
(2005) 12 MAD CK 0048
In the Madras High Court
Case No : Criminal Appeal No. 202 of 2005

Balaprasanna

APPELLANT

Vs

Inspector of Police

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Evidence Act, 1872 — Section 21, 27
Penal Code, 1860 (IPC) — Section 302, 392, 397

Citation : (2005) 12 MAD CK 0048

Hon'ble Judges : P.K. Misra, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : A. Padmanabhan, for the Appellant; K. Chellapandian, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The appellant has been convicted u/s 302, I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000 in default to undergo R.I. for one year. He was also convicted u/s 392 r/w. 397, I.P.C. and sentenced to undergo R.I. for 10 years and to pay a fine of Rs. 10,000 in default to undergo R.I. for one year. Both the sentences have been ordered to run consecutively.

2. The prosecution case is as follows:

The deceased is one Mayurani, a Srilankan student, who was residing in the first floor of the house belonging to one Solaimalai (P.W. 1). The accused is also a Srilankan student studying in a different college, but staying in the second floor of the same premises. The occurrence allegedly took place in the afternoon of 22.4.2003. The First Information Report was lodged by P.W. 1 on 24.4.2003 at about 9.30 A.M. It was indicated in the First Information Report that on 24.4.2003 at 9.00 A.M., while the informant had gone to perform pooja in the first floor of the house, he smelt foul odour in the last room of the first floor and

found blood seeping through the front door. On opening the window he noticed that Mayurani was lying in a pool of blood with her face covered with a bag. On the basis of the aforesaid F.I.R., investigation was taken up initially by P.W. 40. Subsequently on the basis of the order of the High Court, such investigation was completed by P.W.42.

2.1. The accused is stated to have been arrested on suspicion on 26.4.2003. On the basis of the statement of the accused, prosecution recovered many materials including a knife and a log allegedly used for killing. Initially P.W. 40 suspected the role of P.W. 1, his wife P.W.2, P.W.3, from whose house certain incriminating materials were recovered allegedly on the basis of statement of the accused as well as P. W.4, who was working as a cleaner in , the vehicle of P.W. 1. Subsequently, however, P.W.42, who took over investigation from P.W. 40. filed charge-sheet only against the present appellant on the footing that P.Ws. 1 to 4 had no role to play in the crime.

3. The prosecution relied upon only circumstantial evidence, namely, confessional statements of the accused leading to recovery of various incriminating materials. Ex.P-6 is the statement leading to recovery of Travel bags (M.O s.2 & 3), knife (M.O.5), wooden log (M.O.28) rubber gloves (M.O.29 series) cotton rope with human hair (M.O.30 series),, two sponges soaked with blood (M.O.31 series), bloodstained blue colour jean pant (M.O.32), bloodstained white banian (M.O.33), colour banian (M.O.34), bloodstained grey colour pant (M.O.35), bloodstained pillow (M.O.36), plastic bucket (M.O.37) from the house of P.W.3. Ex. P-8 is the statement leading to recovery of computer and its accessories (M.Os.6 to 17) from the house of P.W. 15, a classmate of the accused. Ex,P-10 is the statement relating to jewelleryes, ultimately leading to recovery of gold ingots (M.O.I 8 series) from the house of P.W. 19 on the basis of other connecting statements of P.W. 17 and P.W. 18. These three statements, Exs. P-6, P-8 and P-10 dated 26.4.2003, were made before P.W. 40 in the presence of P.W. 22 and C.W. 1. The other confessional statement Ex.P-12 dated 22.9.2003 made before P.W.42 and Subbiah and P.W.24, led to recovery of "M" dollar (M.O.38) and key with key chain (M.O.39) from the toilet in the room of the accused. The prosecution has also relied upon the alleged motive to the effect that the accused urgently wanted money with a view to increase his marks in mathematics and, therefore, the accused had stolen articles belonging to the deceased.

