
(2000) 04 MAD CK 0026
In the Madras High Court
Case No : Criminal Appeal No. 836 of 1999

Kaliammai

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 452

Citation : (2000) 2 ALT(Cri) 332 : (2000) CriLJ 3440 : (2000) 2 LW(Cri) 686

Hon'ble Judges : I. David Christian, J

Bench : Single Bench

Advocate : D. Veerasekaran, for the Appellant; M. Saravanan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

I. David Christian, J.—This appeal is preferred by the petitioner Kaliammai against the order passed in Cri. M.P. No. 372 of 1999 in SC

No. 115 of 1998, on the file of II Additional Sessions Judge, Thanjavur dated 18-8-1999.

2. The petitioner Kaliammai is the wife of late Karuppiah and the petitioner and Karuppiah were residents of Melapoongudi village in

SivagangaTaluk in Sivagangai District. The petitioner Kaliammai is residing in her house in the native village where her children are also residing.

The husband of Kaliammai, namely late Karuppiah was running a hotel under the name and style ""Nithyakalyani Hotel"" at Mary's corner in

Thanjavur Town. Said Karuppiah was residing in a house nearby situated in Pappupillai colony and looking after the hotel business. On 21-9-1997

Karuppiah left the hotel at 2-00 p.m. in the afternoon and went to his house to take rest. Karuppiah used to return to the hotel by 8-00 or 8-30

p.m.

One Sivaraman, a nephew of late Karuppiyah was assisting Karuppiyah in running the hotel and he was residing in Thanjavur and working in the

hotel for the post more than 20 years. He used to be in charge of the hotel during the absence of Karuppiyah. On 21-9-1997 also he was looking

after the hotel. Karuppiyah who had gone to his house for taking his afternoon nap and did not return even after 8-30 p.m. and therefore Sivaraman

sent some of the employees to the house to look for Karuppiyah. They returned and stated that the door of the house where Karuppiyah was

residing was bolted from inside and inspite of their knocking the door, Karuppiyah did not answer and therefore they came back and informed this

to Sivaraman. Sivaraman went to the house where Karuppiyah was residing and since front door was bolted from inside, he went to the backside

and found the backdoor remaining opened. When he entered the house, he saw the dead body of Karuppiyah lying in the front room near his bed

and he had an injury on the head, a stab injury on the neck, besides other injuries all over the body. There was profused bleeding and Karuppiyah

was found dead and by the side of Karuppiyah, a gold chain was found lying. The wooden almirah kept in the room was found opened and

ransacked. One Narasappan who is the uncle of Karuppiyah who is also a native of Melapoongudi village was running a pawn broker shop at

Thanjavur and he is also settled in Thanjavur for the past many years and was closely associated with late Karuppiyah. He used to advance monies

on pledge of gold articles and whenever he was short of money, he used to take the pledged jewels and in turn give them to Karuppiyah and used

to borrow money. In this manner till the date of occurrence, he has handed over to Karuppiyah gold jewels of varying in size, weight and type and

the total value of the pledged articles will be about Rupees 1,30,000/- and roughly they would be weighing about 35. 1/2 sovereigns. All of them

were gold jewels. He also knew that Karuppiyah used to keep all the jewels in the wooden almirah in his house under lock and key. At 9-00 p.m.

when he heard about the murder of Karuppiyah, he immediately went to his house and found Karuppiyah lying dead in the house with injuries on his

head and other parts of the body. He found the bureau has been ransacked and gold jewels have been removed.

Sivaraman, the nephew of late Karuppiah went to the police station on the same day at about 10-30 p.m. and lodged a complaint with regard to

murder of Karuppiah and missing of jewels. In the same report, Sivaraman also has pointed out the suspicion about involvement of three persons

namely Jayaraj, Lakshmanan and Karikalan. Jayaraj and Lakshmanan were employed as workers in the hotel run by Karuppiah and Karikalan

was previously employed in the same hotel, but subsequently was dismissed by Karuppiah. Some blood-stained clothes belonging to Jayaraj and

Lakshmanan were also found in the back portion of the house. Karuppiah has been done to death by beating with wooden logs and three wooden

logs were found thrown in the backyard of the house. Karuppiah used to store fire wood in front of the house for his use in the hotel. The Sub-

Inspector of Police, south police station, Thanjavur on receipt of the complaint from Sivaraman, registered a case in his station Cr. No. 613 of

1997 under Sections 302 and 380, IPC.

The investigation of the case was taken by the Inspector of Police, Thanjavur west police station and he conducted inquest over the dead body in

the presence of Panchayatdars. He prepared an observation Mahazar indicating the position of the dead body and wooden almirah, having been

opened and contents ransacked. The body was sent for post-mortem. The Inspector of Police during the course of investigation on 23-9-1997

arrested the accused Jayaraj, Lakshmanan and Karaikalan at the Central Bus stand in Salem. All the three accused separately gave confession

statements and on the information furnished by these accused the Inspector of Police traced one Nallathambi, resident of Salem, who is the elder

brother of Karikalan. When the Inspector examined Nallathambi, he produced the stolen jewels, cash and other articles. These jewels were seized

by the Inspector of Police. The Inspector of Police has sent the seized articles including the jewels to Court for remand. After completing the

investigation, he laid the charge-sheet. The accused were charged for the offences under Sections 449, 302, 392 r/w. 397 IPC and they were

committed to take their trial before the Sessions Judge, Thanjavur by the Judicial Magistrate No. 1, Thanjavur.

3. The case was taken on file as S.C. No. 115 of 1998 before the II Additional Sessions Judge, Thanjavur and by the judgment dated 18-1-1999

he held that the charges against the accused were not proved beyond reasonable doubt and therefore acquitted the accused of the charges. During the course of trial Sivaraman was examined as P.W. 1 and Narasappan was examined as P.W. 2. The prosecution also examined other employees in the hotel run by Karuppiyah as P.Ws. 3 and 4. Nallathambi from whom the jewels were recovered on the information furnished by the accused was examined as P.W. 5. However, P.W. 5, turned hostile. P.W. 6 another witness from Salem who was also examined to prove the confession and seizure of jewels, did not support the prosecution case and was permitted to be treated as hostile. The expert attached to forensic science Laboratory who has made an observation mahazar of the scene and who has examined the bloodstained articles taken from the scene was examined as P.W. 7. P.W. 8 is the Photographer, who took photographs of the scene. P.W. 9 is the Doctor who conducted postmortem over the dead body of Karuppiyah. P.Ws. 11 and 12 are the Inspectors of police who have conducted investigation, who have arrested the accused and who have seized the properties. P.W. 10 is the Head clerk attached to Judicial Magistrate Court, Thanjavur who has spoken to sending the blood-stained articles for chemical examination. P.W. 13 is also an Inspector of Police who completed the investigation and laid charge-sheet.

The prosecution has filed Exs. P-1 to P-27 documents and has marked M.Os. 1 to 68, Besides blood-stained articles namely the wooden logs, sample blaster, sample clothes worn by the deceased, other M.Os are all gold chain recovered from the scene, gold jewels or articles seized on the information furnished by the accused during the course of investigation.

4. By the judgment dated 13-1-1999, the learned Sessions Judge has passed orders with regard to disposal of material objections (objects) marked in the case by stating that M.Os. 1, 7, 32, 51, 52 and 63 shall be returned to Kalliammai wife of late Karuppiyah. It is ordered that M.Os. 18 to 31, 39 to 59, 57 to 62 which are all gold jewels and a wrist watch, have to be returned to the persons entitled to the same and since sufficient evidence is not available at the time of trial with regard to persons who are entitled to receive them, the Sessions Judge ordered a separate enquiry u/s 452, Cr. P.C. and to decide with regard to return of those valuable articles.

5. The judgment of the learned II Additional Sessions Judge in S.C. No. 115 of

1998 was delivered on 13-1-1999. The accused have been

acquitted and there is no appeal preferred by the State against the accused or by the persons who are interested in late Karuppiyah.

6. Even though the learned Sessions Judge himself in the judgment has ordered that a separate enquiry u/s 452, Cr. P.C. shall be held for deciding

the entitlement of persons to receive the M.Os., he himself has not taken up the enquiry and he also did not forward the material objects to the

Chief Judicial Magistrate for holding enquiry as ordered in the judgment for disposal of the valuable articles seized and marked in the Sessions

case.

7. However, Kaliammai the wife of late Karuppiyah, filed Cri. M.P. No. 372 of 1999 before the II Additional Sessions Judge, Thanjavur himself

who has taken up the petition for enquiry and passed orders with regard to disposal of M.Os. marked in the Sessions case. It is significant to note

that Kaliammai, the widow of Karuppiyah, filed the petition praying for return of the jewels and cash, namely M.Os. 1,7,32,51,52 and 63 which

were already ordered to be returned to her as per the judgment in the case. She has also preferred a claim in respect of M.Os. 18 to 31, 39 to 50,

57 to 62 and also a Wrist watch. Learned Sessions Judge during the course of enquiry into the claim petition has examined the petitioner

Kaliammai as P.W. 1 and Narasappan as P.W. 2. But, by the impugned order dated 18-8-1999 the learned Additional Sessions Judge has

dismissed the application and ordered confiscation to state of all the jewels cash and wrist watch stating that the petitioner has not established her

claim for return of these jewels to her.

8. The petitioner Kaliammai has prayed for return of not only the jewels pledged with late Karuppiyah but also prayed for return of M.Os. 1,7,32,

51,52 and 63 stating that they belonged to her husband and therefore she is entitled to receive the same. Learned Sessions Judge himself by the

judgment made in the Sessions case has already ordered return of these articles to Kaliammai the wife of late Karuppiyah. But, even though such an

order has been passed and an enquiry u/S. 452, Cr. P.C. was ordered only with regard to return of other jewels, while dismissing the petition, the

learned Sessions Judge also dismissed the claim made by Kaliammai in respect of the jewels and cash admittedly belonged to her late husband

Karuppiah. Learned Sessions Judge was completely wrong in rejecting the claim of Kaliammai in respect of M.Os. 1, 7, 32, 51, 52 and 63

ordered by the same Sessions Judge to returned to her. Therefore, when the learned Sessions Judge has chosen to dismiss the petition in to which

included these articles, it becomes obvious that the learned Sessions Judge has not applied his mind while disposing the claim made by the widow

of late Karuppiah.

9. M.O. 1 is the gold chain worn by the deceased and which has fallen down during the struggle in course of which he was murdered brutally and

this has been recovered from the scene from the side of the dead body by the police spon after the occurrence. In fact M.O. 1 has been proved

through the evidence of P.W. 2 Narasappan, who has visited the scene soon after the occurrence before the Police Officials. M.Os. 32, 51, 52

and 63 are all cash change and currency notes which were recovered from the persons of the accused as result of the confession made by them to

the police during investigation. These articles have been identified as belongings to late Karuppiah and therefore rightly they have been also ordered

to be returned along with M.O. 1 gold chain to Kaliammai. So, so far as the order of confiscation made by the learned Sessions Judge in respect

of M.Os. 1, 7, 32, 51, 52 and 63 is concerned, there can be no two opinions that it is liable to be set aside and they have to be delivered to

Kaliammai, the wife of late Karuppiah as per the judgment of the learned Sessions Judge made in S.C. No. 115 of 1998.

10. I have perused the case diary, the statements recorded from the witnesses during investigation, the statements recorded from the accused when

they were arrested by the Police, mahazar, prepared by the police and also the judgment made in S.C. No. 115 of 1998, Moreover we have the

additional piece of evidence by way of examination of the petitioner and Narasappan during the enquiry into Cri. M.P. No, 372 of 1999 by the

Sessions Judge himself.

11. The documents above referred to disclose the following facts which are not controverted and no contra evidence has been adduced.

Late Karuppiah is a resident of Melapoongudi village in Sivagangai district and P.W. 1, the appellant, namely, Kaliammai is the wife of late

Karuppiah. On being informed about the brutal murder of her husband at

Thanjavur, where he was residing and running a hotel Kaliammai has reached the house of Karuppiah even on the same night and she has seen the dead body lying at the scene, even at that time she has identified M.O.I gold chain which late Karuppiah was wearing and which belonged to him. It is unfortunate that Kaliammai, the widow of late Karuppiah was not even examined during the trial of Sessions case in respect of murder of Karuppiah.

