
(1992) 08 MAD CK 0041

In the Madras High Court

Case No : Criminal A. No. 992 of 1986 and Criminal M.P. No. 5712 of 1992

Ravanan

APPELLANT

Vs

State (Inspector of Police), Kumbakonam and Another

RESPONDENT

Date of Decision : 25-08-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 392

Citation : (1992) 08 MAD CK 0041

Hon'ble Judges : Thangamani, J;Arunachalam, J

Bench : Division Bench

Advocate : A. Padmanabhan, for the Appellant; A. Raghupathy, Assistant Public Prosecutor, for 1st Respondent and Mr. K.R. Govindarajan for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Thangamani, J.—Against his conviction and sentence to undergo imprisonment for life under S. 302, I.P.C. and R.I. for seven years and a fine of Rs. 500/- in default to under to R.I. for six months under S.392 I.P.C., the appellant Ravanan has preferred this appeal.

2. The appellant and three others were accused 1 to 4 in S.C. No. 34 of 1985 on the file of the learned Sessions Judge of West Thanjavur. The case of the prosecution is that on the night of 30.1.82 all the four and one absconding accused Mohanasundaram trespassed into the house of one Pattu Ammal and the Appellant Ravanan and Mohanasundaram in furtherance of the common intention of all tied the hands and legs of the said Pattuammal who was sleeping, inserted a cloth into her mouth and caused her death by strangulation. They also committed robbery of the jewels of the said Pattu ammal. On these allegations charges were framed against them as under:

1st Charge A2 and A3 Under S.449 I.P.C.

2nd Charge A1 Under S.302, I.P.C.

3rd Charge A2 to A4 Under S.302 R/w. S.34, I.P.C.

4th Charge A1 Under S.392, I.P.C.

5th Charge A2 to A4 Under S.392 R/w. S.34, I.P.C.

3. The prosecution examined 18 witnesses, filed 29 Exhibits and marked 21 Material objects. They disclose these facts; Deceased Pattu ammal aged about 62 was living with her 80 years old mother in Thayagarajapuram Agraharam. P.W.3 Ranganathan is her brother. He is residing in Housing Unit. Thanjavur. Often he used to visit his sister. P.W.2 Rasathi is a part-time servant maid in the house of the deceased. Pattu ammal was wearing M.O.3 stud, one gold chain with dollar and two bangles. She used to sleep inside the house, while her mother would take her bed outside. On 30.1.1982 at 4.00 P.M., P.W.2 Rasathi finished her household work as usual and went away.

4. On the early next morning at 3.00 A.M. P.W.6 Kaliyamurthy an opposite neighbour of Pattu ammal came out of his house to pass urine. He saw A2 Kannan two others standing there. When P.W.2, Rasathi went to the house of Pattu ammal at 5.30 A.M., the house was locked from inside. So she returned to her house which is two houses away from the house of the deceased. She again went to the house of her mistress at 6.00 A.M. The house was still locked. So she called the mother of the deceased and asked why the house was not opened. The mother of the deceased is short of hearing and she cannot see properly. The mother of the deceased searched for the key, returned and told P.W.2 Rasathi to bring her father since somebody had murdered Pattu Ammal. Thereupon P.W.2 Rasathi went to her house and brought her father and others. They went inside the house through the rear door and found Pattu ammal dead. Her two hands were tied with M.O.9 rope. Usually that rear door would be kept locked. But on that day it was opened. Her mouth was filled with M.O.6 jacket. She was strangled with M.O.5 saree. P.W.1 Arunachalam is a lessee of Pattu ammal. On hearing the news he also came to the house and saw the dead body of Pattu ammal. He noticed that the diamond stud, chain and bangles which she used to wear were not available on her body. The cup-boards were also ransacked. He gave a telegram to P.W.3 Ranganathan and then left for Thiruvidadimarudur Police Station. On 31.1.1982 at 9.00 A.M. P.W.11 Sub Inspector registered Ex.P1 complaint given by P.W.1 Arunachalam in his station Crime No. 20/82 under Ss.302 and 380, I.P.C. He prepared Ex.P5 Express F.I.R. and sent them to J.S.C.M. Court.

