
(2004) 09 MAD CK 0168
In the Madras High Court
Case No : Criminal Appeal No. 402 of 1996

Isithor Prince

APPELLANT

Vs

State Additional Superintendent of police, Prohibition Wing,
Nagercoil kanyakumari Police Station

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Citation : (2005) 2 LW(Cri) 734

Hon'ble Judges : S.R. Singharavelu, J;N. Dhinakar, J

Bench : Division Bench

Advocate : V. Gopinath, S.C. for Mr. K. Selvarangan, for the Appellant;
Chellapandian, Addl, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N. Dhinakar, J.—The accused appeals.

2. The appellant was tried before the Principal Sessions Judge, Kanyakumari at Nagercoil on a charge of murder.

3. The allegation against him is that at 11.30 a.m on 27.11.1994 when the deceased Malaisami (D-1) in the case was standing at Pazhanganatham Bus Stop, the appellant mixed Cyanide in the whisky bottle which was in the possession of the first deceased and that on 28.11.1994, D-1 to D-3 consumed the said whisky containing cyanide leading to their death and that the appellant has committed an offence of murder under three counts.

4. The learned trial Judge finding him guilty under all the charges, sentenced him to imprisonment for life under each count and in addition imposed a fine of Rs.10,000/- , and in default he was sentenced to undergo two years rigorous imprisonment.

5. The brief facts necessary to dispose of the appeal are as follows:

a) P.W. 11 is the wife of D-1-Malaisami. D-2 and D-3 are the friends of D-1. D-1

was doing business in ready-made textile garments. D-1 with his wife P.W. 11 was residing at Perumalpatti, but later shifted his residence to Indira Priadarshini Nagar at Madurai. P.W. 11 used to visit her brother's house which was near by and the appellant was also in the habit of visiting the brother's house of P.W. 11. P.W. 11's brother Alagesan introduced the appellant to P.W. 11. They, became intimate and also developed illegal intimacy. The first deceased borrowed a sum of Rs.4,500/- from the appellant for celebrating the puberty ceremony of his daughter and later he wanted to shift his residence to a larger house. The appellant helped him in fixing a house at Singampidari Koil Street, where the first deceased and his wife P.W. 11 took up their residence. In the meantime, the first deceased decided to start a new business and the appellant helped him by giving him money. The house, in which the first deceased and his wife P.W. 11 were residing was mortgaged in the name of P.W. 11 as could be seen from Ex. P-25, the Mortgage Deed.

D-1 was paying a monthly rent of Rs. 300/- for the house, but he was not regularly paying the rents. In the month of April 1994, an alliance for his daughter materialized and D-1 and P.W. 11 asked the advice of the appellant to help them to perform the marriage of their daughter. The appellant gave 7 sovereign of gold jewels, but unfortunately, the marriage did not take place and the appellant wanted D-1 to return the jewels. D-1 told him that he has pledged the jewels and has utilised the money for his business. The appellant was not happy with D-1 in not returning the jewels. A week prior to Deepavali D-1 asked for a hand loan from the appellant and the appellant gave him Rs.4,000/- . After Deepavali, the first deceased was not attending to his business and the appellant was unable to visit the house to continue the affair with P.W. 11 on 14.11.1994, D-1 went to Kanyakumari in connection with his business and the appellant went to the house of D-1 and stayed in the company of P.W. 11 in the house. On 20.11.94 D-1 returned to Madurai with a view to take the goods from the shop. On 27.11.94 at about 10.00 a.m.

D-1 went out of his house and returned by 1.30 p.m in a drunken state. At 5.00 p.m. the appellant took D-1 outside and both of them returned at 8.30 p.m. Later at 09.30 p.m., D-1 and the appellant went to the Bus Stop in a Cycle-M.O.-12 with ready made garments and seen P.W. 11. Thereafter, D-1 was not seen alive by P.W. 11. The deceased later was seen by P.W. 16, the time keeper working in Tiruvalluvar Transport Corporation, Madurai at 11.30 p.m. He was seen weighing luggage, for which Ex. P-22 the luggage bill was given. On 18.11.1994 D-1 reached Kanyakumari and after selling the clothes reached a wine shop, where P.W. 3 and P.W-4 were working. P.W. 1, D-2 and D-3, who were also doing business in ready made garments after finishing their business, reached the shop where D-1 was taking drinks. At that time D-1 told that he has four ounces of whisky in his possession and since the said quantity is sufficient for him, the others could purchase their liquor. Accordingly, P.W. 1, D-2 and D-3 purchased old Monk rum from the shop of P.W. 3. Three glasses were obtained from the shop. D-1 poured the liquor in one glass, P.W. 1, D-2 and D-3 poured

