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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	24.11.2021
DELIVERED ON	23.12.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MRS. JUSTICE R. HEMALATHA

CrI.A. No.413 of 2018

Raghuvaran

Appellant/Accused 1

Vs.

State by
the Inspector of Police
Tiruppur Rural Police Station
Tiruppur
(Cr. No.1088 of 2010)

Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. seeking to set aside the judgment of conviction and sentence dated 26.03.2018 passed in S.C.No.240 of 2010 on the file of the II Additional District and Sessions Court, Tiruppur.

For appellant Mr. R. Sankarasubbu
for Mr. J. Franklin

For respondent Mr.A.Babu Muthu Meeran
Addl. Public Prosecutor

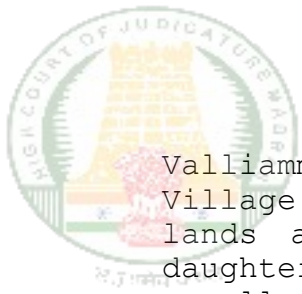
JUDGMENT

P.N. PRAKASH, J.

The judgment and order of conviction and sentence dated 26.03.2018 made in S.C. No.240 of 2010 on the file of the II Additional District & Sessions Court, Tiruppur, is under assail in this criminal appeal by the first accused.

2 The prosecution story runs thus:

2.1 This is a case of murder of the Pazhanichamy - Valliammal couple, who were aged 65 years and 55 years respectively at the time of the incident. Pazhanichamy and



Valliammal were living in their farmhouse in Mudalipalayam Village. Pazhanichamy's aunt Gnana Soundari had agricultural lands adjacent to that of the former. Gnana Soundari has a daughter, Shanthi, whose sons are Raghu @ Raghuvaran (A.1), the appellant herein and Maheswaran (A.2), who died on 09.12.2010, i.e., after the registration of FIR (Ex.P.17) on 21.02.2010 and before framing of charges on 23.09.2011.

2.2 The family of Pazhanichamy and the family of Shanthi were not in good terms as there was a pathway dispute between them, which is a normal phenomenon in the countryside, because of which, there used to be frequent quarrels between the two families.

2.3 Pazhanichamy and Valliammal have a son, Vijayakumar (P.W.1), who is married to Radhika (P.W.2). Vijayakumar (P.W.1) was living with his family in Tiruppur town which is away from the farm house of his father Pazhanichamy in Mudalipalayam Village.

2.4 On 21.02.2010, Vijayakumar (P.W.1) tried to talk to his parents by mobile phone, but in vain. So, around 8.30 a.m., he went to his father's farm house and found the lights on and the whole house ransacked. He desperately searched for his parents and eventually, found his father Pazhanichamy dead in a tobacco pit in the land of one Ramasamy (not examined). Near the said place, he found his father's bloodstained stick broken into three pieces (M.O.3) and a pair of slippers (M.O.4). He also saw his father's battery torchlight (M.O.10) on the ground in broken condition. Then, he searched for his mother Valliammal and found her body floating in a well nearby. Soon, the villagers gathered there.

2.5 Vijayakumar (P.W.1) lodged a complaint (Ex.P.1), wherein, he has stated that he was told by Krishnamurthy (P.W.6) and Periasamy (P.W.7) that Raghuvaran (A.1) and his brother Maheswaran (A.2) were found quarrelling with Pazhanichamy around 9.00 p.m. on the previous day, i.e., 20.02.2010 and therefore, he suspects their involvement in the murder of his parents.

2.6 Based on the written complaint (Ex.P.1), Sakthivel Murugan (P.W.18), Sub Inspector of Police, registered a case in



Cr. No.1088 of 2010 at 9.30 a.m. on 21.02.2010 under Section 302 IPC (2 counts) against Raghuvaran (A.1) and his brother Maheswaran (A.2) and prepared the printed FIR (Ex.P.17), which reached the jurisdictional Magistrate only at 11.00 p.m. on 21.02.2010, as could be seen from the endorsement thereon.

