

(2009) 01 MAD CK 0212
In the Madras High Court
Case No : Criminal Appeal No. 125 of 2007

Pavunu

APPELLANT

Vs

State by the Inspector of Police

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 109, 201, 302, 34

Citation : (2009) 01 MAD CK 0212

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

Bench : Division Bench

Advocate : S. Govindarajan, in Crl.A. No. 125 of 2007 and R. Shanmugam, SC for S.U. Karthikeyan, in Criminal A. No. 408 of 2007, for the Appellant; P. Kumaresan, APP, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This judgment shall govern these two criminal appeals, namely Criminal Appeal No. 125 of 2007 filed by A-3 and

Criminal Appeal No. 408 of 2007 filed by A-1 and A-2.

2. The appellants three in number stood charged, tried and found guilty by the Additional District and Sessions Division, Fast Track Court, Vellore

in S.C. No. 183 of 2005 as follows.

Accused Charges Findings Sentence

A-1 and A-2 Section 302 r/w Section Guilty Life imprisonment each and

34 IPC to pay a fine of Rs.1000/-, in

default to undergo 6 months

RI.

A-1 and A-2 Section 201 r/w Section Guilty u/s 201 r/w 34 5 years R.I. each and to pay

302 IPC IPC a fine of Rs.1000/-, in default

to undergo 6 months RI.

A-3 Section 302 IPC Guilty u/s 302 r/w Life imprisonment and to pay

Section 109 IPC a fine of Rs.1000/-, in default

to undergo 6 months RI.

A-3 Section 201 r/w Section Guilty 5 years R.I. and to pay a fine

109 IPC of Rs.1000/-, in default to

undergo 6 months RI.

3. The short facts necessary for the disposal of these appeals can be stated thus:

a) P.W.1 is the elder brother of the deceased Venkatesan @ Chinnathambi. Both were carrying on brick kiln business independently. A-3 is the

wife of the deceased. P.W.2 is the son of the deceased. The first accused took on lease 35 cents of land of the deceased for carrying on his brick

business. One Ravi was carrying on business in that piece of land. In the course of the brick transaction and manufacturing of brick, A-3

developed intimacy with A-1 and apart from that, she has also given 5 sovereigns of gold jewels to A-1. When the deceased came to know about

the same, he has not only demanded the return of the jewels, but also asked A-1 to hand over the possession of the land and thus, A-1 and A-3

were aggrieved over the attitude of the deceased. A-2 was an associate of A-1.

b) On 26.04.2004, the deceased went towards the field at about 7.00 p.m., but he did not return. A-1 and A-2 beat the deceased and caused his

death. They originally buried the dead body in the land of P.W.4's brother and thereafter, they exhumed the dead body and gave an intimation to

A-3 and along with her, they threw the dead body on the railway track. On the next day morning, A-3 informed P.W.2 and others that her

husband, who went last night at 7.00 p.m., did not return. They were all making a search throughout. P.W.4 informed that a new pit was dug in the

land of his brother and it also seems to be closed. Immediately, P.Ws.1 and 2 and others went there and dug the pit, but they noticed only

bloodstains and they did not see the dead body. After seeing the dead body of the deceased in the railway track, P.Ws.1 and 2 proceeded to

Jolarpet Railway police station and gave Ex.P.1, the complaint to P.W.18, the Sub Inspector of Police. The station master has also given Ex.P.22,

the complaint to P.W.18, who registered the case in Crime No. 125 of 2004 u/s 174 Cr.P.C. Ex.P.25, the F.I.R. was despatched to the Court.