Sivaraman was examined as P.W. 1 in the case and P.W. 2 is Narasappan. During the course of evidence, both P.Ws. 1 and 2 have stated that

P.W. 2 is a money lender and he is a licensed pawn broker. He used to lend money on receipt of pledge of gold jewels. P.W. 2 is also closely

associated with the deceased Karuppiah. Karuppiah seems to have been doing well and was running the hotel for many years and he was a man of

means and was possessed of lot of cash. It has also come out in evidence of P.Ws. 1 and 2 that whenever P.W. 2 was short of funds, he used to

go to Karuppiah and by offering the pledged jewels with him, he used to take money from Karuppiah for his business. So, number of gold jewels

which have been originally pledged by third parties with P.W. 2 Narasappan thus happened to be entrusted with late Karuppiah, who himself has

advanced amounts to P.W. 2 keeping those jewels as security for the amount thus lent.

P.W. 1 Sivaraman is non-else than the nephew of late Karuppiah. He was assisting Karuppiah in running the hotel and he was with Karuppiah for

20 years. He has also spoken to the fact that Karuppiah used to lend money to P.W. 2 and he used to receive jewels as pledge from P.W. 2 with

whom third parties have already pledged and raised loans it is now Karuppiah who was living alone in Thanjavur running a hotel was possessed of

lot of cash and jewels obviously Karuppiah was living alone in the house which is also situated close to the hotel.

Of the three accused who were charged for the murder of Karuppiah, accused 1 and 2 were employees working under Karuppiah even at the

time of murder while the third accused Karikalan was a dismissed employee of Karuppiah since Karuppiah was living alone in the house and since

these accused were all employees under him. They must have come to the house of Karuppiah now and then and they must have also come to

know that Karuppiyah was always possessed of cash and jewels. It is only with the object of committing robbery of jewels and cash, these accused

have entered the house and in course of robbery they have also committed murder and Karuppiyah died due to multiple injuries sustained by him,

The evidence of P.Ws. 1 and 2 in the Sessions case with regard to the fact of late Karuppiyah being entrusted with jewels and being in possession

of lot of cash was spoken to by them and in this aspect there was no cross-examination and this has not been denied even by the accused.

12. No doubt on going through the judgment of the learned Sessions Judge, I am including to hold that prosecution has not been conducted in an

efficient manner expected in a murder case and P.W. 2 has not even asked to identify these gold jewels during the time of trial. He was asked to

identify M.O. 1 which was recovered from the scene and which belonged to late Karuppiyah. The definite case of the prosecution is Karuppiyah was

possessed of lot of gold jewels which he received as pledge on the strength of which he advanced money to P.W. 2 Narasappan.

So, P.W. 2 Narasappan would be the proper witness to identify the gold articles which were subsequently recovered from the accused in the

course of investigation in pursuance of their arrest and discovery statements given by them. So far as enquiry with regard to return of properties

concerned in a criminal case, it is permissible and lawful even to rely upon the statements made by the witnesses during the course of investigation

recorded u/s 161(3) Cr. P.C. perhaps the only judicial enquiry in which these statements can be relied upon as evidence is an enquiry with regard

to disposal of properties in a criminal case. If only the learned Sessions Judge has gone through the case diary and has perused the statements

recorded from these witnesses and correctly appreciated the evidence of prosecution at the time of trial, there could have been no difficulty for the

learned Judge to make orders with regard to proper disposal of these valuable items. Learned Sessions Judge seems to have examined witnesses

in a mechanical way and the learned public Prosecutor who was in charge of the prosecution case also seems to have been not bestowed enough

attention over examination of witnesses as a result of which P.W. 2 during his examination as a witness has failed to identify and mark these

valuable M.Os. in which case even at that stage he would have stated that originally those items were pledged with him by third parties and he in

turn pledged them with Karuppiah as security for the money borrowed by him from Karuppiah. Anyhow even at the time of trial, there is no contra

evidence of P.Ws. 1 and 2 with regard to pledging of jewels by P.W. 2 with late Karuppiah.

