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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2022

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CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

CrI.A.No.81 of 2019

Balu @ Balamurugan .. Appellant/Accused

Vs.

The State rep. by
The Inspector of Police
Kai Kalathur Police Station
Veppanthattai Taluk
Perambalur District

.. Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) Cr.P.C.
against the judgment and order dated 31.05.2018 passed by the
Sessions Judge, Mahila Court, Perambalur, in S.C.No.21 of 2015.

For Appellant : Mrs.D. Geetha

For Respondent : Mr.M. Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.

This criminal appeal is directed against the judgment and order of conviction and sentence dated 31.05.2018 passed by the Sessions Judge, Mahila Court, Perambalur, in S.C.No.21 of 2015.

2. The prosecution story runs thus :

2.1. Vennila (P.W.21) is the daughter of Irudayaraj (P.W.22) and Arokiamary (P.W.23) and they were all residing in Natham Village in Sirkazhi.



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2.2. The appellant viz., Balu @ Balamurugan hailed from Kaikalathur Village and he used to go to Natham as a labourer during the harvest season and thereby, he got acquainted with Vennila (P.W.21) and they both decided to marry. Sometime in the year 2013, they got married.

2.3. After their marriage, Vennila (P.W.21) lived with Balu in her matrimonial home in Mariamman Koil Street in Kaikalathur. Balu started suspecting the fidelity of Vennila (P.W.21) and used to beat her and so, she used to frequently go to her natal home in Natham. However, on such occasions, mediation talks would be held and Vennila (P.W.21) would be sent back with Balu to Kaikalathur.

2.4. While so, Vennila (P.W.21) became pregnant and she delivered a male baby, 45 days prior to the date of occurrence viz., 22.12.2014. After the birth of the baby, Balu brought both Vennila (P.W.21) and the baby with him, but, continued to harass Vennila (P.W.21) saying that she was not chaste.

2.5. In the morning of 21.12.2014, a big quarrel ensued between them, in which, Balu thrashed Vennila (P.W.21). Again, in the night, Balu picked up a quarrel with her and slapped her. Disgusted with this behaviour of Balu, Vennila (P.W.21) decided to go to her natal home on the next morning.

2.6. Accordingly, on 22.12.2014, around 07.30 a.m., Vennila (P.W.21) carried the baby and started walking towards the bus stand to board a bus to reach her natal village. Balu came behind her in a bicycle, accosted her and asked her to return home, by promising her that he would not beat her again. Since she did not trust his words, she ran away into a nearby lane. Balu chased her, caught hold of her tresses and hit her head with a stone. She started bleeding. He pulled the baby from her and when she tried to pull back the baby from him, he stated, "as long as the baby is there, you would do all this, now I will get rid of this one." So saying, he held the legs of the baby and dropped the baby headlong to the ground. The baby died.

2.7. Vennila (P.W.21) went to the police station and gave a statement (Ex.P8), based on which, the police registered a case in Kaikalathur P.S. Crime No.222 of 2014 on 22.12.2014 at 08.30 a.m. for the offences under Sections 307 and 302 IPC against Balu and prepared the printed FIR (Ex.P10), which reached the jurisdictional Magistrate on the same day at 03.10 p.m., as could be seen from the endorsement thereon.

2.8. Investigation of the case was taken over by Sivasubaramanian (P.W.31), Circle Inspector, Mangalamedu, (in



short "the I.O."), who went to the place of occurrence and prepared the observation mahazar (Ex.P12) and the rough sketch (Ex.P13). The I.O. recorded the statement of Vennila (P.W.21) and other witnesses. Since the body of the baby was shifted to Balu's house nearby and inquest was conducted there and the inquest report was marked as Ex.P14.

2.9. The body of the baby was sent for post-mortem to the Government Hospital, Perambalur, where, Dr.Senthil Kumar (P.W.12) performed autopsy and noted the following external injuries in the post-mortem certificate (Ex.P9) :

- "i. Multiple abrasions in the right frontal area of the head.
- ii. Anterior fontanelle opened and brain matter comes out through it."

After initial examination, he gave his final opinion as under :

"The deceased would appear to have died of head injury, about 6-12 hours prior to autopsy."

