhoopathy examined him and found an incised wound on the neck measuring 3 cm in length. Ex.P.6 is the accident register.

3. In the mean while, P.W.1, the Village Administrative Officer of Begeppalli, Hosur Taluk, was informed by someone about the occurrence. He immediately rushed to the house of the brother of the accused where the dead bodies of the children of the accused were found. At 09.30 p.m. , he found the dead bodies of the children. He also came to know that the accused has been taken to the hospital by his brother for treatment for having consumed poison. Immediately, P.W.1 went to the SIPCOT Police Station and made a complaint at 11.00 p.m. on 02.02.2011. On receipt of the complaint under Ex.P.1, P.W.7, the then Sub Inspector of Police, registered a case in Crime No.30 of 2011 under Sections 302 and 309 of IPC. Ex.P.7 is the FIR. Then, he forwarded both the complaint and the FIR to the court which were received by the learned Jurisdictional Magistrate at 05.30 a.m. on 03.02.2011. Thereafter, he handed over the case diary to the Inspector of Police for investigation.

4. P.W.9, the then Inspector of Police took up the case for investigation on 03.02.2011 at 06.30 a.m. He visited the house of the accused, prepared an observation mahazar [Ex.P.2] and a rough sketch [Ex.P.12] at the place of occurrence in the presence of P.W.4 and another witnesses. Then, he visited the

house of the brother of the accused where the dead bodies of the children of the accused were lying. He prepared an observation [Ex.P.3] and a rough sketch [Ex.P.13] in respect of that place also in the presence of the same witnesses. Then, he conducted inquest on the body of Umesh between 08.45 a.m. and 10.045 a.m. and then on the body of Uma between 10.45 a.m. and 12.45 p.m. The inquest reports are Exs.P.14 and P.15. Then, he forwarded the bodies to the Government Hospital at Hosur, for postmortem.

5. One Dr.Dhamayandhi [not examined] conducted autopsy on the body of the deceased-Uma on 03.02.2011 at 01.05 p.m. Since the presence of the Doctor could not be secured, Dr.Boopathy, Civil Assistant Surgeon, Government Hospital, Hosur, who was working along with her, was examined to speak about the autopsy conducted on the body of the deceased. Dr.Dhamandhi found the following during postmortem:-

"Body of a female child lying on its back with eyes closed. Mouth opened; tongue inside the mouth frothy discharge from nostrils. All nails of both hands bluish discoloration. Tongue bluish in colour; eyes protruded out.
Internal Examination: Hyoid bone preserved. Ribs intact. Heart weight 120 grams, both chambers with clotted blood. C/S congested. Lungs - Weight 200 grams each 190 grams. C/S congested. Liver -Weight 600 grams . C/S Congested. Stomach contains 50 ml of white colour liquid. Kidneys - Weight 90 grams. C/S congested. Spleen - Weight 60 grams. C/S congested. Bladder - Empty. Skull - Intact. Membranes - Intact. Brain 700 grams / petechial heamorrhages congested. Base of Skull - Intact.

Ex.P.9 is the postmortem certificate. She preserved some of the internal organs including neck tissue in formalin and sent them for chemical examination.

6. On the same day at about 03.00 p.m. Dr.Dhamayandhi conducted autopsy on the body of the deceased Umesh and found the following:-

"Body of a male lying over its back. Its eyes closed. Mouth closed. Tongue inside mouth. Frothy discharge from mouth and noses. Tongue bluish in colour; all nails of both hands bluish in colour, eyes protruding out side.

Internal Examination: Hyoid bone preserved. Rib - Intact. Heart weight 100 grams, both chambers clotted blood C/S congested. Lungs weight - right - 200 grams, left - 180 grams. C/S congested. Liver weight 600 grams C/s congested. Stomach contain semi digested food particles about 50 grams. Kidney weight 70 grams each. C/S congested. Spleen weight 60 grams C/S congested. Bladder -Empty. Skull - Intact. Membranes - Intact. Brain 700 grams C/S congested. Base of Skull in tact."

Ex.P.11 is the postmortem certificate. She preserved some of the internal organs including neck tissue in formalin and sent them for chemical examination. After having received chemical analysis report, Dr.Dhamayandhi, opined that the death was due to asphyxia due to smothering. There were no external injuries found on both the dead bodies. There was also no poison detected in any of the visceral organs of both the deceased. After having received the chemical analysis reports, Dr.Dhamayandhi opined that the death of both the deceased was due to asphyxia, due to smothering.

7. P.W.9, in the course of investigation, arrested the accused at 03.00 p.m. on 04.02.2011 at SIPCOT Bus Stop in the presence of P.W.5 and another witness. On such arrest, the accused made a voluntary confession in which he had disclosed the place where he had hidden a pillow and a knife. In pursuance of the said disclosure statement, he took the police and the witnesses to the said place of hide out and produced the pillow (M.O.1) and the knife (M.O.2). P.W.9 recovered the same under a mahazar (Ex.P5) in the presence of the same witnesses. On returning to the police station, P.W.9, he forwarded the accused to the court for judicial remand. He also forwarded the material objects to the court. In the course of investigation, P.W.9 examined few other witnesses including the official witnesses and collected the postmortem certificates and chemical reports. On completing the investigation, he laid the final report against the accused.