P.W.18 proceeded to the spot and made an inspection in the presence of the witnesses. The observation mahazar Ex.P.28 and the rough sketch

Ex.P.32 were prepared. P.W.18 conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and

prepared Ex.P.24, the inquest report. When the matter was pending investigation, P.W.20, the Inspector of Police of the Railway police station,

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. It

was noticed by P.W.20 that it was a case of murder and hence he transferred the investigation to Thirupathur Taluk Police Station.

c) P.W.13, the Doctor attached to the Government Hospital, Thirupattur, on receipt of the requisition, has conducted post-mortem on the dead

body of the deceased and has issued Ex.P.17, the post-mortem certificate, wherein she has opined that the deceased would appear to have died

of injury to vital organs, 36 hours prior to autopsy.

d) On transfer, P.W.21, the Inspector of Police of Thirupathur Taluk Police Station, took up the case and renumbered the same as Crime No. 309

of 2004 and registered the case u/s 174 Cr.P.C. While the matter stood thus, A-1 and A-2 appeared before P.W.8, V.A.O. on 07.05.2004. A-1

gave confessional statement and the same was recorded by the V.A.O., which was marked as Ex.P.2. A-1 and A-2 were produced before the

Thirupattur Taluk Police station along with Ex.P.2. Then, they were arrested and the case was converted from Section 174 Cr.P.C. to Section

302 IPC. Ex.P.27, the alteration report was despatched to the court. Further investigation was proceeded with. A-1 gave confessional statement,

which was marked as Ex.P.3. A-2 also gave confessional statement, which was recorded in the presence of the witnesses and the same was also

marked as Ex.P.4. Pursuant to the confessional statement, A-1 produced M.O.4, stick, which was recovered under a cover of mahazar. P.W.21

proceeded to the spot along with the accused and the witnesses and prepared the observation mahazar and the rough sketch. He recovered the

material objects from the place of occurrence under a cover of mahazar. A-3 was arrested and she came forward to give confessional statement,

which was recorded in the presence of the witnesses. The accused were sent for judicial remand. All the material objects recovered were sent for

chemical analysis. Ex.P.19, the Chemical Analyst's report and Ex.P.20, the Serologist's report were received. On completion of the investigation,

the Investigator has filed the final report.

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

examined 21 witnesses and also relied on 32 exhibits and 10 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, on hearing the submissions made and looking into the materials available, took the view

that the prosecution has proved the case beyond reasonable doubt and found the accused/appellants guilty as per the charges and awarded

punishments as referred to above. Hence these appeals have arisen at the instance of the appellants.

5. Advancing arguments on behalf of the appellants, the learned Senior Counsel has made the following submissions:

a) The occurrence has taken place, according to the prosecution, on 26.04.2004 between 7.00 p.m. and 8.00 p.m. The prosecution had no direct

evidence to offer. But, it relied upon mainly the evidence speaking about the motive. Secondly, extra judicial confession alleged to have been given

by A-1 and A-2 to P.W.8, V.A.O. on 07.05.2004 and also the recovery of M.O.4 under a cover of mahazar pursuant to the confessional

statement given by A-1. Except this, the prosecution had no evidence to offer. Even though the prosecution made an attempt to prove the case

through these circumstances, it has miserably failed to prove its case either, or bring home the guilt of the accused.

b) According to the prosecution, the occurrence has taken place on 26.04.2004 between 7.00 and 8.00 p.m. P.Ws.1 and 2 have categorically

admitted that on the next morning, they were informed by P.W.4 that a pit was dug and was closed in his brother's land. Immediately, they went

over there and opened the pit, but they could not see the body and they found only the bloodstains. Even at that time, the police officials and the

V.A.O. were all present. It was also added by P.W.2 that they gave a clear information and it was also recorded by the police and thus, it would

be quite clear that the police of the said jurisdiction went over to the place and came to know about the occurrence and have recorded so. If to be

so, the first information which was recorded by the police on 27.04.2004 itself has been suppressed in the instant case.

c) Secondly, even after seeing the dead body in the railway track, P.W.1 has given the complaint to the railway police, where he has categorically

stated that it was the act of one Ramesh, namely A-1, who has committed the murder and threw the dead body in the railway line and thus, in the

uncertain terms, an information was given to the police. Further, the case was not converted to Section 302 IPC even after transfer of the case

from the Railway police to the regular police for the reasons best known to the police officials. For the first time, the case was altered from Section

