

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

CRIMINAL APPEAL NO.59 OF 2017

Kani @ Marikkani

.. Appellant

vs

State represented by
the Inspector of Police,
B – 6, Peelamedu Police Station,
Coimbatore.

.. Respondent

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code to set aside the conviction order passed against the accused/ appellant in S.C.No. 87 of 2014, dated 16.02.2016 on the file of First Additional District and Sessions Judge at Coimbatore.

For Appellant : Mr.R.Rajasekaran

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

(Order of the Court was delivered by **Dr.Anita Sumanth, J.**)

The appellant is one of two accused for the murder of one Yogaraja and is before us challenging the judgment of the First Additional District Court, Coimbatore in Sessions case No. 87 of 2014, dated 16.02.2016. He, along with one Ramesh @ Rameshkumar, was charged for offence under

Section 302 of the Indian Penal Code for the murder of one Yogaraja @ Raja and convicted with imprisonment for life with levy of fine of Rs.1,000/-, in default of which, to undergo further imprisonment for three months challenging which he alone is before us in appeal.

2. The case of the prosecution is as follows:-

The deceased Yogaraja and the appellant (A2 in S.C.No.87/2014) were co-workers engaged in construction work. They were residing together along with PW1, Jagadeesan, PW4 Arumugam and Ramesh (A1 in S.C.No.87/2014) in the same room in a building. PW1 Jagadeesan, was a mason under whom the accused and deceased were working and Arumugam was a centering mason. The aforesaid were all engaged in the same construction project. On 02.02.2013, the deceased Yogaraj told PW1 Jagadeesan that the appellant was in the habit of consuming liquor and causing nuisance. He also complained that on account of such nuisance, his work was being affected and he could not perform the same properly. On the basis of this complaint, PW1 asked the accused to leave employment. Enmity developed on this account between the accused and the deceased and the deceased was enraged that the accused was the cause for his unemployment.

3. On 04.02.2013, at about 9.00 a.m., when PW1 went to the second floor of the building, which was recently constructed, he found somebody lying covered on a mat. When he removed the cover, he found the deceased lying in a pool of blood with injuries on his face. He identified the deceased

as Yogaraja @ Raja and immediately informed the site engineer Sivakumar, PW2 lodging a complaint before the Superintendent of Police, PW22. Upon registration of FIR in Crime No.23 of 2013, Ex.P1, investigation was commenced by the Investigating Officer (PW24). In the course of investigation, the Investigation Officer sought details about the accused and was given the telephone number of the accused by PW9 Anguraj, the owner of a Mess nearby. The phone was however switched off and efforts were made to trace the cell phone using the IMEI code. While this was so, PW9, who was not in the premises during the initial part of the investigation, returned on 05.02.2013 and reported that he seen A1 and A2 last on 02.02.2013 at 10.00 p.m. carrying a hoe and iron rod.

4. On 06.02.2013, the Investigation Officer traced the mobile and found that it was being used by PW15 Viyay, at Virudhunagar. Upon enquiry, PW15 informed the officer that the cell phone had been sold to him by A1, for a sum of Rs.700/-. He stated that he had used it briefly and returned it to A1, since it was not functioning properly. Monitoring the tower signals, the Investigating Officer traced the accused to Peelamedu and Singanallur, Coimbatore. Information was received from PW10, Mahesh Kumar, the nephew of PW1 that the two accused were spotted on 08.02.2013 at around 9.00 a.m., near Mani's theatre. Upon identification by PW10, the accused were arrested and confessed to having committed the crime. Confessions were recorded and the admissible portion of the confessions are marked as Ex.P.7 and Ex.P.8. Pursuant thereto, recovery was effected and blood

stained hoe (spade) and cell phone were recovered from A1 and T-Shirt and blood stained iron were recovered from A2.

5. The accused were thereafter remanded to judicial custody. In the meantime, the body of Yogaraj was forwarded for post mortem to Dr.T.Jayasingh, Government Hospital, Coimbatore. The post mortem report is marked as Ex.P.24. A final opinion was given by the Dr.T.Jayasingh marked as Ex.P.26 to the effect that the deceased had died of multiple injuries on his head and neck. Death by poison was ruled out. Upon completion of examination of witnesses and receipt of expert medical opinion, all materials were forwarded to the Trial Court. Charges were drawn as detailed in the earlier part of this order. When confronted with the same, the accused pleaded not guilty, choosing however, not to examine any witnesses nor mark any documents. On the part of the prosecution, 24 witnesses were examined and 28 documents and 17 material objects marked.