2.7 Investigation of the case was taken over by Ramamurthy (P.W.19), Inspector of Police (for brevity "the I.O."), who went to the place of occurrence and prepared the observation mahazar (Ex.P.2) and rough sketch (Ex.P.18) in the presence of Saravanamuthu (P.W.4) and Arjunan (not examined).

2.8 From the place where Pazhanichamy's body was found, the I.O. seized the following items under the cover of a mahazar (Ex.P.3):

- soil with bloodstains (M.O.1);
- soil without bloodstains (M.O.2);
- 3 pieces of bloodstained stick (M.O.3); and
- a pair of black colour slippers (M.O.4)

2.9 On the same day at 1.00 p.m., the I.O. seized from near a fence and electric pole in the Tiruppur - Manoor Road, the following items under the cover of a mahazar (Ex.P.4):

- Soil with bloodstains (M.O.5);
- Soil without bloodstains (M.O.6); and
- Front portion of a brown colour broken battery torchlight with bloodstains (M.O.7)

2.10 Thereafter, the I.O. requisitioned the services of the Fire Service personnel and accordingly, Manikandan (P.W.12), Fireman, came with his team to the place of occurrence and fished out the body of Pazhanichamy from the tobacco pit and the body of Valliammal from the well. He also requisitioned the services of the dog squad and the finger print expert.

2.11 The I.O. conducted inquest over the body of Pazhanichamy and the inquest report was marked as Ex.P.21. In the inquest report (Ex.P.21), it is stated that Pazhanichamy was last seen alive by one Subramani on 20.02.2010 at 8.30 p.m. Likewise, in the inquest report (Ex.P.21), it is stated that the dead body of Pazhanichamy was first seen by Subramani at 8.30 a.m. on 21.02.2010.



2.12 The I.O. conducted inquest over the body of Valliammal and the inquest report was marked as Ex.P.22. In the inquest report (Ex.P.22) also, it is stated that Valliammal was last seen alive at 6.00 p.m. on 20.02.2010 by Subramani while she was grazing her goats. It is also stated in the inquest report (Ex.P.22) that the dead body of Valliammal was first seen at 8.30 a.m. on 21.02.2010 by Subramani and Vijayakumar (P.W.1). This Subramani was not examined as a witness in the case.

2.13 Raja (P.W.17), Inspector of Police (Finger Print Bureau), came to the farm house of the deceased duo and lifted some chance finger prints.

2.14 After inquest, both the bodies were sent to the Government Hospital, Coimbatore, for postmortem where Dr. Jeyasingh (P.W.16) performed autopsy and issued the postmortem certificates, viz., Ex.P.10 (in respect of Pazhanichamy) and Ex.P.13 (in respect of Valliammal).

2.15 After receiving the viscera reports, Dr. Jeyasingh (P.W.16) gave his final opinion as to the cause of death of Pazhanichamy as follows:

"OPINION: The deceased would appear to have died of VIOLENT COMPRESSION OF NECK AND ASSOCIATED WITH NECK AND HEAD INJURIES"

2.16 Likewise, his opinion as to the cause of death of Valliammal is as follows:

"OPINION: The deceased would appear to have died of VIOLENT COMPRESSION OF NECK".

2.17 While the investigation was going on, it is said that the appellant surrendered before one Viswalingaswamy, President, Mudalipalayam Panchayat on 24.02.2010 and gave an extrajudicial confession (Ex.P.5) stating the various facts relating to the strained relationship his family had with the family of the deceased.



2.18 Coming to the commission of the offence, the appellant has stated that on 20.02.2010, he and his brother were returning home around 8.45 p.m. and at that time, they saw Pazhanichamy looking for his goat; on seeing them, Pazhanichamy asked them as to whether they had stolen his goat and picked up a quarrel with them and therefore, they eliminated him by strangulating him with the lungi worn by him (appellant) and assaulting him with a stick and the battery torchlight which were with him (Pazhanichamy); thereafter, when Valliammal came, his brother Maheswaran strangulated her with his lungi and killed her; thereafter, they both threw the body of Pazhanichamy in the tobacco pit and the body of Valliammal in the nearby well; then, they searched the house of Pazhanichamy, but, did not find anything; after the murder, they both hid the lungis that were used by them in a bush nearby the place of occurrence, went to their house, changed their attire, went to Thiruchendur Murugan temple and Madurai Meenakshi Amman temple and returned to Tiruppur and fearing that police would torture him, he was surrendering and giving the statement.

