

**Mir Osman a Vs. State of A.P., Rep. by Its P.P.,high Cou**

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**SooperKanoon Citation :** [sooperkanoon.com/1134965](http://sooperkanoon.com/1134965)

**Court :** Andhra Pradesh

**Decided On :** Feb-11-2014

**Judge :** L. Narasimha Reddy and the Hon'Ble S

**Appellant :** Mir Osman a

**Respondent :** State of A.P., Rep. by Its P.P.,high Cou

**Advocate for Def. :** Smt. Ammaji Nettem Counsel

**Judgement :**

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY and THE HON'BLE SRI JUSTICE M.S.K.JAISWAL Crl.Appeal No.1215 of 2009 11-02-2014 Mir Osman Ali... Appellant-Accused State of A.P., rep. by its P.P.,High Court of A.P., Hyderabad ...Respondent Counsel for the Appellant:Smt. Ammaji Nettem Counsel for respondent :Public Prosecutor HEAD NOTE: ?.CASES REFERRED : .... HON'BLE SRI JUSTICE L. NARSIMHA REDDY AND HON'BLE SRI JUSTICE M.S.K.JAISWAL Criminal Appeal No.1215 of 2009 11th February, 2014

**JUDGMENT**

: (Per Hon'ble Mr. Justice M.S.K. Jaiswal) This is a case of infanticide wherein it is alleged that the appellant- accused has killed his one year old daughter - Muskan Fatima and has thrown the dead body in a well. Crime No.192 of 2008 was registered by P.S. Kanchanbagh in relation thereto. Charge-sheet was filed after investigation and on committal to the Metropolitan Sessions Division, the case was

numbered as S.C.No.36 of 2009 on the file of IV-Additional Metropolitan Sessions Judge, Hyderabad. Through its Judgment, dated 10-08-2009, the trial Court found the accused guilty of the charge under Section 302 of I.P.C., and convicted and sentenced him to undergo imprisonment for life. Aggrieved by the same, the accused preferred the appeal.

2. The brief facts stated by the prosecution are: The accused married the de facto complainant - Smt.Shaheen Begum in the year 2001 and they are blessed with a son, and a daughter. The accused was working as a watchman whereas his wife was working as a domestic help. The accused felt that he may not be the father of the girl child he suspected the fidelity of his wife. He used to proclaim that since the child is not fathered by him, he would kill her. It is alleged that on 27-06-2008 at about 3.00 p.m., the accused took the baby on the pretext of getting her hair cut but did not return for a week. On 04-07-2008, the dead body of the one year old baby was found floating in the adjacent well. It was identified as the daughter of P.W.1 and accordingly she submitted report on 04-07-2008.

3. The plea of the accused to the charge under Section 302 of I.P.C., is one of denial. In order to prove its case, the prosecution examined P.Ws.1 to 13 and produced Exs.P.1 to P.13 and M.Os.1 to 6. The accused denied the incriminating evidence against him when confronted under Section 313 of Cr.P.C.

4. The contention of the learned Counsel for the appellant is that the trial Court convicted the accused on the basis of the evidence of PW.1 without there being any independent corroboration. He submits that the so-called alleged confession said to have been made by the accused was not proved and he has been found guilty that too in the absence of the medical evidence. Learned Counsel contends that the Judgment is not based on proper appreciation of the evidence on record and is liable to be set aside.

5. On the other hand, the learned Public Prosecutor submits that P.W.1 is none other than the wife of the accused and she has categorically stated that it is the accused who has took the deceased daughter, about a week prior to the body of the baby being found in the well, that she would not have falsely implicated the accused in a serious crime of homicide. She contends that the trial Court has

taken into consideration the surrounding facts and circumstances and has rightly held the accused guilty of the charge.

6. The point for consideration is whether the prosecution proved its case against the accused beyond all reasonable doubt, or whether the conviction and sentence need to be set aside, modified or varied?.

7. Point:- The case is based on circumstantial evidence. Two circumstances that are relied upon by the prosecution are the theory of last seen together, and the confession leading to the discovery of incriminating material objects. As already noticed, the relationship between the couple was strained.

8. The motive for the alleged cruel act on the part of the accused is said to be the dangerous phenomena of the husband suspecting the wife and going to the extent of disowning the paternity of a child born out of the wedlock. On this aspect, except the version of PW.1 - wife, there is absolutely no other evidence to show that the deceased nurtured any such ill-will, more particularly, against a tender aged daughter of one year old. The elder sister of PW.1 was examined as P.W.2. Her evidence is silent about having any knowledge as to the accused suspecting his wife - P.W.1 or doubting the paternity of the child. No other evidence is adduced in that direction. Therefore, it can be said that the prosecution could not successfully establish the essential ingredient of there being any strong motive for the accused to resort to the act of killing his own daughter.

