

(2016) 4 Crimes 488

MADRAS HIGH COURT

Case No: Criminal Appeal (M.D.) No. 339 of 2014.

Valliappan - Appellant
@HASH State

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 28, 2016

Acts Referred:

Penal Code, 1860 (IPC) - Section 302, Section 404

Citation: (2016) 4 Crimes 488

Hon'ble Judges: S. Nagamuthu and M.V. Muralidaran, JJ.

Bench: Division Bench

Advocate: Mr. M. Karunanithi, Advocate, for the Appellant; Mr. K..S. Duraipandian, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

S. Nagamuthu, J. - The appellant is the sole accused in S.C. No. 105 of 2011, on the file of the learned District Sessions Judge, Mahila Court,

Pudukkottai. He stood charged for the offences punishable under Sections 302 and 404 of the Indian Penal Code. By Judgment dated

17.12.2014, the Trial Court has convicted the appellant, as detailed below:-

Accused Section of law Sentence Fine amount

1 302 IPC To undergo imprisonment for Rs. 1,000/- in default to undergo

life. rigorous imprisonment for one

year.

2 404 IPC To undergo rigorous Rs. 1,000/- in default to undergo

imprisonment for one year. rigorous imprisonment for three months.

As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The deceased, in this case, was one Mrs. Anjalai. She was a resident of Melamelanilai Village in Pudukkottai District. Her husband was in a

foreign country, on account of employment. She had two children. PW-7 is her mother and PW-6 is her mother-in-law. The deceased, her

children and PW-6 were living at Melamelanilai Village, whereas her mother [PW-7] was residing at Banathi Village, which is a neighbouring

village. The deceased was doing finance business. She used to lend money to various persons for interest. On account of the said business, she

used to visit various places in and around the said village. In connection with the above said business, the accused was known to her.

2.1 It is alleged that the accused had borrowed a sum of Rs. 80,000/- from her for interest. But, he failed to repay the same. The deceased

demanding return of the said amount. This irked the accused. This is stated to be the motive for the occurrence. It is alleged that on 4.5.2010, the

accused took the deceased from Konnaiyur Village in his TVS Motorcycle bearing Registration No. TN-63-J-2662, on the request made by the

deceased to go over to Pudukkottai. On their way to Pudukkottai, at a place, known as ""Kumaramalai Vilakku Road"", the accused stopped the

Motorcycle under the guise of passing urine. The deceased got down from Motorcycle. Suddenly, the accused took out an iron rod, which he was

already keeping in Motorcycle and attacked her brutally. She died instantaneously. The accused threw the dead body in the nearby place. At that

time, according to the case of the prosecution, the deceased was in possession of a sum of Rs. 1,00,000/-. The accused removed the same from

the dead body and fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

2.2 PW-1, the then Village Administrative Officer at Peraiyur was informed by Village Panchayat Assistant that a dead body woman was found

lying by the side of Ponnamaravathy Road, Pududdottai, near Kumaramalai Vilakku Road. On such information, PW-1 rushed to the said place.

He found dead body of a woman lying near a bush, were injuries on the dead body. The identity of the deceased was not known. Immediately,!

rushed to Namanasamuthiram Police Station, made a complaint to the Sub-Inspector of police.

2.3 PW-17, on receipt of the said corny registered a case in Crime No. 72 of 2010 under Section 302 of the Indian Penal code 12.00 Noon, on

5.5.2010. EX-P1 is the plaint and EX-P8 is the First Information port. Then, he forwarded both the documents to the court, which were received

by the learned Judicial Magistrate, at 4.30 PM, on 5.5.2010.

2.4 Taking up the case for investigation 4.30 PM, on 5.5.2010 PW-20 proceeded to the place of occurrence, prepared an observation Mahazer a

Rough Sketch, showing the place of occurrence in the presence of PW-19 and another witness. He recovered bloodstained earth and sample

earth from the place of occurrence. He also recovered a crowbar found by the side of the said place. He examined many more witnesses. During

such examination, the identity of the body of the deceased. EX-P16 is the inquest report. Then, he forwarded the dead body for postmortem.

2.5 PW-14 - Dr. Kumar conducted autopsy b body of the deceased, at 4.15 PM, on. He noticed the following injuries:-

Swab was taken from inside vagina, sent for semen analysis.

1. Public hair was taken from sent for analysis.

2. Rope mark at neck was cut with normal margin sent for analysis.

3. Thorax was opened:- right lung was pale, Left lung was congested, Heart was empty, there was no fracture, hyoid bone was intact.

4. Abdomen was opened. Liver spleen, kidney was pale. Stomach was empty, intestine contain air, Uterus was normal"".

Skull was opened:- There was a fractured, broken into piece and right parietal prominence extended into midline, meninges were torn, cerebrum

were torn.

