



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 12.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

R.T. (MD) No.2 of 2017

State of Tamil Nadu,
In the case of Cr.No.71 of 2013,
Rameswaram Temple Police Station,
Ramanathapuram District.
Through State Public Prosecutor

... Complainant

Vs.

Mari

... Accused

Reference under Section 366 of the Code of Criminal Procedure seeking confirmation of the death sentence imposed on the accused on 03.11.2017 in Special S.C.No.2 of 2017 by the Fast Track Mahila Court, Ramanathapuram.

For Complainant : Mr.R.Anandaraj
Additional Public Prosecutor

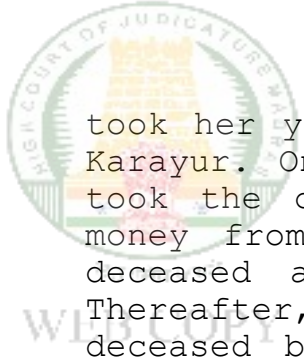
For Accused : Mr.N.Anantha Padmanathan
Amicus Curiae

J U D G M E N T

(The Judgment of the Court was delivered by C.T.SELVAM, J.)

The appellant/accused has filed the Criminal Appeal, challenging the judgment, dated 03.11.2017, in Special S.C.No.2 of 2017 on the file of learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram, by which, he was convicted for offences under Section 364 I.P.C. and Section 6 of POCSO Act, 2012 sentenced to undergo life imprisonment and fine of Rs.5,000/- each, in default, 1 year rigorous imprisonment for each offence and also convicted for offence under Section 302 IPC and sentenced to death and fine of Rs.5,000/-, in default, 1 year rigorous imprisonment. RT(MD) No.2 of 2017 is made towards confirmation of the sentence of death passed against the appellant.

2.The prosecution case is that appellant, his wife and their children resided at Rameswaram. One month prior to the occurrence, there was a quarrel between the accused and his wife P.W.2 - Dhanusura Banu. Owing thereto, P.W.2 left along with her younger son Vasanth and younger daughter deceased Mahathi to P.W.3 - Sutha's house at Nalupanai. On 22.04.2013 when P.W.2 went to Dharapuram, she



took her younger son Vasanth and deceased Mahathi from Nalupani to Karayur. On the evening of 23.04.2013 the accused came drunk and took the deceased under pretext of getting her snacks. He asked money from his brother P.W.12 Murugan, who gave Rs.50/- to the deceased and asked both the accused and deceased to go home. Thereafter, the accused sexually assaulted the deceased. The deceased became unconscious and with intention to hide his act, accused threw the child into the sea and caused her death.

3.P.W.1, elder married sister of the deceased, preferred a complaint before Sub Inspector of Police at Rameswaram Police Station on 24.04.2013. P.W.23, Sub-Inspector of Police registered the complaint in Crime No.71 of 2013 under Section 174 Cr.P.C. and prepared Ex.P.9 FIR. P.W.25, Inspector of Police, took up the investigation, went to the scene and prepared observation mahazar Ex.P.2, as also rough sketch Ex.P.10. He conducted inquest over the body of deceased in the presence of Panchayatars and prepared Ex.P.11, Inquest Report and sent the body to Government Hospital, Rameshwaram through PW-20 Head Constable for post-mortem. The Post-mortem Report is Ex.P.3. P.W.25 examined witnesses and recorded their statements. P.W.25 was transfe. P.W.24 - Inspector of Police, caused chemical examination of the private parts of the deceased by Forensic Science Laboratory, Madurai. After his transfer, on 06.05.2015, Amuthaselvi, Inspector of Police, took up investigation, examined witnesses and recorded their statements. On 02.09.2016, she arrested Accused and recorded his confession in the presence of P.W.19, and another. She altered the FIR from 174 Cr.P.C. to Section 302 I.P.C. and Section 6 of POCSO Act, 2012 and prepared alteration report Ex.P.30. She sent the accused for medical examination. She made arrangements to record the statements of P.Ws.1 to 3, 6, 12, 17 and one Nagaraj and Selvakumar under Section 164 Cr.P.C. After her transfer and upon completion of investigation, P.W.27 filed a charge sheet informing commission of offence under Section 302 IPC and Section 6 of POCSO Act, 2012.

