



Crl.A(MD)No.315 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2022

CORAM :

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

Crl.A(MD)No.315 of 2020

Pandiyammal @ Sundarapandiyammal .. Appellant/Accused No.1

Vs.

The Inspector of Police,
Devaram Police Station,
Theni District.
(In Crime No.264/2007)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, to call for the entire records connected to the judgment in S.C.No.69 of 2008 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Periyakulam in Theni District dated 21.07.2010 and set aside the conviction and sentence imposed against the appellant.



Crl.A(MD)No.315 of 2020

WEB COPY

For Appellant : Mr.R.Alagumani
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by **P.N.PRAKASH, J.**]

This criminal appeal is filed against the judgment and order, dated 21.07.2010 in S.C.No.69 of 2008, on the file of the learned Additional District and Sessions Judge (Fast Track Court), Periyakulam in Theni District.

2. The prosecution story runs thus:

2.1) For the sake of clarity, it needs to be stated at the threshold that interestingly, there are three Murugans in this case, namely, Murugan [P.W-1], Murugan [P.W-3] and Murugan [P.W-5].



CrL.A(MD)No.315 of 2020

WEB COPY

2.2) The deceased Navaneethapriya was the daughter of Murugan [P.W-1] and Booma [P.W-2] and the younger sister of Naveenkumar. She was nine years old at the time of her death. Naveenkumar and Navaneethapriya were studying in 5th and 4th standard respectively in R.C.Middle School, Devaram.

2.3) The family was residing in Devaram Moonandipatti Village, Theni District. Murugan [P.W-1] was employed as a bus driver in KSR Engineering College in Tiruchengode. Therefore, the two children were under the care and protection of their mother, Booma [P.W-2]. The children used to go to school everyday around 8.00 a.m. and return home in the evening. On 03.09.2007, Naveenkumar and Navaneethapriya left for school, but in the evening, only Naveenkumar returned. When Booma [P.W-2] asked him, he stated that Navaneethapriya did not come to school. So Booma[P.W-2] alerted her neighbours and everyone started searching for Navaneethapriya. Information was sent to Murugan [P.W-1], who rushed to the village on the next morning, namely



CrL.A(MD)No.315 of 2020

WEB COPY

04.09.2007. In the meanwhile, around 5.30 to 6.00 a.m., some people found the body of Navaneethapriya in an open water tank adjacent to the land of one Seenimuthu Nadar. Immediately, Ramar [P.W-4] carried the body and brought it to the house of Murugan [P.W-1]. On return from Tiruchengode, Murugan [P.W-1] gave a written complaint, based on which, Jaculine [P.W-17] Sub Inspector of Police, registered a case in Devaram Police Station, in Crime No.264 of 2007 under Sections 302 IPC and 379 IPC on 04.09.2007 at 7.45 hours, against unknown accused and prepared the printed FIR [Ex.P-14], which reached the jurisdictional Magistrate at 02.00 p.m. on 04.09.2007, as could be seen from the endorsement thereon.

2.4) Investigation of the case was taken over by Nallu [P.W-21] Inspector of Police, who was in-charge of Devaram Police Station. The Investigating Officer [P.W-21] went to the place [before the house of P.W-1], where the body was placed and prepared the observation mahazar [Ex.P-6] and rough sketch [Ex.P-17]. He also conducted inquest



CrL.A(MD)No.315 of 2020

WEB COPY

over the body of the deceased and the inquest report was marked as Ex.P-19. He prepared the observation mahazar [Ex.P-6] near the open water tank, where the body was found and also prepared a rough sketch [Ex.P-18]. In the complaint [Ex.P-1], Murugan [P.W-1] has stated that the ear rings and anklets worn by Navaneethapriya were missing from the body of his daughter. In the inquest report, the involvement of the appellant in the crime was suspected, because Murugan [P.W-3] had stated during the inquest that when he went to the house of the appellant, he found the appellant had had her head bath and was cleaning the house.

2.5) This circumstance, namely, that the appellant had a head bath and was cleaning the house was projected as an incriminating circumstance in the inquest report, pursuant to which, the appellant was arrested by the police on 04.09.2007 at 1.15 p.m. After the inquest, the body was sent to the Government Hospital, Uthamapalayam, where, Dr.Mohammed Ali Jinna [P.W-9] conducted autopsy on the body of the



Crl.A(MD)No.315 of 2020

WEB COPY

deceased and issued the postmortem certificate [Ex.P-5].

2.6) In the postmortem certificate[Ex.P-5], Dr.Mohammed Ali Jinna [P.W-9] has noticed three external injuries in the nose, mouth and eyebrows. He has given the final opinion as follows:

“The deceased would appear to have died of shock and hemorrhage due to multiple injuries sustained, 24 to 28 hours prior to autopsy.”

