
(2016) 03 MAD CK 0273
In the Madras High Court
Case No : Criminal Appeal No. 397 of 2012

Jayaraman

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 364, 376

Citation : (2016) 3 MLJCriminal 193

Hon'ble Judges : Mr. M. Jaichandren and Mr. S. Nagamuthu, JJ.

Bench : Division Bench

Advocate : Mr. T. Muruganantham, Advocate, for the Appellant; Mr. M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Mr. S. Nagamuthu, J.—The appellant is the sole accused in S.C.No.74 of 2011 on the file of the learned Additional Sessions Judge, Fast Track Court-1, Poonamallee. He stood charged for offences under Sections 364, 376, 302 and 201 IPC. By judgment dated 08.08.2011, the trial Court had convicted him for the offences under Sections 364 and 302 IPC alone and acquitted him from the charges under Sections 376 and 201 IPC. For the offence under Section 364 IPC, the trial Court sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1,000/-, in default to undergo simple imprisonment for one year and for the offence under Section 302 IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default to undergo simple imprisonment for one year. Challenging the said conviction and sentence, the accused/ appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(a) The deceased in this case was a young female child aged 6 years, by name Gowri. P.W.2 is the mother of the child. P.W.1 is the sister's husband of P.W.2. P.W.1 was a maistry and he was also a mason. The accused was working under

him. In the month of February 2010, P.W.1 had allotted duty to the accused as a watchman, in a building under construction opposite to the College at Madhanangkuppam Village. On a Sunday, in the same month, there was a quarrel in the said premises among the accused, his uncle and other relatives. The village head of the said village informed P.W.1 about the same. In that quarrel, there were also exchange of blows between them, in which one person sustained even head injury. On reaching the said spot, P.W.1 gave the arrears of salary to the accused and removed him from service. Thereafter, he gave employment to the husband of P.W.2, who is none other than his co-brother. Mr. Ethiraj-the husband of P.W.2 was also working in the said place. The accused was enraged over the above incident. He developed grudge against Mr. Ethiraj, the father of the deceased, that it was because of him, he had lost his job. This is stated to be the motive for the occurrence.

(b) On 19.06.2010, P.W.2, her husband Mr. Ethiraj and the deceased Gowri were sleeping in their house. At about 9.00 p.m. on the same day, when P.W.2 got up, she found the child missing from the place where she was sleeping. Immediately, P.W.2 informed her husband as well as P.W.1 about the same. They went in search of the child in the nearby place, but, they could not find her anywhere. On the next day also they went in search of the child. Finally, P.W.1 gave a complaint to the Inspector of Police, Korattur Police Station on 20.06.2010 at 8.30 p.m. P.W.13, the then Inspector of Police on receipt of the said complaint under Ex.P1, registered a case in Cr. No. 344 of 2010 for "girl missing." He forwarded the FIR [Ex.P19] and the Complaint [Ex.P1] to the Court, which were received by the learned Magistrate on 23.06.2010 at 10.10 a.m.

(c) Taking up the case for investigation, P.W.13 went to the place of occurrence, examined P.Ws.1 to 3 and a few more witnesses, and recorded their statements. But, there was no clue about the whereabouts of the child. On 26.06.2010, he received information that there was a dead body of a child near Korattur lake. Immediately, he proceeded to the place of occurrence and informed P.Ws.1 to 3 also about the same. He found the dead body at the said place. He prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.11 and another witness. P.Ws.1 to 3 and others identified the dead body as that of the deceased Gowri. There were no dress materials found on the dead body. Then, he conducted inquest on the body of the deceased and forwarded the same to the hospital for post-mortem.

(d) The dead body was beyond recognition. The body was highly decomposed and partially skeletonised. Both the hands were not found due to the post-mortem dis-articulation. The right lower limb and the left leg were also found missing. P.W.9 - the Doctor, who conducted autopsy on 27.06.2010 at 3.45 p.m., gave opinion that there were no definite evidences of ante-mortem injuries and he finally gave opinion that no definite opinion could be given regarding the approximate time of death and also the cause of death. P.W.13 then altered the case into one under Section 302 IPC and forwarded the report to the Court. As

per his request, a piece from the left Tibia was taken and sent to the Forensic Science Lab, Chennai for DNA examination. The mother of the deceased and the father of the child, Mr. Ethiraj also underwent DNA examination for identification of the dead body. The report revealed that Mr. Ethiraj and P.W.2 were the biological parents of the deceased. Thus, the identity of the deceased was established.

