

Chelladurai Alias Alex Vs. State Rep. by

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Court : Chennai

Decided On : Oct-24-2013

Judge : V.Dhanapalan

Appellant : Chelladurai Alias Alex

Respondent : State Rep. by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

24. 10/2013 CORAM THE HONOURABLE MR.JUSTICE V.DHANAPALAN and THE HONOURABLE MR.JUSTICE M.DURAI SWAMY Criminal Appeal (MD).No.206 of 2012 Chelladurai alias Alex .. Appellant vs State rep. by The Inspector of Police, Tenkasi Police Station, Tirunelveli District. Crime No.312 of 2010. .. Respondent Criminal appeal is filed under Section 374 of Cr.P.C. against the conviction and sentence passed in the judgment dated 9.8.2011 in S.C.No.107 of 2011 by the Additional Sessions Judge cum Fast Track Court No.II, Tirunelveli District. !For appellant ... Mr.S.Durairaj ^For respondent ... Mr.K.S.Duraipandi Additional Public Prosecutor :

JUDGMENT

M.DURAI SWAMY, J This appeal is directed against the conviction and sentence ordered against the first accused in the judgment dated 9.8.2011 made in S.C.No.107 of 2011 by the Additional Sessions Judge cum Fast Track Court No.II,

Tirunelveli District. By this judgment, the first accused/appellant in this appeal was convicted under Sections 452, 342, 302 and 380 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- under Section 302 IPC; rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/-, in default, to undergo 6 months rigorous imprisonment under Section 452 IPC; 1 month rigorous imprisonment under Section 342; and 1 year rigorous imprisonment under Section 380 IPC. The sentences were ordered to run concurrently. The period of imprisonment already undergone was directed to be given set off. The second accused was acquitted of the charge under Section 202 IPC.

2. The case of the prosecution is that the first accused was involved in chain snatching cases. When the second accused was in Palayamkottai Central Prison in connection with arrack case, he and the first accused became friends. The complainant, Ramasamy was an employee of Public Works Department. He was residing in Door No.6-B at Annamalayar Bhavanam, Kalidasan Nagar, Thenkasi, with his wife Meenalochani. The said Meenalochani used to stay alone in the house when her husband, Ramasamy, goes to office. It was the usual habit of the first accused, whenever he goes to the area where Meenalochani's house is situated, to visit her house and ask for water to drink. On 30.07.2010 at 03.00 p.m., the first accused went to Meenalochani's house and asked for water; when Meenalochani went to kitchen for bringing water, the first accused followed her and locked the door inside, tied Meenalochani's hands behind with some soiled cloth and inserted a blouse in her mouth in order to prevent her from making cry and pushed her into the bathroom, and took a sickle (aruval) and cut her neck and thus, committed murder with an intention to steal the gold jewellery, which the deceased was wearing. The first accused took away gold chain weighing 4 sovereign from deceased Meenalochani's neck. The first accused contacted the second accused, who was not in station, at that time, for pledging the gold thali chain, for which the second accused asked the first accused to keep the chain with him till he returns, for pledging the same. Hence, the first accused was charged with Sections 452, 342, 302 and 380 IPC and since the second accused concealed the offence by not informing the police, he was charged under Section 202 IPC.

3. In order to prove its case, the prosecution has examined PWs.1 to 17, and marked Exs.P1 to P25 and produced MOs.1 to 15. On completion of the evidence on the side of the prosecution, when the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances found in the evidence of the prosecution witnesses, he denied them as false. Neither any witness was examined nor document was marked on the side of the defence. The Trial Court, after hearing the arguments advanced by either side and on considering the materials available on record, took the view that the prosecution has proved its case beyond reasonable doubt as per the charges insofar as the first accused/appellant is concerned and consequently, convicted the first accused and awarded punishment as referred to above. The Trial Court acquitted the second accused of the charge since the charge under Section 202 IPC was not proved beyond reasonable doubt.

