

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2019

Delivered on : 19.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.753 of 2017

Palanisamy M/A 50 years
Son of Chinnakaruppan,
1/278 Thotipalayam Karavalli Madhapur,
Sanganur, Coimbatore. ... Appellant/Accused

Vs.

The Inspector of Police,
Karumathanpatti Police Station,
Karumathanpatti P.S.Cr.No.381 of 2014. ... Respondent/complainant

Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code as against the conviction made in S.C.No.268 of 2018 under Section 302 IPC dated 08.12.2016 by the First Additional District and Sessions Judge, Coimbatore, and sentencing the appellant to undergo life imprisonment and to pay a fine of Rs.5000/- in default to undergo three months simple imprisonment.

For Appellant : Mr.M.Mohamed Saifulla
(Legal Aid Counsel)

For respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellant, who is the sole accused in S.C.No.268 of 2015 on the file of I Additional District and Sessions Court, Coimbatore, is found guilty of the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo further

period of three months simple imprisonment. Challenging the same the present Criminal Appeal has been filed.

2. Case of the Prosecution:

2.1. The appellant was the son in law of the deceased Pazhanal @ Palaniammal. Fifteen years ago, the deceased has received two sovereigns of gold from the deceased to meet out the medical expenses of her husband. Though she did not return back the jewel, she repaid a sum of Rs.15,000/- (Rupees fifteen thousand only) to the appellant. The appellant not satisfied with the return of money, insisted for the return of the jewel on the previous day. The deceased while refusing insulted him. On 20.11.2014 at about 5.30a.m., the appellant once again asked her to return the jewel. The deceased once again spoke harshly. Out of anger, the appellant hit her on the head with the wooden log-M.O.1, due to which, she sustained injuries and fell down. The witnesses viz., P.Ws.1 to 4 took the deceased to the hospital in an Ambulance though she was alive initially, she succumbed to the injuries. Thereafter, P.W.1 gave a complaint under Ex.P1 at about 1.00p.m., on the same day.

2.2. P.W.9-Anandhan is the Special Sub Inspector of Police, who registered a complaint under Ex.P7-printed First Information Report and recorded the statement of P.W.1. Thereafter, P.W.13 took up the investigation and prepared Exs.P17-Rough Sketch and P18-Inquest Report on the very same day. He arrested the appellant/accused at about 12.15p.m., based upon the confession statement given by him before P.W.8 and one Sathayanarayanan (not examined) and recovered M.Os.1 to 4 through mahazars. After completion of the investigation, P.W.13 filed the final Report.

3. Before the trial Court, the prosecution has examined 13 witnesses while marking Exs.P.1 to P.18 and material objects M.Os.1 to 7. On behalf of the defence, though one witness (D.W.1) has been examined viz., the wife of the appellant, she has stated that the appellant was on duty at that point of time.

4. In compliance with the mandate of Section 313-A of the Criminal Procedure Code, incriminating materials were placed before the appellant and he denied the same.

5. After considering the evidence available and by placing reliance upon, particularly, the evidence of P.Ws.1 to 4, the trial Court rendered a conviction against the appellant.

6. P.W.1 is the son of the deceased. He had stated about the motive. According to P.W.1, he along with P.Ws.2 and 3 were present at the place of occurrence. They saw the accused running away with the wooden log-M.O.1 while the

deceased was in a pool of blood. Thereafter, he along with P.W.2 took the deceased in an Ambulance to the Coimbatore Medical College and Hospital, Coimbatore. After the death of the deceased, he gave the complaint under Ex.P1.

7. In his cross-examination, P.W.1 has stated that it is true that the deceased used to be in a trance and dancing in possession of God. However, she used to fall only in his presence. He has also acknowledged the fact that he has made a statement that the deceased died of accident as could be seen under Ex.P16-Accident Register. He did not see the deceased when entered the house at about 1.30 a.m. The accused was running with M.O.1 after the occurrence. He did not know what actually happened when his mother shouted.

8. From the abovesaid evidence, we could see that P.W.1 gave two different versions. His first statement was made to P.W.12 Doctor, who treated the deceased in the hospital. He seeks to justify it by saying that such a statement was made in order to expedite the treatment. However, in the complaint given under Ex.P1 he has stated that the earlier statement was made as he was tensed up.

9. P.W.2 is the son-in-law of the deceased. He has also stated that he saw the deceased in a pool of blood. The appellant was found with the M.O.1-wooden log, stating that the deceased did not give back the jewel, therefore, he attacked her and ran away.

10. P.W.3 is the wife of P.W.1. Though she has not stated anything about the presence of the appellant, she has deposed that she saw the deceased on the floor. However, she has deposed that she saw M.O.1-wooden log near the deceased.