4. The Trial Court has relied upon the following circumstances to hold that the appellant is guilty of the offences under Sections 302 392 r/w. 397, I.P.C:

(a)The death is homicidal.

(b)The accused was in need of money to chase mathematics paper and for the aforesaid purpose he has killed the deceased to take away the valuable articles like computer and gold ornaments to sell such articles in the market.

(c)At the time of occurrence, only the accused, deceased and P.W.9 were available in the premises and there was no other person.

(d) Statement of the accused leading to recovery of incriminating materials such as knife, rope, clothes, wooden log and other valuable articles such as computer, gold ornaments, "M" Dollar and the key chain with key belonging to the deceased.

5. So far as homicidal nature of death is concerned, the evidence of the Doctor P.W.41 along with the post mortem report makes it clear that the death was homicidal and not suicidal or accidental.

6. Coming to the question of motive, the prosecution has relied upon the evidence of P.W. 15, P.W. 16 and P.W. 17 to the effect that the accused wanted to join engineering or medical course and since he had not fared well in Mathematics paper of +2, he wanted to boost the mathematics marks through bribery and for the aforesaid purpose he was in need of money.

6.1. Law is well settled that when there is direct evidence relating to culpability of an accused in a murder case, the motive is immaterial. But, in a case depending upon the circumstantial evidence, proof of strong motive is considered as an additional link. In *Arjun Marik and Others Vs. State of Bihar*, , while considering the question of motive, it was observed:

10. In this connection it may first be pointed out that mere absence of proof of motive for commission of crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the must have been committed by the accused.

7. In the present case, the prosecution witnesses have stated that the accused wanted to pursue medical or engineering course. If the accused actually wanted to pursue medical examination and he had fared poorly in mathematics, there won't be any necessity to the accused for thinking of chasing marks in mathematics. However, high marks in mathematics would be helpful in pursuing engineering course. Even though the prosecution states that the accused had not fared well in mathematics, no efforts were made by the prosecution to find out the actual marks secured by the accused. Even the evidence relating to lack of financial background of, the accused does not appear to be strong enough. Even the prosecution witnesses have admitted that the accused was spending money liberally on many occasions and it cannot be said that the accused was in a very dire strait financially. The so called motive sought to be established by the prosecution does not appear to have been proved through cogent evidence.

8. Another circumstance relied upon by the prosecution is to the effect that at the time when the occurrence had taken place, except the accused, the deceased

and P.W.9, there was none-else in the house. For the aforesaid purpose, the prosecution has relied upon the evidence of the Doctor and the post mortem report to the effect that there was partly digested food articles in the stomach. The prosecution has also relied upon the statement of P.W.32 to the effect that the deceased had taken meal in the college mess at about 1.30 P.M. and the evidence of P.W.9, the maidservant of P.W. 1 to the effect that the deceased had returned to her room at 2.00 P.M. It is the further evidence of P.W.9 that at 3.00 P.M. she had heard a sound in the upstairs and at about 3.30 P.M. the accused came down with some articles in a gunny bag and the computer and the accessories. Even though P.W.9 states about the presence of the deceased and also the accused, her evidence does not exclude the possibility of any other person entering inside the house. Even the alleged time of assault or death is only based on opinion of the doctor P.W.41.

9. The main circumstance relied upon by the prosecution relates to the statements of the accused leading to discovery of material facts, admissible u/s 27 of the Evidence Act.

10. Law is well settled that the prosecution while relying upon the confessional statement leading to discovery of articles u/s 27 of the Evidence Act, has to prove through cogent evidence that the statement has been made voluntarily and leads to discovery of the relevant facts. The scope and ambit of Section 27 in the Evidence Act had been stated and restated in several decisions of the Supreme Court. However in almost all such decisions reference is made to the observation of the Privy Council in *Pulukuri Kotayya v. Emperor* AIR 1947 PC 67. It is worthwhile to extract such quoted observation:

It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced : the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user or the past history, of the object produced is not related to his discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of the knife : knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which stabbed A.", these words are inadmissible since they do not related to the discovery of the knife in the house of the informant. (P. 77)

11. After approving the aforesaid observation and referring to several ether Supreme Court decisions, the various requirements of Section 27 have been summed up in *Anter Singh Vs. State of Rajasthan*, , in the following manner:

"16. (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with

question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is admissible.

