

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement reserved on : 29..03..2016

Judgement pronounced on : 13..04..2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.141 of 2013

Jayaprakash

... Appellant/ Accused

-Versus-

State Rep. by
The Inspector of Police,
Madukarai K.G. Savadi Police Station,
Coimbatore District.
[Crime No.108 of 2012]

... Respondent/ Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned III Additional Sessions Judge, Coimbatore, in S.C.No.249 of 2012 dated 30.01.2013.

For Appellant : Mr.L.Mouli

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

[Judgment of the court was delivered by S.NAGAMUTHU.J.,]

The appellant is the sole accused in S.C.No.249 of 2012 on the file of the III Additional Sessions Judge, Coimbatore. He stood charged for offences under Sections 449, 302 and 397 of IPC. The trial court, by judgement dated 30.01.2013, convicted the sole accused under all three charges and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for two years for offence under Section 449 of IPC; to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to suffer rigorous imprisonment for five years for offence under Section 302 of IPC ; and to undergo rigorous imprisonment for seven years for offence under Section 397 of IPC. Challenging the said convictions and sentences, the sole accused has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Vasanthakokila. She was

residing at D.No.7/26, Vinayagar Koil Street, Navakkarai Village. P.W.3 is her husband. She was a Hindu and thus, she was wearing Gold Thali Chain [M.O.1]. On 03.03.2012, she was alone at her house. It is alleged that the accused, who was also formerly residing in that locality and known to the deceased and her family members, had gone to the house of the deceased at about 10.30 a.m. He trespassed into the house, stabbed the deceased with knife, snatched the gold thali chain from her neck and fled away from the scene of occurrence. P.W.1 is her brother-in-law [the brother of the husband of the deceased]. P.W.2 is a neighbour of P.W.1.

3. It is further alleged that on 03.03.2012, in the morning, P.W.1, as usual, wanted to go to the house of the deceased to meet P.W.3. P.W.2 also accompanied him. When they went to the house of the deceased, they found the accused opening the doors of the house of the deceased from inside the house and fleeing away from the scene of occurrence. When P.Ws.1 and 2 intercepted the accused, he pushed them aside and ran away. Sensing some untoward incident, they rushed into the house where they found the deceased lying with injuries in the dining hall of the house. P.Ws.1 and 2 sprinkled some water on her face and also tried to make her to regain consciousness. The deceased opened her eyes. When they enquired as to what had happened, the deceased told them that the accused had stabbed her and snatched away the gold thali chain. Soon she again slipped into unconsciousness. P.Ws.1 and 2 cried for help. The neighbours gathered. Within a short time, the deceased breathed her last. P.W.1 immediately contacted his brother [P.W.3] over phone and informed about the occurrence. P.W.1 also rushed to the place of occurrence.

4. Meanwhile, P.W.1 went to K.G. Chavadi Police Station and made a complaint at 12.00 noon on 03.03.2012. In that complaint, he specifically mentioned the above facts and also stated that the deceased was killed only by the accused. P.W.11, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.108 of 2012 under Sections 380 and 302 of IPC. Ex.P.13 is the FIR. He forwarded both the complaint [Ex.P.1] and the FIR [Ex.P.13] to the court which were received by the learned jurisdictional Magistrate at 03.00 p.m. on 03.03.2012. Then, P.W.11 handed over the case diary to the Inspector of Police for investigation.

5. P.W.12 took up the case for investigation. He proceeded to the place of occurrence at 1.00 p.m. In the presence of P.W.5 and another witness, he prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P14). At his request, P.W.10 came to the place of occurrence and took up photographs of the deceased and the surroundings. M.O.10 is the photographs [series]. Then, he examined P.Ws.1 to 5 and recorded their statements. He conducted inquest on the body of the deceased and prepared an inquest report [Ex.P15]. Then, he forwarded the body of the deceased for post-mortem. Thereafter, he recovered blood stained cement flooring (M.O.2) and ordinary cement flooring (M.O.3) in the presence of P.W.5 and another witness under a mahazar (Ex.P.3).

6. P.W.9 Dr.Jeyasingh conducted autopsy on the body of the deceased at 01.15 p.m. on 04.03.2012 . He found the following injuries:-

"Ante mortem injuries :-

(1) Incised wound 3.5 x 1 cm x skin deep noted over left side chin and upper part of neck.

