
(2003) 08 MAD CK 0021
In the Madras High Court
Case No : Criminal Appeal No. 414 of 2001

Kanavaipitchai

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 366, 376, 376(2)

Citation : (2003) 08 MAD CK 0021

Hon'ble Judges : S. Sardar Zackria Hussain, J; A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : P. Venkatasubramanian, app, for the Appellant; V.M.R. Rajendran, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—The investigation done by the Inspector of Police, Dindigul Town South Police Station, in Cr. No. 346 of

1997 revealed that the appellant/accused had committed rape on the deceased by name Hajaraammal aged seven years and thereafter murdered

her. Charges were framed against the appellant/accused under Sections 302 I.P.C.; 366(a) I.P.C.; 376(2)(f) I.P.C. and 201 I.P.C. The appellant

faced trial for the abovesaid charges before the Additional Sessions Judge, Dindigul. The learned Additional Sessions Judge, in his judgment dated

2.3.2001, found him guilty as charged and sentenced him to undergo imprisonment for life for the conviction u/s 302 I.P.C.. 10 years Rigorous

Imprisonment was imposed for conviction u/s 366(a) I.P.C. and again a similar term for conviction u/s 376(2)(f) I.P.C. The trial Judge sentenced

the accused to undergo 3 years Rigorous Imprisonment for the conviction u/s 201 I.P.C. Questioning the correctness of the judgment of the

Additional Sessions Judge, Dindigul, the above appeal has been preferred.

2. The prosecution, in its endeavour to bring home the guilt of the accused, examined as many as 20 witnesses and marked Exs.P1 to P24 and produced M.Os. 1 to 10.

3. The case of the prosecution as unfolded from the evidence available on record, can be narrated as under:

P.W.2 is the wife of P.W.1 and the deceased is their child.

P.W.1 resides at door No.16 in Asanathpuram, Pedambur, Dindigul. P.W.1 is a coolie by profession and is working in the shop of one Syed

Mohammed. P.W.2 is working as a servant maid in a house in the same village. Apart from the deceased, P.Ws.1 and 2 have two more children

by name Mohammed Sulaiman and Ragamathiza, who are working in a shoe company. The accused is residing close to the house of P.Ws.1 and

2. P.W.1 as usual went for his work and came back to the house at about 12.30 p.m.

But however, PW-2 had not come back by that time. Hence, PW-1 went near Madurai Veeran Temple, where some children were sitting. Shortly

thereafter, the deceased also came there. The deceased asked PW-1 to give her some money and whereupon, he gave her 50 paise. PW-2

returned home at about 3 P.M. after finishing the work and as she felt tired, she slept. At about 4 P.M., PW-1 went back home and finding PW-2

was asleep, he woke her up and asked her to serve food for him. PW-2 then asked PW-1 about the whereabouts of the deceased, when PW-1

informed about his giving 50 paise to her at about 1.30 P.M. After sometime, the other two children of PWs-1 and 2 returned. When PW-2 asked

them, they were not aware about the whereabouts of the deceased. The two children went to the house of one Kuppi and another person, who is

running a mutton stall. As the deceased was not there, both PWs-1 and 2 went in search of the deceased and in fact, they searched till mid-night.

The next day also, PWs-1 and 2 searched for the deceased. As they were not able to trace her, they went and gave a complaint in the police station.

PW-16 is the Head Constable at Dindigul Town (South) Police Station at the relevant time. At about 6 P.M. on 2.5.1997, PW-1 came and gave

a complaint that his daughter by name Hajira Ammal aged about 7 years is

missing from 4 P.M. on 1.5.1997. On the basis of the said complaint,

Cr. No. 346/97 was registered. Ex.P-16 is the F.I.R.

PW-9 is a resident of Asanathpuram in Dindigul. On 2.5.1997 at about 11.30 P.M., he came out of his house to pass urine. At that time, he saw

the accused standing in front of his house. PW-9 saw him in a frightened mood. PW.10 is also a resident of the same area. On 2.5.1997, he went

to Pithalaipatti and came back at about 11.45 P.M. and he saw the accused coming from the house of one Mohammed Ibrahim, owner of the

mutton stall. PW-11 is also a resident of the same area and he is working in a tea stall. On 2.5.1997 at about 1 A.M., the accused came to that tea

shop. He first asked for some water with which he washed his hands. Thereafter he took a cup of tea and then left that place.

