

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.253/2017

P.S.Baskar ... Appellant/Defacto Complainant

Vs.

1. State rep. by,
The Inspector of Police,
Nagore Police Station,
Nagore.

2. Neelamegam

3. Sathyaraj

... Respondents

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment dated 07.03.2017 passed in SC.No.42/2014 on the file of the Fast Track Mahila Court, Nagapattinam.

For Appellant : Mr.R.Vivekananthan

For Respondents : Mr.V.Arul, APP - R1
Ms.Greetha Senthil Kumar - R2 & R3

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.]

This appeal has preferred against the order of acquittal passed by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam in S.C.No.42 of 2014 dated 07.03.2017.

2. The brief facts of the prosecution case, are as follows:-

P.W.1 is a retired Headmaster. He was residing with his wife Rajam in a palce called Vadakadambangudi. The accused are father and son and are residents of the same area. On 11.06.2012, at about 10.30 a.m., P.W.1 left the house to recharge the television. Thereafter, he called his wife at 11.45 a.m. and spoke to her. Thereafter, when P.W.1 returned home at 12.30 p.m., he found his wife Rajam dead and her throat

slit and her jewels were missing. According to P.W.1, his wife worn a thali chain and bangles, M.O.1 and 4. Immediately, P.W.1 lodged Ex.P.1.

3. P.W.22, Sub Inspector of Police received Ex.P.1 and registered a case in Crime No.254 of 2012 for the offences under sections 302 and 380 of IPC under Ex.P.18 First Information Report and forwarded the First Information Report to the Court and a copy to the Inspector of Police.

4. In the meanwhile, P.W.4 Kailasam and P.W.10 Selvi informed P.W.1 about seeing A1 coming out of the house at the relevant time with blood stained knife and P.W.10 Selvi informed P.W.1 that A2 climbed the compound wall and came from the house of P.W.1. P.W.14 has seen A1 with blood stained clothes and knife and A1 also threatened P.W.14 that he will kill him and P.W.14 informed the same to P.W.1 on the next day. P.W.10 on the date of occurrence at about 12 noon, seen A2 jumping upon the compound wall of P.W.1. After some time, A2 changed his dress and left the place in a motor cycle. She has also informed the same to P.W.1.

5. P.W.23, Inspector of Police, took up the case for investigation and requested Finger Print Expert and Sniffer Dog team to the place of occurrence and went to the place of occurrence and prepared Observation Mahazar Ex.P.2 and Rough Sketch Ex.P.19 in the presence of P.W.3 Thiagarajan and one Krishnan and also seized blood stained earth M.O.13 and ordinary earth M.O.14 under Seizure Mahazar Ex.P.14 in the presence of P.W.12 Santhanam and one Nagarajan. Thereafter, he conducted inquest over the dead body of the deceased and prepared Inquest Report Ex.P.21 and forwarded the dead body to the Medical Officer for conducting autopsy.

6. P.W.20, Medical Officer attached to the Nagapattinam Government Hospital, conducted autopsy over the dead body on 12.06.2012 and found the following injuries

A cut lacerated wound in 10x6x4 cm cut front of neck exposing the cut injury, gluteal of neck curved regular rim major vessels trachea upto orbit spinal.

and issued Ex.P.15 Postmortem Certificate and had opined that deceased had died due to cut injury to neck, major vessels, Trachea usuphygius.

7. P.W.23, in continuation of his investigation, on 24.07.2012, seized blood stained clothes and knife in the presence of P.W.13 and one Thiagarajan under Ex.P.5 Seizure Mahazar and sent the same to the Court under Form 95, Ex.P.23.