11. P.W.4 is the eye witness, who saw the deceased lying and thereafter, she being taken to the hospital in an Ambulance. P.W.6 is the witness, who signed the seizure mahazar, Ex.P2 and Ex.P3-Observation Mahazars, by which M.Os.2 and 3 viz., blood stained soil and soil respectively were recovered.

12. P.W.8 is the witness, who speaks of the confession, arrest and recovery under Exs.P5 and P6 with respect to M.Os.1 to 4. P.W.9 is the Sub Inspector of Police, who registered Ex.P1-complaint.

13. P.W.10 is the Doctor, who conducted the post mortem after receiving requisition under Ex.P8 and also the author of Ex.P10-Viscera Report and Ex.P7-Final Report. P.W.11 is the Junior Scientific Officer, who has given Ex.P12-Biological Report and Exs.P13 to P15-Blood Grouping Report. P.W.12 is the

Doctor, who received the deceased and gave the first aid. She is an author of Ex.P16-Accident Register. P.W.15 is the Investigating Officer, who conducted the investigation and prepared Ex.P17-rough sketch and conducted inquest under Ex.P18-Inquest Report and filed a final report.

14. Heard Mr.M.Mohamed Saifulla, learned counsel appointed as the Legal Aid Counsel. He has argued the case on behalf of the appellant as the earlier counsel reported no instruction. In fact, such an appointment is made after due intimation was given to the appellant through and to the office of the learned Public Prosecutor. As there was no attempt to engage the counsel by the appellant, we accordingly appointed an amicus to assist the Court.

15. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor and perused the records.

16. Submissions of the Appellant:

16.1. The learned counsel appearing for the appellant has submitted that the evidence of P.W.1 has not been considered properly, especially the contradictions available and so also the case of P.W.3. The entire occurrence had happened according to P.Ws.1 to 3 at morning 5.30 a.m., on 21.11.2014. However, as per Ex.P16 coupled with the evidence of P.W.12, the deceased was admitted as inpatient at about 11.50p.m. The deceased was taken in an Ambulance. The distance between the place of occurrence and the hospital was not very far. Even assuming that it would take one hour as the maximum, there cannot be a delay of 6 ½ hours in admitting the deceased in the hospital. There is a material contradiction also with respect to M.O.1-Wooden log as could be seen from the evidence of P.Ws.1 to 3. Since the material object is a prime one, the evidence adduced coupled with the recovery cannot be sustained. P.W.8 has also not clearly deposed in this regard. The statement has been handwritten and thereafter, typed while obtaining the signature of P.W.8. He further deposed that there are 52 to 60 persons available in the said place. Therefore, the recovery made is not admissible under Section 27 of the Indian Evidence Act, 1872.

16.2. The evidence of P.W.11 coupled with Exs.P12 to P15 would clearly show that the results with respect to the bloodstain found in the material objects are in conclusive except with respect to M.O.5(blood stained yellow colour jacket). The motive as projected by the prosecution has not been proved. It is improbable that the appellant would have committed the offence after giving the jewel 15 years ago. Even the post mortem Doctor has not stated that the deceased died of multiple injuries. The very specific case of the

prosecution is also not one of attacking the deceased more than one time. As the recovery itself has not been proved, the prosecution cannot make any reliance upon the same. In support of his contentions, the learned counsel has made reliance on the following judgments.

1. Jayakumar Vs. State represented by the Inspector of Police ((2019) 2 MLJ (Criminal) 668)
2. Palaniammal and another Vs. State, rep., by Inspector of Police ((2019) 2 MLJ (Crl.) 655)
3. Balwan Singh Vs. State of Chattisgarh (Crl.A.No.727 of 2015 dated 06.08.2019);
4. Shantabai and others Vs. State of Maharashtra ((2008) 16 Supreme Court Cases 354);
5. State of Maharashtra Vs. Vitthal Ashurji Gawali (Bombay DB) ((2006) 1 Mh.LJ (Crl.) 233)
6. Sattatiya Vs. State of Maharashtra ((2008) 3 Supreme Court Cases 210),
7. Sampath Kumar Vs. The Inspector of Police ((2012) 2 Supreme Court Cases (Criminal) 42),
8. Varkey Joseph Vs. State of Kerala, rep., by the Circle Inspector of Police (Criminal Appeal No.326 of 1993 dated 27.04.1993); and
9. Digamber Vaishnav and others Vs. State of Chhattisgarh (Criminal Appeal Nos.428-430 of 2019 dated 05.03.2019)
10. Sheila Sebastian Vs. R.Jawaharaj and another (Crl.A.Nos.359-360 of 2010 dated 11.05.2018);
11. Ashoksinh Jayendrasinh Vs. State of Gujarat (2019 AIR (SC) 2615);
12. State of Tamil Nadu Vs. Ammasi Alias William ((1992) Supreme Court Cases (Criminal) 971); and
13. Sadhu Ram & another V. The State of Rajasthan ((2003) AIR(SC) 3530).

