



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 04.08.2017

Delivered on : 11.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) No.119 of 2017

and Crl.M.P.(MD) No.3302 of 2017

Saridha

.. Appellant/Accused No.2

vs.

State Represented by
The Inspector of Police,
Puthiyamputhur Police Station,
Thoothukudi District.
(Crime No.31 of 2013)

.. Respondent/Complainant

Criminal appeals are filed under Section 374(2) of Criminal Procedure Code against the judgment and conviction dated 19.12.2013, by the learned II Additional Sessions Judge, Thoothukudi in S.C.No.186 of 2013.

For Appellant

: Mr.S.Muthalraj

For respondent

: Mr.R.Ramachandran

Additional Public Prosecutor

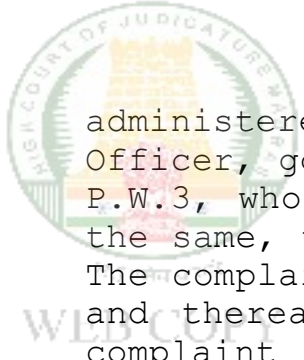
JUDGMENT

(Judgment of the Court was delivered by
M.M.SUNDRESH, J)

The appellant, who stood charged for the offences under Section 302 I.P.C. along with A1 and convicted and sentenced in S.C.No.186 of 2013 on the file of II Additional District and Sessions Court, Thoothukudi seeks its reversal before us. The accused No.1 though convicted has not filed any appeal.

2.The prosecution case in a nutshell:

The deceased was a three year old child of the appellant born out of the wedlock with P.W.14 - Rajan. P.W.14 had left the appellant. Thereafter, A1 was living with the appellant for sometime and thereafter they married each other. They were living separately from the deceased. The deceased was living with his grand father, namely, P.W.13, who is also the father of the appellant. On 28.03.2013 at about 5.00 p.m. both the accused took the deceased from the house of P.W.13. A1 also attacked the deceased and pushed him from the bridge, during which time the appellant was not present. The appellant is said to have



administered poison. P.W.1, who is the Village Administrative Officer, got the information about the murder of the deceased from P.W.3, who was working as the Village Assistant. After confirming the same, the complaint was given on 29.03.2013 at about 8.00 a.m. The complaint was to the effect that the accused took the deceased and thereafter, he fell down from the Bridge. Accordingly, the complaint states that the cause of death will have to be ascertained and action to be taken. P.W.15 is the Head Constable, who registered the F.I.R. under Section 174 Cr.P.C. After registration of the same, it was given to P.W.16, the Head Constable. P.W.18, the Inspector of Police has received the same from P.W.16. P.W.2 was the one who got the confession statement from A1 under Ex.A19 and recovery was made under Ex.P.6 thereafter. P.W.7 has signed the recovery Mahazar. P.W.18 prepared Observation Mahazars, Exs.A.8 and A.9 along with Sketches under Exs.P.20 and P.21 in the presence of witnesses. After the arrest of A.1, he recorded the statement of P.W.6, who is the Doctor, who conducted the postmortem and thereafter obtained the same. The Viscera Report was obtained on 05.04.2013 under Ex.P.5. Thereafter, the appellant being A2 was arrested on 15.05.2013. Based upon the confession statement recorded under Ex.P.12, Material Objects 3 and 4 have been recovered. These objects are 50 ml. bottle containing liquid and Stainless steel spoon. P.W.18 is the alteration report altering the F.I.R. from Section 173 Cr.P.C. to 302 I.P.C. Finally, on completing the investigation, P.W.18 laid the charge sheet against the accused under Section 302 I.P.C.

3.Prosecution Witnesses:

(i) P.W.1, the Village Administrative Officer is the author of the complaint Ex.P.1. He stated that he did not know the occurrence personally, but gave the complaint only based on the information obtained from P.W.3, his Assistant.

(ii) P.W.2 is also a Village Administrative Officer, who attested the confession statement said to have been given by A1. As he has stated it was done at the police station, he was treated as hostile.