4.1. P.W.1 - Nageswari, sister of the deceased, deposed that on obtaining information, over phone, from P.W.3 - Sudha, that the body of their sister Mahathi was lying on the seashore, she went to the scene, saw the body and preferred Ex.P.1, complaint. She also deposed that on enquiry she came to know that her father had been roaming on the seashore along with the deceased and he sexually assaulted her and committed murder.

4.2. P.W.2 - Dhanusura Banu, mother of the deceased deposed that since the accused was a drunkard and sexually abused her, they quarreled frequently and she left the accused three months prior to the occurrence along with deceased Mahathi and younger son Vasanth to her daughter Sudha's house at Nalupanai. She also deposed that one month after the occurrence the accused had called for her company and when she refused he stated that since she had failed to do so, he had murdered their younger daughter.

4.3. P.W.3 - Sudha, sister of the deceased corroborated the evidence of P.W.1.



4.4. P.W.4 - Munis Bala brother of the deceased apart from corroborating the evidence of P.W.1 deposed that when he went in search of his sister, his father-in-law P.W.12 - Murugan informed that the deceased had gone along only with his/her father and he will take care of her and hence he returned home.

4.5. P.W.5 - Selvi, a neighbour and a distant relative of the accused, apart from deposing about the quarrel between the accused and P.W.2, deposed that when Magathi was taking food at P.W.6's house, the accused came there and took the deceased.

4.6. P.W.6 - Nagalakshmi, aunt of the deceased, P.W.7 - Nagalakshmi and P.W.8 - Muniamma, residents of Karaiyur corroborated the evidence of P.W.5

4.7. P.W.9 - Deepa, sister of the deceased, spoke to usual conduct of the accused and corroborated the evidence of P.W.5.

4.8. P.W.10 - Malairajan, Village Head and Mutharaiyar community leader, spoke to character of the accused, dispute in the family of the accused, knowing of death of the accused and the suspicion of accused committing the murder.

4.9. P.W.11 - Raju spoke to attesting observation mahazar Ex.P.2.

4.10. P.W.12 - Murugan, brother of the accused, spoke to accused coming along with the deceased and demanding money and of accused proceeding north side along with the deceased after receiving Rs.50/- from him. He also spoke to P.W.4 coming in search of the deceased and he informed that the deceased had gone along with his/her father.

4.11. P.W.13 - Mohana Kanmani, Doctor, who conducted post-mortem on the body of deceased, opined that the deceased would appear to have died owing to drowning 'with sexual assault'.

4.12. P.W.14 - Dr.Balasubramaniam, who conducted medical examination of the accused, certified his potency.

4.13. P.W.15 - Tmt.Minitha, Scientific Officer, Forensic Science Laboratory, Ramanathapuram, spoke to Viscera Report of the deceased.

4.14. P.W.16 - Vijayendran, Scientific Officer, Forensic Science Laboratory, Madurai, opined that Vaginal Swab, Anal Swab and Rectal Swab did not contain semen and smear did not contain spermatozoa.

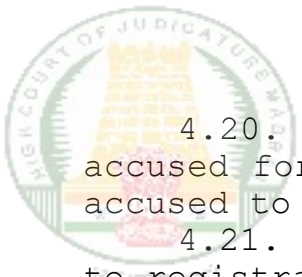
4.15. P.W.17 - Vellaichamy, working in the boat of P.W.12 corroborated the evidence of P.W.12.

4.16. P.W.18 - Malarvizhi, Headmistress of Karaiyur Primary School, spoke to deceased attending the school on 23.04.2013.

4.17. P.W.19 - Rodrigo, Village Administrative Officer, Rameswaram, spoke to arrest of accused and confession.

4.18. P.W.20 - Muniyandi, Special Sub-Inspector of Police, spoke to handing over the body of deceased to Doctor for post-mortem and on completion thereof, handing over the body to the relatives.

4.19. P.W.21 - Balamurugan, Grade II Police Constable, spoke to handing over private parts of the deceased to Forensic Science Laboratory, Madurai.



4.20. P.W.22 - Muniasamy, Police Constable, spoke to taking the accused for medical examination and handing over the custody of the accused to District Prison, Ramanathapuram District.