9. With regard to the deceased being seen in the company of the accused for the last time, there is no other independent corroboration to the evidence of P.W.1. The evidence of PW.1 needs to be carefully scrutinized before it is accepted as truthful. She stated that the deceased was still a milk sucking baby and when she was going out of the house for attending to her domestic chores in the neighbouring houses, she used to leave behind her 8 years old son and the deceased child in the house, while the accused used to go away for his own avocation. She further stated that on 27-06-2008, the deceased was taken by the accused on the pretext of getting her hair dressed but for a week thereafter neither the husband returned home nor the child. She kept quiet all along for about a week without making any endeavour to trace either of them. Even though she

claims to have given a complaint to the police two days after both of them went missing, that has not seen the light of the day nor is spoken to by the Investigating agency. Her silence for about a week creates any amount of doubt about the veracity of her version that she has seen the accused taking away the deceased from the house on 27-06-2008. It was only after the dead body was found in the well on 04-07- 2008, that a complaint was lodged. It is also come in the evidence that the deceased child was crawling but not able to walk and whenever P.W.1 used to leave the house, the children used to cry. She admitted that in the absence of both the mother and father i.e., PW.1 and the accused, the child used to come out of the house. The well, in which the corpse was found, is separated just by two or three houses. P.W.1 admitted that whenever she used to go out for her work, both in the mornings and evenings, she invariably had to pass through the well, in which the body was found. The well is surrounded by several houses and is abutting a mosque, which is visited by several people. The child is said to have been taken away by the accused in the mid-day. PW.1 denied the suggestion that the deceased child went out of the house crawling and accidentally fell in the well. However, if the totality of the circumstances is taken into account, the possibility suggested to her, cannot be ruled out. In the process of elimination, such a doubt has to be cleared, lest the accused is denied the benefit thereof.

10. The other evidence on the aspect of last seen together is that of PW.5. This witness stated that she was told by PW.1 that the accused took her daughter and did not return back and a week thereafter, the dead body was found in the well. Since this witness denied of making any statement under Sec.161 of Cr.P.C. before the police, as in Ex.P.2, she was treated hostile, by the trial Court, on the request of the prosecution. If Ex.P.2 is carefully perused what becomes clear is that the case against the accused becomes weaker. The relevant part - Ex.P.2 reads: ".About two weeks back prior to my examination by the police, I saw the accused was taking his daughter by wrapping in a Rexene cover (suit cover) and also I heard the crying of his daughter and after 3 or 4 hours accused returned back to home alone and passed in front of my house."

11. This part of the statement of PW.5 belies the version of PW.1. If what she has stated is believed, PW.1 would not have conducted in the manner in which she did for about a week after the child went missing. When a neighbouring resident has seen the accused carrying one year old child, wrapping in a Rexene cover and such a child is crying, it would certainly raise any amount of alarm. Her further claim that the accused returned back alone to the house after about 3 or 4 hours also falsifies the plea of PW.1 that her husband never returned for about more than a week. That apart, if this version is believed, it become highly improbable that the accused would have thrown the dead body of the deceased wrapped in a Rexene cover in a well, surrounded by several houses and mosque being visited by several people in the broad day light. As per Ex.P.2, PW.5 has seen the accused taking the child at about afternoon and he returned within 3 or 4 hours, which implies that the entire act of the accused taking the child, killing her, rapping in a Rexene cover and dumping the dead body in the well would have taken place in between 2.00 p.m. to 6.00 p.m.

12. We find it difficult to hold that the prosecution has conclusively proved that it is the accused took away the deceased child from their house, which was subsequently found lying dead in a well.

13. The other circumstantial evidence relied upon by the prosecution is the confession leading to the discovery of material objective. According to the prosecution, on being apprehended, the accused confessed having killed his daughter with the help of towel - M.O.6 and thereafter, wrapped it in M.O.5 - a black colour blazer suit cover and thrown it in the well. The confession is said to have been made in the presence of PW.7. He deposed that in his presence while the accused was in the custody of the police, he confessed that he killed his daughter by pressing her throat and thrown it in a well. The alleged confession did not lead to seizure of any objects. Such a confession, wherein the accused inculpated himself while in police custody, is inadmissible particularly when it did not lead to recovery of any material object with which the accused is said to have caused the death of the child. P.W.7 was treated as hostile and even in the cross-examination he reiterated his earlier version.

14. The other evidence that is available on record has no direct relevance for the reason that it touches upon the aspects which are not in controversy. The witnesses spoke about the fact of the dead body being found floating in a well while some people tried to draw water from the well for washing before offering the prayers at the mosque. The evidence also discloses that the dead body was taken out of the well and it was subjected to post-mortem examination after conducting the inquest and the scene of offence panchanama. The post-mortem examination revealed that due to decomposition of the body, nothing could be said about the cause of death. The Medical Officer- P.W.10 in the reports, which are Ex.P.9 to Ex.P.11, categorically stated that no opinion can be formed at post-mortem examination regarding cause of death. No injuries were also found on the dead body.

15. Upon perusing the oral and documentary evidence on record, we have no hesitation to hold that the prosecution failed to establish beyond reasonable doubt, that the accused is responsible for the death of his daughter. The essential links in chain of circumstances are not established. Therefore, the conviction and the consequential sentence ordered by the trial Court cannot be sustained. The same are liable to be set aside and the accused is entitled to an acquittal. The point is accordingly answered.

16. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C.No.36 of 2009 on the file of IV- Additional Metropolitan Sessions Judge, Hyderabad, dated 10-08- 2009, against the appellant-accused, are set aside. The appellant-accused shall be set at liberty forthwith, unless his detention is needed in any other case. \_\_\_\_\_ L.NARASIMHA REDDY, J  
\_\_\_\_\_ M.S.K.JAISWAL, J11h February, 2014