



Crl.A.No.835 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.835 of 2019 and
Crl.M.P.No.18017 of 2019

Adhikesavan

...Appellant

Vs.

State represented by
The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai.
(Cr.No.1682 of 2017)

...Respondent

Prayer: Criminal Appeal is filed under Section 374(2) Cr.P.C. to call for records and set aside the judgment dated 22.07.2019 made in S.C.No.43 of 2018 by the learned Sessions Judge, Mahila Court/Special Court for Cases under POCSO Act/Children's Court, Chennai.

For Appellant : Mr.A.Nagarajan

For Respondent : Mr.A.Damodaran, Addl. Public Prosecutor
Assisted by Ms.M.Arifa Thasneem



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JUDGMENT

This criminal appeal has been filed to set aside the judgment of conviction and sentence passed against the appellant in S.C.No.43 of 2018, dated 22.07.2019 by the learned Sessions Judge, Magalir Neethimandram, Chennai.

2 The case of the prosecution is that the accused is an Auto Driver. The accused and his wife Mohana were living separately due to some misunderstanding between themselves. The deceased Kousalya, who is a mentally retarded, is their daughter. The accused is supposed to pay a monthly maintenance of Rs.5,000/- to his wife and daughter as per the order of the Family Court. But, the accused did not pay the amount and defaulted in paying the monthly maintenance and therefore on 13.09.2017, the wife Mohana left her mentally retarded daughter in front of the house of the accused. The accused took his daughter and left her at his relative's house and after some days, they also asked the accused to take back his daughter. Hence the accused, as no other way, took back his mentally retarded daughter on 20.09.2017 and he decided to take away the life of the mentally



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retarded daughter and on the same day he killed his daughter by strangling her neck with nylon rope. Therefore a case was registered in Cr.No.1682 of 2017 for the offence under Section 302 IPC and after investigation, the respondent police laid charge sheet before the learned V Metropolitan Magistrate, Chennai, which was taken up in P.R.C.No.141 of 2017. Since the offence charged against the appellant/accused is triable only by the Court of Session, the learned V Metropolitan Magistrate committed the case to the learned Principal District and Sessions Judge, Chennai, which was taken on file in S.C.No.43 of 2018, who in turn, made over the same to the learned Sessions Judge, Mahila Court/Special Court for Cases under POCSO Act/Children's Court, Chennai.

3 Before the trial Court, in order to prove the charges, prosecution examined 11 witnesses as P.Ws.1 to 11 and marked 13 documents as Exs.P1 to 13, besides one material object M.O.1 (Nylon Rope). After examination of the prosecution witnesses and incriminating materials culled out from the evidence of prosecution witnesses were put before the accused and he denied the same as false. On the side the defence, no oral and documentary evidence was let in.



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4 The learned Sessions Judge, after trial and after hearing the learned counsel on either side, by judgement dated 22.07.2019, found the appellant/accused guilty for the offence under Section 302 IPC and convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a further period of 6 months.

5 Aggrieved over the said judgment of conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

6 Learned counsel for the appellant/accused would submit that the trial Court convicted the appellant only based on the evidence of P.W.1, the Village Administrative Officer, who filed the complaint and set the law in motion. In this case, there is no direct evidence or eye witness and the whole case runs only based on the circumstantial evidence. Therefore it is the bounden duty of the prosecution to establish three links of chain, namely motive, last seen theory and recovery of weapon.



6.1 In this case there is no evidence to show that the deceased was lastly seen together with the appellant/accused and furthermore recovery also not proved in the manner known to law. Coming to motive, prosecution has failed to establish the motive for the accused to kill his own daughter. Therefore, when the case is based only on the circumstantial evidence, prosecution must prove motive, last seen theory and recovery, but in the present case, prosecution miserably failed to prove the above facts. The trial Court failed to consider the same and only based on the surmises and conjectures and also on sympathy ground, came to the conclusion that the appellant committed the offence of murder of his own daughter. In the absence of any eye witness and also the chain of link without any break, the conviction recorded by the trial Court is perverse. To support the above contention, the learned counsel for the appellant placed reliance on the judgment of the *Hon'ble Supreme Court* reported in **(2023) 6 SCC 399** in the case of ***Laxzman Prasad Alias Laxman vs. State of Madhya Pradesh***.

6.2 The learned counsel would further submit that P.W.2, who alleged to have given information to P.W.1 and also P.Ws.7 and 8 were



turned hostile and not supported the case of the prosecution. There are lots of contradictions between the evidence of P.W.1 viz. VAO, who gave complaint, P.W.2 viz., Ashokan, friend of the accused, and P.W.6 one Santhanam.

