

Jeyaraj Vs. the State Represented by the Inspector of Police.

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Court : Chennai

Decided On : Feb-15-2012

Judge : N.Paul Vasanthakumar; P.Devadass, Jj.

Acts : [Indian Penal Code\(IPC\) 1860](#) - Sections 302; Code of Criminal Procedure(CrPC) - Section 174, 313, 374; Indian Evidence Act - Section 24, 27

Appeal No. : Criminal Appeal (MD) No.175 of 2011

Appellant : Jeyaraj

Respondent : The State Represented by the Inspector of Police.

Advocate for Def. : Mr.K.S.Duraipandian, Adv.

Advocate for Pet/Ap. : Mr.A.R.Jeyaruthran, Adv

Judgement :

Appeal filed under Section 374 of Criminal Procedure Code to set aside the judgment of the learned Principal Sessions Judge, Srivilliputtur, Virudhunagar District in S.C.No.102 of 2009 by his judgment dated 30/9/2010 and acquit the appellant from the charges.

JUDGMENT

(Judgment of the Court was delivered by P.DEVADASS ,J)

1. This is a most unfortunate case concerning two innocent children who have died under tragic circumstances.

2. On account of their death, their father, Jayaraj, was convicted on 30.9.2010 under section 302 IPC (2 counts), in S.C.No.102 of 2009, by the learned Principal Sessions Judge, Virudhunagar Sessions Division at Srivilliputhur and awarded him double life sentences and fined him Rs.2,000/- and directed both the life sentences shall run concurrently.

3. The lifer is challenging his said conviction and sentences.

4. The prosecution case may briefly be recounted as under:- (1) Murugeshwari (P.W.2) married her uncle's son Jayaraj (accused). He is a palmarah climber. She is an insurance agent. They are residing in Meenakshipuram, in Sankarankoil Taluk, in Tirunelveli District. P.W.2's brother P.W.1 Arunachalam and their mother P.W.3 Sevanammal are residing in the nearby Mangudi Village.

(2) P.W.2 used to go out to collect the insurance amount. But, the accused suspected her. Successively, she gave birth to female children only. Out of the four, two have died. The remaining two are Gnanaselvi and Selvapriya. Accused wished to have male children through another wife. P.W.2 and the children are hurdle for him. There used to be frequent quarrel between the spouses. Accused used to beat P.W.2 mercilessly. She used to go to her mother's house. Stay there for few days. P.Ws.1 and 3 used to pacify them.

(3) On 30/3/2009, at about 3 p.m., P.W.2 came to P.W.1's house and told that her husband had beaten her and also threatened to marry another woman. Accused complained to P.W.1 that his sister is leading a wayward life, so, he is going to marry another woman. P.W.2 told that she will not live with him and thrown away the mangalsutram. He demanded his gold ring and cell phone. She gave them. P.Ws.1 and 3 reminded him of the future of the children. Accused replied that the children will die soon. Then, he had gone to his house. At about 8 p.m., on his request, P.W.2 was sent back to his house. But, again, he had beaten her.

(4) On 31/3/2009, at about 3.30 p.m., Gnanaselvi and Selvipriya returned home from the School. The accused gave them Rs.50/- each to buy cool drinks. The children went to the shop.

(5) In the meanwhile, accused asked water from P.W.2. She gave him water in M.O.1 - ever silver vessel. He drank the water and hide M.O.1. Accused was in a rage. He burnt her LIC documents.

(6) From P.W.4 Arockiasamy's petty-shop in Meenakshipuram, the children purchased 7 up cool drinks contained in plastic containers. They brought them to the house. Accused directed each to bring a vessel. Accordingly, they brought. He poured the

cool drinks into that and gave them. They drank. He gave M.O.1 to his wife containing drinks. But, she refused to drink. He had beaten her. At about that time, P.W.3 came. She pleaded him to spare her and their problem could be solved through talk. P.Ws.2 and 3 went to accused's mother Jothiammal's house. Accused also came there.

(7) At about 6.30 p.m., Gnanaselvi informed P.W.1 that her parents are quarrelling and requested him to come. At about 7.15 p.m., P.W.1 visited their house. P.W.2 and her husband were not there. Selvapriya was found vomiting. Gnanaselvi could not reply. Soon the children swooned. P.W.1 rushed to Jothiammal's house. He told the accused and P.W.2 that both are fighting but their children have fainted in their house.

