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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2021

DELIVERED ON : 10.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.652 of 2018

Parameswari

...Appellant/Sole Accused

vs.

State through
The Inspector of Police,
Ramanatham Police Station,
Cuddalore District.
(In Crime No.249 of 2016)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 praying to call for the records and set aside the the judgment and conviction passed by the Hon'ble Sessions Judge, Mahila Court, Cuddalore, in S.C. No.24 of 2017 dated 13.07.2018.

For Appellant : Mr. P. Palanikumar

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor.

J U D G M E N T

Judgment of the Court was delivered by R.HEMALATHA, J.

This appeal is against the judgment and order dated 13.07.2018, passed by the learned Sessions Judge, Mahila Court, Cuddalore, in S.C. No.24 of 2017, in and by which the accused was convicted for an offence under Section 302 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.10,000/- and in default to pay the fine amount, to undergo Rigorous Imprisonment for 2 years.



2. The facts of the case as narrated by the prosecution flows in the following sequence.

- i. A male child, Nithish, aged 4 years, was found murdered in a bathroom situated in a secluded place and behind the house of his parents, Thiru. Murugesan (P.W.2) and Tmt. Sangeetha (not examined), with a slit neck and in a pool of blood, on 23.08.2016 in the evening. The deceased was their youngest son. They were residents of Chitheri Village, Veppur Taluk, Cuddalore District, and were working as agricultural labourers.
- ii. On the fateful day, the deceased boy, Nithish, along with his siblings Sakthi Parameswari (P.W.3), aged 9 years, and Sankareswari, aged 7 years, had returned from their school at about 5 p.m. Having found their house locked, they left their respective school bags in the elevated frontage of their house (Thinnai in tamil) and went to the house of their neighbour (the appellant Parameshwari) to watch TV.
- iii. Parameshwari, the appellant, was living with her mother-in-law and her son Jeeva, a toddler. Her husband was working in Singapore.
- iv. It is alleged that the victim Nithish tried to wake up Jeeva, the son of the appellant. The appellant intervened and according to Sakthi Parameswari (P.W.3), the sister of the victim, and Pachamuthu (P.W.4), a milk vendor, who was riding a two wheeler on the road, she (the appellant) took Nithish, the victim, outside and then to the bathroom which is behind the house of P.W.2.
- v. The parents who returned from work by about 5.30 P.M., enquired the whereabouts of the victim Nithish and then it was found that he was missing. Sakthi Parameswari (P.W.3), sister of the victim, reportedly told her parents that he would be playing somewhere outside. A frantic search was made when one Manickammal (not examined) found the boy dead in a pool of blood in the bathroom behind the house of P.W.2. He bore a cut injury on his neck. Both the parents were shocked to find their son dead and P.W.2 along with other villagers carried his son's corpse to his house from the bathroom.
- vi. A message was passed on to Thiru. Venkatesan (P.W.1), the maternal uncle of the deceased Nithish, who rushed to the place of his sister Sangeetha (mother of the deceased boy). He also went to Ramanatham Police Station and lodged a police complaint (Ex.P1).



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vii. Thiru Chockalingam (P.W.9), the Special Sub Inspector of Police, received the complaint (Ex.P1) and registered F.I.R (Ex.P10) in Ramanatham Police Station Crime No.249 of 2016 for an offence under Section 302 IPC at about 9 p.m. on the same day. The FIR was also despatched to the residence of the Judicial Magistrate, Thittakudi at 2 a.m., the next day early morning.

viii. Thiru. Rajaram (P.W.10), the Inspector of Police, took up investigation, visited the scene of occurrence at about 10.15 p.m on the date of occurrence, prepared an Observation Mahazar (Ex.P2) and a Rough Sketch (Ex.P11) in the presence of one Ramasamy (not examined) and Venkatesan (P.W.5). He also seized the blood stained cement mortar sample (M.O.1) and one without blood stain (M.O.2) from the bathroom, where the child was found dead, under the cover of a mahazar Ex.P3 in the presence of the same witnesses.

ix. An inquest (Ex.P12) was conducted on the body of the deceased by P.W.10 in the presence of 5 panchayatdharas and thereafter, the body was sent for postmortem to the Government Hospital at Thittakudi.

x. Dr. Harisankar (P.W.7), Assistant Surgeon of Government Hospital, Thittakudi, conducted autopsy on the body of the deceased child at about 3 p.m. on 24.08.2016 and found the following injuries:

- 1) Deep cut injury over neck (anterior aspect) of size 8 x 2 x 1cm running across crico-thyroid junction, causing discontinuity in airway & exposure of subcutaneous tissue.
- 2) Superficial cut injury over inner aspect (flexor aspect) of Rt. Wrist 1 x 0.5 cm in size.
- 3) Reddish brown skin discoloration of lateral border of Rt. Eye.