rum in their glasses. Two bottles of Thumps Up M.0.4 series were purchased and they were mixed with the drinks. D-1 consumed whisky and left the place. Immediately thereafter, D-1 became sick and he told his friends that he is no longer interested in taking the remaining drink and asked his friends D-2 and D-3 to consume the remaining portion of his drink. Accordingly D-2 and D-3 to consumed the liquor left over by D-1. All the three came out and on reaching the street all the three fell down one by one. P.W. 1 thinking that they are suffering from fits gave an iron key. In the meantime, P.W. 10 brought a taxi in which D-1 to D-3 were placed and taken to Kanyakumari Hospital by P.W. 1. They were produced before P.W. 5, the Casualty Medical Officer, who on examining D-1 and D-2 found them dead. D-3 was alive and since P.W. 5 the Doctor felt that D-3 required better medical treatment, referred him to Nagercoil Government Hospital. D-3 was accordingly taken to Government Hospital at Nagercoil, where he was pronounced dead at 10.40 a.m. On being informed about the death of D-3, P.W. 1 who accompanied him to Nagarcoil, returned to Kanyakumari Hospital and later went to Kanyakumari Police Station and gave a complaint, Ex. P-1. On the basis of the complaint Ex. P-1, a case in crime No. 931 of 1994, u/s 174 Cr. P.C was registered by P.W. 22 the Sub Inspector of Police. P.W. 23 on receipt of the information about the registration of the crime, reached the scene of occurrence at 12.15 p.m and drew a Rough Sketch Ex. P-39 after preparing an observation Mahazar-Ex. P-2. He seized M.0.2-old monk bottle, M.0.1-monitor whisky bottle, M.0.3 series Glass Tumblers and M.0.4 series Thumbs Up bottles under a cover of mahazar Ex. P-3. He seized from Prakash Wines M.0.6-old monk rum bottle and M.0.7-Whisky bottle under a cover of mahazar Ex. P-4. The inquest over the dead body of D-2 was conducted and Ex. P-40 is the inquest report. Thereafter, inquest over the dead body of D-1 was conducted and the inquest report is Ex. P-41. During inquest P.Ws. 1 to 4 were questioned and their statements were recorded. On 29.11.1994 at about 6.30 p.m, the officer went to Nagercoil and conducted inquest over the dead body of D-3 in the presence of Panchayatdars and prepared Ex.

P-42 the inquest report. He then gave requisitions Ex. P-8, Ex. P-11 and Ex. P-14 to the respective Doctors for conducting autopsy on the three dead bodies.

b) On receipt of the requisition, P.W. 6, the Assistant surgeon attached to the Government Hospital, Kanyakumari conducted autopsy over the body of D-2 and found the following injuries:

Lies on back. RM present on all 4 limbs. Moderately nourished. Symmetrical. Skin dark. No visible disease. Abrasion just behind the Rt. Ear 4 cm x 2 cm. No internal injuries. Stains of falls present on both thigh, scrotium and guteal region. Hypostain present on the back. Posterior aspect of both arm and thighs. Head, face features:- Symmetrical. Scalp: No loss of hair. Eyelids closed. Nose: Froth stain along the Left side of Nose. Mouth & Lip - Froth stain along the Lt. angle of mouth. Tongue: Inside. No stains. Jaws:- Clenched Teeth complete. Ears: No discharge. Thorax-Well formed. Abdomen: Uniform. Genital organs:-