(8) The children were found in a most deplorable condition. P.Ws.1 to 3 and the accused took them in the van driven by P.W.5 Balamurugan to P.W.11 Dr.Meenakshisundaram's hospital in Thalavaipuram. P.W.11 found the children in a very serious condition. He smelt organo phosphorous compound, a pesticide (Ex.P.15 - report). He advised them to take the children immediately to Government Hospital, Rajapalayam. But, the van had left. So, they took the children in an auto to the home.

(9) At about 10.30 p.m., the children passed away. At about 12.30 a.m., at Thalavaipuram Police Station, P.W.1 gave Ex.P.1 complaint to P.W.10 AyyalSamy, Head Constable. He registered a case of suspicious death in Crime No.67 of 2009 under Section 174 Code of Criminal Procedure. Sent the First Information Report [Ex.P.14] to P.W.16 Kalimuthu, Tahsildar, Rajapalayam.

(10) P.W.15 David Rajan, Sub-Inspector of Police, Thalavaipuram, did preliminary investigation. At about 2 a.m., he visited the house of the accused. In the presence of P.W.6 Ramasamy and Kasirajan, prepared Ex.P.2 observation mahazar. Drew Ex.P.18 site-plan. Recovered M.O.1 ever silver vessel, M.O.4 7-up plastic containers with remaining contents, M.O.7 half-burnt insurance document, M.O.3 match-box, M.O.2 kumkum-box. In the presence of witnesses, he poured the contents of M.O.1 in an another 7-up container and sealed. Seized them under Ex.P.3 mahazar.

(11) In the presence of Panchayatdhars, P.W.15 held inquest over the dead bodies. (Exs.P.19 and P.20 - Inquest Reports). He examined P.Ws.1 to 3 and other material witnesses and recorded their statements. From P.W.4's shop, P.W.15 purchased M.O.5 7-up cool drinks. Sealed it. Seized it under Ex.P.4 mahazar in the presence of witnesses. He sent the seized items to P.W.16. P.W.17 sent the dead bodies to Government Hospital, Rajapalayam for autopsy.

(12) On 1/4/2009, at about 11.45 a.m., at the said Hospital, P.W.13 Dr.Ponnusamy conducted autopsy on the dead body of Priya and found the following:

A female body lied flat not decomposed arms by the side fixed at elbows. Moderately nourished. No discharge from ear or nose. Mouth closed. Tongue within. No external injury.

Internal examination

Abdomen: Stomach dieted with 350 ml fluid

Stomach congested. Liver, spleen, kidney, intact c/s congested. Intestine: intact c/s congested.

Chest: heart lungs intact c/s congested

Skull: skin bones brain intact, brain C/s congested. Hyoid bone intact. (Ex.P.16 Post-Mortem certificate).

(13) At about 12.45 p.m., P.W.13 conducted autopsy on the dead body of Gnanaselvi and found the following:-

A female body lied flat not decomposed, arms by the side fixed at elbows moderately nourished. No discharge from ear or nose. Mouth closed. Tongue within. No external injury.

Internal examination:

Abdomen: Stomach distended with 300 ml fluid

Stomach: congested liver, spleen, kidney, intact c/s congested Intestine: intact c/s congested

Chest: Heart lungs intact c/s congested.

Skull: Bones, (nc) skin intact.

Brain intact c/s congested

Hyoid bone intact. (Ex.P.17 Postmortem Certificate)

(14) P.W.15 having come to know that the children were murdered, submitted the Case-Diary to P.W.17 Anand Arockiaraj, Inspector, Thalavaipuram. He took up his investigation. Altered the Section of law to Section 302 IPC. Sent Ex.P.21 alteration memo to Court.

(15) On 4/4/2009, at about 10 a.m., the accused appeared before P.W.7 Krishnamurthi, VAO, Puthur. He confessed his killing of the children by giving 7-up cool drinks mixed with poison and if he goes to Police, they will torture him and thus, he has surrendered.