5. On receipt of information P.W.16 Inspector visited the scene place at 1.00 A.M. He prepared Ex.P2 observation Mahazar in the presence of P.W.4 Srinivasan. At 11.30 A.M. he recovered M.O.9 rope. M.O.10 series jackets, M.O.11 lock and M.O.12 broken kondi under Ex.P3 mahazar. At 12.00 Noon P.W.16 Inspector prepared Ex.P19 rough sketch. He got the place of occurrence and the corpse photographed by P.W.15 photographer. M.Os.1 to 4 and 14 to 17 are the photos and their negatives. From 12.15 P.M. to 3.00 P.M. he held inquest over the dead

body of Pattu ammal and prepared Ex.P18 Inquest Report. At the time of inquest he examined P.W.1 Arunachalam, P.W.2, Rasathi and P.W.3 Ranganathan. Thereafter he sent the body through P.W.13 Constable with Ex.P6 Requisition for post-mortem.

6. At 4.00 P.M. on that day, P.W.13 Doctor commenced post-mortem in Government Hospital, Kumbakonam. Rigor morits were partially present in all four limbs. Eyes were closed and tongue was within the mouth. Discharge of blood was present from the nostril and mouth.

On External Examination:-1. Contusion of 5 cm ? 4 cm. present on the right side of the face. Dark red colour; on dissection effusion of the blood present in subcutaneous layers.

2. Contusion of 3 cm ? 6 cm. around the right eye starting from the upper eye lid and extending to lower eye lid. Dark red colour. On opening the eye lid sub conjunctival haemorrhage also seen.

3. No evidence of mark seen in the neck.

On Autopsy:- Hyoid bone intact. Trachea rings 6, 7, 8 and 9 fractured on the anterior surface. Heart:-120 grams. Chamber-empty, Lungs; Right 300 grams. Left 250 grams. Cut section congested excludes dark fluid blood. Stomach Empty. Liver 1500 grams, congested. Spleen: 100 grams, congested. Kidney 100 grams each congested. Intestine normal Bladder empty. Uterus Atrophied. Brain 1300 grams. Brain matter slightly congested.

In the opinion of the Doctor, the deceased would appear to have died of asphyxia due to strangulation and death could have occurred from 14 to 18 hours prior to autopsy. Ex.P7 is the postmortem certificate. Then P.W.12 constable seized M.O.5 saree and M.O.6 jacket from the body and entrusted the same in the Police station.

7. At 5.00 P.M., P. W.14 Finger Print Expert inspected the site and found that there was finger print on the wooden drawer of the bureau. The Inspector seized the same under Ex.P4. Mahazar. P.W. 14 Finger Print Expert got the finger prints on the drawer photographed by Police photographer P.W.8. M.O.13 is the negative. When the expert compared this finger print with that of the deceased, they did not tally.

8. On 9.2.1982 P.W.16 Inspector examined P.W.13 Doctor. P.W.18 his successor continued the investigation from 20.4.1982. He searched for Mohanasundaram. On 24.2.1984 at 2.00 P.M., he arrested Mohanasundaram in Puliampatai Main Road. The latter gave a confession statement, the admissible portion of which is Ex.P24. Pursuant to the same he took the Police party to Pudupattanam and identified one Kumar there. The Inspector seized M.O.8 diamond stud produced by the said Kumar under Ex.P25 Mahazar. On 25.2.1984 he got the thumb impression of Mohanasundaram and produced him in Court.

9. On the same day at 4.30 P.M., the Inspector arrested A3 Panneerselvam and examined him. He gave a confession statement, the admissible portion of which is Ex.P26. Pursuant to the same he took P.W.18 Inspector to Sundaraj Jewellery shop in Sirkazhi and identified P.W.9 Natarajan. The Inspector seized M.O.18 gold ingot produced by the said Natarajan under Ex.P27 Mahazar.

10. At 9.00 P.M., on that day the Inspector arrested the appellant Ravanan and examined him. He gave a confession statement, the admissible portion of which is Ex.P28. Pursuant to the statement he seized M.O.21 gunny bag, M.O.7 tumbler. M.O.20, torch light and M.O.19 aruval under Ex.P29 Mahazar.

