



Crl.A.(MD) No.373 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**Crl.A.(MD) No.373 of 2023
and
Crl.M.P.(MD) No.7195 of 2023**

Ramachandran

... Appellant/Accused No.1

-VS-

State rep.by
The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
(In Crime No.111 of 2011).

... Respondent

PRAYER: Appeal filed under Section 374 (2) of the Code of Criminal Procedure to call for the records and allow the appeal and acquit the appellant by setting aside the judgment dated 11.04.2023 in S.C.No.203 of 2018, on the file of the learned Additional District and Sessions Judge, Dindigul.



WEB COPY

CrL.A.(MD) No.373 of 2023

For Appellant : Mr.P.Ganapathi Subramanian
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

J U D G M E N T

[Judgment of the Court was made by A.D.JAGADISH CHANDIRA, J.]

This criminal appeal is filed against the judgment and order, dated 11.04.2023, passed in S.C.No.203 of 2018, by the learned Additional District and Sessions Judge, Dindigul.

2. The appellant is the accused No.1. The Trial Court framed a charges against the appellant, as detailed below:

Charge	Penal Provision
1	under Sections 302 and 318 IPC

The appellants/accused denied the charges as false and opted for trial.



CrI.A.(MD) No.373 of 2023

WEB COPY

3. After full-fledged trial, by judgment and order dated 11.04.2023, Additional District and Sessions Judge, Dindigul District convicted the appellant and sentenced him, as detailed below:-

Accused Nos.	Section of Law	Sentence of imprisonment	Fine amount
A1/appellant	302 IPC	To undergo imprisonment for life	Rs.10,000/- each in default to undergo rigorous imprisonment for three months.
	318 IPC	To undergo rigorous imprisonment for one year	

The period of sentence already undergone was directed to be set off under Section 428 of the Code of Criminal Procedure. Aggrieved over the said conviction and sentence, the appellant is before this Court, by way of filing the present Criminal Appeal.

4. The prosecution case is as under:

4.1. Radhakrishnan, the Village Administrative Officer has filed a



CrI.A.(MD) No.373 of 2023

WEB COPY

complaint (Ex.P3) before the Investigating Officer (P.W.12) stating that on 27.04.2011 at about 11.00 a.m., while he was on duty, one Thangapandi (P.W.2) had informed him that a three days old baby was found dead in half-buried stage in the Pappammal stream near his land. He had also informed the details of the child's burial and suspected the child's death. On receipt of the said complaint, P.W.12 has registered a First Information Report under Section 174 Cr.P.C., and the same was marked as Ex.P4.

4.2. P.W.12 took up the case for investigation and visited the place of occurrence and prepared Ex.P5-Observation Mahazar and Ex.P6-Rough Sketch. An inquest was conducted on the child's dead body and the inquest report was marked as Ex.P7. P.W.12 arrested the accused and obtained his confession statement. Thereafter, he prepared an alteration report for altering the sections from Section 174 Cr.P.C., to one under Sections 302 and 318 of IPC and the same was marked as Ex.P8 and sent the same to the Judicial Magistrate. P.W.10 stated that while she was working as Nurse in the Sithayankottai Primary Health Centre, on 25.04.2011 one Priya came for delivery and on that day at about 09.50 p.m., she gave birth of a male child. The said Priya was admitted in the Dindigul



CrI.A.(MD) No.373 of 2023

WEB COPY

Government Hospital for further treatment. P.W.11 had given a treatment to the said Priya. While taking the treatment, the said Priya had informed P.W.10 and P.W.11 that her husband name is Ramachandran. P.W.13 has conducted postmortem and has given a postmortem report as Ex.P9. P.W.13 reported that there was no pus in the body and the cause of death could not be determined as the body was in a decomposed stage. Thereafter, P.W.12 handed over the case records to the Inspector of Police P.W.14 for further investigation.