8. P.W.5 to P.W.9 had also seen the dead body of the deceased in the house of P.W.1. P.W.11 had also seen the dead body of the deceased and also found that the jewels worn by the deceased were missing from her body. P.W.13 has handed over the blood stained clothes, M.Os.5 and 7, of P.W.1, to the police. P.W.14, Sekar on 11.06.2012, has seen the accused coming from P.W.1's house with knife and was stealthing something. Immediately on her hue and cry, he rushed to the place of occurrence and found the dead body of Rajam. However, he has not informed the same to anybody. When the matter stood thus, on 20.03.2013, the police seized gold bangles and one Thali chain M.O.1 and 4 from the backyard of the house of the accused and also, knife, M.O.8.

9. P.W.15 is the son of the deceased and P.W.1. He has also rushed to the place of occurrence after the death of his mother. After two days, P.W.4 and P.W.10 had informed him about seeing the accused and he had informed the same to the police. However, the police has not taken any action. Thereafter, they informed the same to the village panchayat. The villagers convened a meeting, but did not take any action. Therefore, he sent a complaint to the Director General of Police and other officials. A copy of the same is Ex.P.6 and Ex.P.7.

10. P.W.16 is the Village Administrative Officer of Keevalur village on 20.03.2013, both the accused appeared before him and informed that they wanted to confess about the crime since police are searching for them. They sought the help of P.W.16 to hand over them to police. P.W.16 immediately handed over them to the police.

11. P.W.24 arrested the accused and recorded the confession of A1 and A2. In pursuant of the confession of A1, they seized knife and thali chain and bangles under Ex.A.10 and the recoveries were made from the back yard of A1's house. Then he sent the accused to the judicial custody and the material objects to the Court under Form 95 Ex.P.25 and Ex.P.26.

12. P.W.25 continued the investigation filed final report against the accused under sections 380 and 302 of IPC. In the meanwhile, P.W.26 Judicial Magistrate on 25.2.2012 had recorded the statement of the witnesses P.W.10 Selvi and P.W.4 Nagappan under Ex.P.29 and Ex.P.30.

13. Based on the evidence and materials, learned trial Court found that the circumstances relied upon by the prosecution has not been clinchingly established and extended benefit of doubt to the accused and thereby, both the accused were acquitted against which the present appeal came to be filed

by P.W.15 Baskaran, son of the deceased and P.W.1, filed after obtaining leave of this Court.

14. The learned Senior Counsel appearing for the appellant vehemently contended that the deceased was found dead in her house in the noon. P.W.1 and neighbours have seen the deceased found dead after her throat slit. The evidence of P.W.1 and other witnesses clearly shows that the gold chain and bangles, M.O.1 and M.O.4 is also missing from her body. Ex.P.1 was immediately lodged on the same day and P.W.4 Kalidoss and P.W.10 Selvi have also seen the accused coming out of the house of P.W.1 and the deceased at the relevant point of time. Despite the above fact, the Investigating Officer has failed to record the statements of P.W.4 and P.W.10, as a result, a village panchayat was convened on 23.06.2012. And even after change of Investigating Officer, investigation has not been properly conducted and the blood stained clothes were recovered only on 24.07.2012 and that itself show that the investigating officer has not conducted investigation properly in this case. Whereas, the evidence of P.W.1 and P.W.4 in this case clinchingly establish the fact that both the accused were seen immediately after the occurrence with the blood stained knife and the evidence of P.W.14 also clearly shows that the accused infact, stealthily hidden something in his backyard and he immediately informed the same to P.W.1. Despite the same, the Investigating Officer has not properly conducted investigation in this case.

15. It is further contended by the Senior Counsel that P.W.15 has sent several representations to superior police officials in this regard besides he has also filed CrI.O.P.No.4545 of 2013 for transfer of investigation before this Court. All these facts clearly show that the Investigating Officer P.W.23, has not conducted investigation properly. However, the evidence of P.W.4, P.W.10 and P.W.14 clearly prove the complexity of the accused with the grave crime. M.Os.1 and 4 gold jewels worn by the deceased have been identified by P.W.1 and other witnesses. The evidence of P.W.24 and P.W.14 and P.W.16 Village Administrative Officer not only prove the confession of the accused before Investigating Officer but also recovery of jewels and knife at the instance of the accused. There is no explanation whatsoever by the accused for being in possession of such jewels belonging to the deceased. This itself clearly establish the fact that it is only the accused who had committed the offence and the Court has to draw the presumption under section 114(g) of the Indian Evidence Act. The learned trial Court has not considered this aspect and merely because the witnesses P.W.4, P.W.10 and P.W.14 are examined by the subsequent Investigating Officer, their evidence cannot be discarded. Hence, submitted that it is a fit case where the accused ought to have been convicted.

