
(2007) 09 MAD CK 0143

In the Madras High Court

Case No : Criminal Appeal No. 492 of 2005 and Criminal Revision Case No. 1002 of 2005

Senthil

APPELLANT

Vs

State
V. Padmanabhan Vs State and Senthil

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 302, 380, 392, 404, 449

Citation : (2007) 09 MAD CK 0143

Hon'ble Judges : K.N. Basha, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Govindarajan, in Criminal A. No. 492 of 2005 and T.R. Ravi, for R. Rajendran, in Criminal R.C. No. 1002 of 2005, for the Appellant; C.T. Selvam, Assistant Public Prosecutor in CrI. A. No. 492 of 2005 and for R1 in CrI. R.C. No. 1002 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—It is a case of triple murder. The appellant, who is the sole accused, having been tried and convicted for the offence

under Sections 449, 302 (3 counts), 404 and 392 of IPC and sentenced to undergo rigorous imprisonment for seven years for the offence u/s 449

IPC; to undergo imprisonment for life for each count for the offence u/s 302 IPC; to undergo rigorous imprisonment for two years for the offence

u/s 404 IPC; to undergo rigorous imprisonment for five years for the offence u/s 392 IPC and that the sentences are to run concurrently by the

judgment of the learned Sessions Judge, Nagapattinam dated 12.4.2005 made in S.C. No. 1 of 2004, has preferred the above criminal appeal.

For convenience, the appellant will be hereinafter referred to as the accused in

this judgment.

2. CrI. R.C. No. 1002 of 2005 has been preferred by one V. Padmanabhan, who was examined as P.W. 4 in the above sessions case, seeking

for enhancement of the sentences imposed on the accused.

3. The case of the prosecution is that the first deceased-Padmavathi (D-1), aged about 54 years, was a widow and she lived along with the second

deceased/second daughter-Jeeva (D-2), aged about 26 years, and the third deceased/grandson-Bragadeeswaran (D-3), aged about 2 1/2 years,

born to the first daughter by name Latha. As the marriage of, the said Jeeva was arranged, she had purchased some jewels for her marriage and

kept in the house. The accused, who is also a resident of the same village, had close association with the first deceased and used to assist her in the

day-to-day domestic work. In order to take away the jewels, cash and other belongings of the first deceased, the accused is said to have

committed the murder of the said Padmavathi, Jeeva and Bragadeeswaran.

4. According to the prosecution, one Baskaran - P.W. 3, at about 7.00 a.m. on 8.5.2003, sent intimation to P.W. 2, who is the brother of the first

deceased through his uncle, to come to the house of the first deceased, as the house was locked and a bad smell emanated from it. Around 7.30

a.m., P.W.2 went to the house of the first deceased and, on entering the house through the backdoor, saw the first deceased lying upside down

and the body was covered with a gunnysack. Thereafter, P.W. 2 went to the Village Administrative Officer, P.W. 1 and gave a complaint, Ex. P-1

at about 12.00 noon on 8.5.2003. P.W. 1 took P.W. 2 along with the complaint, Ex. P-1 and submitted a report, Ex. P-2 to P.W. 25, the Sub

Inspector of Police attached to Thiruthuraipoondi Police Station and the same was registered in Cr. No. 185 of 2003 for the offence u/s 174

Cr.P.C. He, prepared the express reports and forwarded the same to the higher police officials and to the Court. Ex.P-34 is the printed First

Information Report. Thereafter, he handed over the further investigation to P.W. 26.

5. P.W. 26, the Inspector of Police attached to Edayur Police Station and incharge of Thiruthuraipoondi circle at the relevant point of time, on

receipt of the express report, proceeded to the scene of occurrence at about 2.00 p.m., on 8.5.2003 and prepared an Observation Mahazar, Ex.

