

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM  
AND

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Criminal Appeal No.449 of 2018  
and CRL MP No.10200 of 2018

Mahalakshmi  
D/o.Pitchaikani  
Appellant/Accused

Vs

The State by  
Inspector of Police,  
Palladam Police Station,  
Tiruppur District.  
Crime No.847/2012  
Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned Principal District and Sessions Judge, Tiruppur, passed in S.C.No.90 of 2016 on 04.07.2018.

For Appellant : Mr.S.Mohammed Ansar

For Respondent : Mr.K.Prabhakar  
Additional Public

Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned Principal District and Sessions Judge, Tiruppur, passed in S.C.No.90 of 2016 on 04.07.2018, convicting appellant/A1 for offence u/s.302 IPC and sentencing her to life imprisonment and fine of Rs.5,000/- i/d 6 months S.I.

2. Appellant/A1 and another faced trial in S.C.No.90 of 2016 on the file of learned Principal District and Sessions Judge, Tiruppur. Prosecution case is that A1 was working under PW-1 and there was an illicit intimacy between them. A1 insisted that PW-1 marry her and PW-1 refused stating that he had a 4 year old son. Angered and revengeful, A1, with the assistance of A2, took the son of PW-1 to her house, strangled him using a saree and further, suspecting that the child may not have died, threw him into a drum filled with water. PW-1 preferred Ex.P1, complaint and case was registered in Crime No.847 of 2012 as 'Boy Missing', later altered to reflect offence u/s.302 IPC. On completion of investigation, a charge sheet was filed informing commission of offences u/s.302 and 201 IPC before learned Judicial Magistrate, Palladam.

3. Before trial Court, prosecution examined 17 witnesses and marked 13 exhibits and 4 material objects. None were examined on behalf of defence nor were any exhibits marked.

3.1. PW-1, father of deceased child, deposed that he and both accused had worked at the same place for a period of 1½ years, that his son was playing outside his house on 30.06.2012, at about 04.30 p.m. and upon his wife and mother, PWs.2 and 3, waking him at about 05.30 p.m. informing that his son was missing, he preferred Ex.P1, complaint. PW-1 deposed that the house of accused had been locked from the day on which his son went missing and since a bad smell was emanating therefrom, on complaint of neighbours, police broke open the lock at the door and found the body of the deceased child in a decomposed state. PW-1 deposed that he and PW-2/his wife identified their son. PW-1 also deposed that A1 insisted upon his marrying her. He refused stating that he was a married man with child. He informed PWs.2 and 3. PW-3 asked the father of A1 to reprimand her and he assured that A1 would not commit the mistake again. A1 continued to harass PW-1 and since he refused, A1 along with A2 committed the offence. PWs.2, 3 and 7, wife, mother and father-in-law of PW-1, have also spoken on similar lines.

3.2. PW-4, neighbour of PW-1, spoke to her being asked by PW-1 about his son, of searching for the deceased boy along with others and of preference of complaint by PW-1. PW-4 also spoke to attesting Ex.P2, observation mahazar.

3.3. PW-5, neighbour of PW-1, spoke to his being asked by PW-1 about his son, of searching for the deceased boy along with others and of preference of complaint by PW-1. PW-5 also deposed that PW-1, A1 and he were working together, that the house of A1

was locked from the day on which the deceased boy went missing, that A1 insisted that PW-1 marry her and PW-1 refused. PW-3 asked the father of A1 to reprimand her and the said incident took place 15 days prior to the date of occurrence.

3.4. PW-6, a resident of Palladam, spoke to his being at home on the date of occurrence since 'power shut down' was announced, of having gone over to a nearby shop to buy fruits and of having seen both accused conversing there. PW-6 also spoke to having seen the deceased boy playing in front his house at about 03.30 p.m. and of PW-1 at 05.00 p.m. asking him about the whereabouts of his son, of joining PW-1 in the search for his son and of preference of complaint by PW-1. PW-6 deposed that the house of A1 was locked since the date of occurrence and of hearing of the death of deceased boy later. PW-6 also deposed that he had no knowledge of enmity between PW-1 and A1.

3.5. PW-8, owner of a grocery shop, spoke to both accused conversing before his shop on the date of occurrence, that PW-6 came to his shop towards purchase of cigarettes, of PW-1 asking him if he had seen the boy and of preference of complaint by PW-1. PW-8 also spoke to police finding the body of deceased in the house of A1.

3.6. PW-9, a resident of Palladam, spoke to having seen the villagers searching for the son of PW-1 on 30.06.2012. PW-9 also spoke to a bad smell emanating from the house of A1, of telephoning the police, who came by 07.00 p.m. and broke open the lock at the door and found the body of deceased boy.

3.7. PW-10 deposed that he is running a school in which the deceased boy was studying and that two persons enquired of him about the whereabouts of deceased boy. PW-10 also spoke to his having seen the body of deceased boy in the house of A1.

3.8. PW-11 spoke to the enquiry conducted by police on 30.06.2012 and of police persons breaking into the house of A1 and finding the body of the deceased boy. PW-11 also spoke to attesting Ex.P3, Observation Mahazar.

3.9. PW-12, spoke to attesting Ex.P4, admissible portion of confession of A1 and Ex.P5, seizure mahazar of MO-4 and of attesting the confession statement of A2.

