

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.287 of 2017

A.Divya
W/o.Aravind Kumar
Appellant/Accused

Vs

The Inspector of Police,
D-2 Selvapuram (Law and Order) Police Station,
Selvapuram,
Coimbatore District.
Crime No.314 of 2016
Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment of learned III Additional District and Sessions Judge, Coimbatore, passed in S.C.No.126 of 2016 on 16.02.2017.

For Appellant : Mr.P.Palani Kumar

For Respondent : Mr.R.Pratap Kumar,
Additional

Prosecutor

Public

JUDGMENT

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

This appeal arises against the judgment of learned III Additional District and Sessions Judge, Coimbatore, passed in S.C.No.126 of 2016 on 16.02.2017.

2. Case of prosecution is that PW-1 and accused are husband

and wife. The deceased was their daughter. Owing to differences between them, accused was living with her daughter at her mother's house and developed intimacy with PW-11. PW-2, mother of accused, insisted that accused lived with PW-1 and had a talk with PW-1's family towards reunion of PW-1 and accused. Though initially the accused refused to join PW-1, on the advice of family members, she requested six months time. While so, on 03.06.2016 at about 03.45 p.m., taking advantage of absence of PWs.2 and 3, mother and brother of accused, she strangled her daughter to death. On the date of occurrence, PW-5, went to meet PW-18, who was residing in a portion adjacent to the house of PW-2 towards collecting a catalogue and since PW-18 had gone to his workshop to bring the same, PW-5 conversed with another friend and after such friend left he waited for PW-18. While so, on hearing the screams of deceased, he peeped inside the house of PW-2 and saw the accused strangulating the child. PW-5 questioned the accused who replied that as she stopped the child from sucking her thumb, the child was crying. Convinced, PW-5 left the place after seeing PW-18. On her return, PW-2 asked PW-3 to examine the child. Since the child was unconscious, they took the child to hospital, where she was declared dead. When PW-2 questioned accused, she pleaded ignorance. PW-1, husband of accused, preferred Ex.P2, complaint to PW-15, Sub-Inspector of Police. A case was registered in Crime No.314 of 2016 on the file of respondent for offence u/s.302 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offence u/s.302 IPC. On committal, the case was tried in S.C.No.126 of 2016 on the file of learned III Additional District and Sessions Judge, Coimbatore.

3. Before trial Court, prosecution examined 19 witnesses and marked 18 exhibits and 1 material object. None were examined on the side of defence, however, 3 exhibits were marked.

3.1. PW-1, husband of accused, spoke to he and accused living separately owing to differences between them, of accused having illegal relationship with others which he warned against, elders having a talk with both of them, accused seeking 6 months time to join PW-1, coming to know of the death of his daughter through PW-3 on 03.06.2016 at about 08.30 p.m. and of rushing to hospital. PW-1 also spoke to seeing his daughter dead with ligature marks on the neck and upon PW-4 informing him about the occurrence, preferring Ex.P2, complaint, against accused.

3.2. PW-2, mother of accused, spoke to differences between PW-1 and accused, accused having relationship with others, upon advice of elders accused agreeing to live with PW-1 but seeking 6 months time, she having gone out of the house on the date of occurrence, of accused having been alone with the deceased child

and on her return seeing the deceased child unconscious and taking her to hospital accompanied by accused and PW-3 and of Doctors informing her that the deceased child had been done to death by strangulation. PW-3, brother of accused, has also spoken on the same lines.

3.3. PW-4, owner of the house where PWs.2 and 3 were residing, spoke to a quarrel between accused and PW-2 about 10 to 20 days prior to the occurrence and of requiring them to vacate the house. PW-4 also spoke to attesting Ex.P3, Observation Mahazar.

3.4. PW-5 spoke to his having gone to the house of PW-18, who was residing in a portion adjacent to the house of PW-2 towards collecting a catalogue and since PW-18 had gone to his workshop to bring the same, PW-5 conversed with another friend and after such friend left he waited for PW-18. While waiting, he heard the child screaming peeped inside the house of PW-2 and saw the accused strangulating the child. PW-5 questioned the accused who replied that as she stopped the child from sucking her thumb, the child was crying. PW-5 left the place after seeing PW-18. At about 07.30 p.m., on coming to know that the deceased child was admitted in hospital he rushed there. PW-5 also deposed that he did not inform those present at hospital as they were agitated, decided to wait for PW-1 and on PW-1's arrival informed him.

