

Bail slip

The Appellant/ Accused namely Lalitha W/O Murugaiya be and hereby was directed to be released on bail wide court order dated 25/02/2013 in crl. mp.1/2013 in crl. A.122/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.A.No.122/2013

Lalitha

..

Appellant

Vs.

State rep. by,
The Inspector of Police
Ketti Police Station,
Ketti, Nilgiris District.

..

Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of conviction passed by the learned Principal District and Sessions Judge, Udhagamandalam in SC.No.16/2011 dated 14.12.2012.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.Mohammed Riyaz [CrI.Side]

JUDGMENT

Appellant is the sole accused in case tried in SC.No.16/2011 on the file of the Court of Principal District and Sessions Judge, Udhagamandalam, for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 14.12.2012, found her guilty of offence u/s.304 IPC and sentenced her 5 years rigorous imprisonment and fine of Rs.1,000/- in default, 6 months simple imprisonment. Challenging the said conviction and sentence, the present appeal is filed.

2 The facts of the prosecution case, necessary for the disposal of this appeal, in brief, are as follows:-

[a] Appellant/accused - Lalitha is a resident of Gandhi Nagar, Ketti. She was living with her two children. Her husband had deserted her and was living separately. Appellant/accused developed illicit intimacy with one Sudhakar, a widower, 11 months prior to the date of occurrence. The said Sudhakar wanted appellant/accused to take care of his child Abhishek, who was 4 years old. Appellant/accused was reluctant to do so and developed a dislike for the child. Appellant/accused decided to do away with the child.

[b] On 16.05.2010, at about 11.45 a.m., the appellant/accused beat the child Abhishek and threw him inside a pit, 20 feet in depth, dragged the child from the said pit and laid him in front of her house and repeatedly beat him with a stick. Owing thereto, the child died.

[c] P.W.1-Balraj, was a resident of Andipatti, Theni District. He deposed that he and his first wife who had died, had been blessed with two daughters, viz., Kalaiselvi and Meenakshi and a son, viz., Muniyaraja. The elder daughter Kalaiselvi was given in marriage to one Sudhakar and the couple had a son by name Abhishek and a daughter. The said Kalaiselvi died after birth of the daughter. Thereafter, Sudhakar took his son Abhishek and went to Ketti. Subsequent thereto, there was no contact between P.W.1 and Sudhakar. While so, on 17.05.2010 at about 15.30 hours, he received telephonic information from the paternal uncle of Sudhakar that his grandson Abhishek had died and his body was kept in the house of one Kaliyappan. On 18.05.2010, at about 8.00 hours, P.W.1 reached the house of Kaliyappan and found that the body of his grandson revealed injuries to the head and body and the right hand was found broken. Suspecting foul play in the death of the child, P.W.1 went to Ketti Police Station on 18.05.2010 at about 10.00 a.m. and lodged complaint in Ex.P.1.

[d] P.W.2-Saraswathi deposed that she was a casual labourer, residing at Gandhi Nagar, Ketti. The appellant/accused was residing in her parental home, along with her two children. Seven months prior to the occurrence, Sudhakar came along with his child Abhishek to the house of the appellant/accused and leaving the child under her care, went to Tiruppur for work and returned during weekends. She would further state that whenever Abhishek ate something, the appellant/accused used to snatch the same from him by questioning his taking the snacks meant for her children. Appellant/accused also used to beat Abhishek. On 16.05.2010, at about 11.30 a.m., when P.W.2 and 5 other women, viz., Suseela, Valli, Saroja, Chandra and Selvi, assembled in front of the house of P.W.2 on account of a Women Self Help Group Meeting, they saw the appellant/accused scolding Abhishek and throwing him into a 20 feet deep pit. Appellant/accused asked the child to come up and since the child could not get up, the appellant/accused went down and brought the child with her. She took a stick and started beating him. Thereafter, she took the child inside the house. P.W.2 stated that she did not see the child thereafter. Two days later, on seeing the grandparents of Abhishek, P.W.2 came to know of the death of the child. She noticed injuries all over the body. P.W.3 - Chandra, P.W.4 - Valli have also spoken in similar vein.

[e] P.W.5-Gopi would depose that he is a resident of Gandhi Nagar, Ketti and a Coolie. On 18.05.2010, at about 10.30 a.m., Police came to the house of Kaliyappan and prepared an Observation Mahazar [Ex.P.2] in connection with the death of the child Abhishek, P.W.5 and one Siva attested the same.

[f] P.W.8-Safiullah, was the Head Constable attached to Ketti Police Station and he took the body of the deceased Abhishek along with the requisition under Ex.P.3 on 18.05.2010 at about 13.00 hours to the Government Headquarters Hospital, Udhagamandalam and handed over the same to P.W.7-Dr.Pugazhenthhi. He would further depose that since it was evening, autopsy could not be conducted and on the next day, the postmortem was conducted after P.W.8 identified the body. On completion of autopsy, P.W.8 handed over the dead body to the relatives for the purpose of cremation. On receipt of the requisition from the Tahsildar, Coonoor, he received the internal organs as well as the larynx bone of the deceased child from the hospital and handed over the internal organs for chemical analysis to the Forensic Science Laboratory, Coimbatore and the larynx bone to the Medical College Hospital, Coimbatore for examination.