(16) At about 11 a.m., at the Dhalavaipuram Police Station, P.W.7 produced the accused with his Ex.P.5 report. P.W.17 arrested him. In pursuance of that, from his home, he had produced ten pockets, each containing light yellow colour powder weighing 10 grams (M.O.8 series) and 2 pockets containing light ash colour powder, each weighing 10 grams (M.O.9). He seized them in the presence of witnesses, under Ex.P.7 mahazar. P.W.17 produced the accused to the Court for judicial custody. He sent the case-properties to the Lab for chemical analysis.

(17) The viscera of Gnanaselvi and Priya contained Phosphide, a poisonous ingredient. It is rodenticide (Exs.P.12 and P.13 - viscera reports). The plastic containers received from P.W.16 found contained Phosphide. The 7-up cool drinks purchased from P.W.4's shop does not contain Phosphide. (Ex.P.8 chemical report). The contents of M.O.8 found contained diazepam. The contents of M.O.9 is Aluminium Phosphide (Ex.P.11 chemical report). P.W.13 opined that the children died due to phosphide poisoning (Exs.P.16 and P.17 postmortem certificates).

(18) P.W.17 further examined P.W.13 and perused the chemical and toxicology reports and concluding his investigation, filed the Final Report for offence under Section 302 IPC (2 counts).

5. The accused has been examined under Section 313 Cr.P.C., on the incriminating aspects in the prosecution evidence. He denied his complicity in this case. He did not produce any witness.

6. Analysing the evidence, the trial Court came to the conclusion that the circumstances projected by the prosecution are proved, thus, the prosecution has proved its case beyond all reasonable doubts and found the accused guilty of offence under Section 302 IPC (2 counts) and sentenced him as stated earlier.

7. According to Mr.A.R.Jeyaruthran, learned counsel for the appellant, the prosecution failed to establish the guilt alleged as against the accused. Elaborating his submissions, the learned counsel submitted as under:- (i) P.Ws.1 to 3 are closely related and are highly interested. They cannot be believed.

- (ii) P.W.2 is an unfaithful wife. She has been living in adultery with one Murugan, she distanced herself from the case and involved her husband in this case.
- (iii) P.Ws.1 and 3, who are brother and mother of P.W.2 interested in excluding her from the case, thus, no reliance can be placed on their evidence.
- (iv) There is no proof that particular poisonous substance has been administered to the children.
- (v) The vomitous material has not been recovered from the scene place, scientifically tested and co-related with the poisonous substance found in the viscerae of the children.
- (vi) Aluminium Phosphide by its nature have pungent smell, so, it cannot be kept openly. There is no evidence of such scent having emanated from the scene place or from the bodies of the deceased children.
- (vii) The accused also took the children to P.W.11's hospital. If he is the cause for their death, he would not have accompanied them to the hospital. (viii) P.Ws.1 to 3 have stated that the accused told them that soon the children will die. However, in his Ex.P.1 complaint, P.W.1 did not mention about this nor the name of the accused.
- (ix) Already, the accused was taken away by the Police. That being so, the accused having appeared before P.W.7 VAO and confessed to his poisoning of the children is not genuine.
- (x) There is no written extra-judicial confession.
- (xi) The accused was stated to have been handed over by the Revenue Staff to P.W.17 - Investigation Officer, when the accused surrendered before P.W.7 itself is doubtful, his arrest by P.W.17, his confession and recovery of M.Os.8 and 9 pockets containing poisonous powder and other materials are farce and are Police desk work.

8. On the other hand, the learned Additional Public Prosecutor submitted as under:

(i) Although P.Ws.1 to 3 are relatives, their evidence is consistent, cogent and natural and does not suffer from any infirmity.

(ii) There are very many telling circumstances which goes to fasten the accused with criminal liability.

(iii) The accused suspected the fidelity of his wife and there was strained relationship between them. She had begotten him only female children. However, the accused was interested in having male children. He is interested in replacing P.W.2 by another lady and through a new wife, he wished to begot male children. For this, the children are hurdle for him, thus, he had poisoned them. Thus, they have died.

(iv) There is extra-judicial confession of the accused to a non- Police/private person/P.W.7. It is relevant evidence under Section 24 of the Indian Evidence Act. In the facts and circumstances, merely on account of absence of a writing when the extra-judicial confession is genuine and voluntary, it cannot be brushed aside.

(v) The medical evidence discloses that the poisonous substance found in the visceras tallied with the poisonous substance recovered from the house of the accused.