17. Submissions on behalf of the State:

The learned Additional Public Prosecutor appearing for the State would submit that though there is no direct eye witness available, P.Ws.1 and 2 have seen the accused along with the deceased immediately after the occurrence. This coupled with the conduct of the appellant and in the light of the recovery would clearly establish the case of the prosecution. The witnesses have also spoken about the motive. The discrepancies though minor, cannot be put against the case of the prosecution. The trial Court duly considered the evidence available on record and assessed the evidence of D.W.1 also. Therefore, the appeal deserves to be dismissed.

18. Discussion:

- 18.1. P.Ws.1 to 3 have clearly deposed in tune with the

case of the prosecution about the timing of the occurrence being 5.30a.m., on 21.11.2014. Thereafter, the deceased was taken immediately in an Ambulance to the hospital. From the place of occurrence to the hospital, the travelling time is not far away. It could be at the maximum an hour. Even assuming it takes half an hour to get the ambulance, there is absolutely no reason for admitting the deceased at about 11.50a.m., that too over 6 hours delay. P.W.12 has clearly stated that the deceased was admitted at about 11.50 a.m., which is in tune with Ex.P16-Accident Register. If the deceased was alive at the time of admission and if P.Ws.1 to 3 have seen the deceased immediately after the occurrence and took her to the hospital in an ambulance, then, how the inordinate delay has occurred. If the story is true, then possibly the deceased would have died by the vital hours of delay in admitting the deceased. Thus, the evidence adduced is contrary to the human conduct. Therefore, the very case as projected by the prosecution creates doubt in the mind of the Court and thus, not safe to rely upon.

18.2. P.W.1 has given a different statement than the one given at the earliest point of time. While he had stated that the deceased died from falling, which was accordingly recorded under Ex.P16 and as deposed by P.W.12, it was changed thereafter on the ground of tense situation and in order to give immediate treatment to the deceased. We are not inclined to accept the said statement. We are dealing with a case where there is no explanation for the belated admission. Further, there is no basis for the explanation given. We find there are other material contradiction in the evidence of P.Ws.1 to 3. P.W.1 has stated that he saw the accused running with M.01-Wooden log wherever P.W.2 has stated that the deceased was standing with the said wooden log. P.W.3 goes on to state that she saw the wooden log in the place of occurrence. If she had seen the wooden log after the accused left, the very recovery by the prosecution goes. Thus, for the aforesaid reason, we are unable to accept the evidence of P.Ws.1 to 3.

18.3. Insofar as the arrest and recovery are concerned, the evidence of P.W.8 does not inspire confidence. Though the other witness, by name, Sathyanarayanan has not been examined, P.W.8 has stated that there are 50-60 persons available at the place where recovery has been made. Therefore, the parameter required for the admissibility of the recovery made is not available in the case on hand. There is also no explanation for the non examination of the other witness, who is the friend of P.W.8, by name, Sathyanarayanan, though by itself it is not a serious infirmity. P.W.10 is the Doctor, who conducted post mortem. It is not the case of the prosecution that the appellant hit the deceased multiple times. Though there are two injuries, one can say that they would occur

simultaneously. P.W.12 also says that there was a deep injury on the head. The evidence of P.W.10 is only for the purpose of assisting the Court in coming to the correct conclusion. It is merely only an opinion, which has been seen contextually in the facts of the case. This evidence will have to be seen with the evidence of P.W.1 himself, who has deposed that the deceased used to be in a trance and dancing when allegedly possessed by God. She also used to fall down though in his presence. This along with the evidence of P.W.12, who had deposed about the statement made by P.W.1 in tune with P.W.16 would make us to conclude that it is not a conclusive proof that the injury has been suffered by M.O.1 and that too by the appellant.

18.4. The learned counsel appearing for the appellant placed reliance upon number of judgments which we would like to quote. The Division Bench of this Court in Jayakumar Vs. State represented by the Inspector of Police ((2019) 2 MLJ (Criminal) 668), has held as under with respect to the recovery.

