



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice A.A.NAKKIRAN

Crl.A.No.201 of 2019

P.Yogesh

..Appellant/Accused

Vs.

State represented by
The Inspector of Police,
P-3, Vyasarpadi Police Station,
Chennai - 600 039.
(Crime No.542/2011)

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. May be pleased to set aside the conviction dated 26.09.2012 imposed in S.C.No.87 of 2012 in crime no.542/2011 on the file of the XVI Additional District and Sessions Judge, (Fast Track Court II), Chennai.

For Appellant : Mr.V.Ramana Reddy

For Respondent : Mr.M.Babu Muthumeeran
Additional Public
Prosecutor

JUDGMENT

(Delivered by P.N.PRAKASH, J.)

This criminal appeal has been filed against the judgment and order dated 26.09.2012 passed in S.C.No.87 of 2012 on the file of the XVI Additional District and Sessions Court, (Fast Track Court No.II), Chennai and to set aside the same.

2. The prosecution story runs as under:

2.1 The appellant Yogesh got married to the deceased Rukmani (D1) sometime in the year 2008 and through the wedlock, the couple had two children Yuvaraj (D2) and Deepika (D3), aged about 2 ½ years and 8 months, respectively. The family was residing in the first floor in Door No.34-A, Kalyanapuram,



Vyasarpadi, Chennai - 39. The appellant was working as a daily wager in a gas distribution company.

2.2 On account of marital discord, a quarrel ensued between the appellant and Rukmani (D1) on 24.06.2011, in which, the appellant is said to have strangled the latter with a telephone wire (M.O.9), stabbed on her chest with a knife (M.O.5), committed her murder and thereafter, murdered the two children (D2 and D3) by strangulating them with telephone wires (M.O.1 series).

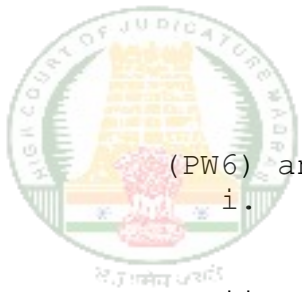
2.3 Thereafter, the appellant locked the house from outside and his whereabouts were not known. The family members of Rukmani (D1) and the family members of the appellant found the door locked from outside, waited for a day and again, assembled near the house of the appellant on 25.06.2011 at 6.15 a.m. They were trying to contact the appellant and Rukmani (D1) through their mobile phone, but, in vain. At that time, Nagalingam (PW1) and Sakthivel (PW2), brothers of Rukmani (D1), Anusuya (PW8) and Ponnurangam (PW9), parents of the appellant and Prakash (PW11), brother of the appellant, were present in front of the house of the appellant.

2.4 At that time, Prakash (PW11) received a phone call from the appellant and when he told the appellant that they were all looking out for him, the appellant is said to have stated that he has murdered his wife and children and asked him to go inside and see. When Prakash (PW11) heard this, he exclaimed to others whatever was told to him by the appellant. Therefore, the family members of both parties broke open the lock (M.O.2) and entered the house to find Rukmani (D1) with a knife (M.O.5) pierced on her chest, telephone wire (M.O.9) around her neck and the dead bodies of the two children (D1 and D2) with telephone wires (M.O.1 series) around their necks. One of the neighbours Jothi (PW3) also heard the hue and cry.

2.5 On a complaint statement (Ex-P1) given by Nagalingam (PW1), Purushothaman (PW20), Inspector of Police, registered a case in P-3, Vyasarpadi Police Station Crime No.542 of 2011 on 25.06.2011 at 8.00 a.m. and prepared the printed FIR (Ex-P29), which reached the jurisdictional Magistrate on the same day at 2.15 p.m., as could be seen from the endorsement thereon.

2.6 Purushothaman (PW20), Inspector of Police, went to the place of occurrence and prepared the observation mahazar (Ex-P2) and rough sketch (Ex-P3).

