



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.10.2017

DELIVERED ON : 27.10.2017

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CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

CRL.A[MD].No.359 of 2016

Murugan : Appellant/Sole Accused

Vs.

State, rep by
The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli District,
Crime No.1432 of 2013.

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure praying to set aside the Judgment of conviction dated 26.11.2014 made in S.C.No.87 of 2014, on the file of the learned Principal Sessions Judge, Tirunelveli.

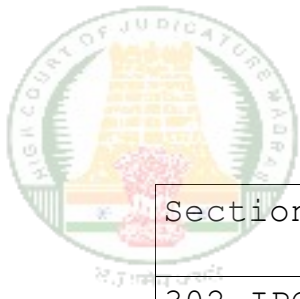
For Appellant : Mr.C.Christopher
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in S.C.No.87 of 2014, on the file of the learned Principal Sessions Judge, Tirunelveli. He stood charged for the offences punishable under Sections 302 and 506(ii) of the Indian Penal Code.

2.By Judgment dated 26.11.2014, the Trial Court convicted the

<https://hcservices.ecourts.gov.in/hcservices/> accused and sentenced him, as detailed below:-



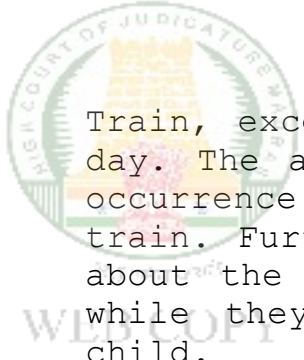
Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.100/- in default to undergo simple imprisonment for three months.
506(ii) IPC	To undergo rigorous imprisonment for one year.	No fine.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

3. The case of the prosecution, as put forth by its witnesses, is consciously narrated below:-

3.1. PW-1 is the wife of the accused. He is a coolie by profession. The accused and PW-1 were having two daughters, namely Murugeshwari and Mariselvi, aged about 2^{1/2} years and seven months old respectively. PW-6, the sister of the accused, who is residing at Mayiladi at Nagercoil, used to help him financially. On 27.10.2013, PW-1 requested the accused to purchase dress for their children to celebrate Deepavali. Whenever PW-1 and the accused were in need of money, they used to go to the house of PW-6 and receive money. Since the accused had no money to purchase dress for children, he decided to go to Mayiladi to get money from PW-6.

3.2. Accordingly, on 27.10.2013, they went to Nagercoil in a Passenger Train with an intention to get money from PW-6. When they went to the house of PW-6, she shouted at them stating that "it was surprising that they are not having money even to purchase dress for their children to celebrate Deepavali". However, finally, PW-6 gave a sum of Rs.70/- and a Dhoti to the accused. Thereafter, on the same day, while they were returning to Tirunelveli in a Passenger Train, PW-1 picked up quarrel with the accused as to why he took her to the house of PW-6. The accused also started to quarrel with PW-1. During the course of the quarrel, the accused started to beat the children stating that all the problems had arisen only due to them and suddenly, snatched the seven months old child - Mariselvi from PW-1. Though PW-1 tried to prevent the accused from snatching away the child, she could not succeed. Finally, the accused threw the child from the train, while the train was nearing a river bridge. On seeing the act of the accused, PW-1 raised alarm. However, in the Passenger



Train, except for them, no other passenger was travelling on that day. The accused threatened PW-1 that if she discloses the above occurrence to anybody, he will throw the other child also from the train. Further, the accused also warned PW-1 that if anyone asked about the whereabouts of the younger child, she has to say that while they were in the train, somebody else had kidnapped the child.

3.3. After reaching the home, PW-1 did not disclose the above occurrence to anybody, but, she was continuously weeping. When the mother-in-law of PW-1 enquired her, she informed her that while they were returning from Nagercoil, the accused snatched away the younger child and threw her from the train. Thereafter, the relatives of PW-1, namely, Mariammal and Mariselvem came to the house of PW-1. PW-2, the brother of PW-1, asked the accused as to what had happened to the younger child. Though, initially, the accused did not give proper reply, finally, he had admitted that he had thrown the child from the running train. PW-2 further asked him as to where he had thrown the younger child. Thereafter, the accused took them to the place of occurrence, where he had thrown the child and found the dead body of the child near a bush. Then, PW-1 went to the Tirunelveli Junction Police Station and gave an oral complaint, which was reduced into writing by PW-12, the then Sub-Inspector of Police. EX-P1 is the complaint and EX-P11 is the First Information Report. Then, PW-12 forwarded both the documents to the Court of Judicial Magistrate No.IV, Tirunelveli and handed over the investigation to the Inspector of Police.

3.4. PW-13, taking up the case for investigation, on 29.10.2013, at 06.45 PM, proceeded to the place of occurrence, recovered the dead body, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-5 and another witness. Thereafter, PW-13 brought the dead body of the deceased near the bank of river and conducted inquest on the body of the deceased in the presence of the panchayatars. EX-P13 is the inquest report. Then, he recorded the statements of PW-1, PW-2 and PW-5. Then, he forwarded the dead body for postmortem through PW-10.

