



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.11.2021

DELIVERED ON: 01.12.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

CRL.A.No.197 of 2018
and CRL.M.P.No.4763 of 2018

Subramani

.. Appellant/Accused

Vs.

The Assistant Commissioner of Police
High Court Range, Chennai
Crime No.1395/2014
B-2 Esplanade Police Station
Chennai

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the judgment passed in Spl.S.C.No.165 of 2015 dated 25.07.2017 by the Principal Sessions Judge, Chennai.

For Appellant	Mr.J.I.Rajkumar Roberts
For Respondent	Mr.M.Babu Muthu Meeran Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.

Challenging the conviction and sentence dated 25.07.2017 passed in Spl.S.C.No.165 of 2015 by the Principal Sessions Judge, Chennai, the accused (Subramani) has preferred this appeal.

2. The prosecution story runs thus :

2.1. The place of occurrence in this case is a four-storeyed (G plus 3) mansion with a terrace, in door No.82/12,



Iyappachetty Street, Mannady, Chennai, which was being managed by Yasin (P.W.5), as the power agent of the real owner.

2.2. Yasin (P.W.5) had let out the ground floor and first floor to commercial establishments and in the second floor portion, he had taken up repair work. In the third floor portion, Mariappan (P.W.4), an Advocate was residing with his family. In the terrace (fourth floor), Yasin (P.W.5) had built a small room measuring 10' x 10' with a kitchen for the stay of bachelors.

2.3. Yasin (P.W.5) hails from Tuticorin District. Since he was making structural alterations in the second floor, he had requisitioned the services of Krishnakumar (P.W.1), a mason from Tuticorin district, who was doing masonry work in the second floor and was also residing there.

2.4. Yasin (P.W.5) let out the small room in the fourth floor (terrace) to the deceased Kanagaraj, who was Krishnakumar's (P.W.1's) younger brother. Kanagaraj was employed as a medical representative in a pharmaceutical company in Salem. Along with Kanagaraj, his friends, viz., Subramani, Vignesh, Sivanandam and Prabakar were also staying. Kanagaraj and Subramani were from Tuticorin District and they were childhood friends.

2.5. Kanagaraj got married to Chithiraiselvi on 20.05.2013 at Tuticorin, which function was presided over by Yasin (P.W.5). Since Kanagaraj brought his wife Chithiraiselvi to stay with him in the fourth floor portion, he requested his friends to vacate and accordingly, they too obliged. Chithiraiselvi became pregnant sometime in the middle of 2014 and therefore, she went back to her native village in Tuticorin. Since Chithiraiselvi had left for her confinement, Subramani started to stay with Kanagaraj in the fourth floor portion.

2.6 While so, in the evening of 13.11.2014, Krishnakumar (P.W.1) saw his brother Kanagaraj and Subramani together in the fourth floor portion. Around 04.30 a.m. on 14.11.2014, Krishnakumar (P.W.1), who was residing in the second floor, heard a noise in the terrace and when he went out to look as to what was the noise, he saw Subramani coming down the staircase hurriedly and taking the motorcycle that was parked in the ground floor and leaving.

2.7. After the day dawned, Krishnakumar (P.W.1) went to the fourth floor where Kanagaraj was residing and found the portion locked from outside. Krishnakumar (P.W.1) did not suspect anything and he left for his job. While so, Krishnakumar (P.W.1) received a telephone call from Chithiraiselvi and Kanagaraj's friends saying that they were not able to reach Kanagaraj at all and that his mobile phone appears to be switched off continuously. Krishnakumar (P.W.1) also tried to contact Kanagaraj, but, he was unable to reach him. Krishnakumar (P.W.1)



informed this to Yasin (P.W.5) and the latter advised him to wait that night (14.11.2014) and if Kanagaraj does not return, they could break open the lock of the portion and look therein.

2.8. Since Kanagaraj did not return home on the night of 14.11.2014, on 15.11.2014, around 06.00 a.m., Krishnakumar (P.W.1) and his assistant mason Ramamoorthy (P.W.2), broke open the Godrej Navtal padlock (M.O.4), opened the front door and went inside the portion. They were shocked to see Kanagaraj with multiple injuries on his body and bloodstained knife (M.O.1) lying nearby. Soon, news spread in the building and curious onlookers including Mariappan (P.W.4) and Yasin (P.W.5) gathered there.