[g] P.W.7-Dr.P.Pugazhenthhi, was the Assistant Medical Officer attached to the District Headquarters Government Hospital, Udhagamandalam. On receipt of the requisition under Ex.P.3 from the Inspector of Police, Ketti Police Station, on 19.05.2010 he along with Dr.Jayaganesh Moorthy, conducted autopsy on the dead body of the deceased Abhishek. They found the following injuries:-

"External Injuries:-

1. Multiple old and recent scars [varying period] varying size [0.5cm to 2cm] all over body.
2. Fresh Abrasions in [a] Right Cheek [b] Left Forehead [c] Front temporal region 1x1cm [Rt].
3. Body swelling right lower arm 6x5x1cm
4. Right sub congenital haemorrhage.
5. Emaciated.

Internal Examination:-

Abdomen - Distended, Peritoneal cavity foul smelling gas.

Stomach - 20 ml of brown colour fluid. Small Intestine / Large Intestine - filled with gas and minimal faeces. Solid organs congested. Thorax - Ribs-Ricketty Rosesary - intact. Lungs - Congested. Heard-empty.

Hyoid - Intact. Head scalp - contusion right

fronto temporal region 4x1 cm. Skull Membrane - Intact. Brain - Congested."

Ex.P.5 is the Postmortem Certificate and Ex.P.6 is the final opinion of the doctor, wherein he has opined that "in view of negative chemical analysis report and no definitive autopsy finding, definite opinion could not be given."

[h] P.W.9-Jaffer Ali, was the Tahsildar, Coonoor and on receipt of the FIR in Cr.No.54/2010, he gave a requisition under Ex.P.8 to P.W.8 to send the internal organs of the deceased for chemical analysis as well as the larynx bone to the Government Medical College Hospital. Ex.P.9 is the Report pertaining to the larynx bone sent by the Government Medical College Hospital, Coimbatore.

[i] P.W.10-Haridas, was the Sub-Inspector of Police of Ketti Police Station and on 18.05.2010 at about 10.00 hours, he received the written complaint from P.W.1-Balraj under Ex.P.1 and registered a case in Cr.No.54/2010 u/s.174 Cr.P.C. Ex.P.10 is the Printed FIR. He despatched the originals of the complaint [Ex.P.1] and FIR [Ex.P.10] to the jurisdictional Magistrate Court and copies of the same to the higher officials.

[j] P.W.11-Sathyanathan, Inspector of Police attached to Ketti Police Station, on receipt of the FIR in Cr.No.54/2010, went to the scene of crime at about 10.15 hours and prepared the Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.11] in the presence of P.W.5-Gopi and Siva. He summoned the services of P.W.6-Simon, Photographer to take photographs at the scene of occurrence. He held inquest on the dead body of the deceased child in the presence of Panchayatdars at about 10.30 hours and prepared the Inquest Report [Ex.P.12]. He sent the body for autopsy through P.W.8-Head Constable. He examined P.W.1, Santhi, Gandhi, Jayakumar, Velmurugan, Ramachandran, Sudhakar, Kaliyappan, Mogana, P.W.2, P.W.3, P.W.4, Saroja, Selvi, Suseela and P.W.5-Gopi and recorded their statements. On 26.05.2010, he received Exs.P.9 and 4, viz., Report from the Government Medical College Hospital regarding Larynx Bone, stating that the bone was intact and the Report from the Forensic Science Laboratory, Coimbatore regarding the absence of poison in the internal organs. He also enquired the doctors who conducted the autopsy and received the Postmortem Certificate [Ex.P.6]. P.W.11 raised queries and elicited certain answers from the doctors under Ex.P.7, wherein the doctor had opined that there is a possibility of death of the child due to shock and hemorrhage on falling from considerable height. Based on such opinion, P.W.11 altered the FIR from u/s.174 Cr.P.C., to one of section 304 IPC. The Altered FIR was marked as Ex.P.13. He sent the same to the jurisdictional Magistrate Court. On 29.06.2010, he effected the arrest of the appellant/accused through Woman Constable Prathiba at Gandhi Nagar. Appellant/accused when enquired in the

presence of one Nanjan and Kakkamallan, gave a confession statement voluntarily. Thereafter, she was sent for judicial remand. On completion of investigation, he laid the final report against the appellant/accused for the offence u/s.304 IPC before the jurisdictional Magistrate Court.