Normal. Upper and Lower limbs. Free. Thorax: No No fracture of ribs. 12 C: Normal. Heart: Wt 275 gm c/s congested. Rt chamber full. Lt chamber empty. Blood clots also present in the Rt chamber. Blood: dark colored. Lungs:- Bluish pink discolouration of both lungs. (Right) 600 gm c/s congested, (left) 550 gms c/s congested. Hyoid bone: Intact. Stomach: Contents distended. Digested food particles present along with brownish coloured liquid with an alcoholic odour. Wt-325 gms. Oesophagus: Normal. Pancreas-Normal. Liver Wt. 1275 gms. Chocolate colour c/s congested. Gall Bladder;- Full. Spleen: Wt 175 gm grey colour, c/s congested. Omentum and Mesentery: Normal. Kidneys: R&L- 150 gms. c/s congested. Kidney surface congested. Intestines: Normal Abdomen: Normal. Large Intestine; Normal. Bladder: Full. Head bones: No fracture. Membranes: Normal. Brain: Wt 1600 gms. c/s pale. Spinal column: Normal. Atlas Axes.: Intact. Spinal Cord : Normal. Viscera preserved in super saturated solution of NaCl.

The Doctor, P.W. 6 issued Ex. P-10, the post-mortem certificate after retaining Stomach and its contents. Intestines and its contents, sample of liver, Kidney, Brain for the purpose of sending them for analysis. Later after the receipt of the chemical analysis report, gave his final opinion that death could have been on account of poisoning of Potassium Cyanide,

c) The autopsy on the dead body of D-1 - Malaiehamy was conducted by P.W. 7, the Doctor, who was attached to Kanyakumari Hospital and he found the following injuries:

Body lies on back, moderately Nourished, symmetrical. Colour Skin has and Irish black. No visible disease. No external injuries. Stains of motion on both thighs present. RM present in all limbs. Postmortem hypothesis seen on posterior aspect of neck, back side, thigh and limbs. Eyelids-closed. Froth stain seen on right side of Nose & right ankle of mouth. Tongue inside the mouth. Jaws - clenched. Teeth - complete. Penis & scrotum - Normal. Excremidity - free. Abdomen - Uniform. No fracture of ribs. Heart - Weight 240 gms. c/s congested. Right chambers Full. Left chambers empty. Blood - dark red. Lungs - right 540 gms c/s congested. Left 510 gms c/s congested. Bluish dis-colouration on seen over the surface of both lungs. Hyoid Bone - intact. Stomach - weight 400 gms with contents. Contents - Dark brown colour liquid seen. Alcoholic odour present. No food particles inner surface -dark brown coloured. Liver - weight 1125 gms. c/s congested. Bluish discolouration over the surface. Surface - smooth. Spleen - 250 gms. c/s congested Bluish discolouration over the surface. Kidneys - 110 gms each, c/s congested Bladder - Full. Head - No bony injuries. No fracture present. Membrane -intact. Brain - weight 1125 gms. c/s pale. Axes & Allan - intact. No spinal cord injuries.

P.W. 7 also preserved the stomach and its contents, intestines and its contents, sample of liver, sample of kidney, sample" of brain. He after receipt of the chemical analysis report issued-Ex. P-13 the post mortem certificate, in which he has opined that the death was on account of poison.

d) The post-mortem on the body of D-3 was conducted by P.W. 8, the Doctor attached to the Government Headquarters Hospital ,Nagercoil at Kanyakumari District and he found the following injuries:

A black moderately nourished male lies on back hands empty. Hyoid bone intact. Rigor mortis present in all four limbs. No external Injuries.

Internal Examination: Heart 250 gms chambers empty. Right Lung 350 gms. Left lung 300 gms. c/s congested. Stomach 250 gms containing 150 ml coffee colour foul smell fluid. Liver 1100 gms. c/s congested. Spleen 100 gms. c/s congested. Each kidneys 100 gms c/s congested. Bladder empty. Brain 1100 gms. c/s congested. Spinal cord: No fracture.

He also sent the stomach and its contents, intestine, sample of liver, kidney to the chemical analysis and later after the receipt of the report, gave his opinion under Ex. P-16, opining that the person would have died of Pottassium Cyanide poisoning.

