
(2009) 01 MAD CK 0209
In the Madras High Court
Case No : Criminal Appeal No. 346 of 2008

Pandian and Kumar

APPELLANT

Vs

The Inspector of Police

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120(B), 302, 404

Citation : (2009) 01 MAD CK 0209

Hon'ble Judges : M. Venugopal, J; M. Chockalingam, J

Bench : Division Bench

Advocate : Ramesh Kumar Chopra, for the Appellant; P. Kumaresan, APP, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to the judgment of the Sessions Division, Nilgiris at Udagamandalam made in S.C. No. 25 of

2007, whereby the accused/appellants stood charged under Sections 120(B) and 302 IPC and A-1 also stood charged u/s 404 IPC, tried and

found guilty as per the charges and the first accused was sentenced to undergo imprisonment for life for each of the offences under Sections

120(B) and 302 IPC and one year R.I. with a fine of Rs. 1000/-, in default to undergo 3 months S.I. u/s 404 IPC and the second accused was

also sentenced to undergo imprisonment for life for each of the offences under Sections 120(B) and 302 IPC.

2.The short facts necessary for the disposal of this appeal can be stated thus:

a) P.W.4 is the mother of the deceased Vetrivel. She had four daughters, including P.W.5. The first accused is the son of P.W.4's brother and the

second accused was the associate of A-1. One of the daughters of P.W.4, namely Muniswari got married on 14.6.2006 at Salem. A-1 also

attended the marriage. On the previous day night, his behaviour towards P.W.5 was found thoroughly not satisfactory, since he used unsavoury

remarks. After returning to Coimbatore, P.W.4 sent his son, namely the deceased, to the house of A-1 and called his mother and informed about

the conduct of the first accused. It came to the knowledge of the first accused. Therefore, he developed ill-will against the family members of the

deceased. For about one month prior to the occurrence, he was not in talking terms with the deceased.

b) On 03.09.2006, A-1 and A-2 came to the house of the deceased and took the deceased in his M.O.5, motorbike. At that time, the deceased

informed his mother that he is going to Ooty along with A-1 and A-2 and will be coming that night. On the way, P.W.7, the common friend of both

the accused and deceased saw them and when he was also called to Ooty, he told that he got some other work and hence he could not

accompany them. Thereafter, both the accused and the deceased went to Mettupalayam and met another friend P.W.8. They parked the

vehicle in the cycle stand at Mettupalayam, which was managed by P.W.12. M.O.7, token was also issued. Thereafter, both the accused and the

deceased reached Thalaikundah at Ooty. P.W.6 was the native of Thalaikundah and was selling Caps in that area. At about 6.00 p.m., he saw the

deceased in the company of both the accused. He asked them whether they required Caps, but they replied in negative. Thereafter, at about 9.00

p.m., again P.W.6 saw both the accused together, but the deceased was missing.

c) The deceased did not come home that night. P.W.4 informed P.W.7, who in turn contacted A-1. A-1 replied that both A-1 and A-2 returned

to Coimbatore, but the deceased stayed at Ooty. For a few days, the deceased did not come at all. P.W.1, the Forest Guard found the dead body

of the deceased on 6.9.2006. He informed the same to the Forest Officer, who advised him to give a complaint. Accordingly, P.W.1 went to the

Pudumund Police Station and gave Ex.P.1, the complaint to P.W.22, the Sub Inspector of Police, who on the strength of Ex.P.1, registered a

complaint in Crime No. 218 of 2006 u/s 302 IPC. Ex.P.30, the F.I.R. was despatched to the Court.

d) P.W.23, the Inspector of Police, on receipt of the copy of the F.I.R., took up the investigation, proceeded to the spot and made an inspection

in the presence of the witnesses. He prepared Ex.P.2, the observation mahazar and Ex.P.33, the rough sketch. He also recovered the material

objects from the place of occurrence under a cover of mahazar. He conducted inquest on the dead body of the deceased in the presence of the

witnesses and panchayatdars and prepared Ex.P.34, the inquest report. The dead body of the deceased was sent to the hospital for the purpose of

autopsy. Thereafter, the Investigating Officer noticed a tailor mark in M.O.3, shirt of the deceased. The tailor mark in the shirt was marked as

M.O.4. He was able to notice the cell number of the tailor. P.W.23 informed the tailor, who came over there and identified the dead body as that

of the deceased. Immediately, an information was given to P.W.4 and Ors. who visited the spot and they identified the dead body.