3.5. PW-8 - Dr.J.Sridharan conducted autopsy on the body of the deceased. EX-P8 is the postmortem certificate. He noticed the following injuries:-

"Contusion of size 5X4 CM over left frontal region of head.

Scalp Contusion of size 8X 6 CM noted over left fronto-parietal."

<https://hservices.reports.gov.in/hcervices/> that the deceased would appear to have died of head injury.



3.6. On 30.10.2013, at 08.00 AM, PW-13 arrested the accused in the presence of PW-4 and PW-7. On such arrest, he gave a voluntary confession and handed over the train ticket, [MO-6], which he had purchased for travelling from Nagercoil to Tirunelveli. PW-13 recovered the same under a mahazer. On returning to the Police Station, PW-13 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. On completing the investigation, he laid charge sheet against the accused, on 30.12.2013.

3.7. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 13 witnesses were examined, 15 documents and six material objects were marked.

3.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he neither choose to examine any witness nor did he exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

4. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

5. The learned counsel appearing on behalf of the appellant submitted that the alleged occurrence, in this case, took place on 27.10.2013, at about 09.00 PM. However, the complaint was lodged only on 29.10.2013, at about 06.00 PM. The delay of three days, according to the learned counsel, has not been explained by the prosecution. The conduct of PW-1 in keeping quiet for three days, without disclosing the death of her seven months old child is unnatural. No mother will remain silent, after losing her child, without disclosing the occurrence to anybody. Moreover, except the solitary eye-witness of PW-1, no other independent witness was examined. Thus, according to the learned counsel for the appellant, in the absence of any independent witness, it is highly unsafe to sustain the conviction solely on the basis of the evidence of PW-1.

6. Further, the learned counsel for the appellant has drawn the attention of this Court to the cross-examination of PW-1, where she has stated that she went to the Police Station along with the accused and the other relatives for the purpose of making



a complaint. If really the accused committed the offence, as it is alleged by the prosecution, he would not have accompanied PW-1 to the Police Station for lodging the complaint. This, according to the learned counsel, would go to show the innocence of the accused.

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7. The learned counsel for the appellant further submitted that the alleged arrest of the accused and the subsequent recovery of material object are highly doubtful. He further submitted that PW-13 arrested the accused at 08.00 AM, on 30.10.2013 in the presence of PW-4 and PW-7, whereas the evidence of PW-1, during cross-examination, shows that the accused had accompanied PW-1 to the Police Station and after lodging the complaint, the police asked PW-1 to go to her house, but her husband was detained in the Police Station itself. Therefore, the evidence of PW-1 would show that the accused was present in the Police Station, even at the time of lodging the complaint. Thus, according to the learned counsel, the arrest of the accused and the subsequent recovery of MO-6, as projected by the prosecution, cannot be believed.

8. While concluding his arguments, in the alternative, the learned counsel for the appellant submitted that the appellant had no intention to kill his own daughter. The occurrence took place in a sudden quarrel between PW-1 and the accused. There was no premeditation for the accused to commit the crime. It was purely sudden. Thus, the act of the accused, according to the learned counsel, would fall within the ambit of Fourth Exception to Section 300 of the Indian Penal Code and thus, the appellant is not liable for punishment under Section 302 of the Indian Penal Code.

9. The learned Additional Public Prosecutor, however, opposed this Criminal Appeal. According to him, the prosecution has clearly proved the case with cogent and convincing evidence. Under such circumstances, no infirmity can be found on the conviction and sentence recorded by the Trial Court. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeal.

10. We have considered the above submissions.

11. It is the submission of the learned counsel for the appellant that though the alleged occurrence, in this case, took place on 27.10.2013, at about 09.00 PM, the complaint was lodged only on 29.10.2013, at about 06.00 PM. The delay of three days, according to the learned counsel, has not been explained by the prosecution.

<https://hcservices.hcscourts.gov.in/hcservices/> 12. A perusal of the evidence of PW-1 would show that on 29.10.2013, while PW-1 and the accused were returning from



Nagercoil to Tirunelveli, when the train was moving slowly on the Tamirabarani River Bridge, there was a quarrel between the accused and PW-1. At the height of the quarrel, the accused snatched away the minor child from PW-1 and threw her from the train. When she made a cry, there was nobody in the compartment to help her. The accused threatened PW-1 that if she discloses the above occurrence to anybody, he will also throw the other child from the train. Thus, in our considered view, in order to save the life of other child, PW-1 would not have chosen to disclose the crime committed by the accused to anybody. However, after reaching home, she was weeping continuously. When the mother-in-law of the accused and the other relatives asked her about the whereabouts of the other child, PW-1 revealed that the accused threw the child from the train. Immediately, thereafter, PW-1, along with PW-3 to PW-5, went to the Sengottai Police Station, on 29.10.2013. Since it was informed that the place of occurrence would not come within the jurisdiction of Sengottai Police Station, they went to Melapalayam Police Station, where also, it was informed that the scene of occurrence does not come within their jurisdiction. Finally, they went to the Tirunelveli Junction Police Station and made a complaint. Thus, in our considered view, the prosecution has explained the delay properly.

