

Bail Slip

The appellant i.e. Ameer @ Ameer Batcha in Crl.Appeal No.312/2013 (Accused in Sessions Case No.258 of 2010 on the file of Additional District and Sessions Judge/Fast Track Court No.IV, Coimbatore at Tiruppur) was released on bail vide order of this court dated 26.4.2013 and made in M.P.1/2013 in Crl.A.No.312 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.312 of 2013

Ameer @ Ameer Batcha ... Appellant / Accused

Vs

State rep. By
Inspector of Police,
Perumanallur Police Station,
Tiruppur,
Crime No.199/2008 ... Respondent/ Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 09.02.2012 passed in S.C.No.258 of 2010 by the learned Additional District Judge/Fast Track Court No.IV, Coimbatore, at Tiruppur.

For Appellant : Mr.C.C.Chellappan,
Legal Aid Counsel

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

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The sole accused in S.C.No.258 of 2010 on the file of the learned Additional District and Sessions(Fast Track) Court No.IV, Coimbatore at Tiruppur, is the appellant herein. He stood charged for offences under Sections 364 and 302 IPC. By judgment dated 09.02.2012, the trial Court convicted him under both the charges and sentenced him to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.1000/- in

default to undergo 6 months Rigorous Imprisonment for the offence under Section 364 IPC, and to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo 6 months rigorous imprisonment for the offence under Section 302 IPC and the trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased one Nuja @ Nuvama, aged about 3 years is daughter of P.W.1. P.W.2 is the father and P.W.3 is the mother of P.W.1 and grand parents of the deceased. P.W.17 Pargana is the sister of P.W.1. All are residing in the same house. The accused is a close relative of P.W.1's family and also residing near their house. The accused wanted to marry P.W.17. But, her family refused for the same. Hence, the accused decided to take revenge against their family. The accused used to play with the deceased child, and most of the time the accused used to carry the deceased child. On 19.06.2008, in the morning, the child was playing in front of the house of P.W.1. At about 10.00 a.m., the child was found missing and they started searching the child. On 20.06.2008, P.W.6, found a child floating in a well behind Office of the Village Administrative Officer and he informed the same to P.W.1 and others. Immediately, P.W.1 along with her family members went there and identified the deceased child. Then, P.W.2, father of P.W.1, lodged a complaint (Ex.P.1) before P.W.15, the then Head Constable of the respondent police Station. On receipt of the complaint, P.W.15 registered a case in Crime No.199 of 2008 for the offence under Section 174 Cr.P.C and forwarded Ex.P.12 First Information Report and Ex.P.1 complaint to the higher official and to the Court.

3. P.W.18, the Inspector of Police, took up the case for investigation and visited the scene of occurrence and prepared Observation Mahazar(Ex.P.2) and Rough Sketch(Ex.P.14) in the presence of the witnesses. He also conducted inquest on the dead body of the deceased child between 9.00 a.m. and 11.00 a.m., on 20.06.2008, in the presence of panchayathars and also recovered water(M.O.4) from the well and obtained statement from the witnesses. Then, he sent the body of the deceased child for postmortem through Head Constable Nagaraj (P.W.15).

4. P.W.12, the Doctor, working in the Government General Hospital, Thiruppur, conducted autopsy on the body of the deceased child on 20.06.2008 at 1.30 p.m. He found the following injuries:

" External injuries :

1 x 1 cm abrasion over baby knee, a pin point abrasion over forehead"

Ex.P.8 is the Postmortem certificate. He also gave opinion

that the deceased would appears to have died of drowning. Ex.P.19 is the final opinion.