4. PW.4 Ragavan was a neighbour of Ramasamy, having his house on the eastern side. On 30.07.2010 between, 3.00 p.m. and 4.00 p.m., one Indumathi and Subbuthai informed him that PW.1 Ramasamy's house remained open and asked PW.4 to look into the same. PW.4 went to the house of Ramasamy, while Indumathi and Subbathai were waiting outside. PW.4 saw bloodstains and foot marks in the hall and when he entered into the bath room attached to the bed room, he saw a body of woman lying facing the floor. Immediately, PW.4 informed Indumathi and Subbuthai, and in turn, Indumathi called PW.1 Ramasamy over phone and he came to the house at 5.00 p.m.,. According to PW.1, normally, his wife used to wear nose ring, ear stud, thali chain and bangles. According to PW.1, gold chain weighed 4 sovereign. At that time, when PW.1 saw the body, he noticed the thali chain worn by the deceased was missing. PW.1 informed his cousin-Gandhimathi and her son, and after they came to the house at 7.00 p.m., PW.1 went to the Police Station and gave Ex.P.1 written complaint to the Sub Inspector of Police, attached to Thenkasi Police Station.

5. Based on the complaint Ex.P1, a case was registered in Crime No.312 of 2010 under Sections 302 and 380 IPC. Since the Inspector of police of that the Police Station was on leave, PW.14 Head Constable handed over FIR Ex.P.20, to the Court concerned on 30.7.2010 at about 8.30 p.m. A copy of the FIR was sent to

PW.15, Inspector of Police, attached to Ayakkudi Police Station, Tirunelveli District, who was incharge of Thenkasi Police Station, since the Inspector of Police, attached to Thenkasi Police Station, had gone on leave.

6. On receipt of a copy of the FIR Ex.P.20, on 30.7.2010 at 20.00 hours, PW.15, Inspector of Police, went to the spot and inspected the scene of occurrence in the presence of witnesses, Kailasasundaram and Jeyapal. He prepared an Observation Mahazar Ex.P.4 and a Rough Sketch Ex.P.21. PW.15 recovered MO.8 blouse, MO.9 denture and MO.10 Sickle (Aruval) in the presence of Kailasasundaram, Jeyapal under Ex.P.5 Mahazar from the place of occurrence. He conducted inquest over the body of the deceased in the presence of PW.1, Gandhimathi and Panchayatdars and prepared an Inquest Report Ex.P.22. Body of the deceased was handed over under Ex.P.2 requisition for postmortem through the Head Constable PW.13 to the Thenkasi Government Hospital. Bangles Mo.2, ear stud MO.3, thali with yellow thread MO.4, nose ring MO.5, toe ring MO.6, bloodstained biscuit colour blouse MO.11, bloodstained saree MO.12 and other Material Objects were recovered from the body of the deceased.

7. On receipt of the dead body, PW.2, Doctor, attached to the Thenkasi Government Hospital, conducted autopsy on the body of the deceased on 31.07.2010 and gave Ex.P.3 Postmortem Certificate. While conducting autopsy, he noticed the following injuries: ".1. Cut Injury over right side of neck of size 15 x 4 x 4 cm extending obliquely 2cm to the left of midline in front and 5 cm to the right of midline over the back with dried clot over the wound exposing. Underlying cut muscles, blood vessels, trachea, oesophagus at the level just below thyroid cartilage cervical vertebrae exposed, no fracture.". He opined that the deceased appeared to have died 18 to 36 hours prior to post- mortem. PW.2 reserved his final opinion pending chemical analysis report. After receipt of Ex.P.13 Viscera Report wherein it has been stated that there was no poisonous substance in the internal organs, Postmortem Doctor, PW.2 opined that the deceased would have died of multiple injuries.

8. Material Objects recovered from the scene of occurrence as well as recovered from the body of the deceased were sent to the Court for analysis.

9. PW.16, Inspector of Police, attached to Pavoorchathiram Police Station, has stated that on 5.10.2010, he was searching for the accused in Crime No.338 of 2010 under Sections 302 and 380 IPC, and consequently, arrested one Anbalagan in the presence of PW.8, V.A.O. of Keezhapavoor and PW.9 Village Assistant. The said accused gave confession in the presence of the said witnesses and also stated about the involvement of the first accused/the appellant herein in that case. Based on the confession made by the said Anbalagan, A.1 was arrested on 05.10.2010. The accused, Anbalagan, also identified the first accused. During the course of investigation, A.1 confessed that he was involved in Crime Nos.288 of 2009 and 312 of 2010 (the present case) and in both the cases, he had cut the neck of the women and snatched away chains. The admitted portion of the confession was marked as Ex.P.24. Based on the confession made by A.1, MO.1 gold chain weighing 4 sovereigns was recovered from his house in the presence of witnesses under Ex.P25 Mahazar.