6.3 P.W.1, the Village Administrative Officer, in his evidence has stated that on 20.09.2017, at about 11.15 a.m. he received a phone call from one Asokan, who is P.W.2, and informed that the accused murdered his daughter, who is a special child aged about 19 years by strangling her neck using nylon rope, whereas, P.W.2 denies making such call to P.W.1. Hence very origin of the complaint filed by P.W.1, based on the information alleged to have given by P.W.2 itself is doubtful, for which, there is no explanation from the prosecution.

6.4 As per complaint (Ex.P1) and FIR (Ex.P8), P.W.1 was informed about the murder at 11.15 am. and he gave complaint to the police at 11.45 a.m. In Ex.P1, the time of occurrence has been inserted at 10.00 a.m. Hence there is no clear information about the time of occurrence.



6.5 P.Ws.7 and 8 are the witnesses for confession and Seizure Mahazar, but they have turned hostile and they deposed that police did not seize any objects from the place of occurrence. Therefore recovery was not proved in the manner known to law.

6.6 Furthermore, P.W.5, who is the Secretary of the Manasa Special School, where the mother of the deceased viz. Mohana was working as Cook and staying along with her deceased child, had deposed that the Mohana went out along with her child and did not return. But the crucial witness, who is the mother of the deceased and who alleged to have left the deceased in front of the house of the accused, has not been examined by the prosecution and her whereabouts is not known to the prosecution.

6.7 There are bundle of doubts in the case of the prosecution and there are lots of contradictions between the evidence of the prosecution witnesses. Therefore it is settled law that, when two views are possible, the view which favours the accused has to be taken into consideration and the appellant/accused is entitled to benefit of doubt.



7 Per contra, the learned Additional Public Prosecutor appearing for the respondent police would submit that the deceased, who is a mentally retarded person, is daughter of the appellant/accused. The appellant separated from his wife and his wife Mohana and the deceased daughter were living separately staying at Manasa Special School, where the mother of the deceased was working as Cook. Further the Family Court ordered monthly maintenance of Rs.5,000/- to the wife of the accused and the deceased daughter. But the accused failed to pay the said maintenance and paid only Rs.2,000/- for limited period and hence the wife of the accused refused to receive the amount and left the School along with the deceased child.

7.1 The wife of the deceased left the deceased daughter in the appellant's house and since the appellant could manage the mentally retarded daughter, who is aged about 19 years, he left the deceased in his brother-in-law's house and since he also could not take care of the deceased, he and P.W.4, who is also brother-in-law of the appellant/accused, handed over the deceased to the police station. Thereafter, the appellant was informed about the deceased and he took the deceased from the police



station. Thereafter, on 20.09.2017 at about 10.00 a.m. the appellant/accused strangled the neck of the deceased with nylon rope, due to frustration, since he was not able to maintain the mentally retarded child and due to strangulation, the deceased died.

7.2 P.W.1, who is the Village Administrative Officer, on receiving the information, went to the place of occurrence and informed the same to the police and the case was registered. The appellant has also given his confession statement, which leads to recovery of the nylon rope, which was used by the appellant/accused to strangle the neck of the deceased.

7.3 From the evidence of P.Ws.4 and 5, prosecution has proved the last seen theory and due to frustration the accused committed the offence of murder of his own daughter and hence motive also clearly proved and through evidence of P.W.7 recovery was proved. Even though P.Ws.7 and 8 turned hostile, through other witnesses prosecution has proved its case beyond all reasonable doubts, which can not be brushed aside. To support this contention, the learned Additional Public Prosecutor relied on the decisions of the *Hon'ble Supreme Court* reported in **2025 SCC OnLine SC**



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958 in the case of *K.P.Tamilmaran vs. State by Deputy Superintendent of Police.*

7.4 Further even though, in this case, there is no eye witness, however, prosecution has proved its case through circumstantial evidence. The trial Court has rightly appreciated the evidence of prosecution witnesses and found the appellant/accused guilty for the offence under Section 302 IPC. There is no merit in the appeal and the same is liable to be dismissed.

8 Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor for the respondent police and perused the materials available on record.