e) Later, the investigation was handed over to P.W. 24, by P.W. 23, on 03.12.1994, the Additional Superintendent of Police. On 06.12.1994 on receipt of the final opinion of the Doctors, the crime was altered to one u/s 302 IPC and the express report is Ex. P-44. On 07.12.1994 P.W. 24 arrested the appellant while he was near Arapalayam Bus stop. He gave a statement. Thereafter, the appellant took the police party to P.W. 13, who in turn took the police party to P.W. 14. P.W. 14 in turn took them to P.W. 15, from whom they seized the cyanide under mahazar Ex. P-28. The appellant also took the police party to his house and produced a plastic cover containing cyanide. The said cyanide is. M.O.10. The same was seized under a cover of mahazar Ex. P-27, which was attested by P.W. 12. The material objects seized were forwarded to Court with a requisition to send them for analysis. He gave a requisition Ex. P-13 to the Magistrate to record the statements of P.W. 13, P.W. 14, P.W. 15 and P.W. 16 u/s 164 Cr. P.C. He also gave a requisition to the Magistrate at Nagercoil, P. W. 17, to conduct test Identification Parade. Accordingly P.W. 17 conducted Test Identification Parade on 03.01.1995 and P.W. 16 the Time Keeper though identified the appellant on the first occasion could not identify him on the second and third occasion. Ex. P-31 are the proceedings prepared by Magistrate as regards the test identification parade conducted by him. On 24.12.1994, 26.12.1994, 04.01.1995, 06.01.1995 and 21.01.1995 witnesses were examined and the final report was filed against the appellant on 27.01.1995.

f) The appellant was questioned u/s 313 Cr. P.C on the incriminating circumstances appearing against him. He did not examine any defence witness on his side, nor did he file a written statement.

6. The cause of death of D-1, D-2 and D-3 is not in dispute and that the same has been established through the evidence of the Doctors, P.W. 6, P.W. 7, and P.W. 8, who conducted autopsy and gave opinion on receipt of the chemical analysis report that all the three died on account of cyanide poisoning. The

appellant also did not dispute the said fact before the trial Court nor did he dispute the said fact before this Court. On the medical evidence, we hold that all the three deceased died on account of Cyanide poison.

7. The question now to be decided by us is whether the appellant was responsible in mixing the poison in the drink that caused the death of D-1 as well as the other two deceased namely Saravanan (D-2) and Jabar (D-3).

8. The prosecution in order to establish that the appellant mixed cyanide poison with a view to cause the death of D-1 and that D-2 and D-3 by taking the drink accidentally died relied upon circumstantial evidence.

9. It is settled principle of law that where there is no eye-witness to the murder and the case against the accused depends entirely on circumstantial evidence, the standard of proof required to convict the accused on such evidence is that the circumstances relied upon must be fully established and the chain of evidence furnished by these circumstances should be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and that it is true that in a case of circumstantial evidence, not only could the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused, vide the judgment reported in Deonandan Mishra Vs. The State of Bihar, The above proposition of the Supreme Court was later reiterated in several" other judgments and we do not propose to swell our judgment by reiterating to all the other judgments here.

10. Now we will find out whether the prosecution has succeeded in establishing all the links in the chain of circumstances to prove that the appellant mixed cyanide in the whisky bottle which was in possession of the first deceased.

11. The appellant and P.W. 11 who is the wife of the first deceased were having illicit relationship and according to P.W. 11 on 27.11.1994 her husband, D-1, and the appellant left the house at about 09.30 p.m., and that thereafter she did not see her husband alive. According to P.W. 16, he saw two persons at the weighing bridge and he issued Ex. P-22, the luggage bill after weighing the luggage. He did not identify the appellant in Court, that the appellant was in the company of the deceased and that it was the deceased and the appellant who went to his weighing bridge to weigh the articles. Thereafter, the first deceased was seen in the shop of P.Ws. 3 and 4, where they were working, and" in the said shop, D-2 and D-3 were also present in the company of P.W. 1.

12. It is the case of the prosecution that D-1 told P.W. 1, D-2 and D-3 that he has already consumed liquor along with his brother and that four ounces of whisky alone is left with him. It is the evidence of P.W. 1 that D-1 asked him as well as D-2 and D-3 to purchase their drinks and accordingly, they purchased their own drinks. P.W. 1 has further stated that the first deceased consumed whisky which he was having in his possession and was not feeling alright and therefore, D-1 requested the other two persons to consume the remaining portion of his whisky.

According to P.W. 1, D-2 and D-3 consumed the said whisky left over by D-1 and that after the consumption of whisky, all the three persons, namely, D-1 to D-3 travelled together and fell down.

