

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Criminal Appeal No.481 of 2018
and
Crl.M.P.No.10712 of 2018

Boovaraghamoorthy
S/o.Ramasamy Appellant/A2

Vs

State represented by
Inspector of Police,
Cuddalore N.T.Police Station,
Cuddalore. Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against judgment of
learned Sessions Judge (Mahila Court), Cuddalore, passed in
S.C.No.210 of 2017 dated 07.07.2018.

Appellant : Mr.Shanmugasundaram,
senior counsel for Mr.A.Gopinath

Respondent/State : Mr.K.Prabhakar,
Additional Public Prosecutor

JUDGMENT

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

This appeal arises against judgment of learned Sessions
Judge (Mahila Court), Cuddalore, passed in S.C.No.210 of 2017
dated 07.07.2018.

2. Appellant/A2 along with another faced trial in
S.C.No.210 of 2017 on the file of learned Sessions Judge (Mahila
Court), Cuddalore, for offences u/s.302 r/w 34 and 201 r/w 302

IPC. Case of the prosecution is that PW-1 had two daughters through his first wife. PW-1's first wife left him and married another. Thereafter, PW-1 married A1. A1 developed illicit intimacy with A2 and they spent time together when none else were in the house. The deceased child Aathifa, aged 2½ years, was a hindrance to them. On 03.01.2017, A1 and A2 took the child to the roof of the house and threw the child into the water tank, owing to which the child died. A2, in order to screen the offence, informed PW-1 that his first wife Asha came along with henchmen, beat her and took away the child. As the search for the child ended in vain, PW-1 preferred Ex.P1, complaint and a case was registered in Crime No.11 of 2017 on the file of respondent for 'Girl Missing'. On completion of investigation and filing of charge sheet, the case, on committal, was tried in S.C.No.210 of 2017 on the file of learned Sessions Judge (Mahila Court), Cuddalore.

3. Before trial Court, prosecution examined 11 witnesses and marked 18 exhibits and 2 material objects. On behalf of defence, 1 witness was examined and 1 exhibit was marked.

3.1. PW-1, father of deceased child, spoke to illicit relationship between A1 and A2 which he warned against, of having been informed by A1 on 03.01.2017 at about 6.30 p.m., over phone, that his first wife came along with henchmen, beat her and took the deceased child, of searching for the deceased child, questioning his first wife about the whereabouts of the child on 04.01.2017, his first wife informing she had no knowledge and of preferring Ex.P1, complaint, on 05.01.2017. PW-1 spoke to having been informed by the house owner that a foul smell emanated from tap water, of seeing the water tank using an emergency light and finding his child floating, informing police there about, of having been informed by PW-2 that accused took the child to the roof on 03.01.2017, of both accused absconding and of seeing a wooden stool near the water tank.

3.2. PW-2, house owner, spoke to A1 raising a hue and cry informing that PW-1's first wife had taken the deceased child, informing PW-1 over phone and seeing the body of deceased child floating in the water tank on 05.01.2017 at about 10.30 p.m. PW-2 has been treated hostile as he did not support the prosecution case of his away witnessed both accused proceeding to the terrace carrying the deceased child and a stool, the stool having been required to reach the top of the water tank.

3.3. PW-3 spoke to having gone to Manjakuppan on 03.01.2017 at about 06.00 p.m. to see his friend, of seeing A2 putting something (rose in colour) into the water tank and coming to know on 05.01.2017 that PW-1's child was found floating in the water tank. PW-3 also spoke to learning of illicit relationship

between both accused and that they had done to death the child.

3.4. PW-4 spoke to attesting Ex.P2, observation mahazar.

3.5. PW-5 spoke to attesting Ex.P3, observation mahazar and Ex.P4, seizure mahazar.

3.6. PW-6, Village Administrative Officer, spoke to both accused appearing before him, of A2 tendering a confession, which he recorded, handing over both accused to police along with a report, attesting confession given to police and attesting Ex.P9, seizure mahazar for MO-1 [wooden stool].

3.7. PW-7, Doctor, spoke to conducting postmortem on the body of deceased child and of issuing Ex.P13, Postmortem Report. PW-7 stated that the child appeared to have died due to 'drowning with asphyxia'.