13. Now, turning to the submission of the learned counsel for the appellant that except the solitary eye-witness of PW-1, no other independent witness was examined, we find that it is the categorical statement of PW-1 that on the date of occurrence, except PW-1, the accused and their children, no other passenger was travelling in the train. Therefore, the question of examining independent witness does not arise at all. Further, the evidence of PW-2 would show that the accused had made extra-judicial confession statement, where he had admitted that he threw the child from the train. Thus, we do not find any reason to disbelieve the evidence of PW-1. The evidence of PW-1 is fully corroborated by the evidence of PW-2. Though PW-1 has been cross-examined at length, nothing could be elicited from her so as to disbelieve her version.

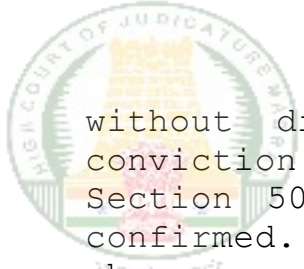
14. Now, coming to the submission of the learned counsel for the appellant that the arrest of the accused and the subsequent recovery of MO-6 are highly doubtful, on a perusal of the evidence of PW-1 would show that PW-1, in her chief-examination, has categorically stated that when the relatives of PW-1 asked the accused to show the place, where he had thrown the child, the accused took them to the scene of occurrence, where the deceased child's body was found lying and immediately, he fled away from the place of occurrence. Thereafter, PW-1 went to the Police Station along with the other relatives to make complaint. PW-2 has ~~admitted~~ ^{stated} that he, along with PW-1 and other relatives went to the Police Station for the purpose of making complaint. However, PW-1, during cross-examination, made a vague statement that the



accused was present at the time of making complaint. When the evidences of PW-1 and PW-2 clearly disclose about the occurrence, that took place on 27.10.2013 that the accused threw the child from the train, no significance could be attached to the submission made by the learned counsel for the appellant with reference to the vague statement made by PW-1 in her cross-examination. The evidence of PW-2 is duly corroborated by the evidence of PW-1.

15. Now, turning to the alternative submission made by the learned counsel for the appellant that the appellant had no intention to murder his daughter and the occurrence took place at the spur of the moment due to the provocative words uttered by his wife - PW-1 during the course of quarrel between the accused and the deceased, the said submission, in our considered view, is not sustainable. Furthermore, it is not the case of the accused that he had no knowledge that his act of throwing the child from the running train will result in child's death. It is common knowledge that throwing a child, that too, a seven months old child, from a running train, will result in death. Secondly, from the case of the prosecution, absolutely, we do not find any provocative words uttered by PW-1. PW-1 only asked the accused as to why he took her to the house of PW-6, since she faced humiliation at the house of PW-6. This is only a normal incident, that would occur in a day-to-day life. The words uttered by PW-1, at no stretch of imagination, can be construed as the provocative words. Thus, from the above circumstances, the prosecution has clearly established that it was this accused, who had thrown the child from the running train, which resulted in the death of the child. Furthermore, the verbal quarrel was only between the accused and PW-1, in which a toddler life was snatched away in a most brutal manner. Moreover, in our considered view, even in cases, where if the evidences disclose that the offender acted in a most cruel manner, he cannot take undue advantage of sudden provocation for claiming the benefit under Exception IV to Section 300 of the Indian Penal Code. Thus, the question of considering the benefit of Exception IV to Section 300 of the Indian Penal Code does not arise at all. Thus, the act of the accused would squarely fall within the ambit of First Limb of Section 300 of the Indian Penal Code and therefore, he is liable to be punished under Section 302 of the Indian Penal Code. The Trial Court has dealt with the evidences of all the witnesses elaborately and rightly came to the conclusion that it was this accused, who committed the crime. In our considered view, there is no infirmity in the Judgment of the Trial Court.

16. Insofar as the criminal intimidation made by the accused is concerned, we are convinced of the evidence of PW-1 that the accused threatened her that if she discloses the occurrence to anybody, he will throw the other child also from the train. That was the reason why, PW-1 would have kept quiet for some time,



without disclosing the occurrence to anybody. Therefore, the conviction recorded by the Trial Court for the offence under Section 506(ii) of the Indian Penal Code is also liable to be confirmed. Thus, we hold that the prosecution has proved both the charges against the accused beyond reasonable doubts.

17. In the result, this Criminal Appeal is dismissed; the conviction and sentence imposed on the appellant/accused, by Judgment dated 26.11.2014 made in S.C.No.87 of 2014, on the file of the learned Principal Sessions Judge, Tirunelveli, is confirmed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Tirunelveli.
2. The Judicial Magistrate No.IV,
Tirunelveli.
3. The Superintendent,
Central Prison,
Palayamkottai.
- (Requesting to serve a copy of
this judgment to the accused)**
4. The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.C.Christopher, ADVOCATE IN SR No.84416
nb

MK/KK/SAR-1/13.11.2017/8P/8C