

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL No.625 OF 2010

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

Conviction of the appellant/sole accused of an offence punishable under Section 302 IPC, *vide* judgment dated 24.02.2010 in Sessions Case No.298 of 2008 on the file of the learned Additional District and Sessions Judge, Kamareddy, and the consequential sentence imposed upon him to undergo life imprisonment coupled with payment of a fine of Rs.10,000/- in default of which, he was to suffer further imprisonment for a period of three months, is called in question in this appeal filed by him under Section 374(2) CrPC r/w Section 383 CrPC.

The prosecution's case before the Sessions Court:

P.W.1, the mother of the deceased children, Balamani (daughter, aged 11 years) and Narasimloo (son, aged 7 years) and the wife of the appellant/accused, submitted Ex.P.1 report to the Assistant Sub-Inspector of Police, Machareddy Police Station (P.W.8), on 01.06.2009 about their untimely death. Thereupon, he registered a case in Crime No.101 of 2009 under Section 302 IPC. Ex.P.10 is the FIR. Upon receiving Ex.P.10 from P.W.8, the Inspector of Police, Kamareddy (P.W.11), commenced investigation. He examined and recorded the statements of P.W.1, P.W.2, P.W.3, I.Lokyanaik (L.W.4), P.W.4, P.Yellaiah (L.W.6) and P.W.5. Thereafter, he examined and recorded the statements of P.W.6 and T.Manga (L.W.10) and drafted the scene of the offence panchanama (Ex.P.7). He also prepared a rough sketch of the scene (Ex.P.8). P.W.9, a photographer, took pictures of the scene and the dead bodies of the deceased children. Exs.P.11 to P.14 are the photographs. P.W.11 held an inquest over the bodies of the deceased children in the presence of P.W.6 and T.Manga (L.W.10). Ex.P.5 is the inquest report of Balamani and Ex.P.6 is the inquest report of Narasimloo. P.W.11 arrested the accused at his house on 04.06.2009 at 9.00 A.M. in the presence of P.W.7 and P.Narsimlu (L.W.12) and recorded his confessional statement (Ex.P.9). The accused was sent for remand. The Circle Inspector of Police, Kamareddy (P.W.12), then took up the investigation and having verified the investigation already done by

P.Ws.8 and 11, he laid a charge-sheet against the accused after receiving the post-mortem examination reports, Exs.P.16 and P.17. Thereupon, the Sessions Court framed a charge against the accused that on 01.06.2009, while returning back to Village Ghanpur along with his daughter, Balamani, and son, Narasimloo, when they reached the village water tank adjacent to the pathway, the accused suddenly got aggressive and caught hold of the arms of his children and forcibly dragged them into the water tank and drowned them to death, thereby committing an offence punishable under Section 302 IPC.

The prosecution examined 12 witnesses and marked 17 exhibits. No case properties were marked. The accused did not choose to adduce either oral or documentary evidence.

By the judgment under appeal, the Sessions Court held in favour of the prosecution as the accused had no explanation as to how his children, who were in his custody, met with their death. The Sessions Court therefore concluded that the prosecution had proved beyond a reasonable doubt that the accused had killed his children for reasons best known to him and accordingly convicted and sentenced him.

Salient points in the oral and documentary evidence adduced by the prosecution may now be noted.

P.W.1, the wife of the accused and the unfortunate mother of the deceased children, stated in her examination-in-chief that on the fateful day, the accused had taken them along with him to see P.Ws.2 and 3, his parents. She further stated that the accused had gone to Dubai in search of employment after borrowing money but as he was found to be suffering from tuberculosis, he was sent back to India. As the persons from whom he had borrowed money were pressurizing him to return the same, she said that the accused used to beat her. She further stated that her brother-in-law, Kashaiah, had informed her over the telephone about the death of her children, whereupon she reached Ghanpur water tank and found their dead bodies. She also stated that the accused was present at Ghanpur water tank at that time. Ex.P.1 was identified by her as the complaint given by her to the police about the incident. In her cross-examination, P.W.1 stated that she received information about the incident at about 1.00 P.M. She also said that the Sub-Inspector of Police had drafted Ex.P.1 complaint and she did not know the contents thereof. She further stated that the police were already

present at the scene of the offence by the time she reached there and that she was examined by the police on the same day night. According to her, about 100 people would have gathered at the scene of the offence.

Although he turned hostile, P.W.2, the father of the accused, confirmed that the accused had gone to Dubai after borrowing money and had to return due to tuberculosis. He also stated that the accused used to beat his wife and children owing to the pressure exerted upon him by those who had lent him money. P.W.2 further stated that he had identified the dead bodies of his grandchildren and that the accused was present at the time he went to Ghanpur water tank. In his cross-examination by the counsel for the accused, P.W.2 stated that he came to know about the incident at about 12.30 P.M. and he immediately proceeded there. According to him, about 100 to 200 people were present at the scene when he reached the spot. P.W.3, the mother of the accused, turned hostile but confirmed during her cross-examination that the accused had gone to Dubai after contracting loans but had to return as he was suffering from tuberculosis.

P.W.4, a shepherd of Ghanpur, was the first person to notice the dead bodies of the children in the water tank. He however turned hostile. P.W.5, who informed the Village Sarpanch of the bodies in the water tank upon being told by P.W.4, also turned hostile. He however stated in his chief that the Sarpanch, in turn, had informed the police who then came to the spot and that he was examined by them. P.W.6 was one of the panchas who participated in the inquest proceedings and also signed in Ex.s P.7 and P.8. P.W.7, the Village Revenue Officer, Ghanpur, confirmed that he had signed in Ex.P.9 confessional statement. The Assistant Sub-Inspector of Police, Machareddy (P.W.8), stated that P.W.1 came to the police station and presented Ex.P.1 report and he thereupon registered Crime No.101 of 2009. P.W.9 was the photographer who took Exs.P.11 to P.14 photographs.