2.7 From the place of occurrence, Purushothaman (PW20), Inspector of Police, seized the following items under the cover of a mahazar (Ex-P4) in the presence of witnesses Manimaran



(PW6) and Mohanlal (PW10):

- i. Bloodstained sandal colour half-sleeve shirt (M.O.10)
- ii. Black telephone wires measuring 31 inches and 28 inches of length (M.O.1 series)
- iii. Broken lock (M.O.2)
- iv. A hand written letter left in the house by the appellant (Ex-P27)
- v. Floor tiles with bloodstain
- vi Floor tiles without bloodstain
- vii. Bloodstains on the floor collected in a gauze
- viii Gold colour pocket diary

2.8 Purushothaman (PW20) conducted inquest over the three bodies of the deceased and the three inquest reports were marked as Ex-P24 [Rukmani (D1)], Ex-P25 [Yuvaraj (D2)] and Ex-P26 [Deepika (D3)].

2.9 All the three bodies were sent for postmortem to the Government Stanley Medical College & Hospital, where, Dr.S.Balasubramaniam (PW17) performed autopsy on the body of Rukmani (D1) and issued the postmortem certificate (Ex-P18), wherein, he has noted five injuries. The knife (M.O.5) measuring 10 cms. long, which was found pierced on the chest of Rukmani (D1), was removed during the postmortem and was handed over to Murugan (PW13), Police Constable, through whom, it has been marked as M.O.5.

2.10 After receiving the viscera report, Dr.Balasubramaniam (PW17) gave his final opinion, in which, he has opined as follows:

"(b) The deceased would appear to have died of shock and haemorrhage due to multiple stab injuries over the left side of chest (viscera preserved)."

2.11 Dr.Selvakumar (PW18) performed autopsy on the body of Yuvaraj (D2) and issued the postmortem certificate (Ex-P19), which shows the presence of an oblique ligature mark around the neck. In his (PW18) final opinion, he has opined as follows:

"Opinion: The deceased would appear to have died of asphyxia due to hanging."

2.12 Dr.Selvakumar (PW18) performed autopsy on the body of Deepika (D3) and issued the postmortem certificate (Ex-P20),



wherein, he has opined as follows:

"Opinion: The deceased would appear to have died of asphyxia due to hanging."

2.13 The blood sample of Rukmani (D1) was sent to the Forensic Sciences Department for serology along with the seized articles including the shirt (M.O.10).

2.14 The appellant was arrested by the police on 26.06.2011 at 8.15 a.m. and from his possession, a key (M.O.3) of the lock (M.O.2) was recovered under the cover of a mahazar (Ex-P5) in the presence of witnesses Sundar (PW7) and Kumar (PW5). The lock (M.O.2) and key (M.O.3) were sent for expert opinion.

2.15 Dr.Hemalatha (PW16), Scientific Officer, Tamil Nadu Forensic Sciences Department, examined the lock (M.O.2) and key (M.O.3) and has opined as follows:

"IV.OPINION:

The lock, item.1 has been broke open. In the present damaged condition of the lock, the key, Item.2 does not engage with the lock mechanism to 'close' or 'open' the lock, item.1.

The items are packed and returned herewith under this office seal."

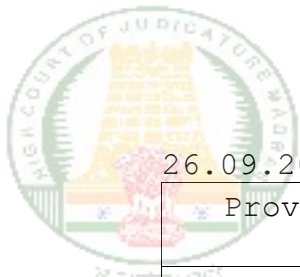
2.16 After examining the various witnesses and collecting the various reports, the investigation was completed by Prakash (PW21), Inspector of Police, who filed a final report in P.R.C.No.10 of 2012 before the X Metropolitan Magistrate, Egmore, Chennai, for the offence under Section 302 IPC (3 counts) against the appellant.

2.17 On the 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.87 of 2012 and was made over to the XVI Additional District and Sessions Court (Fast Track Court No.II), Chennai, for trial.

2.18 To prove the case, the prosecution examined twenty one witnesses and marked twenty nine exhibits and eleven material objects.

2.19 When the appellant was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same, but, did not offer any explanation whatsoever. No witness was examined nor any document marked on behalf of the accused.