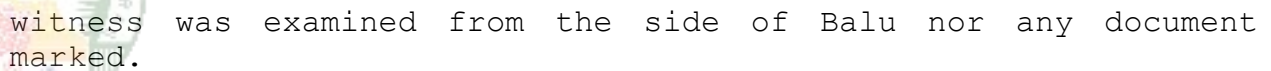
2.10. Balu surrendered before Azhagudurai (P.W.14), Panchayat President, Kaikalathur Panchayat, on 22.12.2014 around 03.30 p.m. and confessed to him that he had thrown his baby, due to which, the baby died. Azhagudurai (P.W.14) took Balu and surrendered him to the police, pursuant to which, the police placed him under arrest.

2.11. After examining the witnesses and collecting various reports, the I.O. completed the investigation and filed a final report in PRC.No.33 of 2015 before the Judicial Magistrate, Perambalur, for the offences under Sections 307 and 302 IPC against Balu.

2.12. On appearance of Balu, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.21 of 2015 and was made over to the Mahila Court, Perambalur, for trial. The trial Court framed charges for the offences under Section 307 IPC for attacking Vennila (P.W.21) and under Section 302 IPC for murdering the baby. When Balu was questioned, he pleaded "not guilty".

2.13. To prove the case, the prosecution examined 31 witnesses and marked 22 exhibits and 1 material object.

2.14. When Balu was questioned under Section 313 Cr.P.C. on the incriminating circumstances against him, he simply denied the same and did not offer any explanation whatsoever. No



2.16. Challenging the aforesaid conviction and sentences, Balu has filed the instant criminal appeal.

4. The prosecution has proved the following facts beyond any doubt :

5. The short question that arises for consideration in this appeal is, how the baby's death happened.

7. Per contra, Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor submitted that the evidence of Valliammai (P.W.10) is in itself sufficient to hold that Balu is guilty of the offences.



8. This Court gave its anxious consideration to the rival submissions.

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9. Out of 31 witnesses, 10 witnesses from Kaikalathur Village, turned hostile to the prosecution case, which is not surprising, because, they would not have wanted to let down Balu. As regards the witnesses from Natham Village, they did not turn hostile, but, their evidence is not of any value, because, they all came to Kaikalathur Village, only after the incident had taken place. Therefore, we are left with the evidence of Vennila (P.W.21), Valliammai (P.W.10), Senthilkumar (P.W.12) and Azhagudurai (P.W.14).

10. Before proceeding further, it may be necessary to state here that the defence had adopted a very peculiar procedure in this case. As and when a witness turned hostile, they left it at that. Where the witness supported the prosecution case in the chief-examination, the witness was recalled under Section 311 Cr.P.C. and was made to disown his/her earlier testimony.

11. Senthilkumar (P.W.12) is a native of Kaikalathur Village and he knows Balu and his wife Vennila (P.W.21). He has stated in his evidence that on 21.12.2014, on coming to know about the quarrel between Balu and Vennila (P.W.21), he went to their house and advised Balu. He has also stated that Balu used to quarrel with his wife very frequently. He was cross-examined on the same day, when he was examined in-chief i.e., on 02.06.2017 and the defence was not able to elicit anything contrary from him. However, he was recalled on 11.10.2017 by the defence and during his further cross-examination, he has stated that he had no personal knowledge about the quarrel between Balu and Vennila (P.W.21). Though the prosecution did not declare him hostile, yet, we are rejecting his testimony and we are relying upon his initial version, where he has merely spoken about the quarrel between the Balu-Vennila couple.

12. Vennila (P.W.21), in her chief-examination on 17.06.2017, has completely narrated the entire sequence of events, from the time of her marriage with Balu, including his suspicious nature and the trouble she has undergone at his hands.