(iii) P.W.3 is the Village Assistant of P.W.1. He have information about the body of the deceased lying near the bridge at about 6.00 p.m. on 28.03.2013. He informed P.W.1 as stated by him. In his cross-examination he has stated that he found body of the deceased near the Bridge.

(iv) P.Ws.4 and 5 are the eye-witnesses said to have seen A1 attacking the deceased. It is their further case that thereafter A1 has pushed the deceased from the bridge. After doing so, A1 brought the appellant and after talking to each other for few minutes took the boy in the bike .

(v) P.W.6 is the Doctor, who conducted postmortem. He has deposed based upon Ex.P.4 that the deceased was administered

(v) P.W.7 is the one, who has signed as a witness to confession statement given under Ex.P.6 by A1.



(vi) P.W.8 stood as a witness to Exs.P.8 and P.9 Observation Mahazars.

(vii) P.W.9 is the Doctor working as Assistant Director in Forensic Sciences Department.

(viii) P.W.10 is the aunt of the appellant.

(ix) P.W.11 is the witness to the confession statement given by the appellant followed by recovery of Material Objects 3 and 4 under Ex.P.13.

(x) P.W.12 is the Doctor, running a private Hospital at Puthiamputhur. He has deposed that on 28.03.2013 at about 6.30 p.m. accused brought a male child, aged about 3 years. On examination, he found him dead and accordingly they were advised to take the child to Government Hospital.

(xi) P.W.13 is the father of the appellant. He has stated that the child was taken by the accused. He informed about the child lying near the bridge after he was murdered by the accused. On reaching the place he came to know that the accused persons took the child to the burial ground. Thereafter, he went to the place and took the child and brought him to the Government Hospital.

(xii) P.W.14 is the husband of the appellant.

(xiii) P.W.18 is the Inspector of Police, who conducted the investigation. He has stated that the appellant was arrested on 15.05.2013 at about 2.00 p.m. before the Naduvakurichi bus stop. He further speaks about the confession statement Ex.P.12 and recovery of Material Objects 3 and 4 under Ex.P.13. He further states that in his Inquest Report Ex.P.22 he has recorded that the death of the deceased was found by the Government Doctor Jeya Ganesan working in Tuticorin Government Medical College Hospital. He admits that the deceased was brought by the appellant, her parents and her relatives. He further admitted that information has been received from the Hospital. But, nobody gave the complaint from the hospital. One Marthanda Booptahy, the station writer came to the hospital. However, he has not been arrayed as a witness. The accident register indicates that it was the appellant who brought the deceased. It was recorded by Dr.Jeya Ganesan. He was not examined as a witness. The accident Register also mentions the body was sent thereafter to the mortuary. He has stated that the police did not know about the death of the child before Ex.P.1.

4. Based on the above materials, the Trial Court framed charges as detailed earlier in this judgment. During the trial on the side of the prosecution, as many as 18 witnesses were examined and 24 documents were exhibited, besides 6 Material Objects. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false.

5. The trial Court convicted the accused based upon the evidence of P.Ws.1, 4 and 5. Reliance was made on the evidence of P.W.12 and 18 with respect to arrest and recovery of Material Objects 3 and 4. The Court below did find material evidence, the



accident register being not relevant. Thus, the present appeal has been filed as against the same by the appellant though A1 has not chosen to do so.

Submissions:

6. The learned counsel for the appellant would submit that the prosecution has miserably failed to prove its case. P.W.3 says that the body was found near the bridge. P.Ws.4 and 5 were not the eye-witnesses insofar as the alleged overtact alleged against the appellant is concerned. P.W.13 has stated in his chief examination that he took the body from the burial ground to the police station. P.W.18 in his cross-examination has admitted that he has recorded in the inquest report that it is the appellant who brought the deceased to the hospital, which was recorded by Dr.Jeya Ganesan in the Accident Register. Thereafter, the body was sent to mortuary. It is further submitted that the appellant was arrested on 15.05.2013 after receipt of the Viscera Report under Ex.P.5 dated 05.04.2013. Therefore, the intention was to implicate the appellant, who was very much available in the locality. Therefore, the appeal will have to be allowed.

