



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.03.2022

DELIVERED ON : 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)No.177 of 2019

WEB COPY

Roselin Packiarani

...Appellant / Sole Accused

Vs.

State represented by
The Inspector of Police,
Palakkarai Police Station,
Tiruchirappalli District.

...Respondent / Complainant.

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 15.02.2019 passed in S.C.No.63 of 2017 on the file of the learned Sessions Judge, Tiruchirappalli Division, Tiruchirappalli District and set aside the Judgment and Acquit the appellant of the charge leveled as against him.

For Appellant : Mr.K.Veilmuthu
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

JUDGMENT

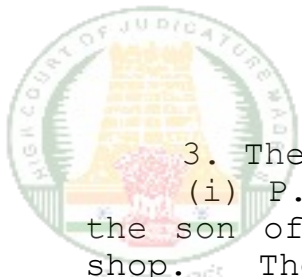
R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 15.02.2019, passed in S.C.No.63 of 2017, by the learned Sessions Judge, Tiruchirappalli Division, Tiruchirappalli District.

2. The appellant / sole accused stood convicted and sentenced to undergo imprisonment, as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
364 IPC	To undergo life imprisonment.	To pay a fine of Rs.2,000/-, in default, to undergo four years rigorous imprisonment.
302 IPC	To undergo life imprisonment.	To pay a fine of Rs.2,000/- in default, to undergo four years rigorous imprisonment.

(Both the sentences were directed to run concurrently.)



3. The brief facts of the prosecution are as follows:

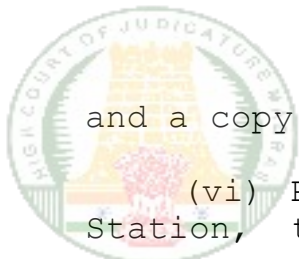
(i) P.W.1 is the wife of P.W.3. The deceased child Shirish is the son of P.Ws.1 and 3. P.W.1 was running a cell-phone recharge shop. The accused became acquainted with P.W.1. Due to such acquaintance, the accused was given a job in P.W.1's shop. The accused also used to do some household work for P.W.1. During pregnancy, P.W.1 was about to close her shop. At that time, the accused requested P.W.1 to allow her to look after the shop and run the business. Accordingly, the accused was put in-charge of the shop for some period. After the child's birth, when P.W.1 returned back to the shop, she came to know that the accused has misappropriated funds from the shop. Thereafter, P.Ws.1 and 3 decided to dispense with the services of the accused. Even after the accused was stopped from working in P.W.1's shop, she used to come to the shop and used to take the child of P.W.1. On 30.07.2016, at about 12.30 p.m., the accused came to the shop of P.W.1 as usual and took the child. Thereafter, P.W.1 also left to the market. P.W.6 is the mother-in-law of P.W.1 and mother of P.W.3. She was also present in the shop of P.W.1, when the accused took the child with her.

(ii) P.W.2, one Stephen Raj, who is the neighbouring shop owner, at about 2.15 p.m., on 30.07.2016, saw the accused taking the child to a secluded lane. Suspecting the accused, P.W.2 followed and saw that the accused took the child to the terrace of an old and dilapidated house. P.W.2 followed her and saw that the accused tried to strangulate the child besides she was also causing injuries to the child with knife. When P.W.2 raised alarm and shouted at her, the accused ran away from that place along with the child. Immediately, P.W.2 called P.W.3 and also rushed to the house of P.W.3. At that time, the accused came there and handed over the child to P.W.6 and ran away from that place.

(iii) P.W.4, one Ramesh also saw the accused taking the child to the terrace of the house belonging to one Amala Doss. Thereafter, he came to know that the child was dead. P.W.5, One Abdullah Sha also saw the accused taking the child of P.W.1 on 30.07.2016.

(iv) P.W.6 while she was in the house, the accused came with the child at 2.30 p.m., and dropped the child on her shoulder and left the place. P.W.6 found injuries on the child and the child was in serious condition. At that time, P.Ws.1 and 3 came there and immediately, they took the child to the hospital. However, the Medical Officer-P.W.15, found that the child was already dead and issued Accident Register- Ex.P.5.

(v) P.W.18, the then Sub-Inspector of Police of Palakkarai Police Station, received the complaint - Ex.P.1 from P.W.1 and registered an F.I.R-Ex.P.14 in Crime No.402 of 2016 for the offence



and a copy to the Superior Officer.