13. Coming to the incident in question, Vennila (P.W.21) has stated that unable to withstand Balu's torture, she decided to once and for all to go back to her natal home; while she was

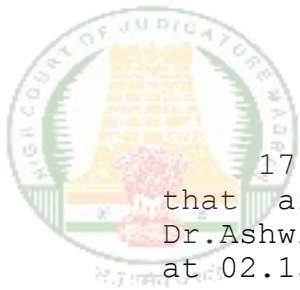


going with the baby to the bus stand around 06.00 a.m., Balu followed her in a bicycle and requested her to return home saying that he would not beat her again; since she did not believe his words, she rushed with the baby to a nearby lane; Balu chased her and caught hold of her tresses and hit her head with a stone, due to which, she started bleeding; he pulled the baby from her and when she tried to pull the baby back from him, he stated, "as long as the baby is there, you would do all this, now I will get rid of this one"; so saying, he held the legs of the baby and dropped the baby headlong to the ground; one lady who was nearby, carried the baby.

14. Vennila (P.W.21) was not cross-examined on 17.06.2017 on the day she was examined in chief, but, was recalled and subjected to grilling cross examination on 08.12.2017, which she withstood. It was suggested to her that, since she wanted to get married to someone else, she planned to get rid of the baby, as the baby was a source of hindrance towards that plan. Therefore, the defence case is that, Balu was nowhere near the place of occurrence and it was Vennila (P.W.21), who got rid of the baby, in order to get married to someone else. In the light of such a defence that has been taken by Balu, it is strange, as to how, we can now infer that the baby slipped from the arms of Vennila (P.W.21) during the scuffle, fell down and died.

15. Coming to the evidence of Valliammai (P.W.10), a native of Kaikalathur Village, who was examined in chief on 02.06.2017, she has stated that in the quarrel between Balu and Vennila (P.W.21), the baby slipped from Vennila's (P.W.21's) arms and fell down; Balu took the baby from the ground and kept the baby with him; she (P.W.10) pulled the baby from Balu and handed over the baby to another lady with instructions to hand over the baby to Balu's father; at that time, there was no injury on baby's head. This witness should have been declared hostile by the prosecution, but, for reasons best known to them, it was not done.

16. However, this witness (Valliammai-P.W.10) was recalled by the defence on 14.02.2018 and was further cross-examined. During further cross-examination, she has stated that she does not know Balu at all and does not know anything about the case. Had the defence not recalled this witness for cross-examination on 14.02.2018, there could have been some force in the submission of Mrs.Geetha that there is a serious doubt as to how the baby sustained injuries.



17. At this juncture, it may be necessary to state here that after the incident, Vennila (P.W.21) was examined by Dr.Ashwin Maduram (P.W.30) on the same day i.e., on 22.12.2014 at 02.15 p.m., who found the following injuries on her person :

- i. 1 x 1 x 1cm cut injury on the left side of the head; and
ii. two abrasions on the left cheek

A copy of the Accident Register was marked as Ex.P11. Even to the doctor (P.W.30), she has stated that she was assaulted by a known person at 07.00 a.m. with a stone near Kaikalathur bus stand.

18. It is true that the trial Court had acquitted Balu of the charge under Section 307 IPC, because, the injuries sustained by Vennila (P.W.21) were simple and the weapon used by Balu was merely a stone. However, no finding has been returned that Vennila (P.W.21) did not suffer any injuries at all in the incident.

19. Finally, we have the evidence of Azhagudurai (P.W.14), President of Kaikalathur Panchayat, who did not turn hostile, but, stated that Balu surrendered before him at 03.30 p.m. and stated that he had thrown the baby and thereby, caused its death. Of course, the extra-judicial confession of Balu was not taken down in writing and that, by itself, cannot be a reason, to completely discard his testimony. On a thorough analysis of the evidence on record, we do not find any infirmity in the findings of the trial Court, warranting interference in this appeal.

In the result, this criminal appeal is dismissed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Sessions Judge
Mahila Court, Perambalur



2.The Inspector of Police
Kai Kalathur Police Station
Veppanthattai Taluk
Perambalur District

3.The Superintendent
Central Prison
Trichy

4.The Public Prosecutor
High Court
Madras

5.The District Collector,
Perambalur.

6.The Director General of Police,
Mylapore, Chennai-4

7.The Superintendent of Police,
Perambalur.

8.The Judicial Magistrate,
Perambalur.

9.The Chief Judicial Magistrate,
Perambalur.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.81 of 2019

SSV(CO)
GMV(27/04/2022)