11. On returning to the Station the Inspector examined P.W.1 Arunachalam by showing M.O.7 tumbler.

12. On 26.2.1984 the Inspector got the thumb impressions of A.3 Panneerselvam and the appellant. On 27.2.1984 at 6.00 A.M. he arrested A2 Kannan in Govindapuram Bus stand in the presence of P.W.10 Rajendran. The Inspector, obtained his thumb impression also.

13. On the same day P.W.18 Inspector obtained the palm impressions (Exs.P9 to P13) of the four accused and the absconding accused Mohanasundaram and sent the same to P.W. 14 found that the impression on Ex.P10 tallied with that of the appellant. Ex.P14 is the photograph of the impression found on the drawer. Ex.P16 is the report of the Finger Print Expert.

14. As per the request of the Inspector M.O.10 series jackets, M.O.5 saree and M.O.6 jacket were sent for Chemical examination under Ex.P21 covering letter. Exs.P22 and P.23 are the reports of the Chemical Examiner and Serologist.

15. On 16.4.1984 P.W.18 Inspector completed the investigation and laid charge sheet against the four accused and Mohanasundaram.

16. When examined under S.313 Cr.P.C. the appellant denied the allegations against him except that his thumb impression was taken during investigation.

17. After trial, the learned Sessions Judge found that the appellant guilty under Ss.302 and 392, I.P.C. convicted and sentenced him as indicated earlier. The accused 2 to 4 were acquitted of the charges against them.

18. The learned counsel for the appellant submitted that the learned Sessions Judge having disbelieved the major portion of the prosecution case and acquitted A2 to A4 has erred in convicting the appellant alone on the same evidence. The Trial court went wrong on the evidence of P.W.8 Finger Print Expert.

19. There is no dispute that on the night of 31.1.1982 Pattu ammal was done to death in her house in Thyagarajapuram Agraharam and some of her jewels were stolen. Ex.P7 post-mortem certificate discloses that there were two contusions on her face and she died of asphyxia due to strangulation. The Trial court has fastened the liability on the appellant for the homicidal violence on the only reason that the thumb impression (M.O.13) found on the drawer of a wooden

cup-board in the scene place was that of the Appellant. It is true that P.W.14 Finger print expert has found that the thumb impression appearing in the drawer and that of the admitted thumb impression Ex.P10 of the appellant tally and they are of one and the same person. Normally this would be sufficient to prove that the appellant also gained entry into the house on that fateful night and he was also involved in the crime whatever may be the part played by him. However, the version of the prosecution that thumb impression was available on the drawer of the wooden cup-board on the morning next to occurrence itself is doubtful. P.W.16 Inspector states in his evidence that at 11.00 A.M. on 31.1.1982 he arrived on the scene place. P.W.14 the Finger Print Expert also came there at his instance. Under the supervision and the instructions of P.W.14 Finger Print expert, the impression on the wooden drawer was taken by P.W.8 Photographer. M.O.13 is the negative by P.W.8 Photographer. M.O.13 is the negative of the said photograph. But P.W.8 Photographer admits in cross-examination that only from memory he stated that the photograph was taken on 31.1.1982. He had not marked the day on the photograph. Though he states that there will be record in his diary regarding the taking of photograph on 31.1.1982, the said diary has not been produced. Besides though P.W.16 Inspector deposes that at 5.00 P.M., on that day he seized the wooden drawer under Ex.P4 Mahazar, the said wooden drawer has not been produced in Court. It is not one of the material objects marked. Ex.P4 reads that at 5.00 P.M., on 31.1.1982 since P.W.14 Finger Print Expert stated on examination that a palm impression was available in the drawer of the wooden cup-board for the purpose of further investigation this wooden drawer has been seized. P.W.4 Srinivasan is an attester to Ex.P4. He admits in cross examination that he does not remember whether there were any thumb impressions on the wooden bureau. And P.W.16 Inspector concedes that the drawer of the wooden bureau was separable. He has written so in Ex.P4 Mahazar. But he did not seize the wooden drawer. The Inspector does not offer any explanation as to why such an important piece of material has not been actually seized even though there is Ex.P4 Mahazar in that connection. It is significant to note that the appellant Ravanan was arrested at 9.00 A.M. on 25.2.1984 by P.W.18 Inspector. According to this Inspector, on 26.2.1984 he obtained the thumb impression of the appellant and send them to the Finger Print expert. And P.W.14 Finger Print expert states that till 29.2.1984 M.O.13 negative did not reach him. It was sent to him along with the admitted thumb impression of the appellant only on 29.2.1984. So the possibility of both the thumb impressions having been taken only after the arrest of the appellant could not be ruled out. The failure to seize the wooden drawer on 31.1.1982 itself and send it to court throws grave doubt about the prosecution version regarding the coming into existence of the impugned thumb impressions. Besides, had the wooden drawer been Produced before the Court, the appellant would have had an opportunity of getting the alleged thumb impression compared by another Expert.

