

Muthulakshmi vs State Represented By on 24 March, 2022

Author: P.N.Prakash

Bench: P.N.Prakash, A.A.Nakkiran

Criminal Appeal Nos.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Criminal Appeal Nos.584 of 2018 and 329 of 2021

Muthulakshmi
W/o.Gopalakrishnan

.. Appellant in CrI.A.No

Pazhani Gounder
S/o.Thaila Gounder

.. Appellant in CrI.A.No

Vs.

State represented by
The Inspector of Police,
Kallavi Police Station,
Krishnagiri District.
Crime No.27/2015

.. Respondent in both ap

Criminal Appeals filed u/s.374(2) of the Code of Crimi
against the judgment and order dated 10.08.2018 passed in Special
S.C.No.26 of 2015 on the file of learned Sessions Judge, Fast Track
Court, Krishnagiri.

1/18

<https://www.mhc.tn.gov.in/judis>

For Appellants : Mr.D.Baskar [Crl.A.No.584 of 2018]
Mr.E.Kannadasan [Crl.A.No.329 of 2021]

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J] As all these appeals arise out of one and the same judgment, they are considered and decided by this common judgment.

2. These criminal appeals are directed against the judgment and order of conviction and sentence dated 10.08.2018 passed by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, in Special S.C.No.26 of 2015.

3. The prosecution story runs thus:

3.1. Gopalakrishnan [PW-10] is the son of Pazhani Gounder [A1] and Muthamma [PW-3]. They were residing in Jadaiyanpallam, Uthankarai Taluk, Krishnagiri District. Gopalakrishnan [PW-10] was working as a lorry driver and used to go on long trips to various North Indian States for <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 transporting goods by road. Gopalakrishnan [PW-10] got married to one Deepa six years prior to the incident and through the wedlock, was born Pooja, the deceased in this case. Deepa committed suicide and thereafter, Gopalakrishnan [PW-10] got married to Muthulakshmi [A2] and they were all living in joint family in Jadaiyanpallam village. Five days prior to the date of occurrence [date of occurrence being 04.02.2015], Gopalakrishnan [PW-10] left for Gujarat leaving behind his wife Muthulakshmi [A2] and his daughter Pooja in the custody of his parents Pazhani Gounder [A1] and Muthamma [PW-3]. In the night of 04.02.2015, around 11.00 p.m., the body of Pooja was recovered by the villagers from a Well behind the house of Pazhani Gounder [A1] and the whole village was very tensed in this regard.

Information was sent to Gopalakrishnan [PW-10] and Thirumurthy [PW-1], the brother of Gopalakrishnan's [PW-10's] first wife Deepa and the maternal uncle of Pooja.

3.2. On a written complaint [Ex.P1] given by Thirumurthy [PW-1], Sampooram [PW-16], Sub-Inspector of Police, registered a case in Kallavi <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 Police Station Crime No.27 of 2015 on 05.02.2015 at 09.00 a.m. u/s.174 Cr.P.C. [suspicious death] and prepared the printed First

Information Report [Ex.P8], which reached the jurisdictional Magistrate on the same day, as could be seen from the endorsement thereon.

3.3. In the complaint [Ex.P1], Thirumurthy [PW-1] has stated about the marriage of Gopalakrishnan [PW-10] with his sister Deepa; the birth of Pooja; death of Deepa; re-marriage of Gopalakrishnan [PW-10] with Muthulakshmi [A2]; about the information received by him on the night of 04.02.2015 from Pazhani Gounder [A1] that Pooja was found missing in the house and when they searched for her, her body was found floating in the Well.

3.4. Investigation of the case was taken over by Kumaran [PW-22], Inspector of Police, who went to the place of occurrence and prepared the observation mahazar [Ex.P5] and rough sketch [Ex.P19]. Kumaran [PW- 22], Inspector of Police, saw the body of Pooja kept on the cot in front of <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 the house of Pazhani Gounder [A1]. Inquest over the body of Pooja was conducted and the inquest report was marked as Ex.P20. The body of Pooja was sent to the Government Hospital, Dharmapuri, where, Dr.Thunderchief [PW-20] performed autopsy on the body of Pooja and issued the postmortem certificate [Ex.P14]. In his evidence as well in the postmortem certificate [Ex.P14], he has noted as follows:

"EXTERNAL INJURIES : 4 x 3 cm reddish brown abrasion on right buttock.