2.7) After the arrest of the appellant at 1.15 p.m. on 04.09.2007 as stated above, her confession was recorded, pursuant to which, the appellant was taken to the house from where the following items were recovered under the cover of a mahazar [Ex.P-11] at 3.15 p.m. on 04.09.2007 in the presence of witnesses Kannan [P.W-10] and Mohan [not examined]:

- (i) one red colour bordered violet colour saree with bloodstains and faeces;
- (ii) one black and light blue colour polyester saree with



CrL.A(MD)No.315 of 2020

WEB COPY

bloodstains and faeces [M.O-9];

(iii) one yellow colour saree [M.O-10]

(iv) one bloodstained white shirt worn by Navaneethapriya [M.O-4];

(v) blue colour half-skirt worn by Navaneethapriya [M.O-5];

(vi) wooden handle of spade [M.O-11] approximately having 2 feet length;

(vii) a rusted tin box having 73 c.m. length x 40 c.m. breadth x 26 cm. height and some bloodstains in the tin box [M.O-12];

(viii) an aluminium basket having height of 25 c.m. x circumference of 25 c.m. [M.O.13];

(ix) a blue colour school bag [M.O-6];

(x) the notebooks [bound and unbound] of Navaneethapriya [M.O-14].

2.8) After the seizure, the appellant was taken to a portia tree in front of her house from beneath which, the following items were



CrL.A(MD)No.315 of 2020

WEB COPY

recovered at 4.00 p.m. on 04.09.2007 under the cover of a mahazar [Ex.P-12] in the presence of witnesses Kannan [P.W-10] and Mohan [not examined]:

- (i) a pair of black stone-fitted gold ear ring with screw weighing 2 grams [M.O.1]
- (ii) one mango designed silver anklet [M.O-2] and polythene cover in which the ear rings and the anklet were packed.

2.9) Thereafter, the appellant was taken to the shop of Natarajan-[P.W-11] at 4.45 p.m. on 04.09.2007 and one silver anklet [M.O.3] was seized under the cover of a mahazar [Ex.P-13] in the presence of some witnesses. Thereafter, the appellant was sent in judicial custody. Thereafter, investigation was continued by Ramlakshmanan [P.W-.22] Inspector of Police, who examined various witnesses, completed the investigation and filed a final report in P.R.C.No.6/2008 in the Court of the District Munsif-cum-Judicial Magistrate, Bodinaikanur against the appellant and one Babu for the offences under Sections 302, 392, 201



Crl.A(MD)No.315 of 2020

WEB COPY

and 202 IPC.

2.10) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Theni and was made over to the Additional Sessions Court(Fast Track Court), Periyakulam for trial in S.C.No.69/2008.

2.11) The trial Court framed charges under Sections 302, 392 and 201 IPC against the appellant and as regards Babu[A2], the trial Court framed charges under Sections 201 and 202 IPC.

2.12) When questioned, both the accused pleaded not guilty. To prove the case, the prosecution examined 22 witnesses and marked 23 exhibits and 21 material objects.

2.13) When both the accused were questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against them,



CrL.A(MD)No.315 of 2020

WEB COPY

they denied the same. No witness was examined nor any document marked on behalf of the accused.

2.14) After considering the evidence on record and on hearing either side, the trial Court, by judgment and order dated 21.07.2010 in S.C.No.69 of 2008, acquitted Babu [A2] of both the offences and convicted and sentenced the appellant [A1] as under :

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.1,000/-, in default, to undergo rigorous imprisonment for six months.
392 IPC	To undergo rigorous imprisonment for ten years.	Rs.1,000/-, in default, to undergo rigorous imprisonment for six months.
201 IPC	To undergo rigorous imprisonment for one year.	Rs.500/-, in default, to undergo rigorous imprisonment for three months

Challenging the aforesaid conviction and sentence, Pandiyammal @ Sundarapandiyammal is before this Court in this appeal.



Crl.A(MD)No.315 of 2020

WEB COPY

3. The conviction certificate of the appellant shows that from 05.09.2007, the date on which she was produced before the jurisdictional Magistrate for first remand, till now, the appellant is in jail. In other words, the appellant was not released on bail during trial. After she was convicted in the year 2010, she did not even choose to file an appeal. However, this appeal was filed only in the year 2020 with a huge delay of 3436 days, which was condoned by this Court and the appeal was admitted.

4. Heard Mr.R.Alagumani, learned counsel appearing for the appellant and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondents.

