

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.665/2013

Muniraj

Appellant

Versus

The State by
The Inspector of Police
Denkanikottai Police Station
Krishnagiri District.

Respondent

Appeal filed under section 374[2] Cr.P.C., against the conviction and sentence imposed on the appellant in SC.No.117/2010 dated 19.04.2012 by the learned Principal Sessions Judge, Krishnagiri.

For Appellant : Mr.K.Selvarangan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The sole accused in SC.No.117/2010 on the file of the learned Principal Sessions Judge, Krishnagiri, has come up with this appeal, challenging the conviction and sentence imposed on him. He stood charged for the offences u/s.363 IPC [2 counts] ; 302 IPC [2 counts] and 201 read with 302 IPC. By judgment dated 19.04.2012, the Trial Court acquitted him from the charges u/s.363 IPC [2 counts] and 201 r/w 302 IPC ; however convicted him for the offence u/s.302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,500/- for each count, in default, to undergo rigorous imprisonment for 6 months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

[A] P.W.2 is the wife of the appellant/accused. They had two male children by name Jagan and Vishal, aged 4 years and 2 ½ years respectively. They were all residing at Kottai Ulimangalam village in Krishnagiri District. P.W.2 was employed in a private company and from out of her income, the family was run, as the accused had no employment. Because the accused was unemployed and was not earning anything and since he was whiling away his time, there arose frequent quarrels between P.W.2 and the accused. Thus, there was no love last between the accused and P.W.2.

[B] On 20.11.2009, before leaving for her work in the morning, P.W.2 requested the accused to take Master Vishal to a local doctor. Her mother-in-law was also at home then. At 19.00 hrs., on the same day, when P.W.2 returned home, she found that the accused as well as both the children were not available. When she enquired her mother-in-law, she told P.W.2 that the accused had taken both the children to the hospital at Denkanikottai. For the whole night, the accused did not return. On the next day, that was on 21.11.2009, again P.W.2 had gone for her work. In the usual course, when she returned in the evening by 19.00 hrs., the accused had not returned along with the children. Within half-an-hour thereafter, the accused alone returned home. When the mother of the accused enquired him as to where the children were, he told that he had killed the children. Perturbed over the same, P.W.2 enquired the accused about the children. He told that he had admitted the children in a Children's Home. When P.W.2 repeatedly insisted him to say as to what had happened to the children, he told that he killed the first child Jagan [hereinafter referred to as D1] by throwing him in water and killed the second child Vishal [hereinafter referred to as D2] and buried the body at the burial ground. P.W.2, shocked over the same, took one Kumar [P.W.5] and rushed to the place disclosed by the accused. The accused, however, fled away from the house. P.Ws.2 and 5 went to the scene of crime and found the dead bodies of both the children, lying by the side of a small pond. Then immediately, leaving P.W.5 at the spot, P.W.2 rushed to the office of the Village Administrative Officer at Ulimangalam village, who was the jurisdictional Village Administrative Officer. She made a statement to VAO [P.W.1] about the above incident. P.W.1 reduced the same into writing under Ex.P.1. Then, he forwarded the same to the Denkanikottai Police Station.

[C] P.W.8, the then Sub-Inspector of Police attached to the said Police Station, on receipt of the complaint under Ex.P.1 on 22.11.2009 at 07.00 hrs., registered a case in Cr.No.333/2009 for the offence u/s.302 IPC. Ex.P.16 is the FIR. He forwarded both the documents to the Court concerned, which

were received by the learned Magistrate at 20.15 hrs on the same day.

[D] P.W.9, the then Inspector of Police, took up the case for investigation and proceeded to the scene of occurrence on 22.11.2009 and prepared the Observation Mahazar [Ex.P.2] and also prepared a Rough Sketch [Ex.P.17] in the presence of P.W.1 and another witness. She examined P.Ws.2 to 6 and recorded their statements. Thereafter, she held inquest on the dead body of the deceased in the presence of Panchayatdhars and other witnesses till 11.30 hrs. Ex.P.19 is the Inquest Report. P.W.9 also recovered M.Os. 1 to 3 [a blue colour underwear ; an empty bottle and an empty cool drinks bottle respectively] from the scene of crime, under a Mahazar. She sent the dead body of the deceased for postmortem.