2.19 Viswalingaswamy wrote the confession statement (Ex.P.5) given by the appellant and we find the signature of the appellant in the last page and not in the first two pages. Viswalingaswamy has signed in the said statement. Beneath his signature, Sivasubramaniam (P.W.10), Ward Councillor, has signed. Viswalingaswamy produced the appellant to the I.O. along with the confession statement (Ex.P.5) and a report (Ex.P.25) stating that Sivasubramaniam (P.W.10), Ward Councillor, was also present when the confession statement given by the appellant was recorded.

2.20 The I.O. took custody of the appellant and placed him under arrest at 12.45 p.m. on 24.02.2010 and recorded his police confession. Based on the alleged disclosure made by the appellant, the I.O. seized the parts of brown colour battery torchlight (M.O.7) from near a fence under the cover of a mahazar (Ex.P.7). He also seized a bloodstained yellow colour half sleeve shirt (M.O.8) and a lungi (M.O.9) under the cover of a mahazar (Ex.P.6). These recoveries were made in the presence of witnesses Thirumalaisamy (not examined) and Sivaprakasam (P.W.11).

2.21 On the same day, at 05.45 p.m., the I.O. arrested Maheswaran (A.2) and recorded his police confession. Based on the disclosure made by Maheswaran (A.2), the I.O. seized a



cement colour half sleeve shirt (M.O.11) and a black and white lungi (M.O.12) under the cover of a mahazar (Ex.P.8).

2.22 The seized items were sent to the Tamil Nadu Forensic Science Laboratory for examination and the serology report (Ex.P.30) showed that the T-shirt, underwear, lungi and the broken torchlight pieces contained human blood group of O+ve and the serology report (Ex.P.33) showed that the blood group of Pazhanichamy is O+ve.

2.23 Raja (P.W.17), Finger Print expert, gave a report (Ex.P.16) stating that the chance finger print mark "R1" is identical with the left hand palm print of the appellant.

2.24 After completing the investigation and examining various witnesses and collecting the various reports, the I.O. filed a final report before the jurisdictional Magistrate against the appellant and Maheswaran (A.2) for the offences under Sections 302 and 302 read with Section 34 IPC and Sections 457 and 380 read with Section 511 IPC.

2.25 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.240 of 2010 and was made over to the II Additional District and Sessions Court, Tiruppur, for trial.

2.26 Meanwhile, Maheswaran (A.2) died on 09.12.2010. The trial Court framed charges against the appellant under Section 302 IPC (2 counts) for the murder of Pazhanichamy and Valliammal, Section 302 read with Section 34 IPC for the murder of Valliammal and Sections 457 and 380 read with Section 511 IPC for attempt to commit theft in the house of the deceased duo. When questioned, the appellant pleaded not guilty.

2.27 To prove the case, the prosecution examined 19 witnesses and marked 33 exhibits and 13 material objects.



2.28 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on his behalf nor any document marked.

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2.29 After considering the evidence on record, the trial Court, by judgment and order dated 26.03.2018 in S.C. No.240 of 2010, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
Section 457 IPC	5 years rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment
Section 380 r/w Section 511 IPC	5 years rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment
Section 302 (2 counts)	Life imprisonment for each count and fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment for each count
Section 201 IPC (2 counts)	5 years rigorous imprisonment for each count and fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.30 Challenging the aforesaid conviction and sentences, Raghuvaran (A.1) is before this Court.

3 Heard Mr. R. Sankarasubbu, learned counsel representing Mr.J.Franklin, learned counsel on record for the appellant and Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.



