(2008) 01 SC CK 0055

Supreme Court of India

Case No: Criminal Appeal No. 1107 of 2005

K.T. Palanisamy		APPELLANT
	Vs	
State of Tamil Nadu		RESPONDENT

Date of Decision: Jan. 11, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 109, 120B, 201, 302, 34

Citation: (2008) 1 ACR 803 : AIR 2008 SC 1095 : (2008) AIRSCW 715 : (2008) 1 CLT 718 : (2008) 2 JT 107 : (2008) 1 LW(Cri) 427 : (2008) 3 RLW 1942 : (2008) 1 SCALE 288 : (2008) 3 SCC 100 : (2008) 1 Supreme 339

Hon'ble Judges: S. B. Sinha, J; Dalveer Bhandari, J

Bench: Division Bench

Advocate: C. Rose, Murali C. Krishna and C. Balakrishna, for the Appellant; V. Kanakaraj, S. Joseph Aristotle, S. Prabu Ramasubramanian and V.G. Pragasam, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, J.

Appellant with two others, namely, A2, Vellingiri, and A3, Officer @ Paramasivam, were prosecuted for commission of the offence of murder of one Somasundaram.

Appellant was an astrologer. The deceased was passing through tough times. His son had also remained ill for long time. He allegedly was advised by the appellant to perform some poojas on the bed of the river Bhavani situated at Nanjaipuliyampatti on or about 29.4.1996. He went to the place for the said purpose along with the accused persons. The deceased at that time was said to be wearing a gold chain (M.O.1) and two gold rings (M.Os.2 & 3) engraved with the letters "P.Mani". The deceased was allegedly last seen by PW-3 and PW-4 namely, Nallasamy and K.Devaraj respectively and his brother-in-law PW-5, Muthusamy. He, however, did not come back. On inquiries having been made from the appellant, the family

members of the deceased were informed that he had gone away after performing the said pooja for attending some function. He was even thereafter not heard of for a long time.

An advertisement was issued in a local newspaper on 12.5.1996. Poongodi (PW-1), the wife of the deceased, in order to search out her husband, in turn, sought for the assistance of the appellant, who advised them to perform a pooja at Bannavi Amman Temple.

2. However, when the parents of the deceased and his grand-mother left for Bannavi Amman Temple for performing the pooja in the company of the appellant, they also did not return home. From a report which appeared in a local newspaper on 3.6.1996 PW-1 came to learn that the said three persons have been found murdered at Erode. He went to Erode and lodged first information report before the Erode, South Police Station, which was recorded by Manoharan (PW16). A first information report was registered being crime No. 415/96 under the caption "man missing". On 4.7.1996 the statement of PW-1 was recorded by the Investigating Officer PW-18. The Banglaputhur police station which had the jurisdiction to investigate into the said matter received the said first information report on 2.9.1996, on the basis whereof PW-17 the Head Constable of the said police station registered a case as Crime No. 406/96 against the accused under Sections 302 and 379 of the Indian Penal Code (for short the ''IPC''). Accused Nos. 1 & 2 were arrested on 6.7.1996 at a bus stop at Erode in the presence of Abdulhasan Ansari (PW-11). Allegedly, on the basis of a purported confessional statement made by the appellant, the Investigating Officer and others went to Coimbatore for recovery of a gold chain which is said to have been sold to one Dhanasekaran. The said gold chain and some bangles, however, were seized in connection with the murder of the deceased''s parents and grand-mother. He also took the police party to a jewellery shop belonging to one Dhanasekaran who produced a long golden chain. The same was seized and marked as M.O.1. Accused No. 2 allegedly was having a gold ring in his finger which was seized and marked before the learned Trial Judge as M.O.3.

3. Accused No. 3 was arrested near a municipal guest house at Erode on 7th July, 1996. Two Criminal cases were instituted against the appellants; one for commission of murder of Somasundaram; and the other for murder of his parents and grand-mother.

Whereas the first case was registered as S.C No. 70/97, the second one was registered as S.C No. 100/97.