(2) Incised wound 2 x 0.5 cm x skin deep noted over right upper neck, 1 cm below to the wound no.1

(3) Incised wound 1 x 0.2 cm x skin deep noted over middle of chin.

(4) Bluish contusion noted on the following region:

- 1 x 0.5 cm noted over left lower lip.

- 1 x 0.5 cm noted over right upper lip.

- 7 x 6 x 2 cm noted over right side chin, mandible and right upper neck.

- 13 x 11 cm noted over top and front of right shoulder and right upper chest.

- 8 x 5 cm noted over back of left supra scapular region.

- 3 x 3 cm noted over back of left shoulder.

- 5 x 5 x 2 cm noted over right side neck and posterior aspect of neck.

- 6 x 5 x 0.25 cm noted over front of neck, at the level of thyroid cartilages and cricoids cartilage.

(5) Abrasion 2 x 2 cm noted over left elbow.

On dissection of Scalp, Skull and Dura: Sub scalp contusion 3 x 3 cm noted over left parieto occipital prominence and 5 x 5 cm noted over right occipital region. Right temporalis muscle found contused. Diffuse sub arachnoid hemorrhage noted over left parieto temporal region.

On dissection of neck: Contusion 10 x 8 cm noted over entire left side neck muscles and 9 x 6 cm noted over entire right side neck muscle. Hyoid bone found fractured in its both side upper part of greater cornu with surrounding tissue contusion. A vertical fracture noted on mid line of thyroid cartilage with surrounding tissue contused.

Other Findings:-

- Peritoneal & Pleural cavities - Empty.
- Larynx and Trachea: Cut section pale.
- Heart - right side chambers contain about few cc of fluid blood and left side chambers empty.
- Coronaries - patent.
- Stomach contains about 150 grams of partially fluid, no specific fluid, mucosa pale.
- Small Intestine contains about 10 ml of bile stained fluid, no specific fluid, mucosa pale.
- Liver, Spleen, Kidneys, Lungs and Brain - Cut section pale.
- Urinary bladder - empty.
- Uterus: Atrophied."

She preserved the visceral organs and blood and sent the same for chemical analysis. Ex.P.11 is the post-mortem certificate. She opined that the deceased would appear to have died of blunt injury on neck and its corresponding internal injuries. He further opined that the injury Nos.1 to 3 would have been caused by a weapon like Knife (M.O.6). Ex.P.12 is the final opinion regarding the cause of death of the deceased.

7. During the course of investigation, on the same day at 06.30 p.m. near Valayaar bus stand, PW.12 arrested the accused in the presence of P.W.6 and another witness. On such arrest, the accused disclosed the place where he had hidden a blood stained lungi, a blood stained shirt, a knife and a gold chain. In pursuance of the same, he took P.W.12 and the witnesses to Palacode Main Road and from a bush near Transformer, he produced the blood stain lungi (M.O.4), blood stained shirt (M.O.5) and blood stained knife (M.O.6). P.W.12 recovered the said material objects under a mahazar (Ex.P4) in the presence of the said witnesses. Then, the accused took P.W.12 and the witnesses to his house and identified the place near hibiscus plant where he had buried the gold chain weighing 5 sovereigns. He unearthed the gold chain (M.O.1) and produced to P.W.12, who, in turn, recovered the same in the presence of the said witnesses under a mahazar (Ex.P.6). On returning to the police station, he forwarded the accused to the court for judicial remand. Thereafter, he recovered the blood stained clothes recovered from the body of the deceased and forwarded the material objects to the court. On the orders of the learned Judicial Magistrate, the Head Clerk of the court forwarded the material objects for chemical examination. The chemical analysis report revealed that there were human blood stains on all the material objects including the knife. Meanwhile, P.W.12 was transferred. P.W.13, took up the case for further investigation, collected the post-mortem certificate, examined the Doctor, who conducted autopsy on the body of the deceased, and the other official witnesses, collected the reports and on completing investigation, P.W.13, the investigating officer laid

final report against the accused.

8. Based on the above materials, the trial court framed as many as three charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 13 witnesses were examined, 15 documents and 11 material objects were marked.