6. The Trial Court proceeded to hear the parties in detail and finally concluded that both accused were guilty of the offence as charged, convicting them as set out in the first para of this decision. It is against the aforesaid judgment that A2 alone has come up in appeal. We have heard the submissions of Mr.R.Rajasekaran, Counsel for the Appellant and Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the State.

7. At the outset we may state that the case of the prosecution is

entirely circumstantial. The admitted facts are that the accused were working and residing together along with PW1 and PW4. There appears to have been a misunderstanding between the accused and the deceased caused by the deceased informing PW1 Jagadeesan, the mason employing the two accused and the deceased, that the accused was consuming of liquor and causing a nuisance, resulting in poor performance at work. PW1, thus fired the accused from employment and the accused blamed on this the complaint of the deceased and as a result the accused had some enmity with the deceased. This is stated to be the motive for the murder.

8. PW1, who is the de-facto complainant and employer of deceased and the accused, would speak about the motive for the crime. He noticed the dead body on 04.02.2013 at 9.00 a.m. and gave a complaint, on the basis of which, the FIR was lodged. He also identified A1 and A2 when they were found by the Investigating Officer on 08.02.2013 at Coimbatore. PW2 Sivakumar, the building Engineer speaks about the construction being carried out by PW1 and his employees and also identifies both the accused.

9. PW3 Manickavasagam, a resident of Coimbatore was formerly employed with the department of Town planning. His wife was the owner of the property that was being developed by PW2 Sivakumar. On the morning 4.2.2013 around 11.a.m, he would state that he received a call from PW2 informing him that there was a dead body found in the second floor of the construction. He was very disturbed and immediately went to the scene of occurrence, where he found the police officials as well as persons from the

mess nearby and others from the vicinity. The deceased was identified by the police as one Raja and PW2 informed him that he was part of his team.

10. PW4 Arumugam would speak about being working on various projects under construction. He would state that more than 4 ½ years ago, the deceased had approached him along with five of his associates asking for a job. He employed all five of them in a construction project and they had been working and residing in the same site. While this was so, on 30.01.2013, he seen the deceased and spoken to him and informed him that two accused, who were also staying in the same room as he, were creating nuisance in the night after imbibing alcohol and this was becoming a problem to him. He was, thus, sleeping outside on account of the disturbance caused by them in the room. It was suggested by PW4 that he should complain to PW1, the contractor, who would caution them strongly against such behaviour. On 4.2.2013 when he was out of station he was informed around mid-morning that Raja had been found dead. He was very perturbed and rushed to the scene of occurrence immediately. P.W.4 also identified A1 and A2 upon their production in Court.

11. PW5 is a Mahazar Witness for the materials seized. PW6, Jabaraj was managing a mess in a hospital situated about 450 mtrs from the scene of occurrence. He would speak about the morning of 4.2.2013 when many of his customers were referring to the murder of a person in the nearby construction project. Thereafter, he was approached by the police authorities who had shown a photograph and asked if he knew the person in the

photograph. He said that he did not know him and was then asked if he knew the accused Ramesh and Kani. He stated that they had approached him on 30.1.2013 for a job. He had sent them away saying that at the moment he had no requirement for staff, but that he would intimate them, if need be, at a later date. He also spoke about the two accused telling him on 31.1.2013 that they had been employed in the nearby construction project. PW6 would identify both accused in the course of court proceeding saying specifically that the person with black shirt was Ramesh and the person with green checked shirt was Kani.

12. PW7 Alagu, the father of the deceased speaks about being informed on 4.2.2013 about the demise of his son. He immediately rushed to the hospital where the body was being kept. He identified the dead person as his son. He was also shown a cell phone and tee shirt. He identified the shirt MO9 since it contained the words '*ponaiayan boys*' and '*Yogaraj*' on it. He spoke about several boys in the village wearing similar tee shirts made in celebration of the local festival. He was unable to identify the cell phone. He would speak about being called on 8.2.2013 around 8 a.m. in the morning to be informed by the police officials that his sons' killers had been found. He went to the place between around 10.00 a.m. with his nephew Samikannu and saw the two accused in the police station. In the course of court proceedings, he identified A1 and A2 as being the same two persons he had been shown in the police station as his son killers. PW8 Jayakumar, uncle of the deceased spoke about having been informed about the crime and the

death of his nephew Yogaraj.