4.21. P.W.23 - M.Arumuga Nainar, Sub-Inspector of Police, spoke to registration of case in Crime No.71 of 2013 u/s. 174 Cr.P.C., and of forwarding Ex.P.9, Original First Information Report to Judicial Magistrate, Rameswaram and copies thereof to higher officials.

4.22. P.W.24 - Gnanaraj, Inspector of Police, spoke to sending of parivate parts of the deceased to Forensic Science Laboratory, Madurai through Court for chemical examination.

4.23. P.W.25 - B. Kannan, Inspector of Police, spoke to visiting the place of occurrence, preparation of mahazars, conducting of inquest and examination of witnesses.

4.24. P.W.26 - Tmt. J.Crystal Pabitha, learned Judicial Magistrate, Thiruvadanai spoke to recording statements of P.Ws.1 to 3, 6, 12, 17 and one Nagaraj and Selvakumar under Section 164 Cr.P.C.

4.25. P.W.27 - Jeyanthi, Inspector of Police, spoke to alteration of F.I.R., taking accused to police custody, recording of confession statement, examination of witnesses and receipt of draft charge sheet prepared by Amuthaselvi (deceased), Inspector of Police and also spoke to filing of charge sheet informing commission of offences under Section 6 of POCSO Act, 2012 and Sections 302 and 364 IPC.

5. When the accused was examined under Section 313 Cr.P.C. regards the incriminating materials against him, he denied his complicity in the crime and stated that he had been falsely implicated in the case.

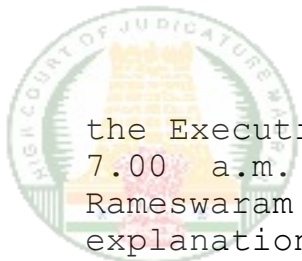
6. On appreciation of materials before it, trial Court, under judgment dated 03.11.2017, convicted appellant/accused for offences u/s. 364 and 302 IPC and Section 6 of Protection of Children from Sexual Offence Act, 2012 and sentenced him to undergo life imprisonment and fine of Rs.5,000/- each, in default, 1 year rigorous imprisonment for each of the offence under Section 364 I.P.C. and Section 6 of POCSO Act, 2012 and sentenced to death and fine of Rs.5,000/-, in default, 1 year rigorous imprisonment for offence u/s.302 IPC. After having imposed the said punishment, the Trial Court has submitted the proceedings to this Court for confirmation, as provided in Section 366 of the Code of Criminal Procedure. The said reference is now before this Bench in R.T.No.2 of 2017.

7. Heard learned Additional Public Prosecutor for complainant and learned Amicus Curiae for accused.

8. Shri.N.Ananthapadmanabban, learned Amicus Curiae, appointed by this Court to appear for accused, pointed out the following discrepancies in the prosecution case:

<https://hcservices.ecourts.gov.in/hcservices/>

(1) Though F.I.R. was registered under Section 174 Cr.P.C., there was nothing on record to show that intimation was given to



the Executive Magistrate The F.I.R. was registered on 24.04.2013 at 7.00 a.m. and the same was received by Judicial Magistrate, Rameswaram at 10.30 a.m. on 18.03.2014. Thus, there is no explanation for delay of 11 months.

(ii) Ex.P.6 Chemical Analysis Report shows that Vaginal Swab, Anal Swab and Rectal Swab tests were all negative.

(iii) Confession of appellant/accused was recorded after 3 years and 5 months from the date of occurrence. P.W.19 - V.A.O, witness to the confession deposed that the accused was present in the police station even before he went there with his Assistant. Hence, confession is hit by Section 25 of Indian Evidence Act.

(iv) There is total contradiction in the statements of the witnesses recorded under Section 161(3) Cr.P.C. and 164 Cr.P.C. There are also contradictions in evidence of the witnesses.

(v) Having kept quiet for 3 years and 5 months and subsequently giving information that one month after the occurrence, the appellant husband called P.W.2/wife to accompany him and on refusal he stated that only because of her he had killed their daughter is absolutely imaginary and nothing but an afterthought. Prosecution witnesses have also stated that the accused had no bad reputation of trying to mingle with any other strange girls in the village and he had not misbehaved with his other daughters.

