

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.718 of 2019

Sathiya

... Appellant

Versus

State rep. by
The Inspector of Police,
Ponnai Circle,
Vellore District.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment and sentence, dated 27.09.2019 passed in S.C.No.80 of 2019 by the Additional District and Sessions Judge, Fast Track Court, Vellore by allowing the Criminal Appeal.

For Appellant : Mr.R.Jothi
for Mr.P.Rathanavel

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

JUDGMENT

"ஆணும் பெண்ணும் நிகரெனக் கொள்வதால்

அறிவி லோங்கி இவ் வையம் தழைக்குமாம்"

- மகாகவி பாரதியார்.

This appeal is filed against the order, dated 27.09.2019 by the learned Additional District and Sessions Judge, Fast Track Court, Vellore in S.C.No.80 of 2019, in and by which, the Trial Court found the

appellant/accused guilty of the offence under Section 304 (ii) of the Indian Penal Code (2 counts) and imposed a sentence of Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- for each count and in default of payment of fine, to undergo Rigorous Imprisonment for another period of six months.

2. This is a sad case which stands testimony to the gender inequality prevailing in our society. The appellant/accused is the mother of three children. The first child, namely *Lathika*, was aged about 5 years and the second child, namely *Hasini*, was aged about 3 years and at that stage, she begot third child, which was also a female child. When the third child was about 1 ½ month old, unable to bear the taunt of the society that she was an unfortunate woman to bear only female child, on 22.07.2016 between 16.30 hours to 17.30 hours, while sparing the eldest child, it is alleged that she administered poison, namely *Organo Phosphorous compound* to the second female child, namely *Hasini* and the 1 ½ month old baby and also consumed herself the same poison and attempted to commit suicide. However, the mother was rescued, both the children died unfortunately.

3. A case was registered in Crime No.255 of 2016 under the

provisions of Section 174 of the Code of Criminal Procedure and thereafter, was altered into one under Section 302 of the Indian Penal Code and Section 309 of the Indian Penal Code. P.W.15 took up the case for investigation and filed a Final report, which was taken on file by the learned Judicial Magistrate, Vellore as P.R.C.No.2 of 2018 and after appearance of the accused and furnishing of copies under Section 207 of the Code of Criminal Procedure, the learned Magistrate committed the case to the Principal Sessions Court, Vellore. After taking the case on file as S.C.No.80 of 2019, the case was made over to the Trial Court.

4. The Trial Court, after considering the materials on record, framed charges under Sections 302 (2 counts) and 309 of the Indian Penal Code. The accused denied the charges and stood trial. The prosecution, in order to prove the charges, examined P.Ws.1 to 15 and marked **Exs.P-1 to P-24**. The prosecution also produced material objects i.e., **M.Os.1 to 4**. Upon being questioned about the material evidence on record and incriminating circumstances, the accused denied the same. Thereafter, no evidence was let in on behalf of the defence. The Trial Court, thereafter, proceeded to hear learned Additional Public Prosecutor on behalf of the prosecution and learned Counsel for the accused. After appreciation of the evidence, even though all the witnesses, in this case, turned hostile and

changed the story as if, by mistake, the child, *Hasini* aged about 3 years, had mistakenly consumed the poison herself and also administered it to the 1 ½ month old baby and upon seeing this in a state of shock, the appellant/accused consumed the poison and on a better appreciation of the other evidence on record, including the evidence of the postmortem Doctor, the Investigating Officer and the documents, the Trial Court found that it is only the act of the accused in consuming the poison herself and also administering it to the two tender children leaving out the eldest girl child.

5. The Trial Court, thereafter, on a wholesome appreciation of the evidence, found that this is also a case of 'Nalla Thangal syndrome' that unable to bear taunt of the society and the relatives, the state of mind in which the mother attempts to commit suicide and during that time kills her children also, upon considering that nobody else will be there to take care of the children. The said concept which was originally propounded by the learned District Judge by considering the legend story of Nalla Thangal contained in Tamil literature, was considered by this Court in ***In Re Sreerangayee Vs. Unknown***¹. Thereafter, the state of mind/psychological concept was explained in detail and propounded by this Court in the

¹ (1973) 1 Mad LJ 231

judgment of *Suyambukani Vs. State of Tamil Nadu*². The said judgment is being followed in a number of later judgments. As a matter of fact, the said state of mind/syndrome is reiterated by the Division Bench of this Court in *Poovammal Vs. State*³.

6. *Suyambukani's* case (cited supra) was in the year 1989. Unfortunately, this occurrence happened in the year 2016 and we, as a society, have not corrected ourselves, inspite of such long period. It is a matter of great pain that the appellant/accused, being the mother, should feel ashamed for giving birth to female children and even would attempt to commit suicide and to kill the children. Therefore, I am of the view that the Trial Court had rightly followed the dictum of the judgment in *Suyambukani's* case (cited supra) and refused to convict the appellant/accused for the offence under Section 302 of the Indian Penal Code and convicted her under Section 304(ii) (2 counts) of the Indian Penal Code.

7. Now, coming to the sentence, the Trial Court, taking a lenient view, had imposed a sentence of three years Rigorous Imprisonment and a fine of Rs.1,000/-. It is a fact that after the attempt of committing suicide,

² 1989 LW(Crl) 86

³ 2012 (2) MWN (Cr.) 276

when the appellant/accused was questioned before the Trial Court on the question of sentence, it has come into light that P.W.1 and the appellant/accused, in this case, have begotten one more child and that child is also a female child. Therefore, intrigued by the said fact, this Court has directed the appellant to be present before this Court. The mother is present before this Court along with both the children i.e., the eldest child, namely Lathika, who is now studying VI standard in Government Middle School, Perumalkuppam village and the fourth child, again named *Hasini*, who is aged 3 years. The mother breaks down before this Court in pain and agony about the entire incident. She also represents that she had undergone tubectomy. She now realised that the female children are as good as male children and has courage to face the society or the family members. She has given a solemn undertaking before this Court that she will upbringing both the female children in the best possible way by properly educating them.

8. Considering the same, instead of sentencing the appellant, it would be appropriate and befitting to release the appellant/accused under Section 4 of the Probation of Offenders Act, 1958. Therefore, this Criminal Appeal is partly allowed on the following terms:-

- (i) The appellant is released on probation of good conduct on

condition that she will appear before the learned Additional District and Sessions Judge, Fast Track Court, Vellore and execute a bond for good behaviour undertaking that she will not indulge in any offence whatsoever for a period of two years, and that she will educate both the female children minimum upto under-graduate level and that she will upbringing them in the best possible manner without placing any fetters merely because they are girl children;

(ii) The appellant/accused shall continue to appear once in every two years before the aforementioned Trial Court and re-affirm the continuance of education and well-being of both the girl children and also undertaking that she would appear before the Court and take the sentence in the event of her not complying with the undertaking as aforesaid;

(iii) The appellant's husband, namely *Venkatesan*, shall also execute a bond standing as surety ensuring the compliance of the above mentioned undertaking by the appellant;

9. The Criminal Appeal is partly allowed accordingly.

14.07.2022

Index : yes/no
Speaking/Non-speaking order
grs

D.BHARATHA CHAKRAVARTHY, J.

grs

To

1. The Additional District and Sessions Judge
(Fast Track Court), Vellore.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Ponnai Circle,
Vellore District.

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