16. The learned counsel for the accused submitted that the entire case rest on the circumstantial evidence relied upon by the prosecution. Merely because, P.W.1 and P.W.15 suspected the accused, mere suspicion itself is not a ground to rope the accused in a grave crime. These accused have been arrayed as accused due to various pressures and tactics adopted by P.W.1 and P.W.15. In fact, the investigation was in the right direction from the very beginning. They lifted the chance prints from the place of occurrence and the same has not tallied with any of the villagers and investigation was proceeding in the right direction. However, all the villagers were summoned to the police station. Villagers also allegedly convened panchayat on 23.06.2012 and based on the resolution passed in the panchayat, these accused have been implicated in the alleged crime and also based on external pressure and also due to various complaints given by P.W.1 to the superior authorities and Criminal Original Petition filed before this Court for direction, these accused have been made scape goat by planting interested witnesses. The evidence of P.W.4, P.W.10 and P.W.14, who have allegedly seen the accused on the date of occurrence is highly artificial. Their conduct in remaining silent in disclosing the same to any one including P.W.1 and police on the date of occurrence creates serious doubt. Hence, it is the contention of the learned counsel for the accused that the recovery is also planted by the Investigating Officer and no such recovery has been effected from these accused and submitted that in the absence of any clinching evidence, the prosecution cannot succeed in the case based on the circumstantial evidence. The learned trial Court considered the entire aspects in detail and passed the judgment, which does not require interference.

17. The learned Additional Public Prosecutor submitted that the case is based on the circumstantial evidence and the learned trial Court did not believe the evidence of witnesses. However, left the matter for appreciation of facts and evidence by this Court.

18. In the light of the above submissions, now the point that arises for consideration is that

Whether the prosecution has proved the guilt of the accused beyond all reasonable doubts?

19. Deceased Rajam is the wife of P.W.1. She died on 11.06.2012. This fact has been clearly established by the prosecution. The evidence of P.W.1, husband of the deceased, shows that when he returned home at 12.30 p.m., he found his wife dead with throat slit inside his house. The further evidence of P.W.1 is that gold thali chain and 6 bangles worn by the deceased were also missing from her body. Immediately, he lodged Ex.P.1 with P.W.22. According to P.W.1, M.O.1 and 4 are jewels found missing from the body of the deceased at the

relevant point of time. The evidence of Medical Officer P.W.20 and Ex.P.15 Postmortem Certificate and Viscera Report clearly establish homicidal death of the deceased Rajam. From the above evidence and materials, the prosecution has established homicidal death of Rajam.

20. The prosecution has mainly relied upon the following circumstances :

1. Both the accused, father and son, were seen with blood stained knife and clothes in front of the house of P.W.1 at the relevant point of time.

2. The recovery of M.O.1 and 4, jewels and knife, from A1.

21. The prosecution has mainly relied upon the evidence of P.W.4 and P.W.10 and P.W.14. P.W.4 Kailasam was working with P.W.1 at the relevant point of time. Similarly, P.W.1 is a native of the same place. In this regard, when the evidence of P.W.1 carefully seen, it is the evidence of P.W.1 that immediately when he found his wife dead and jewels worn by her were missing, he lodged a complaint and thereafter, he enquired P.W.4 after two days of the occurrence. At that time, P.W.4 informed that on the date of occurrence, when he came to fetch water, A1 came out of the compound with blood stained knife at the relevant point of time. Besides A1 also threatened P.W.4 not to inform the same to any one. Similarly P.W.10 has also informed P.W.1 the next day of the date of occurrence, that on the date of occurrence, A2 climbed the compound wall of P.W.1's house with blood stained clothes and after changing his dress, left the place in a motor bike. It is the specific evidence of P.W.1 that P.W.4 had informed the same when he enquired him after two days. Whereas, P.W.10 informed him the very next day.