2.9. Krishnakumar (P.W.1) went to the police station and gave a written complaint (Ex.P1), wherein, he stated that he suspects the involvement of Subramani in the murder.

2.10. Based on the written complaint (Ex.P1), Radhakrishnan (P.W.24), Inspector of Police registered a case in B-2 Esplanade Police Station Crime No.1395 of 2014 at 07.00 a.m. on 15.11.2014 and prepared the printed FIR (Ex.P17), which reached the jurisdictional Magistrate on the same day at 03.50 p.m., as could be seen from the endorsement thereon.

2.11. Radhakrishnan (P.W.24) went to the place of occurrence at 09.00 p.m. and in the presence of Suresh (P.W.22) and Surendar (not examined), prepared an observation mahazar (Ex.P18) and rough sketch (Ex.P19). From the place of occurrence, Radhakrishnan (P.W.24) seized the following items under the cover of a mahazar (Ex.P16) in the presence of witnesses viz., Suresh (P.W.22) and Surendar (not examined) :

- 1 Bloodstained knife (M.O.1)
- .
- 2 Broken Godrej Navtal padlock (M.O.4)
- .
- 3 Pillow (M.O.10)
- .
- 4 Bedsheet (M.O.11)
- .
- 5 Cement plaster pieces with and without blood stains (M.O.12)

Thereafter, Radhakrishnan (P.W.24) conducted inquest over the body of Kanagaraj and prepared the inquest report (Ex.P20). The body was sent to the Rajiv Gandhi Government General Hospital, Chennai, for postmortem, where Dr.Venkatraj (P.W.21) performed autopsy on the body of Kanagaraj and noted the following injuries :



WEB COPY

1. 16 x 2-1cm x bone deep horizontal gaping cut injury on the right eyebrow, left eyebrow and left temple.
2. 18 x 1-0.5cm x bone deep horizontal gaping cut injury on the right and left parietal, left temporal regions of scalp; on reflection of scalp; 18 cm fissured fracture of the left parietal bone of calvarium; 4 cm depressed fracture of left temporal bone of calvarium.
3. 16 x 6-3.5cm x bone deep horizontal cut injury along the occipital region of scalp,
4. 18 x 5-7cm x bone deep horizontal cut injury on the left cheek, left side of the nape of the neck just 2 cm below and behind the left ear lobule. This injury lies just 1.5cm below the 3rd injury.
5. 7 x 4-2cm x 5cm horizontally oblique cut injury on the left side of the upper back.
6. 1 x 1-0.5cm x 0.5cm cut injury on the back of the left shoulder.
7. 6 x 3-1cm x 1.5cm horizontally oblique cut injury on the back of the left shoulder. This injury lies 2cm in front of the 6th injury.
8. 14 x 3.5-1cm x 4-2cm horizontally oblique cut injury with 2 regions of intervening normal skin on the right side of the neck.
9. 5 x 2-1 cm x 2 cm cut injury on the left side of the upper lip.

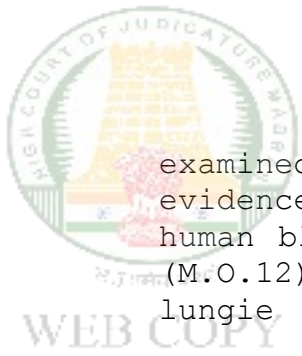
On removal of calvarium : Thick film of subdural and diffuse subarachnoid hemorrhage on both cerebral hemispheres. Skull base : intact. All the above injuries are ante mortem in nature.

Heart: Normal in size; C/S: Empty; Valves: Normal, Coronaries: Patent; Great vessels: Normal. Lungs: Normal in size; C/S: Pale. Larynx & Trachea: Empty. Hyoid Bone: Intact. Stomach: Contained 200 gm of partially digested cooked food particles with no definite smell; Mucosa: Pale. Liver, Spleen & Kidneys: Normal in size; C/S: Pale. Bladder: Empty. Pelvis & Spinal column: Intact.

In his evidence, as well in the postmortem certificate (Ex.P14), Dr.Venkatraj (P.W.21) has opined as follows :

"The deceased would appear to have died of shock and hemorrhage due to multiple cut injuries."

