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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.07.2019

PRONOUNCED ON : 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.A(MD)No.186 of 2019

Tmt.Nagarathinam

... Appellant / Sole Accused

Vs.

State through
The Inspector of Police,
Sempatty Police Station,
Dindigul District.
[Crime No.115 of 2003]

... Respondent / Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in SC No.92 of 2004, on the file of the learned Additional District and Sessions Court (Fast Track Court), Dindigul District dated 10.01.2005 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

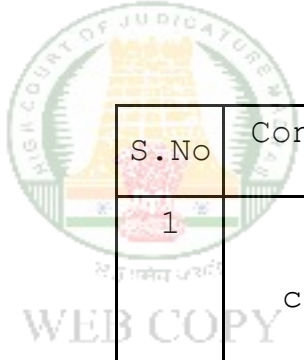
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by B.PUGALENDHI.,J.]

This appeal is filed against the conviction and sentence imposed against the appellant in S.C.No.92 of 2004, on the file of learned Additional District and Sessions Court (Fast Track Court), Dindigul and vide judgment dated 10.01.2005.

2.The trial Court framed charges under Section 302 IPC (two counts) and 309 IPC and after conclusion of the trial, found this appellant guilty for the commission of offence under Sections 302 (two counts) and 309 IPC and she was imposed with the following sentences:



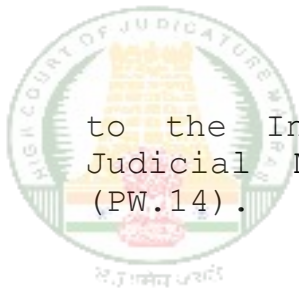
S.No	Conviction u/s	Sentence
1	302 (two counts)	Two life imprisonment for the death of Ramar and Laxmanan and to pay a fine of Rs.10,000/- and in default to pay the fine amount, to undergo simple imprisonment for a period of three months.
2	309	Simple imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default to pay the fine amount, to undergo simple imprisonment for a period of three months.

The trial Court ordered that the substantive sentence of imprisonment shall run concurrently.

3.The case of the prosecution in brief is as follows:

3.1.This appellant /accused was married to one Raju (PW.3) and they were having twin sons namely Ramar and Laxmanan, aged about five years. The accused had developed illegal intimacy with one Suresh of Nadupatti Village and on knowing the same, her husband (PW.3) condemned the same. On seeing the accused talking to one flower merchant (PW.6), her paramour Suresh also got infuriated, came to the accused house on 28.03.2003 around 8.00 am and scolded her for having contact with the flower merchant(PW.6), quarrelled with her and also beaten her with hands and left around 11.00am. The appellant, who already lost the love and affection of her husband (PW.3) on account of her relationship with Suresh, got disappointed over the quarrel picked up by her paramour Suresh, decided to commit suicide along with her children and she gave pesticide to her children namely Ramar (D-1) and Laxmanan(D-2). Laxmanan after consuming it, ran to the house of the appellant's sister and informed the appellant's sister's daughter one Pitchaiyammal (PW.11) that his mother is giving some medicine to his brother. Pitchaiyammal and her mother Unnamalaiammal (PW.2) came to the appellant's house, found the appellant attempting to take poison, pushed away the tumbler and prevented the appellant from consuming poison and they also took the children Ramar and Laxmanan to one Kasthuriba Hospital at Chinnalapatti. The Doctor at Chinnalapatti, informed them that the children were dead. Thereafter, the appellant went to the office of the Village Administrative Officer (PW.1) and gave her extra judicial confession statement about the occurrence to PW.1 and he recorded the same in the presence of his Village Assistant one Murugan around 4.30 pm. PW.1 after recording the statement confirmed the incident through his Assistant and produced the statement along with the appellant before the Sub Inspector of Police (PW.17), Sempatty Police Station around 6.00pm.

3.2.On receipt of the complaint, PW.17 registered the same in Sempatty Police Station in Crime No.115 of 2003 under Section 302 IPC on 28.03.2003, as against the accused and communicated the same

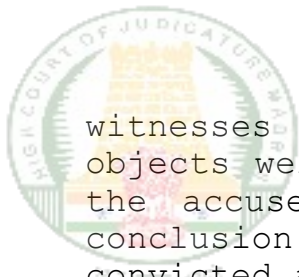


to the Inspector of Police (PW.18) and also to the concerned Judicial Magistrate Court through the Head Constable Subbaiah (PW.14).

3.3. On receipt of the intimation, PW.18 made a requisition to the District Head Quarters for the assistance of hand writing experts and scientific expert, went to the place of occurrence and prepared observation mahazar (Ex.P.3) and rough sketch (Ex.P.21) in the presence of VAO (PW.1) and one Murugan Village Assistant. Thereafter, he conducted the inquest for the deceased Ramar and prepared the inquest report (Ex.P.22) and sent the body of Ramar for postmortem, through Head Constable Kulanthairaj (PW.15). Thereafter he conducted inquest for the deceased Laxmanan in the presence of Panchayatadars and prepared the inquest report (Ex.P.23) and sent the body for post mortem. He also recovered the material objects MO.1 three stainless steel tumblers in Ex.P.4 and thereafter, he arrested the accused on 29.03.2003 at about 7.00 am in the presence of PW.1 and village assistant Murugan and recorded her confession statement and pursuant to the confession statement, he also recovered the pesticide tin marked as MO.5, which was concealed in the cattle shed in front of the accused house through the Mahazar Ex.P.6. He also recovered a Green and Pink colour T-shirt (MO.6), brown colour trousers (MO.7), Maroon Colour T-shirt (MO.9) and a Pink Colour Trousers (MO.9) the clothes of D-1 and D-2 from the Constable PW.15 and PW.16.

3.4. Dr. Thirunavukkarasu (PW.9) conducted the postmortem of the deceased children and the postmortem certificate of the Laxmanan (D-2) is marked as Ex.P.9. The Viscera was preserved and was sent for chemical analysis and the chemical analysis report is marked as Ex.P.10 and as per Ex.P.10 Endosulphan poison - poly chlorinated pesticide was detected on the stomach, intestine, liver and kidneys of the deceased Laxmanan and he gave his final opinion in Ex.P.11 and according to his final opinion, the deceased Laxmanan appears to have died of Endosulphon Poison. Similarly, PW.9 conducted the postmortem for the deceased Ramar and the postmortem certificate of D-1 Ramar is marked as Ex.P.12. The Viscera was preserved and was sent for chemical analysis and the chemical analysis report is marked as Ex.P.13 and as per Ex.P.13 Endosulphon poison - poly chlorinated pesticide was detected on the stomach, intestine, liver, kidneys of deceased Ramar. The Doctor gave his final opinion in Ex.P.14 and according to his final opinion deceased Ramar appears to have died of Endosulphon Poison. The Investigating Officer (PW.18), examined the Doctor PW.9 and other witnesses and filed his final report against this appellant for the offences under Section 302 and 309 IPC, before the learned Judicial Magistrate No.II, Dindigul in PRC No.2 of 2004 and the same was committed to the Court of Sessions and taken up for trial in SC.No. 92 of 2004.

4. During the trial, on the side of the prosecution, 18



witnesses were examined, 27 Exhibits were marked and 11 material objects were also produced. The incriminating materials were put to the accused under Section 313 CrPC and she denied the same. In conclusion of the trial, the trial Judge found the appellant guilty, convicted and sentenced as stated in paragraph No.2.

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5. Heard Mr. Alagumani, learned Counsel appearing for the appellant and Mr. S. Chandrasekar, learned Additional Public prosecutor appearing for the state and perused the materials placed on record.

6. The learned Counsel appearing for the appellant would submit that the entire case rests upon the circumstantial evidence and all the witnesses, except the official witnesses, have turned hostile and the motive was not established and the extra judicial confession statement said to have been recorded by PW.1 is a very weak piece of evidence, with which the appellant was convicted and there is no corroborative materials in support of the case of the prosecution.

7. Per contra, the learned Additional Public Prosecutor would submit that though the ocular witnesses have turned hostile, the prosecution has made out their case with the available evidence. In the extra judicial confession statement the appellant herself had stated that due to the attitude of his paramour, she administered the pesticide to her children and she also attempted to commit suicide and the prosecution has established its case beyond reasonable doubt and accordingly, the trial Court has also rightly found the appellant guilty, convicted and sentenced her.