7. The learned Additional Public Prosecutor would submit that there is ample evidence through P.Ws.4 and 5. P.W.11 has spoken about the confession statement given by the appellant followed by recovery of Material Objects 3 and 4 under Ex.P.13. Hence, no interference is required.

8. We have considered the rival submissions and perused the evidence available on record.

Discussion:

9. We make it clear that our discussions are only with respect to the role said to have been played by the appellant alone and thus, nothing can be inferred to apply it to A1, who has not appealed against the judgment rendered by the Court below.

10. There appears to be three versions with respect to the body of the deceased concerned. P.W.13 has stated that he found the body near the Bridge. From the information given by P.W.3 to P.W.1, a complaint was given. Further, P.W.13, even in his chief examination has stated that he found the body at the burial ground. He along with other villagers took it to hospital. Therefore, there is a contradiction between the evidence adduced by P.Ws.3 and 13. P.W.18, who is the investigation officer in clear terms stated that it is the appellant, who brought the body to the hospital. It was recorded by a Doctor by name Jeyaganesan, who was the author of the accident register. Further, he admits that an intimation was given from the hospital. However, he
<https://hccs.courts.gov.in/cases/> Service courts govt services that the death was not known till the receipt of Ex.P.1, the complaint given by P.W.1. P.W.12, who is running a private hospital in his chief examination had also stated that the



appellant came to see him along with the body of the deceased. On examination and having found the deceased was no more, he advised her to go to the Government Hospital. It is thereafter, the appellant must have gone to the Government Hospital.

11. Therefore, the very case of the prosecution, in our considered view cannot be accepted as correct. To confirm the evidence of P.W.18, we perused the case diary produced by the learned Additional Public Prosecutor. To our shock and surprise the accident register found in the case diary is in tune with the statement made by P.W.18. The accident register did show that it was indeed the appellant who brought the child. It was registered by Dr. Jeya Ganesan and thereafter sent to the mortuary. Perhaps, that is the reason why the accident register was not marked and the doctor concerned not examined. This would show that the case as projected by the prosecution as against the appellant is false. After all, it is the duty of the prosecution to place all the materials before the Court to satisfy a fair investigation leading to a fair trial which is a fundamental right conferred on one who is charged with an offence.

12. Considering the principles governing the fair trial and after taking note of the earlier decision in Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1], the Hon'ble Supreme Court in Rettiram v. State of M.P. [(2012) 4 SCC 516] was pleased to hold that a fair trial is the heart of the criminal jurisprudence. The following paragraph would be apposite:

"39. The question posed by us fundamentally relates to the non-compliance of such interdict. The crux of the matter is whether it is such a substantial interdict which impinges upon the fate of the trial beyond any redemption or, for that matter it is such an omission or it is such an act that defeats the basic conception of fair trial. Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism.

40. In Mrs. Kalyani Baskar v. Mrs. M. S. Sampooram [(2007) 2 SCC 258], it has been laid down that 'fair trial' includes fair and proper opportunities allowed by law to the accused to prove innocence and, therefore, adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed and the courts should be zealous in seeing that there is no

41. In this regard, we may fruitfully reproduce the observations from Sidhartha Vashisht v. State (NCT of



Delhi) [(2010) 6 SCC 1] wherein it has been so stated: -
(SCC pp. 79-80 para 197)

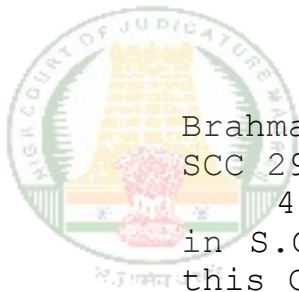
"197. In the Indian Criminal jurisprudence, the accused is placed on a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places 19 (2007) 2 SCC 258 20 (2010) 6 SCC 1 human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."