P-3 and drew a rough sketch, Ex. P-45 in the presence of the witnesses. Between 3.00 p.m. and 4.30 p.m., he conducted inquest on the body of

the first deceased. The said inquest report is Ex. P-46. Thereafter, he sent the body of the first deceased along with a requisition, Ex. P-16 to the

doctor to conduct postmortem.

6. P.W.12, the doctor attached to Government Hospital, Thiruthuraipoondi, on receipt of the requisition and the body, commenced post-mortem

on the body of the first deceased at 5.00 p.m., on 8.5.2003 and he found the following external injuries:

1) Very faint depressed ligature marks present over the anterior aspect of the neck around middle of the neck.

2) Small abrasion present in the nose of lips.

He issued the post-mortem certificate, Ex. P-19 with his opinion that the deceased would appear to have died of asphyxia and primary neurogenic

shock caused, by smothering and strangulation done more than 72 hours prior to post-mortem.

7. P.W. 26, in the meanwhile, recovered the steel lock, M.O. 1, brass lock, M.O. 2 found nearby the house of the first deceased on 8.5.2003

under the mahazar, Ex.P-4 in the presence of witnesses. On 9.5.2003, he came to the police station and altered the offence to one under Sections

302 & 380 IPC and prepared the express report, Ex. P-47. He sent intimation to the fingerprint expert and to the sniffer dog squad. He took

photographs of the scene of occurrence. Thereafter, he proceeded to the scene of occurrence at 9.00 a.m., on 9.5.2003 and prepared an

Observation Mahazar, Ex. P-48 and drew a rough sketch, Ex. P-49 in the presence of witnesses. He found the body of the second deceased lying

underneath the large wooden receptacle for storing paddy in the house. He conducted inquest on the body of the second deceased between 10.00

a.m., and 12.00 noon and prepared the inquest report, Ex. P-50. He sent the body of the second deceased along with a requisition, Ex. P-20 to

the doctor to conduct post-mortem.

8. P.W. 13, Assistant Surgeon attached to Government Hospital, Thiruthuraipoondi, on receipt of the requisition and the body, commenced post-

mortem on the body of the second deceased at 5.00 p.m., on 9.5.2003 and he found the following appearances:

A female body of aged about 26 years lies on back, both hands tied with cloth on the back, hands are opened and found empty. Scalp hairs

loosened, both eye balls destroyed. Tongue inside the mouth. Both cheeks, nose and both pinna were destroyed. Body swollen and skin blisters

present all over the body. Maggot present.

External injuries are not made out due to decomposition.

He issued the post-mortem certificate, Ex. P-23 with his opinion that the deceased would appear to have died of injury to the vital organ-brain

more than 72 hours prior to autopsy.

9. P.W. 26 also took the body of the third deceased from inside the wooden receptacle on 9.5.2003 and conducted inquest on the body of the

child between 12.00 noon and 2.30 p.m. The said inquest report is Ex. P-51. He sent the body of the third deceased along with a requisition, Ex.

P-24 to the doctor to conduct postmortem.

10. P.W. 14, Assistant Surgeon attached to Government Hospital, Thiruthuraipoondi, on receipt of the requisition and the body, commenced post-

mortem on the body of the third deceased at 5.30 p.m., on 9.5.2003 and he found the following appearances:

A body of a male child aged about 2 1/2 years lies on, the back. Body was swollen due to decomposition. Blisters were present all over the body

with loosened skin. Eyes were destroyed due to decomposition. Tongue swollen and protruded out. Maggots about thousands were present all

over the body. Hands were free. Hair scanty with easily pluggable.

He issued the post-mortem certificate, Ex. P 269 with his opinion that the deceased would appear to have died of injury to vital organs brain, lungs

and heart mere than 80 hours prior to post-mortem.

11. P.W. 26, thereafter, examined the witnesses and recorded their statements. On 9.5.2003, he recovered the Saree, M.O. 30, Blouse, M.O.