3.8. PW-8, first wife of PW-1, spoke to having two children through PW-1, of having left PW-1 and marrying another, visiting PW-1's house on 20.12.2016 to see her children, A1 asking her to take her children as otherwise she would murder them, being enquired by PW-1 on 05.01.2017 about the whereabouts of deceased child, informing no knowledge there regards and having been informed on 06.01.2017 that her child was done to death.

3.9. PW-9, Sub-Inspector of Police, spoke to registering a case in Crime No.11 of 2017 on the file of respondent for 'Girl Missing' and of forwarding the same to Court and higher officials. Ex.P14 is the First Information Report.

3.10. PW-10, Inspector of Police, spoke to conducting investigation in the case, visiting the scene, preparation of mahazars, examining witnesses and recording their statements, removing the body of deceased child from the water tank, forwarding the body of deceased to Government Hospital, Cuddalore, altering the First Information Report to reflect offences u/s.302 and 201 IPC, conducting inquest in the presence of panchayatdars and witnesses, forwarding the body of deceased towards conduct of postmortem, of PW-6, Village Administrative Officer, handing over both accused, arresting both accused, recording the confession of accused, seizure of material objects and on his transfer, handing over the case papers to PW-11, Circle Inspector.

3.11. PW-11, Circle Inspector, spoke to conducting further investigation in the case and on completion thereof, filing of charge sheet informing commission of offences u/s.302 r/w 34, 201 r/w 302 and 497 IPC.

4. On questioning u/s.313 Cr.P.C., accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 07.07.2018, convicted and sentenced them as follows:

Accused	Offences u/s.	Sentence
A1 and A2	302 r/w 34 IPC	Life imprisonment and fine of Rs.5,000/- i/d 1 year S.I.
A1	201 r/w 302 IPC	2 years R.I. and fine of Rs.2,000/- i/d 6 months S.I.
A2	201 r/w 302 IPC	5 years R.I. and fine of Rs.10,000/- i/d 6 months S.I.

Trial Court directed that sentences run concurrently. There against, the present appeal.

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

6. Prosecution has examined PW-2, owner of the house, wherein PW-1 and A1 resided, to speak to his witnessing both accused proceeding to the terrace carrying the deceased child and a stool. PW-2 has turned hostile. PW-3 has been examined to speak to his having chanced upon a street immediately adjacent to the occurrence house, having looked up and seeing the appellant throwing a rose coloured object into the water tank. His evidence to such effect, even if accepted, would not carry the prosecution case far as it is not his specific deposition that he saw the body of the child being thrown into the water tank. In any event, PW-3 fails the test of reliability since he has admitted to not knowing appellant/accused earlier and he has not been subjected to a Test Identification Parade which would have lent credibility to his identification of the accused. PW-6 has claimed that both this appellant as also A1 appeared before him at his office on 07.01.2017 at about 09.00 a.m. and tendered confession recorded in Ex.P5. However, Ex.P18, inquest report, prepared on 06.01.2017 at about 05.00 p.m. informs the involvement and commission of offence by appellant and the other accused. Confession is seen to be the making of the prosecution. In any event, the same was post registration of the case and time and time again has this Court held that such a confession is not admissible. The confession of A2 becomes even more suspect given the evidence of PW-6 that A1 had also signed therein but Ex.P5 does not reflect signature of such accused. One other submission of learned senior counsel which this Court finds most appealing is that A1, even as per the confession recorded from her, continued to dwell in the house post

occurrence and that such would hardly be a possibility if one keeps in mind that the inmates including the accused would be using water flowing through the taps from the tank and A1 would have done so in the knowledge that a body was afloat in the tank's wateriest. There absolutely is no material as would justify the finding of conviction arrived at by trial Court.

The Criminal Appeal is allowed. The conviction and sentence passed by learned Sessions Judge (Mahila Court), Cuddalore, passed in S.C.No.210 of 2017 dated 07.07.2018, are set aside. Appellant is acquitted of all charges. Appellant is directed to be released forthwith if his detention is not required in connection with any other case. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge (Mahila Court),
Cuddalore.
- 2.The Inspector of Police,
Cuddalore N.T.Police Station,
Cuddalore.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison, Cuddalore.
- 5.The District Collector/District Magistrate,
Cuddalore.
- 6.The Director General of Police,
Mylapore, Chennai 4.
- 7.The Section Officer,
Criminal Section, High Court, Madras.

Criminal Appeal No.481 of 2018

BR(CO)
CSL/08.03.2019