e) P.W.20, the Doctor, attached to the Government Hospital, Uthagamandalam, on receipt of the requisition, has conducted post-mortem on the

dead body of the deceased and has issued Ex.P.27, the post-mortem certificate, wherein he has opined that the deceased would appear to have

died of shock due to injury to vital organs left testis.

f) Pending investigation, P.W.23 arrested both the accused on 08.09.2006. The accused came forward to give confessional statements, which

were recorded in the presence of the witnesses. The admissible part of the confessional statement of A-1 was marked as Ex.P.6 and the

admissible part of the confessional statement of A-2 was marked as Ex.P.7. Pursuant to the confessional statement, A-1 produced M.O.8 stick,

M.O.19 cell phone cover and M.O.11 sim card, which were recovered under a cover of mahazar. Pursuant to the confessional statement of A-2,

he produced M.O.9 stick, M.O.7 token and M.O.12 bike key, which were recovered under a cover of mahazar. Pursuant to the confessional

statement of A-1, M.O.6 cell phone was recovered from P.W.10 under a cover of mahazar. P.W.23 recovered M.O.5, motor bike from the

cycle stand of P.W.12 under a cover of mahazar. The accused were sent for judicial remand.

g) An identification parade was conducted by P.W.17, the Judicial Magistrate, Kotagiri. In the identification parade, P.W.6 identified the accused

twice. Ex.P.18 is the identification parade proceedings. All the material objects recovered were sent for chemical analysis. Ex.P.37, the Chemical

Analyst's report and Ex.P.38, the Serologist's report were received.

h) Further investigation was taken up by P.W.24, the Inspector of Police, who examined the witnesses and recorded their statements. On

completion of the investigation, the Investigating Officer has filed the final report.

3. The case was committed to the court of sessions and necessary charges were framed. The prosecution, in order to substantiate the charges

levelled against the accused, examined 24 witnesses and also relied on 39 exhibits and 13 M.Os. On completion of the evidence on the side of the

prosecution, the accused were questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses,

which they flatly denied as false. No defence witness was examined. The trial court, after hearing the submissions made on either side and looking

into the materials available, took the view that the prosecution has proved the case beyond reasonable doubt, found the accused/appellants guilty

as per the charges and awarded punishments as referred to above. Hence this appeal has arisen at the instance of the appellants.

4. Advancing arguments on behalf of the appellants, the learned Counsel would submit that in the instant case, the prosecution had no direct

evidence to offer and it has relied on only circumstantial evidence; that necessary circumstances were neither placed nor proved pointing to the guilt

of the accused; that according to P.W.4, the mother of the deceased, nowhere has she stated that on the date of occurrence, both the accused,

namely A-1 and A-2, came to the house and took the deceased and thus, her evidence would be of no use to the prosecution case; and that so far

as P.W.7 was concerned, he has stated that he saw both the accused and the deceased at about 9.30 a.m. at Sankanur road and thus, it would be

quite clear that he had seen them only within the limits of Coimbatore, by which it cannot be stated that they have travelled beyond that place or

they have gone to Mettupalayam in the motor bike or they have travelled to Ooty, where the occurrence has taken place.

5. The learned Counsel would further submit that the prosecution mainly relied on the recovery of cell phone and also the motor bike; that so far as

the cell phone was concerned, this was marked as M.O.6 and the same was sold

and the receipt was marked as Ex.P.4; that there was correction made with regard to the date; that P.W.11 was the person, in whose presence, M.O.6 cell phone was sold; that P.W.11 claimed that he signed in the blank paper and went away; that apart from that, there was no evidence to indicate that the cell phone originally belonged to the deceased and thus, the evidence in respect of the recovery of cell phone will not advance the prosecution case; that so far as the recovery of motor bike pursuant to the confessional statement of A-2 was concerned, P.W.14 has been examined in this regard and he has also relied on Ex.P.14, the receipt; that P.W.14 has categorically stated that he did not know the signature found in Ex.P.14; that even P.W.4 or the daughters of P.W.4 was not examined in this regard; that P.W.14 was the owner of the vehicle; that according to him, he has actually sold the vehicle to the deceased, but he was unable to identify the signature of the deceased in Ex.P.14; that there was no evidence to indicate that the vehicle stood in the name of the deceased and thus, this part of the evidence also was not connecting the accused with the crime and that the prosecution rested its case on the above circumstances, which were not proved pointing to the guilt of the accused and the lower court has taken an erroneous view and hence the appellants are entitled for acquittal in the hands of this Court.