He also sent visceral organs and hyoid bone to the Forensic Science Laboratory, Chennai. As per the viscera report (Ex.P6), no poison or alcohol was detected in the internal organs of the victim. Hyoid bone report (Ex.P7) showed that the hyoid bone was in tact. Based on these reports, P.W.7 gave his final opinion that "the death appears to have been due to asphyxia and hemorrhage shock due to injury to the trachea and blood vessels".

xi. P.W.10 had collected the blood stained school uniform of the deceased child and belt (M.O.6 to M.O.8) and sent them



to Forensic Lab, Chennai, through the Judicial Magistrate, Thittakudi.

- xii. On the next day (24.08.2016), a sniffer dog by name Arjun was pressed into service which went into the house of the accused from the scene of occurrence and brought a piece of cloth from the residence of the appellant. Thiru. Krishnamurthy (P.W.8), Head Constable, was the one who handled the dog.
- xiii. Based on certain confidential inputs, P.W.10 arrested the accused on 27.08.2016, near Chitheri bus stop, at about 8.30 a.m. in the presence of Thiru. Rajaram (P.W.6), Village Administrative Officer of Chitheri Village and his assistant (not examined). A police confessional statement of the appellant was recorded, based on which, a blood stained blade (M.O.3), a nighty (M.O.4) and a blood stained towel (M.O.5) were recovered, which the appellant had hidden in a pit in a grove behind her residence, under a cover of a mahazar (Ex.P5) in the presence of P.W.6 and his assistant.
- xiv. According to the prosecution it came to light that the appellant had an extramarital relationship with one Arulraj (not examined) and both of them were caught in a compromising position one day by P.W.2 and from that day she was carrying a grudge against P.W.2 and his family and ended up in this murder.
- xv. Thiru. Manickam (P.W.11), Assistant Director of Forensic Laboratory, Chennai, found human blood in the cement mortar (M.O.1), nighty (M.O.4), blade (M.O.3), towel (M.O.5), a blue half trouser (M.O.6), half sleeve shirt (M.O.7) and belt (M.O.8). The biological reports were marked as Ex.P13 and Ex.P15.
- xvi. P.W.10 examined P.W.1 to P.W.3 and other witnesses and recorded their statements under Section 161(3) Cr.PC. After completing investigation, he filed a final report against the accused in P.R.C.35/2016 before the District Munsif-cum-Judicial Magistrate, Thittakudi, who, committed the case to the Court of Sessions after furnishing copies of documents to the appellant under Section 207 Cr.PC.
- xvii. To the charge framed under Section 302 IPC by the learned Sessions Judge, Mahila Court, Cuddalore, the appellant pleaded not guilty. In order to establish the guilt of the accused, the prosecution examined 11 witnesses and marked 15 exhibits and 8 material objects. After full trial, she was questioned under Section 313 Cr.PC with regard to



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the incriminating circumstances appearing in evidence against her and she denied of having committed any offence. No witness was examined on her side and the learned Judge, Mahila Court convicted her under Section 302 IPC and sentenced her as already stated.

3. Mr. P. Palanikumar, learned counsel for the appellant had the following points to highlight.

- a) There was no motive for the murder though the prosecution has tried to invent a motive which is not duly supported by any independent witness/evidence.
- b) Circumstantial evidence should have a complete chain of events with no missing links and in this case, there are many missing links.
- c) The absence of the name of the accused in the complaint (Ex.P1), even as a suspect, is fatal to the case of the prosecution. The evidence of P.W.3 cannot also be relied upon.
- d) No comparison of the blood grouping in the blood stains found on the clothes of the accused with that of the victim was even attempted to be made.
- e) The brother of the accused's husband was not examined though he was reportedly present when the alleged incident of P.W.2 finding the accused with Arulraj in her house in a compromising position, took place.
- f) The said Arulraj has also not been examined.

4. Per contra, Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor, contended that the prosecution had proved the guilt of the appellant beyond any reasonable doubt and that there are no missing links in the prosecution theory. He would further contend that when P.W.3, the child witness, had clearly deposed that she saw the appellant taking the victim to the bathroom behind her residence and also withstood the testimony of cross examination, the trial court was right in convicting the appellant for the offence under Section 302 IPC.

5. The victim was a child aged just 4 years. He was with his siblings till the incident took place. He was reportedly watching the television in the house of the appellant along with his sisters till the moment he was reportedly taken out of her house by the appellant. The rough sketch (Ex.P11) shows that the said bathroom is behind the house of P.W.2 & P.W.3. P.W.3 also reportedly told her father (P.W.2) on the date of



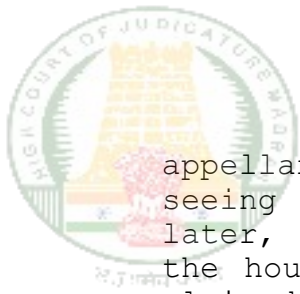
occurrence that the victim (her brother), might be playing somewhere nearby. P.W.3 has not told anything about the unusual behaviour of the appellant and also the appellant taking away her brother towards bathroom. On the contrary her deposition before the trial court was different. She was specific in deposing that she saw the appellant taking her brother to the bathroom. This raises a doubt because as per the rough sketch (Ex.P11), had the appellant taken the victim boy from the backyard of her house, P.W.4 who was on the main road riding his two wheeler could not have seen the accused with the victim. If the appellant had taken the victim through the front portion of her house, then P.W.3 ought to have followed the appellant to know where exactly the appellant and her brother were going. If what P.W.3 has stated in her deposition is true, it is not known as to why the name of the appellant did not find a place in the complaint (Ex.P1).