5. The following facts are beyond a cavil:

- i. Navaneethapriya was the daughter of Murugan [P.W-1] and Booma [P.W-2] and sister of Naveenkumar; residing at Devaram Moonandipatti village, Theni District;



CrL.A(MD)No.315 of 2020

WEB COPY

- ii. Both the children were studying in R.C.Middle School, Devaram where Joy Nirmala Jothi [P.W-12] was the class teacher and Amalraj [P.W-13] was the Headmaster;
- iii. Murugan [P.W-1], father of the children was not in the village on 03.09.2007 as he was working as a driver in Thiruchengode, which is far away from Theni;
- iv. On 03.09.2007, both the children left for school in the morning, but Navaneethapriya did not return in the evening;
- v. Navaneethapriya did not come to school on 03.09.2007 which has been established through the evidence of Joy Nirmala Jothi [P.W-12] and Amalraj [P.W-13];
- vi. The whole village was searching for Navaneethapriya from the evening of 03.09.2007;
- vii. Navaneethapriya's body was found on 04.09.2007 around 6.30 a.m., near the common water tank by Ramar [P.W-4];
- viii. The death of Navaneethapriya was a homicide;
- ix. The appellant was also from the same village and was known



CrL.A(MD)No.315 of 2020

WEB COPY

to the other villagers;

6. The short point that emerges for consideration in this appeal is, whether the appellant was the perpetrator of the offence.

7. The prosecution case as per the final report is that, the appellant was married to one Perumal and through him, she has three children, Meena, Kumar and Saravanan; her husband died three years prior to the incident; she developed intimacy with Babu [A2]; the appellant badly needed money and so, when she saw Navaneethapriya going to school wearing ear rings and anklets, she decided to eliminate her, remove the ornaments and make money out of it; when she saw Navaneethapriya at 9.00 a.m., on 03.09.2007, she took her to her house, hit the child with a spade; murdered her; removed her ornaments and disposed of the same; she informed Babu[A2] about this and together, they disposed of the body near the open water tank adjacent to the land of one Seenimuthu Nadar.



CrI.A(MD)No.315 of 2020

WEB COPY

8. The prosecution is relying upon the following circumstances:

- i. When Murugan[P.W-3], Ramu[P.W-6], Chinnathai[P.W-8] saw the appellant, she had had an oil bath and was cleaning the house;
- ii. Mahendran [P.W-7] had last seen Navaneethapriya in the company of the appellant at 8.00 a.m., on 03.09.2007;
- iii. the recovery of the belongings of Navaneethapriya from the house of the appellant vide Ex.P-11 as stated in paragraph No.2.6 above;
- iv. recovery of a pair of ear ring beneath the portia tree opposite to the house of the appellant based on her disclosure;
- v. recovery of one anklet from the shop of Natarajan [P.W-11].

9. Now, let us first deal with the evidence of Murugan [P.W-3], Ramu [P.W-6] and Chinnathai [P.W-8].



Crl.A(MD)No.315 of 2020

WEB COPY

10. Murugan [P.W-3], in his evidence, has stated that he is from Devaram Moonandipatti village; he knows the appellant and Navaneethapriya; on 03.09.2007, around 4.30 p.m., Booma [P.W-2], the mother of Navaneethapriya, was searching for her; he also joined in search with her on that day; but in the midnight around 12.30, he saw the appellant in the open space near her house with a plastic pot, going into her house; on 04.09.2007, he woke at 6.00 a.m. and saw a commotion in the house of Murugan [P.W-1] and so he went there and saw the body of Navaneethapriya; since he had some suspicion on the appellant, he went to her house and found that she has had oil bath and was cleaning her house.

11. In the cross-examination, Murugan [P.W-3] has stated that the people in the village use the water tank round the clock and he has specifically stated that when he saw the body of the child, it was without clothes and was naked.



CrL.A(MD)No.315 of 2020

WEB COPY

12. Murugan [P.W-5], in his evidence, has stated that he is from Devaram Moonandipatti village; he knows the appellant and the family of Navaneethapriya; in the evening on 03.09.2007, Booma [P.W-2], the mother of the child started looking out for her, he also joined the search; on the same night around 1.00 (midnight), he saw the appellant washing a pot in the open water tank adjacent to the land of Seenimuthu Nadar.

13. In the cross-examination, he has admitted that people of Devaram Moonandipatti village use the water in the tank both in the day and night hours and that people would be around there at all times.

14. Ramu [P.W-6], in his evidence, has stated that he is from Devaram Moonandipatti village; he knows the appellant and the family of Navaneethapriya; on 03.09.2007, he also joined the search along with Booma [P.W-2] to find out the whereabouts of Navaneethapriya; at 12.00 in the midnight of the same day, he saw the appellant coming from the water tank near the land of Seenimuthu Nadar, with an aluminium basket.



CrL.A(MD)No.315 of 2020

WEB COPY

15. Chinnathai [P.W-8], in her evidence, has stated that she is from Devaram Moonandipatti village; she knows the appellant and the family of Navaneethapriya; she also joined the search for the child; on 03.09.2007, Navaneethapriya was missing and the body was found on the next morning near the water tank; on the previous night, around 1.00 a.m., she saw the appellant cleaning her house.