4.3. P.W.14-Thiru Karunakaran, the Inspector of Police, took up further investigation. Regarding the child's genetics, the genes have been taken from the accused Ramachandran and Priya and the same was sent for DNA test. The said report was marked as Ex.P11. After completion of investigation, he filed a final report against the accused for the offence under Sections 302 and 318 r/w 34 IPC before the learned Judicial Magistrate, Nilakottai in P.R.C.No.34 of 2012. On appearance of summons, A1 appeared before the Court and A2 did not appear before the Court and thereby warrant was issued against A2.



CrL.A.(MD) No.373 of 2023

WEB COPY

5. The trial Court framed the charges under Sections 302 and 318 IPC. On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Principal District and Sessions Court, Dindigul, for trial and taken up in S.C.No. 203/2018. Since the second accused did not appear, the case against A2 was split up. The Trial Court framed a charge against the appellant, as detailed in paragraph-2 supra.

6. When questioned, the appellant pleaded "not guilty". To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.14 and marked 11 exhibits as Ex.P1 to Ex.P11. When the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the appellant nor any document marked.

7. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 11.04.2023, found the appellant



CrI.A.(MD) No.373 of 2023

guilty and convicted and sentenced him, as detailed in Paragraph No.3 supra.

Challenging the above said conviction and sentence, the appellant has filed the present appeal.

8. We have heard Mr.P.Ganapathi Subramanian, learned counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

9. The learned counsel appearing for the appellant made the following submissions:-

(i) It is a case of circumstantial evidence. Other than the evidence to Ex.P11, the DNA Report to prove that the appellant is the biological father of the deceased child, no other evidence has been let in by the prosecution to prove that the appellant was present along with A2, the mother of the child and that he along with A2 committed the murder of the child.

(ii) P.W.10- Nurse and P.W.11- Private Doctor, who had given further treatment to A2 and the child, have not spoken about the presence of the appellant



CrI.A.(MD) No.373 of 2023

WEB COPY

along with A2 either at the time of admission in the hospital or at the time of discharge. There is absolutely no evidence to prove that the appellant was present even at the time of delivery of child or at the time of further treatment. Further the medical evidence is also not conclusive in respect of the cause of death of the infant and circumstances when there was no legal evidence to connect the appellant to the crime. He further submitted that though DNA test had been conducted, the expert has not been examined to prove the maternity, the trial Court erred in convicting the appellant and thereby, prayed for allowing this appeal.

10. The learned Additional Public Prosecutor appearing for the respondent would submit that it is a case of infanticide. The appellant, who is a married man, had illicit intimacy with A2, who is also a married woman, who was separated from her husband. Due to illicit intimacy, A2 conceived and she delivered the child. The accused, in order to conceal the birth of the child born out of illegal relationship, had murdered the child by closing the nossels and by suffocating. Pursuant to the same, in order to conceal the birth, had secretly disposed the dead body. The prosecution, by examining the witnesses and



CrL.A.(MD) No.373 of 2023

WEB COPY

marked the exhibits, has proved the case beyond reasonable doubt and the trial Court has rightly convicted the accused.

11. What is to be seen whether the prosecution has proved his case beyond reasonable doubt and whether the trial Court has right in convicting the accused.

12. P.W.1-Paraman was examined with regard to having seen the dead body of the child, which was half buried. However, he has not supported the case of the prosecution and he has been treated as hostile.

13. P.W.2-Thangapandi is a Villager, who was received the information about having seen the dead body of a five days old child in a half buried stage, had given an information to the Village Administrative Officer.

14. P.W.3 and P.W.4 are the hearsay witnesses, who have heard about the dead body of the 5 days old child lying in a half buried stage near Pappammal stream.



CrI.A.(MD) No.373 of 2023

WEB COPY

15.P.W.5 and P.W.6 have been examined as witnesses with regard to the Observation Mahazar and they have not supported the case of the prosecution.

16. P.W.7 was examined for the purpose of proving that the appellant/accused and A2 Priya were living at Sithoor and that a child was born to them. But, she has not supported the case of the prosecution and she has been treated as hostile.

