
(2005) 06 MAD CK 0132
In the Madras High Court
Case No : Criminal Appeal No. 118 of 2003

Selvi and others	Vs	APPELLANT
State by Inspector of Police		RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 201, 202, 302

Citation : (2005) 06 MAD CK 0132

Hon'ble Judges : S. Sardarzackria Hussain, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : S. Shanmugavelayutham, for the Appellant; E. Raja, APP, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The appellants A1 to A4 have filed this criminal appeal challenging the conviction and sentence Imposed for the offences punishable under Sections 302 and 201 r/w 302 I.P.C. as against A1 and u/s 202 I.P.C. as against A2 to A4.

2. The case of the prosecution is as follows:

(a) The deceased Dinesh, aged about 8 years is the son of P.W.1 Pavuna and P.W.2 Asokan. A-1 Selvi is the wife of A-2 Rajasekhar, A-3 Murugan is the brother and A-4 Ramayee is the mother of A-1. They are residing in the house, which is situated near to the house of P.Ws.1 and 2.

(b) The boy Dinesh was studying in 2nd standard. After coming from school, P.W.1's son Dinesh/Deceased used to go to the house of the accused and play with the sons of A1 and A2. During the play, there used to be quarrels and some times, the children of A1 used to beat Dinesh. When this was reported to P.W.1 by Dinesh, she went and complained to A-1 stating that her sons had beaten

Dinesh.

(c) A-1 having not relished over the complaining attitude of P.W.1, indirectly scolded her sons stating that why did they play with the son of a bitch. When P.Ws.1 and 2 questioned this, she openly told that P.W.1 had illicit intimacy with her husband A-2. Due to this, there used to be frequent quarrels between A-1 and P.W.1 on the one hand and P.W.1 and P.W.2 on the other hand. A-1 used to challenge P.W.1 that one day or the other, she would kill her son Dinesh so that she would teach a proper lesson to P.W.1's family.

(d) The fateful occurrence took place on 26.12.2001 P.W.1 permitted her son Dinesh to go outside the play with the children at 3 p.m. on the date of occurrence. Subsequently, he did not turn up. When P.W.2, the husband of P.W.1 came back home after finishing his job, asked the whereabouts of Dinesh, she told that their son has gone for playing with the children. However, even in the evening, he did not turn up and they were searching throughout night, but he was not available.(e) The next day at 7 p.m., P.W.3 Dhanalakshmi who is the landlady of both P.Ws.1 and 2 and the accused came running and cried aloud stating that the dead body of Dinesh is found in the kitchen of the portion occupied by the accused. All of them went inside the house of the accused and found the dead body of the deceased with injuries and tied by ropes and sarees.

(f) Then, immediately, P.W.1 at about 10.30 p.m. on 27.12.2001, gave a complaint (Ex.P1) to P.W.10, the Sub Inspector of Police (in charge). P.W.10 registered a case in Crime No.692/2001 for the offences punishable under sections 302 and 201 I.P.C. and prepared First Information Report, Ex.P13.

(g) P.W.11, Inspector of Police took up investigation and came to the scene and prepared Observation Mahazar Ex.P3 and rough sketch Ex.P14 in the presence of witnesses. He conducted inquest over the dead body of the deceased in the presence of panchayatdars and witnesses and prepared inquest report Ex.P15. P.W.11 sent the body of the deceased for postmortem along with a requisition Ex.P6.

(h) P.W.6, the doctor attached to Government Headquarters Hospital, Mettur conducted post-mortem and issued the post-mortem certificate Ex.P7. He found the following injuries:

External Injuries:

1. An abrasion 3cm x 3cm over right scapular region.
2. Abrasion over the thigh left 2cm x 3cm. peeling of skin left thigh.
3. A linear wire mark, (wire in situ) in front of neck extending from 3" below right ear obliquely extending upto left side nape of neck, a knot mark seen 1cm x 1cm right side neck about 4cm below right mandible.

On dissection: The underlying area is pale in colour. Parchment with petechial haemorrhage present. Laceration of right sterno mastoid muscle "carotid arteries

right side normal.

Internal Examination:

Hyoid bone preserved thyroid cartilage preserved trachea and larynx congested. Heart 200 gms. chambers empty. Lungs right 280 left 200 gm c/o congested musous collection present. Liver: 800 gms C/o congested.