4. The learned Sessions Judge convicted the appellant and other two accused persons for commission of offence u/s 120B, 302 read with Section 34 and 109 of the IPC as also Section 379 and 201 thereof. They were sentenced to undergo rigorous imprisonment for life u/s 120B, 302 read with Section 34 and Section 109 of the IPC and one year''s rigorous imprisonment u/s 379 and three years rigorous

imprisonment u/s 201 of the IPC.

5. Before the learned Trial judge, a large number of witnesses were examined on behalf of the prosecution. PW1 is the widow of the deceased. Her evidence centered around the fact that the deceased used to consult him as he was an astrologer. She further stated that the deceased had gone with the accused for performing the said pooja and never came back thereafter. She identified Material Objects 1, 2 & 3. According to her, a letter was received from one Bala in the name of the first accused stating that her husband was keeping well but was in a depressed mind and that within a month he would go back home.

6. Allegedly, on the hope generated from the said letter, no first information report was lodged. As noticed hereinbefore, she went back to the appellant and requested him to find out her husband, who in turn advised her to perform a pooja at Pannari Mariamman temple. Her in-laws and mother of her mother-in-law went there on 28.6.1996 and the news about their murder appeared in the newspaper on 30th June, 1996. According to her, she became suspicious on learning that her in-laws have been murdered and as her husband was also missing, she filed a first information report on 3.7.1996 at Erode.

7. In the cross-examination of the said witness, several discrepancies have been brought on record particularly the omissions in her statement u/s 161 of the Code of Criminal Procedure, that her husband had been putting on M.Os. 1 to 3. She accepted that there used to be quarrel between her and her husband. The distance between her residence and that of her in-laws was 5 to 6 kms. They were living separately. She admitted that her husband had not been in sound mental health. She had been informed that her husband was to go to a function after performance of the said pooja and the same statement was made by her before the police. Loganathan (PW-2) was to be the brother-in-law of the deceased appellant. According to him, he used to run an electrical shop with the deceased Somasundaram and one Nallasamy. The deceased, according to him, used to come to the appellant to discuss astrological aspects as regards his child who had not been keeping good health. He deposed that on 29.4.1996 Somasundaram came to his shop along with the appellant and informed him that they were going to perform a pooja in the Vannan temple whereafter he would go to some function. Although according to him the deceased was wearing gold ornaments (viz. the rings and the chain) but he did not know to whom they belonged to.

8. PW-3 was also a partner in the said electrical shop in which the deceased and PW-2 were running. According to him on 29/4/1996 he met the deceased at Gobi Chettipalayam when he informed him that he had been coming from Nanjai Pulliampatti after performing the pooja. He furthermore informed that they were going to a temple whereupon he came back by bus. He could not remember the date when Somasundaram brought the three accused to his shop.

9. PW-4 is K.Devaraj. He was a valuer working at the Veerappan Chattiram Co-operative Bank. He also saw the deceased going to perform pooja with the accused.

PW-5 is Muthusamy. He is an electrician. He is the brother in-law of the deceased. Allegedly, he saw the deceased and the other accused sitting in the bus and on a query made by him, they informed that they were going to the temple at Nanjaipulimpatti and at about 8.30 P.M. on that day when he was returning from Bangalaputhur, all the three accused also boarded the same bus. On a query again made by him in regard to whereabouts of the deceased, he was told that he had gone to attend some function. Although he is a resident of the area he did not know as whether there was a river bridge at Puliampatty or not.

10. PW-6 is Thangavel. He is the brother-in-law of the deceased. He is said to have given advance of a sum of Rs. 10,000/- on execution of a pronote to accused No. 3, at the instance of the deceased. The letter which was marked as Ex.A6, according to him, contained some zig-zag lines at the time of his deposition which were not there when it was received.

11. PW-7 is Marisamy. According to him, Dhanasakarn had paid a sum of Rs. 15,000/- to the accused persons. He accepted that he was a police informer and had been appearing for them as a witness.

PW-8 has, however, denied that he was a Jeweler or that he had a shop.

