
(2016) 02 MAD CK 0182
In the Madras High Court
Case No : Criminal Appeal Nos. 197 of 2012

Kasi	Vs	APPELLANT
State Rep. by The Inspector of Police		RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 392, 449

Citation : (2016) 3 MLJ Criminal 434

Hon'ble Judges : Mr. M. Jaichandren and Mr. S. Nagamuthu, JJ.

Bench : Division Bench

Advocate : Mr. N.R. Elango, Senior Counsel for Mr. R. Asokan, Advocate, in CrI.A.No.197 of 2012, Mr. N. Manokaran, Advocate, in CrI.A.No.231 of 2012, for the Appellant; Mr. M. Maharaja, APP, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The Appellants are Accused 1 to 4 in S.C.No.82 of 2011 on the file of the learned Additional Sessions Judge, Fast Track Court No.II, Salem. The trial court framed charges against each accused separately as detailed below:-

Serial Number of Charge

Charge(s) framed against

Charge(s) framed under

1

A1

Section 449 of IPC

2

Section 302 r/w 34 of IPC

3

Section 392 of IPC

1

A2

Section 449 of IPC

2

Section 302 r/w 34 of IPC

3

Section 392 of IPC

1

A3

Section 449 of IPC

2

Section 302 of IPC

3

Section 392 of IPC

1

A4

Section 449 of IPC

2

302 r/w 34 of IPC

3

392 of IPC

2. By JUDGMENT dated 02.03.2012, the trial court convicted all the four accused and accordingly sentenced them as detailed below:-

Rank of the Accused

Penal Provision under which convicted

Sentence

A1 to A4

Section 449 of IPC

Rigorous Imprisonment for five years and to pay a fine of Rs.5,000/- each in default to undergo simple imprisonment for one year

A3

Section 302 of IPC

Imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for a further period of one year

A1, A2 and A4

Section 302 r/w 34 of IPC

Imprisonment for life and to pay a fine of Rs.10,000/- each in default to undergo simple imprisonment for a further period of one year

The trial court, however, acquitted A1 to A4 from the charge under Section 392 of IPC. Challenging the said conviction and sentence, A1 to A4 are now before this court with these Criminal Appeals.

3.0. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs. Lakshmi. P.W.1 and P.W.2 are the husband and son respectively of the deceased. P.W.5 is the wife of P.W.2. P.Ws.1 to 3 along with the deceased were residing in the house bearing Door No.11-1/54, Vijaya Vinayagar Koil Street, Ilampillai, Salem District. P.Ws.1 and 2 are textile merchants by profession and they had a Textile Shop in the same village, but, at a different place. P.W.6 is a relative and also an employee of P.W.1 in the textile shop.

3.1. A1 is the brother of P.W.1. A2 and A3 are the relatives of A1. A4 is the elder sister of A1. It is alleged that all the four accused have got independent motives against the family of P.W.1. P.W.1 and A1 had adjacent lands. In respect of an approach road to the field of A1, there was a long standing dispute between A1 and P.W.1. There was also a dispute between A1 and P.W.1 in respect of drawing of water from the common well. Twenty years before the occurrence, it is alleged that the deceased had taken 60 sovereigns of gold jewels from P.W.1 and did not return the same. Because of these instances, there was a long standing enmity between A1 and P.W.1.

3.2. The father of A3 and P.W.1 filed nominations to contest the local body election. P.W.1 requested A1's father to withdraw the nomination and in consideration, he promised to give a housing plot to him. Believing the said words, A3's father withdrew from contest. But, P.W.1 did not give the housing plot to A3. This resulted in enmity between A3 and P.W.1.

3.3. A4, who is the sister of P.W.1, was cultivating the lands belonging to P.W.1. When P.W.1 requested to return the possession of land, A4 refused to return the possession of land. This is stated to be the cause for enmity between A4 and P.W.1. Thus, all the four accused had enmity with P.W.1 and his family members.