8. This is a case of circumstantial evidence and therefore, it would be relevant to refer to the decision of the Supreme Court in *Padala Veera Reddy vs State of A.P.* reported in 1991 SCC Criminal 407, wherein, the Supreme Court laid down the test, which has to be adopted in dealing with cases of circumstantial evidence and the same reads thus:

"15. ...in a case of circumstantial evidence, such evidence must satisfy the following test:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of



any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

9. By applying the ratio laid down by the Hon'ble Supreme Court, we have analysed the evidence in this case as follows:

Except the official witnesses, all other witnesses have turned hostile in this case. PW.1 is the Village Administrative Officer of the concerned village, who had deposed that on 28.03.2003 at about 4.00 pm, the accused appeared before him and stated that she had extra marital affair with one Suresh and the said Suresh had also suspected her fidelity, abused her and also beaten her around 11.00 am on that day and therefore, she got frustrated and in order to commit suicide, she had taken her children from the school and administered Endosulphan Poison to them. Her younger son Laxmanan went and informed her sister Unnamalaiammal (PW.2) and PW.2 came with her daughter PW.11 and they prevented her from taking poison, when she attempted to drink the poison and thereafter, all of them took the children D-1 and D-2 to Chinnaalappatti Kasthuriba Hospital, where they were declared dead. After placing the dead bodies in the house, she came and reported the incident to him.

10. PW.1 Village Administrative Officer, after ascertaining the incident through his assistant recorded her statement in Ex.P.1 and reported the same to the Sempatty Police Station around 6.00pm. The statement recorded by PW.1 from the accused is marked as Ex.P.1 and the complaint of PW.1 is marked as Ex.P.2. On receipt of the complaint PW.17, the Sub Inspector of Police, registered a case in Crime No.115 of 2003, on 28.03.2003 at about 6.00pm and communicated the same to the Inspector of Police (PW.18) and to the Judicial Magistrate-II, Dindigul, through Head Constable (P.14). The First Information Report (Ex.P.20) reached the concerned Court at about 11.00pm. On receipt of the intimation, PW.18 had visited the occurrence place, prepared the observation Mahazar (Ex.P.3) and rough sketch (Ex.P.21) and recovered the material objects MOs.1 to 4 from the place of occurrence in Ex.P.4, he also arrested the accused on 29.03.2003 and recovered an orange colour tin SICOSULFAN 35 (Endosulphane 35 %) from a cattle shed in front of the accused house in Ex.P.6, he also sent the bodies for postmortem and the Doctor (PW.9) has conducted postmortem of D-1 and D-2 on 29.03.2003 and the postmortem certificate, chemical analysis report and the final opinion of D-1 Laxmanan are marked as Exs.P.9, 10 and 11 respectively. Similarly, postmortem certificate, chemical analysis report and final opinion of the deceased Ramar are marked as Ex.P.12, 13 and 14 respectively. As per the evidence of the postmortem Doctor PW.9, both deceased appears to have died of Endosulphan Poison.

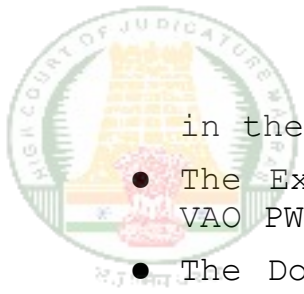
11. The recovered material objects were also sent for chemical

analysis through the Judicial Magistrate - II, Dindigul and the request letter of the Judicial Magistrate-II, Dindigul to the Assistant Director of Chemical analysis Forensic Lab, Madurai is marked as Ex.P.26. The Assistant Chemical Examiner to Government vide his report dated 30.04.2003, which is also marked as Ex.P.27, found the presence of Endosulphan in the material objects MO.1 to MO.11 as follows:

Sl.No	MOs	Report
1	Three empty stainless steel (MO.1)	Detected endosulphan in the washings of the three stainless tumblers
2	Stainless steel vessel (MO.2)	Detected endosulphan in the washings of the stainless steel vessel
3	Stainless steel knife with an orange plastic handle (MO.3)	Did not detect endosulphan
4	A white plastic container with a plastic lid (Mo.4)	Detected endosulphan
5	An orange/red/yellow cylindrical metallic container with a hole (MO.5)	Detected endosulphan
6	A dirty pink coloured T.Shirt (MO.6)	Did not detect endosulphan
7	A pale green shorts (MO.7)	Detected endosulphan
8	Black silken thread (Mo.8)	Did not detect endosulphan
9	Dirty maroon coloured T-shirt (MO.9)	Did not detect endosulphan
10	Pink coloured shorts (MO.10)	Detected endosulphan
11	Black silken thread (Mo.11)	Detected endosulphan

12. From the available evidence, the following circumstances are found as against the accused:

- The evidence of PW.7 Lalitha, child welfare officer Alamarathupatti that the deceased had taken her children Ramar and Laxmanan from Anganwadi Centre on 28.03.2003 on the pretext, she was taking them to an outstation.
- Evidence of PW.2 Unnamalaiammal, sister of the accused that her sister's son Laxmanan 1 ½ years back came to their house weeping that his mother the accused was administering some medicine to his brother Ramar.
- The children of the accused, Ramar and Laxmanan were found dead



in the house of the accused on 28.03.2003.