9 Admittedly in this case, there is no eye witness and the case is based on the circumstantial evidence. It is true that P.W.2, who is said to have given information about the occurrence to P.W.1, has turned hostile and did not support the case of the prosecution. P.W.4, who is the brother-in-law of the appellant/accused and maternal uncle of the deceased has deposed that after marriage his sister and the appellant separated due to misunderstanding

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and the wife of the appellant was staying at Manasa Special School along with her deceased daughter. He was informed that his sister took the child and left her in the house of the appellant. On 30.09.2017, the appellant/accused left the deceased at the house of brother of P.W.4. Thereafter, since brother of P.W.4 could not take care of the deceased, he and P.W.4 met P.W.5, who is Secretary of the Manasa Special School, where the mother of the deceased had stayed, and requested to admit the deceased, for which, P.W.5 refused and as no other option, P.W.4 handed over the deceased to the police station informing the contact details of the appellant/accused, being the father of the deceased and the appellant took the deceased from the police station. Thereafter, P.W.4 received information from the Koyambedu police station that the appellant murdered his daughter by strangulating her neck with nylon rope.

10 Further P.W.5, who is the Secretary of Manasa Special School, has deposed that during 2006-07, the appellant and his wife Mohana used to drop their deceased daughter in the morning and take her back in the evening. Thereafter, for a period of time the deceased did not attend the School and when the same was questioned, the wife of the appellant



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informed that there was misunderstanding between her and the appellant.

Thereafter in the year 2009, at request of the mother of the deceased, she was engaged as Cook in the School and she and her deceased daughter were staying in the School itself. In the year 2016, Mohana left the School due to the death of her father and after four months she came back and stayed in the School. During that period, the appellant/accused sent Rs.2,000/- and Mohana refused to receive the same. Thereafter in the month of September, 2017, Mohana left the School along with her daughter and did not return. On 13.09.2017, Raja, who is the uncle of the deceased called and requested to admit the deceased as inmate, for which she enquired about Mohana and he told that she was in the Hospital. Therefore, P.W.5 refused to admit the deceased in the absence of her mother Mohana. Thereafter on 20.09.2017, she received information about the death of the deceased.

11 P.W.6 has deposed about the Observation Mahazar Ex.P2 and P.W.7 is the witness for confession statement and Seizure Mahazar. P.W.9, the Doctor, who conducted postmortem on the body of the deceased had deposed that he found several external injuries on the body of the deceased and the deceased appears to have died due to asphyxia due to cumulative



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effects of smothering and ligature strangulation and he also opined that the injuries would not have been self inflicted and he issued postmortem certificate, which was marked as Ex.P7.

12 From the evidence of P.Ws.1 to 10, it is clear and admitted fact that the body of the deceased found only in the house of the appellant, for which, the appellant did not file any complaint before the police, either for girl missing or for the death of the deceased. Hence once body of the deceased found in the house of the appellant, as per Section 106 of Indian Evidence Act, 1872, the appellant has to explain the same, which he failed to do. Even though, it is the case of circumstantial evidence, when the death is unnatural and the body of the deceased found in the house of the appellant, the appellant has to explain the same.

13 Even though the learned counsel for the appellant pointed some contradictions in the evidence of prosecution witnesses and contended that three links of the chain has to be proved, it is settled law that defect in investigation and the lapse on the part of the investigating agency, should not stand in the way of administration of justice. If the prosecution case is



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established by the evidence adduced, any failure or omission on the part of the Investigating Officer cannot render the case of the prosecution doubtful.

14 Therefore we are of the considered view that the appellant is the one who murdered his own daughter. However, even though the confession statement is not admissible in evidence, in the confession statement Ex.P.11, the appellant/accused has narrated the entire facts that since the deceased, who is mentally retarded and aged about 19 years, nobody can control her. The appellant also could not take care of her and her mother also left the child and hence in order to safeguard the reputation of the family and the deceased and due to frustration, he decided to take away the life of the deceased.

15 Hence this Court finds that the act of the appellant/accused would not fall under Section 302 IPC, instead, it would fall under Section 304(ii) IPC. Therefore the judgment of trial Court convicting the accused under Section 302 IPC is set aside. The appellant is convicted for the offence under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for a period of 10 years and the fine amount and the default sentence ordered



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by the trial Court is hereby confirmed.

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16 With the above modifications, the appeal stands disposed of.

Consequently connected miscellaneous petitions is closed. The trial Court is directed to secure the appellant/accused to undergo remaining period of imprisonment as modified by this court.

[PVJ] [MJRJ]
16.12.2025

Speaking Order/Non Speaking Order

Neutral Citation case: Yes/no

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To

1. The Sessions Judge, Mahila Court/Special Court for Cases under POCSO Act/Children's Court, Chennai.
2. The Inspector of Police, K-10, Koyambedu Police Station, Chennai.
3. The Public Prosecutor, High Court of Madras.



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and
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