31, Inskirt, M.O. 32, Metal Chain, M.O. 33 produced by the Head Constable, P.W. 21 from the body of the first deceased under the special

report, Ex. P-32 and recorded his statement. On 10.5.2003, he recovered the salwar kameez, M.O. 34, Bra, M.O. 35, Jatti, M.O. 36, lungi,

M.O. 37 and sandal colour shawl, M.O. 38 produced by the Head Constable, P.W. 22 under Form-95. He also recovered the shirt, M.O. 28

and banian, M.O. 29 produced by the Head Constable, P.W. 20 under Form-95. On 11.5.2003 he caused to take fingerprints of the suspected

persons. On 13.5.2003 he transferred the further investigation to P.W. 27.

12. P.W. 27, the successor of P.W. 26, on taking up further investigation, went to the scene of occurrence on 13.5.2003 and examined the

neighbouring witnesses and recorded their statements. He sent the seized material objects for chemical examination through the requisition. He also

sent the fingerprints of the suspected persons for comparison to the fingerprint expert. He examined the other witnesses on 14.5.2003 and

recorded their statements. On the same day, he proceeded to the office of the Village Administrative Officer, P.W. 8 at 7.55 p.m., and received

the statement of the accused. At 8.15 p.m., he recorded the voluntarily confessional statement given by the accused in the presence of P.W.8 and

other witnesses, the admissible portion of which is Ex. P-7. The accused informed them that if he is taken to the scene of occurrence, he will

produce the material objects. He recovered the disco gold chain, M.O. 6 produced by the accused at 10.15 p.m. Thereafter, the accused brought

P.W.27 and others to his house and handed over the ear rings with drops, M.O. 10, oval ring, M.O. 14, one pair ear ring with stones, M.O. 9,

minor chain, M.O. 11, one pair ear ring, M.O. 8, one pair silver anklet, M.O. 12, silver waist cord, M.O. 13, key chain, M.O. 25, BPL television,

M.O. 3, one poombu bag, M.O. 24, one Philips bicycle, M.O. 22, which were recovered under the mahazar, Ex. P-10. At 2.00 a.m., on

15.5.2003, the accused produced one pillow, M.O. 19 and one blanket, M.O. 20 from a bush, which were recovered under the mahazar, Ex.P-

9. At 3.30 a.m., the accused produced the ceiling fan, M.O. 5 from the house of P.W. 10, which was recovered under the mahazar, Ex. P-12. At

5.30 a.m., the accused produced the tape recorder, M.O. 4 from the shop of P.W. 9 tailor, which was recovered under Ex. P-13. The accused

also produced the thread, M.O. 21, which was recovered under Ex. P-11. Thereafter, the accused was brought to the police station and

remanded to judicial custody. He sent the fingerprint of the accused to the fingerprint expert for comparison on the same day. He examined the

other witnesses on the same day and recorded their statements. On 20.5.2003 he took custody of the accused for interrogation. On the same day,

the accused gave a confessional statement, the admissible portion of which is Ex. P-14, in the presence of witnesses. The accused took them to

Kattur village and produced the thali chain, M.O. 17, gold ring, M.O. 15, another ring, M.O. 16, ring, M.O. 14, polythene bag, M.O. 27, cotton

bag, M.O. 26, currency notes of denomination 500 and 100 totalling Rs. 5,200/-, M.O. 18 series, which were recovered under the mahazar, Ex.

P-15. He examined P.W. 1 and other witnesses on 21.5.2003 and recorded their statements. He remanded the accused to judicial custody on

22.5.2003. He examined the other witnesses and recorded their statements on 23.5.2003. He also examined the sniffer dog trainer and the Sub

Inspector of Police, P.W. 25 and recorded their statements. He examined the Head Constable, P.W. 23, Sub Inspector of Police, P.W. 24 and

the fingerprint expert, P.W. 15 and recorded their statements. He examined the post-mortem doctors, P.Ws. 12 to 14 on 29.7.2003 and

recorded their statements. After completion of investigation on 20.9.2003, he filed the final report against the accused for the offence under

Sections 449, 302, 404 & 380 IPC.