- The Extra judicial confession statement of the accused to the VAO PW.1 and the case registered based on the complaint of VAO.
- The Doctor PW.9 conducted the postmortem of the children Ramar and Laxmanan on 29.03.2003 and gave his opinion and as per the postmortem certificate the deceased died due to endosulphan poisoning.
- The investigating officer PW.18 recovered a 250ml tin (MO.5) Sicosulfan-35, a fertiliser content of Endosulphan 35% from the cattle shed opposite to the accused house on 29.03.2003 at 9.00 am in Ex.P.6 and pursuant to the confession statement of the accused in the presence of VAO (PW.1) and also recovered 3 stainless steel tumblers (MO.1), stainless steel vessel (MO.2), stainless steel knife with an orange plastic handle (MO.3), and a white plastic container with a plastic lid (Mo.4) in Ex.P.4 from the place of occurrence on 28.03.2003 and the chemical analysis report Ex.P.27 would disclose the presence of poison Endosulphan in MOs.1 to 3
- Evidence of PW.10 Liagat Ali, Inspector of Police Finger Print Division that the finger Print of the accused tallied with the finger print of the photo taken from the tumbler (MO.1) and his report is also marked as (Ex.P.16)

13.This is a pathetic case the mother herself killed her own children and in similar such circumstances, this Court in Suyambukkani Vs State of Tamil Nadu, represented by Inspector of Police, ICF, Police Station, reported in 1989 L.W.(Cr1), has held as follows:

"27.As pointed out earlier, ill-will and premeditation should be both present in a case of murder. The absence of one of them coupled with an important excusing circumstance would transform the offence into a culpable homicide. In the present case, there is ofcourse premeditation, but, obviously, the mother along with her children, is clearly in our opinion an excusing circumstances equivalent to those enumerated in the Exceptions to S.300 IPC and will be therefore, in the nature of an Exception, when the mother escapes and children die, bringing the offence to one punishable under S.304, Part-I, IPC.

Following the above decision of this Court, in Guruswami Pillai Vs State, reported in 1991(1)(MWN(Cr) this Court has held as follows:

"It is well established that the accused caused the death of her two children and she did it intentionally. Therefore, the offence would be one of murder, unless it comes under the exceptions embodied in S.300 IPC. The wording of S.300 IPC would suggest that those exceptions



are imitative. However, one has to take a deep look at the way in which the code was framed, the intention with which it was drafted and the time when it was made applicable.

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Therefore, though technically the exception to S.300 IPC appear to be limitative they can no longer be considered so, after afflux of time. In fact, Courts have added one more exception known as sustained provocation.

Now that it is clear that the exceptions under S.300 IPC are not limitative, we have to examine whether Nallathangal's syndrome can be considered as one of the exceptions. Since the code in the structure makes the exceptions limitative, Courts have to show restraint on circumspection in adding exceptions and such additions should be ejusdem generis.

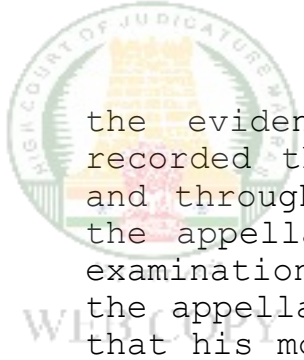
One thing is clear from an analysis of exception, namely, that is all the exceptions either premeditation or ill will is absent. Therefore, when both are present, it will be impossible to consider the matter as an exception.

As pointed out earlier, ill-will and premeditation should be both present in a case of murder. The absence of one of them coupled with an important excusing circumstance would transform the offence into a culpable homicide. In the present case, there is of course premeditation, but obviously no ill-will. The extreme course of family suicide, the mother along with her children is clearly in our opinion an excusing circumstances equivalent to those enumerated in the Exceptions to S.300 IPC and will be therefore, in the nature of an exception, when the mother escapes and children die, bringing the offence to one punishable under S.304, Part I IPC.

