

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.721 of 2019 and
Crl.M.P.No.14997 of 2019

Sumathi

... Appellant

-Vs-

State Represented by,
The Inspector of Police,
Vellore North Police Station,
Vellore District.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment order passed by the learned Additional District and Sessions Court, (FTC) Vellore, in S.C.No.22 of 2015, vide his order dated 29.03.2019.

For Appellant : Mr.L.Sharadh Kumar

For Respondent : Ms.T.P.Savitha,
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the Judgment of conviction and sentence imposed by the learned Additional District and Sessions Judge (FTC), Vellore in S.C.No.22 of 2015.

2.The respondent Police have registered a case in Crime No.575 of 2014 under 'Boy Missing' on the complaint given by the father (PW1) of the deceased Dinesh and after investigation, as per the Alteration Report (Ex.P17) altered the Section to 302 and 201 IPC. On completion of investigation, the respondent Police laid a charge sheet before the learned Judicial Magistrate No.IV, Vellore and same was taken on file as P.R.C.No.2 of 2017. After completing the formalities, since the offence are triable exclusively by the Court of Session, the case was committed to the learned Principal District and Sessions Judge, Vellore and the same was taken on file as S.C.No.22 of 2015 and made over to the Additional District and Sessions Court (FTC), Vellore for disposal.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charges against the appellant, the learned Additional District and Sessions Judge (FTC), Vellore framed charges for offence punishable under Sections 364, 302 and 201 IPC.

4.After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned Additional District and Sessions Judge (FTC), Vellore found guilt of the appellant under Section 300 Exception-4 punishable under Section 304(i) and 201 IPC and convicted and sentenced him as follows:-

- For offence punishable under Section 304(i), the appellant was sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo one year Rigorous Imprisonment.
- For offence punishable under Section 201 IPC, the appellant was sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year Rigorous Imprisonment. Both the sentences were ordered to run consecutively.

5.Challenging the above said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

6.The learned counsel for the appellant would submit that there is no eye witness in this case and no independent witness was examined by the prosecution to prove the case. The motive between the appellant and the defacto complainant has not properly established by the prosecution and there is no corroborative evidence either in the form of independent witness or any material implicating the appellant. The learned counsel would further submit that the recovery is not based on the confession statement (Ex.P7) given by the appellant. Therefore, the confession alleged to have been made by the appellant is not admissible in evidence. In the absence of the eye witness and independent witness, the motive has to be established by the prosecution and also the chain of circumstances without any break in link.

7.The learned counsel for the appellant would further submit that none of the witnesses have spoken that the deceased was taken by the appellant to her house and no last seen-together theory in this case. None of the witnesses have spoken that the deceased was lastly seen with the appellant. Therefore, the prosecution has failed to establish the motive and also the last seen-together theory without break of chain of link. There are material inconsistencies in the statements of the witnesses. The chain of circumstances is not complete. The learned trial Judge, without considering the same,

convicted the appellant based on the sympathy and assumption and conjectures. Thus, the appeal deserves to be allowed.

8.Ms.T.P.Savitha, Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that the motive between the wife of the defacto complainant (PW.1) and the appellant was clearly established by the prosecution. The body of the deceased was recovered from the locked house of the appellant especially inside the bureau. Though there is no eye witness in this case, the prosecution has established the case with cogent and reliable evidence. Since the body of the deceased was recovered from the locked house of the appellant, it is for the appellant, who has to establish how the body of the deceased came into the house. When the body of the deceased child was recovered from the locked house of the appellant, it is the duty of the accused to explain under what circumstances the body of the deceased child came into the locked bureau especially the said bureau is in the exclusive custody of the appellant. Though the learned trial Judge has found that the offence under Section 364 and 302 IPC not made out, however found guilt of the appellant under Section 304(i) IPC and 201 IPC. Therefore, findings of conviction and sentence recorded by the trial Court does not warrant any interference and therefore, the appeal is liable to be dismissed.

9.Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent and also perused the materials available on record.

10.The case of the prosecution is that PW1 and PW2 are husband and wife and the deceased is their son. The father of the deceased (PW1) was running a mechanic shop and residing at Thottapalayam and the accused was residing on the opposite house of the father of the deceased (PW1). The father of the deceased (PW1) and the accused were having illegal intimacy, at one time, the said relationship came to the knowledge of wife of PW1 (PW2). Thereafter, quarrel said to have been aroused between the wife of PW1 (PW2) and the accused. Enraged over it, the appellant developed enmity against the wife of PW1 (PW2) and took a revenge by way of murdering her male child Dinesh (deceased). On 24.10.2014, at about 02.00 p.m., when the son of PW1 and PW2 was playing in front of house, he found missing and not returned to home. Immediately, his parents (PW1 & PW2) searched in and around the house and PW1 went to the Police Station and lodged a complaint (Ex.P1).