3.4. On 30.07.2010 at about 09.30 a.m., P.Ws.1 and 2, as usual, had gone to

their textile shop. P.W.6 had also come to the shop on the day of occurrence around 11.30 a.m. P.W.2 wanted to go to Yercaud to take back his children, who were studying in a school there. Therefore, P.W.2 went to his house where the deceased and P.W.5 alone were available. P.W.2 took P.W.5 and left for Yercaud. Thus, the deceased alone was in the house at or about the time of occurrence on 30.07.2010.

3.5. P.W.1, who was in the textile shop, wanted P.W.6 to go and to get lunch for him from his house. P.W.6, therefore, went to the house of the deceased where to his shock, he found the doors of the house kept open. It was the usual practise to bolt the doors from inside and to open the same only on ringing of calling bell. Since it was unusual that the doors were kept open, with curiosity, P.W.6 entered into the house. In the bathroom, he found the deceased lying with slit injuries on her neck. Immediately, P.W.6 contacted P.W.1 who was in the textile shop and informed him about the occurrence. Thereafter, P.W.1 rushed to his house and found the dead body of the deceased Mrs. Lakshmi lying in the bathroom with slit injuries. He found that the gold chain worn by the deceased was missing. Thus, it was clear to the mind of P.W.1 that the deceased had been murdered and the gold chain had been stolen away. Immediately, P.W.1 proceeded to Magudanchavadi Police Station and made a complaint under Ex.P.1.

3.6. P.W.24, the Inspector of Police, on receipt of the said complaint [Ex.P.1], registered a case in Crime No.289 of 2010 under section 448, 302 and 379 of IPC. In the complaint, since the culprits were not known, P.W.1 has mentioned that the assailants were not known. Thus, the FIR was registered against the unknown culprits. Ex.P.16 is the FIR. Then, he forwarded both the complaint and the FIR to the jurisdictional court which were received by the learned Judicial Magistrate No.II, Sankari, at 06.05 p.m. on 30.07.2010.

3.7. Taking up the case for investigation, P.W.24 proceeded to the place of occurrence and prepared an observation mahazar (Ex.P.12) and a rough sketch (Ex.P.17) in the presence of P.W.19 and another witness. P.W.23 took photographs at the scene of occurrence as requested by P.W.24. P.W.24 recovered some pieces blood stained cement flooring and ordinary cement flooring [without blood stains] from the place of occurrence in the presence of the same witnesses under a mahazar (Ex.P.13). Then, he conducted inquest on the body of the deceased between 06.45 p.m. and 09.48 p.m. on 30.07.2010. Thereafter, he sent the body for postmortem to the Government MKM College Hospital, Salem.

3.8. P.W.22-Dr. Meera conducted autopsy on the body of the deceased at 11.00 a.m. on 31.07.2010 and she found the following injuries on the body of the deceased:-

"Antemortem Injuries:-

(1) An oblique wide open cut injury seen over palmar aspect of left thumb-measuring 2 x 1 cms x bone deep. The edges are clean cut, slightly everted.

Both ends acute angle with adherence of blood clots.

(2) An oblique wide open cut injury seen over palmar aspect of left index finger - Measuring 1 x 1 cm x bone deep. The edges are regular and everted. Both ends acute angled with adherence of blood clots.

(3) An oblique wide open cut injury seen over left palm-Thenar Eminence-measuring 4 x 1 cm x muscle deep. The edges of both ends of the wound are acute angled, everted and margins are clean cut.

(4) An oblique wide open cut injury seen over front of neck below the level of thyroid cartilage - measuring 14 x 6 cms x bone deep. The edges are clean cut, slightly everted. Both ends acute angled with adherence of blood clots. The underlying strap muscles and sternomastoid, carotids, trachea and oesophagus were cut thro and thro.

(5) An oblique wide open cut injury seen over front of neck 1 cm below the previous injury-measuring 6 x 3 cms x muscle deep. The edges are clean cut, slightly everted. Both ends acute angled with adherence of blood clots.

(6) An oblique wide open cut injury seen over left side of neck 0.5 cms below the previous injury-measuring 3 x 2 cms x muscle deep. The edges are clean cut; slightly everted. Both ends acute angled with adherence of blood clots.

(7) An oblique wide open stab injury seen over front of neck 1 cm below the injury (4) - measuring 2 x 0.5 cm x bone deep. The edges are clean cut;slightly everted. Both ends acute angled with adherence of blood clots.

(8) Tongue was bitten by teeth.

Other Findings:-

O/D: Skull, scalp , membranes - Intact. Brain - CS pale.

O/D: Neck: Vide injury column,hyoid bone: Intact.

O/D: Thorax: Lungs- C/s Pale. Heart: Normal in size. Chambers Empty. Valves and Coronaries-Patent. Myocardium-Normal. Great Vessels-Patent.

O/D Abdomen: Stomach-150 Gms of well digested chyme with no specific smell. Mucosa C/s - pale. Liver, spleen and kidneys-C/S pale. Bladder-empty. Genitalia-No fresh injuries made out. Uterus-Surgically absent. Pelvis and spinal column intact."

She preserved the internal organs of the deceased and sent the same for chemical analysis. She has also preserved blood gauze for analysis. Ex.P.14 is the Postmortem Certificate. She opined that the injuries found on the body of the deceased could have been caused by a weapon like M.O.8. She further opined that the deceased would have died of shock and haemorrhage due to multiple cut and stab injuries. According to her, the death would have occurred within 24 hours prior to the autopsy.

3.9. P.W.24 in the course of investigation, recovered the blood stained articles and few other articles including the blood stained cloths from the body of the deceased and forwarded the same to the court.

3.10. When the investigation was in progress, on 11.08.2010, it is alleged that A1 went to the office of P.W.16, the then Village Administrative Officer of Azhagappanpalayam Village at 08.30 a.m. At that time P.W.20, the Village Assistant was also present. On such appearance it is alleged that A1 wanted to confess. Accordingly, he confessed orally which was reduced into writing by P.W.17. Then, he produced A1 before P.W.24 along with the confession and a special report. At 10.15 a.m. on being produced by P.W.17, P.W.24, arrested A1. On such arrest, A1 made a voluntary confession in which A1 disclosed the place where he had hidden a TVS 50 motor cycle and a gold chain. In pursuance of the same, he took P.W.24 and the witnesses to his house and produced the TVS-50 Motorcycle (M.O.4) and the Gold Chain weighing 6/12 sovereigns (M.O.1). P.W.24 recovered the same under a mahazar (Ex.P4) in the presence of P.W.17 and P.W.20.

3.11. On 11.08.2010 at 01.30 p.m. P.W.24 arrested A4-Pappa @ Palaniammal at Ravuthankadu in the presence of the same witnesses. On such arrest, she gave a voluntary confession in which she disclosed the place where she had hidden a pair of gold ear studs. In pursuance of the same, at 03.00 p.m. she took the police and the witnesses to the place of hideout and produced a pair of gold ear stud (M.O.2). P.W.24, in turn, recovered the same under a mahazar (Ex.P.6) in the presence of the same witnesses. On the same day at 05.30 p.m. P.W.24 arrested A2 and A3 in the presence of the same witnesses. On such arrest, A2 gave a voluntary confession in which he disclosed the place where he had hidden a Hero Honda Splendour motor cycle bearing Regn. No.TN 30 X 9824. In pursuance of the same, he took the police and the witness to his house and produced the same motor cycle (M.O.5). P.W.24 recovered the same under a mahazar (Ex.P.7). Then, he took the police and the witnesses to a shop also where he allegedly purchased the hand gloves. From the shop identified by A2, P.W.24 recovered a receipt (Ex.P.23) under a mahazar (Ex.P.8) in the presence of the same witnesses. At 07.30 p.m. on the same day, A3 said to have given a voluntary confession in which he disclosed the place where he had hidden the blood stains cloths. In pursuance of the same, at 09.00 p.m. he took the police and the witnesses to his house and produced a lungi (M.O.6), a half sleeve shirt (M.O.9) . At 10.00 p.m. he took the police and the witnesses to a different place and produced a knife measuring 10 cm length (M.O.8) and a half sleeve shirt (M.O.7). P.W.24 recovered the same under a mahazar (Ex.P.10). On returning to the police station, he forwarded the accused to the court for judicial remand and handed over the material objects to the court for chemical analysis. At his request, the material objects were sent for chemical analysis. The chemical analysis report revealed that there were blood stains on all the material objects except the knife.