We are in full agreement with the observations of the Division Bench in Suyambukkani's case. On facts, on the first charge, the appellant will be liable to be convicted under Section 304 part -I, IPC and not under Section 302 IPC."

14. But this ratio laid down by this Court cannot be applicable to the given facts and circumstance of this case.

15. The fact that the appellant has administered poison to her two children Ramar and Laxmanan on 28.03.2003, is elicited through



the evidence of the Village Administrative Officer (PW.1) who recorded the extra judicial confession statement of the appellant and through the evidence of PW.2 and PW.11. PW.2 is the sister of the appellant and though she was treated as hostile in her chief examination, she would admit that 1 ½ years back, the appellant's son Laxmanan came to her house weeping and informed that his mother / appellant was attempting to pour some medicine to his brother Ramar. Immediately, she went to the house of the accused and where she found Ramar in a serious condition, scolded the appellant and took them to the hospital.

16. PW.11 is the daughter of PW.2, who is also said to have accompanied PW.2 to the appellant's house and she was also treated as hostile but she supported the case of the prosecution to a limited extent in her chief examination that on 28.03.2003 at about 2.30 pm D-2 Laxmanan came to her house and informed them that his mother appellant was attempting to pour some medicine to his brother Ramar and on his call, both PW.2 and PW.11 went to the accused house and taken the children to hospital. Both PW.2 and PW.11 denied in their statements that the appellant attempted to commit suicide by drinking endosulphan poison which was prevented by them.

17. According to the prosecution case, the appellant had purchased the endosulphan poison twenty days prior to the occurrence when she was scolded by her paramour Suresh. The investigation agency failed to establish when and from where she had purchased the endosulphan poison. On the date of occurrence also, the appellant's paramour Suresh came to her house around 8.30 am, scolded her and beaten her for having chat with PW.6 and therefore, she got frustrated that already she lost her love and affection of her husband PW.3 and also lost the confidence of her paramour, administered poison to her children and attempted to commit suicide. There is no other corroborative piece of evidence to establish that the appellant had also attempted to commit suicide. Her own sister PW.2 and sister's daughter PW.11 would deny that the appellant had attempted to commit suicide and they have prevented the same.

18. In the absence of any such material that the appellant had also attempted to commit suicide, the conviction and sentence as against the appellant for the commission of offence punishable under Section 309 IPC cannot be sustained and accordingly, she is acquitted from the charge under Section 309 IPC. Insofar as 302 IPC is concerned, prosecution has established the case against this appellant that the appellant's son Ramar and Laxmanan died due to endosulphan administered by the appellant to them and in the absence of any material that the appellant committed the offence on frustration, the conviction and sentence imposed as against the appellant for the commission of offence under Section 302 IPC (two counts) is confirmed.



19.Mr.R.Alagumani, learned Counsel appearing for the appellant, would submit that the appellant is languishing in jail from the date of occurrence on 28.03.2003 and she has committed the offence out of frustration and she had already completed more than 16 years in the prison and in view of the double murder, the benefits which was extended to even hardcore criminals vide GO.360, was not made applicable to the appellant.

20.Considering the facts and circumstances of the case, the conviction and sentence under Section 302 IPC (two counts) are confirmed. However, it is open to the Government to consider the case of the appellant in the light of G.O.(Ms)No.64 Home (Prison-IV) Department, dated 01.02.2018 and also taking into account, the period of her incarceration.

21.In the result, the criminal appeal is partly allowed and the order dated 10.01.2005 in S.C.No.92 of 2004, on the file of learned Additional District and Sessions Court (Fast Track Court), Dindigul is modified and the appellant is acquitted of the charge under Section 309 IPC. However, conviction under Section 302 IPC and sentence of imprisonment, fine and default sentence are confirmed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

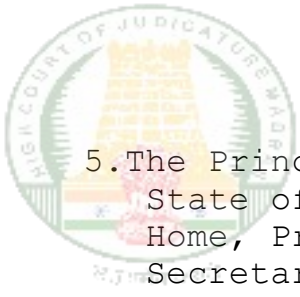
To

1.The Additional District and Sessions Judge,
(Fast Track Court),
Dindigul.

2.The Inspector of Police,
Sempatty Police Station,
Dindigul District.

3.The Superintendent,
Special Prison (Woman),
Madurai.

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



5.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

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+1 CC to M/s.R.ALAGUMANI, Advocate (SR-80251[F] dated 07/08/2019)

Cr1.A(MD)No.186 of 2019

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