11.Based on the complaint (Ex.P1) given by PW1, an First Information Report [Ex.P10] in Crime No.575 of 2014 was registered under 'Boy Missing'. During investigation, one Chandrasekar told that on 24.10.2014, at about 08.00 p.m., the appellant told him that she murdered the son of PW1 and PW2

and kept in bureau. Immediately, the Police rushed to the scene, broken the closed house of the appellant and opened the bureau and recovered the body of the deceased, who is the son of PW1 and PW2 and found the mouth of the deceased was tied. After completing investigation, the respondent Police altered the Section to 302 and 201 IPC as per alteration report (Ex.P17) and laid a charge sheet before the learned Judicial Magistrate No.IV, Vellore and same was taken on file in P.R.C.No.2 of 2017. After completing the formalities, the case was committed to the learned Principal District and Sessions Judge, Vellore and the same was taken on file as S.C.No.22 of 2015 and made over to the Additional District and Sessions Judge (FTC), Vellore for disposal.

12.During the trial, on the side of the prosecution, as many as 12 witnesses were examined as PW1 to PW12 and 22 documents were marked as Exs.P1 to P22 and 9 material objects were exhibited. After completing the examination of prosecution witnesses, when incriminating circumstances were culled out from the evidence of prosecution witnesses put before the appellant, he had denied as false. On the side of the defence, no oral and documentary evidence was produced.

13.After completing trial and hearing arguments advanced on either side, the learned Additional District and Sessions Judge (FTC), Vellore, vide judgment, dated 29.03.2019 in S.C.No.22 of 2015 convicted and sentenced the appellant as stated above.

14.This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding and accordingly, this Court has re-appreciated the entire oral and documentary evidence produced before this Court to give an independent finding.

15.In this case, the age of the deceased boy was only three years and he is the son of PW.1 and PW.2. The allegation against the appellant is that she was having illegal intimacy with the father of the deceased boy (PW.1) and on coming to know about the same, the mother of the deceased (PW.2) picked up a quarrel with the appellant. Due to which, there was a grudge and enmity between the mother of the deceased (PW.2) and the appellant. In order to take vengeance, the appellant took the son of PW.1 and PW.2 to her house and murdered the deceased by pressing a pillow on his nose and mouth and kept the body in the bureau and locked the house. Since the deceased boy was found missing and did not return back to home, the father of the deceased (PW.1) gave a complaint to the respondent Police under 'Boy Missing'. Immediately, the respondent Police reached the scene of occurrence and took up the investigation. At that time, one Chandrasekar informed that the appellant informed him that she murdered the son of PW.1 and kept the body in the bureau which

was kept in her house. The investigating officer enquired the appellant about the incident and since the appellant denied the same and also refused to give key to open the door of the house, the Investigation team broke open the door and also bureau and found the body of the deceased. The Investigating Officer recovered the body of the deceased from the bureau, seized the materials found place in the occurrence under Seizure Mahazar (Ex.P15), conducted Inquest on the body of the deceased, prepared Observation Mahazar (Ex.P14), Rough Sketch (Ex.P13), sent the body of the deceased for post-mortem and also sent the Material Objects (MO1 to MO8) for examination. On completion of investigation, the respondent Police have laid the charge sheet.

16. During trial, the learned trial Judge framed the charges against the appellant for offence under Sections 364, 302 and 201 IPC. In order to substantiate the charges, on the side of the prosecution totally 12 witnesses were examined and 22 documents were marked, besides 9 material objects were exhibited, out of which PW1 and PW2 are the father and mother of the deceased boy.