6. The motive, according to the prosecution, is that the appellant had an extra marital affair with one Arulraj. According to P.W.2, when he was sleeping outside the house, on the 21st day of Tamil month Adi, the mother-in-law of the appellant raised an alarm that an intruder had entered her house and when he (P.W2) and the brother-in-law of the appellant went inside the house, they caught the appellant and Arulraj red handed in a compromising position. His further deposition is that since the appellant suspected him that he was the one who spread the said news in the village, she took revenge on him.

7. If taking revenge on P.W.2 is the only reason for the murder, prosecution ought to have established the same. The prosecution has not made any attempt on that. The mother-in-law of the appellant, who was the one who allegedly raised the alarm on the intruder in her house (who was later found to be Arulraj) was not examined. Similarly, Ganesan, the brother of the husband of the appellant and Arulraj were also not examined. P.W.10, the Investigation Officer, also admitted during the course of cross examination that neither Arulraj nor Ganesan (brother of appellant's husband) was enquired by him.

8. P.W.2 has further deposed that the appellant broke all the flower pots kept by him in his residence to vent her anger on the incident when P.W.2 caught the appellant red handed when she was with Arulraj. Though the complainant (P.W.1) has in the cross examination stated that he forgot to mention the earlier feud between P.W.2 and the accused, it is revealed that at no point of time neither P.W.1 nor P.W.2 suspected the accused.

9. Barring the milk vendor (P.W.4) and the elder sister of the victim (P.W.3), no one else had even seen the



appellant and the victim together. The milk vendor's version of seeing the children going into the house of the appellant and later, of seeing the appellant bringing the victim child out of the house of the appellant are not very convincing. P.W.3 who claimed of having seen the appellant taking her victim brother to the bathroom, which was located in a secluded place behind the residence of P.W.2, lacks credibility because if her narration was true, it should have aroused her suspicion and she would have followed her brother. Though her deposition has to be considered with some lenience as she was just 9 years old, this part of her statement has to be taken with a pinch of salt. Moreover, in the Inquest Report (Ex.P12), the column No.4, as to who saw the deceased boy alive last, is kept blank.

10. It is clear from the deposition of the prosecution witnesses that the prosecution has not been able to make out the convincing sequence of events to establish the guilt of the accused. The last seen theory, as already stated, contains many loopholes. Forensic analysis reports do not serve any purpose to establish the guilt of the appellant and instead appears to be an empty formality. Finger prints were not lifted from the scene of crime. The deployment of sniffer dog did not help the prosecution in any way. The weapon used for the murder was allegedly a shaving blade. The Doctor (P.W.7), during the course of cross examination, stated that a shaving blade causing such an injury cannot be ruled out. However, he also added that the blade was not shown to him when he was examined by the police.

11. It is well settled that in a case which rests on circumstantial evidence alone, the following must be proved.

- a) The circumstance from which the conclusion of the guilt to be drawn should be established in the first instance.
 - b) All the facts so established should be consistent only with the hypothesis of the guilt of the accused.
 - c) The circumstances should be of conclusive nature and tendency.
 - d) They should be such as to exclude every hypothesis but the one proposed to be proved.
 - e) They must be such as to show that within all human probability the act must have been done by the accused.
- In the instant case, the prosecution had failed to prove the guilt of the accused beyond all reasonable doubts.



12. In the result,

(i) This Criminal Appeal is allowed.

(ii) The conviction and sentence passed by the Sessions Judge, Mahila Court, Cuddalore, in S.C. No.24 of 2017 dated 13.07.2018, is set aside.

(iii) The appellant is directed to be released forthwith, if her custody is not required in any other case.

(iv) Fine amount, if any, paid by her shall be refunded.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
Ramanatham Police Station,
Cuddalore District.
(In Crime No.249 of 2016)
2. The Sessions Judge,
Mahila Court, Cuddalore.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court,
Madras.
5. The Superintendent of Prison,
Special Women Prison,
Puzhal.
6. The Superintendent of Central Prison,
Vellore.



7. The District Munsif Cum Judicial Magistrate,
Titakudi.

8. The Chief Judicial Magistrate (For Information),
Cuddalore.

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+1cc to Mr. P. Palanikumar, Advocate, S.R.No.65680

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