17. P.W.8 & 9 are the neighbours of the accused who were examined to speak about the illicit relationship between the appellant and A2 and birth of the child and later having seen the dead body of the child near the Pappammal stream. They have not supported the case of the prosecution and they were treated as hostile.

18. P.W.10 is the nurse in the Primary Health Centre and she had deposed that on 25.04.2011 while she along with P.W.11-Doctor were on duty at Sithaiyankottai Primary Health Centre, A2 Priya was admitted for delivery and



CrL.A.(MD) No.373 of 2023

WEB COPY

that she delivered a male child and that since the said Priya was heavily bleeding, she was referred to Dindigul Government Hospital and during that time two persons a male and female had accompanied the said Priya. However, she had not identified the appellant as the person who had accompanied Priya and that there was no entry in the hospital with regard to the person, who had admitted the said Priya in the hospital.

19. P.W.11 the Assistant Surgeon has spoken about the admission of the Priya in the Primary Health Centre for delivery and later referring her to the Dindigul Government Hospital.

20. P.W.12-The Inspector of Police took up the case for investigation and visited the place of occurrence and prepared Ex.P5-Observation Mahazar and Ex.P6-Rough Sketch. An inquest was conducted on the child's dead body and the inquest report was marked as Ex.P7. P.W.12 arrested the accused and obtained his confession statement. Thereafter, he prepared an alteration report for altering the sections from Section 174 Cr.P.C., to one under Sections 302 and 318 of IPC and the same was marked as Ex.P8 and sent the same to the Judicial Magistrate.



CrL.A.(MD) No.373 of 2023

He had examined the P.W.10-Nurse and P.W.11-Doctor and recorded their statements.

21. P.W.13 is the doctor, who conducted the postmortem and issued Ex.P9-postmortem certificate and he had given an opinion under Ex.P10 stating that no definite opinion can be given regarding the cause of death of the child because of decomposition of the body.

22. P.W.14-Thiru Karunakaran, the Inspector of Police, took up further investigation. Regarding the child's genetics, the genes have been taken from the accused Ramanchandran and Priya and the same was sent for DNA test. The said report was marked as Ex.P11. After completion of investigation, he filed a final report against the accused for the offence under Sections 302 and 318 r/w 34 IPC before the learned Judicial Magistrate, Nilakottai in P.R.C.No.34 of 2012.

23. Having gone through the evidence, we find that except the DNA report, which also has not been proved by examination of the expert, there is



CrI.A.(MD) No.373 of 2023

WEB COUNCIL

absolutely no evidence to show that the appellant was present along with A2 Priya either at the time of delivery of the child or at the time when she was referred to Government Hospital, Dindigul for further treatment. Further, though P.W.10-Nurse, who had admitted A2 for delivery, had deposed that two persons viz., a male and female accompanied A2 at the time of delivery, she had not identified the appellant as the person, who had accompanied A2 at the time of admission for delivery and at the time of discharge for further treatment. The prosecution has also not clarified whether the appellant had accompanied at the time of delivery. Having gone through the entire records, we are of the opinion that there is absolutely no material to connect the appellant to the crime and the prosecution has miserably failed to conclusively prove its case beyond reasonable doubt. In view of the above, the appellant is entitled for benefit of doubt.

24. In the light of the above discussions stated supra, we are of the opinion that the prosecution has not proved its case beyond all reasonable doubts in respect of the appellant herein. Therefore, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant, by the learned Additional District and Sessions Judge, Dindigul, made in S.C.No.203 of 2018, dated



CrI.A.(MD) No.373 of 2023

WEB COPY

11.04.2023, is set aside and the appellant is acquitted from all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled. The appellant is directed to be released forthwith unless his detention is required in connection with any other case.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
am

[A.D.J.C., J.] [K.R.S., J.]
24.07.2024

To:

- 1.The Additional District and Sessions Judge,
Dindigul.
- 2.The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD) No.373 of 2023

A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.

am

Crl.A.(MD) No.373 of 2023

24.07.2024