13. The prosecution from the evidence of P.W. 16 and P.W. 1 wanted to establish before the trial court that the first deceased after leaving the house along with the appellant was seen by P.W. 16 and later on 28.12.1994 he was in the company of P.W. 1, D-2 and D-3 and that they consumed whisky brought by D-1 and it is only after consuming the same all the three fell down and died later. Though the prosecution has succeeded in proving that P.W. 1, D-2 and D-3 consumed whisky brought by D-1, the prosecution was not able to establish that it was the appellant who mixed cyanide in the whisky brought by the first deceased. In fact P.W. 16 was examined to establish that D-1 was seen in his company on the previous evening.

14. A test identification parade was conducted by P.W. 17, the Judicial Magistrate I, Nagercoil on the requisition Ex. P-30 given by the investigating Officer. During identification parade though P.W. 16 identified the appellant, on the first occasion, he could not identify the appellant on subsequent occasions, as the person who was seen in the company of the first deceased on the evening of 27.11.1994. He did not also identify the appellant in Court, though he was the sole appellant in the case. The prosecution therefore did not succeed in establishing that after D-1 and the appellant left the house on 27.11.1994 at about 09.30 p.m, they were seen together by P.W. 16 at 11.30 p.m on the same day.

15. Though the evidence of P.W. 1 shows that the first deceased left the house at about 09.30 p.m on 27.11.1994 and the evidence of P.W. 1 shows that the first deceased came to the wine shop at 09.30 p.m on 28.11.1994, the prosecution was not able to establish as to what happened between 09.30 p.m on 27.11.1994 and 9.00 a.m. on 28.11.1994. In the absence of any evidence as to what transpired during this period and in the absence of any other material placed before the court, it escapes once apprehension as to how the prosecution wants the Court to infer that the appellant mixed cyanide in the whisky which was in possession of the first deceased. If it is to be assumed that cyanide was mixed by the appellant at the bus stop on the night of 27.11.1994, as could be seen from the allegations in the charge, then, D-1 and his brother, who according to P.W. 1 consumed the whisky must have died much earlier before D-1 coming to the wine shop, where P.W. 1, D-2 and D-3 were present. Since according to P.W. 1, D-1 told D-2 and D-3 that he has already consumed whisky along with his brother and he has the balance of four ounces of whisky. If it is the case of the prosecution, as we stated earlier, that the appellant mixed cyanide at the bus stop, then definitely D-1 and his brother would have died on consuming the said whisky. But neither D-1 nor his brother suffered any harm. This vital link as to when and by whom, the cyanide was mixed in the whisky, is found missing in the case of the prosecution, and it has failed to prove that the cyanide was mixed by

the appellant on the night of 27.11.1994.

16. It is to be remembered at this stage, the yet another blunder committed by P.W. 23 the officer who initially took up investigation. Any officer, worth his salt, in a case of suspicious death, would have certainly examined the wife of the deceased. Though he took up investigation in the crime on 28.11.1994, which was registered u/s 174 Cr. P.C., he did not even consider it necessary to examine P.W. 11, the wife of the first deceased to find as to when the first deceased left the house. P.W. 11 was examined only by P.W. 24, the successor who took up investigation from P.W. 23 and the said statement of P.W. 11 is alleged to have been recorded on 3.12.1994. This statement of P.W. 11 was received by the Magistrate on 12.12.1994 According to P.W. 24 that on 07.12.1994, he arrested the appellant and thereafter examined P.W. 13, P.W. 14 and P.W. 15 and Seized the cyanide cake. P.W. 24 did not even whisper a word in his evidence as to how he was able to fix the identity of the appellant as the person, who could have mixed the cyanide in the bottle carried ,by D-1 As we stated earlier, in the absence of any evidence as to when the cyanide was mixed in the bottle carried by the first deceased and in view of the positive evidence of P.W. 1 that D-1 and his brother consumed whisky, but did not suffer any harm, it is difficult to accept the prosecution theory that the deceased mixed cyanide in the whisky at the bus stop on the night of 27.11.1994 when D-1 was not vigilant. In the absence of any other evidence and in view of the discussion which we have made, we find it difficult to hold that the prosecution has succeeded in establishing all the links of chain of circumstances. In any event, this is not a case where few links in the chain are found missing, but this is case where the entire chain is missing. In that view of the matter, we cannot but acquit the appellant and accordingly, the appellant is acquitted.

In the result, the appeal stands allowed: It is reported that the appellant is on bail. Therefore, the bail bonds, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid is also directed to be refunded to the appellant.