12. On analysis of the entire materials brought on records by the prosecution, the only relevant evidence is the purported recovery of chain (M.O.1) at the instance of the appellant.

The dead body of the deceased was not recovered. There is no evidence in regard to death. Nothing has been brought on record to show that there was enough water in the river or the current in the water was such so as to take a dead body away.

All the prosecution witnesses are related to the deceased. It is difficult for us to believe that all the witnesses saw the deceased accompanying the accused persons one after the other at different places. Therefore, chances of their deposing falsely cannot be ruled out. Be that as it may, when the offence is said to have been committed and the circumstantial evidence is made the basis for establishing the charge against the appellant, indisputably all the links must be completed to form the basis for his conviction.

13. It is now well settled that in a case where an offence is said to have been established on circumstantial evidence alone, indisputably all the links in the chain must be found to be complete as has been held in Sharad Birdhichand Sarda v. State of Maharashtra [AIR 1984 SC 1622] in the following terms:

A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ''must or should'' and not ''may be'' established. There is not only a grammatical but a legal distinction between ''may be proved'' and ''must be or should be proved as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra where the following observations were made:

certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between ''may be'' and ''must be'' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

14. In this case, corpus delicti has not been proved. The same need not be but the death as a fact must be proved. Even death has not been proved in this case. No piece of mortal remains of the deceased was found. If the prosecution witnesses are to be believed they had no reason to suspect the appellant herein at the relevant point of time. They knew that the deceased was to attend another function. We fail to understand as to why the deceased would take all the accused to the shop of PW2 or allowed to be found in their company by all of his relations and partners. None of the witnesses testified that they were seen near the place of worship. None said that they were found to be performing any pooja. No evidence was adduced to show that any pooja was performed in a temple.

15. In a situation of this nature, it is difficult to hold that a judgment of conviction can be founded on the sole circumstance of the deceased''s having been last seen with the appellant by the prosecution witnesses who are all interested and partisan witnesses. More significant is the conduct of the prosecution witnesses. On the day of the alleged crime, they did not suspect the appellant in any manner whatsoever. They did not even go to the place of the occurrence. Despite the fact that he was

missing, the purported explanation of the appellant was taken for granted. Even no missing report was lodged. It was expected that such missing report should have been lodged immediately and that details of his wearing apparels as also the fact that he had two rings on his finger and one gold chain would have been mentioned.

16. The fact that the deceased was last seen with the appellant should have been specifically disclosed in the first information report. Suspicion was raised about the involvement of the appellant only because three other dead bodies were recovered. We do not know the nature of evidence that has been adduced in that case. We need not enter into any surmise in this behalf.

17. In any event, the circumstancial evidence which formed part of the records of SC 100 of 1997 could not be relied upon for arriving at the conclusion that the appellant herein is guilty of commission of the said offence.

18. The only other circumstance is recovery of the golden chain. It was allegedly sold to PW8. He, however, has denied his involvement. Even assuming that golden chain was recovered at the instance of the appellant herein, the same by itself, in our considered view, would not be sufficient for upholding the judgment and conviction u/s 302 of the IPC.

19. Mr. V. Kanakaraj, learned senior counsel appearing on behalf of the respondent, has placed strong reliance on a decision of this Court in Sevaka Perumal and Anr. V. State of Tamil Nadu reported in [1991 (3) SCC 471]. Therein also it was held that the fact of the death of the deceased must be established like any other fact. In that case it was not done. This Court in that case gave an instance where a corpus delicti is not possible to be traced or recovered. The same being that the murder was committed and the dead body was thrown into the river, stream or burnt out. Even such is not the case here. As indicated herein before, the fact that the river was a tidal one had not been proved.

There is, thus, no reliable or acceptable evidence that the offence has been committed by the appellant. Neither any direct nor circumstantial evidence had been brought on record to establish the guilt on the part of the appellant herein.

20. We, therefore, are of the opinion that the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. The appellant is in jail. He is directed to be set at liberty unless wanted in connection with any other case.