

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1287 of 2011

Selvam

...Appellant

Versus

State Thr. Insp. of Police

...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal arises out of final judgment and order dated 21.9.2010 passed by the High Court of Judicature at Madras in Referred Trial No. 1 of 2010 and Criminal Appeal No. 299 of 2010 confirming the judgment and order of death sentence dated 12.3.2010 passed by the Additional Sessions Judge, Salem in S.C.No. 198 of 2009.

2. The facts and circumstances arising out of this Criminal Appeal are that:

A. Murugesan (PW.1) and his wife Indirani (PW.2) had left for a Padayatra to Palani hills leaving their daughter Palaniammal, the

deceased herein, aged 9 years and studying in fourth standard, with her grandfather Karnaiyan (PW.3).

B. On 12.2.2009, the deceased had left for her school at 8.30 a.m. after informing Valli (PW.4). Since the deceased did not return from the school as usual, Karnaiyan (PW.3) after making a search, conveyed the message over the phone to her parents Murugesan (PW.1) and Indirani (PW.2).

C. In early hours of 13.2.2009, Murugesan (PW.1) and Indirani (PW.2) returned home and after making a search got registered a missing complaint of her daughter.

D. On the same day, the accused Selvam, appellant herein, appeared before Vijayan (PW.9), the Village Administrative Officer (V.A.O) and made a confessional statement. Vijayan (PW.9) produced the appellant before the police and another confessional statement was recorded on the basis of which, the case of missing person was converted into one under Sections 302, 376, 379 and 201 of Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'). Thereafter, the appellant took Shanmugam (PW.16) I.O., Vijayan (PW.9) and Murugesan (PW.1) and got recovered the dead body of the deceased.

E. A Sessions Case No. 198 of 2009 was instituted, wherein the prosecution examined 16 witnesses and relied on various exhibits and objects. The trial court after hearing the parties convicted the appellant for the charges framed and awarded death penalty vide judgment and order dated 12.3.2010.

F. The matter was submitted to the High Court for confirmation of death sentence under Section 366 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') and the appellant also filed an appeal against the said judgment and order. The High Court vide its impugned judgment and order dated 21.9.2010 upheld the conviction as well as the death sentence awarded by the Sessions Court.

Hence, this appeal.

3. Mr. Neeraj Kumar Jain, learned senior counsel appearing for the appellant has submitted that it is a case of circumstantial evidence as there is no eye-witness. The depositions made by Marimuthu (PW.5) and Amudha (PW.8) cannot be relied upon as their version is quite unnatural and no evidence has been produced to corroborate the version given by the said witnesses, particularly, about the character of the appellant given by Amudha (PW.8). His wife and sister-in-law

who alleged to have been mis-behaved with by the appellant had not been examined. More so, it was not a case where death sentence could have been awarded

4. Per contra, Mr. M. Yogesh Kanna, learned standing counsel for the State of Tamil Nadu has opposed the appeal contending that the concurrent findings recorded by the courts below do not warrant any interference. Considering the rape and murder of a 9 years old innocent and defenceless girl and the manner in which the rape and murder had been committed, the courts below had rightly awarded the death sentence. Thus, no interference is called for.

5. We have heard learned counsel for the parties and perused the record.

Before we proceed further to examine the case, it may be necessary to mention the injuries found on the person of the victim and the same are as under:

“1. Ant bite mark seen over the sides of clavicular region and lateral and upper of right side of chest and flank and lateral side of abdomen. Both sides of inner aspect of upper SRD of both thighs, the inner and back of left knee, bleeding through left ear. Blood stained cut fluid oozed out from both nostrils;

2. Contusion over left neck measuring 3 cms below left mastoid process measuring 6 x 4 cms brownish in colour;
3. A laceration over outer aspect of the left ear-lobe and pinnae measuring 5.5 x 2.5 x 0.26 cms;
4. Bluish black contusion over right infra scapular region measuring 9 x 6 cms and measuring 3 x 2 cms over left scapular region;
5. Abrasion measuring 2 x 2 cm over upper part of gluteal region;
6. A contused abrasion over at the level of both sides of scapular region measuring 16 x 5 cms.
7. Laceration over right side of posterior parital region measuring 2.5 x 0.25 x bone deep and it lies 4 cms above occipital protrudence and 28 cms above the glabilla swelling with contusion over both sides of the neck;
8. Curved linear abrasion with contusion over external genitalia right measuring 7.5 x 0.25 cms and left side measuring 2.25 x 2.0 cms; O/D underlying tissue is contused;
9. Dark reddish brown abrasion over labia majora on both sides measuring 3 x 0.2 cms.”

With respect to the injuries, Dr. Panneerselvam (PW.14) has opined as under:

“Injuries 8 and 9 may occur when having forcible intercourse (with a small girl).

Injury 2 may occur when the neck is pressed hard.”

