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## **Dharmaraj Vs The Inspector of Police**

### **Criminal Appeal (MD) No. 294 of 2009**

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**Court:** Madras High Court (Madurai Bench)

**Date of Decision:** March 2, 2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) - Section 313#Evidence Act, 1872 - Section 27#Penal Code, 1860 (IPC) - Section 302, 380, 449

**Hon'ble Judges:** V.M. Velumani, J.; A. Selvam, J.

**Bench:** Division Bench

**Advocate:** G. Bhagavath Singh, for the Appellant; C. Mayilvahana Rajendran, APP, Advocates for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A. Selvam, J.

Challenge in this Criminal Appeal is to the convictions and sentences dated 19.01.2009 passed in Sessions Case No. 145

of 2007 by the Principal District and Sessions Court, Pudukkottai.

2. The contraction of the case of the prosecution is that on 25.10.2007, at about 12.30 P.m. in Pidariamman Kovil Street, Perunkalur Village, the

accused by name Dharmaraj has entered into the house of the de facto complainant by name Udayakumar and stealthily removed a gold dollar

chain worn by one Dharankini, daughter of the de facto complainant and subsequently stayed her by using an aruval by way of cutting her neck.

After occurrence, the father of the deceased viz., de facto complainant has given a complaint to the Sub Inspector of Police and the same has been

registered in Crime No. 65 of 2007. The complaint given by the de facto complainant has been marked as Ex. P.1.

3. On receipt of Ex. P.1, the then Sub Inspector of Police viz., P.W. 16 has taken up investigation, examined connected witnesses and made all

arrangements to conduct necropsy on the body of the deceased and accordingly Dr. Mathialagan (P.W. 12) has conducted autopsy and he found

the following external and internal injuries:

1. Laceration left side neck deformed wall above in direction 10 x 4 x 3 c.m.
2. Laceration in between 2 eye brows deep in to oral cavity.
3. Laceration left eye with fracture maxilla.
4. Laceration right cheek 2 x 2 x 1 cm.
5. Depressed fracture nasal lines.
6. Laceration left cheek 2 x 1 x 1 cm.
7. Fracture left mandible.
8. Loss of upper 2 incisors, lower one incised left cavity.
9. Laceration occipital scalp 4 x 3 cm bone deep.
10. Contusion left shoulder.
11. Laceration right side neck 4 x 3 x 2 cm.
12. Incised wound left middle and left index finger with parietal amputation middle finger terminal phalanx. Thorax no fracture ribs. Heart 200 gms

empty. Lungs 250 gm pale. Hyoid sent for analysis. Stomach empty. Liver 800 gm pale. Spleen 80 gm normal. Kidney 80 gm normal. Intestine

empty. Uterus normal size empty. Skull depressed. Occipital bone fracture. Brain 1100 gm. Blood clot in occipital lobe. Spinal cord no fracture".

The Postmortem Report has been marked as Ex. P.8. The successor in office of P.W. 16 by name Muthiah (P.W. 17) has conducted further

investigation and after completing the same, laid a final report on the file of the Judicial Magistrate"s Court, Pudukkottai and the same has been

taken on file in P.R.C. No. 45 of 2007.

4. The Judicial Magistrate, Pudukkottai after considering the fact that the offences alleged to have been committed by the accused are triable by

Sessions Court, has committed the case to the Court of Sessions, Pudukkottai Division and the same has been taken on file in Sessions Case No.

145 of 2007.

5. The trial Court after hearing both sides and upon perusing the relevant records has framed first charge against the accused under Section 449 of

the Indian Penal Code, second charge under Section 380 of the Indian Penal Code and third charge under Section 302 of the Indian Penal Code

and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws. 1 to 17 have been examined and Exs. P.1 to P.23 and M.Os. 1 to 16 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials

available in evidence against him, he denied his complicity in the crime. However no oral and documentary evidence have been let in on the side of

the accused.

8. The trial Court after contemplating the evidence available on record, has found the accused guilty under Section 449 of the Indian Penal Code

and sentenced him to undergo five years rigorous imprisonment and also imposed a fine of Rs. 2,000/- with usual default clause. He has also been

guilty under Section 380 of the Indian Penal Code and sentenced to undergo five years rigorous imprisonment and also imposed a fine of Rs.

5,000/- with usual default clause. He has also been guilty under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for

life and also imposed a fine of Rs. 5,000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present

Criminal Appeal has been preferred at the instance of the accused as appellant.

