

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.673/2013

Tamilarasan .. Appellant/sole Accused

Vs

State by
The Inspector of Police,
Kallakurichi Police Station,
Kallakurichi Taluk,
Villupuram District. ... Respondent/ Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram District in S.C.No.23 of 2012, dated 13.08.2013.

For Appellant : Mr.L.Mahendran,
Legal Aid Counsel

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.23 of 2012 on the file of the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram District. He stood charged for the offences under Sections 302 and 307 (2 Counts) of IPC. The trial court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 302 of IPC and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.100/- for each count, in default, to undergo rigorous imprisonment for

one year for the offence under Section 307 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) The appellant is the husband of P.W.1. The marriage between P.W.1 and the accused was celebrated 9 years prior to 2013. Out of the said wedlock, they had 3 children, by name, Subhashini, Salini and Venkatesan. In the year 2011, they were aged about 9 years, 7 years and 4 years respectively. In the year 2008, the accused was involved in a murder case and he was imprisoned. Since the accused was in prison, P.W.1 took all her 3 children and came down to her parental house and started residing at Agara Kottalam Village. After being released from prison, the accused came to Agara Kottalam Village and wanted P.W.1 to return to his house at Mamandur along with the children. But, P.W.1 refused to return to Mamandur. The accused was aggrieved over the same.

(b) On 24.07.2011, again, the accused came to Agara Kottalam Village and insisted P.W.1 to return to his house along with the children. Once again P.W.1 refused. Enraged over the said incident, the accused decided to kill his wife and all the 3 children and going for marriage with another woman. This is stated to be the motive for the occurrence.

(c) On the same day, at about 7.00 p.m., P.W.1 and her children had their food. Leaving the children at her house, P.W.1 alone went out for taking bath. When she returned home, all the three children told that the accused came and gave 7 Up beverage mixed with some other substance. They further told that because they had drunk the beverage mixed with some other substance, they had the feeling of giddiness. They also told that the accused, after administering the said beverage, had left the place of occurrence.

(d) P.W.1 arranged for an Autorickshaw and took all the three children to the hospital. P.W.12 Doctor Sivalingam examined the child Shalini at 9.00 p.m. on 24.07.2011, who was brought in a 108 Ambulance Service. The child was conscious. He admitted her as inpatient. Ex.P.6 is the Accident Register. Then, she examined the child Subhashini. She had breathing trouble and her condition was also bad. He admitted her as inpatient. Ex.P.7 is the Accident Register. When he examined the child Venkatesan, aged about 4 years, he was also drowsy. He admitted him as inpatient. Ex.P.8 is the Accident Register.

(e) On the same day at 10.40 p.m., the accused was brought to the same hospital by one Selvaraj. The accused told the doctor that he had taken a beverage, mixing poison with the same. He admitted him as inpatient. Ex.P.9 is the Accident Register. P.W.12 also gave intimation to the police about the same.

(f) On receipt of information from P.W.12, P.W.17, the then Sub-Inspector of Police attached to the Kallakurichi Police Station, rushed to the Kallakurichi Government Hospital where he recorded the statement of P.W.1 and on returning to the police station at 8.00 a.m. on 25.07.2011, he registered a case in Cr.No.562 of 2011 against the accused. The child Venkatesan had died due to the said poison. Ex.P.1 is the complaint and Ex.P.12 is the First Information Report. He forwarded both the documents to court and handed over the Case Diary to P.W.18 the then Inspector of Police.

(g) P.W.18 took up the case for investigation, proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of two witnesses. Then, he conducted inquest on the body of the deceased Venkatesan between 10.30 a.m. and 11.30 a.m. and forwarded the body for postmortem. P.W.11 conducted autopsy on the body of the deceased on 25.07.2011 at 01.10 p.m. He preserved the internal organs for chemical examination. In the report of the Chemical Analyst, it was stated that there was poison in the internal organ known as 'Indoxacarb Insecticide'. The investigation was thereafter taken up by P.W.20 on 26.07.2011.