22. In this regard, when the evidence of P.W.4, when carefully seen, P.W.4 in his evidence has stated that on the very next day, he has informed P.W.1 about he seeing A1. Thereafter, there was a village panchayat. In the cross examination, he has admitted that on the date of occurrence itself, immediately he has informed to P.W.1 that he has seen A1 in the place of occurrence and at that time also police came to the place of occurrence. The evidence of P.W.1 and P.W.4, as to the date on which P.W.1 got information about the involvement of the accused is highly inconsistent with each other. It is further to be noted that P.W.4 is working with P.W.1. If really he has seen the accused immediately after the occurrence with blood stained knife, his normal conduct would have been to inform the same to P.W.1, or to the villagers, or to the police on the date of occurrence itself. Whereas, he has deposed that he has stated the above fact to the police only after 10 days and that too only after village resolution. The conduct of P.W.4 is highly doubtful. Further the evidence of P.W.1 and

P.W.4, as to the date on which the above information was passed on to P.W.1 is also inconsistent with each other and also creates serious doubt about their version.

23. P.W.10 in her evidence has deposed as if she has seen A2 climbing the compound wall with blood stained clothes and after changing his clothes, he left in a bike. According to her, she has not informed the same to either P.W.1 or to the police on the date of occurrence. Only after the meeting in the village, she is said to have informed the same to the police and after six months only the police examined to her. The conduct of P.W.4 and P.W.10 is highly doubtful and against normal human conduct.

24. It is further to be noted that P.W.23, who conducted initial investigation, in his evidence has categorically admitted that further statement of the witnesses have been sent to the Court after nine months. Further P.W.22 submitted that on the date of occurrence Observation Mahazar and Rough Sketch have been prepared. However, only on 24.07.2012, M.O.6 and M.O.7, the alleged blood stained clothes of A1 was seized from P.W.13. This also creates serious doubt about the entire prosecution case. It is further to be noted that P.W.22, immediately after registering the First Information Report, he has recovered blood stained earth and ordinary earth and at his instance, sniffer dog team also came to the place of occurrence besides Finger Print Expert also lifted finger prints from the place of occurrence. This version has been substantiated by the admission of the Investigating Officer, he has categorically admitted that chance prints were lifted from the place of occurrence and sent to the expert for examination and report. But no expert report has been filed by the prosecution. The non filing of the vital evidence and chance prints lifted and developed by the expert, gives only inference that those vital documents have been suppressed by the prosecution only due to the fact that the chance prints lifted from the place of occurrence did not tally with that of the accused in this case. Withholding that vital document, creates serious doubt about the entire prosecution case as against the accused.

25. Further, the evidence of P.W.3 also shows the fact that there was village panchayat in the village and the accused were very much present in the village from the date of occurrence till their arrest and P.W.4's chance finger print was also obtained by the police in the police station as per his evidence. Further, P.W.10's evidence clearly shows that on the date of occurrence itself, she informed P.W.1, P.W.15 his son and one Kumar about she seeing A2 on the date of occurrence. Her conduct in not informing the fact to the police, immediately after the occurrence, creates serious doubt about her version.

Further her version that she had informed the same to P.W.1 and his son P.W.15 is also unreliable in view of the evidence of P.W.1 himself. Further, in her statement before the Judicial Magistrate, she had not stated about the missing of jewels from the body of the deceased. She has also not stated in her previous statement given before the Judicial Magistrate P.W.26 about she seeing A2 before the village panchayat. Similarly, her statement before the Judicial Magistrate also clearly indicate that her evidence is nothing but improved version before the Court. All these facts make their evidence unreliable and creates serious doubt.

