(2007) 03 MAD CK 0183

Madras High Court (Madurai Bench)

Case No: Criminal Appeal (MD) No. 358 of 2005

Pandiammal		APPELLANT
	Vs	
The State of Tamilnadu		RESPONDENT

Date of Decision: March 20, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 307

Citation: (2007) 03 MAD CK 0183

Hon'ble Judges: P.R. Shivakumar, J; M. Chockalingam, J

Bench: Division Bench

Advocate: K. Manavalan, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.
This Criminal Appeal is directed against the judgment dated 04.11.2004 made in S.C. No. 542 of 2003 on the file of the Additional District and Sessions Judge (Fast Track Court No. 1) Madurai. In the said Sessions Case, the accused stood charged, tried and found guilty for the offences under Sections 302 (2 counts) and 307 IPC. The accused was sentenced to undergo life imprisonment (2 counts) and to pay a fine of Rs. 5,000/-(each count) in default to undergo six months Rigorous Imprisonment u/s 302 IPC and to undergo 7 years imprisonment and to pay a fine of Rs. 1000/- in default, to undergo six months Rigorous Imprisonment u/s 307 IPC. The sentences were directed to run concurrently and the period of imprisonment already undergone by the accused/appellant was given set off. Challenging the said conviction and sentence, the appellant/accused has brought-forth this Criminal Appeal.

2. The brief facts necessary for the disposal of the appeal can be stated thus:

(a) PW.1 is the native of Kodikulam Varugapatti. PW.4 Jegadeeswari is his daughter. Both the deceased Sathish Kumar @ Padivu and Vigneswaran are his sons. PW.1"s wife Samuthram had an illicit intimatcy with one Kasimayan, the husband of the accused. Prior to the occurrence, a panchayat was convened in which the said Kasimayan was fined to pay a sum of Rs. 40,000/- (Rupees forty thousand only) as compensation to the victim and accordingly, the same was paid. On that count, the accused had a grudge over the family of PW.1.

(b) On 8.12.2002, PW.1 took all his children viz., the deceased Sathish, Vigneswaran and Jegadeeswari PW.4, nearby his pumpset and after his taking bath in the pumpset, he left all the three children to take bath and he went to his house to bring spade. At that time, the accused came over there uttering "having shamed my husband and also having collected fine, you were bathing happily, I would show you whom I was". On saying so, she dragged all the three children but PW.4 escaped, whereas Sathish and Vigneswaran were pushed into the well. PW.4 witnessed the occurrence. Immediately, she went to PW.5, who was working in a nearby field, and informed about the occurrence. Subsequently, PW.6 and PW.7 were also informed. All of them rushed to the side of the witness PW.4 and found the accused going away from the scene of occurrence. Immediately, PW.8 got into the well, and took out one child. Similarly, PW.9 got into the well, and took out the other child. Both the children were found dead.

(c) Thereafter, PW.1 went to Valanthur Police Station at about 11.30 a.m. and gave a report before the Sub Inspector of Police PW.15 and the same was marked as Ex.P.1, and on the basis of which a case came to be registered in Crime No. 116/2002 under Sections 302 IPC. F.I.R. Ex.P.16 was despatched to the Court.

(d) On receipt of the copy of the F.I.R., the Inspector of Police, PW.16 took up investigation and proceeded to the scene of occurrence, made an inspection and prepared an Observation Mahazar Ex.P.4 in the presence of the witnesses and prepared rough sketch Ex.P.7. He recovered the Material Objects MO.1 to Mo.16 under the cover of Mahazar Ex.P.5. He conducted inquest on the dead body of deceased Sathish and Vigneswaran in the presence of the witnesses. He prepared Inquest Reports Ex.P.8 and Ex.P.9 in respect of two dead bodies, respectively. A requisition was forwarded for conducting autopsy on both the dead bodies.

(e) On receipt of the requisition for conducting post-mortem, the Doctor PW.10, attached to Government Hospital conducted autopsy on the dead body of the deceased Sathish Kumar and he found injuries as described in the Post-mortem Certificate, which was marked as Ex.P.2 wherein he has opined that the deceased would appear to have died of drowning. Similarly, he conducted autopsy on the dead body of the deceased Vigneswaran and he found injuries as described in the Post-mortem Certificate, which was marked as Ex.P.3 wherein he has given the same opinion.

(f) Pending investigation, on 24.6.2002 at about 5.00 p.m., the accused was arrested in the presence of the witnesses and produced her before the Court for remand. PW.16, the Investigating Officer took up further investigation and on completion of the investigation, filed the final report against the appellant/accused.

3. The case was committed to Court of Sessions and necessary charges were framed against the accused.

4. In order substantiate the charges levelled against the accused, the prosecution examined 16 witnesses, 9 Exhibits and 11 MOs.

5. On completion of the evidence on the side of the prosecution, the accused was questioned u/s 313 Crl.P.C as to the incriminating circumstances found in the evidence of the prosecution witnesses. She denied them as false. No defence witnesses were examined.

