
(2009) 01 MAD CK 0178
In the Madras High Court
Case No : Criminal A. No. 14 of 2008

Chennamurthy

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313
Penal Code, 1860 (IPC) — Section 201, 302, 377

Citation : (2009) 01 MAD CK 0178

Hon'ble Judges : M. Venugopal, J; M. Chockalingam, J

Bench : Division Bench

Advocate : V. Gopinath for L. Mahendran, for the Appellant; P. Kumaresan, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This appeal challenges a judgment of the Sessions Division, Tiruvannamalai, made in S.C. No. 124 of 2006 whereby

the appellant/A-1 stood charged under Sections 377, 302 and 201 of IPC along with another shown as A-2, and on trial, A-1 was found guilty

under Sections 302 and 201 of IPC and awarded life imprisonment along with a fine of Rs. 15000/- and default sentence and one year Rigorous

Imprisonment along with a fine of Rs. 5000/- and default sentence respectively and acquitted of the charge u/s 377 of IPC. A-2 was acquitted of

the charge levelled against him.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W.1 is the Correspondent of St. Joseph Higher Secondary School in which P.W.2 was the Chief Warden of the Hostel, and A-1, A-2,

Nimilan, Illango and Babu were Sub Wardens. The deceased Saravanan was a student studying VI Standard and also staying in the hostel run by

Mercy Home at the time of occurrence. P.W.3 was studying VII Standard, and P.W.4 was studying VIII Standard. They were also residing in the

very same hostel. After taking dinner on 1.12.2005 at about 8.15 P.M., the deceased went out of the study hall. P.W.3 who went outside to

attend nature's call, saw the deceased being taken by A-1 towards the mess. After attending the nature's call, P.W.3 returned to the study hall.

The attendance was used to be taken by the Students Leader, P.W.4. On that day, only A-1 took the attendance for VII and VIII Standard by

calling the names of the students; but, for the VI Standard, without calling the names of the students, he recorded as if all were present. P.W.4 and

one Rajkumar informed A-1 that the deceased was not present for which A-1 replied that he was being paid salary and not to them and asked

them to bind their business. At about 9.45 P.M., all the students went to bed. At that time, P.W.4, the Student Leader, informed A-1 that the

deceased was missing. A-1 scolded him and asked him to go to bed.

(b) On 2.12.2005 at about 5.00 A.M., A-1 gave a wake up call to all the students, and thereafter, he went asleep till 7.00 A.M. He was woken

up by the students, and they told him that the deceased was found dead. Immediately A-1 told them that if police enquire them, they should tell that

the deceased was also sleeping along with them during that night. Then, A-1 took the attendance for VI to VIII Standards. One Benjamin who

was there, questioned A-1 why he was putting present for the deceased who is dead. Immediately, A-1 turned that page, took another sheet,

wrote the names of all the students and put a dot against the name of the deceased. At about 6.45 A.M., one Alex and Joseph the Cooks in the

hostel, informed P.W.1 that a dead body of a boy was lying near the water tank. P.W.1 immediately rushed to the place, found the deceased lying

in a pool of blood, and he was with bleeding injuries. A stone was also found near the dead body. He called for A-1 and enquired him. A-1

replied that on 1.12.2005 at about 9.00 P.M., after making students to go to bed, he also slept in the room, and he did not know what had

happened. On 2.12.2005, P.W.1 went to the respondent police station at about 11.00 A.M. and lodged a report, Ex.P1. P.W.13, the Sub

Inspector of Police, on the strength of Ex.P1, the report, registered a case in Crime No. 802 of 2005 u/s 302 of IPC. The printed FIR, Ex.P19, was despatched to the Court.

(c) P.W.15, the Inspector of Police of the Circle, on receipt of the copy of the FIR, took up investigation at about 12.15 P.M., proceeded to the

scene of occurrence, made an inspection, prepared an observation mahazar, Ex.P13, and also drew a rough sketch, Ex.P22 in the presence of

witnesses. Then he caused the photographs to be taken of the dead body and also the scene of occurrence through P.W.9, the Photographer. At

about 1.00 P.M., he recovered M.O.5, bloodstained earth, M.O.6, sample earth, M.O.1, stone, and M.O.7, pen, under a cover of mahazar, in

the presence of witnesses. Thereafter, he conducted inquest on the dead body of Saravanan in the presence of witnesses and panchayatdars.

Ex.P23 is the inquest report prepared by him. The dead body was sent to the Government Hospital along with a requisition for postmortem. Then,

he examined the witnesses and recorded their statements.