[E] P.W.3, Dr.Vijay, the Civil Assistant Surgeon attached to the Government Hospital, Denkanikottai, conducted autopsy on the body of D1 on 23.11.2009 at 11.30 hrs. He found the following injuries:-

"External Appearance:-

[1]Face-swollen [2] Eyes closed. Eyeballs soften and bulged [3] Nose-blood stained fluid comes out from both nostrils [4] Mouth-open, blood stained fluid comes out from right side angle of mouth [5] Tongue - bitten between teeth and protruded out.

Internal Examination:-

[1] Heart-130 gms. Chambers filled with blood. C/s - congested. [2] Lungs- [Rt] 200 gms [Lt] 180 gms. C/s - congested. [3]Hyoid bone-intact. [4] Stomach-empty. Mucosa normal [5] Liver-900 gms C/s - congested [6] Spleen-80 gms C/s - congested [7] Kidney-90 gms each; C/s - congested [8]Skull and membranes-intact [9] Brain-liquification setting in 1300 gms."

Ex.P.7 is the Postmortem Certificate. He opined that the death was due to drowning. At 13.00 hrs., on the same day, he conducted autopsy on the dead body of D2. He found the following injuries:-

"External Appearance:-

[1] Eyes closed. [2]Mouth-closed, whitish frothy fluid comes out. [3]Tongue-kept inside the mouth.

Internal Examination:-

[1] Heart-100 gms. Chambers filled with

blood. C/s - congested. [2] Lungs- [Rt] 200 gms [Lt] 180 gms. On pressing, blood-stained excretion present [3]Hyoid bone-intact. [4] Stomach-20ml of white coloured liquid present. Mucosa normal [5]Liver-800 gms C/s - congested [6] Spleen-60 gms C/s - congested [7] Kidney-80 gms each; C/s - congested [8]Skull and membranes-intact [9] Brain-900 gms. + liquification setting in."

Ex.P.8 is the Postmortem Certificate. He opined that the death of D2 was due to drowning.

[F] P.W.9, during the course of investigation, arrested the accused on 22.11.2009 at 15.00 hrs near the Ulimangalam Bus Stand, in the presence of P.W.1 and another witness. On such arrest, the accused gave a voluntary confession statement ; but no fact was discovered out of the same. Thereafter, P.W.9 returned to the Police Station and forwarded the accused for judicial remand and also handed over the material objects to the Court.

[G] Thereafter, investigation was taken over by P.W.10 on 23.02.2010. He forwarded the material objects for chemical examination through Court. The report revealed that there was diatom in the lung and sterna. On completion of the investigation, he laid the charge-sheet against the accused.

[H] Based on the above materials, the Trial Court framed charges against the accused 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 10 witnesses were examined, 19 documents and 3 material objects were also marked.

[I] Out of the said witnesses, P.W.2 is the wife of the accused and she has stated that this accused took the children with him lastly and he returned without the children. When she enquired, he told that he had killed the children. Thereafter, when she along with P.W.5, rushed to the place disclosed by the accused, where the dead bodies of the children were found. Thereafter, she went to P.W.1 [VAO] to make a complaint. P.W.1 has stated about the arrival of P.W.2 and recording of the statement of P.W.2. He has further stated that he forwarded the same to the police for registration of a case. P.W.1 also spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of crime. P.W.3 is the doctor who conducted autopsy on the dead bodies of the deceased children. He has stated that the death of the children

was due to drowning. P.Ws.4 and 5 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 is the mother of P.W.2. She has stated only about the hearsay information and she has not stated anything incriminating against the accused. P.W.7, the Chemical Analyst, has stated that Diatom test of the internal organs of both the deceased proved positive. P.W.8 has spoken about the registration of the case on the complaint of P.W.2. P.Ws.9 and 10 have spoken about the investigation done by them and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not chose to examine any witness nor marked any documents, on his side.