9. Out of the above said witnesses, P.Ws.1 and 2 have stated that when they reached the house of the deceased at 10.30 a.m., they found the accused opening the doors of the house from inside and fleeing away from the scene of occurrence. They have further stated that when they tried to intercept, the accused pushed them aside and ran away. They have further stated that when they entered into the house, they found the deceased lying in the dining hall with injuries. She was unconscious. The sprinkled some water on her face. She regained consciousness and on enquiry, she told them that the accused attacked and snatched away the gold chain. Soon she became again unconscious. P.Ws.1 and 2 further stated that they lifted the body of the deceased to the main hall of the house and cried for help. The neighbours arrived. Within a short while, the deceased died. P.W.3 the husband of the deceased had stated that the gold chain (M.O.1) was worn by the deceased lastly. When he came to the house, he found the gold chain was missing from the body of the deceased. He came to the place of occurrence on the information being passed by P.W.1. P.W.4 has stated that at about 10.45 a.m. on 03.03.2012, when he was returning to his Navakkarai house, he found the accused running from opposite direction. The villagers cried and asked P.W.4 to catch him hold, but, he could not catch as the accused ran away very fast. P.W.5 has spoken about the observation mahazar and the rough sketch prepared at the place of occurrence. P.W.6 has spoken about the arrest of the accused on 03.03.2012 at 06.30 p.m. and he has further stated that on the disclosure statement made by the accused, M.O.1, M.O.4, M.O.5 and M.O.6 were all recovered. P.W.7 has stated that he took the dead body for post-mortem. P.W.8 has stated that he examined the material objects and found human blood stains of 'B' origin on all material objects including the knife (M.O.6). P.W.10 has spoken about the photographs taken at the place of occurrence. M.O.10 series are the photographs numbering six. M.O.11 is the compact disc containing photographs taken at the place of occurrence. P.W.11 has spoken about the registration of the case and handing over of the case diary to P.W.12 for investigation. P.W.12, the Inspector of Police, has spoken about the substantial portion of the investigation done by him in this case. P.W.13 has spoken about the further investigation done by him and the filing of final report against the accused.

10. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. On his side, he examined one Mr. Kingcom as D.W.1 and Exs.D1 and D2 and defence side material objects M.O.1 and 2 were marked.

11. In his evidence, D.W.1 has stated that during the relevant point of time, he was working as a Reporter in "Dinakaran Tamil Daily". According to him, he received a summons from the court in connection with this case to produce all the photographs in the possession of his Office relating to the occurrence which were taken at the place of occurrence. He has further stated that the photographs taken at the place of occurrence in this case that appeared in the "Dinakaran Tamil Daily Newspaper" on 04.03.2012 contained in a CD. According to D.W.1, the photographs were destroyed as per the office procedure as such photographs would be retained only for one month. Ex.D.2 is the certificate issued by his Manager to the above said effect. He has further stated that in the Daily Newspaper Edition dated 04.03.2012 marked as Ex.D1, a news item pertaining to the alleged occurrence in the instant case with five photographs has been reported. He has further stated that the Deputy Superintendent of Police is found in three photographs. But, he was not able to say whether any of the persons covered in the photographs is the accused.

12. During cross examination of P.W.10, he has stated that in the memory card which was used by him at the time when he took photographs at the place of occurrence at the request of the police, he took a total number of 15 photographs. Only six out of 15 photographs were produced by the police in court as M.O.10 series. P.W.10 has produced the rest of nine photographs which have been marked as defence side M.O.2 series [nine photographs]. Defence side M.O.1 is the memory card containing a total number of fifteen photographs taken by P.W.10.

13. According to the defence of the accused, as it is stated by P.Ws.1 and 2, he did not run away from the house of the deceased and he was very much available at the scene of occurrence when the Deputy Superintendent of Police and the Investigating Officer interrogated all of them. It is his further evidence that he was taken to the police station, kept illegally and thereafter, the case has been cooked up against him.

14. Having considered all the above, the trial court convicted the accused under sections 449, 302 and 397 of IPC and accordingly punished him as detailed in the first paragraph of this judgement. That is how, the sole accused is now before this court with this criminal appeal.

15. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records carefully.