6. After hearing the arguments advanced by both sides, the trial Court found the appellant/accused guilty as per the charges and awarded punishments as stated above. Hence, this appeal at the instance of the appellant/accused.

7. While advancing his arguments, learned Counsel for the appellant would submit that, in the instant case, the prosecution has not proved its case beyond a reasonable doubt and the trial Court was not prepared to believe the evidence of PW.1. According to the evidence of PW.1, after his bath at the pump set, he left the three children and he reached his house and thus, he could not be a competent witness to speak about the occurrence and hence the trial Court did not believe his evidence. Insofar as PW.4 is concerned, she was the child of 11 years old at the time of adducing evidence and her evidence also cannot be believed for more than one reason. PW.4 is not only in tender age of 11 years but also according to her evidence, she could not have seen the occurrence at all. It was according to her, after the occurrence, she came to the field and informed to PW.5. It is highly doubtful whether PW.5 was working in a field nearby the pumpset. According to PW.4, other witnesses also came to the scene of occurrence immediately after the occurrence. Had it been true, no one has spoken to the fact that the occurrence had taken palce according to the version of PW.4.

8. Added further the learned Counsel for the appellant that, in the instant case, even the Post-mortem Certificates issued by the Doctor did not corroborate the evidence of PW.4 but it was pointing to the death only due to asphyxia and it does not sepak to the complicity of the accused. Even though the prosecution claims to have recorded a confessional statement through the Investigator, that was not enough to bring home the guilt of the accused. Apart from that, there was no recovery of weapon.

9. Added further the learned Counsel for the appellant that, in the instant case, the children might have fallen into the well by accidentally or by playing. Apart from that, there was no motive for the appellant/accused to commit the crime and the case was falsely

fabricated against the appellant/accused.

10. Added further the learned Counsel for the appellant that, for the reasons stated above, the prosecution has not proved its case beyond a reasonable doubt but the the trial Court has erroneously found the accused guilty for the charges levelled against her and hence, the accused is entitled for acquittal in the hands of this Court.

11. The Court heard the learned Additional Public Prosecutor on the above contentions.

12. The Court paid its anxious consideration on the rival submissions made and had a thorough scrutiny of the materials available.

13. It is not in controversy that the two children of PW.1 viz., Sathish Kumar and Vigneswaran died out of drowning. In order to substantiate the same, the prosecution examined PW.10, the Doctor, who conducted autopsy and who issued the post-mortem certificates Exs.P.2 and P.3 in respect of two children, respectively, from which it would be clear that the two children died out of drowning. In the instant case, it is not the case of the appellant/accused either before the Court below or before this Court that they died otherwise or due to any other cause. Thus, it would be safely concluded that the two children died on account of drowning.

14. The specific case of the prosecution was that PW.1 took his three children on the date of occurrence i.e. on 8.12.2002 to his pumpset and after having his bath, he left his children there and he came back to his house to take out a spade and immediately returned to his field nearby his pumpset. When his three children were bathing, the accused came over there uttering "having shamed my husband and also having collected fine, you were bathing happily, I would show you whom I was". On saying so, she dragged all the three children but PW.4 escaped, Sathish Kumar and Vigneswaran were pushed into the well. PW.4 witnessed the occurrence. Immediately, she went to PW.5, who was working in a nearby field, and informed about the occurrence. Subsequently, PW.1, PW.6 and PW.7 were also informed. Thus, it was due to the act done by the appellant/accused, the dead bodies were recovered from the well. The evidence of PW.4 was corroborated by the evidence of PW.5, who was working in nearby a field.

15. At this juncture, it is pertinent to point out that, it is true, at the time of adducing evidence, PW.4 was in tender age and the child was aged 11 years. Merely, because of the age of the witness, her evidence cannot be rejected. The Court has gone through the evidence of PW.4 and her evidence has inspired the confidence of the Court and the trial Court has marshalled the evidence proper.

16. Apart from that, in the instant case, the accused family was directed to pay a fine of Rs. 40,000/- at the instance of PW.1 and hence, she had a grudge, which ultimately prompted her to commit the crime as narrated by PW.4. Immediately, after the occurrence, a case came to be registered, investigation was taken up and final report was filed before the Court, Inquest was conducted and the dead bodies were subjected to

post-mortem and the Doctor PW.10, who conducted autopsy, has opined that the children died due to drowning. Thus, the prosecution has proved the case beyond a reasonable doubt and the trial Court has also rendered a correct judgment in the instant case. The contentions put-forth by the learned Counsel for the appellant do not merit acceptance.

17. Under the circumstances, the judgement of the trial Court, in the opinion of the Court, does not require any interference. With regard to conviction u/s 307 IPC, PW.4 was dragged in order to push into the well by the accused, the trial Court has found it an attempt to commit the murder and accordingly convicted and sentenced the accused/appellant u/s 307 IPC, which also does not require any interference. Hence, for the reasons stated above, the judgment of the trial Court is confirmed. The Criminal Appeal fails and the same is dismissed.