2.12. The apparel worn by Kanagaraj viz., lungie (M.O.2), white colour banian (M.O.3) and underwear (M.O.5) were handed over to the police. The seized articles, along with the apparel of Kanagaraj, were sent to the Tamil Nadu Forensic Sciences Department, through the jurisdictional Magistrate and were



examined by C.Bhavani (P.W.12), Scientific Officer, who, in her evidence, as well in the Serology Report (Ex.P6), has stated that human blood group 'A' was detected in the cement plaster pieces (M.O.12), knife (M.O.1), bedsheet (M.O.11), banian (M.O.3), lungie (M.O.2) and the underwear (M.O.5).

2.13. On 18.12.2014, Subramani was arrested by Radhakrishnan (P.W.24) at Koyambedu bus stand and his police confession was recorded. Based on the disclosure of Subramani, a Hero Honda motorcycle (M.O.6) was seized under the cover of a mahazar (Ex.P12) in the presence of witnesses viz., Ramesh (P.W.20) and Prabakar (not examined). From the disclosure made by Subramani, the apparel that were allegedly worn by him, were seized from the ground floor portion of the place of occurrence viz., No.82/12, Iyappachetty Street, Mannady, Chennai-1, under the cover of a mahazar (Ex.P13). The seized apparel are, bloodstained jeans pant (M.O.7), bloodstained jockey T-shirt (M.O.8) and a Godrej key bearing No.28569 (M.O.9). The seized apparel (M.Os.7 and 8) were sent to the Tamil Nadu Forensic Sciences Department, through the jurisdictional Magistrate, for examination, where Bhavani (P.W.12), Scientific Officer examined them and in her evidence, as well in the Serology Report has stated that the bloodstains found in the T-shirt (M.O.8) is of human blood group 'A'.

2.14. During the course of investigation, it came to light that the deceased Kanagaraj was a Dalit and Subramani was a non Dalit. Therefore, caste certificates of both were obtained from the authorities concerned viz., Ex.P10, Community Certificate of Kanagaraj issued by Tahsildar, Thiruchendur and Ex.P11, certificate issued by the Head Master of the school, where Subramani discontinued his 9th standard.

2.15. Since Kanagaraj was a Dalit, the investigation was taken over by G.Nazir Basha (P.W.25), Assistant Commissioner of Police, who examined various witnesses and on his transfer, the investigation was completed by K.Kannan (P.W.26), Assistant Commissioner of Police, who filed a final report in P.R.C.No.41 of 2015 in the Court of the VII Metropolitan Magistrate, George Town, for the offence under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (in short "the SC/ST Act"), alleging that during the quarrel, Subramani is said to have abused Kanagaraj by referring to the latter's caste. That apart, a charge under Section 302 IPC, for the murder of Kanagaraj was framed and a charge under Section 201 IPC, for hiding the apparel that were allegedly worn by Subramani at the time of occurrence



were framed.

2.16. When Subramani was questioned, he pleaded "not guilty".

WEB COPY

2.17. To prove the case, the prosecution examined 26 witnesses and marked 23 exhibits and 14 material objects.

2.18. When Subramani was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he admitted the fact that he had stayed along with his friends viz., Vignesh, Sivanandam and Prabakar in the fourth floor portion with Kanagaraj, prior to Kanagaraj's marriage, but denied the rest of the incriminating circumstances. No witness was examined from the side of Subramani nor any document marked.

2.19. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 25.07.2017, in Spl.S.C.No.165 of 2015, acquitted Subramani of the charge under Section 201 IPC and Section 3(1)(x) of the SC/ST Act, but, convicted him under Section 302 IPC and sentenced him to imprisonment for life and fine of Rs.5,000/-, in default, to undergo further two years rigorous imprisonment. Challenging the said conviction and sentence, Subramani has preferred this appeal.

3. Heard Mr.J.I.Rajkumar Roberts, learned counsel for Subramani and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

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

- i. Yasin (P.W.5) was managing the tenants in the mansion at No.82/12, Iyappachetty Street, Mannady, in which, Krishnakumar (P.W.1) was staying in the second floor and was doing masonry works.
- ii. Kanagaraj is the younger brother of Krishnakumar (P.W.1), who was also staying in the same mansion in a room in the terrace.
- iii. Kanagaraj was married to Chithiraiselvi.
- iv. Kanagaraj was found dead with multiple injuries by Krishnakumar (P.W.1) and Ramamoorthy (P.W.2) around 06.00 a.m. on 15.11.2014.



5. The short question that falls for the consideration of this Court is, whether Subramani was the perpetrator of the crime.