P.W.10, the Civil Assistant Surgeon, Kamareddy Government Hospital, stated that she had conducted the post-mortem examination of the dead bodies of the children. She confirmed that Ex.P.16 was the post-mortem examination report of Balamani and Ex.P.17 was the post-mortem examination report of Narasimloo. She confirmed that both the children died due to throttling and drowning and that both the children had suffered fractures of the hyoid bone on the right side. She also stated that in drowning cases, fracture of the hyoid bone would not appear. P.Ws.11 and

12, the Investigating Officers, spoke of the steps taken by them.

Ms.Naseeb Afshan, learned counsel for the appellant/ accused, would point out that there were a number of lapses in the investigation and that the Sessions Court ought to have given the benefit of doubt to the appellant/accused and acquitted him. She would also point out that all the crucial witnesses had spoken of the fact that the appellant/accused was under tremendous stress owing to the pressure exerted to return the money borrowed by him and would contend, in the alternative, that he was of unsound mind in terms of Section 84 IPC and that the Sessions Court ought to have given him the benefit of this general exception.

Learned Public Prosecutor would however argue that in a sensational case of this nature involving the death of two small children in the open where hundreds of people would congregate, there are bound to be minor lapses on the part of the investigating officers. He would contend that as long as such slips cause no prejudice to the appellant/accused and do not undermine or taint the sanctity of the investigation process, interference would not be called for in appellate jurisdiction.

Having considered the evidence and the material on record, we find that there were several lapses and shortfalls in the investigation. As per the evidence of P.W.5, the police reached the scene of the offence after being informed by the Village Sarpanch, whom he had contacted over the phone. The Sarpanch was not examined. Crime No. 101 of 2009 was stated to have been registered upon submission of the report (Ex.P.1) at 01.30 PM by P.W.1. P.W.1 stated that this report was drafted by a Sub-Inspector of Police while P.W.8, the Assistant Sub-Inspector of Police, stated that P.W.1 came to the police station and presented him with the report. P.W.1 did not state so. The rough sketch (Ex.P.8), showing the bodies of the deceased children in the middle of the water tank, was stated to have been drafted by P.W.11, who commenced the investigation at 03:00 PM, but P.W.2 stated to the effect that he went to the spot at 12.30 PM and identified the deceased children. It is not clear as to how he identified the deceased children if they were still in the water at that point of time. P.W.6 confirmed that he had signed in Ex.P.8 at about 2 or 2:30 PM. There is no indication as to when the bodies were brought out of the water tank. P.W.9, the photographer, did not speak of the time at which he took the photographs, but they were taken before and after the bodies were removed from the water. The Inquest Reports reflect that the

dead bodies of the deceased children were seen at 12:00 PM and that they were last seen alive by I.Lokyanaik (L.W.4) at 10:30 AM. Though P.W.1 stated that the appellant/accused took the children to see his parents, it appears that he actually took them along when he went to see I.Lokyanaik (L.W.4), the agent. However, he was not examined. The inquest proceedings commenced at 03.00 PM and concluded at 04.30 PM.

Notwithstanding these discrepancies and lapses, we agree with the learned Public Prosecutor that these lacunae in the investigation are of no real significance. They do not cause prejudice to the appellant/accused nor do they, in any manner, raise even an iota of doubt in his favour. They are therefore not fatal and can be safely overlooked.

The irrefutable fact remains that these two young children, who left the safety of their house at 7:00 AM with their father, the appellant/accused, were dead by 12:00 PM, when their lifeless bodies were detected in the water tank. The postmortem examination reports confirmed that their death was caused by asphyxia due to throttling and drowning. Both the children had also suffered fractures of their hyoid bone and this, *per* the evidence of P.W.10, is not symptomatic of mere drowning. Their deaths were therefore not natural and were clearly homicidal. The presence of the appellant/accused at the water tank is not in dispute. Both, P.W.1 and P.W.2, his own father, spoke of his presence at the water tank at that time. No suggestion was put to P.W.1 that the children had not left with their father, the appellant/accused, at 7:00 AM on the fateful day. Once this fact stands un rebutted, it is for the appellant/accused to explain as to how the children who were in his custody came to meet with their death. Section 106 of the Indian Evidence Act, 1872, requires any fact especially within the knowledge of a person to be proved by him and the burden to do so would rest squarely upon his shoulders. The appellant/accused therefore had to explain as to how the two children, who were with him on that day, died. The appellant/accused however had no explanation whatsoever to offer in this regard.

Though Ms.Naseeb Afshan, learned counsel, would contend that the mental condition of the appellant/accused was not sound and that he should be given the benefit of Section 84 IPC, we find that no such plea of temporary insanity was taken at any earlier point of time. Except for the evidence of all the family members of the appellant/accused that he was

under great stress owing to the pressure to return the money borrowed by him, there is no medical evidence of any temporary insanity and no foundation was laid for taking such a plea before us. In the absence of medical evidence indicating to the effect that the appellant/accused was of unsound mind, the benefit of Section 84 IPC cannot be extended to him. We therefore reject the contention of the learned counsel in this regard. Further, we find that none of the exceptions to Section 300 IPC are attracted to the case on hand and it has not even been contended before us to that effect.

We therefore affirm that only the appellant/accused could have caused the death of his two children, who were in his custody, by asphyxiating them in the water tank. The mere fact that he did not choose to abscond from the scene of the offence does not digress from the heinousness of the offence committed by him and we find no grounds to interfere with the judgment under appeal, convicting him of an offence punishable under Section 302IPC and sentencing him to undergo life imprisonment. The appeal is accordingly dismissed.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

1st AUGUST, 2016

Svv/PGS