EX-P5 is the postmortem certificate. He gave opinion that the deceased would appear to have died of shock and hemorrhage due to injuries. He

further opined that the death of the deceased would have been caused by a weapon, like crowbar.

2.6 During the course of investigation, PW-recovered bloodstained clothe from the dead of the deceased. On 9.5.2010, at 3.00 PM, Pudukkottai

- Thirumayam Vilakku, he ed the accused in the presence of the witnesses. On such arrest, he gave a voluntary confession, in which he disclosed

the place, where had hidden TVS Motorcycle and a sum of 1,00,000/-. In pursuance of the same, the accused took the police and the witnesses

to his house and produced the Motorcycle [MO-1] and a sum of Rs. 1,00,000/- [MO-2]. PW-20 recovered the same under a mahazer. On

returning to the police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court for

chemical examination.

2.7 The investigation was, thereafter, continued by PW-22. At the request of the Investigating Officer, the material objects were sent for chemical

examination. The report revealed that here were bloodstains on all the material objects, except inskirt. On completing the investigation, he laid

charge sheet against the accused.

2.8 Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the

accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 22

witnesses were examined, 16 documents and 14 material objects ere marked. Out of the said 22 witnesses, PW-I is the Village Administrative

Officer, who has stated that he found the dead body at 11.00 AM, on 5.5.2010, at the place of occurrence with injuries. He has further stated

about the complaint made by him. PW-2 is the Panchayat Clerk, who has occurrence. PW-3 to PW-5, the relatives of the deceased, have stated

that on information that there was a dead body lying with injuries, they went to the place of occurrence and identified the dead body as that of the deceased.

2.9 PW-6 is the mother-in-law of the deceased. She was aged about 75 years. She has stated that on the day of occurrence, the deceased was at

her house along with PW-6. At that time, the accused came there and took her in his TVS Motorcycle. PW-7, the mother of the deceased, has

stated that she was living in a different village. She has further stated that on the day of occurrence, the deceased received a phone call from

the accused at about 4.00 PM, on 4.5.2010, asking her to come to Ponnarnaravathy Bus Stand. Accordingly, she alone went to Ponnarnaravathy

Bus Stand. Thereafter, she did not return back, she has stated. PW-8 was Clerk in the local Panchayat Office. He has stated that at 5.00 PM, on

4.5.2010, the deceased came to the Panchayat Office along with the accused, received her salary and went back.

2.10 PW-9 has stated that he was residing at Aakkalapur Village. On 4.5.2010, according to him, he went to Konnaiyur Mariamman Temple. In

the temple, according to him, the deceased had come along with the accused. At that time, according to him, he gave a sum of Rs. 1,50,000/- to

the deceased. After the payment was made, he did notice the accused. The deceased went out from the temple. PW-10 has stated that he found

the dead body of the deceased on 5.5.2010. PW-11, a Forensic Expert, has stated that there was no poison detected. PW-12 has stated that he

conducted chemical analysis on the material objects. He has further stated that he found human bloodstains on all the material objects, except

inslirt. PW-13, a close relative of the deceased, has turned hostile and she has not supported the case of the prosecution in any manner.

2.11 PW-14 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. PW-15 has stated that he

took photograph of the dead body from various angles. PW-16 has stated that he handed over the dead body to the hospital for postmortem, as

directed by the Investigating officer. PW-17 has spoken about the registration of the case, on the complaint made by PW-1. PW-18 has spoken

about the preparation of observation Mahazer and the Rough Sketch and the recovery of material objects. PW-19 has spoken about the same

facts. PW-21 has stated that she has examined the hyoid bone of the dead body and found that there was a fracture. PW-20 and PW-22 have

spoken about the investigation conducted by them and the filing of final report.

2.12 When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences

available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. Having

considered all the above material, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judging and punished him

accordingly. That is how, appellant is now before this Court with Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also

perused the records carefully.

4. This is a case based on circumstantial evidence. In the case of this nature, the prosecution is required to prove the circumstances projected by it

beyond reasonable doubt and all the such proved circumstances should establish close link with each other and form a complete chain unerringly

pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt the accused. Keeping this

broad principle our mind, let us now examine the circumstances projected by the prosecution so as to see whet such circumstances have been

proved.

5. The first and foremost circumstance projected by the prosecution is that on 4.5.2010 the deceased was found alive and thereafter, the dead

body was found on 5.5.2010, around 11.00 AM. The doctor, who conducted autopsy, found number of injuries on the body of the deceased.