6. The court heard the learned Additional Public Prosecutor on the above contentions and has paid its anxious consideration on the submissions made.

7. It is not in controversy that the dead body of Vetrivel was found on 06.09.2006 by P.W.1, the Forest Guard. After informing his officers, he gave the complaint Ex.P.1 to P.W.22, the Sub Inspector of Police, who registered the case in Crime No. 218 of 2006 u/s 302 IPC. The investigation was taken up by P.W.23, the Inspector of Police. Following the inquest made by him and the preparation of Ex.P.34, the inquest report, the dead body was subjected to post-mortem by P.W.20, the Doctor, who has given his categorical opinion as a witness before the court and also through the contents in Ex.P.27, the post-mortem certificate that the deceased would appear to have died of shock due to injury to vital organs left testis. The identity of the dead body either or the death was due to homicidal violence was never disputed by the appellant before the

trial court. Apart from that, the dead body has been clearly identified by P.W.4 and the others. Under these circumstances, it leaves no doubt in

the mind of the court in respect of the identity of the dead body that it was that of the deceased and also the cause of death. Hence without any

impediment, it could be recorded so.

8. True it is, the prosecution had no direct evidence to offer to substantiate its case. This Court is able to notice the following circumstances, which

in the considered opinion of the court pointing to the guilt of both the accused, who are the appellants before this Court. P.W.4 is the mother of the

deceased. She has categorically spoken to the fact that the marriage of one of her daughters has taken place at Salem on 14.6.2006 and it was A-

1 who has also attended the marriage. On the previous night, his behaviour towards P.W.5 was found thoroughly not satisfactory. After coming to

Coimbatore, P.W.4 called the mother of the first accused to inform the conduct of A-1 and it was the deceased who went to the house of A-1 and

took his mother. When it came to the knowledge of A-1, he developed animosity and he was not in talking terms with the deceased for a period of

a month prior to the occurrence. According to P.W.4, on 03.09.2006, the deceased informed her that A-1 and A-2 have come and he along with

them is going to Ooty in his motor bike and will be returning in the afternoon. It is true, P.W.4 has not stated that she saw A-1 and A-2 coming

into the house and taking the deceased. It would be quite clear from her evidence that it was the deceased who has passed on the information that

he was to go to Ooty in his motor bike with A-1 and A-2. It is pertinent to point out that P.W.7 was the common friend of both the accused and

the deceased. He saw both the accused and the deceased at about 9.30 a.m. at Sankanur road. He enquired them and they told that they are

going to Ooty in the motor bike and they also invited him, but he could not go. Thus, it would be quite clear that on the date of occurrence at about

9.30 a.m., both the accused and the deceased informed P.W.7 that they were on the way to Ooty and P.W.7 found the deceased in the company

of both the accused.

9. It was the evidence of P.W.6, the Cap seller that at about 6.00 p.m. on 03.09.2006, he saw both the accused and the deceased and he

enquired them whether they required Cap, but they replied in negative. After

9.00 p.m. on the same day, he saw both the accused returning, but the other third party was found missing. Subsequently, an identification parade was conducted in order to identify both the accused. P.W.6 was taken to the Central Prison and he identified both the accused, namely A-1 and A-2 twice in the presence of P.W.17, the Judicial Magistrate, Kothagiri. The identification parade proceedings were also filed under Ex.P.18 and no procedural irregularity or illegality is noticed. The learned Counsel for the appellants has raised two contentions in this regard that the Cap seller, who was actually in the crowd, has not even seen A-1 and A-2 for atleast a few minutes and hence he could not remember them and if so, he could not have identified A-1 and A-2 properly and further, A-1 and A-2 complained to the Magistrate that they were actually shown to the witness earlier and thus, the identification parade proceedings cannot be given any evidentiary value. This Court is unable to agree with the learned Counsel for the following reason. It is true, in a given case like this, the identification parade in law is a must in order to ascertain whether the witness, who has seen the assailants at a particular point of time when the offence was committed, could identify the accused. If it is ascertained so, his evidence has got to be taken as a corroborative piece of evidence when he comes before the court to identify the accused in the court hall at the time of proceedings. The identification parade is not a substantive piece of evidence, but it is only a corroborative piece of evidence to the main evidence, namely identifying the accused in the court hall. In the instant case, P.W.6, though Cap seller, asked A-1 and A-2 and also the deceased whether they required Cap, but they replied in negative and within a short span of time, he saw both A-1 and A-2 returning, but the other third party was found missing. Though it was only for a few minutes, P.W.6 could remember the identity of the accused. Apart from that, identification parade was conducted by P.W.17, Judicial Magistrate concerned, who has clearly deposed that on both occasions, P.W.6 was able to identify both the accused twice and hence it leaves no doubt in the mind of the court and thus this is the strong piece of evidence.