9. The sum and substance of the case of the prosecution is that on 25.10.2007 in Pidariamman Kovil Street, Perunkalur Village, in the house of the

de facto complainant, the accused has made trespass and stealthily removed a gold dollar chain worn by the deceased and subsequently murdered

her by using an aruval.

10. The entire case of the prosecution hinges upon circumstantial evidence. Since the entire case of the prosecution is based upon circumstantial

evidence, a primordial duty is cast upon the prosecution to prove that every link of circumstances points out towards the alleged guilt of the

accused.

11. The prosecution has set the law in motion only on the basis of Ex. P.1, complaint, wherein no mention has been made with regard to

incriminating circumstances against the accused. In Ex. P.1, it has been simply stated that somebody has committed murder for gain and due to

occurrence the daughter of the de facto complainant by name Dharankini has passed away.

12. The learned counsel appearing for the appellant/accused has contended that some of the prosecution witnesses during the course of cross-

examination have candidly admitted that even on 26.10.2007 at about 04.00 p.m., the Inspector of Police has taken custody of the accused and

under the said circumstance the subsequent arrest, confession and alleged recovery are nothing, but false and further the junior paternal uncle of the

accused by name Urumaiah has been examined as P.W. 8 and both the families are having dispute with regard to division of lands and further

during the course of cross-examination P.W. 8 has clearly stated to the effect that he found M.Os. 1 and 2 around the neck of deceased and

therefore, it is nothing but make-believe affair on the part of the prosecution to set up witnesses for the purpose of proving the alleged recovery

from the roof of the house of P.W. 8 and the trial Court without considering that no piece of evidence is available so as to point out the alleged guilt

of the accused, has erroneously invited convictions and sentences against him and therefore the convictions and sentences passed by the trial Court

against the appellant/accused are liable to be interfered with.

13. In order to sustain the convictions and sentences passed by the trial Court, the learned Additional Public Prosecutor has represented that in the

instant case, one Karthikeyan has been examined as P.W. 5 and one Palanimuthu has been examined as P.W. 7 and both of them have seen the

accused after occurrence near some places and further the junior paternal uncle of the accused by name Urumaiah has been examined as P.W. 8

and he has been examined on 15.02.2008 and his specific evidence is that the Inspector of Police has seized M.Os. 1 and 2 from the roof of his

house and that too in the presence of the accused and subsequently he has been recalled and cross-examined on 28.03.2008 after lapse of 1 1/2

months, where he simply stated that he found M.Os. 1 and 2 around the neck of the deceased and during interregnum period he has been won

over by the accused and therefore the evidence given by him on 28.03.2008 can easily be eschewed and the trial Court after considering the

overwhelming evidence available on record has rightly invited convictions and sentences against the appellant/accused and the same do not warrant

interference.

14. As stated earlier, in Ex. P.1, complaint, no mention has been made with regard to involvement of the appellant/accused in crime. The de facto

complainant as well as his wife by name Kousalya have been examined as P.Ws. 1 and 2 and they simply stated about the death of their daughter

and also missing of M.Os. 1 and 2. One Anbu has been examined as P.W. 3 and he stated that after occurrence the accused has voluntarily

confessed to the effect that he committed crime.

15. The trial Court has invited convictions and sentences against the appellant/accused on the basis of evidence given by P.Ws. 5, 7 and 8 coupled

with recovery of some material objects.

16. The specific evidence given by P.W. 5, Karthikeyan is that on the date of occurrence he has seen the accused near vicinity of the place of

occurrence. Likewise, P.W. 7, Palanimuthu has given specific evidence that on the date of occurrence, he has seen the accused in a wynd, which

situates near the tiled house of P.W. 8. In fact, this Court has groped the evidence given by P.Ws. 5 and 7 and even a suggestion has not been put

to them with regard to animosity that existed in betwixt them and accused. Under the said circumstances the evidence given by P.Ws. 5 and 7

cannot be eschewed with regard to the said aspect.

17. The prosecution has recovered M.Os. 1 and 2 from the tiled roof of the house of P.W. 8, viz., Urumaiah, junior paternal uncle of the accused,

in the presence of P.W. 4, Village Administrative Officer and his menial.

18. As pointed out earlier, an inert attempt has been made on the side of the appellant/accused for the purpose of showing that a despair has been

in existence in between the families of the said Urumaiah and accused. Of course, it is true that the said Urumaiah and father of the accused are

siblings and no trustworthy evidence is available with regard to the alleged animosity that exists in between two families.