10. After joining duty from leave, PW.17 Inspector of Police, attached to Thenkasi Police Station, took up the case for further investigation on 25.8.2010. On coming to know that the first accused was arrested by the Pavoorchathiram Police, PW.17 gave a requisition letter to the Inspector of Police, attached to Pavoorchathiram Police Station, to arrest A.1 on 06.10.2010. He also received the gold chain from Pavoorchathiram Police Inspector. PW.1 Ramasamy identified the gold chain. A.1 was remanded to judicial custody on 12.10.2012. On 26.11.2012, identification parade was conducted and the first accused was correctly identified by the witness. On completion of the investigation, PW.17, Inspector of Police, filed a charge sheet in the Court for the offences under Sections, 452, 342, 302, 380 and 202 IPC. The case was committed to the Sessions Court.

11. At the outset, assailing the conviction and the sentence imposed on the first accused/appellant, the learned counsel for the appellant submitted that there is no material evidence pointing to the guilt of the accused/appellant and based on the alleged confession and recovery of the gold chain, the accused/appellant was found guilty and convicted by the Trial Court. Further, the learned counsel for the appellant submitted that non-examination of Indumathi and the scribe of Ex.P.1 complaint, Balasubramanian, is fatal to the case of the prosecution. The learned

counsel added that when the alleged occurrence was on 30.07.2010, A.1 was arrested only on 5.10.2010. In these circumstances, the learned counsel for the appellant submitted that the case was deliberately foisted on the appellant and the prosecution has not proved the case beyond reasonable doubt and therefore, the Trial Court ought not to have convicted the appellant.

12. Countering the submissions made by the learned counsel for the appellant, learned Additional Public Prosecutor submitted that based on the confession made by the first accused/appellant MO.1 gold chain was recovered from the first accused/appellant's house and the chain of circumstances including the evidence of PW.4 and PW.5 led to the conclusion that it was the first accused who committed the offence of murder for gain, and, in such circumstance, the learned Additional Public Prosecutor submitted that the prosecution had proved the case beyond reasonable doubt and the Trial Court had rightly convicted the appellant and under the circumstances, the judgment of the Trial Court does not warrant any interference at the hands of this Court.

13. Heard the learned counsel on either side and gave our anxious consideration to the submissions made and perused the materials available on record.

14. The deceased is the wife of PW.1. Apart from the present case for the offence under Sections 302, 452 and 380 IPC, the appellant/A1, was also charged for similar offence in Crime No.288 of 2009 on the file of Kadayam Police Station. When PW.1 went for work, his wife, Meenalochani was staying alone in the house. A.1, often used to visit her house asking for drinking water, whenever he visits that area. As such, on 30.07.2010, between 3.00 p.m. and 4.00 p.m., he went to the deceased's house and asked for water. When deceased Meenalaochani went to the kitchen for bringing drinking water, A.1 followed her and locked the door inside, tied her hands on the back side, inserted a cloth in her mouth and cut her neck using a sickle (Aruval) which he took from the kitchen.

15. PW.5, Prince Abraham, who was working as Deputy Director of Tirunelveli Regional Forensic Science Department, was known to PW.1 and A.1. PW.6 is an auto driver, who knew the deceased. On 30.07.2010, at about 10.00 a.m., PW.6 took deceased Meenalochani to the market in his auto and left her at her house at

about 11.00 a.m.,. PW.5 saw A.1 coming in the opposite direction at about 3.15 p.m., near Kalidasan Nagar Junction. PW.1 was informed about some unusual happening in his house, by one Indumathi at 4.00 p.m.,. PW.1, rushed to his house at 5.00 p.m. and saw his wife lying in bath room facing the floor with her hands tied on the back side and a cloth inserted in her mouth and her neck cut.

16. This is a case of circumstantial evidence. There is no direct witness for the offence. It is well settled that in cases where the evidence is of circumstantial in nature, the circumstances from which conclusion of guilt is to be drawn should be in the first instance fully established and all the facts so established should be consistent only to the hypothesis of the guilty of the accused. The chain of evidence should be so complete as not to leave any reasonable ground for a conclusion consistent with his innocence of the accused and it must be such as to show that within all human probability, the act must have been committed by the accused.