DISSECTION OF THORAX AND ABDOMEN:

Rib cage was intact. Heart was normal in size; chambers contained fluid blood. Valves, great vessels were normal. Lungs were voluminous, shows rib indentation, cut section: frothy fluid oozed out.

Stomach contained 50 ml of light brown colored watery fluid with partially digested rice particles having no specific odour, mucosa was congested.

Liver, Spleen and Kidneys were normal in size, cut section: congested.

Urinary bladder contained 5 ml of clear urine. Uterus measuring 1.5 x 1.5 x 0.5 cm, cut section : Cavity empty. Hymen shows fresh, complete, irregular rupture with oozing of blood from the ruptured margins.

Pelvic bone was intact."

After receipt of the diatom report [Ex.P18], which showed that diatom was not detected, he gave his final opinion as to the cause of death, which is as <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 follows:

"Opinion as to cause of death:

a) Reserved pending report of :.....

b) The deceased would appear to have died of asphyxia due to drowning. The death would have occurred 12 to 24 hours prior to the autopsy."

3.5. While the police were clueless as to who the perpetrator of the dastardly offence was, suddenly Muthulakshmi [A2] appeared before Jayanthi [PW-7], Village Administrative Officer, on 05.02.2015 at about 03.00 p.m. and gave an extra judicial confession [Ex.P2] confessing that she had an illicit affair with her father-in-law [A1], which was seen by Pooja one day and so they decided to get rid of her; on 04.02.2015, after dinner, her father-in-law [A1] had sex with her and at that time, Pooja was sleeping in the adjacent room; her father-in-law [A1] decided to get rid of Pooja and so he carried her to the cattle shed, raped her and threw her body in the Well.

3.6. After recording the extra judicial confession [Ex.P2], Jayanthi [PW-7], Village Administrative Officer, produced Muthulakshmi [A2] along with a special report [Ex.P3] before Kumaran [PW-22], Inspector of Police, <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 at about 04.30 p.m. The police arrested Muthulakshmi [A2] and recorded her confession. Thereafter, on the same evening at 05.00 p.m., Pazhani Gounder [A1] was arrested. The alteration report [Ex.P22] was made ready altering the case from one u/s.174 Cr.P.C. to one u/s.376 and 302 IPC and section 6 of the POCSO Act against Pazhani Gounder [A1] and Muthulakshmi [A2]. Since the penal provisions of POCSO Act was invoked, the investigation was continued by Baskaran [PW-23], Deputy Superintendent of Police.

3.7. Baskaran [PW-23], Deputy Superintendent of Police, after examining the witnesses, collecting the various reports of the experts and completing the investigation, filed a final report in Spl.S.C.No.26/2015 in the Special Court for POCSO Act cases [Fast Track Court, Mahila Court], Krishnagiri, for the offences u/s.302 IPC and section 5(1) r/w 6 of the POCSO Act against Pazhani Gounder [A1] and sections 302 and 109 IPC against Muthulakshmi [A2]. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with. When questioned, the accused <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 pleaded 'not guilty'.

3.8. To prove the case, the prosecution examined 23 witnesses and marked 26 exhibits and 6 material objects. When the accused were questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. None was examined from the side of the accused and no exhibit was marked.

3.9. After considering the evidence on record and hearing either side, the trial Court, by judgment and order 10.08.2018 in Spl.S.C.No.26 of 2015, had convicted and sentenced the accused as under:

Provision under Accused Sentence which convicted A1 Section 302 IPC life imprisonment and fine of Rs.2,500/-, in default, to undergo 1 year rigorous imprisonment.

Section 5(1)(m)

life imprisonment and fine of

A2	r/w 6 of the POCSO Act Section 302 r/w 109 IPC	default, to undergo 1 year ri imprisonment. life imprisonment and fine of each, in default, to undergo
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<https://www.mhc.tn.gov.in/judis>

Criminal Appeal Nos.584 of 2018 and 329 of 2021 Provision under Accused Sentence which convicted imprisonment.

The sentences were ordered to run concurrently.

3.10. Challenging the aforesaid conviction and sentences, Pazhani Gounder [A1] has filed Crl.A.No.329 of 2021 and Muthulakshmi [A2] has filed Crl.A.No.584 of 2018.