According to the doctor, the said injuries on the body of the deceased could have caused by a weapon, like crowbar. The crowbar used for the

occurrence was found, laying the dead body. The doctor has further stated the deceased would appear to have died of shock and hemorrhage due

to injuries. We find reason to reject the said opinion of the doctor. From this circumstance, the prosecution, in our considered view, had clearly

established that the deceased was done to death, in a brutal manner somewhere between at 4.00 PM, on till and 11.00 AM, on 5.5.2010 and the

death deceased was a homicide.

6. Now, the question is as to who was the perpetrator of the crime. In order to prove as to who the perpetrator of the crime, the prosecution relies

on two circumstances. The circumstance is that the deceased was lastly alive in the company of the accused.

7. The learned counsel for the appellant would submit that in order to prove the guilt of used, there is no consistency in the evidence of PW-6 to

PW-9. Their statements are contradictory in nature. In order to appreciate this submission, we have gone through the evidences of PW-6 to PW-

9. PW-6, the mother-in-of the deceased, has stated that on the day of occurrence, when the deceased was at her house. along with PW-6, the

accused came in Motorcycle and from her house, he took the deceased in the Motorcycle. But, PW-7, the mother of the deceased, has stated that

the deceased received a phone-call from the accused asking her to come to Ponnamaravathy Bus Stand. In response to the same, the deceased

alone went to Ponnamaravathy Bus Stand and thereafter, she did not return back. Thus, there is total inconsistency between the evidences of PW-

6 and PW-7 as to whether the deceased went along with the accused or she went alone, as it is stated by PW-7. Therefore, it is difficult believe

that the deceased was taken by the accused in his Motorcycle.

8. Then, next comes the evidence of PW-8. who has stated that on the day of occurrence, when he was at his office, the deceased came with

another person, received her salary and rent back. He has identified the accused as a person, who was in the company of the deceased. However,

it is not the case of the accused that he was previously known to PW-8. There was no test identification parade also conducted. For the first time,

PW-8 identified the reused in Court. In the absence of test identification parade and in the absence of any other circumstances to corroborate the

evidence of PW-8, in our considered view, it is too difficult believe PW-8 that the person, who accompanied the deceased, was this accuse.

9. Next comes the evidence of PW-9, who has stated that on 4.5.2010, he found the accused and the deceased together in Maniamman Temple

at Konnaiyur. He has further stated that he gave money to the deceased. According to him, it was around 5.00 to 5.30 PM. He has further stated

that when he was in the temple, the accused remained outside the temple. He has stated that the accused and the deceased left together. He has

stated that after the money was paid, the accused was not present there at all. This is what he has stated even in chief-examination. Thereafter, he

has stated that the deceased went out of the temple premises. Thus, from the evidences, which we have discussed above, absolutely, there is no

proof that the deceased was lastly seen considered view, has not been proved.

10. The next circumstance is the arrest of the accused, at 3.00 PM, on 9.5.2010. It is stated by PW-20 that he was arrested in the presence of

PW-18 at Pudukkottai - Thirumayam Road. On such arrest, the accused gave a voluntary confession, out of which, a sum of Rs. 1,00,000/- and

a Motorcycle were recovered. Absolutely, there is no evidence that the said motorcycle belongs to the accused. Thus, the connection between

Mo-1 and the crime has not been established. Therefore, the recover) of Motorcycle is of no consequence. Similarly, a sum of Rs. 1,00,000/- was

recovered. We are conscious of the fact that it is difficult to identify MO-2, a sum of Rs. 1,00,000/- that it was the one, which was kept by the

deceased lastly. Even PW-9, who has stated that he gave a sum of Rs. 1,50,000/- has not stated as to what was the denomination of the currency,

which he gave to the deceased. Thus, there is no nexus established between MO-2 and the deceased. Thus, the alleged recovery of a sum of Rs.

1,00,000/- from the accused also would not advance the case of the prosecution in any manner. The accused has not made any claim in respect of

the said amount of Rs. 1,00,000/-, as, according to him, the said amount was not at all recovered from him. The Trial Court has rightly ordered the

said amount to be refunded to the legal heirs of the deceased.

11. From the foregoing discussions, except establishing that the deceased was lastly seen alive on 4.5.2010 and the death of the deceased was a

homicide, the prosecution has not proved any other circumstances to prove the guilt of the accused. From the circumstances proved, of course, the

prosecution has succeeded in establishing a strong suspicion against the accused. The said suspicion, however, cannot take the place of proof. We

cannot convict the accused on mere surmises and on a mere suspicion. Thus, we hold that the prosecution has failed to prove the case beyond

reasonable doubts and thus, the appellant is entitled for acquittal.

12. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant, by Judgment dated 17.12.2014, made in

S.C. No. 105 of 2011, on the file of the learned District Sessions Judge, Mahila Court, Pudukkottai, is set aside and the appellant is acquitted. Fine

amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated.