
(2010) 11 MAD CK 0112

In the Madras High Court

Case No : Criminal A. (MD) No. 312 of 2010

Lookkas Sivachandran 2 Siva alias Sathyaseelan alias Seelan
alias Anbu

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302, 392, 454

Citation : (2010) 11 MAD CK 0112

Hon'ble Judges : K.N. Basha, J;Aruna Jagadeesan, J

Bench : Division Bench

Advocate : A.W.D. Tilak, for the Appellant; Daniel Manoharan, for the Respondent

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—This Criminal Appeal is filed by the Appellant, who is arrayed as the accused in SC. No. 146/2009 against the

judgment dated 23.4.2010 passed by the learned Additional Sessions Judge (FTC-I), Tuticorin, convicting the Appellant/accused for the offence

u/s of 302 of IPC and sentencing him to undergo Life Imprisonment and to pay a fine of Rs. 1000/-, in default to undergo one year Rigorous

Imprisonment and acquitting him for the offences under Sections 454, 392 and 201 of IPC.

2. The case of the Prosecution as disclosed from the evidence of the Prosecution witnesses is as follows:

a. The deceased Gurudesimandal belonged to the State of Orissa. She was residing with her husband and Children in a labourers' hut provided by

M/s. Bharat Power Plant Private Limited for the workers. The husband of the

deceased was working as a Centring Worker under the Contractor by name Shanmugam. The accused and four others, who were also working as Centring Workers under the said Contractor, were residing together in a hut adjacent to the hut of the deceased. The deceased was running a small petty shop on the eastern side of her hut and next to her petty shop, there were six other huts. In order to enable the workers to buy things from the said shop, a hole was provided in the hut of the deceased. PW.1 Rajendran was working as the Office Assistant in the said Company.

b. On 24.10.2008 at 11.30 a.m. the husband of the deceased and her son went to Tuticorin to purchase things. At 3.30 a.m., when PW.1 was sitting in the tea stall run by one Periasamy PW.5, the accused came there with his shirt torn and hair scattered and he told PW.1 that he received information that his mother died at Trichy and wanted to go immediately and further requested PW.1 to arrange some one to drop him in the bus stand. PW.1 immediately asked PW.2 Sattai Karuppasamy to help the accused and drop him at the bus stand. PW.2 took the accused in a TVS-50 Motorcycle and dropped him at the bus stand. Thereafter, PW.1 went to the Company and he was informed by PW.11 the husband of the deceased that when he returned from Tuticorin, he found his wife missing and he searched for his wife and on seeing through the hole of the hut of the accused, he found his wife hanging inside the hut of the accused and he broke-open the door of the hut and brought down the deceased from the ceiling. He found the trunk box broke-open and a cash of Rs. 9000/- and a chain weighing three sovereigns were missing from the said trunk box in his house. Thereafter, PW.11 along with PW.1 went to the Puthiamputhur Police Station and gave the complaint Ex.P1.

c. PW.8 the Sub Inspector of Police attached to the said Police Station on receipt of Ex.P1 on 24.10.2008 at 6.00 p.m. registered a case in Cr. No. 118/2008 under Sections 392 and 302 of IPC and prepared printed First Information Report Ex.P7 and sent the same to PW.15, the Inspector of Police attached to the said Police Station.

d. PW.15 took up the case for investigation and went to the place of occurrence on 24.10.2008 at 19.30 hours and prepared a observation mahazar Ex.P2 and a rough sketch Ex.P10 in the presence of the witnesses. At

20.15 he recovered the broken trunk box MO.3, cigarette pieces

MO.4, broken lock MO.2 and light green colour saree MO.1 and light green colour saree piece MO.5, rose colour jacket MO.6, 7-Lever-50-

MM Lock MO.2 under Ex.P3 mahazar from the hut of the deceased. He examined the witnesses PW.1 to 3 and 11 and recorded their statements

with the help of a translator, as some of the witnesses were speaking Hindi. He conducted inquest on the body of the deceased from 9.00 p.m to