Stomach: contains 200 ml. partially digested particles.

Intestine: empty, kidney 90 cms each congested.

Spleen: 80 GMS c/s congested.

Bladder: empty

Skull: no fracture. Membranes intact. Brain liquefaction started, scrotum congested. Right testes swollen.

The following viscera preserved:

1. Hyoid bone 2. Thyroid cartilage 3. stomach with contents 4. portion of intestine 5. portion of liver 6. one kidney and 7. NaCl - sodium chloride.

According to the doctor P.W.6, the deceased would appear to have died about 2 to 3 days prior to autopsy and the death is due to asphyxia.

(i) when P.W.11, Inspector of Police went to the scene of occurrence, A2, A3 and A4 alone were available there and A1 was found missing. The next day was arrested at about 8.00 a.m. and thereafter, A2 to A4 were arrested. The material objects were sent for chemical examination.

(j). After completion of the investigation, charge sheet was filed for the offences punishable u/s 302 and 201 I.P.C.

3. During the course of trial, P.Ws.1 to 11 were examined, Exs.P1 to P15 were filed and M.Os. 1 to 5 were marked.

4. When the accused were questioned u/s 313 Cr.P.C. with reference to the incriminating materials against them, they simply denied the same.

5. The trial court after analysing the evidence available on record, found A-1 guilty of the offences under Sections 302 and 201 r/w 302 I.P.C. and found A-2 A-4 guilty of the offence u/s 202 I.P.C. Aggrieved by the said judgment, all the appellants have filed this appeal before this court, challenging the same.

6. Mr. S. Shanmugavelayutham, learned counsel for the appellants, would take us through the entire evidence and contend that the evidence collected by the investigating agency would not be sufficient to find all the accused guilty of the offences referred to above and as such, they are entitled to be acquitted. He has also pointed out various discrepancies in the evidence and contend that even the materials available on record may not be accepted as credible and therefore, the

judgment of the trial Court has to be set aside.

7. On these aspects, we have heard the learned Additional Public Prosecutor.

8. We have given our anxious consideration to the rival contentions and also gone through the records.

9. Admittedly, there is no eye witness and the entire case hinges upon the circumstantial evidence. It is settled law that in the case of circumstantial evidence, the prosecution has to establish by placing substantial piece of evidence to make those circumstances a complete chain to connect those materials with the commission of crime by the accused. Even one link is missing, the accused cannot be convicted for the offences alleged, that too for the murder.

10. In this case, the following three circumstances have been brought out by the prosecution.

1. Motive.

2. The dead body of the deceased was found available in the kitchen of the house occupied by A-1's family.

3. Immediately after the date of occurrence, the house of A-1 was found locked and on the next day, when the dead body available in the house and A-1 was missing.

11. On the basis of these materials, the trial court concluded that A-1 is responsible for the murder and A-2, A-3 and A-4 have acted to save A-1 by concealing the evidence for the murder and by not informing to the authorities concerned.

12. In regard to the motive, the prosecution has examined three witnesses, P.W.s.1, 2 and 3. All the three witnesses would state that there used to be frequent quarrels between P.W.1 and A-1. A-1 entertained suspicion on P.W.1 that she had illicit intimacy with her husband A-2. So, whenever there was a quarrel between the children, she used to make the insinuation by accusing P.W.1 that P.Ws.1's son is of a prostitute and she also used to scold her children stating that they should not play with P.W.1's child as she is of immoral character. This was objected to by P.Ws.1 and 2, so in that process, A-1 had developed enmity against P.W.1's family.

13. With regard to her motive or enmity, there is nothing to indicate that P.Ws.1 to have given any false particulars and as such, the materials placed before the Court by P.Ws.1 and 2, the mother and father of the deceased and the evidence of P.W.3, who is the landlady, would indicate that A-1 had got some motive against P.W.1's family. Therefore, in our view, the motive is sufficiently established.