3.12. In the course of investigation, P.W.24 examined the Doctor and the other official witnesses, recorded their statements and collected the postmortem certificate and the other reports. On completing the investigation, he laid the final report against the accused.

4. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this JUDGMENT. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 24 witnesses were examined, 31 documents and 19 materials objects were marked.

5.0. Out of the said witnesses, P.Ws.1, 2 and 5 have stated that lastly the deceased was alone at her house at 11.30 a.m. on 30.07.2010 and thereafter, the dead body was found around 02.00 p.m. They have also stated about the missing of gold jewels. P.W.3 is a relative of P.W.1. He has stated that on hearing the information about the occurrence, he rushed to the place of occurrence. He has not stated anything incriminating the accused. P.W.4 has stated that he saw all the four accused coming out of the house of the deceased around 12.00 noon on the day of occurrence and at that time two motor cycles were parked out side.

5.1. P.W.5 is the wife of P.W.2. She has stated that at 11.30 a.m. on the day of occurrence, she left for Yercaud along with P.W.2 and at that time, the deceased alone was left at the house. P.W.6 is an employee at the textile shop of P.W.1. As directed by P.W.1, when he went to the house, according to him, the house was kept open and when he further entered into the house, he found the deceased dead in the bathroom with slit injuries.

5.2. P.W.7 is also an employee in the textile owned by P.W.1. He has also stated that P.W.1 was in the shop on the day of occurrence and P.W.6 left for the house of the deceased to take lunch at 02.00 p.m. for P.W.1. P.W.8 is a neighbour of the deceased. He has stated that at about 11.30 a.m. on the day of occurrence, he found the deceased standing out side her house for some time when he had come out of his house for purchasing buttermilk. P.W.9 is also a neighbour of the deceased. He has stated about the motive between the accused and the deceased and he has also stated that on the day of occurrence at 03.00 p.m., he found the dead body of the deceased.

5.3. P.W.10 has stated that on the day of occurrence, at about 10.00 a.m., he found all the four accused together proceeding in two separate motor cycles. P.W.11 has stated that he was running a fancy stores and on 30.07.2012, A2 purchased two hand gloves in his shop. P.W.12 has stated that he along with P.W.20 had gone to Vijaya Vinagayagar Temple at Ilampillai Village and at that time, near the temple, they found a TVS 50 Motorcycle and a splendour Motorcycle parked. After darshan, when he returned, the motorcycles were not found. Then, he went to the shop.

5.4. P.W.13 has stated that on the day of occurrence at 11.00 a.m. when he went to Vijaya Vinayagar Temple, he found a TVS 50 motor cycle and a splendour motor cycle parked near the house of the deceased. P.W.14 has stated that on

the day of occurrence at 11.30 a.m. , he found A1 and A2 proceeding in two separate motor cycles. P.W.15 has stated that on the day of occurrence, when she went to the house of the deceased for selling buttermilk, the deceased came out of the house and expressed her unwillingness and then went inside the house.

5.5. P.W.16 is a Police Constable. He has stated that he carried the dead body from the place of occurrence to the hospital for postmortem. P.W.17 is the Village Administrative Officer of Azhagappanpalayam A-Pudur Village. He has stated that at 08.30 a.m. on 11.08.2010, when he was in his Office along with his Assistant, A1 appeared before him and gave a voluntary confession which was reduced into writing by him in the presence of his Assistant [P.W.20]. He has further stated that then, he produced A1 before the Inspector of Police along with a special report. On such production , A1 gave a voluntary confession out of which, the material objects were recovered. He has also stated about the arrest of the other accused, their respective voluntary confession and the consequential recoveries of material objects as enumerated herein above.