[k] P.W.12-Ganapathi, Inspector of Police attached to Ketti Police Station would state that the Final report/Charge sheet filed by P.W.11 was returned by the jurisdictional Court and hence, P.W.12 submitted a requisition letter to the Judicial Magistrate, Coonoor, to 'further investigate' the case and upon receipt of the permission from the Court, he continued the investigation ; went to the scene and prepared the Rough Sketch, marked as Ex.P.14. He examined P.W.3, Panditharaj, Karuppan @ Karuppasamy and recorded their statements. He also examined the doctors who conducted autopsy and recorded their additional statements. After completion of investigation, he altered the offence from u/s.304 IPC to one u/s.302 IPC and laid the charge sheet before the learned Judicial Magistrate, Coonoor, who took it on file in PRC.No.1/2011 and issued summons to the accused. On her appearance, she was furnished copies of the documents u/s.207 Cr.P.C. and finding the case triable exclusively by the Sessions Court, committed the same to the Court of District and Sessions Judge, Nilgiris at Udhagamandalam, who took it on file in SC.No.16/2011 and on appearance of the appellant / accused, had framed the charge u/s.302 IPC and questioned her. The appellant / accused pleaded not guilty to the charges framed against her.

[l] The prosecution examined P.Ws.1 to 12 and marked Exs.P.1 to 14 and M.O.1 series-Photographs.

[m] The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against her in the evidence tendered by the prosecution and she denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellant/accused.

[n] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/accused as above stated and hence, this appeal.

3 Heard learned counsel for the appellant/accused and Mr.Mohammed Riyaz, learned Government Advocate [Crl.Side] appearing for the State . Perused the materials on record.

4 P.Ws.2 to 4, neighbours of the appellant / accused had spoken to witnessing the appellant / accused throw the deceased child into a 20 feet pit, picking him up therefrom and thereafter, beating him with a stick and taking him home on

16.05.2010. P.W.2 has spoken to not having seen the child thereafter and P.Ws.3 and 4 have spoken to coming to know of the death of the child two days later when his maternal grandparents came along. The complaint has been preferred by P.W.1 - maternal grandfather of the child on 18.05.2010 at 10.00 a.m. P.W.1, in cross, has admitted that after the death of his daughter Kalaiselvi, i.e., mother of the deceased child, he had nothing to do with his son-in-law Sudhakar / father of the child and that he had no knowledge where the child was, till his death nor had made any attempts to do so. Though he has denied the suggestion that the deceased child was given to sufferance of fits and it was owing to his failing to heed the request of his son-in-law to provide treatment to the child at Andipatti where P.W.1 resided that differences arose between him and his son-in-law, he has admitted that at the postmortem, as many as five persons had informed that the deceased child frequently would fall down and suffer injury. Postmortem Certificate [Ex.P.5] inter alia informs the presence of 'multiple old and recent scars [varying period] varying size [0.5 cm to 2 cm] all over the body'. It also reveals "right subconjunctival haemorrhage and contusion on the right fronto temporal region 4x1 cm". Ex.P.6-Final Opinion given by P.W.7 would inform that 'no definite autopsy finding could be rendered regards the cause of death'.

5 P.W.11 - Investigating Officer, in cross, has admitted that in Ex.P.12-Inquest Report, he had recorded that the deceased child had suffered injury to the face owing to having fallen down while playing, that on 17.05.2010 at about 7.00 a.m., he had developed giddiness and had died at about 10.45 a.m. at which time, his father Sudhakar had come and seen him. P.W.11 has deposed that the Panchayatdars had expressed suspicion over the death. When there is material to show that the deceased child had died owing to reasons other than that informed by

the prosecution, i.e., where P.W.11 admits that child having fallen down while playing, to his having developed giddiness at about 7.00 a.m., on 17.05.2010 and having died at about 10.45 a.m., on the same day and the Postmortem Certificate informs injuries, viz., [1] Multiple old and recent sars [varying period] varying size [0.5cm to 2cm] all over the body ; [2] Abrasions on left cheek, left forehead and fronto temporal region 1x1cm [rt] ; [3] bone swelling on the right lower arm ; [4] right subconjunctival haemorrhage, and further, P.W.1 in his cross, admitted to others having informed on deceased child frequently falling down and suffering injuries, which position finds support in the Postmortem Certificate, informing the above injuries, the benefit of doubt ought to have been accorded to the appellant/accused.

6 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide impugned Judgment in S.C.No.16/2011 dated 14.12.2012 are hereby set aside and the appellant/accused is acquitted of the charge levelled against her. Fine amount, if any paid, shall be refunded to her.

7 It is reported that the appellant/accused is on bail. Bail bond executed by her, shall stand cancelled.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

AP

To

- 1.The District and Sessions Judge
Nilgiris at Udhagamandalam.
- 2.The Judicial Magistrate, Coonoor.
- 3.The Chief Judicial Magistrate, Nilgiris.
- 4.The Inspector of Police
Ketti Police Station, Ketti,
Nilgiris District.
- 5.The Director General of Police
Mylapore, Chennai-4.
- 6.The Superintendent of Prison
Special Prison for Women, Vellore.
7. The Public Prosecutor,
High Court, Madras.
8. The District Collector
Nilgiri at Udhagamantalam
- 9.The section officer
criminal section
High court Madras

+1CC TO N.Mohideen basha,advocate,in sr.21889

Cr1.A.No.122/2013

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GSP(17/02/2018)