14. The second circumstance is availability of the body with injuries in the kitchen of the house occupied by the family of the accused. The boy was found

missing from 26.12.2001 at 3 p.m. According to P.W.1, he left the house in order to play with the children of A-1. Ultimately, the boy was found with injuries in the kitchen of the house belonging to A-1. Though P.Ws.1 and 2 were searching for the boy throughout night and next day, they were not able to get at him. But, on the next day, i.e. on 27.12.2001 at 7 p.m., Dhanalakshmi, who is the landlady of A-1 was able to find the body of the deceased inside the kitchen of A-1 and then informed the same to P.Ws.1 and 2. When P.Ws.1 and 2 went inside the house, they found the body of the deceased with injuries tied with ropes and sarees beneath the shelf in the kitchen. Admittedly, A-1 at that time was missing and A-2, A-3 and A-4 were alone available.

15. Though it was suggested to P.W.1 by the accused that the house in which body was found was not occupied by the family of the accused, such suggestion has not been put to landlady P.W.3, who has actually let out this portion to A-1's family. Further, A-1 has never given any explanation in the statement u/s 313 Cr.P.C. or produced evidence as a defence evidence to show that the portion was not occupied by them. On the other hand, there is no denial of the fact with regard to the possession of the premises by A-1 to A-4, while they were questioned u/s 313 Cr.P.C. When the dead body with injuries tied with ropes and sarees was found available in the kitchen occupied by A-1, it is for A-1 and others to explain as to how the body was found inside the kitchen. No explanation has been offered by any of the accused.

16. In this context, it would be appropriate to refer to the observation made by the Supreme Court in *Joseph s/o Kooveli Poule v. State of Kerala*, 2002-2 L.W. (Crl.) 783, which reads as follows:

"During the time of questioning u/s 313 Cr.P.C., the appellant instead of making at least an attempt to explain or clarify the incriminating circumstances inculcating him, and connecting him with the crime by his adamant attitude of total denial of everything when those circumstances were brought to his notice by the court not only lost the opportunity but stood self condemned. Such incriminating links of facts could, if at all, have been only explained by the appellant and by nobody else they being personally and exclusively within his knowledge."

This observation made by the Supreme Court on the basis of Section 106 of the Evidence Act, in our view, would apply in all fours to the present case.

17. There is no material culled out from any other witness stating that the premises, in which the dead body was found, was never in possession of the accused nor to give any explanation as to how the body with injuries was found in the kitchen that was occupied by them. Therefore, the second circumstance also, in our view, is established.

18. The third circumstance establishes the abscondance of A-1. It is settled law that mere abscondance of the accused would not suffice to hold that he must be the culprit. But in this case, when all the other accused (A-2 to A-4) were

available in the house when the body was inside the kitchen. A-1 alone was found missing. As a matter of fact, when P.W.1 suspected that A-1 might have done some harm to her son, she went to the house of A-1 in search of her son but A-1's house was found locked at that time. The next day only, on the information given by P.W.3 landlady, she came to know that her son's body with injuries was found inside the kitchen of A-1's house. At that time, A-1 was found missing when all the other accused were available. There is no reason as to why A-1 alone had left the house. No suggestion has been put to any other witnesses with regard to her availability in the house nor any explanation has been offered by A1, while she was questioned u/s 313 Cr.P.C.

19. All the circumstances put together would indicate that A-1, who has got the motive against P.W.1's family, who was missing after the occurrence when all the other accused were available, alone must have committed the crime. In the absence of any explanation, A-1 alone after committing the murder, must have tied the dead body with ropes and sarees and as per Ex.P7, the cause of death was due to asphyxia. Thereafter, the first accused must have tied his hands and legs with ropes and put the body near the shelf in the kitchen. Therefore, the finding with regard to the offence u/s 302 I.P.C. and u/s 201 r/w 302 I.P.C. as against the first accused by the trial court is perfectly justified, so far as A-1 is concerned, this appeal has no merits and the same is liable to be dismissed and accordingly dismissed as against A-1.

20. In regard to A-2 to A-4 though charge was framed u/s 201 r/w 302 I.P.C., they have been convicted only u/s 302 I.P.C. The materials available on record, in our view, would not indicate that A-2 to A-4 committed the offence, especially when they were available when P.Ws.1 and 2 came to the house in search of the body of their son. Therefore, the conviction and sentence imposed upon A-2 to A-4 u/s 202 I.P.C. are liable to be set aside and accordingly, the same are set aside, so far as A-2 to A-4 are concerned, the appeal is allowed. The fine amounts, if paid by them, shall be refunded. The bail bond executed by A-2 to A-4 shall stand cancelled.