PW-3 is a resident of the area, wherein PWs-1 and 2 reside. He used to leave his house to his shop at 4 A.M. and come back at 1 P.M. in the

afternoon. On 3.5.1997, as usual, he left at 4 A.M. and he was about to leave that place in a bicycle, When he noticed somebody lying down at

the entrance. With the help of the torch light, he could identify that it was the deceased. He immediately informed PWs-1 and 2. Both of them

came and saw the deceased and out of grief, they cried aloud and people gathered.

PW-1 thereafter went to the police station and informed about the availability of the deceased near the house of PW-3. PW-20, the Inspector of

Police, when he was on duty, was informed by the Sub Inspector of Police about this and he proceeded to the police station. The crime was then

altered as one u/s 376 IPC and suspicious death. Express Report Ex.P-20 was prepared and sent to the Court of the Judicial Magistrate.

Thereafter, the Inspector of Police went to the scene of occurrence at 6 A.M. and prepared Ex.P21 sketch and observation mahazar Ex.P-2.

Assistance of the Finger Print Expert and also the sniffer dog was sought for. Inquest over the body of the deceased was held between 8 and 11

A.M. in the presence of panchayatdars and Ex.P22 is the inquest report. At about 11.15 A.M., hair to the length of 5 c.m. that was found in the

right hand of the deceased was seized. The Inspector of Police then sent a requisition to the Government Hospital to conduct autopsy on the body

of the deceased. On the same day, the Inspector examined a number of

witnesses.

PW-19 is the Doctor in the Government Hospital, who conducted autopsy on the body of the deceased on 3.5.1997 in the afternoon. Ex.P-19 is

the post mortem certificate issued by her. In the said Certificate, the Doctor made the following notings:-

A decomposed body lying on its back. Symmetrical blebs and peeling of the skin present, hairs are loosening. Eye balls are protruding. Tongue is slightly protruding.

Teeth 6 6

6 6 Mammary glands not well developed.

Internal Examination:-

Thoracic cage. Normal. Heart-decomposed. Lungs-decomposed. Hyoid bone intact. Stomach contain 100 gms. Of partially digested food

particles and Liver, Spleen decomposed. bladder empty. Uterus - small (childhood uterus) Skull bone - intact. Brain liquified with in the

membranes. Small intestines protruding through the vaginal orifice hymen teared and seen with few tiny blood clots. Vagina admits 2 fingers and

vaginal wall and bouch of Boughlas. Pelvic floor ruptured - Through this rent intestine protruding outside through the vagina - uterus Normal.

Childhood uterus.

PW-12 is a resident of Asanathpuram. On 5.5.1997 at about 8 A.M., he along with his friend were standing in front of a Tea Stall for the purpose

of taking tea. The accused then came there and asked PW-12 to come aside. The accused told PW-12 that he had raped the deceased and

murdered her and that after so doing, he kept the body in his house and that at about 12.30 Hours, he placed the body near the house of PW-3.

The accused then told PW-12 that he is afraid that the villagers would beat him and requested PW-12 to take him to the police station. PW-12

then took him to the Dindigul Town (South) Police Station at about 9 A.M. in the morning. The accused confessed his guilt and gave a statement.

PW-12 and two others by name Mani and Abu Thahir signed the said statement. PW-20, the Investigating Officer arrested the accused and he

made a voluntary confession statement. The accused took the police party and

witnesses to his house and produced MO-4 towel and MO-5

piece of a gunny bag. The Inspector then made necessary requisition before the Judicial Magistrate to send the accused for necessary medical examination.

PW-18 is the Doctor attached to the Government Hospital, Dindigul. The accused was brought for medical examination pursuant to the order of

the Judicial Magistrate No. III, Dindigul. The Doctor, after examining the accused, issued the certificate Ex.P-17. In the said Certificate, the

Doctor has stated as under:-

1. (a) Sparse mustache, sparse axillary hair, public hair, well developed. Voice change present. Both testis well developed. Secondary sexual characters developed. Teeth

7 7

7 7

External genitalia circumcision done-well developed. Age verified about 19 years (Nineteen years).

(b) Left lower limbs shortened - ? Residual Polio-observed. Physical capacity normal.

2. No external injury seen over body of the accused as well as in private parts. (both congenital as well acquired).

3. Anatomically, neurologically - there is no evidence to say that he is impotent.

4. Blood & Hair samples taken & preserved.

Then, the hair sample taken by the Doctor and the one that was seized from the right hand of the deceased viz., MO-2 were sent for analysis.

Ex.P14 is the report from the Director and Chemical Examiner to Government, Madurai-20, wherein, he has stated that both the hair pieces viz.,

the one seized from the right hand of the deceased and the sample taken from the accused by the Doctor found to be similar.