174 Cr.P.C. to Section 302 IPC only after the extra judicial confession alleged to have been made by A-1 and A-2 to P.W.8, the V.A.O. and till

that time, the case was not altered at all. In the instant case, there was not only suppression of the first information, but also the police were waiting

for a period of 7 days even after the cognizable offence was brought to their notice.

d) In the instant case, so far as the extra judicial confession alleged to have been made is concerned, it should have been rejected by the trial court

for the simple reason that A-1 and A-2 were all along available in the village, but they appeared before the Village Administrative Officer on

07.05.2004. The police neither registered the case for murder nor arrested them, but has kept quiet. There is no reason for A-1 and A-2 to

appear suddenly before P.W.8, V.A.O. to confess about the offence on 07.05.2004 and that too after a period of nearly about 10 days. It is not

the case that P.W.8, V.A.O. was already acquainted to A-1 and A-2 and there is no reason as to why they should make confession before P.W.8

and thus, that confessional statement has been created in order to shape the case of murder like this.

e) Further, in the instant case, M.O.4, which is alleged to have been recovered from A-1 pursuant to the confessional statement, did not contain

any blood at all. According to the prosecution, the occurrence has taken place on 26.04.2004 at about 7.00 to 8.00 p.m., but P.W.13, the

Doctor, who conducted post-mortem on the dead body of the deceased on 29.04.2004, has categorically stated in his report and also in his

evidence that the deceased would appear to have died about 36 hours prior to autopsy. If to be so, it should have been on the night hours of

27.04.2004 or on the morning hours of 28.04.2004 and hence the time of death is also not proved by the prosecution. Under these circumstances,

all would cast a doubt and that too in a case of circumstantial evidence, if they are not placed and proved properly and cogently, the trial court

should have rejected the case of the prosecution in entirety 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 Venkatesan @ Chinnathambi was found in the railway track near Jolarpet. On information of

P.W.1, a case came to be registered by P.W.18, the Sub Inspector of Police attached to the railway police, Jolarpet in Crime No. 125 of 2004

u/s 174 Cr.P.C. Subsequently, following the post-mortem, it was found that it was a case of murder and then, the case was transferred to

Thirupattur Taluk Police Station and a case came to be registered in Crime No. 309 of 2004 u/s 174 Cr.P.C. Ex.P.26, the F.I.R. was also

marked. P.W.13, the post-mortem Doctor has opined that the deceased would appear to have died of shock and haemorrhage due to the injuries

sustained. Thus, the prosecution was successful enough in proving the fact that the deceased died out of homicidal violence. This fact was also not

disputed by the appellants before the trial court and hence it has got to be recorded so.

8. In order to substantiate the charges levelled against the appellants, the prosecution had no direct evidence to offer. It has relied upon only

circumstantial evidence. In a given case like this, the prosecution must place and prove all necessary circumstances pointing to the guilt of the

accused undoubtedly and also the hypotheses that no one else could have committed the offence except the accused. If this test is applied, the

court is afraid whether it can agree with the prosecution case. In the instant case, the prosecution came with the specific charge that A-1 and A-2

beat the deceased and caused his death between 7.00 p.m. and 8.00 p.m. on 26.04.2004 and while screening the evidence, A-3 also joined with

them. In order to prove those charges, the prosecution mainly rested on the evidence in respect of motive, extra judicial confession alleged to have

been given by A-1 and A-2 to P.W.8, V.A.O. on 07.05.2004 and also the recovery of M.O.4 under a cover of mahazar.

9. All the circumstances noticed were stood against the prosecution case. According to the prosecution, the occurrence has taken place on

26.04.2004 between 7.00 p.m. and 8.00 p.m. P.W.13 was the Doctor, who conducted autopsy on the dead body of the deceased. According to

him, the death would appear to have caused 36 hours prior to autopsy, i.e. the death would have caused on the night hours of 27.04.2004 or on

the early morning hours of 28.04.2004, but the prosecution case was that the death has occurred on 26.04.2004 itself. The dead body was found

only on 28.04.2004 at about 11.00 a.m. Thus, the death would have been caused as noticed by the post-mortem Doctor and not as put forth by

the prosecution on 26.04.2004 between 7.00 p.m. and 8.00 p.m. No explanation was forthcoming from the prosecution before this Court.