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

- Pazhanichamy and Valliammal were living in Mudalipalayam Village in their farm house.
- Their son Vijayakumar (P.W.1) and his wife Radhika (P.W.2) were living away from them.
- The dead body of Pazhanichamy was found by Vijayakumar (P.W.1) on 21.02.2010 in a tobacco pit in the land of one Ramasamy.
- The body of Valliammal was found in a well on 21.02.2010 by Vijayakumar (P.W.1).
- Both the deaths were caused by homicidal violence.
- The house of the deceased duo was found ransacked.
- The appellant is a relative of Pazhanichamy and there was a pathway dispute between the families of the appellant and the deceased.

5 For fastening criminal liability on the appellant, the prosecution relied upon the extrajudicial confession (Ex.P.5) that is said to have been given by the appellant to Viswalingaswamy, President, Mudalipalayam Panchayat (not examined) on 24.02.2010. As rightly contended by Mr. Sankarasubbu, Viswalingaswamy to whom the appellant is said to have given the confession was not examined as a witness in the trial Court. Instead, the prosecution sought to prove the confession through the evidence of one Sivasubramanian (P.W.10), the local Ward Coucillor, who has stated that he was also present when the appellant gave the confession to Viswalingaswamy. The confession statement (Ex.P.5) runs to 2 ½ pages and the signature of the appellant has been obtained only in the last page and not in the first two pages. The confession statement (Ex.P.5) does not give the date and time on which it was recorded by Viswalingaswamy. However, it bears the signature of Sivasubramaniam (P.W.10) in the last page with date as 24.02.2010, beneath which, the I.O. has signed with date as 24.02.2010.

6 The most crucial aspect motive for the double murder is the quarrel that is said to have ensued between the appellant and Pazhanichamy on the night of 20.02.2010. Pazhanichamy was searching for his goat and when he saw the appellant and his



brother Maheswaran, he is said to have asked the brothers as to whether they had stolen his goat. Irked at that, the appellant and his brother are said to have murdered Pazhanichamy and also his wife and had thrown their bodies in the tobacco pit and well respectively.

7 However, what is the good reason for the appellant to ransack the house of Pazhanichamy? The appellant is alleged to have stated in the confession statement (Ex.P.5) that they ransacked the house to find out some documents. This appears unbelievable and artificial. The quarrel between the appellant and Pazhanichamy was merely in connection with missing of a goat. Assuming for a moment that in a fret of anger, the appellant had murdered Pazhanichamy and Valliammal, we find no good reason as to why they should ransack their house. It is not the case of the prosecution that there was a civil dispute pending in any Court of law between the appellant and Pazhanichamy for which the accused party needed some documents from Pazhanichamy's house and hence, they ransacked his house.

8 The next piece of evidence is that of Raja (P.W.17), Inspector of Police (Finger Print Bureau), who is said to have lifted some chance finger prints from the house of Pazhanichamy and one of them tallied with that of the appellant. He has given a report (Ex.P.16) which merely states that the chance finger print marked as R.10 is identical with the left hand palm print of the appellant. Beyond that, the report does not spell out the reasons for arriving at such a conclusion. Even the photographs of the chance finger prints have not been enclosed with the report. Even in his evidence before the Court, Raja (P.W.17) has not given any reason for arriving at such a conclusion. That reasoning is the heartbeat of every conclusion is a salutary principle of any law and in this context, felicitous it is to point out that in *Ramesh Chandra Agrawal vs. Regency Hospital Ltd. and Others*¹, the Supreme Court has clearly held as follows:

"20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an

¹ (2009) 9 SSC 709



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important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee [(2009) 9 SCC 221 : (2009) 10 Scale 675] , SCC p. 249, para 34.)"
(emphasis supplied)

9 Thus, the ipse dixit of Raja (P.W.17), both in his evidence as well in his report (Ex.P.16) that the finger print of the appellant tallied with the chance finger print lifted from the place of crime, without anything more, cannot be made a basis for sustaining the conviction.