WEB COPY

6. Krishnakumar (P.W.1), in his evidence, has stated that he was residing in the second floor portion of the building in door No.82/12, Iyappachetty Street, Mannady, which was managed by Yasin (P.W.5) and that he was doing masonry work there; his younger brother Kanagaraj was living in a small portion in the terrace of the building; while Kanagaraj was a bachelor, Subramani, Vignesh, Sivanandam and Prabakar used to stay with him; after Kanagaraj got married to Chithiraiselvi in the middle of 2013, she was staying in that portion with her husband Kanagaraj; after she left for her confinement, Subramani was staying with Kanagaraj; on 13.11.2014, he saw Kanagaraj and Subramani together in that portion around 09.00 to 09.30 p.m.; the next day, early in the morning, i.e., around 04.00 a.m. on 14.11.2014, he heard a strange noise from the terrace portion and when he went out to look what it was, he saw Subramani coming down the staircase hurriedly and leaving the place in a motorcycle; in the morning, when he went to see his brother, he saw that portion locked. Rest of his testimony relates to the search for Kanagaraj by his friends and his wife on 13.11.2014. Krishnakumar (P.W.1) has further stated that on 15.11.2014, around 6 a.m., he went to the fourth floor and broke the lock, entered the room and found Kanagaraj dead with multiple injuries; in that premises, he found a knife with bloodstain, as well a shirt in the hanger that belonged to Subramani. Of course, the police have failed to seize that shirt for the reasons best known to them.

7. In the cross-examination, Krishnakumar (P.W.1) has stated that on 13.11.2014, around 09.00 p.m., he saw Kanagaraj and Subramani climbing up the stairs to the fourth floor.

8. Mr.Rajkumar Roberts, learned counsel for Subramani contended that in the chief-examination, Krishnakumar (P.W.1) has stated that he had gone to the fourth floor portion and had seen Kanagaraj and Subramani together, whereas, in the cross-examination, he has stated that he had seen them climbing up the staircase and therefore, this is a contradiction. We are unable to appreciate this submission inasmuch as, saying that two of them climbing up the stairs and thereafter, saying both of them were together in the room is not incompatible to each other. If



WEB COPY

Krishnakumar (P.W.1) had stated that, he had seen both of them climbing down the staircase and going out and thereafter, if he had stated that he had seen both of them together in the room, then, one can say that there is a contradiction. But, that is not the case here.

9. Mariappan (P.W.4), who was staying in the third floor portion, has stated that he knows Krishnakumar (P.W.1) and Kanagaraj; prior to Kanagaraj's marriage, Subramani was Kanagaraj's roommate; after Kanagaraj got married, his friends were not staying there; when Kanagaraj's wife went for delivery, Vignesh and Subramani started staying with Kanagaraj; on 13.11.2014, around 08.00 p.m., he saw Kanagaraj and Subramani climbing down the staircase and going out; again, on the next day (14.11.2014), around 04.30 a.m., he heard a noise in the terrace portion and when he went out to look what it was, he saw Subramani going down the staircase; he also saw Krishnakumar (P.W.1) coming out of the second floor portion and looking out; after the day dawned, Kanagaraj's wife telephoned his (P.W.4's) wife and told her that her husband (Kanagaraj) is not accessible over phone; since Krishnakumar (P.W.1) did not have a spare key for the lock that was hanging outside the main door of Kanagaraj's portion, they asked Yasin (P.W.5), but, he too did not have a spare key and therefore, they decided to wait that day; on the next day, i.e., on 15.11.2014, Krishnakumar (P.W.1) and Ramamoorthy (P.W.2) went to Kanagaraj's portion, broke the lock and went inside; when they told him (P.W.4) that Kanagaraj was found dead with multiple injuries, he also went to see the body and thereafter, the police complaint was given.

10. Apart from Mariappan's (P.W.4's) evidence, we have the evidence of Sivanandam (P.W.7), who has stated that he was working with Kanagaraj as sales representative in the same company; Kanagaraj had got married to his mother's sister; in the evening of 13.11.2014, after finishing his work, he came to Kanagaraj's portion and at that time, Subramani and Vignesh were there; he was writing his daily work report, while the other three were having their meal; at that time, Kanagaraj asked Subramani, as to when he is going to vacate, as his (Kanagaraj's) wife is going to return, for which, Subramani said that he will not vacate immediately, which resulted in a quarrel, in which Subramani abused him by referring to his caste; he (P.W.7) and Vignesh left the house and went away on their own; on 14.11.2014, Kanagaraj did not come for work and therefore, he called Krishnakumar (P.W.1) and enquired; Krishnakumar (P.W.1) told him (P.W.7) that Kanagaraj's mobile was switched off and he also does



not know his whereabouts; on the next day (15.11.2014), he received information that Kanagaraj was found dead in his room.