20. In this context, it will be worthwhile to extract these passages from the decision in Shanmughayya and others (Criminal Appeal No. 169 of 1986 dated

7.2.1992) to which one of us was a party (Arunachalam, J.):

The Police Standing Orders show that an officer should be declared as a person competent by the Superintendent of Police, to take finger print. S.5 of the Identification of Prisoners Act No. 33 of 1920 deals with the power of a Magistrate order a person to be measured or photographed. Under this Section if a Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct a person to allow his measurements or photograph to be taken, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer. Such an order can be made only by a Magistrate of First Class and further unless the person has at some time been arrested in connection with such investigation or proceeding. The Act does not say that S.5 refers to the prescribed manner spelt out in S.4 of the Act. The power of the Magistrate under S.5 of the Act does not seem to affect the power of a police officer, to take finger prints or photographs of the persons arrested in connection with, the various facts referred to under S.4 of the Act.... S.8, confers power on the State Government to make rules for the purpose of carrying into effect the provisions of this Act. It was stated by the learned Public Prosecutor, that the State of Tamilnadu had not framed any rules for the purpose of carrying into effect the provisions of this Act. After careful consideration of Ss.4 and 5 of the Act, we are unable to agree with Mr. N. Dinakar, that invariably during investigation a person arrested must be taken before a Magistrate and orders obtained before the finger prints of such persons could be taken by a Police officer. Ss.4 and 5 operate in different fields and obviously if the State Government had made any rules for the purpose of carrying into effect the provisions of this Act, the Investigating Officer, ought to have followed such rules which would fall within the ambit of "Prescribed manner" contemplated under S.4 of the Act. If the State Government has not made any rules under the Act, it will be the duty of the investigating officer, to follow Police Standing Order 836. Police Standing Orders are in the nature of instructions given, to be followed by the Police Force. Police Standing Order 836(3)(a) defines "finger prints" as including prints of thumb and are either "rolled" or "plain", P.S.O. 836(3)(f) defines "proficient" to be an officer, who has been declared by a Superintendent of Police or in the City of Madras by the Commissioner of Police, to be qualified to take clear and well rolled impressions. The method of taking finger prints with reference to appliances, forms part of P.S.O. 836(4)(a), P.S.O. 836(4)(d) states that prints should invariably be taken on the authorised Finger Print Slip (Form No. 141). It also states, that the headings of the slip are self-explanatory...P.S.O. 836(4)(K) reads as follows:

Finger impressions shall be taken only by officers declared by a Superintendent or, in the City of Madras, by the Commissioner of Police, to be qualified to take clear and well-rolled impressions.

None of the provisions of Police Standing Order 836 had been followed by the investigating agency. Of course, it is possible to argue that Police Standing Orders do not have statutory force. We think it necessary that the State Government must make rules under S.8 of the Identification of Prisoners Act, 1920 for the purpose of carrying into effect the provisions of the Act. Some of the State Governments have made rules. A proper procedure in obtaining finger prints must be followed for otherwise, the sanctity of scientific evidence not only gets obliterated but also becomes an exercise in futility.... In *Shankataia v. State of Rajasthan* (AIR 1978 S.C. 1248) the Supreme Court while negating the contention of the learned counsel, that in view of S.5 of the Identification of Prisoners Act, it was incumbent on the Police to obtain the specimen thumb impression of the appellant before a Magistrate and since that was not done; the opinion rendered by the Finger-Print Expert by using these illegally obtained specimen finger impressions, must be ruled out of evidence, held that the contention appeared to be misconceived because in the State of Rajasthan, the Police were competent under S.4 of the Identification of Prisoners Act, to take the specimen finger-prints of the accused, which they did in the presence of Superintendent of Police. It was therefore not necessary for them to obtain an order from the Magistrate for obtaining such specimen finger-prints.