4. Heard Mr.D.Baskar, learned counsel for the appellant in Crl.A.No.584 of 2018 and Mr.E.Kannadasan, learned counsel for the appellant in Crl.A.No.329 of 2021 and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

5. The prosecution has proved beyond a peradventure the following facts:

(i) Gopalakrishnan [PW-10] is the son of Pazhani Gounder [A1] and Muthamma [PW-3];

<https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021

(ii)Gopalakrishnan [PW-10] got married to one Deepa and through the wedlock, Pooja was born;

(iii)Deepa committed suicide after which, Gopalakrishnan [PW-10] got married to Muthulakshmi [A2];

(iv)Gopalakrishnan [PW-10] was a lorry driver and at the time of the incident, he was not in the village and was away;

(v) the body of Pooja was recovered on 04.02.2015 at 11.00 p.m. from the Well behind the house of Pazhani Gounder [A1];

(vi)the death of Pooja was not an accident, but a homicide.

6. The short point is whether the evidence on record supports the charges framed against Pazhani Gounder [A1] and Muthulakshmi [A2].

7. It may be pertinent to state here that most of the witnesses turned hostile including Gopalakrishnan [PW-10]. Therefore, we are left only with the extra judicial confession [Ex.P2] of Muthulakshmi [A2] and the <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 evidence of Lakshmanan [PW-5] and Alamelu [PW-6].

8. Now, let us examine the evidence of Lakshmanan [PW-5] and Alamelu [PW-6]. Lakshmanan [PW-5] and Alamelu [PW-6] are related to each other and Lakshmanan [PW-5] was from Muthalikottai and Alamelu [PW-6] was from Pallathur village. In their evidence, they have stated that their relative Sarasu was residing in Barathamadu village; that Sarasu wanted medical help and requested them to come; therefore, they went to Sarasu's village, but, by then Sarasu was shifted to the hospital; hence, while they were returning home to their village, en route, they passed through Jadaiyanpallam and decided to see Pooja around 10.00 in the night; at that time, when they went to the house of Pazhani Gounder [A1], they saw Pazhani Gounder [A1] carrying Pooja on his shoulders and going behind his house and also saw Muthulakshmi [A2] wearing a nighty and speaking over mobile phone; after seeing that, they proceeded to their village that night; on the next day, they received information that Pooja's body was found in a Well and therefore, they rushed to the house of Pazhani <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 Gounder [A1] and Muthulakshmi [A2] and saw Pooja's body in the house of Pazhani Gounder [A1]; that they were available when the police came there.

9. It is the case of prosecution that the statement of these witnesses were recorded only on 06.02.2015 after the case was altered and the statements reached the Court only on 10.02.2015. However, strangely, Lakshmanan [PW-5] and Alamelu [PW-6], who were present during the inquest, did not say that they saw Pazhani Gounder [A1] carrying Pooja on his shoulders and going behind his house at 10.00 in the night of the previous day. That apart, they decided to come to see Pooja on the previous day. It is not known why they returned to their village after coming up to the house of Pooja without even speaking to Pazhani Gounder [A1] and Muthulakshmi [A2], whom they found to be present there. Therefore, we are unable to place any reliance on the evidence of Lakshmanan [PW-5] and Alamelu [PW-6] that they came to Jadaiyanpallam village at 10.00 in the night of 04.02.2015 for seeing Pooja, but, on seeing Pazhani Gounder [A1] carrying Pooja on his shoulders, they returned to their village and again <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 came back to Jadaiyanpallam village on the next day.

10. Now we are left only with the extra judicial confession [Ex.P2] of Muthulakshmi [A2] that was alleged to have been given by her to Jayanthi [PW-7], Village Administrative Officer. Overwhelming evidence shows that Pazhani Gounder [A1] and Muthulakshmi [A2] were taken into custody on 05.02.2015 itself, for which, we have the evidence of Shankar [PW-2] and Sakthi [PW-12]. These witnesses were not declared hostile.