(vi) P.W.19, the then Inspector of Police of Palakkarai Police Station, took up the investigation and went to the place of occurrence and prepared Observation Mahazar(Ex.P.2) and Rough Sketch (Ex.P.15) in the presence of witnesses and recorded the statement of witnesses. On the same day, he arrested the accused at 8.00 p.m., recorded her confession and recovered the material objects(M.O.2) under Ex.P4 and also forwarded all the material objects to the Court. On the next day morning, he conducted inquest on the dead body of the child and prepared the Inquest Report-Ex.P18 and gave a requisition to the Medical Officer to conduct autopsy. P.W.16-Dr.Saravanan, conducted autopsy and found the following external and internal injuries:

"1.Obliquely vertical, linear, reddish, scratch abrasion 1.1 X 02. cm, on right side of middle part of nose with intervening normal skin: The direction of the injury was downwards and towards the midline of face.

2.Obliquely Vertical, linear, reddish, scratch abrasion 1.4 X 0.5 cm, on upper part of right cheek, 1.5 cm right lateral from the injury no.1: upper part of the injury was on lower eyelid of right eye; The direction of the injury was downwards and towards on midline of face;

3.Obliquely Vertical linear, reddish, scratch abrasion 2.5 X 0.3 cm, on left side of lower part of chest, 4.5 cm left lateral from midline of chest;

4.Irregular, blackish abrasion 1 X 1 cm, on inner aspect of upper part of left knee;

5.Multiple, overlapping, linear, reddish, crisscross, scratch abrasions and multiple, overlapping, linear, crisscross, skin deep, incised injuries present over an area of 2.5 X 0.5 cm on lower part of right side of scrotum; deep to this injuries, on dissection of Scrotum, Dark red extravasation of blood over an area of 1.5 X 1 X 0.2 cm, on the soft tissue present above the right testis;

6.Multiple overlapping, crisscross, linear, reddish, scratch abrasions and Multiple, overlapping, linear crisscross, skin deep, incised injuries over an area of 2.5 X 1.3 cm on outer aspect of left side of scrotum; All the underlying structures were intact;

7.Ill defined, incomplete, oblique ligature abrasion 8 X 2 cm on right side of neck, 4.5 cm below chin, 4.5 cm above suprasternal notch and 4 cm below right mastoid process; on dissection of neck, the base of the ligature abrasion was dry, pale, glistening and parchment like;

laryngeal cartilages, great vessels of neck



and internal neck muscles were intact;"

and issued Ex.P.P6 and final report Ex.P.9 and opined that there was evidence of asphyxia due to occlusion of nose and mouth and fatal external compression of neck by ligature material; and there was also evidence of compression of scrotum. So the deceased would appear to have died due to combined effects of all the aforesaid causes.

(vii) P.W.19, the then Inspector of Police, Palakkarai Police Station, also conducted further investigation and handed over the case file to the successor P.W.20.

(viii) P.W.20, the then Inspector of Police, Palakkarai Police Station, conducted the further investigation and altered the crime to Sections 364 and 302 I.P.C and finally, laid the final report against the accused for the offence under Sections 364 and 302 I.P.C.

(ix) Considering the above materials, the trial Court framed charges as mentioned above and the accused denied the same as false. The prosecution, in order to bring home the guilt of the accused, examined as many as 20 witnesses as P.W.1 to P.W.20, marked 22 documents as Exs.P1 to P22 and produced five material objects M.Os.1 to 5.

(x) Based on the evidence and materials, the trial Court found the accused guilty of both the charges and sentenced the accused as above above. Assailing the same, the present Criminal Appeal is filed.

4. The learned counsel appearing for the appellant would contend that the prosecution has not proved any of the circumstances relied upon by them and the motive projected by the prosecution is highly doubtful. It is the further contention that evidence of P.Ws.2 and 4, who allegedly saw the accused with the child at the relevant point of time also highly doubtful and their testimonies cannot be relied upon as they are interested witnesses since they are close friends of P.W.3. Hence, the learned counsel contended that the circumstances relied upon by the prosecution has not been clinchingly established.

5. It is the further contention of the learned counsel for the appellant that P.Ws.1 and 3's evidence itself would clearly indicate that when they took the child to the hospital, it is stated by them that the child fell down and sustained injuries. Therefore, their evidence is nothing but improved version due to some other motive and submitted that the prosecution theory is wholly unreliable and prayed for acquittal of the accused.