5. Subsequently, on 25.06.2008, the accused appeared before P.W.10, who was local Assistant Secretary of Indian Communist party, AIYM wing, and given a extra judicial confession, that he only threw the child into the well. Since P.W.1's family refused to give in marriage P.W.17 to the accused, in order to take revenge, he threw the child into the well and also threw her chappal behind the bushes. P.W.10, recorded the statement and produced the accused before P.W.18. P.W.18 arrested the accused and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement, he recovered the chappal of the deceased child (M.O.2) near the bush. Then, he altered the charge into 364 and 302 IPC and the alteration report is Ex.P.16. Then he recorded the statement of the other witnesses and on completing investigation, he laid charge sheet against the accused.

6. 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 18 witnesses were examined and 19 documents were exhibited, besides 4 Material Objects.

7. Out of the said witnesses, P.W.1 is the mother of the deceased child and her evidence was that the accused is a close relative of her family. The accused wants to marry her sister, P.W.17. But, she refused for the marriage. She further stated that the accused used to play with the child and most of the time child was with the accused. On 19.06.2008, the child was found missing. On 20.06.2008, the body of the child was found floating in a well. The well is situated nearly 3/4 k.m away from the house of P.W.1 and it is not possible for the child to walk up to the well and fall down. P.W.2, father of P.W.1, has also spoken about the missing of the child. On identifying the body of the deceased child in the well, he gave complaint (Ex.P.1). P.W.3 is the mother of P.W.1. She has stated that at about 10.00 a.m., they found the child missing. When P.W.3 enquired the accused, the accused informed her that after giving some chocolates, he left the child in front of the house. P.W.3 has also spoken about the motive of the accused to take revenge against their family. P.W.4 is a resident in the above area. On 19.06.2008, he saw the accused taking the child with him. P.W.5 is running a petty shop near the house of the accused and his evidence was that on 19.06.2008, at about 8.45 a.m., the accused brought the child to his shop and bought some chocolates, then, he took the child towards northern side. P.W.6, saw the child floating in the well and informed the same to others. P.W.7 is the mahazar witness and also witnessed to the recovery of water (M.O.4). P.W.8, also a

resident in that area. On 19.06.2008 at 8.00 a.m., P.W.8 saw the accused carrying the child. P.W.9 is also a resident of the same area and a member in the Indian Communist Party. On 25.06.2008, when P.W.9 and P.W.10 were sitting in the office, the accused came there and gave a voluntary confession about the murder of the deceased child. P.W.10 is also a member in the Indian Communist Party and Deputy Secretary in AIYM. His evidence was that on 25.06.2008, the accused came to his office and gave an extra judicial confession(Ex.P.19). He recorded the statement of the accused and filed a special report before P.W.18. He is also a witness to the recovery of the chappals (M.O.3). P.W.11, who is a resident of pandian nagar, Thiruppur, on the date of occurrence, when he was going in a bike, saw the accused carrying the child near to the well. He also identified the dress of the child. His further evidence is that at about 9.00 a.m., he saw the accused standing in the bus stop in a perplex mood. P.W.12, the doctor, conducted postmortem and gave final opinion with regard to the cause of death. P.W.13 is the Junior Scientific Officer working in the Forensic Laboratory and he conducted examination of water and filed the reports Ex.P.10 and Ex.P.11. P.W.14, Scientific Officer in the Forensic Laboratory examined the internal organs of the deceased child and gave a report Ex.P.7. P.W.15, the then Head Constable, on receipt of complaint, registered the case and conducted inquest on the body of the deceased child and handed over the case to the Inspector of Police. P.W.16, Head Constable, took the internal organs of the deceased child for chemical examination. P.W.17, sister of P.W.1 has spoken about the motive for the occurrence and missing of the deceased child. P.W.18, Inspector of Police, conducted investigation, arrested the accused and obtained statement of the witnesses and on completion of investigation, he laid charge sheet in this case.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, he examined his mother as DW1 and he did not mark any document.

9. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

10. We have heard Mr.C.C.Chellappan, learned legal aid counsel appearing for the appellant and Mr. M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. The learned counsel for the appellant would submit that there is no eye-witness to the occurrence and since there is a previous enmity between the accused and P.W.10, the extra judicial confession cannot be believed. The

only circumstance that the accused found carrying the child before the occurrence alone is not sufficient to convict the accused.

12. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has clearly proved the motive and as many as 4 witnesses have seen the accused carrying the deceased child before the occurrence. Apart from that, the extra judicial confession given by the accused is highly reliable, and, the prosecution proved the case beyond any reasonable doubt. Thus, according to the learned Additional Public Prosecutor, there is no merit in the criminal appeal and sought for dismissal of the appeal.

13. We have considered the above submissions.

14. It is a case of circumstantial evidence. In order to prove the case, the prosecution relied upon the following circumstances:

(i) The first and foremost circumstance is motive. The accused and P.W.1's family are close relatives and the accused is residing near to the house of P.W.1's family. It is the evidence of P.Ws.1, 2, 3 and 17 that the accused want to marry P.W.17. But they refused for the same, in order to take revenge, the accused took the child of P.W.1 and threw the child into the well. Even though the accused examined DW1, his mother to prove that there is no dispute between the accused family and P.W.1's family, in her cross examination, D.W.1 has stated that she was residing at Tiruvannamalai for 3 months prior to the occurrence and she came to Thiruppur only after the cremation of the deceased child. Therefore, her evidence is not helpful to the accused. Hence, in our considered view the prosecution has proved the motive for the occurrence.

(ii) The second important circumstance is that as many as 4 witnesses, viz, P.Ws.4,5,8 & 11, saw the accused carrying the child on 19.06.2008. P.W.5, the person, who is running a petty shop, in his evidence he has stated that on the date of occurrence, at 8.45 a.m., the accused brought the child to his shop and bought chocolates for her. P.W.8, also saw the accused carrying the child at about 8.00 a.m. P.W.11, resident of the Pandian nagar, Thiruppur, also saw the accused carrying the child near to the well, where the dead body of the deceased child was found and thereafter at about 9.00, he saw the accused standing in the bus stop in a perplex mood .

15. All the above witnesses are independent witnesses, they are no way related to the family of the deceased child, all of them consistently deposed that the accused was carrying the child on 19.06.2008 around 9.00 a.m. Hence, it is clearly established by the prosecution that it is only the accused carrying the child soon before the occurrence and it is a strong circumstance against the accused.

16. The another circumstance relied upon by the prosecution is the extra judicial confession given by the accused before P.Ws. 9 and 10. They are all residents of the same area and they are all members in a political party. Apart from that, (M.O.3) chappal, worn by the deceased child was also recovered based on the disclosure statement of the accused. We find no reason to disbelieve the exdtra judicial confession given by the accused. Hence, taking into consideration of the totality of circumstances, we are of the considered view that the prosecution has clearly proved the guilt of the accused beyond any reasonable doubt. Hence, the appeal fails and consequently, it is liable to be dismissed.

17. In the result, the Criminal Appeal is dismissed and the judgment of the trial court in S.c.No.258/2010 dated 09.02.2012 is confirmed. It is reported that the accused/appellant is on bail. The trial Court is directed to take steps to secure the presence of the accused/appellant to commit him to prison to undergo the remaining period of sentence, if any.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

mrp

To

1. The Additional District Judge,
Fast Track Court No.IV,
Coimbatore at Tiruppur.

2. The Principal Sessions Judge
Coimbatore

3. The Judicial Magistrate No.II
Tiruppur

4. The Chief Judicial Magistrate
Tiruppur

5. The Superintendent
Central Prison,
Coimbatore

6. The Inspector of Police
Perumanallur Police Station
Tirupur

7. The Public Prosecutor,
High Court, Madras.

8. The Section Officer
Criminal Section,
High Court, Madras

1 cc to Mr.C.C. Chellappan, Advocate, Sr. 35500

Crl.A.No.312 of 2013

GJ (CO)
kk 23/12



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