In the post mortem certificate, PW.14 stated that the said Palaniammal was raped forcibly, which is confirmed by injuries 8 and 9. As regards the absence of spermatozoa, PW.14 deposed before the court that when the spermatozoa goes into the parts of a person it will start to destroy after 24 hours. After 48 hours it will completely disintegrate. If the body was in a decomposed condition, then it could not be found whether there was any spermatozoa in the parts of the body or not. PW.14 further opined that the death of the deceased was caused due to the injury on the head.

6. From the statements of Murugesan (PW.1), Indirani (PW.2), Karnaiyan (PW.3), Valli (PW.4) and Arumugam (PW.12), it is clear that the deceased had left for the school at around 8.30 a.m. on 12.2.2009 but did not reach the school or returned home thereafter. Radiokaran (PW.7), who was well known to the accused, deposed that while he was proceeding to Chithoor, he passed through the house of the appellant and saw that the appellant was washing the floor of his house. He questioned the appellant about the same suspecting it to be

blood smell to which the appellant responded that the dog had vomited and hence he was cleaning the floor. Later on, he came to know that the deceased was missing. Marimuthu (PW.5) deposed that he had joined the search of the deceased girl on 12.2.2009. At about 5.00 a.m. on the next day, he saw the appellant going on a TVS motorcycle with a gunny bag but when the appellant returned after half an hour, he did not have any gunny bag with him. Marimuthu (PW.5) identified the said motorcycle and the belongings of the deceased girl as well as the deceased itself. Vijayan (PW.9) has deposed about the appellant making an extra-judicial confession before him and that he produced the said appellant before the IO PW.16. He further deposed about the appellant making a confession before the said IO on the basis of which he alongwith the police went to the house of the appellant from where he got recovered a pair of silver anklets belonging to the deceased and also pointed out the TVS motorcycle. He further deposed about the appellant taking them to Onamparai Thanneer Vaikkal Madhaka from where he got recovered the body of the deceased as well as other belongings of the deceased from inside the gunny bag. Shanmugam (PW.16) is the IO and had deposed about the disappearance of the deceased and the subsequent

investigation including the confession made by the appellant before him and the recoveries made thereto.

7. After relying on the above evidence, the trial court came to the following conclusion:

“...the root-cause for the perpetrator of the heinous crime, his thirst for lust, his loneliness in his house and the fact that the parents of the deceased gone for pilgrim and take days to return back, though the girl goes to school as usual on the fateful day also, but the above circumstances, which were so conducive for the accused, who is a sex hunter, took the girl to his house where nobody was available, raped the girl to fulfill his thirst for sex and after his fond /desire is over; fear crept in his mind and hence he killed the girl by attacking with cot-frame (M.O.2) on her head with intention to kill her and with knowledge that blow by M.O.2 on the head of the deceased, which is a vulnerable part of the body, would easily caused death, as she being a small girl at a tender age of 9, and thereby he had committed the offence of rape and murder....”

The court after weighing the mitigating and aggravating circumstances came to the conclusion that the act of the appellant was a violent, barbaric and sinful sexual attack on the child thereby awarding death sentence.

8. On reference being made to the High Court, the High Court carefully examined the evidence on record and came to the conclusion that the prosecution has been successful in proving its case. The court

recorded a finding that the extra-judicial confession made by the appellant was voluntary and made in a fit state of mind and that the appellant having come to know of the ensuing investigation might have come under a grip of fear and, therefore, would have rushed to make a judicial confession before PW.9. The court further came to the conclusion that the evidence was marshaled properly and the prosecution has without an iota of doubt brought home the guilt of the appellant. Looking at the facts of the case and the manner in which the crime was committed, the High Court held that it was a fit case where the death sentenced awarded by the trial court should be affirmed.

9. With the assistance of learned counsel for the parties we have perused the judgments of the courts below and the evidence on record. In his statement under Section 313 Cr.P.C., the appellant did not plead any defence whatsoever. Rather a bald statement had been made that he had falsely been implicated and there is no reason on the basis of which the evidence of Marimuthu (PW.5) could be disbelieved. More so, the appellant had been seen going on the TVS motorcycle with a gunny bag and came back without any gunny bag regarding which he made the confessional statement before Vijayan (PW.9), V.A.O., the

recovery had been made at his instance and the recovery witnesses had been examined whose veracity could not be doubted.

As a result, we do not find any cogent reason to interfere so far as the findings of guilt recorded by the courts below are concerned. However, considering the facts and circumstances of the case the death sentence awarded by the courts below require to be converted into life imprisonment but taking note of the diabolic manner in which the offence had been committed against a child, it is desirable that the appellant should serve minimum sentence of 30 years in jail without remission, though subject to exercise of constitutional power for clemency.

10. With the above observations, the appeal is disposed of accordingly.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(J. CHELAMESWAR)

.....J.
(M.Y. EQBAL)

New Delhi,
May 2, 2014