(vi) Accused never went underground or tried to abscond from the village either on the date of occurrence or immediately after a complaint was made or till such time he was arrested. P.Ws.4, 6 and 12 spoke to accused crying, holding keeping his child on his lap.

(vii) Finding in Ex.P.11 that on the night of 23.04.2013 appellant/accused had left deceased n the sea shore as she wanted to attend the call of nature and on her not returning for a long time, he went home to sleep on the impression that she would have proceeded to her aunt's home is more probable and defies the last seen theory projected through P.Ws.6 to 9, 12 and 17.

(viii) Postmortem report reveals that child could have died 12 to 18 hours prior to 12.45 p.m., i.e., 6.45 p.m. to 12.45 p.m. on the previous day. There is evidence on record to show that deceased was in the house till 10.00 p.m. The best witness to speak about the return of the accused and the deceased to home at night would be the other son Vasanthan, a minor boy. He was not examined.

9.Learned Additional Public Prosecutor, placing reliance on the written arguments submitted as follows:

(i) P.Ws.12 and 17 spoke to the last seen theory. If Magathi went to the shore to attend the call of nature and did not return, as a father, the accused should have acted immediately to see what happened to his daughter and he should have taken steps to lodge a complaint to the police.

(ii) After due investigation, the penal provision of the case was altered into Section 6 of POCSO Act and Sections 364 and 302 I.P.C. and hence the prosecution sent requisition to the Executive Second Class Magistrate to send the F.I.R. to the concerned Judicial Magistrate and subsequently, the Executive Second Class Magistrate sent all the necessary and relevant documents to the learned

Judicial Magistrate, Rameswaram. Thus, the delay in sending the F.I.R. to Judicial Magistrate was explained.

(iii) There are some slight contradictions between the statement of witnesses and inquest and that alone will not vitiate the entire prosecution case.

(v) Departmental action has been initiated by the Superintendent of Police, Ramanathapuram District against the four erring officials for not taking immediate steps to investigate the case promptly.

(vi) The accused took his own child and committed sexual offence, which is against nature, and subsequently committed her murder by throwing her into the sea with the intention to screen his offence. Thus, the offence committed by the accused falls in the rarest of rare cases and hence, the trial Court has awarded capital punishment, which is to be confirmed.

10. The weakness of the prosecution case is laid bare through submissions of learned amicus curiae. Learned Additional Public Prosecutor submissions do not carry forward the prosecution case. The finding of conviction arrived at by the Trial Court is totally erroneous.

In the result, in this Referred Trial (MD).No.2 of 2017, the conviction and sentence imposed on the accused/respondent, by Judgment dated 03.11.2017, made in Special Sessions Case No.2 of 2017, on the file of the learned Principal District Judge, [Fast Track Mahila Court] Ramanathapuram, are set aside and the accused/respondent shall stand acquitted of all charges. Fine amount, if any, paid by the accused/respondent shall be refunded to him. The accused/respondent is directed to be released forthwith, unless his custody is required in connection with any other case. We record our appreciation of learned amicus curiae for his meticulous preparation and presentation, which has been of much assistance in dealing with the case.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Principal District Judge,
(Fast Track Court), Ramanathapuram.

2.The Judicial Magistrate, Ramanathapuram.

3.-do- Thro' The Chief Judicial Magistrate,
Ramanathapuram.



4.The Sessions Judge,
Fast Track Mahila Court,
(FAC), Ramanathapuram.

5.The Superintendent of Prison,
Central Prison, Madurai.

6.The Inspector of Police,
Temple Police Station,
Rameshwaram, Ramanathapuram District.

7.The Commissioner of Police,
Ramanathapuram District.

8.The District Collector,
Ramanathapuram.

9.The Director General of Police,
Mylapore, Chennai.

10.The Inspector General of Police,
South Zone, Madurai.

11.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

The Section Officer/Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.N.Anantha Padmanathan, Advocate SR.No. 68151

Judgment made in
R.T. (MD) No.2 of 2017
12.06.2018

sj
JM/SKN RSK/SAR 1/29.08.2018/7P/15C