11. From the evidence of Sivanandam (P.W.7), it appears that on the night of 13.11.2014, he was also in the room of Kanagaraj, along with Vignesh and Subramani. However, the presence of these witnesses on 13.11.2014, has not been spoken to by Krishnakumar (P.W.1). This witness (P.W.7) is a close relative of Kanagaraj. Therefore, Krishnakumar (P.W.1) would have known about the presence of this witness (P.W.7) had he really been present on 13.11.2014. This witness (P.W.7) was essentially examined by the police, for the charge under Section 3(1)(x) of the SC/ST Act. The trial Court has acquitted Subramani of the said charge against which, the State has not filed any appeal.

12. The next piece of incriminating evidence against Subramani is, the alleged recovery of his apparel from the ground floor portion of the same building, after his arrest on 18.12.2014. As rightly contended by Mr.Rajkumar Roberts, these recoveries appear to be sham because, no one after committing a murder in the fourth floor, will come to the ground floor and keep his bloodstained apparel and go away naked. It is not the case of Krishnakumar (P.W.1) and Mariappan (P.W.4) that they saw Subramani changing his clothes in the ground floor and thereafter, taking the bike and going away. The irony is, the incident had taken place on 14.11.2014; Subramani was arrested on 18.12.2014 and the seizure of clothes was effected thereafter, from the ground floor portion, where Aquarite Engineering Company is functioning, as per the evidence of Mariappan (P.W.4) and Yasin (P.W.5). Therefore, we are not believing the prosecution story, with regard to the seizure of the apparel that were allegedly worn by Subramani at the time of occurrence, one month later i.e., on 18.12.2014, after his arrest. The question that haunts us is, where was Subramani after 15.11.2014? He was apprehended only on 18.12.2014. He has not denied his friendship with Kanagaraj. Even in the Section 313 Cr.P.C. statement, he has admitted that he was staying with Kanagaraj in the fourth floor portion, prior to Kanagaraj's marriage. Subramani has failed to discharge the onus under Section 106 of the Evidence Act.

13. In the cross-examination, Krishnakumar (P.W.1), has very clearly stated that right from his childhood, he knew Subramani and that he has no animosity towards him. The defence has not made any suggestion to Krishnakumar (P.W.1), disputing his evidence that he saw Subramani climbing down the staircase



around 04.30 a.m. on 14.11.2014 and going away in a motorcycle. It was also not suggested to Krishnakumar (P.W.1) that he has a motive to falsely implicate Subramani in the crime. At the earliest point of time viz., in the complaint (Ex.P1) itself, Krishnakumar (P.W.1) has stated that Subramani stayed with his brother Kanagaraj on the night of 13.11.2014; around 04.30 a.m. on 14.11.2014, he heard a noise and saw Subramani hurriedly climbing down the staircase, taking the bike and leaving. In the absence of any explanation as to where Subramani was from 14.11.2014 to 18.12.2014, we have no reasons to disbelieve the evidence of Krishnakumar (P.W.1) and Mariappan (P.W.4).

14. For all the foregoing reasons, we find no merit in this appeal and no serious infirmity in the findings returned by the trial Court warranting interference and accordingly, the judgment and order of conviction and sentence dated 25.07.2017 passed by the Principal Sessions Judge, Chennai in Spl.S.C.No.165 of 2015, is confirmed.

In the result, this criminal appeal is dismissed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

gya

To

- 1.The Principal Sessions Judge,
(The Special Judge at Chennai under
S.C. & S.T. Prevention of Atrocities Act)
Chennai.
- 2.The VII Metropolitan Magistrate,
George Town, Chennai.
- 3.The Superintendent,
Central Prison, Puzhal,
Chennai.



4.The Assistant Commissioner of Police
High Court Range, Chennai
Crime No.1395/2014
B-2 Esplanade Police Station
Chennai

WEB COPY

5.The Public Prosecutor
High Court, Madras.

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

+2cc to Mr.J.I.Rajkumar Roberts, Advocate SR.No.62464

Cr1.A.No.197 of 2018

PA(CO)
CB(14/12/2021)