(d) P.W.10, the Doctor, attached to the Government Hospital, Polur, on receipt of the requisition, conducted autopsy on the dead body of

Saravanan and has given his opinion in Ex.P17, the postmortem certificate, that the deceased would appear to have died of asphyxia due to

throttling 37 to 39 hours prior to autopsy.

(e) After the completion of the autopsy, P.W.12 produced the shirt worn by the deceased, marked as M.O.1, and trouser, M.O.11, and amulet,

M.O.12, under a report Ex.P18.

(f) On 4.12.2005 at about 4.00 P.M., when P.W.2, the Chief Warden, was in his house with the Assistant Sadanandam, A-1 and A-2 appeared

before him, and A-1 gave an extra-judicial confession. P.W.2 reduced the same into writing, and the said confession of A-1 is Ex.P3. He got the

signature of both the accused. He prepared his covering letter, Ex.P4, and produced Exs.P3 and P4 and both the accused before the Investigating

Officer. Then the case was altered from Section 302 of IPC to Sections 302, 377 and 201 of IPC. The Investigator prepared an express report,

Ex.P24, and sent to the Court.

(g) P.W.15 examined A-1 at about 7.30 P.M. and recorded his confession. Based on the confessional statement, he produced M.O.2 shirt,

M.O.3, lungi, and M.O.4, jatti of A-1, which were recovered under a mahazar, Ex.P5. At about 8.30 P.M., he recorded the confessional

statement of A-2. Then P.W.15 took both the accused to the scene of occurrence, prepared an observation mahazar, Ex.P6, and drew a rough

sketch, Ex.P25. Thereafter, he examined P.W.2 and recorded the statement. On 5.12.2005, P.W.15 examined P.Ws.4 and 5 and recorded their

statements. On the very day, he forwarded A-1 to the hospital to ascertain the potency of A-1. P.W.14, the Doctor, attached to the Government

Hospital examined A-1 and A-2 on 16.12.2005 and issued potency certificates, Exs.P20 and P21 respectively.

(h) On 6.12.2005, P.W.15 examined P.Ws.1, 7 and 8 and recorded their statements. On the very day, he seized the attendance register of the

school, Ex.P7. Thereafter, on 7.12.2005, he gave a requisition for recording the statements of P.Ws.4 and 5 u/s 164 of Cr.P.C. P.W.6, the

Judicial Magistrate, Vandavasi, on receipt of the requisition and the order of the Chief Judicial Magistrate, recorded the statements of P.Ws.4 and

5 on 9.12.2005, which proceedings were marked as Exs.P9 and P10 respectively. The material objects were sent for chemical analysis, and

Ex.P26 is the report of the chemical analyst and serologist. On completion of the investigation, the Investigating Officer filed the final report.

3. The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution

examined 15 witnesses and also relied on 26 exhibits and 12 material objects. On completion of the evidence on the side of the prosecution, the

accused were questioned u/s 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which they

flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced, scrutinized the materials available and

took the view that the prosecution has proved the case beyond reasonable doubt in respect of A-1 and hence found him guilty and awarded the

punishment as referred to above while it acquitted A-2 of the charge framed against him. Hence this appeal at the instance of A-1.

4. The learned Senior Counsel Mr. V. Gopinath appearing for the appellant would submit that the prosecution has miserably failed to prove the

guilt of the accused; that the trial Court has acquitted A-2; that the very reasons for the acquittal of A-2 should have been applied to A-1 also; that

the prosecution had no direct evidence to offer, but relied upon only circumstantial evidence; that necessary circumstances were neither placed nor proved pointing to the guilt of the accused; that the main circumstance relied on by the prosecution was that on the date of occurrence that was on

1.12.2005, at about 8.15 P.M., P.W.3 a student of VII Standard, witnessed the deceased following A-1 towards the mess, and thereafter, when

the attendance was taken, the students leader, P.W.4, informed A-1 that the deceased was absent for which A-1 replied that the salary was only

paid to him and not to P.W.4, and when P.W.4 again informed A-1 that the deceased was missing when they went to bed, A-1 scolded him and

asked him to mind his business; that the other circumstances relied on by the prosecution were the extra-judicial confession alleged to have been

given by A-1 and A-2 to P.W.2 the Chief Warden, on 4.12.2005 at about 4.00 P.M. and that the same was reduced into writing by P.W.2

marked as Ex.P3, and his covering letter was marked as Ex.P4, and he produced both the accused before the Investigating Officer P.W.15, and

the respective confessional statements were recorded by him, and pursuant to the same, A-1 produced M.Os.2 to 4.