10. Secondly, according to P.Ws.1 and 2, Venkatesan @ Chinnathambi was not found on the night hours of 26.04.2004 and it was A-3 who

informed P.Ws.1 and 2 and others. P.W.4, the nearby neighbour, informed that a new pit was dug in his brother's land and it remains closed also

and therefore, they should go and verify. Accordingly, P.Ws.1 and 2 and others went over there and opened the pit, but they could not see the

dead body and found only the bloodstains. At this juncture, it is pertinent to point out that according to the witnesses, the V.A.O. and the police

officials were also present on 27.04.2004. They would further add that the police have recorded their information which was given. If to be so, the

police have clear information of the incident as reported by P.Ws.1 and 2 on 27.04.2004 morning itself. But what happened to that information

remained unknown before the trial court.

11. Thirdly, the dead body was found in the railway track near Jolarpet on 28.04.2004. P.W.1 rushed to Jolarpet Railway Police and gave an

information to P.W.18, the Sub Inspector of Police, who registered the case in Crime No. 125 of 2004 u/s 174 Cr.P.C. The dead body was

subjected to post-mortem by P.W.13, the Doctor, who has clearly opined that it was not an accident, but it was a case of death due to homicidal

violence. Immediately, the case was transferred to the regular police, namely Thirupattur Taluk Police on 29.04.2004 itself. Even after the same,

the case was not altered to Section 302 IPC, but the case was renumbered as Crime No. 309 of 2004 only u/s 174 Cr.P.C. It is pertinent to point

out that even in the earliest information given by P.W.1 to the railway police on 28.04.2004 itself, he has categorically stated that it was a case of

murder and the act committed by A-1 in killing his brother. At this juncture, it remains to be stated that Thirupattur Taluk Police, under what

circumstances or reasons, did not register the case for murder, but continued it u/s 174 Cr.P.C. remained unknown. Further, the case was altered

to Section 302 IPC only on 07.05.2004 subsequent to the production of A-1 and A-2 by P.W.8, V.A.O and the confessional statement given as

found under Ex.P.2. At this juncture, it remains to be stated that though the prosecution has projected as if A-1 and A-2 were absconding, the

evidence would indicate that they were very well available in that place. If to be so, what made the police not to register the case of murder or not

to cause arrest of the accused or not to proceed with the investigation remained unexplained. It is not the case of the prosecution that P.W.8,

V.A.O. was acquainted with A-1 and A-2, but what impelled them to appear before him suddenly and gave such a confessional statement on

07.05.2004 remained unknown and is doubtful and it casts a doubt whether they gave such a statement at all.

12. In the instant case, though M.O.4 was subjected to analysis, it did not contain human blood at all. It should not be forgotten that it was a case

rested on circumstantial evidence. If to be so, it is true, the witnesses may fail, but not the circumstances. But the circumstances when placed to

take a decision as to the guilt of the accused, they must be cogent, convincing and must constitute a chain without a snap and pointing to the

hypotheses that except the accused no one could have committed the offence. In the instant case, all the circumstances noticed are contra to the

hypotheses that except the accused no one could have committed the offence. Under these circumstances, it would be highly unsafe to rest the

conviction on the basis of the circumstances placed before the trial court, but the trial court has taken an erroneous view and hence the judgment of

the trial court has got to be made undone only by upsetting the same.

13. Accordingly, the judgment of conviction and sentence imposed on the appellants by the trial court is set aside and the appellants are acquitted

of the charges levelled against them. The bail bonds if any executed by them shall stand terminated and the fine amounts if any paid by them shall

be refunded to them. Accordingly, these criminal appeals are allowed.