2.20 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated



26.09.2012, convicted and sentenced the appellant as under:

Provision under which convicted	Sentence
Section 302 IPC (3 counts)	Life imprisonment and fine of Rs.10,000/-, (totally Rs.30,000/-) in default to undergo six months simple imprisonment, for each count.

The aforesaid sentences were ordered to run consecutively.

2.21 Challenging the above conviction and sentences, the appellant has filed the present appeal belatedly, but, the delay has been condoned by this Court vide order dated 01.04.2019 in CrI.M.P.No.3888 of 2019 in CrI.A.No.SR12191 of 2019.

3. Heard Mr.V.Ramana Reddy, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent/State.

4. The prosecution has proved the following facts beyond any doubt:

- (a) the appellant got married to Rukmani (D1) and had two children Yuvaraj (D2) and Deepika (D3);
- (b) the appellant is the son of Anusuya (PW8) and Ponnurangam (PW9) and brother of Prakash (PW11)
- (c) Rukmani (D1) is the sister of Nagalingam (PW1) and Sakthivel (PW2);
- (d) the death of Rukmani (D1) and her two children viz., Yuvaraj (D2) and Deepika (D3) was not suicide, but, homicide.

5. The short question that falls for consideration is whether the appellant is guilty of the offence.

6. Nagalingam (PW1) and Sakthivel (PW2), in their evidence, have stated about the marriage of their sister (D1) to the appellant; birth of the children (D2 and D3) and the fact that they were living in Door No.34-A, Kalyanapuram, Vyasarpadi, Chennai-39. Of course, Nagalingam (PW1) and Sakthivel (PW2) have also stated that there used to be marital discord between the appellant and Rukmani (D1) and the appellant used to frequently beat her (D1) for more money.

7. Coming to the kernel of the case, these two witnesses viz., Nagalingam (PW1) and Sakthivel (PW2), have stated that from 24.06.2011, they were looking out for the appellant and Rukmani (D1), because, there was no news from them, as they were inaccessible. On similar lines, there are evidences of the



appellant's mother Anusuya (PW8) and brother Prakash (PW11).

8. Jothi (PW3), has, in her evidence, stated that she saw the appellant going out of the house on 24.06.2011 around 6.45 a.m. for collecting water from the common tap and thereafter, she found the house locked from outside; on the same evening, relatives of the appellant and Rukmani (D1) came to the house looking out for them; as they found that the door was locked from outside, they left and started looking for them elsewhere; on the next day, around 6.45 a.m., the family members of Rukmani (D1) and the appellant came to the house, broke open the lock (M.O.2) and found the dead bodies inside.

9. Though Ponnurangam (PW9), father of the appellant, turned hostile, we have the evidence of Anusuya (PW8), mother of the appellant and Prakash (PW11), brother of the appellant, who, in their evidence, have stated that the appellant became inaccessible on 24.06.2011 and all of them went to the appellant's house in the morning along with Nagalingam (PW1) and Sakthivel (PW2).

10. Prakash (PW11), in his chief examination on 17.07.2012, has stated that on 25.06.2011, while he was there in the appellant's house, he received a phone call from the appellant, who told him that, he has murdered his wife and children and asked him (PW11) to go inside and look; therefore, they all broke open the lock (M.O.2), entered the house and found the three dead bodies inside the house.

11. However, in the cross-examination, which was conducted on 16.08.2012, there was a short somersault by Prakash (PW11), who stated that on 25.06.2011, he did not receive any phone call and he was in his house. Though the prosecution has not declared Prakash (PW11) as hostile, we cannot place much reliance on the cross-examination, which was done after a month he was examined-in-chief.

12. However, Anusuya (PW8), mother of the appellant, has supported the prosecution case and stated that the whereabouts of her son were not known on 24.06.2011, as his house was found locked from outside and on 25.06.2011, around 6.00 a.m., when they had all assembled in front of the appellant's house, her younger son Prakash (PW11) received a phone call from the appellant. She has further stated that they all broke open the lock (M.O.2) and went inside the house to find three dead bodies lying in a pool of blood.