3.10. PW-13, Doctor, who conducted postmortem, has stated that the deceased appeared to have died of asphyxia due to smothering.

3.11. PW-14, Sub-Inspector of Police, spoke to registration of case in Crime No.847 of 2012 for 'Boy Missing' on the complaint of PW-1.

3.12. PW-15, Police Constable (Grade II), spoke to handing over the body of deceased boy to Doctor towards conduct of postmortem and on completion thereof, handing over the same to the relatives. Ex.P9 is the report submitted by PW-15.

3.13. PW-16, who conducted investigation in the case, spoke to visiting the scene of crime, examining witnesses, preparation of mahazars, breaking open the house of A1 and finding the body of deceased boy in a stack of timber, conducting inquest, altering First Information Report to reflect offence u/s.302 IPC and forwarding the same to Court, arrest of accused, recording their confession and on his transfer, handing over the case to PW-17, Inspector of Police, for further investigation, who, upon completion of investigation, filed a charge sheet informing commission of offences u/s.302 and 201 IPC.

4. On appreciation of materials before it, trial Court, under judgment dated 04.07.2018, while acquitting A2 of all charges, convicted appellant/A1 for offence u/s.302 IPC and sentenced her to life imprisonment and fine of Rs.5,000/- i/d 6 months S.I. Hence, this appeal.

5. In rendering a finding of conviction against A1, Court below has found as follows:

i) The body of the deceased child has been recovered from the house of A1. The defence has not denied that the child has been done to death. It was the defence case that as PW-1 had borrowed money from many persons and defaulted in repayment, one of such persons would have taken the deceased and murdered him. PW-13, Doctor, who conducted postmortem, stated that the deceased died due to asphyxia due to smothering. Though in cross-examination, a question was put to PW-13, Doctor, that the deceased died only owing to drowning and the same was admitted to by PW-13, it was not the defence case that the deceased accidentally fell into the drum. Moreover, the body of deceased has not been recovered from the drum but from a stack of timber in the house of A1.

ii) PW-1 deposed to having preferred Ex.P1, complaint, upon his search for his son ending in vain, that the house of accused had been locked and since a bad smell emanated therefrom, on complaint of neighbours, police broke open the lock and found the body of deceased in a decomposed state. PWs.2 and 3, wife and mother of PW-1 have also spoken on the same lines. There was



no contradiction in their evidences.

iii) As against the defence case of PW-4, a neighbour of PW-1, being a cooked-up witness, it was found that PW-4 did not depose anything against accused whereas her evidence made stronger the version of PW-1 that the deceased boy had gone missing and immediately a complaint had been preferred.

iv) While the evidence of PWs.3, 5 and 6 was to the effect that there was an illicit relationship between PW-1 and A1, it was the evidence of PWs.1, 2 and 3 that it was only A1 who insisted that PW-1 marry her and PW-1 refused stating that he was a married man having a 4 year old child. A conjoint reading of all the above evidence informed the motive of A1 for committing the offence was that PW-1 refused to marry her since he had a son.

v) There was no eye-witness to the occurrence and the entire case rested on circumstantial evidence. While so, prosecution witnesses, both in chief and in cross-examination, had deposed that the body of deceased boy had been recovered from the house of A1. Though it was the defence case that PW-1 borrowed money from many persons and they threatened PW-1 that they would kidnap his son, if he defaulted in payment and hence, one of such persons would have committed the offence, the defence has not mentioned who had threatened PW-1. Even if the defence case was to be accepted, there was no explanation on how the body of deceased was found in the house of A1. Once the body of deceased was recovered from the house of A1, she was upon a duty to explain, which she has failed to do.

vi) Though there was a delay in the First Information Report reaching the Court, the same would not affect the prosecution case in the instant case.

vii) PW-1, in the complaint, has not made any mention of A1 and given such position, the defence contention of PW-1 having preferred the complaint only to falsely implicate A1 was unsustainable. Further, initially, the case was registered only for 'boy missing' and on identification of the deceased boy, the same was altered to one u/s.302 IPC.

viii) In acquitting A2 the trial Court has reasoned that except for PWs.6 and 8 having deposed to having seen both accused together, at 2.30 p.m. on the date of occurrence as per PW-6, there was nothing whatsoever against A2 and he had been roped in on the confession of A1. It was not in evidence that PWs.6 and 8 had seen the deceased boy in the company of the accused.

This Court finds that a well-reasoned approach has been adopted by Court below and finds no reason to interfere with the judgment under challenge.

In the result, the Criminal Appeal shall stand dismissed confirming the judgment of learned Principal District and Sessions Judge, Tiruppur, passed in S.C.No.90 of 2016 on 04.07.2018. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

gm

To

1.The Principal District and Sessions Judge,  
Tiruppur.

2.The Inspector of Police,  
Palladam Police Station,  
Tiruppur District.

3.The District Collector,  
Tiruppur District.

4.The Director General of Police,  
Chennai.

5.The Public Prosecutor,  
High Court, Madras.

+1 cc to M/s.S.Mohamed Ansar, Advocate Sr.No.79428

Criminal Appeal No.449 of 2018

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CSL/30.01.2019

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