13. PW9 Anguraj was running a mess called the Angaalaman Mess. He would give detailed evidence to the effect that the workers in the project used to eat in his mess. On 31.1.2013 Wednesday he recalled Raja coming there at around 6.00 p.m. On the morning of the same day, PW1 the contractor, had engaged the services of A1 and A2 for the same project. A1 and A2 were also staying in the same room as the deceased. PW2 had informed him that A1 and A2 would also eat at his mess and that he would bear the cost of the food. He would speak about his daily routine of closing the mess at around 10.30 in the night after which his wife would clean the vessels and he would assist her.

14. On the night of 2.1.2013, while his wife and he were cleaning the vessels, he found A1 and A2 in the premises of the construction. When his wife enquired as to why they were here at that time of the night, they informed them that the deceased had complained about them to PW1, who had consequently asked them to leave service. He would also state that he saw Ramesh A1 holding a 'mamutti' and Kani the appellant herein holding an iron pipe/rod. He would state that he was able to identify the mamutti as well as the rod as being the very same mamutti and the rod shown to them by the police and marked as MO's 10 and 11 respectively. Since he had suffered the bereavement of his relative, he was not in the station on the 3rd and returned on 5.1.2013. In the meantime around 4.1.2013 he had received a phone call from the police officials informing him about the death of Raja

and asking if he knew his phone number which he furnished to them. It is PW9 who puts forth the last-seen theory that has carried much weight with the trial judge.

15. PW10 Mahesh Kumar, the nephew of PW1 was a mahazar witness for the confession of the accused. PW11, 12, 13, 14 and 21 were all staff of Tata Teleservices, Vodafone and Aircel, who speak about the details of calls made from the cell phone of the accused. PW15 Vijay speaks about the deceased's cell phone given to him for a few days and returned thereafter. PW16 Gunasekaran, Special Sub-Inspector of Police issued the requisition for post mortem of the body. PW17, Violet Jhansi Rani is a fingerprint expert, who analyses the finger prints at the scene of crime and confirms that one chance print obtained on a brandy bottle at a scene of crime tallied with the fingerprint of the first accused.

16. PW18 Rajmohan, forensic expert issued the bio-logical report. He analysed the blood stained on the material objects 1 to 8 that were furnished by him to the police and issued Report Ex.P17 to the effect that the blood stains on all objects except MO5 was human blood. PW19, a shop owner speaks about the SIM card of the deceased. PW 20 Soundarajan SSI of Police heading the dog squad would speak about taking a sniffer dog Chitra to the scene of occurrence. The dog obtained the scent from the towel that was lying in the scene of occurrence and thereafter headed forward to Avinashi road. The trail stopped at the Avinashi road, Railway bridge. PW22 was the Superintendent of Police who registered the FIR.

17. PW23 is Dr.Jeyasingh who conducted the post mortem and issued a post mortem report. Ex.P24 is the final opinion rendered by the Doctor which states as follows:-

‘P.M.No.319/2013, dated 05.02.13.

Cr.No.209/13 of B-6 Peelamedu P.S.

Regarding the bode of a male aged about 21 years, named RAJA @ YOGARAJA. Requisition received at 11.00 am on 05.02.13 form The Inspector of Police, B-6 Peelamedu P.S. With his letter Cr.No.209/13. Body in charge of Police Head Constable No.1988 name GunaSekaran.

Identification Marks:

- 1. A black mole seen over right upper chest.*
- 2. An old scar seen over inner aspect of left thigh.*

Body was first seen by the undersigned at 11.15 am on 05.02.13. The condition of the body then was early decomposition changes noted all over the body. Postmortem examination was commenced at 11.15 am on 05.02.13. Appearances found at Post mortem; early decomposed body of a male aged about 21 years. Finger and toenails were bluish in colour. Marbling changes noted over front of chest and shoulder. Postmortem peeling of skin noted over neck, front of chest and abdomen. Tongue protruded out’

18. PW24 Karthikeyan, is the Special Investigation Officer who conducted the investigation. He arrived to the scene of occurrence at around 10.a.m. on 04.02.2013 and was handed over the files and case records pertaining to FIR furnished by the complaint by PW1 and the FIR lodged there upon. He immediately surveyed the site and requested the services of the sniffer dog squad, finger print experts and forensic science experts. At

around 11.00 a.m. he drew a rough sketch which is Ex.P27 and took note of the observation mahazar at Ex.P 5. Material objects in 1 to 8 were found by him. Body of the deceased was sent for Post mortem. He also enquired about the cellphones used by the deceased and was informed that they were 2 numbers 9585444229 & 9965165717 with IMEI code 911211152119989 & 911211152119997 that were furnished to him by PW9 Anguraj, the owner of Angalamman Mess, who was not in station at that time. The body of the deceased that was in Kovai Medical Hospital was handed over to the family members. In the meantime, extensive enquiries were conducted in regard to IMIE codes of the cellphones used by the deceased . On 08.02.2013 the cellphones were traced to Peelamedu.