6. The learned Additional Public Prosecutor appearing for the State would submit that P.Ws.1 and 6, have clearly stated that on



the date of occurrence, the accused took the child with her and P.W.2 and 4, have seen the accused causing some injuries to the child in an isolated place. There was no motive whatsoever for P.Ws.2 and 4 to implicate the accused with a grave crime. The accused has immediately handed over the child to P.W.6 and the child was also taken to the hospital with serious injuries. The accused has failed to explain any of the circumstances against her. The material objects seized also contained human blood, for which, there was no explanation. He would further submit that the time gap between the point of time when the child was last seen alive with the accused and the death of the child is very small. In such scenario, it is for the accused to explain as to what happened to the child when he was in her custody, which she failed to do and therefore, submitted that the prosecution has clearly established the guilt of the accused beyond all reasonable doubts.

7. We have perused the entire materials.

8. It is the case of the prosecution that since the accused was sent out from the shop run by P.W.1, she developed enmity towards her. Even after she was removed from the job, she used to come to the shop and take the child as usual and purchase some eatables for the child. While the matter stood thus, on 30.07.2016, the accused came to the shop at about 12.30 p.m., and at that time, P.W.1 and 6 were in the shop. The accused took the child with her and P.W.1 left to the market for purchase. P.W.1, did not take it seriously. P.W.6 in her evidence also has spoken that the accused took the child at the relevant point of time. P.W.5 one Abdullah Sha in his evidence has spoken that at the relevant point of time, the accused took the child during lunch hours. It is relevant to note that P.W.5 is an independent witness and his evidence clearly shows that on the date of occurrence, the accused took the child with her, from the shop of P.W.1. P.W.2 also saw the accused taking the child to the terrace of the isolated house belonging to one Amala Doss. As P.W.2 felt some thing unusual, he followed the accused. At that time, he saw that on the terrace, the accused tried to strangle the child with her shawl and also causing scratches with knife. Immediately, P.W.2 shouted at her. At once, the accused ran away with the child and immediately, P.W.2 informed P.W.3 and went to the house of P.W.3. At that time, the accused gave the child to P.W.6. P.W.4 also in his evidence has clearly spoken that the accused took the child to the terrace of the house and after some time, she came back.

9. P.Ws.1, 3 and 6 in their evidence in one voice have stated that the accused handed over the child to P.W.6 and left the place. On seeing the child, P.Ws.1 and 3 found some serious injuries, at once, they took the child to the hospital. P.W.15, the Medical Officer attached to the Government Hospital, Trichy at the relevant point of time examined the child, which was brought by P.W.1 and

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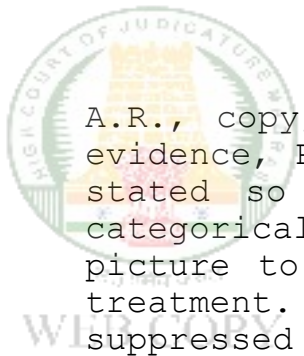
10. Thereafter, a complaint was lodged by P.W.1. The evidence of the witnesses examined by the prosecution, particularly, P.Ws.1 to 6, clearly established the fact that the child was taken by the accused on the date of occurrence and the child was with her at the relevant point of time. In fact, P.Ws.2 and 4's evidence clearly proved the fact that the accused took the child to the terrace of the house and caused injuries. The Medical Officer, who conducted autopsy, finally gave an opinion that there was evidence of asphyxia due to occlusion of nose and mouth and fatal external compression of neck by ligature material; and there was also evidence of compression of scrotum; and opined that the child would appear to have died due to combined effects of all the aforesaid causes and the final opinion was also placed on record and marked as Ex.P9.

11. The Post-mortem certificate clearly shows that there were various internal and external injuries noted by the post-mortem Doctor, on the body of the child, who is aged about 3 ½ years. Evidence of P.W.2 clearly shows that the accused was strangulating the child with Dhuppatta and also causing scratches with knife. The F.I.R has been lodged on the same day; it reached the Court immediately. The investigation was also commenced, the accused was also arrested on the same day; and the material objects were collected by the Investigation Officer.

12. It is relevant to note that the dresses worn by the accused also had stains of human blood. Though grouping of the blood could not be found in the Serology report, the fact remains that the dress collected from the accused contained human blood. There was no explanation forthcoming from the accused in this regard.