17. PW.1, the father of the deceased has stated about missing of his son (deceased) and also giving a complaint (Ex.P1) to the respondent Police. PW.2, the mother of the deceased has clearly stated about the enmity between her and the appellant and also stated that there was illegal intimacy between the appellant and her husband (PW.1), due to which, there was frequent quarrel between her and the appellant. Further, she has stated about the complaint (Ex.P1) given by her husband (PW.1) for her son missing. PW.3, the relative of PW.1, has stated that he saw the Investigating Officer came to the occurrence place and since the appellant refused to give a key to open the house, the Investigation team broke open the door and recovered the body of the deceased who is the son of PW.1 and PW.2 from the bureau and he identified the dress wore by the deceased before the trial Court. PW.4, the Mahazar Witness has stated that the Investigating Officer came to the place of occurrence, prepared Observation Mahazar (Ex.P14) and seized the Material Objects (MO1 to MO8) under Seizure Mahazar (Ex.P15) and recorded the confession of the appellant (Ex.P7) and he put his signature in Exs.P7, P14 & P15 and the same were marked as Exs.P3, P5 & P8. PW5 is the witness for conducting inquest on the body of the deceased and he put his signature (Ex.P10) in the Inquest Report (Ex.P16). PW.7 is the photographer attached to the Office of Deputy Superintendent of Police and he stated that he took photos in the place of occurrence and also took photo on the body of the deceased. PW.11, the Scientific Officer has stated about the examination on the inner organs of the deceased and found no poisonous substance and issued the report Ex.P20 and also sent the Material Objects (MO1 to MO8) to Forensic Science Lab for Chemical Examination and received the reports (Exs.P18 to P19). PW12 is the Doctor, who conducted the Postmortem on the

body of the deceased and he has given the final opinion (Ex.P22) that the deceased would have died due to Asphyxia and issued the Postmortem Certificate (Ex.P21).

18. Therefore, from the evidence of PW.1 to PW.3, it is clearly proved that there was motive between the appellant and PW.2 with regard to the illegal intimacy between the appellant and PW.1. The witness for mahazar (PW.4) and the Photographer (PW.7) has clearly stated that the body of the deceased was recovered from inside the bureau, which was kept in the house of the appellant and both the house and bureau were broken by the Investigation team, since the appellant refused to give key. The Postmortem Doctor (PW.12) has clearly stated about the deceased was died due to "Asphyxia Due to Smothering". Further, there is no eye witness in this case and the prosecution has proved the circumstantial evidence and motive has been clearly established by the prosecution through the circumstantial evidence.

19. The house and bureau where the body of the deceased was recovered, belongs to the appellant and under her control. It is for the appellant, who has to explain how in the locked house and bureau, the body of the deceased came into. In this case, the appellant failed to give explanation how the body of the deceased came into her house. Therefore, from the evidence PW.1, to PW.4, the Photographer (PW.7), the Scientific Officer (PW.11) and the Postmortem Doctor (PW.12) and also from the complaint (Ex.P1) and Exs.P14 to P22, it could be seen that prosecution has clearly established the motive between the appellant and PW.2 and the illegal intimacy between the appellant and PW.1 and also proved that the body of the deceased was recovered from the house of the appellant.

20. The learned trial Judge found that the act of the appellant does not fall under Section 302 IPC. Due to motive and emotional disturbance and with sudden provocation, the appellant has committed the offence without any pre-plan and therefore, the learned trial Judge found not guilty for offence punishable under Section 302 IPC, but found guilty under Section 300 Exception-4 punishable under Section 304(i) IPC and convicted the appellant under Section 304(i) IPC. Therefore, under these circumstances, this Court finds that the act of the appellant would not fall under Section 302 IPC and the appellant due to sudden provocation and emotion, she has committed the offence and the learned trial Judge rightly convicted the appellant for offence punishable under Section 304(i) IPC.

21. As far as the offence under Section 201 IPC is concerned, the body of the deceased was recovered from the locked bureau which was kept in the locked house of the appellant and the appellant has not offered any explanation with regard to how the body of the deceased child came into her bureau. Therefore, the appellant has committed the

offence under Section 201 IPC and the trial Court has rightly convicted the appellant under Section 201 IPC.

22.Since the deceased boy was three years old and the appellant had taken away the life of the child, there is no mitigating circumstances to reduce the sentence of imprisonment. Therefore, the appeal deserves to be dismissed and is, accordingly, dismissed and the judgment of conviction and sentence rendered by the trial Court is confirmed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge (FTC),
Vellore.
2. The Inspector of Police,
Vellore North Police Station,
Vellore District.
3. The Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate No.IV
Vellore.
5. The Superintendent,
Special Prison for Women,
Vellore.
6. The Section Officer (Record)
Criminal Section,
High Court, Madras.

Cr1.A.No.721 of 2019

RK(CO)
GMY(02/07/2021)