"11. Insofar as the recovery of Wooden Log/M.O. 1 is concerned, it is the evidence of PW6 that the appellant/accused was arrested on 02.12.2015 at about 1.00 p.m. and he voluntarily came forward to give confession statement, which led to the recovery of Wooden Log/M.O. 1, Cellphone-M.O. 4 and Cash of Rs. 90/-/M.O. 5 said to have been taken by the appellant from the pocket of the deceased. In Ex. P1/statement given by PW1, the appellant/accused dropped the wooden log and fled away and even in the chief examination, PW1 deposed so and this Court has also pointed out that in Ex. P1, PW1 did not state anything about the snatching of cash or taking away of cellphone from the pocket of the deceased/Vijayan, but only in the chief examination, he has deposed so.

12. As regards recovery of Wooden Log/M.O. 1, Ex. P5/Mahazar was marked and in the light of the testimony of PW1 that the wooden log, after the commission of the offence, was said to have been dropped by the appellant/accused on the spot itself, recovery of the same under the cover of Mahazar/Ex. P5 as spoken to by PW6 cannot be believed. The admissible portion of the

confession statement of the appellant would disclose that the appellant/accused had stated that he produced M.O. 1/Wooden Log

concealed by him.

13. In the light of the reasons assigned above, the recovery of M.O. 1/Wooden Log said to have been used by the appellant/accused for the commission of the offence, cannot be believed, so also the recovery of M.O. 4/Cellphone and M.O. 5/Cash of Rs. 90/-."

18.5. Insofar as the recovery is concerned, the Division Bench of this Court in Palaniammal and another Vs. State, rep., by Inspector of Police ((2019) 2 MLJ (Cr1.) 655) has held as follows:

"9(ii) Prosecution sought to establish recovery of material objects through PW-12, Village Administrative Officer and PW-13. The evidence of PW-12, Village Administrative Office, does not inspire confidence inasmuch as he himself admitted that he is suffering from dementia. PW-12, in cross, admitted that he did not know the number of pages of confession statement and where the print out was taken. Further, he has also admitted that the MO-22 [polythene bag] was found in a open place and anyone could see it. PW-13, another witness to the recoveries, admitted that he was seated in the police vehicle throughout and attested the documents on the request of police. Hence, the seizure and recovery becomes doubtful."

We find that the said ratio is to be applied to the case on hand as even here P.W.8 was seated in the police vehicle throughout. Further, there were about 50 to 60 people already gathered in that place.

18.6. On the inconclusive nature of the bloodstain found in the material object, the Apex Court in Balwan Singh Vs. State of Chattisgarh (Cr1.A.No.727 of 2015 dated 06.08.2019), has held in the following manner.

"8. The prosecution also relies upon the evidence relating to recovery of sticks and tabbal which were bloodstained. Such evidence may not be helpful to the prosecution in this case inasmuch as there is no evidence to show that these articles were stained with human blood, and more particularly with blood of the same blood group as that of the deceased. As per the Forensic Science Laboratory Report, the blood stains were disintegrated, and their origin could not be determined.....

14. In the instant case, then, we could have

placed some reliance on the recovery, had the prosecution at least proved that the blood was of human origin. As observed supra, while discussing the evidence of PWs 9 and 16, the prosecution has tried to concoct the case from stage to stage. Hence, in the absence of positive material indicating that the stained blood was of human origin and of the same blood group as that of the accused, it would be difficult for the Court to rely upon the aspect of recovery of the weapons and tabbal, and such recovery does not help the case of the prosecution."

18.7. Similarly in *Shantabai and others Vs. State of Maharashtra* ((2008) 16 Supreme Court Cases 354), the following observation has been made.

"The bloodstains on some of the clothes seized from the accused in recovery belonged to a different blood group from that of the blood group of bloodstains found on the clothes of the deceased and on the sample of soil, axe, stones etc., which were taken from the spot by the investigating officer. As a result of this mismatch, it was held that this circumstance was not proved against the accused."

18.8. In *State of Maharashtra Vs. Vitthal Ashurji Gawali* (Bombay DB) ((2006) 1 Mh.LJ (Crl.) 233), it has been held as follows:

"The other evidence on record is grossly inadequate to indicate any link between the accused and the assault on sakhram. The report of forensic science laboratory at Ex.P52 shows that the results in respect of all medical exhibits, except blood sample of accused were, inconclusive.

In view of this, it is clear that the learned Additional Sessions Judge did not have any option but to hold that the prosecution failed to prove complicity of the accused in the assault which led to death of sakhram."

18.9. In *Sattatiya Vs. State of Maharashtra* ((2008) 3 Supreme Court Cases 210), it has been held as under.

"One of the crucial factors that had led this Court to reverse the conviction was that the bloodstains on the items seized in the recovery could not be linked with the blood of

the deceased. This factor was treated as a serious lacuna in the case of the prosecution."