16. This is a case based on circumstantial evidence. The prosecution has succeeded in establishing that the deceased died of homicidal violence. Now, the question is, who caused the death of the deceased. In order to prove the said fact, the first and the foremost circumstance projected by the prosecution is that at 09.30 a.m. when P.Ws.1 and 2 had gone to the house of the deceased, they found the accused opening the door of the house of

the deceased from inside and rushing out of the house. When they tried to catch him hold, the accused pushed them aside and ran away.

17. The learned counsel for the appellant/accused would submit that this circumstance cannot be believed, for, the accused was very much available at 01.00 p.m. when P.Ws.1 and 2 and the Deputy Superintendent of Police visited the place of occurrence, and prepared the observation mahazar and the rough sketch and conducted inquest on the body of the deceased.

18. The learned counsel would take us through defence side M.O.2 Photographs [series]. These photographs are contained in defence side M.O.1-Memory Card. These two defence side material objects have been proved through P.W.10. P.W.10, the photographer, was engaged by P.W.12, the investigating officer, to take photographs of the dead body and the surroundings at 01.00 p.m. at the place of occurrence. During cross examination, he has admitted that he took a total number of 15 photographs, which were all contained in the memory card [defence side M.O.2]. The prosecution has placed before the court only six photographs as M.O.1 (series). The prosecution has buried the rest of nine photographs. During cross examination, the said nine photographs which are contained in M.O.1-Memory Card have been marked. In some photographs, the accused is found standing at the scene of occurrence. P.W.10 has stated that in six photographs, the person who is standing wearing saffron colour dhoti is the accused. This is not disputed by the prosecution at all. These photographs show that the accused was standing in a very casual manner. Had it been true that the accused had fled away from the scene of occurrence after pushing P.Ws.1 and 2 aside, it would not have been natural that he would be standing at the scene of occurrence in a very casual manner that too in the presence of higher ranking police officers. Further, had it been true that he had fled away from the scene of occurrence, P.Ws.1 and 2, who were present at the time of inquest and when photographs were taken, would not have kept silent. Similarly, the husband of the deceased namely, P.W.3 would also not have kept silent. It is not as if the accused were not known to P.Ws.1 to 3. The accused was also a resident of that locality only. Thus, the very fact that during the course of interrogation, the accused was standing in a casual manner at the place of occurrence, would probabalise the defence that what is stated by P.Ws.1 and 2 that they found the accused fleeing away from the scene of occurrence cannot be true.

19. According to P.Ws.1 and 2, after the accused fled away from the scene of occurrence, when they entered into the house, they found the deceased lying in the dining hall with injuries. She was unconscious. When they sprinkled some water on her face, at that time, she spoke to them and informed that the accused had attacked her and snatched away the gold chain. Immediately, again she became unconscious. Had it been true, since the deceased was still alive, by all means P.Ws.1 and 2, would have taken steps to

rush her to the hospital to save her. When a specific question was asked to P.Ws.1 and 2 as to whether at least they tried to contact "108 Ambulance Service", they have stated that they did not take any step at all to take the deceased to the hospital. Thus, the unnatural conduct of P.Ws.1 and 2 makes their version that they were present at the place of occurrence doubtful. Thereafter, P.W.1 states that he contacted P.W.3 over phone and P.W.1 also rushed to the place of occurrence. The complaint was made only at 12.30 p.m. It is quite unnatural that P.Ws.1 and 2 would have waited for such a long time without even making any attempt to take the deceased to the hospital and then to come to the police station to prefer the complaint. Thus, we find it difficult to believe P.Ws.1 and 2.

20. D.W.1 is the Reporter of Dinakaran Tamil Daily through whom Dinakaran Tamil Daily Edition dated 04.03.2012 has been marked as Ex.D1. He has stated that the paper contained five photographs taken at the place of occurrence and a news report. In those photographs, the Deputy Superintendent of Police is found and in three photographs the accused is found standing very casually. It is not explained to the court as to how the photographs were leaked to the news media. Time and again, it has been impressed by the court as well as the Hon'ble Supreme Court that the investigation is a secret affair and making wide publicity of the steps taken during investigation would be destructive of the further progress in the investigation. As a matter of fact, we are informed that the Director General of Police, Government of Tamil Nadu has also issued instructions by way of circular to all the officers that the details of the investigation are to be kept secret to make further fruitful progress in the investigation.