(vi) The poisonous substance had been mixed with 7-up cool drinks. Purchasing of 7-up cool drinks by the children from his shop had been spoken to by P.W.4.

(vii) The accused did not evince interest in saving the life of his children. He did not make any complaint. His conduct was quite strange. He did not give any explanation for this during his examination under Section 313 Cr.P.C.

(viii) Thus, the accused had poisoned his own daughters and he is guilty of double murder. Thus, he has been rightly convicted and sentenced.

7. We have given our anxious consideration to the rival submissions. We have meticulously perused the voluminous oral, documentary evidence and the materials produced. We have also gone through the findings of the trial Court.

8. Meenakshipuram and Mangudi in Sankarankoil Taluk in Tirunelveli District are nearby villages. There is a distance of 1 Kilometer between them. The nearest big town is Dhalavaipuram. It is at a distance of 10 Kilometers. Accused Jeyaraj and his mother Jothiammal are residing in Meenakshipuram. Accused married P.W.3 Sevanammal's daughter P.W.2 Murugeswari. She is his own Aunt's daughter. Her brother is P.W.1 Arunachalam. P.Ws.1 and 3 are residing in Mangudi. P.W.2 and the accused resided in Meenakshipuram.

9. Gnanaselvi and Selvapriya, then about 10 and 7 years old respectively are the children of accused and P.W.2. On 31.03.2009, at about 10 p.m., they died in their house. Their Viscera Reports (Exs.P.12 and P.13) and the postmortem findings (Exs.P.16 and P.17) revealed that they died of poisoning.

10. Who poisoned them? According to prosecution, their own father had administered them poison.

11. In this case, there is no ocular witness. The case is based on circumstantial evidence.

12. Sir Alfred Wills in his book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules to be observed in the case of circumstantial evidence:

(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

13. In PADALA VEERA REDDY Vs. STATE OF A.P. [AIR 1990 SC - 79], it was laid down that when a case rests on circumstantial evidence, it must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

14. In STATE OF RAJASTHAN Vs. RAJA RAM [(2003) 8 SCC 180], it is observed as follows:-

8.The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

9. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See HUKAM SINGH Vs. STATE OF RAJASTHAN, ERADU Vs. STATE OF HYDERABAD, EARABHADRAPPA Vs. STATE OF KARNATAKA, STATE OF U.P. Vs. SUKHBASI, BALWINDER SINGH Vs. STATE OF PUNJAB and ASHOK KUMAR CHATTERJEE Vs. STATE of M.P.). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be

inferred from those circumstances. In BHAGAT RAM Vs. STATE OF PUNJAB it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

15. In SK.YUSUF Vs. STATE OF WEST BENGAL reported in (2011) 3 SCC (Cri) 620, on the aspect of circumstantial evidence, Honourable Apex Court observed as under:-

32. Undoubtedly, conviction can be based solely on circumstantial evidence. However, the Court must bear in mind while deciding the case involving the commission of serious offence based on circumstantial evidence that the prosecution case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence case. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so established should be consistent only with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that the act must have been done by the accused.

16. To make the accused responsible for the untimely death of the children, prosecution relies on the following circumstances:

- (i) Begetting of female children alone by P.W.2.
- (ii) The accused desired to have male children through another wife.
- (iii) The strained relationship between the accused and his wife/P.W.2.
- (iv) Medical evidence/death by poisoning.
- (v) Extra-judicial confession to P.W.7 - V.A.O.

(vi) Section 27 Indian Evidence Act recovery.

(vii) Non-lodging of F.I.R. by the accused.

17. In this case, P.Ws.1 to 3 namely, Arunachalam, Murugeswari and Sevanammal are the main witnesses. They are brother, sister and mother respectively. On account of they being so closely related, it has been argued on behalf of the accused that their interested testimony is to be discarded.

18. In SARWAN SINGH Vs. STATE OF PUNJAB [(1976) 4 SCC 369], a three-Judge Bench of the Hon'ble Apex Court, while considering the evidence of an interested witness held as follows:

10. . it is not the law that the evidence of an interested witness should be equated with that of a tainted [witness] or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of the interested [witness has] a ring of truth such evidence could be relied upon even without corroboration.