(e) On 28.06.2010, the accused appeared before P.W.8 - the then Village Administrative Officer and gave a voluntary confession. In the said confession, he disclosed that on account of the above stated enmity, with a view to wreak vengeance, while he was fully drunk, at 9.00 p.m., he took the child Gowri, brought her near the lake, had sexual intercourse with the child and killed her. He further confessed that, thereafter, he threw the body in the lake. P.W.8 prepared a Report regarding the said confession and then produced the accused before P.W.13. P.W.13, then arrested the accused in the presence of the same witnesses and on such arrest, he gave a voluntary confession. In the said confession, he disclosed the place where he had hidden the dress materials of the deceased. In pursuance of the same, he took P.W.13 and the witnesses to his house and produced a jeans pant and a white colour T-shirt [M.Os.1 and 2]. P.W.13 recovered the same under a Mahazar. Then, he forwarded the accused to the Doctor for chemical examination. The Report revealed that he was capable of performing penal sexual intercourse with a woman. Since, the accused was in a mood to make confession, P.W.13 made a request to the learned Magistrate to record the confession of the accused. P.W.7-the learned Judicial Magistrate, accordingly recorded the confession of the accused by following the procedure contemplated in law. In the said confession, he confessed the guilt in full, but, he had not confessed that he committed rape on the girl. On completing the investigation, P.W.13 laid the charge sheet.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 23 documents were exhibited, besides 2 Material Objects.

4. Out of the said witnesses, P.W.1 was the former employer of the accused who has stated about the motive and he has also stated about the missing of the girl. P.Ws.1 and 2 have further stated about the fact that after the child was missing from 9.00 p.m. on 19.06.2010, they went in search of her and on the next day, P.W.1 made a complaint to the police. P.W.3 is a villager. He has stated that on 19.06.2010, at 10.00 p.m., when he was proceeding to a building which was under construction where he was working, the accused was found coming from the opposite direction and without even talking to him, in a tense mood, he left the place. P.Ws.4 and 5 have stated that on 19.06.2010, at 9.00 p.m., near Satish Balaji School, somewhere near the place of occurrence, they found the accused carrying a child on his shoulders. They also stated that the said child

was that of the deceased. They have further stated that they were under the impression that he was carrying the child to leave her with her parents. Therefore, they did not say anything about the same to the family members of the deceased. They have further stated that only after the dead body was recovered, they came to know that the child was missing and therefore, they informed about the above incident to the police. P.W.6 is the Judicial Magistrate who has stated that she recorded the statements of witnesses under Section 164 Cr.P.C. P.W.7, the then Judicial Magistrate-2, Poonamallee has stated that he recorded the judicial confession of the accused. He has stated that the accused was produced before him on 05.07.2010. He gave all statutory warnings to him and sent him back for relaxation. On 06.07.2010, when he was again produced, P.W.7 gave all statutory warnings to him and since, he was fully satisfied that the accused was voluntarily confessing, he recorded his confession. According to P.W.7, the accused told him, that out of the said enmity, he took the child, killed her and threw the body at the place of occurrence. P.W.8 has stated about the extra judicial confession given to him on 28.06.2010 by the accused on appearing before him and he has also stated about the fact that he produced the accused along with Special Report to P.W.13. P.W.9, the Doctor who conducted autopsy on the body of the deceased has stated that the cause of death and the time of death could not be given as the body was highly decomposed. P.W.10 has spoken about the recovery of M.Os.1 and 2 on the disclosure statement made by the accused. P.W.11 has spoken about the Observation Mahazar prepared. P.W.12 has spoken about the DNA test conducted by her and her final opinion that Mr. Ethiraj and P.W.2 were the biological parents of the deceased. P.W.13 has spoken about the registration of the case and the investigation done.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor he did mark any document on his side. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused under Sections 364 and 302 IPC alone. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. From the evidence of P.Ws.1 and 2, the deceased Gowri was found missing at 9.00 p.m. on 19.06.2010. P.Ws.1 and 2 went in search of the child for the whole night and also the next day. They were not able to find the child anywhere. Thereafter, P.W.1 made a complaint at 8.30 p.m. on 20.06.2010. From these evidences of P.Ws.1 and 2, it has been clearly established that the child was lastly seen alive at the house of the deceased on 19.06.2010 at 9.00 p.m. After the child was found missing, P.Ws.4 and 5 had seen the child being carried by the accused near Satish Balaji School at about 9.00 p.m. on 19.06.2010. The