5. Added further the learned Senior Counsel that the above two circumstances though relied on by the prosecution, should have been rejected by

the trial Court, but were erroneously accepted; that as far as the first circumstance was concerned, P.W.3 was the student of VII Standard; that

according to him, on the date of occurrence at about 8.15 P.M. he went outside for attending nature's call, and at that time, he found A-1

proceeding towards the mess room, and the deceased followed him; that nowhere P.W.3 has stated that A-1 took the deceased to the mess

room; that though P.W.3 has deposed before the Court that he saw A-1 followed by the deceased towards the mess room at or about the time of

occurrence, and P.W.4 has complained to A-1 as to the absence of the deceased at the time of taking the attendance and also in the bed room,

the statements of these two witnesses were recorded only on 5.12.2005; that both P.Ws.3 and 4 have categorically admitted that they were

present in the School on that day and that on 2.12.2005, the police officials came over and enquired all the students including them; that had it

been true that P.W.3 had witnessed the deceased following A-1 just before the occurrence and P.W.4 has complained as to the absence of the

deceased to A-1 at the time of taking attendance and also when they went for bed, they would have certainly informed the Investigator at the time when they were first enquired on 2.12.2005 itself, but, they have not whispered anything; that their silence would be indicative of the fact that they did not know anything, and they have been added as witnesses to suit the prosecution case, and that too after recording the alleged extra-judicial confessional statement; that much reliance was placed by the prosecution on the extra-judicial confession alleged to have been made by A-1 and A-2 to P.W.2 on 4.12.2005; that it is true that P.W.2 was the chief warden under whom A-1 and A-2 and other three others were working as Sub Wardens; that P.W.1 and other witnesses have categorically admitted that the Investigator along with the police party visited the spot on 2.12.2005 itself and enquired all the inmates and also all the five wardens; that the witness has specifically spoken to the fact that all five wardens were taken to the police station, and A-1 and A-2 were retained in the police station while others were allowed to go out, and thus it would be quite clear from the evidence that A-1 and A-2 were actually in the police custody from 2.12.2005 onwards; that the claim made by P.W.2 that A-1 and A-2 came to his house on 4.12.2005 at 4.00 P.M. and made extra-judicial confession as found in Ex.P3, cannot but be false; that further according to P.W.2, on 2.12.2005 and 3.12.2005, he was away, and he returned only on 4.12.2005; but, this part of his evidence was falsified from the evidence of the other witness stating that he was very well available in the school during those days; that according to P.W.15, the Investigator, when he reached the School on 2.12.2005, he could not see A-1 and A-2 and they were absconding and they were actually produced by P.W.2 only on 4.12.2005 along with Ex.P3 confessional statement and Ex.P4 covering letter of P.W.2; but, it is thoroughly falsified by the evidence of the other witnesses stating that all the wardens were very well available on 2.12.2005, and they were taken to the police station, and A-1 and A-2 were retained by and in the custody of the police all along the period; and that all would go to show that the extra-judicial confession was nothing but cooked up to suit the prosecution case.

6. The learned Senior Counsel would further add that the statements of P.Ws.3 and 4 were recorded by the police only on 5.12.2005 not only to

suit the prosecution case, but also to strengthen by way of corroboration to the extra-judicial confession alleged to have been recorded by P.W.2

on 4.12.2005, and thus, the prosecution has miserably failed to prove its case and they are entitled for acquittal.

7. The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

8. It is not in controversy that one Saravanan, a boy, who was studying VI Standard in St. Joseph Higher Secondary School and also staying in

the hostel run by Mercy Home, was found dead in the morning hours of 2.12.2005. On the complaint given by P.W.1 under Ex.P1, a case came

to be registered by the respondent police in Crime No. 802 of 2005 originally u/s 302, and subsequently altered to Sections 302, 377 and 201 of

IPC. Following the inquest made by the Investigator and preparation of the inquest report, the dead body was subjected to postmortem by

P.W.10 the Doctor, who has given evidence as a witness before the Court and also through the contents of the postmortem certificate marked as

Ex.P17 that Saravanan died due to the suffocation caused out of strangulation. The cause of death as put forth by the prosecution was never

questioned by the appellant/A-1 before the trial Court, and hence it has got to be factually recorded that Saravanan died on account of homicidal

violence.

9. In order to substantiate the charges levelled against the appellant, the prosecution had no direct evidence to offer, and it relied upon mainly two

circumstances. It is not that this Court is unmindful of the caution made by the Apex Court and also the settled principles of law that in a given case

like this, where the prosecution exclusively rests its case upon the circumstantial evidence, it must place and prove necessary circumstances making

a chain without a snap and also pointing to the hypothesis that except the accused no one could have committed the offence. In the case on hand,

on scrutiny of the available materials, the following circumstances are noticed by the Court.