17. As observed in Pulukuri Kottaya's case (supra) it can seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be forged in manner allowed by law. To similar effect was the view expressed in K. Chinnaswami Reddy v. State of Andhra Pradesh and Anr. 1962 SC 1788.

12. In Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, , while considering the scope of Section 21 of the Evidence Act, it was observed:

72. True, such information is admissible in evidence u/s 27 of the Evidence Act, but admissibility alone would not render the evidence, pertaining to the above information, reliable. While testing the reliability of such evidence, the Court has to see whether it was voluntarily stated by the accused.

13. In the background of the above well settled position of law, it is now necessary to analyze and appreciate the materials relating to recovery of various incriminating materials. So far as the recovery of knife, bloodstained clothes, rope, etc., and the recovery of the computer and gold ingots are concerned, the prosecution had relied upon the evidence of P.W. 40, who was investigating initially, and the evidence of P.W. 22. C.W. 1 is also a witness to the statement.

14. P.W. 40, the Investigating Officer, has been substantially discarded by the prosecution itself. It is the admitted case of the prosecution that subsequently P.W. 40 has been suspended and investigation has been handed over to P.W. 42, since according to the prosecution P.W. 40 has procured false confessional statements implicating P.Ws. 1 to 4. As per such statements, P. W. 1 is supposed to have been given a key of the room of the deceased, which is stated to have been recovered from the dash board of the car of P.W. 1. On the basis of such statement, P.Ws. 1 to 4 have been arrested.

According to the own case of the prosecution, such efforts have been made by P.W. 40 with a view to implicate falsely P.Ws. 1 to 4 and for the aforesaid purpose

a departmental proceeding was also initiated. When the prosecution itself is doubting the bona fides of P.W. 40, it would be very hazardous to rely on the very same P.W. 40, so far as the present accused is concerned, in the absence of strong independent evidence.

15. P.W.22 and C.W. 1 are the two witnesses in whose presence the confessional statements had been allegedly made by the accused. Even according to the statement of the subsequent Investigating Officer, P.W.42, several blank papers with the signature of P.W.22 and C.W. 1 had been taken by P.W. 40 and such documents had been used by P.W. 40 to create false records to implicate P.Ws. 1 to 4. In such a murky background, where the prosecution is doubting its own investigating agency, it would be indeed very hazardous to place any implicit reliance upon other portion of the evidence of P.W. 40 regarding the alleged confessional statement.

16. That apart, the materials on record such as the statement of P.W. 22 recorded u/s 164 and the statement of C.W. 1 raise a reasonable doubt relating to voluntariness of the alleged confession. P.W.22, who is a close relation of the deceased (cousin), has stated that two days after the occurrence after the information that Bala Prasana was roaming near LIG Colony, Anna Nagar police brought him to the police station and Bala Prasanna was arrested at 5.00 P.M. and was taken to the police station and a witness was present there. It is further stated that at the time of enquiry, the accused was beaten up by the police and they have seized a gold ring and Rs.5000 cash from him. If this is the statement of P.W. 22 recorded u/s 164, a witness in whose presence the confessional statement leading to discovery of articles from the house of Hajeeali, P.W. 3 had been made, it raises serious doubt regarding the voluntariness of the statement. In this context, it is also note worthy to indicate that C.W. 1 in his evidence has stated that the accused was in police station on 24.4.2003 itself. Similar statement is made by P.W. 4. That apart C.W. 1 has stated that no statement has been made in his presence. The prosecution version to the effect that even some signatures on blank papers had been taken from P.W. 22 and C.W. 1 thus assumes great importance.