19. The fact of being a relative cannot by itself discredit the evidence. In the above said case, the witness relied on by the prosecution was the brother of the wife of the deceased and was living with the deceased for quite a few years. The Hon'ble Supreme Court in the above said case (SARWAN SINGH V. STATE OF PUNJAB [(1976) 4 SCC 369], SCC p. 379, para 16) held as follows. 16. . But that by itself is not a ground to discredit the testimony of this witness, if it is otherwise found to be consistent and true.

20. In BALRAJE v. STATE OF MAHARASHTRA [(2010) 6 SCC 673], the Hon'ble Supreme Court held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they

would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically and the court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. After saying so, the Hon'ble Apex Court held in the following manner: (SCC p. 679, para 30) 30. . if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

21. In PRAHALAD PATEL V. STATE OF M.P. [(2011) 4 SCC 262], in para 15, the Hon'ble Supreme Court held that: (SCC p. 265)

15. . Though PWs 2 and 7 are brothers of the deceased, relationship is not a factor to affect credibility of a witness. In a series of decisions this Court has accepted the above principle (vide *Israr v. State of U.P.*, (2005) 9 SCC 616 and *S. Sudershan Reddy v. State of A.P.*, (2006) 10 SCC 163).

22. In STATE OF U.P. V. NARESH, [(2011) 4 SCC 324] the Hon'ble Apex Court has emphasised that relationship cannot be a factor to affect the credibility of a witness. The following statement of law on this point is relevant: (SCC p. 334, para 29)

29. . The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives' evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the court has to analyse the evidence of related witnesses carefully to find out whether it is cogent and credible. (Vide *JARNAIL SINGH V. STATE OF PUNJAB*, [(2009) 9 SCC 719], *VISHNU v. STATE OF RAJASTHAN* [(2009) 10 SCC 477] and *BALRAJE V. STATE OF MAHARASHTRA* [(2010) 6 SCC 673].)

23. Keeping the above guidelines in our mind let us approach with meticulous care and caution, the testimony of P.Ws.1 to 3.

24. Now, let us proceed to see the circumstances stated by the prosecution one by one and see whether they are established. If established, whether they are incriminating in nature? and whether they form a complete chain unerringly proceeding towards the accused as the killer of the children.

25. The accused and Murugeswari (P.W.2) are not happy couples. The accused is a palmarah climber During the seasons, he used to go to several places, stay there for months together and return home. P.W.2, as insurance agent used to leave the house very often to collect the insurance premium amount and remit it in the Office in Virudhunagar. Totally, P.W.2 gave birth to four children. All are female children. Out of them, two have died already. The remaining are Gnanaselvi and Selvapriya.

26. A close reading of the evidence of P.W.2 reveals that the accused is not happy about P.W.2 having given birth to female children only. He longed for male children. He wished to have them through another wife. On this aspect, no dent has been made by the defence during her cross-examination. On this aspect, her evidence is consistent and cogent. Further, the reality of the situation, namely, she having given birth to only female children also lent credence to it. Thus, the accused is disgusted with P.W.2 having given him only female children and he wanted to have male children through another woman.

27. The accused suspected his wife's fidelity also. There was strained relationship between the spouses. It is the evidence of P.W.2 that very often she received beatings from her husband and on such occasions she used to go to Mangudi and complain about him to her mother (P.W.3) and brother (P.W.1). This has been spoken to by them. They have withstood the lengthy cross-examination of the defence.

28. It is the evidence of P.W.2 that on 30.03.2009, at about 4 p.m., when P.W.2 returned from Virudhunagar after remitting the insurance premium amount, quarrel arose between her and the accused. When she demanded his wages, he told her that when she is coming with money after sharing her bed with many in Virudhunagar, why should he give her money and he also slapped her. Then the children were there. They started crying. In these circumstances, P.W.2 went to

her brother's house. It is also her evidence that the accused also followed her.

29. It is the evidence of P.W.1 that in his house his sister (P.W.2) complained about she having been harassed by her husband and the accused told P.W.1 that his sister is leading a wayward life, so, he is going to marry another woman. At this juncture, P.W.2 throw away her Thali saying that she will not live with him and when the accused demanded the gold ring and cellphone, she immediately gave them to him. These aspects were also clearly spoken to by P.Ws.1 and 2. Their mother (P.W.3) also stated about the strained relationship between her daughter and her son-in-law. The evidence of P.Ws.1 to 3 are clear and cogent. There was much strained relationship between the accused and P.W.2.