13. In order to prove its case, the prosecution has examined P.Ws. 1 to 27, marked Exs. P-1 to P-53 and produced M.Os. 1 to 38.

14. When the accused was questioned u/s 313 of the Criminal Procedure Code in respect of the incriminating materials appearing against him, he

denied them as false. No witness was examined and no document was marked on his side. The learned trial Judge, after considering the materials

available on record, convicted and sentenced the accused for the offences as stated above. Hence, the appeal.

15. Mr. S. Govindarajan, learned Counsel appearing for the accused has submitted that as it is a case of circumstantial evidence, the evidence of

the witnesses should be carefully examined. He would submit that the circumstances put forth against the accused have not been satisfactorily

proved. There is no motive either alleged or established on behalf of the prosecution for the accused to have committed the triple murder. He

would also submit that the only piece of evidence namely, that the accused was last seen along with the first deceased as spoken to by P.Ws. 16 &

17 is totally unbelievable as, according to them, they were kept in custody for more than five days before the accused was arrested on 14.5.2003.

In fact, P.W. 17 has also spoken about the arrest of the accused even as early as on 8.5.2003. Even assuming that the last seen theory as spoken

to by the above witnesses is to be accepted, there is nothing to indicate as to the involvement of the accused in the offence, except saying that he

was only assisting the first deceased in her day-to-day domestic work. So far as the fingerprint expert is concerned, though according to the

accused, the arrest was made as early as on 8.5.2003, the fingerprint was taken on 14.5.2003 in spite of the fact that the accused was very much

present along with the other witnesses right from the date of complaint till the arrest was shown on 14.5.2003. Even according to the prosecution,

if the close association of the accused with the first deceased is to be accepted, the fingerprint of the accused found in the house has no relevance.

He would further submit that so far as the recovery is concerned, it is highly artificial that inasmuch as the tape recorder, M.O. 4 and the ceiling fan,

M.O. 5, which are said to have been stolen by the accused were handed over to P.Ws. 9 & 10, the recovery also cannot be believed as the same

was made on the basis of the confessional statement said to have been given by the accused to the Village Administrative Officer, P.W. 8 in the

absence of such confessional statement marked in the Court. He would further submit that there are lots of discrepancies in the evidence of the

witnesses. According to the learned Counsel, while P.W. 1 has stated that he gave a complaint to the Village Administrative Officer, P.W. 1 at

12.00 noon on 8.5.2003 and the same was registered by the Inspector of Police, P.W. 26 at about 1.00 p.m., on the same day, the evidence of

the Sub Inspector of Police, P.W. 25 who has registered the complaint, Ex. P-1 as Ex. P-2 shows that the same was registered at 11.30 a.m. The

learned Counsel also extensively argued on the contradictions regarding the availability of telephone in the house of a neighbour Padmanabhan,

P.W. 4 and therefore the evidence of P.W. 4 not only in respect of the intimation received by him as to the occurrence but also the identification of

the articles including jewels and cash said to have been recovered from the accused should not be believed.

16. Mr. T.R. Ravi, learned Counsel appearing for the revision petitioner has submitted that as the case falls under the rarest of rare category, the

accused deserves the maximum punishment. The learned Counsel would submit that it is a gruesome murder of three persons, especially the first

deceased, a widow lady without the help of any male member, the second deceased aged about 26 years and whose marriage was scheduled to

be conducted and the third deceased being an infant of 2 1/2 years and hence the capital punishment should be awarded. To support the said

contention, the learned Counsel relied upon a judgment of the Supreme Court in Bablu alias Mubarik Hussain v. State of Rajasthan (2007) 2 SCC

(CrI.) 598.