17. The alleged statement made by the accused led to discovery of knife, bloodstained clothes, rope, etc. Unfortunately for the prosecution there is no evidence to show that in fact the wearing apparels containing bloodstains belonged to the accused, save and except the alleged confessional statement. No witness has spoken that those clothes were worn by the accused at any time far less at or about the time of occurrence. It is also to be kept in view that those articles were recovered from the house of P.W.3 and at the initial stage of investigation, P.W. 3 himself was one of the suspected person and he was arrested. Therefore, the statement of P.W.3 and his mother that those articles were brought by the accused and left in the upstairs room is to be considered with a pinch of salt. Moreover, there is nothing to indicate that in fact the bloodstained clothes and rope had tallied with the blood grouping of the

deceased. The knife did not contain any bloodstain. Therefore, these aspects relating to recovery of articles from the house of P.W. 3 and his mother cannot be considered as a link to complete the chain of circumstantial evidence.

18. The next recovery relates to recovery of computer and accessories. Apart from the fact that there is niggling doubt about the so called confession in view of 164, Cr.P.C. statement of P.W. 22 and the statement of C. W. 1, a further doubt is raised regarding such aspect in view of evidence of C.W. 1 to the effect that he had seen such computer in the room of the deceased when they had gone to the room after the offence was reported. The fact that C.W. 1 is a close relation of the deceased adds height to his evidence rather than taking it away. Even accepting that the computer had been given to P.W. 15 by the accused, such circumstance by itself does not Unerringly point towards the guilt of the accused either in respect of offence of murder or even robbery. It is quite possible that such articles might have been borrowed by the accused from the deceased and not necessarily stolen by the accused from the deceased after killing her. The fact that P.W.9 had not initially stated anything before P.W. 40 about the accused coming down with computer at 3.30 P.M. and stated so for the first time when she was re- examined after 5 months cannot be lost sight of. As a matter of fact, P.W. 9 who was examined on the very date when police started investigation did not inform the police that she had seen the accused coming down from upstairs or that the accused had threatened her. Her statement to the following:

I did not tell anyone that Balaprasanna took away the computer and threatened me. I did not tell this even to the Inspector of Police after going to the police station. I do not tell this even to P.W. 1

19. The next recovery relates to the ingots. For the aforesaid aspect, the evidence of P.Ws.17, 18 and 19 is relevant. Since the golden jewellery had been molten and were recovered in the shape of ingots, it would be very hazardous to come to the conclusion that in fact the golden jewellery belonged to the deceased. If the accused had killed the deceased and stolen those golden jewellery, there is no reason as to why he had also not taken ear rings from the deceased. The fact that ear rings were on the dead body is admitted by the prosecution.

20. The prosecution has strongly relied upon the fact that "M" Dollar belonging to the deceased and a chain with key of the room of the deceased were discovered from inside the toilet in the room which was previously occupied by the accused. For the aforesaid purpose, they have relied upon the evidence of P.W. 42 and the seizure witness P.W. 24. The accused had allegedly made earlier confessional statement before P.W. 40 on 26.4.2003 leading to discovery of several articles. The subsequent statement spoken to by P.W. 42, the subsequent investigating officer, is alleged to have been made only in September, 2003, after about five months. So far as the first confessional statement made before P.W. 40 is concerned, admittedly the accused was under physical custody at that time,

whereas at the time of last confession stated to have been made before P.W.42, the accused was on bail and he had been summoned by P.W.42 for further examination and, therefore, technically in custody. If the accused had not made such a statement at such first instance, when he had confessed about other articles, it is not understood as to why after 5 months when he was on bail he would make such a statement. Such alleged confession made belatedly thus creates doubt regarding its authenticity or voluntariness. In this context, it is to be noted that C.W. 1 states that "M" Dollar was taken from him by P.W.42 for the purpose of facilitating investigation. Keeping in view the fact that C.W. 1 is a close relation of the deceased and obviously interested in punishing the real culprit, such a statement coming from C.W. 1 cannot be lightly brushed aside.