3.5. PW-6, Doctor, deposed that he was running a hospital under the name 'Rupa Medical Centre', of two nurses working there informing him that the heart beat of the child brought to hospital was very low, of he requiring them to refer the deceased child to Government hospital. PW-6 also produced Exs.P4 and P5, CD and Pendrive.

3.6. PW-7, a nurse working in the hospital run by PW-6, spoke to the deceased child having been brought to the hospital in a very critical state and referring her to Government hospital on the instructions of PW-6.

3.7. PW-8, a resident of Kovai Telungupalayam, spoke to accused tendering confession to police on 04.06.2016 at about 02.30 p.m., of he and his friend Krishnan attesting the same and recovery of MO-1, thupatta, under Ex.P7, seizure mahazar.

3.8. PW-9 spoke to his being employed at a shop viz., Rani Gold Covering, wherein the accused was also employed for some time. PW-9 also informed that he had had a relationship with the accused and PW-1 warned him there against.

3.9. PW-10, owner of the shop viz., Rani Gold Covering, deposed that four persons were working in the shop and that accused was one of them. He came to know of the death of the child through newspapers.

3.10. PW-11, a resident of Theethipalayam, deposed that he used to travel by bus and developed friendship with the accused, there was no illicit relationship between them and they used to share their family problems. PW-11 also deposed that since police threatened him, he informed otherwise in his statement. PW-11 has been treated hostile.

3.11. PW-12, Judicial Magistrate III, Coimbatore, spoke to recording Section 164 Cr.P.C. statement of PW-11 and of forwarding the same to Judicial Magistrate V, Coimbatore. Such statement and connected records were marked as Ex.P8.

3.12. PW-13, Judicial Magistrate II, Coimbatore, spoke to recording Section 164 Cr.P.C. statements of PWs.1, 2, 3 and 5 and of forwarding the same to Judicial Magistrate V, Coimbatore. Such statements were marked as Ex.P9.

3.13. PW-14, Doctor, deposed that the deceased child was brought to hospital by PW-2 and on examination he found a ligature mark around the neck of the child. Upon confirming the child had died, PW-14 forwarded the body towards

conduct of postmortem, informed the police through Ex.P11, Death Intimation and issued Ex.P10, Accident Register.

3.14. PW-15, Sub-Inspector of Police, spoke to visiting the hospital upon instructions of higher officials, of enquiring persons there and of registering a case in Crime No.314 of 2016 for offence u/s.302 IPC on the complaint of PW-1 and forwarding the same to Court. Ex.P12 is the First Information Report.

3.15. PW-16, Doctor, who conducted postmortem, stated that the deceased would appear to have died of asphyxia due to violent compression of neck by ligature material (ligature strangulation).

3.16. PW-17, sister of PW-1, spoke to differences between PW-1 and accused, that on the advice of elders, accused agreed to live with PW-1 but sought 6 months time and on receiving information about the death she rushed to the hospital.

3.17. PW-18, a neighbour of PW-1, deposed that PW-5 came to his house on 03.06.2016 at about 03.45 p.m. towards collecting a catalogue, he had gone out to bring the catalogue and PW-5

waited there for 20 to 25 minutes and after receiving the catalogue, PW-5 left. PW-18 also spoke to hearing about the death of child at about 07.00 p.m. and having gone over to the hospital.

3.18. PW-19, Inspector of Police, who conducted investigation in the case, spoke to visiting the scene of crime, preparation of mahazars, examining witnesses, recording their statements and forwarding the same to Court, recording confession of accused, seizure of material object and forwarding the same to Court under Form 95, conducting inquest, forwarding the body of deceased towards conduct of postmortem and upon completion of investigation, filing of charge sheet informing commission of offence u/s.302 IPC.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 16.02.2017, convicted the accused for offence u/s.302 IPC and sentenced her to life imprisonment. Hence, this appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for State. Perused the materials on record.