30. When died, Gnanaselvi was 10 years old and Selvapriya was 7 years old. On 31.03.2009, at about 7.15 p.m., on intimation, P.W.1 Arunachalam visited the children's home, he found Selvapriya vomiting and Gnanaselvi was in a deplorable condition and soon they have fainted. At about 8 p.m., first aid was given to them by P.W.11 Dr.Meenakshisundaram at his hospital in Thalavaipuram. P.W.11 had noticed sweating, breathlessness, severe diarrhea, semi consciousness in them. There was smell of insecticide also. He was of the view that they might have had Organo Phosphorous Compound, an insecticide. He advised them to take the children immediately to Government Hospital, Rajapalayam. These aspects were stated by P.W.11 in his evidence and also in his Medical Report Ex.P.15. In these circumstances, at about 10 p.m. in their house, the children have died one after the other.

31. The Pathological findings of their Visceras is that they died of Phosphide, a poisonous ingredients. It was detected in their stomach, stomach contents, intestine, intestine contents, liver and Kidney (See Exs.P.12 and 13 Viscera Reports).

32. P.W.13 Dr.Ponnusamy, who conducted autopsy on the dead bodies by the children stated that the children died of phosphide, a poisonous substance. The children's stomach, intestine, chest, liver, spleen, kidney, heart, lungs, throat were found congested.

33. Phosphide is an organic non-metallic poisonous substance. Its symptoms are acute vomiting, diarrhea, loosing consciousness, foul and punchant stench and possibility of death within 24 hours of administration of fatal dose.

34. These symptoms were seen on the children by P.W.11 Dr.Meenakshisundaram, who gave them first aid and on dissection the internal contents of their dead bodies also revealed the presence of evidence/symptoms of phosphide poisoning.

35. On the same day, at about 12.30 a.m. at Thalavaipuram police station, P.W.1 gave Ex.P.1 complaint to P.W.10 Ayyasamy, Head Constable. The distance between the scene village and Thalavaipuram is about 10 kilometers. Thereafter, the F.I.R. was despatched and handed over to the Judicial Magistrate, Rajapalayam. Neither in lodging the F.I.R. nor in despatching it to the Judicial Magistrate, there is no delay.

36. It is significant to note that the F.I.R. was lodged not by the children's father/accused. He was present when the children died. He knows their death. He did not make any complaint. When he was examined under Section 313 Cr.P.C. he did not give any explanation as to why he did not prefer complaint on the death of his daughters. In the facts and circumstances of the case, this is an incriminating circumstance as against him.

37. P.W.7 Krishnamoorthy is V.A.O, Puthur Village. He is also the V.A.O. for Meenakshipuram. He has stated that he knows the accused. He is not a stranger or unknown person to him. His evidence is that on 04.04.2009, at about 10 a.m., when he was in his office, the accused appeared before him and told him as follows:

ehd; vdJ FHe;ijfis brtd;mg; ghl;oypy; tprg;bgho fye;JbfhLj;J bfhd;Wtpl;Bld;. fhty;Jiwf;F brd;why; vd;id Jd;g[Wj;Jthh;fs;.

He confessed to him about his killing of his children by giving them 7 Up cool drinks mixed with poisonous powder. Thereafter, at about 11 a.m. at the Thalavaipuram Police station, P.W.7 handed over him to P.W.17 Anand

Arockiaraj, Inspector with his report Ex.P.5, wherein he had stated exactly what the accused had confessed to him. Thereafter, P.W.17 arrested him in connection with this double murder.

38. P.W.7 had stated that the accused had confessed to him orally and he did not write it. P.W.7 is V.A.O. of his village. He knows him. He had no reason to implicate him. Accused had approached him for fear of police harassment. He sought his help and through him he had surrendered to police.

39. Section 24 of the Indian Evidence Act, 1872 prohibits obtaining of confession from a person implicating himself in a crime under threat, coercion, undue influence or out of any inducement or promise of help. The law prohibits confession to police. The law does not prohibits confession to non - police persons/ private persons. This has been recognized under Section 24 of the Indian Evidence Act. In fact confession is the best form of evidence, because it emanates from the very author/accused. It becomes reliable because, it is made by the maker/accused as against his own interest. But, it should not be tainted. Since the confession is made to private persons, to a non-judicial person/outside the Court, it is called extra-judicial confession.