5.6. P.W.18, the Scientific Officer, who has examined the internal organs of the deceased, has stated that there was no poison detected in any of the internal organs. P.W.19 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence by the investigating officer and also the consequential recovery of material objects from the place of occurrence under a mahazar. P.W.20 has spoken about the extra judicial confession of A1 given to P.W.16 in his presence and the arrest of the accused and also the consequential recoveries of the material objects. P.W.21 has spoken about the fact that he carried the FIR and the complaint and handed over the same to the court. P.W.22, the Doctor, has spoken about the autopsy conducted on the body of the deceased and her final opinion regarding the cause of death. P.W.23 has spoken about the photographs taken at the scene of occurrence on the request of the investigating officer. P.W.24, the investigating officer, has spoken about the registration of the case, the entire investigation done by him in the case and the final report filed against the accused.

6. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, they denied the same as false. On their side, they examined 2 witnesses and marked 3 documents. D.W.1 Mr. Parameswaran, is Superintendent of Central Prison, Salem. He has stated that as per the order of remand passed by the learned jurisdictional Magistrate when the accused were produced before him, he found extensive injuries on A1 to A3. D.W.2 Mr. Jayaprakasam, the Motor Vehicle Inspector, Mettur, has stated that the motorcycle bearing Regn. No.TN 30 X 9824 stood registered in the name of one Mr. M. Mallan. Their defence was a total denial.

7. Having considered all the above, the trial court convicted A3 under Sections 449, 302 and 392 of IPC and convicted A1, A2 and A4 under Sections 449, 302 r/w 34 and 392 of IPC and accordingly sentenced them as detailed in the 2nd paragraph of this JUDGMENT. That is how, A1 to A4 are now before this court

with these criminal appeals.

8. We have heard the learned counsel for the Appellants/Accused and the learned Additional Public Prosecutor appearing for the Respondent/State and also perused the records carefully.

9. This is a case based on circumstantial evidence. It is needless to emphasis that in a case based on circumstantial evidence, the prosecution is required to prove the circumstances projected by it beyond all reasonable doubts and such proved circumstances should form a complete chain so as to unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. Keeping in mind the above said broad principle, let us now, analyse the circumstances projected by the prosecution.

10. The first and the foremost circumstances projected by the prosecution is the motive. P.Ws.1 and 2 have extensively spoken about the long standing enmity between the accused and P.W.1. There is no much dispute about the same. Thus, in our considered view, the prosecution has succeeded in proving the motive on the part of the accused as against P.W.1 and his family members. But only on that score, we cannot rush to the conclusion that the accused would have committed the heinous crime of murder.

11. In this case, in order to prove that it was these accused who committed the murder, the prosecution mainly relies on the extra judicial confession said to have been made by A1 to P.W.17 in the presence of P.W.20 at 08.30 a.m. on 11.08.2010. The learned counsel for the appellants would submit that the same cannot be believed, for, P.W.12 during the course of examination has admitted that these four accused were found continuously in the custody of the police from 31.07.2010 onwards. We have gone through the evidence of the said witness wherein it is found that he has admitted that all the four accused were found in the custody of the police from 31.07.2010 onwards. This witness has not been treated as hostile. We find no reason to reject this tacit admission made by P.W.12. If this is accepted, then the story of the prosecution that A1 appeared before P.W.17 on 11.08.2010 and made a voluntary confession cannot be true.

12. There is yet another reason also to reject the alleged extra judicial confession. Ex.P.2 contains two parts. The first part is the special report of P.W.17 to the Inspector of Police, which is in his hand writing. This was received by the Inspector of Police at 10.15 a.m. on 11.08.2010 as per the endorsement made by P.W.24. But, the second part namely, the alleged extra judicial confession of the accused is in the form of computer print out. P.W.20 has admitted that there is no computer facility available at the office of P.W.17. P.W.17 has not stated that he utilised the services of the computer elsewhere to record the so called extra judicial confession of A1. When the evidence of P.W.17 and P.W.20 is to the effect that as soon as the confession was orally made by A1, it was reduced into writing, quite surprisingly and strangely, the said confession is in the form of computer printout. This anomaly has not been explained away

by the prosecution. This creates enormous doubts in the story of the prosecution that A1 appeared before P.W.17 at 08.30 a.m. on 11.08.2010 and made a voluntary confession. In the light of the evidence of P.W.12 that A1 was found in the custody of the police from 31.07.2010 onwards and in the light of the fact that there is no explanation as to how the computer print out of the confession came into being, we find it difficult to accept the case of the prosecution that A1 voluntarily appeared before P.W.17 on 11.08.2010 and made an extra judicial confession. If once it is found that the extra judicial confession said to have been made on 11.08.2010 is false, and once, if it is found that A1 was in the police custody from 31.07.2010 onwards, as a corollary, all the subsequent alleged events that A1 gave a voluntary confession out of which some material objects were recovered and consequent upon the said disclosure statement of A1, the other accused were arrested and on their disclosure statements, the other material objects were recovered, also cannot be believed.