[emphasis supplied]

42. It would not be an exaggeration if it is stated that a 'fair trial' is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity that is governed by Rule of Law. Denial of 'fair trial' is crucifixion of human rights. It is ingrained in the concept of due process of law. While emphasising the principle of 'fair trial' and the practice of the same in the course of trial, it is obligatory on the part of the Courts to see whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred."

13. Law presumes the innocence of an accused until he is proved guilty. A suspicion though very strong can never be a substitute for a proof. The said exposition of law can be seen from the judgment of the Hon'ble Apex Court in Kailash Gour v. State of Assam [(2012) 2 SCC 34]. The apposite paragraphs are hereunder:

"39. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between the accused "may have committed the offence" and "must have committed the offence" which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away. See Narendra Singh v. State of M.P. [(2004) 10 SCC 699] and Ranjitsing



Brahmajeetsing Sharma v. State of Maharashtra [(2005) 5 SCC 294].

40. To the same effect is the decision of this Court in S.Ganesan v. Rama Raghuraman [(2011) 2 SCC 83], where this Court observed:

"39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India."

The above views were reiterated by this Court in State of U.P. v. Naresh [(2011) 4 SCC 324., SCC p. 335, para 34"

14.The occurrence was on 28.03.2013. A1 was arrested on 15.05.2013. Ex.P.5 Viscera Report is dated 05.04.2013. This report states about the presence of poison. Perhaps, this indicates the belated arrest of the appellant, who very much present in the locality, on 15.05.2013, followed by the so called recovery. Till such time the needle of suspicion was not on the appellant. P.Ws.4 and 5 being the eyewitnesses have not spoken anything against the appellant except her speaking to A1. They only saw A1, attacking, strangulating and pushing down the deceased in the absence of the appellant. Under those circumstances, we are unable to believe the recovery made. Further, P.W.11 has stated that the confession statement has been signed by himself and one Moorthy. The said Moorthy has not been examined. According to him, he followed the appellant after her arrest. He has also stated that he has signed both near the bridge as well as in the police station. Therefore, the evidence of P.W.11 does not inspire confidence, especially in the light of the discussion made above and the evidence of P.W.18 in particular.

15.The Court below has held that non-furnishing of the accident register copy is not a relevant factor. Unfortunately, the Court below has not considered the evidence of P.W.18 in its perspective, particularly on the aspect of the Accident Register, which strikes at the very foundation of the prosecution theory. Therefore, we are of the view that the judgment rendered by the trial Court deserves to be set aside.

16.Before parting with the case, we once again make it clear that our observations and discussions are to be seen from context of the prosecution case as against the appellant alone.

17.In the result, the Criminal Appeal is allowed and the order of conviction and sentence passed by the learned II Additional Sessions Judge, Thoothukudi made in S.C.No.186 of 2013 dated 19.12.2013, are set aside insofar as the appellant/A2 is concerned. The appellant is acquitted of all the charges. The appellant is now undergoing sentence in the Special Prison for Women, Trichy. In view of this judgement acquitting her, the jail



authorities are directed to set her at liberty forthwith, if she is not required in connection with any other case or proceedings. Fine amount, if any, paid shall be refunded to the appellant. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The II Additional Sessions Judge, Thoothukudi.
- 2.The Superintendent of Prison,
Special Prison for women,
Tiruchirapalli.
- 3.The Inspector of Police,
Puthiyamputhur Police Station,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.Do Thro' The Principal District Judge, Thoothukudi.
- 6.The Judicial Magistrate No.I, Thoothukudi.
- 7.Do Thro' The Chief Judicial Magistrate, Thoothukudi.
- 8.The District Collector, Thoothukudi.
- 9.The Director General of Police, Mylapore, Chennai.

Copy to:

The Section Officer,
Record Section,
Madurai Bench of Madras High Court, Madurai.

Pre-delivery order in
Criminal Appeal (MD) No.119 of 2017
and Crl.M.P. (MD) No.3302 of 2017

Delivered on
11.08.2017