21. The law makers have made it mandatory that the accused should not have access to the case diary. If the contents of the case diary are widely published in newspapers by leaking out the same, it would surely affect the investigation and also the quality of the evidence that is going to be let in during trial. In this case, in the newspaper report under Ex.D1 [series] in one of the photographs, the accused is found being interrogated by the Deputy Superintendent of Police. In the report, it is further stated that the accused had already been arrested and the stolen gold chain had been recovered from the backyard of the house of the accused. The newspaper report further contains the confession statement of the accused. It is not known as to how the details of the confession given by the accused could go to the press media. This would only illustrate as to how the investigating officer had failed to maintain the secrecy of the investigation and instead he made everything so open and public so that the accused himself could have access to the details of the investigation.

22. The freedom of press is a guaranteed fundamental right under Article 19(1) of the Constitution of India. But, at the same time, we only express our desire that being the responsible media,

the print and electronic media should not show anxiety to make certain reports which would be destructive of the prosecution case or which would hamper the progress to be made in the further investigation. In the instant case, the photographs which appeared in the newspaper on 04.03.2012 have become handy for the accused to demolish the case of the prosecution. P.W.10, the photographer, who was engaged by P.W.12 has, during cross examination, stated that the accused talked to him for some time when he was standing at the place of occurrence which means that the accused was standing in a very casual manner.

23. The learned Additional Public Prosecutor would submit that assuming that the evidence of P.Ws.1 and 2 cannot be believed, on that score the recovery of M.O.1-Gold Chain from his possession on his disclosure statement cannot be disbelieved. This argument, in our considered view, is only very weak in nature. If once it is found that the accused was in the custody of the police, being interrogated by the Deputy Superintendent of Police, at the place of occurrence at 01.00 p.m. when the dead body was still available at the place of occurrence, then, it is highly doubtful that the accused was arrested at 06.30 p.m. elsewhere in the presence of P.W.6 and another witness and he confessed voluntarily out of which M.O.1 was recovered. It is not as though M.O.1 was found in his possession by any other independent witness, like a pawn broker or a purchaser of the jewel. According to the prosecution case, it was buried near a bush and the same was unearthed and produced by the accused. Thus, we find it difficult to accept the case of the prosecution.

24. For these reasons, we are constrained to acquit the accused, but at the same time, we express our anguish, as we feel, that there is failure of justice in this case all because of the respondent police. Crime detection and crime investigation should go together so as to reach a logical end to get the culprit punished. If there is failure in either crime detection or crime investigation, the ultimate sufferer would be the justice. Here, in the instant case, there are reasons to believe that the crime detection appears to be good, but the investigation of the crime was not done satisfying the legal requirements though the Deputy Superintendent of Police himself was present at the place of occurrence supervising the investigation. The crime detection is only identifying the criminal, whereas, the crime investigation is collection of evidences to prove the guilt of the criminal and to get the criminal punished. In this case, it is not as though the deceased died either in an accident or by committing suicide. Undoubtedly, it was a homicide. But, the culprit, who ever he might be, has now escaped. Therefore, we are constrained to say, with pain in our heart, that we are unable to do justice by punishing the real culprit. We, therefore, direct the Director General of Police, Government of Tamil Nadu, to take note of these observations and to take steps to enhance the quality of investigation and the skill of the investigators in this State.

25. In the result, this criminal appeal is allowed and the conviction and sentences imposed on the appellant/accused by the trial court, are set aside. The fine amount paid, if any, shall be refunded to the appellant/accused.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

kmk

- 1.The III Additional Sessions Judge,
Coimbatore, Coimbatore,
District.
2. do thro the Principal Sessions Judge
Coimbatore
3. The Judicial Magistrate No.7,
Coimbatore
4. do thro the Chief Judicial Magistrate
Coimbatore
5. The Superintendent
Central Prison,
Coimbatore
- 6.The Inspector of Police, Madukarai K.G. Savadi Police
Station, Coimbatore District.
7. The District Collector
Coimbatore
- 8.The Director General of Police,
Government of Tamil Nadu,
Mylapore, Chennai.4
- 9.The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer
Crl. Section
High Court, Madras

Criminal Appeal No.141 of 2013

RSY (CO)
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