4 Having considered all the above, the Trial Court convicted and sentenced the appellant/accused as detailed in the first paragraph of this judgment. That is how the appellant is before this Court with this appeal.

5 We have heard Mr.K.Selvarangan, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 This is a case based on circumstantial evidence. P.W.2 is the wife of the accused. She has stated that the accused was unemployed and he was whiling away his time without making any earning. This resulted in frequent quarrels between the accused and P.W.2. This circumstance, we hold, has been proved by the prosecution. But, this is not very incriminating against the accused.

7 The next circumstance is that on 20.11.2009, before going for work, P.W.2 requested the accused to take Vishal [D2] to the hospital for treatment. On the same day, when P.W.2 returned home at 19.00 hrs, the accused and the children were not available at home. When she enquired her mother-in-law, she told P.W.2 that the accused had taken both the children to the hospital. This part of the evidence of P.W.2 that her mother-in-law told that the accused had taken the children to the hospital, is not admissible, as it is only a hearsay evidence, since the mother-in-law of P.W.2 has not been examined. But, from the evidence of P.W.2, it is crystal clear that on 20.11.2009 in the evening, the accused and the children were found missing from the house.

8 On 21.11.2009, at 07.00 hrs, in the usual course,

P.W.2 had gone for her work and when she returned in the evening by 19.00 hrs., the accused and the children had not yet returned. We do not find any reason to reject this part of the evidence of P.W.2. From this

evidence, it is crystal clear that the accused and the children were found missing from 20.11.2009 till 19.00 hrs., on 21.11.2009.

9 The next circumstance is that when the mother of the accused asked her son, in the presence of P.W.2 about the children, he told that he had killed both the children. P.W.2 was shocked over the same. When she enquired the accused, he stated that he had put both the children in a Children's Home. When she again insisted the accused, he told that he had killed both the children. He further told that he had thrown D1 into a pond and he had buried D2 near the pond. P.W.2 had no axe to grind against the accused. Therefore, we find no reason to reject this part of the evidence of P.W.2.

10 After this information, P.W.2 along with P.W.5, had immediately rushed to the place disclosed by the accused, where they found the dead bodies of both the children. Thus, the extra-judicial confession given by the accused that he had killed both the children, is now duly corroborated by the discovery of the dead bodies at the place disclosed by the accused. This is yet another very strong piece of evidence against the accused. But for the said disclosure statement made by the accused, P.W.2 would not have come to know about the death of the children and also the place where the dead bodies were lying. For a moment, it may not be mistaken that we invoke section 27 of the Evidence Act to make this evidence relevant. We hold that this part of the discovery of the dead bodies from the place of crime by P.W.2, is relevant u/s.7 of the Evidence Act as well as section 8 of the Evidence Act. The accused has got no explanation to offer as to how did he come to know about the fact that the dead bodies lying there, had he been innocent.

11 Thereafter, P.W.2 had gone to P.W.1 and then, case was registered, investigated and final report was filed. The medical evidence has clearly proved that the children died due to drowning. In our considered view, these circumstances, viz., the accused and the children were found missing on 20.11.2009 and 21.11.2009 till 19.00 hrs., the statement made by the accused confessing that he had killed both the children and threw the bodies near the pond, the further disclosure made by him about the place where the bodies had been drown, the discovery of the bodies at the place of occurrence in pursuance

of the said statement, would all form a complete chain, unerringly pointing to the guilt of the accused.

12 There is also yet another circumstance which is against the accused, pointing to his guilt, that is, the conduct of the accused. According to P.W.2, after making the disclosure statement, when P.W.2 along with P.Ws.4 and 5 started rushing to the place of occurrence, the accused gave a slip and ran away. Had he been innocent, going by natural human conduct, he would have rushed to the place of occurrence along with his wife to see the dead bodies. But, the conduct of the accused in absconding until he was arrested by the police is also yet another incriminating circumstance against him, proving his guilt.