13. The motive is not only spoken by P.W.1. Though it is suggested in the cross-examination of P.W.2 and others that the accused and P.W.1 moved very closely and had developed some relationship with the accused, which was objected by P.W.3 husband, the entirety of the evidence makes it very clear that the accused was not happy with P.W.1 for dispensing her services. Therefore, merely because the motive as projected by the prosecution is different than the one spoken to, the same will not have any relevancy to determine the culpability of the accused. All the witnesses have clearly spoken that the accused was seen in the company of the deceased at the time of occurrence. The time gap between the point of time when the child was alive with the accused and the child was found dead is very small.

14. Further, the overwhelming evidence available on record proved the fact that the accused took the child and handed over the child with injuries. Immediately, the child was taken to the hospital. The circumstance emphasized by the learned counsel for the appellant while admitting the child to the hospital, P.Ws.1 and 3 has no relevance to the fact that the child sustained injuries due to fall. In



A.R., copy, said statement has not been reflected. But, in their evidence, P.Ws.1 and 3, have clearly explained that though they have stated so at the time of admission of the child, in fact, in categorical strength, they have stated that if they tell the true picture to the Doctor, the child would not be admitted for proper treatment. Only in order to get proper treatment, they had suppressed certain things before the Doctor.

15. In such circumstances, this Court is of the view that it is quite natural that any parent would only attempt to give best treatment to the child first. Therefore, such omission or improvement by P.Ws.1 and 3, even a suppression, will not dent the prosecution in any manner.

16. Another submission is also made by the learned counsel for the appellant that eyewitness's name was not found place in the F.I.R. We are of the view that such statements have no relevance at all. An F.I.R is not an encyclopedia, it need not contain all minute details and the witnesses seen the accused taking child with her, have no axe to grind against the accused and there was no motive attributed against her. Therefore, we are of the view that mere insignificant, contradictions and inconsistencies will not affect the prosecution case.

17. We have also perused the statement given by the witnesses under Section 161 Cr.P.C., the same were recorded immediately and they reached the Court on 31.07.2016 ie., the very next day. Therefore, the contention that they are planted witnesses has to be rejected.

18. As we conclude that the accused alone caused the death of the deceased, which has been proved, certainly the appellant is liable to be punished under Section 302 I.P.C.

19. We have also find that the trial Court also convicted the accused under Section 364 I.P.C. To base a conviction for the offence under Section 364 I.P.C., there must be either kidnapping or abduction in order to murder the person abducted or he may be so disposed of as to be put in danger of being murdered. Only if the kidnapping or abduction is proved, the charge under Section 364 I.P.C would be maintainable.

20. However, the evidence of P.Ws.1 and 6 and other witnesses, who had seen the accused would clearly show that though the services of the accused was dispensed with from the shop of P.W.1, she used to come regularly and take the child to buy eatables. On the date of occurrence also, she took the child as usual in the presence of P.Ws.1 and 6. P.W.1 never objected the accused taking the child. P.W.1 left to the market to purchase some materials without showing any objection. It would clearly indicate that the accused had taken the child with the clear consent of P.Ws.1 and 6. Therefore,



kidnapping or abduction will not be attracted in this case so as to bring the act of the accused under Section 364 I.P.C.

21. Accordingly, we set aside the conviction imposed against the appellant/accused in S.C.No.63 of 2017 vide judgement dated 15.02.2019 for the offence under Section 364 I.P.C alone. The fine amount, if any, paid by the appellant/accused shall be refunded to her. However, we maintain the conviction imposed for the offence under Section 302 I.P.C.

22. Accordingly, this Criminal Appeal is partly allowed the judgment of the trial Court convicting the appellant / accused for the offence under Section 302 I.P.C., is confirmed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Sessions Judge,
Tiruchirappalli Division,
Tiruchirappalli District.
- 2.The District Collector,
Tiruchirappalli.
- 3.The Director General of Police,
Mylapore, Chennai.
- 4.The Superintendent of Police,
Trichirappalli.
- 5.The Superintendent of Police,
Special Prison for Women,
Trichirappalli.
- 6.The Inspector of Police,
Palakkarai Police Station,
Tiruchirappalli District.



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

Copy to:

The Section officer, Criminal Records,
Madurai Bench Of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.K.VEILMUTHU, Advocate (SR-13963[F] dated 23/03/2022)

Crl.A.(MD)No.177 of 2019

23.03.2022

RD(04.04.2022) 9P 11C