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18.10. Insofar as the motive part is concerned, we find that there is no material to show that the deceased was having sufficient money as alleged. If the dispute is lingering for 15 years, there is no need for the accused to indulge in the alleged offence. In this connection, the following decision of the Apex Court would be of relevance. In Sampath Kumar Vs. The Inspector of Police ((2012) 2 Supreme Court Cases (Criminal) 42), the Apex Court has held as follows.

"14. In the present case the testimony cannot be wholly reliable or wholly unreliable. He is not a chance witness who had no reason to be found near the deceased at the time of the occurrence. There is evidence to show that Palani (PW7) used to sleep with the deceased-Senthil in the verandah of the house. What makes it suspect is that the witness has, despite being a natural witness, made a substantial improvement in the version without their being any acceptable explanation for his silence in regard to the fact and matters which was in his knowledge and which would make all the difference in the case. The Court would, therefore, look for independent corroboration to his version, which corroboration is not forthcoming. All that is brought on record by the prosecution is the presence of a strong motive but that by itself is not enough to support a conviction especially in a case where the sentence can be capital punishment. In N.J. Suraj v. State represented by Inspector of Police (2004) 11 SCC 346, the prosecution case was based entirely upon circumstantial evidence and a motive. Having discussed the circumstances relied upon by the prosecution, this Court rejected motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well-settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused. To the same effect is the decision of this Court in Santosh Kumar Singh v. State through CBI. (2010) 9 SCC 747 and Rukia Begum v. State of Karnataka AIR 2011 SC 1585 where this Court

held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in *Sunil Rai @ Pawa and Ors. v. Union Territory, Chandigarh* (AIR 2011 SC 2545). This Court explained the legal position as follows :

"In any event, motive alone can hardly be a ground for conviction. On the materials on record, there may be some suspicion against the accused but as is often said suspicion, howsoever, strong cannot take the place of proof."

15. Suffice it to say although, according to the appellants the question of the appellant-Velu having the motive to harm the deceased-Senthil for falling in love with his sister, Usha did not survive once the family had decided to offer Usha in matrimony to the deceased-Senthil. Yet even assuming that the appellant- Velu had not reconciled to the idea of Usha getting married to the deceased-Senthil, all that can be said was that the appellant-Velu had a motive for physically harming the deceased. That may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt."

18.11. We also agree with the submission made by the appellant that suspicion however strong cannot be a substitute for proof as we find the aforesaid principle has been dealt with by the Apex Court in the following cases.

- (1) *Varkey Joseph Vs. State of Kerala*, rep., by the Circle Inspector of Police (Criminal Appeal No.326 of 1993 dated 27.04.1993); and
- (2) *Digamber Vaishnav and others Vs. State of Chhattisgarh* (Criminal Appeal Nos.428-430 of 2019 dated 05.03.2019)

Thus, in the light of the abovesaid pronouncements coupled with

the discussion made, we are constrained to extend the benefit of doubt to the appellant. The trial Court, in our considered view, has not considered these aspects while rendering conviction. Accordingly, we set aside the conviction and sentence rendered by the trial Court.

19. The conviction and sentence imposed on the appellant/ Palanisamy in S.C.No.268 of 2015 on the file of I Additional District and Sessions Court, Coimbatore, on 08.12.2016 are set aside and the Criminal Appeal stands allowed. The appellant is acquitted of the charges under Section 302 IPC., and the fine amount if any paid by the appellant/Palanisamy, shall be refunded to him. The bail bond, if any, executed by him during trial, shall stand cancelled. The appellant/ Palanisamy is directed to be released forthwith, unless his custody is required in connection with any other case.

20. We place on record our appreciation for the thorough job done by the learned counsel appointed by us to assist the Court. He not only did an excellent job in assisting the Court, but also done a good amount of research by placing the judgments, spending his own money.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The 1st Additional District Sessions Judge,
Coimbatore.

2.The Inspector of Police,
Karumathanpatti Police Station,
Karumathanpatti P.S.Cr.No.381 of 2014.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Public Prosecutor,
High Court, Chennai.

5.The Member Secretary,
Tamil Nadu state legal services Authority
Chennai

6.The Judicial Magistrate No.II
Coimbatore.

7.The Chief Judicial Magistrate
Coimbatore.

8.The District Collector
Coimbatore.

9.The Director General of Police
Mylapore Chennai-4.

Copy to: The Section Officer
Criminal Section
High court, Madras-104.

+1cc to Mr.M.Mohamed saifulla, Advocate SR.NO.70396

PA(CO)
CB(27/09/2019)

Judgment in
Criminal Appeal No.753 of 2017



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