8. Based on the above materials, the trial court framed two charges one under Section 302 of IPC [Two counts] and the other under Section 309 of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 9 witnesses were examined, 22 documents and 8 materials objects were marked.

9. Out of the said witnesses, P.W.1 was the then Village Administrative Officer Begeppalli. He has stated that he heard about the occurrence, visited the house of the brother of the accused found the dead bodies of the children and then, made the complaint to the police. P.W.2 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.3 is the father in law of the accused. He has stated that he heard that his daughter Mrs.Muniamma had consumed poison and she was admitted in Jegadev Hospital at Bangalore. He has further stated that when he went to the hospital he was informed that his daughter was in a critical condition. Later on, he came to know that the accused had consumed poison. He has further stated that on the next day his daughter died in the hospital.

10. P.W.4 has spoken about the preparation of the observation mahazars, rough sketches and also the recovery of material objects from the place of occurrence by the investigating officer. P.W.5 has spoken about the arrest of the accused, the confession made by the accused and the consequential recovery of M.O.1 and M.O.2 based on the disclosure statement of the accused. P.W.6 has spoken about the treatment given to the accused. P.W.7 has spoken about the registration of the case on the complaint made by P.W.1. P.W.8 has spoken about the autopsy conducted by Dr.Dhayamanthi on the body of the deceased Umesh and Uma and her final opinion regarding the cause of death of both the deceased. P.W.9 has spoken about the entire investigation done by him and the filing of final report against the accused.

11. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was that his children were killed by his wife she had attempted to commit suicide. Later, on coming to know about the said fact, he took poison.

12. Having considered all the above, the trial court convicted the accused under both the charges and accordingly punished him as detailed in the first paragraph of this judgement. That is how, the accused is now before this court with this criminal appeal.

13. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records carefully.

14. This is a case based on circumstantial evidence. So far as the deaths of the children are concerned, except the fact

that the children were found lying dead at the house of the brother of the accused, there is no other evidence connecting the accused with the same. Though the charge under Section 302 of IPC [Two counts] states that the children were smothered to death by the accused, absolutely there is no evidence for the same. The medical evidences reveal that the deaths of the children were due to asphyxia, due to smothering. But, who smothered the children to death has not been established by the prosecution. Thus, we hold that absolutely there is no evidence to prove that the accused only had caused the deaths of his children. The trial court has convicted the appellant for murder based only on mere surmise. Therefore, we are inclined to interfere with the same.

15. Now, turning to the charge under Section 309 of IPC is concerned, at the earliest point of time, the accused had told P.W.6-Doctor, that he had consumed poison in an attempt to commit suicide depressing over the death of his wife. This is an extra judicial confession which was voluntarily made by the accused to the Doctor without being influenced by anyone. He has further stated that he caused a slit injury on his neck to himself. Apart from this extra judicial confession, there is no other evidence to prove the charge under Section 309 of IPC also. It is true that the extra judicial confession, by its very nature, is a weak piece of evidence. But, in a case where the extra judicial confession inspires the confidence of the court even without looking for any corroboration solely acting upon the same, the accused could be convicted. Here, in this case, the said extra judicial confession given by the accused to the Doctor was voluntary and since it is in the nature of inspiring the confidence of this court, we hold that the accused had consumed poison in an attempt to commit suicide. Even the accused has taken the defence that depressed over the death of his wife, he consumed poison. Thus, we hold that the charge against the accused under Section 309 of IPC has been proved.

16. In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant by the trial court for offence under Section 302 of IPC [Two counts] are set aside and the appellant/accused is acquitted of the said charge, however, the conviction and sentence imposed on the appellant for the offence under Section 309 of IPC is confirmed.

It is directed that the period of detention already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C.

It is reported that the appellant/accused is on bail and, therefore, the learned Additional Sessions Judge, Krishnagiri, shall take steps, if necessary, to secure the appellant/accused and commit him to prison so as to undergo the unexpired portion of sentence imposed on him by the trial court for offence under Section 309 of IPC and as confirmed by this court.

kmk

s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

- 1.The Addl. Sessions Judge, Krishnagiri, Krishnagiri District.
 2. The Judicial Magistrate No.II, Hosur, Krishnagiri District.
 3. The Chief Judicial Magistrate, Krishnagiri.
 - 4.The Inspector of Police, SIPCOT Police Station, Mathigiri Police Circle, Krishnagiri District.
 5. The Superintendent, Central Prison, Vellore.
 6. The Public Prosecutor, High Court, Madras.
 7. The Section Officer, Criminal Section, High Court, Madras.
- + 1 cc to Mr.L.Baskaran, Advocate SR 19539

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prk3/5

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