

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.145 of 2017

Amala

... Appellant/Sole Accused

-Vs-

State through
The Inspector of Police,
Namakkal Police Station,
Namakkal District.
(In Crime No.339 of 2010)

... Respondent/Complainant

This Criminal Appeal has been filed under Section 374(2) Cr.P.C., to call for records and set aside the judgment and conviction imposed by the learned District and Sessions Judge (Fast Track Court), Namakkal, in S.C.No.44 of 2011 dated 30.01.2012 against the appellant/accused.

For Appellant : Mr.P.Palanikumar

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.44/2011 on the file of the learned Additional District and Sessions Judge, Namakkal. She stood charged for offences under Sections 302 (2 counts) & 201 I.P.C. By judgment dated 30.01.2012, the trial Court convicted the accused under both the charges and sentenced her to undergo imprisonment for life and to pay a fine of Rs.500/- for each count in default to undergo rigorous imprisonment for one month, for offence under section 302 I.P.C., and to undergo rigorous imprisonment for five years and to pay a fine of Rs.250/- in default to undergo rigorous imprisonment for six months for the offence under Section 201 I.P.C. 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:-

P.W.1 - Mr.Nehru is a resident of Namakkal. He was a Driver working in a Transport Corporation. His first wife was one Mrs.Sharmila. They had no issue. They had taken one Shakthivel in adoption (hereinafter referred to as D.1). After some time, Mrs.sharmila passed away. Therefore, he married one Ms.Rasia as his second wife. Through his second wife, he had a daughter by name Shalini (hereinafter referred to as D.2). After 25 days of the birth of Shalini, Mrs.Rasia died. Thereafter, with a view to bring up both the children viz., adopted son Sakthivel & Shalini, P.W.1 married the accused. Out of the said wedlock, there are two children born to them. Thus, all the four children were in the care and custody of P.W.1 and the accused. It is alleged that on 14.02.2010, around 5.00 am, the accused killed both the children (D.1 & D.2) by smothering them by pushing a pillow against their faces and killed them. Thereafter, she threw the dead bodies into a water tank to make it as though, the children died due to drowning. The accused did not disclose anything about the occurrence.

3.P.W.1 was not at his house at that time. He was on duty. He received a message that both the children (D.1 & D.2) were lying dead in the water tank. Therefore, he rushed to his house around 9.00 to 9.30 am on 14.02.2010. He found the dead bodies of the children (D.1 & D.2).

4.One Mr.Subramaniam, the then Village Administrative Officer of Namakkal came to the place of occurrence before the arrival of P.W.1. He made a complaint to the Police at 9.30 am on 14.02.2010. Upon the said complaint, the present case was registered in Crime No.339/2010 for offence under Section 302 I.P.C., against the accused. Ex.P.24 is the complaint and Ex.P.25 is the F.I.R. Then both the documents were sent to the Court. The same were received by the learned Judicial Magistrate at 11.30 am on 14.02.2010.

5.The Investigation was taken up by P.W.16, the then Inspector of Police. He went to the place of occurrence, conducted inquest on the body of both the deceased and forwarded the same to Doctor for post mortem. The Post mortem Doctor has opined that both the children (D.1 & D.2) were died not due to drowning but due to smothering.

6.When the investigation was in progress, it is stated that the accused appeared before P.W.13, the then Village Administrative Officer on 14.02.2010 around 8.00 am and made a voluntary confession. It is stated that she told that she had the feeling that the children born to her and her husband would be affected in future, if, the deceased were alive. Because of the said motive, according to her confession, she killed both the children (D.1 & D.2) by smothering and threw the dead bodies

into water tank. P.W.13, reduced the said extra judicial confession in writing and then he took the accused to P.W.16 and produced her. P.W.16 arrested the accused and forwarded her to Court for judicial remand. On completing investigation, he laid charge sheet against the accused.

7.P.W.6 - Dr.Parameswari, conducted autopsy on the body of Sakthivel (D.1) and found the following injuries:-

"External Examination

No visible external injuries. White frothy fluids comes out from the nose. Eye lids closed. Mouth & lips closed Tongue: inside the oral cavity".

Ex.P.7 is the post mortem certificate. She opined that D.1 would have died due to smothering and not because of drowning.

8.P.W.7 - Dr.Mohan, conducted autopsy on the body of Shalini (D.2) and found the following injuries:-

"External Injuries:-

Could not make out. Frothing in the both the nostrils.

Internal examination: Opening skull no fracture of skull bone.

Brain: Pale.

Thorax: No fractured Ribs.

Lungs: Odematus, Pale

Heart: Partly filled with blood.

Hyoid Bone - sternum preserved

for the Forensic Analysis."

Ex.P.12 is the post mortem certificate. He opined that D.2 would have died due to smothering and not because of drowning.

9. Based on the above materials, the trial Court framed charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 28 documents were exhibited besides 11. Material Objects were marked.