16. An analysis of the evidence of these witnesses shows that they had not seen the appellant with Navaneethapriya at all. Murugan [P.W-3] has stated that after the body was found, when he went to the house of the appellant, he found her having had a head bath and was cleaning the house whereas Chiannathai [P.W-8] stated that in the midnight of 03.09.2004, she saw the appellant cleaning the house.

17. These witnesses, at the most, say that they saw the appellant had washing her clothes in the tank near the land of Seenimuthu Nadar, which is commonly used by all the villagers both in the day time as well



CrL.A(MD)No.315 of 2020

WEB COPY

in the night hours. This, by itself, in our view, is not incriminating. Then, we have the evidence of Mahendran [P.W-7], who has stated that at 8.00 a.m. on 03.09.2007, he saw the appellant in the company of Navaneethapriya. This witness has further stated that he knew that on 04.09.2007, the body of Navaneethapriya was found near the open water tank, but he did not inform anybody that he had seen Navaneethapriya with the appellant on the previous date at 8.00 a.m. and when this was specifically put to him in the cross-examination, he stated that he forgot and therefore, he did not tell anyone. This explanation appears to be very unconvincing inasmuch as when the whole village was searching for Navaneethapriya, this witness would have naturally told everyone that he had seen Navaneethapriya with the appellant at 8.00 a.m. on 03.09.2007. Hence, we are unable to place reliance on the testimony of this witness.

18. Finally, coming to the recovery, all the recoveries have taken place at a break-neck speed on 04.09.2007 itself as set out above. The first recovery is with regard to the books and dress of Navaneethapriya.



Crl.A(MD)No.315 of 2020

WEB COPY

The recovery mahazar shows that the bloodstained school uniform white shirt [M.O.4] of Navaneethapriya was recovered from the house of the appellant, whereas the photographs of the dead body of Navaneethapriya clearly show that Navaneethapriya was wearing school uniform in white colour. That apart, Muthaiya [P.W-14], Special Sub Inspector of Police, Devaram Police Station, has clearly stated that the white shirt that was worn by the child was handed over to him after the postmortem. Therefore, this entire recovery becomes suspect.

19. Now, coming to the recovery of the two anklets, according to the police, one anklet was recovered from beneath the portia tree and the other anklet was recovered from the shop of Natarajan [P.W-11], who, in his evidence, has stated that the appellant came with one anklet to his shop along with one Chitra [not examined] and Thangam [P.W-16] and sold the anklet for Rs.140/-. No document was produced by him to substantiate this.



Crl.A(MD)No.315 of 2020

WEB COPY

20. Be that as it may, Thangam [P.W-16], in his evidence, has stated that he is from Thiruppur and he came to Devaram Moonandipatti village on 04.09.2007, and at that time, the appellant told him that she has one anklet which she found on the road and wanted to dispose it of; so, Thangam [P.W.16] took the appellant to the shop of Natarajan [P.W-11], helped her in pledging the anklet for Rs.140/- out of which the appellant gave Rs.10/- as commission to him. In his evidence, he has stated that he came all the way from Thiruppur, which is far away from the village, had a cup of tea and returned to Thiruppur. The fact remains that the appellant herself knows Natarajan [P.W.11], because he [P.W.11] is in the same village and if she had wanted to pledge one anklet, she need not have taken the services of Thangam [P.W-16] at all as that would only further incriminate her. Natarajan [P.W.11] has stated that the appellant had sold the anklet but Thangam [P.W-16] has stated that the appellant had pledged the anklet. Thereafter, the seizure of the other anklet from beneath the portia tree appears, on the face of it, unbelievable. Thus, we hold that the recoveries that have been effected



Crl.A(MD)No.315 of 2020

WEB COPY

were merely make-believe ones and they do not inspire the confidence of this Court. Hence, this appeal deserves to be allowed.

21. In the result,

(i) This Criminal Appeal is allowed.

(ii) The conviction and sentence imposed on the appellant, vide judgment and order dated 21.07.2010 by the learned Additional District and Sessions Judge (Fast Track Court), Periyakulam, in S.C.No.69 of 2008 are set aside and the appellant is acquitted of all charges. Fine amount, if any, paid by her, shall be refunded.

[P.N.P., J.] & [R.H., J.]
20.06.2022

Index : Yes/No

Internet : Yes/No

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Crl.A(MD)No.315 of 2020

WEB COPY

To

- 1.The Additional District and Sessions Judge (Fast Track Court),
Periyakulam,
Theni District.
- 2.The Inspector of Police,
Devaram Police Station,
Theni District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.315 of 2020



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Crl.A(MD)No.315 of 2020

**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

**Judgment made in
Crl.A.(MD)No.315 of 2020**

20.06.2022