13 From these circumstances, in our considered view, the prosecution has proved its case beyond reasonable doubts, that it was this accused who caused the death of both the children by drowning them into the water and throwing the dead bodies by the side of the pond. Therefore, he is liable to be punished for the offence u/s.302 IPC [2 counts]. The Trial Court, was thus, right in convicting him. So far as the quantum of sentence is concerned, the Trial Court itself has imposed a minimum punishment, which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

14 In the result, the criminal appeal is dismissed. The conviction and sentence imposed on the appellant by the Trial Court in SC.No.117/2010 dated 19.04.2012, are hereby confirmed.

Sd/-
Assistant Registrar(J)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

AP

To

- 1 The Principal Sessions Judge,
Krishnagiri.
- 2 The District Munsif cum Judicial Magistrate
Denkanikottai.

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3 The Chief Judicial Magistrate
Krishnagiri.

4 The Inspector of Police
Denkanikottai Police Station
Krishnagiri District.

5 The Public Prosecutor
High Court, Madras.

6 The Director General of Police
Chennai.

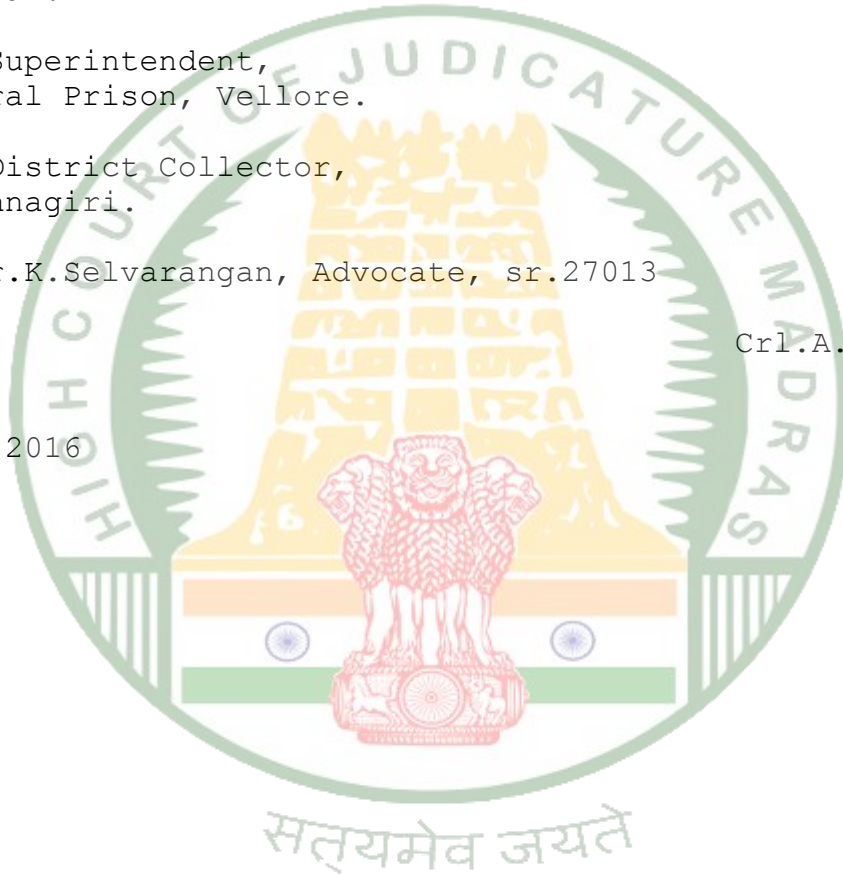
7 The Superintendent,
Central Prison, Vellore.

8 The District Collector,
Krishnagiri.

1 cc to Mr.K.Selvarangan, Advocate, sr.27013

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svi co
kra 20.06.2016



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