13. Learned Sessions Judge cannot be found fault with when he has ordered a separate enquiry u/s 452, Cr. P.C. with regard to disposal of these

valuable jewels which are weighing about 351/2 sovereigns and which are valued at Rs. 1,30,000/-. Kalliammai who was not examined at the time

of trial has filed criminal Miscellaneous petition praying for return of jewels and one has also clearly stated in the enquiry that barring certain

valuable jewels which belonged to her late husband, all the other jewels were pledged with her husband by P.W. 2 Narasappan, who in turn

obtained these gold jewels from third parties. In fact it is not as if that during enquiry u/s 452 Cr. P.C. P.Ws. 1 and 2 have just made bald

statement asking for return of these jewels without disclosing the source and basis of their claim. P.W. 1 has clearly admitted that barring few items

which belonged to her husband, rest of the items were all pledged by P.W. 2 Narasappan and the persons who have pledged them with

Narasappan, after coming to know of the recovery of the jewels in the murder case have been coming and pestering her demanding return of

jewels. P.W. 2 has also clearly stated that these jewels have been pledged with him by third parties and he in turn pledged them with Karuppiah

for borrowing money on security of those jewels. P.W. 2 besides being closely related to Karuppiah, was running a pawn shop under the name

and style ""Sri Murugan Bankers"". In fact P.W. 2 has produced receipts for accepting those jewels as pledges from third parties which have been

produced and marked in the enquiry as Exs. P-2 to P. 82. Learned Judge has also found that writings made in those receipts are all made in the

hand of P.W. 2. P.W. 2 has also stated that he is running the pawn shop under the name and style ""Sri Murugan Bankers"" and he has also

obtained a licence for running the pawn shop. Even during the investigation at the earliest opportunity in the statement made u/s 161(3) Cr. P.C,

P.W. 2 has clearly stated that he has got a ledger showing pledge of these articles with him and he also seems to have produced the ledger to the

investigating officer at the time of investigation. Learned Judge has discussed the records produced by P.W. 2 stating that they are not maintained

in the form required under the Pawn Brokers Act.

14. In the enquiry conducted with regard to disposal of properties concerned in a crime, the learned Sessions Judge is expected to appreciate the

evidence and order disposal of the same and it is only a summary enquiry and the learned Judge is called upon to decide as to from whom they

have been recovered and as to who are entitled to possession of those articles. In fact if any complicated question is raised with regard to title of

those properties, the learned Sessions Judge need not bother himself because his decision will always be subject to any decision by a competent

civil Court with regard to title and possession of movables concerned in a crime. This is especially so when there has been no contra evidence and

there is no rival claim made by any person. The Sessions Judge has not rejected the case of P.W. 2 that all these Jewels have been entrusted to

P.W. 2 by third parties as pledge for money borrowed. I can understand if those third parties have come forward to claim over and above the

head of P.W. 2, in which case the learned Judge would be even justified in refusing to return the jewels to P.W. 2. Moreover, the learned Sessions

Judge seems to have found fault with P.W. 2 for not producing more evidence and documents. As per the judgment, an enquiry has been ordered

u/s 452, Cr. P.C. to find out the correct persons who are entitled to receive the gold jewels which are marked in the Sessions case and he could

have even directed enquiry by the Chief Judicial Magistrate, but the enquiry has to be conducted in the manner provided under the Code of

Criminal Procedure and if the Judge has entertained any doubt it would have been open to him to summon those persons who are said to have

pledged those jewels with P.W. 2. Even P.W. 1 the wife of late Karuppiyah stated that owners of those jewels are coming and demanding jewels

because they were finally found to have been given to her husband by P.W. 2 who was the original pawner.

15. P.W. 2 has also spoken in support of the claim made by P.W. 1 and he had no objection for all these jewels being given to P.W. 1, the widow

of late Karuppiyah because Karuppiyah was entitled to get back the money lent by him as a security for which these jewels were entrusted to him by

way of pledge to P.W. 2. It is unfortunate that Karuppiyah was murdered and these jewels were removed, within two days after the murder, the

Police have done a good job and have seized the jewels from the accused at a place far away from the scene of crime. Statements have been recorded from the accused, jewels have been recovered in the presence of mahazar witness. Who unfortunately turned hostile during the course of trial. It is not as if the accused have made a claim in respect of these jewels. The accused have just denied the possession of incriminating jewels or the information furnished by them. Nallathambi from whom these jewels were recovered by the Police as a result of discovery statements given by the accused has also naturally turned hostile because he is non-else than the elder brother of third accused Karikalan. But, the fact remains that the jewels which have been removed from the house of late Karuppiyah after brutally murdering him were all recovered intact and cash also have been recovered and produced before the criminal Court.