(h) In the course of investigation, on 27.11.2011, at 12.30 p.m., P.W.20 arrested the accused in the presence of P.W.13 and another witness. On such arrest, he gave a voluntary confession in which he disclosed the place at where he had hidden a yellow colour box. In pursuance of the same, he took the police and witnesses to the place of hide out and produced M.O.1. P.W.20 recovered the same under a Mahazar in the presence of the same witnesses. On returning to the police station, he forwarded the accused to court for remand and also handed over the material objects also to court. Then, he made a requisition to the court to forward the M.O.1 for chemical analysis. The report revealed that there was 'Indoxacarb Insecticide' in the same. 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 20 witnesses were examined and 15 documents and one material object were also marked.

4. Out of the said witnesses, P.W.1 - the wife of the accused had stated about the motive. She has also stated that at about 7.00 p.m., on the day of occurrence, when she had gone out for taking bath, the children were alone at the house. When she returned, the children told that the deceased came, gave beverage mixed with some other substance and because they had drunk the same, they had the feeling of giddiness. P.W.2 is the brother of

P.W.1. He has stated that on hearing about the occurrence, he went to the house of P.W.1 and went along with the children to the hospital. He has further stated that within few minutes after admission, the child Venkatesan died in the hospital. P.W.3 is the wife of P.W.2. She has also stated the same facts as spoken by P.W.2 as she accompanied P.W.2 to the house of P.W.1. P.W.4 is the Doctor who gave treatment. He has stated that he is a Siddha Doctor. On 24.07.2011 at 8.00 p.m., P.W.1 brought all the 3 children to him for treatment and he advised her to immediately rush all the 3 children to the Government Hospital. P.W.5 is one of the victims. She is Shubashini, the daughter of the accused and P.W.1. She has stated that on the day of occurrence, at 7.00 p.m., the accused came and gave 7 Up beverage mixing with some other substance to all the 3 children. At that time, they were not aware that poison was mixed with the same. After consuming the same, she developed burning sensation in her chest and also giddiness. She has further stated that she was rushed to the hospital where she had undergone treatment. She has also stated that the same Beverage mixed with some other substance was given to her another sister and to her brother Venkatesan also. P.W.6 is the mother of P.W.1 who has stated only about the motive. P.W.7 has stated that he took the accused to the hospital. P.W.8 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 is an Auto Driver who took the 3 children to Kallakurichi Government Hospital.

5. P.W.10 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.11 has spoken about the postmortem conducted on the dead body of the child Venkatesan. He has further stated that 'Indoxacarb Insecticide' was found in the internal organs and according to his opinion, the deceased would have died due to the said poisoning. P.W.13 has spoken about the arrest of the accused, the disclosure statement made by him and his recovery of M.O.1. P.W.12 has spoken about the treatment given to all the 3 children at Government Hospital, Kallakurichi. P.W.17 has spoken about the registration of the case on the complaint of P.W.1. P.W.18 has spoken about the initial investigation and P.W.19 has spoken about the chemical analysis conducted on M.O.1 which contained the 'Indoxacarb Insecticide'. P.W.20 has spoken about the further investigation and the final report filed by him.

6. 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 choose to examine any witness nor mark any document on his side.

7. 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.

8. When this appeal came up for hearing on 09.03.2016, since there was no representation for the appellant, we appointed Mr.L.Mahendran, learned Counsel as Legal Aid Counsel to argue the case for the appellant. Today, when the matter was taken up, the learned Counsel for the appellant submitted that though it was communicated to the appellant about his appointment to do the case for him, there was no response from him. The accused had not given any further instructions to him. Therefore, he has advanced arguments based on the materials available on record.