6. On appreciation of materials on record, Court below has found as follows:

- (i) PW-5 was the only eye witness to the occurrence and other witnesses have been examined to corroborate his evidence. The presence of PW-5 at the scene of crime has been denied by defence stating that there were discrepancies in the Section 161 Cr.P.C. statement and his deposition before Court regards his time of arrival at PW-18's house, a neighbour of accused. The said contention has been negated on the reasoning that there was only a minor difference and further, the presence of PW-5 at PW-18's house close to 04.00 p.m. on the date of occurrence was spoken to by PW-18. It was the evidence of PW-18 that PW-5 came to his house and waited for about 20 -25 minutes since he had gone out to get the catalogue which PW-5 required.
- (ii) Merely because PW-5 claimed to be an office bearer in a Workers Union, it could not be presumed that he was a stock witness of police.
- (iii) The defence contention that no credence could be given to the evidence of PW-5 since he has not chosen to inform anybody about the occurrence and he has informed only PW-1, father of child, after the child was admitted into hospital, was found unacceptable as there was no occasion for PW-5 to suspect the accused, who was the mother of the child. Further, the explanation offered by PW-5 for not informing anybody till the

arrival of PW-1, father of child, that he did not want to further agitate the family members was acceptable.

- (iv) The defence contended that on receipt of information about death of his child at 07.30 p.m., PW-1, as a father, ought to have rushed to hospital immediately, whereas he has reached the hospital only at 09.00 p.m. which raised a doubt on whether PW-1 really was working at Coimbatore as claimed by him. However, it was found that there was no delay in preference of Ex.P2, complaint and that Ex.P12, First Information Report (computerized), which has been received by Magistrate at 00.15 p.m. on 04.06.2016 at his house, revealed the time of registration as 10.30 p.m. That being so, the question of whether PW-1 was working at Coimbatore or not or whether he was present at Coimbatore on the date of occurrence was of no consequence. The failure of PW-15, Sub-Inspector of Police, to register a case u/s.174 Cr.P.C. on knowledge of suspicious death of the child owing to his awaiting the arrival of PW-1 to prefer a complaint was held to be not of much significance.
- (v) While the defence questioned the veracity of the evidence of PWs.2 and 3, mother and brother of accused, Court below has found that in the absence of any material to disbelieve their evidence, the same could not be easily brushed aside.
- (vi) PW-14, Doctor, deposed that on examination he found that the child was dead and there was a ligature mark on the neck of the child. PW-16, Doctor, who conducted autopsy, stated that deceased died due to asphyxia and violent compression of neck by ligature material (ligature strangulation). The nature of injuries supported the theory of death by strangulation.

7. To the above reasons, we would add that there would be absolutely no occasion for PWs.2 and 3, mother and brother of accused, to depose falsely against her. As it is evident that she was the lone person in the house where the child had been done to death it was for her to explain the death which she has failed to do. We find no reason to interfere with the judgment under challenge.

In the result, the Criminal Appeal shall stand dismissed. The conviction and sentence passed by learned III Additional District and Sessions Judge, Coimbatore, in S.C.No.126 of 2016 dated 16.02.2017, are confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Judicial Magistrate No.V, Coimbatore.
- 2.Do through The Chief Judicial Magistrate,
Coimbatore (for information)
- 3.The Principal District and Sessions Judge,
Coimbatore.
- 4.The III Additional District and Sessions Judge,
Coimbatore.
- 5.The Superintendent, Central Prison, Coimbatore.
- 6.The Inspector of Police,
D-2 Selvapuram (Law and Order) Police Station,
Selvapuram, Coimbatore District.
- 7.The Public Prosecutor,
High Court, Madras.
- 8.The District Collector, Coimbatore.
- 9.The Commissioner of Police, Coimbatore.
- 10.The Director General of Police,
Mylapore, Chennai -4.
- 11.The Section Officer,
Criminal Section, High Court, Chennai.

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