16. There is absolutely nothing to suspect the claim made by P.W. 1 supported by the evidence of P.W. 2 Narasappan. There can be no hesitation in accepting the case of the prosecution that these jewels have been produced and marked in the criminal trial belonged to third parties and they have been originally pledged with P.W. 2 Narasappan who in turn pledged then with late Karuppiyah from whose possession they have been removed by thieves, who have also committed the more serious crime of murder. It is unfortunate that the persons who have been responsible for the murder and theft of these articles have not been punished for want of evidence. But, so far as entitlement of P.W. 1 to receive the jewels from the Court is concerned, there can be no controversy. P.W. 1 also do not claim all these jewels for herself and she has also sworn to the fact that demands are being made on her by the persons who have pledged them with P.W. 2 Narasappan. Narasappan also has no objection for returning all the jewels to P.W. 1 Kaliasammai, with whose help would see to it that these jewels are returned to the persons who pledged them with him. In fact before returning the jewels the persons who have pledged them have to pay the money borrowed from P.W. 2 and since P.W. 2 has borrowed money in turn from Karuppiyah, the money has to go to P.W. 1, the widow of Karuppiyah, who is the victim of the murder and robbery. It is not as if the persons who have pledged these jewels have chosen to come to the Court making claims against P.Ws. 1 and 2. There is

absolutely nothing to show that P.Ws. 1 and 2 also have any intention of cornering these jewels for themselves. Late Karuppiyah has been in

possession of these jewels at the time of his death and all these jewels were removed by culprits and therefore when those jewels were discovered

thanks to the nice investigation done by the police, they must be restored to the legal heir of Karuppiyah, namely Kaliammai. Kaliammai is definitely

entitled to possession of these jewels and therefore the learned Sessions Judge was absolutely wrong in ignoring her claim.

17. The fact that the learned Sessions Judge has not applied his mind becomes obvious from the fact that he has not returned the gold chain which

admittedly belonged to Karuppiyah which was lying in the scene and which was seized by the Police during the course of investigation. If the learned

Judge wanted to return the other jewels to the persons actually who are the owners, he must have embarked upon a full-fledged enquiry by

summoning these persons who have pledged the jewels with P.W. 2 because P.W. 2 has supplied the names of those persons and their names are

also found in Exs. P-2 to P-82. Therefore, in the absence of third party claims and in the absence of any evidence or ground to suspect that P.W.

1 would not return the jewels to the persons who have pledged them, the learned Sessions Judge was not correct in dismissing the claim and

ordering confiscation. The State is the last person to whom the jewels could have been returned and the prosecution also never claimed. In fact the

learned Government Advocate also has absolutely no objection for allowing this appeal and for returning the jewels to P.W. 1, who will be holding

the jewels in trust on behalf of the persons who have pledged them with P.W. 2 who in turn has pledged them with late Karuppiyah. It is only

natural and reasonable that the persons who have borrowed money on pledge of these jewels shall pay back the money to P.W. 1 and get the

jewels. For the reasons stated above, the order passed by II Additional District Sessions Judge, Thanjavur in Crl. M. P. No. 372 of 1999 is liable

to be set aside.

17A. In the result, the appeal is allowed and M.Os. 1, 7, 32, 51, 52 and 63 and M.Os. 18 to 31, 39 to 50, 57 to 62 and the wrist watch are all

ordered to be returned to P.W. 1 Kaliammai, the widow of late Karuppiyah the victim in murder case in S.C. No. 115 of 1998. Learned Sessions

Judge is directed to issue notice to the claimant P.W. 1 the widow of late Karuppiyah to whom these jewels have to be returned without any further delay. Consequently the appeal is allowed. Cri. M.P. is closed.