The Inspector of Police examined the witnesses on various dates and ultimately filed his final report on 20.08.1997.

4. When questioned u/s 313 Cr.P.C., the accused denied having any complicity in the commission of the offence.

5. PW-19 is the Doctor at the Government Hospital, Dindigul, who conducted

autopsy on the body of the deceased in the afternoon of 3.5.1997

pursuant to the requisition Ex.P-18 from the Inspector of Police. Ex.P-19 is the post mortem certificate issued by the Doctor. According to the

Doctor, the deceased would have died of the shock due to injury to the vagina about 48 to 72 hours prior to autopsy. The medical evidence in this

case is amply clear that the deceased would have died only because of homicidal violence.

6. The question is whether the prosecution has brought home the guilt of the accused.

7. This is a case of circumstantial evidence. The law is well settled that each and every incriminating circumstance must be clearly established by

reliable and clinching evidence and the circumstances so proved must form a chain of events from which an irresistible conclusion about the guilt of

the accused, can be safely drawn and further it must be that no other hypothesis against the guilt is possible. Or in other words, the court must

satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events are such that they

rule out the reasonable likelihood of the innocence of the accused. When an important link goes, the chain of circumstances gets snapped and the

other circumstances cannot, in any manner, establish the guilt of the accused, beyond all reasonable doubt.

8. The question is whether the prosecution has brought home the guilt of the accused.

The prosecution has relied on four circumstances, namely,

(1) The evidence of P.W.12 by name Mubarak to whom the accused at about 8.00 a.m. on 5.5.1997 confessed having raped and murdered the deceased.

(2) The hair that was seized from the right hand of the deceased, on analysis found similar to the samples taken by the Doctor from the accused.

(3) Pursuant to the confession statement, a gunny bag M.O.5 was seized from the house of the accused and it was found to contain human blood.

(4) P.Ws.9 and 10 found the accused in the very late hours of 2.5.1997 and P.W.11 saw the accused in the early morning of 3.5.1997 and that he appeared frightened.

9. Circumstance No. 1: P.W.12 resides and doing business in Hasanathpuram in

Dindigul. On 5.5.1997 at about 8.00 a.m., P.W.12 along with two others by name Mani and Apathagir were standing near the tea stall of one Ibrahim for the purpose of taking tea. At that time, the accused came fully exhausted and called P.W.12 aside. The accused told P.W.12 that he had raped and murdered the deceased. The accused further told this witness that he is afraid of the villagers as they may assault him and requested P.W.12 to take him to the police station. Thereafter P.W.12 and two others took him to the police station where the accused gave a statement and in which P.W.12, Mani and Apathagir signed. Ex.P5 is the admissible portion. The accused offered to take the police party and show the place where he originally kept the body of the deceased in his house and the gunny bag used by him to cover the deceased so also the towel he used to strangle the deceased. This witness has been subjected to cross examination by the defence. But however, nothing has been elicited in favour of the accused or anything for this court to disbelieve the testimony of this witness. In brief, we come to the conclusion that P.W.12 is a witness who has infused confidence in the minds of this court.

10. Circumstance No. 2: P.W.3 is a resident of Hasanathpuram in Dindigul and running a mutton stall. As usual, on 3.5.1997 at about 4.00 a.m. he just started to go to his shop. At that time, he saw near the entrance of his house someone lying. With the help of a torch light he could find that it was none else than the deceased. P.W.3 informed about this to P.Ws.1 and 2 and they in turn informed the police about this. Police arrived at the spot and found some hairs in the right hand of the deceased to a length of 5 cm. The hairs were seized in the presence of P.W.6 Sheik Dawood and another under a mahazar Ex.P-3.

The Investigating Officer filed a petition before the Judicial Magistrate to subject the accused for medical examination and the same was allowed by the Judicial Magistrate-III, Dindigul.

P.W.18 is the Doctor attached to the Government Hospital, Dindigul who examined the accused. According to the Doctor, the accused was 19 years old and further opined that both testis well developed and secondary sexual characters also developed. The Doctor also took blood and hair samples. Ex.P17 is his report.

The hair that was seized from the right hand of the deceased as well as the

samples taken from the hair of the accused by Doctor P.W.18 were sent for necessary examination. Ex.P14 is the communication dated 20.6.1997 from the Assistant Director and Assistant Chemical Examiner to Government, wherein the examiner, on comparison, found that the hair seized from the right hand of the deceased as well as the samples taken by the Doctor from the accused, were similar.