19. Accordingly, he went to Peelamedu near Kamaraj Road alongside Mani's theatre along with PW1 who could identify the accused and found both accused standing near the construction project. He then apprehended both accused. Upon arrest the two of them voluntarily confessed to committing the crime. Statements were thus recorded in the presence of Mahesh kumar and Ponnusamy who bore witness to the same. The admissible portion of the confessional statements were filed as Ex.P7 and P8 respectively. Recovery was affected consequently of the cellphone along under observation mahazar filed as Ex.P5.

20. They also recovered an orange and yellow T-shirt from A2, the appellant herein carrying a slogan 'Ponnayan boys' belonging to the deceased recovered under seizure mahazar 6, MO 9. Recovery was also

effected of the instruments used to kill the deceased, blood stained hoe with wooden handle 75cm length and 3 cm wide iron pipe and a blood stained half-sleeved, collared white shirt under seizure mahazar 9 marked as MO's 10,11 and 13.

21. Thereafter, the accused where taken to the station and remanded into custody after following the due procedure of law. The trial court framed charges and when put to the accused, they denied the same. However, they did not choose to examine any witness, not marked any witnesses or any evidence. On the side of the prosecution, 24 witnesses were examined, 28 exhibits were placed on record and 17 Material objects were marked. Upon a detailed hearing of the matter, the trial judge confirmed the charges framed and imposed sentences against which the second accused alone is in appeal before us.

22. There are no eyewitnesses to establish the commission of crime by the accused. What is clear and has been established by the prosecution is that Yogaraj has been murdered leading to the commission of a homicide. What remains to be established is who has committed the crime. The case of the prosecution, as accepted by the trial judge, is that the accused was responsible for committing the crime. Strong reliance is placed on the deposition of Anguraj, PW9, who is a hearsay witness. He would state that he saw the accused last on 02.02.2013 at 10.30 p.m. with a hoe and iron pipe. However, the statement of PW9 is silent as to the events that transpired between 02.02.2013 and 04.02.2013, leaving a yawning gap of

more than one day that remains unexplained. This creates a doubt as to the veracity of the statement. The theory put forth by the witness and accepted by the prosecution is just that, a mere theory that has not been substantiated by any evidence connecting the accused with the crime connected. We are thus not convinced that the evidence of PW9 is credible and reliable enough to be the basis of conviction of the accused. The evidence and reliance placed on the same stands rejected.

23. The only other point is the confessions recorded from the accused by the investigating officer, which, in terms of the mandate of Section 25 of the Indian Evidence Act, is liable to be ignored and accorded no weight. The witness to such confession was PW10 Mahesh Kumar, the nephew of the PW1, the de-facto complainant. Seen in totality, the confessions do not appear to be credible or believable and do not, in any event, inspire the confidence of the Court. The evidence of PW1 is also unconvincing and too simplistic to be believed. The motive for the crime, according to him, is the enmity caused between the accused and deceased by the dismissal from service. This cannot lead to the automatic conclusion of murder and can at best cause suspicion in the mind of the prosecution that has to be corroborated with other evidence so as to be beyond doubt.

24. In a case that is based entirely on circumstantial evidence, it becomes all the more incumbent on the prosecution to draw the golden thread connecting all facts and events clearly so as to establish the sequence of events in an unbroken chain. In the present case, the chain of

events is marred more than once by virtue of the flaw in the last seen theory put forth by PW9 and the unsubstantiated and illegal confession recorded by the police officials.

25. Further, no weight can be attributed to the chance finger print of A1 found by the finger print expert. We do not believe any adverse inference can be drawn from this isolated fact since the accused and the deceased were, after all and admittedly, staying together in the room where the finger print was found.

26. In the light of the detailed discussion above, we are inclined to interfere with, and reverse the order of the Trial judge. The appeal is allowed and the conviction and sentence imposed on the appellant are set aside.

(S.N.J.) (A.S.M.J.)
27.02.2017

Speaking/Non-speaking
Index: Yes/No
Internet: Yes/No
Msv

To

1. The Inspector of Police,
B – 6, Peelamedu Police Station,
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

**S.NAGAMUTHU,J.
&
DR. ANITA SUMANTH,J.**

Msr/msv

CRIMINAL APPEAL NO.59 OF 2017

27.02.2017

<http://www.judis.nic.in>