10.00 p.m. and prepared Ex.P13 inquest report and sent the body to the Government Medical College and Hospital, Tuticorin for postmortem

along with a requisition Ex.P5.

e. PW.7, the Doctor attached to the said Hospital on receipt of Ex.P5 on 25.10.2008 at 10.30 a.m. conducted postmortem on the body of the

deceased and found the following injuries:

Ante Mortem injuries:

1. A contusion of size 6cms x 4 cms x 0.5 cm in the right forehead and an abrasion of size 4 cms x 3 cms over the top of that contusion.
2. Multiple parallel contusions with varying measurements over the left cheek.
3. A contusion of size 10 cms x 8 cms x 1.5 cms in the left fronto parietal region.
4. A pressure abrasion of size 3 cms x 2 cms in the right side of neck below the mandible.
5. A pressure abrasion of size 8 cms x 6 cms in the middle of front of neck.
6. A pressure abrasion of size 2 cmsx1cm in the left side of neck.
7. An abrasion of size 2 cms x 1 cm in the right ear.

Postmortem Injury:

8. An oblique partial ligature mark measuring 11 cms x 2 cms found in the left side of neck. It lies above thyroid cartilage and extending from the chin and passing along the lower margin of left half of the mandible towards the left ear. It lies 4 cms below the chin and 2 cms below the left ear.

On bloodless dissection of neck:

9. Extra vsations of blood noted over the superficial planes of neck. Both sternomastoid muscles found bruised and lacerated in its lower 1/3.

Trachea-bruised. Soft issues around the thyroid cartilage found contused. Hyoid bone-fracture of greater horn in the left side with surrounding

bruise. Larynx, epiglottis and bronchi-congested.

Ex.P6 is the postmortem certificate. PW.7 opined that the deceased would appear to have died of asphyxia due to violent compression over the neck.

f. PW.15, in continuation of the investigation examined the witnesses and recorded their statements and arrested the accused. Pursuant to the admissible portion of his confession, he recovered MO.8 chain under Ex.12 mahazar and sent him for judicial custody. PW.15 completed the investigation and filed a final report against the accused under Sections 454, 392, 302 and 201 of IPC.

3. The case was taken on file in SC. No. 146/2009 by the learned Additional Sessions Judge (FTC-I), Tuticorin and necessary charges were

framed. In order to substantiate the charges levelled against the accused, the prosecution examined as many as 15 witnesses (PW.1 to PW.15)

and also relied on Exs.P1 to P13 and eight material objects (Mos.1 to 8).

4. On completion of the evidence on the side of the prosecution, the accused was questioned u/s 313 Code of Criminal Procedure as to the

incriminating circumstances found in the evidence of prosecution witnesses and the accused denied the same as totally false. On the side of the

defence, neither any witness was examined nor any document was marked.

5. The court below, after hearing the arguments advanced on either side and looking into the materials available on record, found the

accused/Appellant guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

6. Mr. A.W.D. Thilak, the learned Counsel for the Appellant strenuously contended that the case of the Prosecution rests on the circumstantial

evidence and none of the circumstances proved the guilt of the accused. He submitted that the circumstance relied on by the Prosecution is that the

deceased was found hanging in the hut where the accused was residing with four other co-workers cannot form basis for conviction. The learned

Counsel would further submit that the presence of the accused nearby the place of occurrence on the fateful day is itself not sufficient as admittedly

he was working in the said Company and was residing inside the Campus and therefore, the said piece of evidence is inconclusive to prove the

guilt of the accused.

7. The other circumstance relied upon by the Prosecution is the recovery of the gold chain, but the witnesses to the recovery namely PW.13 and

PW.14 did not support the Prosecution. More significantly, PW.11 the husband of the deceased has categorically stated that MO.8 chain alleged

to have been recovered at the instance of the accused is not that of his wife. The learned Counsel would contend that the extra-judicial confession

said to have been given by the accused to PW.6 is unreliable as it lacks credence and devoid of any ring of truth.