9. We have heard the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

10. The learned Counsel for the appellant would submit that there is no evidence to prove as to what was allegedly given by the accused to all the 3 children was 'Indoxacarb Insecticide'. The learned Counsel for the appellant would further submit that the evidence of the child P.W.5 cannot be believed, as she has spoken as tutored. The learned Counsel would also submit that due to previous enmity, the accused has been falsely implicated by P.W.1.

11. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, the evidence of the child P.W.5 is very cogent and convincing and there is no reason to reject the same. Further, the evidence of P.W.1, to whom P.W.5 and others have told that the accused came and gave 7 Up Beverage mixed with some other substance is also relevant and it duly corroborates the evidence of P.W.5. The learned Counsel would further submit that the medical evidence also corroborates the eye-witness account. Based on all the above, the conviction and sentence have been recorded on the appellant by the trial court and the same needs to be sustained.

12. We have considered the above submissions.

13. There is no controversy before this Court that after the accused was imprisoned in connection with some other case, P.W.1 had returned to her parental house and she was living separately along with her children. It is in the evidence of P.W.1 that on many occasions, the accused visited her house and insisted her to come to his village along with the children to live with him, but, P.W.1 refused to go with him. We do not find any reason to reject this part of evidence of P.W.1. Further, it is stated by P.W.1 that on the day of occurrence, all the 3 children had their dinner and thereafter, she went out for taking bath. Thus, at about 7.00 p.m. on the day of occurrence, at the house of P.W.1, except the 3 children of the accused, nobody else was present. P.W.5 has stated that within a short while, the accused came and gave 7 up beverage to all the 3 children mixing some other substance with the

same. The children were not able to realise as to what was being mixed with 7 up Beverage was an 'Indoxacarb Insecticide''. Ignoring the same, they had drunk the beverage mixed with 'Indoxacarb Insecticide''. Thereafter, the accused fled away from the scene of occurrence. It is very evident from the fact that when P.W.1 returned to the house after taking bath, the accused was not present. At that time, all the 3 children in one voice told P.W.1 that the accused had come, gave 7 Up beverage mixed with some other substance and because they had drunk the same, they had giddiness and also burning sensation in the chest.

14. Going by these instances and also the antecedents of the accused, P.W.1 suspected some foul play. Immediately, she took all the 3 children to the Doctor P.W.4. P.W.4 is a Siddha Doctor. She immediately advised P.W.3 to take the children to the Government Hospital. On admission, P.W.1 told the Doctor that the children had been given some beverage mixed with some other substance. The male child Venkatesan succumbed to the poison. The other two children fortunately survived. From the evidence of P.W.5 and that of P.W.1, it has been clearly established that it was this accused, who came to the house of P.W.1 at 7.00 p.m. and gave 7 up beverage mixed with some other substance to the children. The information passed on by all the three children at the earliest point of time to P.W.1 carries much weightage. This information duly corroborates the evidence of P.W.5.

15. So far as the medical evidence is concerned, it has been clearly stated that the child Venkatesan died due to pesticide. In M.O.1, the said pesticide was found. From these facts, the prosecution has established that what was mixed with 7 Up beverage by this accused was a poisonous substance. Thus, the prosecution has clearly proved that it was this accused, who had given poison to all the three children.

16. Now the question is as to what was the offence that the accused has committed by the said act. The mixing of poison with beverage and making the children to drink would prove that the one and only intention was to cause the death of the children. Because Venkatesan was too young with little resistance, he died. Thus, the act of the accused in causing the death of the deceased Venkatesan would squarely fall within the first limb of Section 300 of IPC and so, he is liable to be punished for the offence under Section 302 of IPC.

17. So far as administering poison on the other two children, namely, P.W.5 Shubashini and Shalini, is concerned, as we have already pointed out, the intention of the accused in administering poison to the children was only to cause their death. Fortunately, they survived. Thus, the act of the accused would squarely fall within the ambit of Section 307 of IPC. Thus, the trial court was right in convicting the accused for the offences under Sections 302 and 307 (2 counts) of IPC.