10. The added circumstances are the recovery of M.O.6, cell phone pursuant to the confessional statement given by A-1. In the instant case, there is evidence to indicate that pursuant to the confessional statement of A-1, M.O.6,

cell phone has been recovered from P.W.10. It is to be pointed out that it was actually in the custody of the deceased at the time when the occurrence has taken place. It was actually sold to P.W.10 under Ex.P.4. A perusal of Ex.P.4 would indicate that there was correction as to the date and originally, it was written as 4.8.2006 and subsequently, corrected as 04.09.2006. It leaves no doubt much less reasonable doubt for the simple reason that the occurrence has taken place only on 03.09.2006 and hence the date should have been put as 04.09.2006, but mistakenly, it has been written as 04.08.2006 and subsequently, it has been corrected as 04.09.2006. Further, P.W.10, to whom it has been sold, has been examined and he has identified the phone, but the evidence of P.W.11, in whose presence the phone was sold, did not give any support to the prosecution case. But the evidence of P.W.10, identifying the phone and also deposing that it was sold to him, would be sufficient in the considered opinion of the court that it has been recovered from A-1 pursuant to the confessional statement given by him.

11. The added circumstance was the recovery of motor bike from the cycle stand. P.W.12 was the Manager of the cycle stand at Mettupalayam.

He has clearly deposed that on 03.09.2006, both the accused and the other person came there and left M.O.5, motor bike and M.O.7, token was

issued and on 08.09.2006, the accused came along with the police and the vehicle was taken by the police. Thus, it would be quite clear that on

03.09.2006 morning, M.O.5, motor bike was left at the cycle stand, which was managed by P.W.12 and M.O.7, token has also been issued for

the same. Further, it was recovered only on the identification by the accused on 08.09.2006. The contention of the learned Counsel for the

appellants is that there was no evidence to indicate that the motor bike belonged to the deceased. This contention has got to be rejected for more

reasons than one. On the date of occurrence, P.W.7 has clearly deposed that he has seen both the accused and the deceased coming in the motor

bike. Originally, the motor bike belonged to one Devaraj, who has been examined as P.W.14 and the vehicle was actually under hire purchase

with Bajaj Auto Finance and only a part of the amount has been paid. Pending same, he sold the vehicle to the deceased, but the deceased also

paid only a part of the amount. In order to prove the same, Ex.P.14, the receipt

has been produced. But, the signature of the deceased has not been proved. It was the vehicle originally belonged to P.W.14, Devaraj and it was under hire purchase agreement. It is an admitted fact that the vehicle was sold to the deceased and the deceased has also paid a part of the amount, which could be seen from the evidence. It is true, the R.C. Book in respect of the vehicle did not stand in the name of the deceased on the date of occurrence, but there is evidence that the vehicle was in the custody of the deceased during the relevant time, namely on 03.09.2006. Further, M.O.12, motor bike key, was recovered from A-2. Thus, the recovery of motor bike, which was actually in the custody of the deceased on the date of occurrence, from the accused persons would be clinchingly pointing to the nexus of the accused with the crime. All put together, the court is of the considered opinion that the circumstances are clearly pointing to the nexus of the accused with the crime. It is also made clear that none else except these two accused, could have committed the offence and the same is within the special knowledge of these accused. The accused have to tender explanation as to how the death was caused, but there was no explanation to offer. On the contrary, they claimed that they had nothing to do with the crime at all and they had no nexus with the crime.

12. In the considered opinion of the court, the last seen theory through the evidence of P.W.7, the common friend and also the evidence of P.W.6, the Cap seller just before the occurrence and also the recovery of M.Os. belonged to the deceased, would clearly indicate that the appellants herein have committed the offence, but they have no explanation to offer. Under these circumstances, the trial court has marshalled the evidence proper and has taken a view that the prosecution has proved the case beyond reasonable doubt. Hence the judgment of the trial court does not require any disturbance either factually or legally. Accordingly, this criminal fails and the same is dismissed.