10. The deceased was a boy studying VI Standard in St. Joseph Higher Secondary School and also staying in the hostel attached to Mercy

Home. P.W.3 was a student of VII Standard and P.W.4 was a student of VIII

Standard. According to P.W.3, on the date of occurrence namely 1.12.2005 at about 8.15 P.M., he went out of the study hall to attend the nature's call, and at that time, he has seen A-1 proceeding towards the mess and he was followed by the deceased. It is pertinent to point out that he also returned after sometime when the attendance was taken. The dead body was found nearby the water tank which is situated abutting the mess. From the evidence of P.Ws.3 and 4, it would be quite clear that the attendance used to be taken by the Student Leader namely P.W.4; but, on that day it was taken by A-1. Apart from that, A-1 did not take attendance for the students of VI Standard but called the names of the students of VII and VIII Standard only. He recorded that all the students of VI Standard were present. According to P.W.4, he brought to the notice of A-1 as to the absence of the deceased. Immediately he replied that the salary was paid only to him and not to P.W.4. Sometime later, when all of them went to bed, the deceased was not found in the bed room. This was also brought to the notice of A-1; but, A-1 did not pay heed to it, and on the contrary, he abused P.W.4. At this juncture, it is pertinent to point out that P.W.4 was not only a student and friend of the deceased, but also the Student Leader, and he was to bring the same to the notice of the Warden immediately which he has done. As far as A-1 was concerned, he was not only a Sub Warden, but also a Teacher for those students.

11. It is further pertinent to point out that according to P.Ws.3 and 4, the next morning, A-1 the Sub Warden after giving the wake up call, was sleeping in the last bench upto 7.00 A.M. and it was the students who woke him up and informed him as to the death of the deceased. Immediately, he told P.Ws.3 and 4 that if police enquire, they should inform to the police that the deceased was also sleeping along with them during the previous night; otherwise, he would see the dismissal of the students from the school. Thus, P.Ws.3 and 4 were kept under the grip of fear during those days. It is true that the police came over to the hostel on 2.12.2005. Even assuming all the students were enquired by the police officers, P.Ws.3 and 4 did not come forward to tell due to their age and also they were under the grip of fear. It should not be forgotten that they were actually doing their studies and taking food freely from the hostel attached

to Mercy Home. If any action is taken as mentioned by the Sub Warden cum Teacher, A-1, immediately, they will not only lose their studies, but also lose their shelter. Under such circumstances, they have not come forward to speak about the same. It is true that their statements were recorded on 5.12.2005. They have given statements u/s 161 of Cr.P.C. which were deposed by them before the Court. Now, the contentions put forth by the learned Senior Counsel for the appellant that these are all nothing but further improvements made in the case in order to suit the prosecution case cannot be accepted. It is true that there was a delay; but, the delay, in the considered opinion of the Court, cannot be a reason in view of the age of the children and the situation and circumstances in which they were placed. A careful scrutiny of the evidence of P.Ws.3 and 4 would clearly indicate that it was natural and inspired the confidence of the Court, and hence they were acceptable.

12. From the evidence of P.W.3, it would be quite clear that he has last seen the deceased in the company of A-1 at or about the time and nearby the place of occurrence. From the evidence of P.W.4, it would be abundantly clear that immediately after the occurrence, the deceased who went to the mess area did not come back either to the study hall when attendance was taken, or to the bed room where they were sleeping that night. The conduct of A-1 in abusing P.W.4, the Student Leader, when he complained as to the absence of the deceased and also the subsequent threat made by A-1 the next morning to the students that if police enquire them, they should tell that the deceased was also sleeping with them on the previous night and if not, they would see the dismissal from the school all would go to show that none else except the accused has committed the offence.

13. As rightly pointed out by the learned Senior Counsel for the appellant, from the evidence of the witnesses it would be quite clear that the police have made enquiry, and all the wardens and A-1 and A-2 have been actually taken to the police station, and they were kept in custody. If to be so, the claim by the prosecution that A-1 and A-2 appeared before P.W.2 and gave a confessional statement on 4.12.2005 and it was recorded by him cannot be believed. Hence the alleged extra-judicial confession, Ex.P3, and the covering letter, Ex.P4, have got to be rejected. Equally, the

confessional statement alleged to have been given by A-1 subsequently to the Investigator and the recovery of material objects have got to be

rejected. Accordingly, they are rejected. Even after rejecting that part of the evidence, this Court is of the considered opinion that the evidence of

P.Ws.3 and 4 coupled with the prior and subsequent conduct of A-1 would clearly indicate that it was he who committed the heinous crime of

killing the boy, and he has made an attempt to screen the same. There is nothing to interfere in the judgment of the trial Court.

14. In the result, this criminal appeal fails, and the same is dismissed confirming the judgment of the lower Court.