17. On the other hand, Mr. C.T. Selvam, learned Additional Public Prosecutor has submitted that as it is purely a case of circumstantial evidence,

the conduct of the accused has a bearing on the issue. It is an admitted case of the accused himself that he was closely associated with the first

deceased right from 5.5.2003 till the complaint was lodged on 8.5.2003, but he did not even care either to search for the deceased and to find out

why the house was locked or informed any neighbour or the police as to the same. He would also submit that the last seen theory as spoken to by

P.Ws. 16 & 17 would go to show the involvement of the accused in the gruesome murder of three persons. He would submit that the recovery of

the material objects made pursuant to the confessional statement of the accused would amply prove the involvement of the accused in this case. He

would place strong reliance on the evidence of P.Ws. 9 & 10. P.W. 9 is known to the accused from whom the tape recorder, M.O. 4 said to have

been removed from the house of the first deceased was recovered and he has also spoken that the said tape recorder was handed over to him by

the accused. He would also rely upon the evidence of P.W. 10, yet another close friend of the accused, in whose house the ceiling fan, M.O. 5

was fitted by the accused himself is spoken to by the said witness. Therefore the evidence of P.Ws. 9 & 10 is clinching as to the involvement of the

accused in this case. The learned Additional Public Prosecutor finally submitted that though the fingerprint has been taken, which has tallied with

that of the accused, as the accused had close association with the first deceased and moving in the house frequently, in the normal course, much

importance cannot be given to such fingerprint and even if the evidence as to the fingerprint is not taken into consideration, there are other materials

to sustain the involvement of the accused in this case.

18. We have heard the learned Counsel for the accused, who is the second

respondent in the revision petition as well, and carefully perused the" entire records including the exhibits marked before the trial Court. It is a case of triple murder. Added further, it is a case of murder of a hapless widow, who used to reside lonely with her second daughter aged about 26 years and also with the grandson aged about 2 1/2 years through her first daughter. For her day-to-day domestic work, she used to take the assistance of the accused and therefore the accused had free access to the house and also moved freely with the family members of the first deceased. As the marriage of the second deceased was arranged, the first deceased had purchased some jewels and kept the same in her house. Under these circumstances, the circumstantial evidence to implicate the accused in this case must be considered. P.W.16, who is a resident of the same village, in his evidence has stated that on 4.5.2003 he saw the accused near the house of the first deceased between 4.00 and 5.00 p.m. He again saw the accused along with the first deceased near a tamarind tree adjacent to the house of the first deceased at about 8.30 a.m., on 5.5.2003. P.W. 17, who is a milk vendor and used to go to the house of the first deceased, has deposed that he saw the accused along with the first deceased at about 12.30 p.m., on 5.5.2003. Though in the cross examination, an attempt was made to shatter their evidence by putting a question in respect of the arrest by the police along with the accused even on 8.5.2003, we are of the considered view that as far as the last seen theory is concerned, the said evidence has not been shattered.

19. In fact, the case of the prosecution must be traced from the stage of recovery. According to the prosecution, the accused was arrested on 14.5.2003 when he was produced by the Village Administrative Officer, P.W. 8. On his surrender, though he gave an extrajudicial confession which led to the recovery, marking of the same was objected as the investigation had already commenced and consequently the said confession was not marked. For the said reason, we are of the considered view that the recovery cannot be disbelieved only on the ground that the accused was produced by the Village Administrative Officer, P.W. 8. So far as the recovery of the tape recorder, M.O. 4 and ceiling fan, M.O. 5 is concerned, it is the specific evidence of P.Ws. 9 & 10 that it was given by the accused himself to them on 6.5.2003. In the circumstances, the

prosecution has satisfactorily explained as to the recovery of those articles. So far as the identification of those articles is concerned, the evidence

of P.W. 4 is relevant, wherein he has identified the material objects namely, television, M.O. 3, tape recorder, M.O. 4, fan, M.O. 5, disco chain,

M.O. 6, ring, M.O. 7, one pair ear rings, M.O. 8, one pair ear rings with stone, M.O. 9, ear ring with drops, M.O. 10, minor chain, M.O. 11, one

pair silver anklet, M.O. 12, silver waist band, M.O. 13, ring, M.O. 14, ring, M.O. 15, one ring, M.O. 16, thali chain, M.O. 17 and Rs. 5,200/-

cash, M.O. 18 series. The recovery of the above material objects from P.Ws. 9 & 10 as identified by P.W.4 would undoubtedly establish the

involvement of the accused in this case.