21. The fact that there had been a statement allegedly made by P.W. 1 leading to recovery of a parallel key from the dash board of the car of P.W. 1, cannot be lost sight of. It is of course true that the prosecution has tried to exonerate P.W. 1 by adducing evidence through P.Ws.36 and 39 to the effect that immediately after recovery of the dead body, P.W. 40 had taken two such keys, thus contradicting the alleged confession of P.W. 1. However, the very suspicious role of P.W. 40, who apparently was in possession of at least two keys of the same lock creates suspicion regarding recovery of another key after 5 months.

22. Law is well settled that when the prosecution relies upon circumstantial evidence, all the links in the chain of circumstances must be complete and should be proved through cogent evidence. In *Dhananjay Chatterjee alias Dhana Vs. State of W.B.*, , while considering the nature of proof required in a case based on circumstantial evidence, it was observed:

... the circumstances from which the conclusion of guilt, is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the Court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinise the evidence lest suspicion takes the place of proof.

This observation was followed by the Supreme Court in the decision in *Subhash Chand Vs. State of Rajasthan*, . In this decision, while concluding, the Court observed:

24. Thus, none of the pieces of evidence relied on as incriminating, by the Trial Court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal

evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In *Shankarlal Gyarasilal Dixit Vs. State of Maharashtra*, , this Court cautioned- "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions" (SCC p.44, para 33). This Court has held time and again that between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict.

In *Golakonda Venkateswara Rao Vs. State of Andhra Pradesh*, , it was observed:

6. By now it is well settled principle of law that incases where the evidence is purely circumstantial in nature, the facts the circumstances from which the conclusion of guilt is sought to be drawn must be fully, established beyond any reasonable doubt and such circumstances must be consistent and unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution.

In *Kansa Behera Vs. State of Orissa*, , it was observed:

12 It is a settled rule of circumstantial evidence that each of the circumstances have to be established beyond doubt and all the circumstances must lead to the only one inference and that is of the guilt of the accused....

23. In the present case, some of the links are either non-existent or very weak or even consistent with the innocence of the accused. The fact that a heinous and a high profile offence has been committed does not mean that an order of conviction has to be passed irrespective of the innate strength in the prosecution case. On the other hand, the fact that such a sensational murder has been committed would require the court to be more careful to weigh the various circumstances and obviously the benefit of any reasonable doubt would go to the accused rather than the benefit of every suspicion going in the prosecution way.

24. In course of hearing, the learned Addl. Public Prosecutor has submitted that several witnesses like P.Ws.15, 16, 17, etc. had no axe to grind against the accused and therefore their statement was entitled to great weight. In this context, we are only reminded by the observation made by the Supreme Court in *Shankarlal Gyarasilal Dixit v. State of Maharashtra* 1981 SCC (CrL.) 315, as to why so many would conspire to involve him falsely. In the words of the Supreme Court:

The answer to such question is not always easy to give in criminal cases. Different motives operate in the minds of different persons in the making of unfounded accusation. Besides, human nature is too willing when faced with brutal crimes to spin stories out of strong suspicions.

25. One can only add to such sentiment by- observing that in the present case the prosecution itself has made, according to the subsequent investigating officer, efforts to implicate many innocent persons like P. Ws. 1 to 4. What

guarantee can be there for the very same investigating officer not having falsely implicate the accused in the present case. The Court is always helpless to solve such a conundrum presented before it. Since serious and reasonable doubts have been raised about the matter in which investigation has been undertaken at different stages, it would be indeed very difficult, nay, hazardous to uphold the conviction notwithstanding the seriousness of the crime.

26. The appeal is accordingly allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court in Sessions Case No. 147/2004, dated 7.4.2005, is set aside and the accused is acquitted of all the charges levelled against him. The appellant is directed to be released forthwith unless his presence is required in connection with any other case. The direction of the Trial Court regarding disposal of various Material Objects, as contained in the first page of the judgment is confirmed.