8. The learned Counsel for the Appellant strenuously contended that the recovery of the gold chain at the instance of the accused having been not

proved, there is absolutely no evidence to prove the motive that he committed the murder for theft of the gold chain.

9. Per contra, Mr. Daniel Manoharan, the learned Additional Public Prosecutor would submit that the circumstances relied upon by the

Prosecution established the guilt of the accused and the non-explanation on the part of the accused regarding the body of the deceased being found

in his hut is a relevant and an important circumstance against the accused. The learned Additional Public Prosecutor would submit that all the

circumstances if cumulatively taken together would lead to the only conclusion that the accused alone is the perpetrator of the crime.

10. We have given our anxious and careful consideration to the submissions made by the learned Counsel on either side and also perused the

material records placed and the impugned judgment of the court below.

11. Before analysing the circumstances relied on by the Prosecution, it is relevant to refer to the decision of the Honourable Supreme Court

reported in C. K. Raveendran Vs. State Of Kerala, restating the law relating to circumstantial evidence as under:

The law relating to circumstantial evidence requires that the Prosecution must prove each of the circumstances, having a definite tendency pointing

towards the guilt of the accused and though each of the circumstances by itself may not be conclusive but the cumulative effect of proved

circumstances must be so complete that it would exclude every other hypothesis and unequivocally point to the guilt of the accused.

12. The standard of proof required to convict a person on a circumstantial evidence is now well settled. According to the standard enunciated by

the Honourable Supreme Court, the circumstances relied upon the Prosecution in support of the case must not only be fully established, but also

the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with

the innocence of the accused. Thus, it is well settled that the circumstances from which the conclusion of guilt of an accused is to be inferred,

should be of conclusive nature and consistent only with the hypothesis of guilt of the accused and the same should not be capable of being

explained by any other hypothesis except the guilt of the accused.

13. Keeping in mind the above parameters laid down by the Honourable Supreme Court, the circumstances appearing against the accused in the

present case has to be analysed. The circumstances appeared against the accused are as follows:

i. The discovery of body of the deceased in the house of the accused.

ii. Alleged recovery of ornament at the instance of the accused.

iii. Motive to commit the crime.

iv. Presence of the accused nearby the place of occurrence on the fateful day.

v. Alleged extra-judicial confession of the accused to PW.6, a co-worker.

14. (i) The discovery of body of the deceased in the house of the accused: The body of the deceased was found hanging inside the hut of the

accused. According to PW.1, he was informed by PW.11, the husband of the deceased about the deceased found hanging and it is PW.1 who

had brought down the body from the ceiling. Though PW.1 and PW.2 were available near the place of occurrence, PW.11 the husband of the

deceased had not sought for their help before bringing the body down. According to PW.11, the door was locked outside and he peeped inside

the house through the hole in the hut.

15. PW.14, the Investigating Officer has admitted in his evidence that he did not show any hole in the house of the accused either in Ex.P2

observation mahazar or in the rough plan and he would admit that the hut was woven with coconut leaves on three sides and there was an entrance

on the southern side. Ex.P2 shows that on all the three sides, a wall built up with brick to a height of three feet was found. So it is seen that there

was no pucca structure, but only a temporary structures made up of brick walls.

Ex.P2 observation mahazar further shows houses lying adjacent to the hut of the accused. It could be seen that if the deceased had raised any hue and cry, when she was assaulted, definitely it would have attracted the attention of the other neighbours.

16. It is relevant to point out at this juncture that as many as seven abrasions were found by the Doctor PW.7 on the body of the deceased which disclosed that she had a struggle before she met the fateful end. If she was attacked and struggled in the course of such struggle, then it is more likely that she would have raised hue and cry in such a situation. But, there is absolutely no evidence on this aspect. The evidence on record discloses that till PW.11, the husband of the deceased returned home from Tuticorin after purchase of things, no one heard any cry made by the deceased or noticed the deceased hanging. Therefore, this circumstance relied on by the Prosecution would not connect the accused in any manner to the crime.