19. At this juncture, the Court has to meticulously analyse the evidence given by P.W. 8, Urumaiah. It has already been pointed out the relationship

that exists in between the accused P.W. 8. The Court has closely analysed the evidence given by P.W. 8 and his specific evidence is that on the

basis of confession given by the accused, the Investigating Officer has seized M.Os. 1 and 2 from the tiled roof of his house.

20. As rightly pointed out on the side of the respondent, P.W. 8 has been examined on 15.02.2008 and subsequently after lapse of 1 1/2 months,

he and other prosecution witnesses have been recalled and cross-examined further on 28.03.2008. On 28.03.2008, during the course of cross-

examination, he would say that he found M.Os. 1 and 2 around the neck of the deceased. If that be the case, definitely he would have stated those

things on 15.02.2008 itself. But he has not stated anything. Therefore, it is quite clear that during the interregnum period, some arrangements might

have been made at the intervention of the appellant/accused.

21. The learned Additional Public Prosecutor has befittingly drawn the attention of the Court to the decision in Akil alias Javed v. State (NCT of

Delhi) reported in (2013)3 Supreme Court Cases (Cri) 63, wherein the Hon"ble Apex Court has had an occasion to deal with similar factual

situation and ultimately held that in a criminal proceeding if a witness has been cross-examined after a long interval from the date of chief

examination and circumstances are available for the purpose of believing that he or she might have been won over by other side, such evidence can

be disregarded/eschewed.

22. In the instant case, as pointed out earlier, P.W. 8 has been examined in full on 15.02.2008. Only for the purpose of dismantling the evidence

given by P.W. 8, on 15.02.2008, an abortive attempt has been made on the side of the appellant/accused to recall P.W. 8 and accordingly he has

been recalled and further cross-examined on 23.08.2008. On 23.08.2008, P.W. 8 has slightly given a different version to the effect that he found

M.Os. 1 and 2 around the neck of the deceased. As per the dictum given by the Hon"ble Apex Court, the said portion of evidence can easily be

disregarded/eschewed.

23. The specific evidence given by P.W. 8 is that on the basis of instruction given by the accused, both M.Os. 1 and 2 have been recovered from

the tiled roof of his house. The evidence given by P.W. 8 is nothing, but an unimpeachable. The evidence given by him on 23.08.2008 is liable to be

rejected. Since with regard to recovery, the evidence given by P.W. 8 remains unshattered, the Court can very well believe the same.

24. It has already been pointed out that P.Ws. 5 and 7 have given crucial evidence to the effect that after occurrence, they have seen the accused

in the places spoken by them. Apart from their evidence, for the purpose of encrusting the case of the prosecution, P.W. 8 has given clear

evidence as mentioned supra.

25. Of course it is true that some of the prosecution witnesses have stated in their evidence that on 26.10.2007 itself, the Investigating Officer has

nabbed the accused and that itself would not pave the way for rejecting the unshattered/trustworthy evidence given by P.W. 8.

26. It is an archaic principle of law that as per Section 27 of the Indian Evidence Act, 1872, mere recovery itself is not at all sufficient to come to a

conclusion that the particular person has committed crime.

27. In the instant case apart from recovery of M.Os. 1 and 2 on the basis of voluntary confession alleged to have been given by the accused, the

evidence given by P.Ws. 5 and 7 has lent support to the alleged recovery.

28. The trial Court after considering the evidence given by P.Ws. 5 and 7 coupled with the evidence given by P.W. 8 and also recovery of M.Os.

1 and 2 on the basis of confession given by the accused, has rightly come to a conclusion to the effect that on the date of occurrence, the accused

has trespassed into the house of the de facto complainant and stealthily removed gold dollar chain from the neck of the deceased and subsequently

murdered her by using an aruval.

29. The case of the prosecution has been clearly corroborated by medical evidence. The specific evidence given by P.W. 12, Postmortem Doctor

is that the injuries found on the person of the deceased would be possible, if the deceased has had been attacked by M.O. 8. Further the

prosecution has clearly established that M.O. 8 has sustained human blood. Therefore viewing from any angle, the attacks made on the side of the

appellant/accused do not vitiate the convictions and sentences passed by the trial Court and altogether the present Criminal Appeal deserves to be

dismissed.

30. In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the convictions and sentences passed in Sessions Case No.

145 of 2007 by the Principal District and Sessions Court, Pudukkottai are confirmed. The trial Court is directed to take appropriate steps so as to

incarcerate the appellant/accused in prison to serve out the remaining period of sentence.