21. The Apex Court had occasion to consider in *Mahmood v. State of U.P.* (1976 M.L.J. Cri 194), if the solitary piece of circumstantial evidence viz., that the finger prints of the appellant were found on the handle of gadasa, which was found lying near the dead body, would be sufficient to record a conviction. The Court held that there were some suspicious circumstances which cast a grave doubt as to the genuineness of this lone piece of evidence. Further, the investigator did not take all the necessary precautions which could be taken to eliminate the possibility of fabrication of this evidence, or to dispel suspicion as to its genuineness. Admittedly, he sealed the box with his own seal which thereafter remained with him throughout. He did not take signatures of the witnesses on the parcel containing the gadasa. He did not after sealing the parcel entrust his seal to sarpanch or any other respectable members of the village. Ultimately it was held that the solitary piece of evidence was too shaky, suspicious and fragile to furnish a sound foundation for conviction.

22. A Division Bench of this Court in *Public Prosecutor v. Virtual* (AIR 1923 Mad 178) held that if the finger-prints are clear enough to an argument, there was no reason why an argument by way of deduction should not be as sure foundation for a conclusion and it may be a better one than any based on direct evidence, There is nothing in the so called science of finger print or the qualification of an expert in it, which need deter a court from applying its own eyes and its own mind to the evidence and verifying the results submitted to it by the witness. In that case, acquittal of the Respondent was confirmed since the lower court's conclusion could not be set aside on any reasonable hypothesis.

23. In *The State Vs. Karu Gope and Another*, after noticing the case law available

on the subject, a Division Bench of the Patna High Court held that there was no rule of law as to whether a conviction can be based on the unsupported testimony of a finger print expert. It was a matter of caution whether a court will act on such unsupported evidence or not. The Patna High Court took note of the law laid down by this Court in AIR 1923 Mad 178.

24. It, therefore, appears that the probative value of opinion of an expert on finger prints should be on the same basis as opinion of any other expert such as medical officer etc., In each case, evidence is only a guide to the court, to direct its attention, to judge of its value. The Court is at liberty to use its own discretion and to come to a conclusion either in affirmance or differing from the view taken by the expert. Before an accused can be convicted on the sole testimony of an expert, the Court will have to be satisfied that there can be no mistake either in the investigation or in the opinion of the expert and the responsibility of the Court is much more greater when there is practically no evidence to corroborate the expert.

25. On facts we are not satisfied, that on the sole piece of evidence of the finger print expert, the appellant alone, could be safely convicted for murder.

26. Yet another material pressed into service by the prosecution to establish the nexus between the appellant and the crime is the alleged confession statement of the appellant under Ex.P28 and the consequential recovery of M.O.21 gunny bag, M.O.7, tumbler, M.O.20 torch light and M.O.19 aruval. No doubt P.W.1 Arunachalam seeks to identify M.O.7 tumbler as that of the deceased. But he admits in cross examination that such vessels are available in every household, and it is not very difficult to get the initials engraved in any such tumbler. The admissible portion of the confession statement Ex.P28 reads:

And according to P.W.18 Inspector, M.Os.7, 19, 20 and 21 were recovered under Ex.P29 Mahazar. However, Ex.P29 reads that these articles were produced by A3 Panneerselvam from his house. So nothing much turns upon the statement in Ex.P28 and the alleged consequential recovery. Late arrest, doubt in finger print, plus practically no recovery, when other accused in the alleged joint venture having been acquitted, will certainly benefit to the appellant.

27. In the circumstances, it is evident that the prosecution has not brought home the guilt of the appellant beyond the possibility of all reasonable doubt.

28. In the result, the appeal is allowed. The conviction and sentence passed by the Trial Court under Ss.302 and 392 I.P.C. are set aside and the appellant is acquitted of the charges.

29. In Criminal Miscellaneous Petition No. 5712 of 1992 P.W.3 Ranganathan seeks direction regarding the return of M.O.8 diamond stud, M.O.18, gold in got and M.O.7 tumbler to him. The Trial Court has already passed an order and it is confirmed.