11. In his chief-examination, Sakthi [PW-12], has stated as follows:

"04/02/2015k;njpp g{\$hit flnzhk; ahnuh J}f;fpbfhz;L nghfpwhh;fs; vd;W fj;jpf;bfhz;L 1tJ vjphp ,ut[9 kzp nghy; Xodhh;/ eh';fs; ngha; mf;fk;

gf;fk; njo gh;hn ; jhk;/ ve;j gf;fk; FHe;ij

,Uf;fpd;wJ vd;W bjhpapty;iy/ gpd;g[epyh btspr;rk; te;Jtpl;lJ/ fpzj;J gf;fk; ngha; gh;ff ; yhk; vd;W vy;nyhUk; nghndhk;/ mg;nghJ FHe;ij g{\$h fpzw;wpy; fple;jJ/ FHe;ij g{\$hit fpzw;wpypUe;J vLj;J btsrna nhl;lhh;fs;/ ehd; FHe;ij g{\$hit gh;hn ; jd;/ mg;nghJ FHe;ij vg;go ,Ue;jJ vd;W bjhpapty;iy/"

12. In the cross-examination, Sakthi [PW-12] has stated that on 05.02.2015, the police suspected Pazhani Gounder [A1] and Muthulakshmi <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 [A2] and they took them into custody.

13. As stated above, this witness [Sakthi [PW-12]] was not declared hostile by the prosecution. A reading of the evidence of this witness shows that from 09.00 p.m. on 04.02.2015 onwards, Pazhani Gounder [A1] was going all around in search of Pooja and ultimately, when the villagers decided to look into the Well, they found the body of Pooja there and fished it out. Thus, from 09.00 p.m. onwards, the villagers were involved along with Pazhani Gounder [A1] in search of Pooja. In the extra judicial confession [Ex.P2], Muthulakshmi [A2] had stated that at 10.00 p.m., Pazhani Gounder [A1] carried Pooja and raped her in the cattle shed and threw Pooja in the Well. The age of Pazhani Gounder [A1] was 63 and this story was not believed even by his own son Gopalakrishnan [PW-10], who turned hostile to the case of the prosecution.

14. Be that as it may, it is not the case of the police that Pazhani Gounder [A1] and Muthulakshmi [A2] absconded from the place of village <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 after the occurrence. Similarly, Shankar [PW-2], who is the father of Thirumurthy [PW-1], has, in evidence, stated that Pazhani Gounder [A1] and Muthulakshmi [A2] were taken into police custody at 10.00 a.m. on 05.02.2015. When once they had gone into the custody of the police at 10.00 a.m., the case of the prosecution that Muthulakshmi [A2] alone went to Jayanthi [PW-7], Village Administrative Officer and gave an extra judicial confession on 05.02.2015 at 03.00 p.m., defies credulity.

15. We find that the evidence on record is insufficient to sustain the conviction and sentence in this case.

16. In the result, i. these appeals are allowed and the appellants are acquitted of all the charges. The conviction and sentence passed in Special S.C.No.26 of 2015 on the file of the Sessions Court, Fast Track Mahila Court, Krishnagiri, vide judgment and order dated 10.08.2018, are set aside. Fine amount, if any, paid by the appellants shall be refunded. <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 ii. Pazhani Gounder, appellant in CrI.A.No.329/2021, who is detained in Central Prison, Vellore, is directed to

be released forthwith unless his custody is required in connection with any other case. iii. Bail bonds, if any, executed by Muthulakshmi, appellant in CrI.A.No.584 of 2018 [who is on bail], shall stand discharged. iv. the State Government is directed to pay compensation of Rs.5,00,000/-

[Rupees Five Lakhs only] to Gopalakrishnan [PW-10] under the Victim Compensation Scheme.

v. The trial Court viz., Sessions Court, Fast Track Mahila Court, Krishnagiri and the Secretary, District Legal Services Authority, Krishnagiri, shall ensure that the compensation amount is disbursed to Gopalakrishnan [PW-10] by the Government expeditiously.

[P.N.P., J]
24.03.2022

Index: Yes/No
gm

To

1.The Sessions Judge,

<https://www.mhc.tn.gov.in/judis>

Jud

Criminal Appeal Nos.584 of 2018 and 329 of 2021 Fast Track Mahila Court, Krishnagiri.

2.The District Collector, Krishnagiri.

3.The District Legal Services Authority, Krishnagiri.

4.The Superintendent of Central Prison, Vellore.

5.The Inspector of Police, Kallavi Police Station, Krishnagiri District.

6.The Public Prosecutor, High Court, Madras.

P.N.PRAKASH, J and A.A.NAKKIRAN, J <https://www.mhc.tn.gov.in/judis> Judgment dated : 24.03.2022 Criminal Appeal Nos.584 of 2018 and 329 of 2021 gm Criminal Appeal Nos.584 of 2018 and 329 of 2021 24.03.2022 <https://www.mhc.tn.gov.in/judis>