13. Anusuya (PW8) was examined-in-chief on 09.07.2012 and was recalled and cross-examined on 16.08.2012. Even in the cross-examination, the defence was not able to make any dent in



her testimony.

14. From the evidences of these witnesses, the prosecution has proved beyond a peradventure the facts that the whereabouts of the appellant became unknown from 24.06.2011; the house was locked from outside; when the door was broken open on 25.06.2011, three dead bodies were found inside the house; the appellant was arrested on 26.06.2011; and from the appellant, the key (M.O.3) of the lock (M.O.2) was recovered.

15. That apart, the appellant has not given any suggestion to any of the witnesses attributing any motive for falsely implicating him in the offence.

16. The learned counsel for the appellant submitted that the police had prepared all the papers in the police station, called the family members of the appellant, obtained their signatures and threatened them.

17. We do not find any supporting material to sustain the above argument of the learned counsel for the appellant in the testimony of these witnesses.

18. The learned counsel for the appellant placed strong reliance on the judgment of the Supreme Court in Ashok Vs. State of Maharashtra¹ and submitted that, in a case of circumstantial evidence, the "last seen theory", would not, by itself, be sufficient to mulct criminal liability.

19. We are afraid that the aforesaid judgment may not be of much avail, as the facts in that case are totally different, as could be seen from paragraph no.8 of the judgment. It may be felicitous to extract paragraph no.8:

"8. We have heard the learned counsel for both the sides. The main point of consideration that arises in this case is whether the burden of proof shifts on the accused to explain the death of the deceased persons due to 'last seen together' rule? However, before venturing to answer that question, it may be relevant to keep in mind following few points:

- i. There is an unexplained delay of almost one month in filing the FIR. The dead bodies of Namrata and Shubhangi were found on 29th and 30th August, 2008, respectively while the FIR was filed on 27th September, 2008.

1 2015 (4) SCC 393



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ii. The prosecution has not put forth any story or any version of its own as to how was the murder of three persons committed by the accused.

iii. There is no question asked even in Section 313 statement of the accused as to whether he killed the deceased persons."

20. In the instant case, there is a burden cast on the appellant under Section 106 of the Evidence Act, 1872, to prove the facts, which are especially within his knowledge. Neither in the cross-examination of the witnesses nor in the questioning under Section 313 Cr.P.C., the appellant has given any satisfactory explanation, as to how, the three bodies were found inside his house, the door locked from outside, he became scarce on 24.06.2011 and 25.06.2011 and possession of key (M.O.3) of the lock (M.O.2) on 26.06.2011 was with him, when he was arrested.

21. The learned counsel for the appellant contended that even the expert's opinion (Ex-P17) with regard to the lock (M.O.2) does not say that the key (M.O.3) belongs to the lock (M.O.2).

22. We are unable to sustain the above submission, because, Dr. Hemalatha (PW16), Scientific Officer, has clearly stated that the lock (M.O.2) has been damaged beyond repair, which is compatible with the testimony of Nagalingam (PW1), Sakthivel (PW2), Jothi (PW3), Anusuya (PW8), Ponnurangam (PW9) and Prakash (PW11) that they all broke open the lock (M.O.2) in order to gain entry. The expert's opinion (Ex-P17) has not excluded that the key (M.O.3) is not that of the lock (M.O.2) and it only says that on account of serious damage to the lock (M.O.2), she has not been able to give a definite opinion in this regard.

23. In view of the foregoing discussion, we do not find any infirmity in the findings of the trial Court warranting interference in this appeal.

In the result, this criminal appeal is dismissed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar



1. The XVI Additional District and Sessions Judge,
(Fast Track Court No.II), Chennai.

2. The X Metropolitan Magistrate,
Egmore, Chennai-8.

3. The Chief Judicial Magistrate,
Egmore, Chennai.

4. The Inspector of Police,
P-3, Vyasarpadi Police Station,
Chennai - 600 039.

5. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

6. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras-104.

Crl.A.No.201 of 2019

JP (CO)
PR (23/03/2022)