26. P.W.14 also in his evidence has stated that he has seen A1 with blood stained knife on the date of occurrence date and immediately he rushed to the place of occurrence and found the dead body of the deceased. Under such circumstances, a normal human conduct would be otherwise. If he had really seen the accused with blood stained knife, immediately after finding the dead body of the deceased, who was murdered in a gruesome manner, he would have informed the fact of seeing the accused to P.W.1, whereas he remained silent. The above conduct of P.W.14 also creates serious doubt about his version. If really P.W.4, P.W.10 and P.W.14 informed P.W.1 about the seeing the accused on the date of occurrence or atleast within two days of the occurrence, what should have been immediate reaction on the part of P.W.1. He ought to have given a complaint or sent a representation to the superior officers. Even his allegation that the Inspector has not properly investigating was not true. Whereas, he has sent representation for the first time on 09.07.2013 under Ex.D.1. Even in Ex.D.1 representation, he has stated that two or three people came rushing on the rear side of the house as per the statement of Kailasam, P.W.4. This fact also creates serious doubt about involvement of the accused.

27. Further, as already stated, the best evidence, viz., chance prints lifted from the place of occurrence has not seen the light of the day. The only presumption and inference can be drawn by this Court that chance prints did not tally with that of the accused. We, therefore, hold that the prosecution version, particularly, from the evidence of P.W.4, 10 and 14, is highly unreliable. Hence, we are of the view that the circumstances, relied upon by the prosecution is highly doubtful and the same cannot be based on the above facts in a gruesome crime.

28. One more circumstance relied upon by the prosecution is seizure and recovery of M.O.1 and 4 and M.O.8 knife at the instance of A1. It is the evidence of P.W.16, that on 20.03.2013, the accused appeared before P.W.16 and wanted to give a confession about the crime. Despite such voluntary confession of the accused, P.W.16, being a Village

Administrative Officer, has not chosen to record any confession from the accused. Further, he has just handed over the accused to the Investigating Officer.

29. The Investigating Officer has recorded the confession of the accused A1 and A2 and pursuant to the admissible portion of the confession, he is said to have recovered M.O.1 and M.O.4 from the backyard of the house of the accused. The Investigating Officer has also admitted that the description of the jewels were not spoken by any of the witnesses. There is discrepancy in the weight of the seized jewels in the mahazar and that of the complaint. Further, M.O.1 and 4 were stealthily hidden in a bag and was recovered from a pit. But the bag has not seen the light of the day. There was no reason or explanation whatsoever given by the Investigating Officer. He has simply stated that the bag was destroyed due to long period. In the complaint, Ex.P.1, it is the specific case of P.W.1 that 15 sovereigns was missing from the body of the deceased. But there is discrepancy in the weight of the jewels seized under mahazar. Further P.W.14 has not attested the seizure Mahazar. Therefore, his evidence cannot be given credence.

30. At any event, mere alleged recovery of M.O.1 and M.O.4 itself is not sufficient to prove the prosecution case. Admittedly, the recovery is said to have been effected much after the occurrence, which has taken place on 11.06.2012. The recovery allegedly effected only on 20.03.2013 with huge delay. Therefore, the contention of the learned Senior Counsel that presumption will attract in this case has no basis. As already pointed out, the cloth allegedly used for stealing the material objects has not seen the light of the day. Even no mention whatsoever was made in the seizure mahazar in this regard as to the alleged cloth used by the accused in concealing the material objects. Therefore, the recovery is also not clinchingly established by the prosecution. It is unsafe to give any credence to such recovery in a gruesome crime, particularly in the light of the improved version of the witnesses and their conduct.