17. The Prosecution has relied upon the evidence of PW.13 and PW.14 to prove the recovery of ornament at the instance of the accused. Both the witnesses turned hostile and did not support the case of the Prosecution. Added to it, PW.11, the husband of the deceased disowned the ornament MO.8 shown to him and categorically deposed that MO.8 chain is not that of his wife. With this evidence, it is needless to point that the disclosure statement loses its value and recovery based on such statement is unreliable and lacking in probability. It is plain that the value of the confession can be gone into only if its existence is established by leading evidence about the accused having made it and through recovery of ornament. The Prosecution having failed in its attempt to prove the said circumstance against the accused, it would necessarily will not point to the guilt of the accused.

18. Motive to commit the crime: We may now deal with the evidence of motive put forth by the Prosecution. In a case based on circumstantial evidence, motive assumes pertinent significance as existence of motive is an enlightening factor in a process of presumptive reasoning in such a case. Since the recovery of gold ornament at the instance of the accused is not proved, the motive loses its significance and the said evidence is of no avail to the Prosecution to prove its case.

19. Presence of the accused nearby the place of occurrence on the fateful day: The other circumstance relied upon by the Prosecution is about the accused having been seen near the place of occurrence on the date of occurrence. The evidence in this respect consists of PW.1 and PW.2 to the effect that they saw the accused in a perplexed manner and wanted to go to Trichy as he had received information that his mother had passed away. PW.2 had dropped him in the bus stop. PW.1 and PW.2 stated that they had seen him at about 3.30 p.m. There is no material to indicate as to what was the time of commission of offence. There is no evidence on record also to show that except the accused, no other person was present nearby the place of occurrence. In the circumstances, the presence of the accused at the scene of occurrence cannot take the Prosecution case very far. In so far as the evidence of PW.1 and 2 is concerned, it is to the effect that the accused was found in a perplexed manner with his shirt torn and hair scattered. It is not the case of the Prosecution that the information given by the accused that his mother died was a false one. On being heard about the death of his mother, he might have been found in a perplexed condition. Therefore, this circumstance would also not necessarily point to the guilt of the accused.

20. Alleged extra-judicial confession of the accused to PW.6, a co-worker: Lastly, in so far as the alleged extra-judicial confession of the accused is concerned, the Prosecution has relied upon the evidence of PW.6, the co-worker of the accused. After having been taken through the evidence of that witness, we find the same lacking in credence and devoid of any ring of truth. His evidence is to the effect that he was informed through phone by the accused asking him to leave the Company immediately as he would be beaten by the Police. PW.6 has stated that the accused informed him that he committed the murder of the deceased. It is seen from PW.6's evidence that he is in no way connected with the commission of crime and if that be so, it is doubtful as to why the accused should warn him and advise him to leave the Company. That apart, it is admitted by the Investigating Officer that he has not made any attempt to trace out the phone call said to have been received by PW.6, as the accused contacted him to his mobile phone. There is no material to show that the accused reposed confidence in PW.6 to give such a confession to him.

Merely a bald statement made by PW.6 that the accused contacted and confessed about the guilt is highly unbelievable and unreliable. We are, therefore, not prepared to place any reliance upon the evidence regarding the alleged extra-judicial confession of the accused.

21. It is well established that the circumstantial evidences in order to warrant conviction should be consistent only with the hypothesis of the guilt of the accused. But, none of the circumstances relied on by the Prosecution leads to an inference unerringly pointing to the guilt of the accused.

22. In view of the reasons stated above, we are unable to sustain the conviction and sentence passed against the Appellant and the same is liable to be set aside.

23. In the result, this criminal appeal is allowed and the conviction and sentence imposed on the Appellant are set aside. The Appellant is acquitted of the charges levelled against him and he is directed to be released forthwith unless his presence is required in connection with any other case. The fine amount if any paid by the Appellant is ordered to be refunded to him.