10. Out of the said witnesses, P.W.1, the father of the deceased (D.1 & D.2) and the husband of the accused has turned hostile and he has not supported the case of the prosecution in any manner. P.W.2, the neighbour has stated that he heard about the death of the children (D.1 & D.2), he came to the place of occurrence and found the dead bodies. P.W.3 is yet another neighbour of the deceased. He has also stated about the same facts. P.W.4 is yet another neighbour has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 has spoken about the preparation of observation mahazar, rough sketch and the recovery of material objects at the place of occurrence. P.W.6 has spoken about the post mortem conducted on D.1 and her final opinion regarding the cause of death. P.W.7 has spoken about the post mortem conducted on D.2 and his final opinion regarding the cause of death. P.W.8 is yet another neighbour. He has spoken about fact that the deceased (D.1 & D.2) were lived along with the accused and P.W.1. However, she has also not spoken anything incriminating against the accused. P.W.9, a Constable has stated that he handed over the dead bodies to Doctors for post mortem. P.W.10 has also spoken about the same facts. P.W.11 has stated that he handed over the F.I.R., to the learned Magistrate concerned at 11.30 am on 14.02.2010. P.W.12, the Head Clerk of the Magistrate Court has stated that he sent the material objects for chemical analysis as per the order passed by the learned Magistrate.

11. P.W.13, the then village Administrative Officer has spoken about the extra judicial confession made by the accused, recorded by him. P.W.14 has spoken about the registration of the case. P.W.15 has spoken about the investigation done and the final report filed in this case.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. However, she did not choose to examine any witness nor did she mark any document on her side. Her defence was a total denial.

13. 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 is before this Court with this Criminal Appeal.

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

15. As we have already stated, there is no denial of the fact that both the deceased (D.1 & D.2) were living with P.W.1 and the accused. It is also in evidence that the children were lying dead in the water tank. The medical evidence would clearly go to establish that the death of the deceased (D.1 & D.2) were not

due to drowning but due to smothering. Thus, the prosecution has established that the death of the deceased (D.1 & D.2) were due to homicidal violence.

16. Now, the question is "Who is the perpetrator of the Crime?". In order to prove that it was this accused who smothered the children (D.1 & D.2) and killed them and threw the dead bodies into water tank, the prosecution mainly relies on the evidence of P.W.13. It is stated by the prosecution that the accused appeared before P.W.13, the then Village Administrative Officer on 14.02.2010 around 8.00. But, the learned counsel for the appellant would submit that the evidence of P.W.13 cannot be believed for more than one reason. He would point out the evidence of P.W.3, the neighbour of the deceased that when the Police arrived at the place of occurrence on 14.02.2010 at 9.00 am, the accused was very much available and she was interrogated by the Police and the accused told them that the children had accidentally jumped into the water and died. P.W.8, yet another neighbour has also stated that when the Police came to the place of occurrence, the accused remained there and faced the enquiry. She did not abscond. She was thus, very much in the custody of the Police on 14.02.2010 around 9.00 am. When that be so, it is highly unbelievable that on 14.02.2010 at 8.00 am, the accused had gone to P.W.13, the then Village Administrative Officer and made the extra judicial confession. We find force in the said argument.

17. Above all, it is highly unbelievable that the accused would have chosen the then Village Administrative Officer, who is a total stranger to make the voluntary confession. For these reasons, we find it difficult to act solely based upon the said extra judicial confession made by the accused. Further, as per the settled law, since, an extra judicial confession is a very weak piece of evidence, unless, the same inspires the fullest confidence of the Court and there are evidences from other sources to corroborate the said extra judicial confession, it is not safe to rely on the doubtful extra judicial confession and to convict the maker of the confession. Since, there is no corroboration from any other independent source, on material particulars, then, we cannot convict the accused solely based on the said extra judicial confession. Thus, the appellant/accused is entitled for acquittal.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned District Sessions Judge, Namakkal, in S.C.No.44 of 2011 by judgment dated 30.01.2012 are hereby set aside. The appellant/accused is acquitted of the charges levelled against her and she is directed to be set at liberty, forthwith, unless

her presence is required in connection with any other case. Fine amount, if any, paid by the appellant/accused, shall be refunded to her. Bail bond, if any, shall stand discharged

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar.

jbm

To

1. The Judicial Magistrate-II,
Namakkal.
2. 'Thro' the Chief Judicial Magistrate,
Namakkal.
3. The Additional District and Sessions Judge,
(Fast Track Court), Namakkal.
4. Do 'thro' the Principal Sessions Judge,
Namakkal.
5. The Inspector of Police, Namakkal Police Station,
Namakkal District.
6. The District Collector,
Namakkal.
7. The Director General of Police,
Chennai-4.
8. The Superintendent
Women Special Prison, Coimbatore.
9. The section Officer,
Criminal Section, High Court, Madras.

10.The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.P. PalaniKumar, Advocate, SR. 22355

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NMI (CO)
VR(25/4/2017)



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