31. In a case based on the circumstantial evidence, every incriminating circumstance must be clearly established by legal and clinching evidence and the circumstance so proved must form a chain of events in which irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. We are also of the view that a case based on the circumstantial evidence, there is always a danger that conjuncture or suspicion may take place of legal proof. Therefore, the Court has to necessarily satisfy with various circumstances in a chain of events must be such as to rule out a reasonable likelihood to the innocence of the

accused. When the chain of circumstance gets snapped and the other circumstance, cannot in any manner, is sufficient to establish the guilt of the accused beyond all reasonable doubt. In view of the foregoing discussions, we have no other option, except to hold that circumstances placed by the prosecution has not been proved beyond reasonable doubts and merely because the defacto complaint suspected some detective nature of investigation, that itself cannot be a ground to hold that the Investigating Officer has failed to conduct the investigation properly. Mere suspicion,

however strong, is not a legal proof for establishing the case beyond reasonable doubt. Hence, we find no merits in this appeal.

32. Accordingly, the appeal is dismissed. The judgment of the trial Court in S.C.No.42 of 2014 dated 07.03.2017 is hereby confirmed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vrc

To

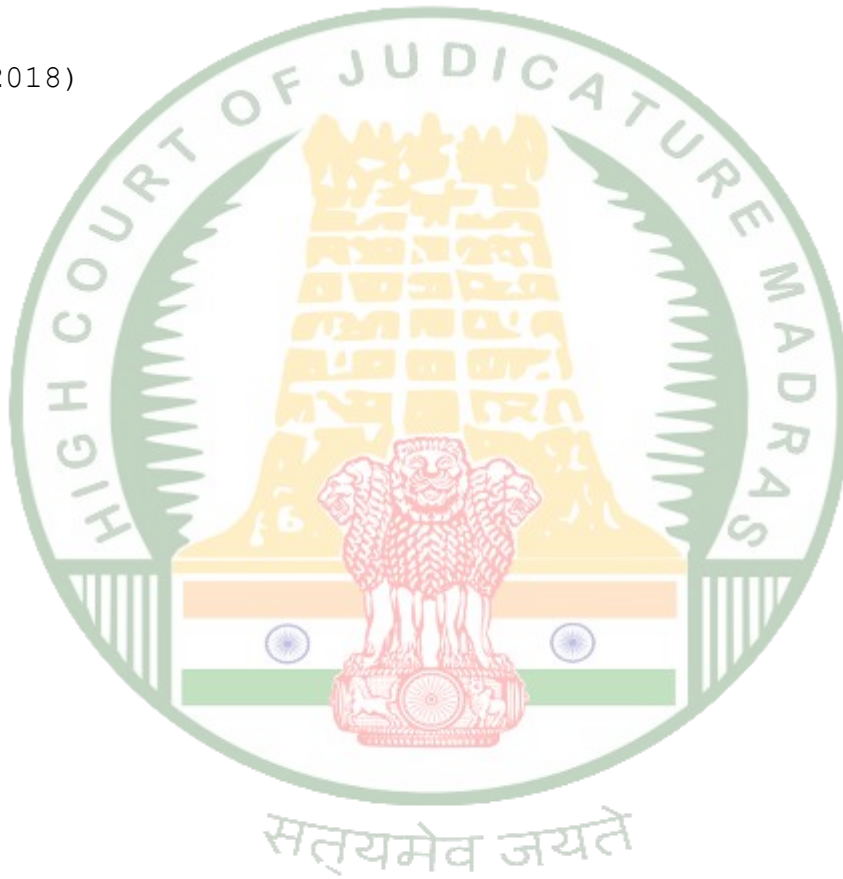
1. The Judicial Magistrate No II
Nagapattinam.
2. The Chief Judicial Magistrate, Nagapattinam.
3. The Sessions Judge
Fast Track Mahila Court,
Nagapattinam.
4. The Inspector of Police
Nagore Police Station,
Nagore.
5. The Public Prosecutor,
High Court, Madras.

6 The Section officer
Criminal Section, High Court, Madras

+1 CC to Ms. Geetha Senthilkumar, Advocate sr 7805.

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KJI (CO)
SP (23/02/2018)



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