In *Kanbi Karsan Jadav Vs. State of Gujarat*, the court considered the case of the prosecution which relied on the evidence of an approver and three aspects which connected the appellant with the commission of the offence. In that case, the accused made a voluntary confession statement to the police and pursuant to which a scarf was recovered. In that scarf, there were hairs of both the accused and the deceased. The court considered it as one of the circumstances, which can be taken note of. In that case, the Court observed as under:-

... The third piece of evidence to be considered is the recovery of the pania, i.e., scarf. No doubt there is no statement by the approver that the scarf in which the dead body was taken was that of the appellant. But a scarf has been found which the High Court has held as belonging to the appellant and hairs both of the deceased as well as of the appellant were found on that scarf. It was argued that the finding of the hairs was of no consequence and at least the Chemical Examiner was not the proper expert who could depose as to the similarity or otherwise of the hairs. The writers on medical jurisprudence, however, have stated that from the microscopic examination of the hairs it is possible to say whether they are of the same or of different colours or sizes and from the examination it may help in deciding where the hairs come from. In *Taylor's Medical Jurisprudence* (1956 Edn.) Vol.1, at p.122, some cases are given showing that hairs were identified as belonging to particular persons.

Thus, we have besides the evidence of the approver three important facts which connect the appellant with the commission of the offence. His pointing out the dead body, his pointing out the silver buttons of the deceased which were stained

with human blood and the presence of his hairs on a pania (scarf) on which there were the hairs of the deceased also. In our opinion this would be sufficient evidence in the circumstances of the present case to connect the

appellant with the commission of the offence.

It will not be out of context to refer to one more ruling of the Supreme Court reported in Rama Nand and Others Vs. State of Himachal Pradesh, .

That is a case of circumstantial evidence. The name of the victim is Sumitra. She went to the house of the accused on 13.5.1972 and on 14.5.1972

she disappeared. The dead body of the victim in that case was not found. The accused gave out that the deceased Sumitra had gone towards the

Sutlej river on the pretext of attending to the calls of nature and that thereafter her Salwar and shoes were found on the bank of the river, which

indicated that she had jumped into the river and committed suicide. The accused after pretending to make a search for her body in the river and

nearabout, went and gave a complaint to the police. A Pranda (cotton headtail) alleged to belong to the deceased Sumitra was recovered from the

Jungle of Ghangar. Some human hair were found entangled in the Pranda. These hairs were sent for comparison with the hair of the deceased

found embedded in her Dupatta. The forensic expert opined that the two sets of hairs belonged to one and the same person. The court accepted

this piece of evidence. Referring to that circumstance (No. 5), the Court observed as under:

Circumstance (5) also stood established. Though a feeble pointer towards the guilt of the accused, by itself it was not of a conclusive character.

That circumstance would go against the case of the accused that the deceased went towards Sutlej River to answer the calls of nature.

But in the case on hand, it was found that the hair that was seized from the right hand of the deceased was found to be similar to the sample that

was taken from the accused by the Doctor. Thus, this important piece of evidence certainly would corroborate the extra judicial confession.

11. Circumstance No. 3: The accused who made an extra judicial confession before P.W.12 was taken to the police station and before P.W.20

the Inspector of Police, he made a confession statement. The admissible portion in the said statement has been marked as Ex.P5. Accordingly, the

accused took them to his house and produced a towel as well as a gunny bag which have been marked as M.Os.4 and 5 respectively. The gunny

bag was sent for chemical analysis and it was found to contain human blood. Ex.P-15 is report of the Serologist. This is yet another corroborative

piece of evidence to connect the accused with the murder.

12. Circumstance No. 4: We have the evidence of P.Ws.9 and 10 who saw the accused in the late hours of 2.5.1997 and P.W.11 in the very

early hours of 3.5.1997. From their testimonies, it is clear that the accused was found to be restless and in fact, frightened to some extent. This

court carefully examined the evidence of three witnesses P.Ws.9, 10 and 11 and found them to be worthy of acceptance. Though it cannot be said

to be a clinching piece of evidence, certainly, it will be a piece of evidence namely, the behaviour/conduct of the accused at the relevant time.

13. Thus, we have the extra judicial confession made by the accused to P.W.12, corroborated by the circumstances 2, 3 and 4 referred and dealt

with earlier. The evidence available on record would lead to the only conclusion that it was the accused who should have done away with the

deceased and none else.

14. In this view of the matter, the conviction and sentence imposed on the appellant Kanavaipitchai, by the learned Additional Sessions Judge,

Dindigul, in S.C. No. 82 of 2000, are confirmed. The appeal is dismissed.