18. Now coming to the quantum of punishment, the accused has killed his son, a young boy and has also attempted to kill his two other children. He deserves for no lenience. We do not find any mitigating circumstance to reduce his sentence. The trial court has imposed only a just punishment on the accused. Therefore, the quantum of punishment imposed by the trial court does not warrant any interference at the hands of this Court. Thus, we do not find any merit at all involved in this appeal.

19. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant are confirmed. The bail bond shall stand cancelled. The trial court shall take steps to secure the accused and commit him to prison to undergo the unexpired portion of the sentence.

20. While parting with the case, we appreciate the services rendered by Mr.L.Mahendran, the learned Counsel, who appeared on behalf of the appellant as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate
Kallakurichi

2. do thro the Chief Judicial Magistrate
Villupuram District

3. The III Additional District and Sessions Judge,
Kallakurichi, Villupuram District.

4. do thro the Principal Sessions Judge
Villupuram

5. The Superintendent
Central Prison, Cuddalore

6. The Inspector of Police,
Kallakurichi Police Station,
Kallakurichi Taluk,
Villupuram District.

7. The District Collector
Villupuram

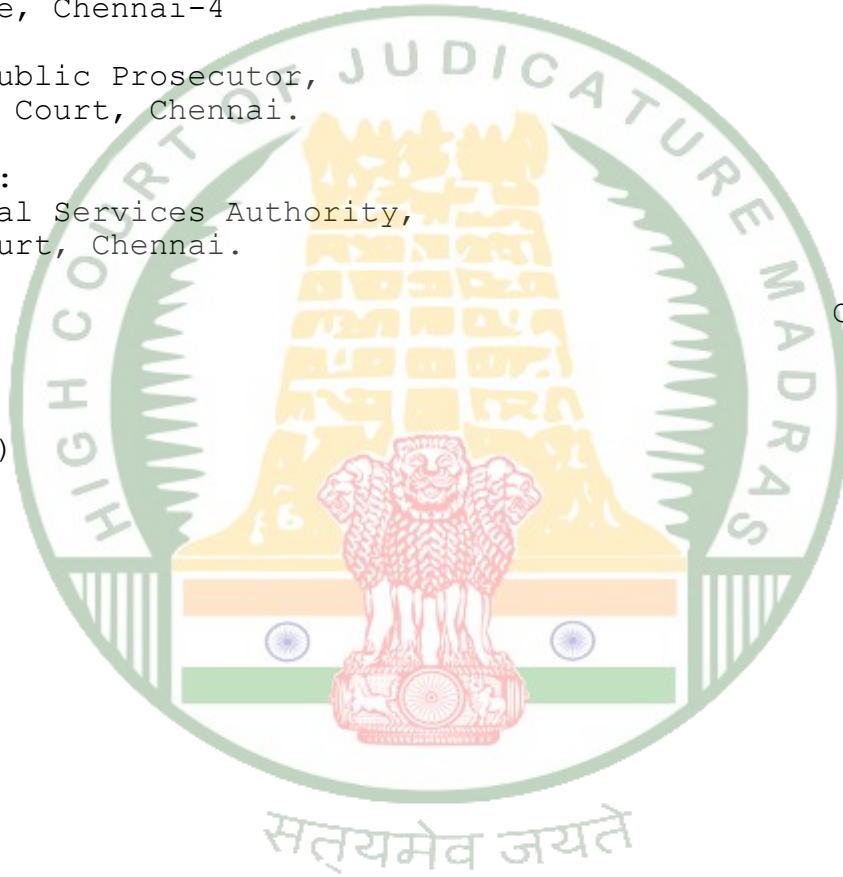
8. The Director General of Police
Mylapore, Chennai-4

9. The Public Prosecutor,
High Court, Chennai.

Copy to:
The Legal Services Authority,
High Court, Chennai.

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