13. There is yet another reason to reject the so called recoveries of material objects. According to the case of the prosecution, from A2 a pair of gold ear studs were recovered. But, the police constable who took the body for postmortem namely, P.W.16 during the course of cross examination has admitted that M.O.2 were found on the dead body of the deceased. He removed the same before the postmortem and handed over the same to the Inspector of Police namely, P.W.24. This itself would be sufficient to hold that the recoveries of the material objects at the instance of the accused is only a make belief story and the same cannot be accepted.

14. Apart from the above, the prosecution relies on the evidence of P.W.4, who has stated that on the day of occurrence, he saw all the four accused coming out of the house of the deceased at around 12.00 noon. But, during the course of cross examination, he has stated that immediately after the occurrence, by about 03.00 p.m. he came to the place of occurrence; the police also arrived at the scene of occurrence immediately; the police were interrogating the people there to get some clues about the occurrence since the assailants were not known as per the FIR; and though he was very much available at the time when P.W.24 was interrogating, he did not disclose anything about the same to the police. Therefore, it is difficult to believe him. P.W.13 has stated that along with P.W.4 he also saw all the four accused coming out of the house of the deceased, he has also stated during cross examination that when the police were interrogating, he was present there, but he did not disclose anything about the same at that time. He has further stated that at the time when the police interrogated there were around 150 people present. But, he did not disclose anything to the police about the occurrence. He disclosed the fact to the police very belatedly. Absolutely there is no explanation for the same. The failure of these two witnesses to disclose the fact about the vital information for such a long time, that is, for more than a day, though they were very much present when P.W.24 was struggling to get some information about the assailants, would clearly go to prove that these witnesses have been planted by the police and therefore, they

cannot be believed.

15. P.W.12 is yet another witness who has stated that he saw all the four accused entering into the house of the deceased at about 11.00 a.m. on the day of occurrence. He has also stated that he came to the place of occurrence around 02.30 p.m. on the day of occurrence. The police also had arrived by the time when he reached the place of occurrence. Though the police were interrogating many people at the place of occurrence, he has admitted in his cross examination that he did not disclose about the above fact to the police at all at that time. He has further stated that the dead body was still at the house of the deceased and when inquest was conducted he was very much present and though the police interrogated every one, he did not say anything about the assailants at all. He has further admitted that on 30.07.2010 though the police interrogated him, he did not disclose the same to the police and instead, he disclosed the above vital information only on the next day to the police, that was on 31.07.2010. Absolutely, there is no explanation for the same. He is not a stranger and he has admitted during cross examination that P.W.1 is none else than his uncle. Even then, he did not disclose about the above fact either to P.W.1 or to any of his other family members. The so called silence of this witness for such a long time though he was interrogated by the police would clearly go to prove that he is not believable and he has been planted by the police.

16. Apart from the above, there is no clinching circumstance against the accused to connect them with the murder of the deceased. As we have already discussed, the recoveries of material objects cannot be relied on as against any of the accused.

17. From the foregoing discussions, it is crystal clear that the prosecution has failed to prove the vital circumstances against the accused and, therefore, we hold that the prosecution has not proved the case as against the accused beyond all reasonable doubts. Thus, the appellants/accused are entitled for acquittal.

18. In the result, CrI.A.Nos.197 and 231 of 2012:- The Criminal Appeals are allowed. The conviction and sentence imposed on the appellants/accused by the trial court are set aside and they are acquitted of all the charges. Fine amount, if any, paid by the Appellants/Accused shall be refunded to them. Their bail bonds shall stand terminated.