40. It is relevant here to mention the observations of Hon'ble Supreme Court in STATE OF RAJASTHAN V. RAJA RAM, [2003] 8 SCC 180, wherein it was observed as under:

An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witness who appear to be unbiased, not even remotely

inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

41. Extra-judicial confession should be genuine and voluntary. There is no requirement of law that extra-judicial confession must always be in writing. Under certain circumstances, though the extra-judicial confession is voluntary and genuine, it may not be written. In such circumstances, it cannot be said that for want of written proof, it should be thrown out. When extra-judicial confession is made by the accused to a private person and that person has repeated it in Court what the accused had stated, for want of writing of the same, we cannot say it cannot be relied on, when otherwise it is reliable and acceptable.

42. Now, in this case, P.W.7 is not a stranger to the accused. What exactly he had stated to him about the occurrence had been repeated by him in the Court, the reason why the accused has approached his help/ surrendered before him has also been stated by P.W.7. That apart, immediately, P.W.7 had also submitted Ex.P.5 Report to P.W.17. It also contains exactly what the accused had stated to him on that day and that was also marked in the Court and was also subjected to cross-examination. In the facts and circumstances, we are not to exclude the oral extra-judicial confession made by the accused to P.W.7, merely on account of want of a written record for the same.

43. P.W.2 had stated that on the next day, after the children have died, police took her husband to Thalavaipuram. This is also what stated by P.Ws.1 and

3. In Ex.P.1 - complaint, P.W.1 had entertained suspicion on the death of the children. That is why initially the case has been registered as suspicious death under Section 174 Cr.P.C. When the children started vomiting and soon fainted P.Ws.1 and 2 and their relatives took the children to P.W.11

Dr.Meenakshisundaram. It is to be noted that the accused also accompanied them. The accused is the father of the children. Then nobody suspected him. He was also present all along like others. That is why initially his name did not figure in the F.I.R. Children have died on 31.03.2009 at about 10 p.m. F.I.R. was lodged on 12.30 a.m. Naturally the police will also ask about the accused as to what had happened. In the facts and circumstances, it cannot be stated that he was arrested and kept under police custody. In the circumstances, non- mentioning of his name in the F.I.R. is not fatal to the prosecution case.

44. After the inquest and the postmortem was over, the Section of law was altered to Section 302 I.P.C. and Ex.P.21 Alteration Memo was submitted to Court by P.W.17. In Ex.P.21 accused's name has not been mentioned. So he was not arrested. His involvement was known first on 04.04.2009, when he made extra-judicial confession to P.W.7.

45. On 04.04.2009 at about 11 a.m, P.W.17 arrested the accused. It is the evidence of P.W.17 that the accused gave him Ex.P.6 confessional statement that if he is taken to his house, he will produce powder pockets and silver vessel. It was recorded by P.W.17 in the presence of P.W.7 and his Assistant. It is also the evidence of P.W.7 that the accused took them to his house and produced 10 powder pockets (M.O.8) and 2 powder pockets (M.O.9) and the Silver Vessel (M.O.1) and they were seized under Ex.P.7 seizure mahazar. On this aspect there is no material contradiction between P.W.7 and P.W.17. There is nothing significant to discard the recovery of M.Os.1, 8 and 9.

46. On 31.03.2009, in the evening, when the children returned home, the accused gave them Rs.50/- each and directed them to purchase 7 Up cool drinks and this has been spoken to by P.W.2. She had also stated that the children have brought 7 Up cool drinks. P.W.4 Arockiasamy, the petty shop owner stated that on 31.03.2009 at about 5.30 p.m., he sold 7 Up cool drinks in plastic containers to the two children of the accused. Nothing has been obtained by the defence in his cross examination disturbing his such evidence. P.W.15 David Rajan, Sub-Inspector of Police purchased a 7 Up cool drinks container (M.O.5) from P.W.4 under Ex.P.4 mahazar.