10 Next, we have the evidence of Periasamy (P.W.7) who has stated that on 20.02.2010, around 8 p.m., while he was going with one Krishnamurthy (P.W.6) towards Reddiar Thottam, he saw the appellant and his brother quarrelling with Pazhanichamy and on the next day, the body of Pazhanichamy was found in a tobacco pit and the body of Valliammal was found in a well. If this witness had really seen Pazhanichamy alive on 20.02.2010 at 8.00 p.m., in column 4 of the inquest report (Ex.P.21) his name would have figured as a person who had last seen the deceased alive. On the contrary, column 4 of the inquest report (Ex.P.21) shows that one Subramani had seen Pazhanichamy alive on 20.02.2010 at 8.30 p.m. and column no.3 states that it was the same Subramani who had seen the body of Pazhanichamy first on 21.02.2010 in the tobacco pit. This Subramani was not examined by the prosecution. That apart, Krishnamurthy (P.W.6) did not support Periasamy (P.W.7) and he turned hostile.

11 Superadded, Periasamy (P.W.7), in the cross-examination, has stated that he was going with Krishnamoorthy (P.W.6) in his motorbike at a speed of 20 kms. per hour and there was no light in the place. Therefore, his evidence that he saw the appellant and Pazhanichamy quarrelling on the previous night does not cut ice with this Court. Even assuming for a moment that the appellant and Pazhanichamy were quarrelling at 8.00 p.m. on 20.02.2010 in connection with the theft of a goat, that by itself, is not sufficient to draw an inference that the appellant had murdered Pazhanichamy and his wife and discarded their bodies. The rough sketch (Ex.P.18) shows that the appellant has to invariably pass through the farm of Pazhanichamy in order to reach his house.



12 Then, we have the evidence of Sekar (P.W.8) who has stated that he is a bus driver; on 20.02.2010, around 8.45 p.m., the appellant and his brother alighted from Bus No.47 at 8.45 p.m. at the MGR Nagar bus stand and walked towards their house. We find nothing incriminating in the testimony of Sekar (P.W.8) because the appellant and his brother had to get down only in MGR Nagar bus stand to go to their house through the farmland of Pazhanichamy.

13 Finally, we have the evidence of Duraisamy (P.W.9) who has stated that on 20.02.2010, around 8.45 p.m., while he was proceeding from Kariyaampalayam Road to Manoor Road, he saw the appellant and his brother alighting from a bus in MGR Nagar bus stand and walking. He has further stated that again, at 10 p.m., when he was returning, he saw both of them walking hurriedly. This witness has not stated that he saw the appellant and Pazhanichamy quarrelling. He has merely stated that he saw the appellant and his brother twice, once at 8.45 p.m. and once again at 10.00 p.m. on 20.02.2010.

14 On a perusal of the evidence on record, it appears that some professional robbers or dacoits should have murdered the couple and ransacked the house and the family of the appellant being a neighbour of the deceased duo with no love lost between the two, as is common in the countryside, where, boundary disputes, pathway disputes, cattle grazing disputes, etc. sour the relationship between neighbours, the police have implicated the appellant and his brother in this case.

15 In view of the foregoing discussion, the judgment and order of conviction and sentence passed by the trial Court in S.C. No.240 of 2010 is set aside.

In the result, this criminal appeal is allowed and the appellant is directed to be released forthwith, if his custody is not required in connection with any other case. Fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

cad



To

- 1 The Inspector of Police
Tiruppur Rural Police Station, Tiruppur
- 2 The II Additional District and Sessions Judge, Tiruppur
- 3 The Superintendent
Central Prison, Coimbatore
- 4 The Public Prosecutor
High Court of Madras, Chennai 600 104
- 5 The Record Keeper, Criminal Section
Madras High Court, Chennai 600 104

+1cc to Mr.J. Franklin, Advocate SR.No.69460

Crl.A. No.413 of 2018

EV(CO)
GMY(06/01/2022)