20. As far as the submission of the learned Counsel for accused relating to the discrepancy in the time of the complaint as given by P.W. 14 is

concerned, according to P.W. 2, the complaint was given to P.W. 1 at 12.00 noon, but the evidence of the Inspector of Police, P.W. 26 is that it

was recorded by him. In our considered view, such a discrepancy in the timing cannot be considered to be fatal when there are other materials to

satisfy the Court as to the involvement of the accused in this case.

21. So far as the submission of the learned Counsel for the accused as to the discrepancy even in the arrest of the accused is concerned, while

P.W. 17 has stated that the accused was arrested on 8.5.2003, the Investigating Officer has shown, the arrest only on 14.5.2003. A perusal of the

evidence of P.Ws. 16 & 17 would go to show that as the involvement of any person in the case could not be traced in the course of investigation,

the Investigating Officer had taken P.Ws. 16 & 17 as well as the accused for interrogation on 8.5.2003. Only in that context, the evidence of P.W.

17 for having seen the accused in the police station should be considered. There is no further evidence to show that in fact the accused was

arrested on 8.5.2003 itself and kept in custody except that he was called for interrogation. This is further fortified by the fact that even according to

the accused, he was present throughout the investigation from 8.5.2003 till he was arrested on 14.5.2003 after the receipt of the report of the

fingerprint expert. Hence, merely because the evidence of P.W. 17 shows that the accused was also found in the police station even on 8.5.2003

along with P.W. 16, we have no reason to disbelieve the version of the

prosecution that the arrest was made only on 14.5.2003 after the receipt of the report of the fingerprint expert.

22. In addition to the above, the conduct of the accused has a relevance for the prosecution case as, admittedly, the accused had free access to the house of the first deceased and he used to assist her in the day-to-day domestic work. However, right from 5.5.2003, the date from which the first deceased was not moving around in the house, the accused has not either made any attempt even to verify as to the whereabouts of the first deceased and why the house was locked or has not even informed the neighbours or relatives muchless to the police as to the locking of the house for almost three days till the complaint was lodged on 8.5.2003 at about 12.00 noon. The above conduct of the accused is also one of the incriminating circumstance for his involvement in the offence if taken together with the other circumstantial evidence. For all the above reasons, we are of the considered view that the conviction imposed on the accused cannot be interfered with.

23. Coming to the sentence, the learned Counsel appearing for the revision petitioner-P.W. 4 has relied upon the judgment of the Supreme Court in Bablu alias Muharik Hussain case (supra). We have perused the judgment. That was a case of murder of five lives namely, wife, three daughters aged 9 years, 6 years and 4 years respectively and a son aged 2 1/2 years. Though the accused in that case was initially convicted for life, the Supreme Court found that it was a brutal and diabolic act where five lives were taken and that too, of four young children and therefore considering the fact that the said case would squarely fall under the rarest of rare category warranting death sentence, imposed the death sentence. However, in our considered view, the said judgment is not applicable to the facts of this case. Whether an accused could be brought under the rarest of rare category would depend upon the facts and circumstances of each case. Going by the prosecution case on hand, the accused is found guilty only on circumstantial evidence and consequently, there is no evidence as to the manner in which the three were killed. Therefore, we refrain to adopt the principles adopted by the Supreme Court in that case keeping the peculiar facts and circumstances to enhance and award the capital sentence in this case. Accordingly, the judgment of conviction and sentence

imposed on the accused by the trial Court and the consequential direction for return of the articles shall stand confirmed. The criminal appeal is dismissed. For the same reasons, criminal revision petition is also dismissed.