accused was not a stranger, but, a known person. Thus, they have clearly identified the accused. They have also further stated that they knew the child also. But, they did not inform the parents of the deceased about the above incident immediately. On this ground, the learned counsel for the appellant tries to assail the evidence of these two witnesses. But, we are not persuaded by the same, for the simple reason, that these two witnesses have told, that they were not aware of the missing of the child until the dead body was found near the lake. Further, it is not as though these two witnesses were residing near the house of P.W.2. Thus, their failure to disclose about the above incident for quite some time has been duly explained by P.Ws.4 and 5. Thus, we are inclined to place reliance on the evidence of P.Ws.4 and 5 and accordingly, we hold that the deceased was carried by the accused near the Satish Balaji School, situated somewhere near the place of occurrence. After some time, that was around 10.00 p.m., P.W.3 had seen the accused coming alone in front of him, somewhere near the place of occurrence. P.W.3 has stated that the accused was in a tensed mood and he did not even speak to him. From the evidence of P.W.3 it is crystal clear, that since the accused was alone found at 10.00 p.m., the deceased would have been done to death between 9.00 p.m. and 10.00 p.m. on that day.

9. Then comes the extra judicial confession given to the then Village Administrative Officer - P.W.8 on 28.06.2010. The learned counsel for the appellant would submit that the said extra judicial confession cannot be true, because, there was no reason for the accused to repose confidence in P.W.8, who was a stranger. We find force in the said argument. We are also of the view that the accused would not have chosen a stranger at all to confess his guilt. Above all, P.W.8 did not reduce to writing the confession verbatim as it was stated by the accused, instead, he has stated that he prepared a Special Report about the said confession and submitted the same to the police. Since, the Report does not contain either the signature of the accused or the verbatim statement of the accused, we cannot give any importance either to the oral evidence of P.W.8 or to his Report. Therefore, we reject the same.

10. Next comes the judicial confession made by the accused to P.W.7, the then Judicial Magistrate. He has strictly followed the statutory requirements before recording confession. He has given time for the accused to relax. He has made all the statutory warnings to the accused on two occasions. He has further recorded that his judicial conscience was satisfied that the accused was making the confession voluntarily. We do not find any reason to reject this judicial confession, wherein the accused has admitted that he kidnapped the child, killed her and threw the body in the lake. This judicial confession is duly corroborated by the evidence of P.Ws.3 to 5. The motive between the accused and P.W.2 and her husband has also been spoken to by P.Ws.1 and 2. This would further strengthen the case of the prosecution.

11. Though it is true that the cause of death could not be ascertained by P.W.9,

the Doctor who conducted autopsy, on that ground, it cannot be said that it was a homicide. In the judicial confession, the accused had voluntarily admitted that he had caused the death of the deceased. Thus, even in the absence of medical opinion, acting upon the confession, we do not find any impediment to hold that the accused had caused the death of the deceased and thus, it was a homicide.

12. In the said judicial confession, he has clearly stated that while in drunken state, he took the child to the lake, killed her and threw her body. The intention of the accused to kill the innocent child is very obvious, which falls within the first limb of Section 300 IPC. Therefore, the appellant is liable to be punished under Section 302 IPC for the offence of murder committed by him. It has also been established that he had kidnapped the child from the guardianship of P.W.2 and therefore, he is liable for punishment under Section 364 IPC. Thus, the trial Court was right in convicting the accused under Sections 302 and 364 IPC.

13. Now turning to the quantum of punishment, the trial Court has imposed only a very reasonable punishment, in which, we do not find any reason to interfere with. Thus, the sentence imposed by the trial Court also deserves to be confirmed.

14. In the result, we do not find any merit in this appeal. The appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant by the trial Court is hereby confirmed.