47. P.W.17 sent the said seized items to Chemical Lab for analysis through Court (See Ex.P.10 Court letter). On analysis of M.Os.5, 8 and 9, M.O.8 ten powder pockets seized from the house of the accused found contained diazepam. M.O.9 two powder pockets, which were also seized from the house of the accused found contained Aluminium phosphide, a poisonous rodenticide (Ex.P.11 - chemical report). The contents of 7 Up container seized from the house of the accused on 01.03.2009 was sent through proper authority to the chemical lab for analysis. On analysis, the contents are found to be phosphide. It is a poisonous ingredient. It is a rodenticide (Ex.P.8 - chemical report). The contents of sample M.O.5 - Plastic container on analysis found not containing phosphide. The pathological findings on the visceras of the children's dead bodies revealed the presence of phosphide inside their bodies. Thus it is seen that the 7 Up plastic containers seized from the house of the accused contained phosphide. The visceras of the children also found contained phosphide. M.O.9 - the two powder pockets seized from the house of the accused also contained phosphide. On 31.03.2009, at about 7.30 p.m., all the symptoms which will be found in phosphide poisonous cases were found in children and the postmortem findings also show that they died of phosphide poisoning.

48. The evidence of P.Ws.1 to 3 reveals that now P.W.2 is living in Devipattinam with one Murugan as his living partner. They denied that P.W.2 had illegal relationship with him even prior to the occurrence. Her so living has no bearing so far as the prosecution case is concerned.

49. The children lived with their parents in their house in Meenakshipuram. On 31.03.2009, at about 7.30 p.m. they were found in a serious condition in their house. They were noticed vomiting by P.W.1 and subsequently by P.Ws.2 and 3, that is what also noticed by P.W.11 and that has been stated in his report Ex.P.15.

50. No doubt vomited material has not been recovered from the scene house. It is not the case of the accused that the children have not been poisoned at all. It is also not the case that the children did not die due to poisoning. They were found struggling for life in their house. In these circumstances, failure to collect vomited material is not fatal to the prosecution case.

51. The accused was fed up with his wife having given birth to female children only. He was interested in begetting male children and decided to have them through another wife. P.W.2 and her children were stumbling block for him to do so. The accused suspected P.W.2's fidelity also. On 30.03.2009, when the accused and P.W.2 quarrelled, they started blaming each other in P.W.1's house at Mangudi. When, P.W.1 expressed his concern for the future of the children, he had stated that the accused had stated that soon they will die. This has also been stated by P.Ws.2 and 3. In these circumstances, in the house of the accused his two children were found dead with the symptoms of they having had poisonous substances and later they died. It is found that they were administered phosphide, a rodenticide mixed in 7-Up cool drinks and phosphide poison also has been recovered from the house of the accused, based on his disclosure statement. The accused also gave extra-judicial confession that he had killed his children by giving them 7-Up cool drinks mixed with poison. As to the death of the children, he did not make complaint to the police at all. As to this, he did not give any satisfactory explanation, when he was examined under Section 313 Cr.P.C.

52. A cumulative consideration of all the above incriminating circumstances forms a complete chain without any missing link and unerringly proceeding towards the accused as the killer of the children. The children's killer is none other than their father himself. He had poisoned them. The prosecution has established its case beyond all reasonable doubts.

53. In these circumstances, we do not find any flaw in the finding of guilt recorded under Section 302 I.P.C. (2 counts) by the learned Principal Sessions Judge, Virudhunagar Sessions Division at Srivilliputhur and his awarding of double life sentences to him.

54. From this case, it is seen that so much of antipathy exists towards girl children. Even their own father did not like them because they were born female. Whether a male child or female child, a child is a child to the parents. They did not make any difference. They should not have the feeling that they (parents) were made burdensome. Now-a-days, women are ahead of men in all fields. Unlike male, women plays multifarious roles. They suffer in silence from their birth till death.

They suffer as mother, wife, sister, daughter and daughter-in-law. Every parent must feel that when girl children were born, they are gifted. No religion preaches killing of children merely because they were born as female. In fact, they advocates treating them as Gods themselves. In stead of killing them, they could very well give them in adoption to those issueless couples, who are longing for a child. There is no meaning in killing innocent children. They shall not be nipped (killed) at the bud and prevent blossoming of 'Karuthammas'.

55. In the result, this Criminal Appeal is dismissed, confirming the conviction and sentences imposed upon the appellant in S.C.No.102 of 2009 on 30.09.2010 by the learned Principal Sessions Judge, Virudhunagar Sessions Division at Srivilliputtur.

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