17. PW.1, husband of the deceased, gave the complaint Ex.P.1. Since he was working as a night watchman in Public Works Department, after getting permission from the office, he went to Tirunelveli with regard to his personal work. At the instance of Indumathi and Subbuthai, PW.4 entered the house of PW.1 and informed them about the dead body lying on the floor in the bath room, and, in turn, Indumathi informed the same to PW.1 over phone. After receiving the phone call from Indumathi, PW.1 started from there and reached his house at 5.00 p.m. In the cross-examination, PW.1 had deposed that he saw bloodstains and foot marks in the hall of his house. He also deposed that he knew A.1, and that he saw him about six months' prior to the occurrence, when he came to his house asking for water two or three times. He denied the suggestion that there was some melee between him and his wife and in that process, he pushed his wife on the date of occurrence. PW.2, Postmortem Doctor also spoke about the injuries sustained by the deceased and he also stated that there is no possibility of sustaining cut injury if the deceased was pushed by a person. PW.5 has deposed that he saw A.1 coming in the opposite direction at about 3.15 p.m., near Kalidasan Nagar Junction.

18. It is not in dispute that Indumathi was not examined. However, the first person who entered the house of PW.1 and saw the deceased, was examined as PW.4. When PW4 informed Indumathi and Subbuthai about what he saw inside the house, Indumathi informed PW.1 about the same over phone. PW.1 came to his house and then, he saw his wife was murdered and her thali chain was missing. If at all, Indumathi had to be examined, at the maximum, she would have spoken about the information passed on by PW4 to her. Since PW4 had spoken about the information given to PW1, no significance could be attached to the non-examination of the said Indumathi. In these circumstances, the non-examination of Indumathi is not material and not fatal to the case of the prosecution.

19. Similarly, the scribe of Ex.P1 complaint, Balasubramanian was not examined. However, on reading of the evidence of PW.1, it is clear that there is no contradiction between the complaint and the evidence of PW.1. PW.1 had complete and full knowledge of Ex.P.1 complaint. When there is no ambiguity, we are of the considered view that the non-examination of the scribe of Ex.P.1, is not material and not fatal to the case of the prosecution.

20. It is yet another submission of the counsel for the appellant that there was a delay in arresting the accused, and therefore, the said delay is fatal to the case of the prosecution. It should be borne in mind that it is a case of circumstantial evidence. Therefore, immediate arrest of the accused is not possible in the case of this nature. Whereas in the instant case, the first accused was arrested on 5.10.2010 based on the confession statement given by another accused in Crime No.338 of 2010 on the file of Pavoorchathiram Police Station. Moreover, based on the confession made by A1, recovery of MO.1 gold chain was also made. In these circumstances and considering all the aspects, we are of the opinion that the delay in arresting A1 is not fatal to the case of the prosecution.

21. PW.5 who is also a neighbour of PW.1 saw A.1 on the date of occurrence at 3.15 p.m., near Kalidasan Nagar Junction, which is nearer to the place of occurrence. He also deposed that he had seen A.1 earlier. PW.5 was very specific about seeing A.1 and also identifying him. The evidence of PW.8 V.A.O. was treated as hostile. PW.15 is the investigating officer who prepared Observation

Mahazar Ex.P4. PW.16, Inspector of Police, attached to Kadayam Police Station, was the police personnel, who arrested A.1. Based on the confession made by A.1, gold chain was recovered from the first accused's house. PW.17 is the Investigating Officer, who filed charge sheet against the accused. Though PW.1 has not stated in Ex.P.1 complaint that he had seen A.1 earlier, while deposing evidence, he had stated that he had seen A.1 earlier when he used to come to his house for getting water. MO.1 gold chain was also identified by PW.1. MO.1 was recovered from the house of A.1 in the presence of witnesses. A.1 has not offered any explanation for having the possession of MO.1 in his house. It is also not the case of A.1 that MO.1 belongs to him.

22. Insofar as the contention of the learned counsel for the appellant that though identification parade was conducted and A.1 was identified by PW.1, but that alone is not sufficient to come to the conclusion that it was only A.1, who committed the murder of the deceased for the reason that PW.1 was not present at the time of occurrence, is concerned, based on Ex.P24 confession made by A.1, MO.1 gold chain was recovered from his house, for which A.1 has not offered any explanation and also that he has not taken any stand that gold chain belongs to him and there was sufficient evidence to the fact that A.1 was seen by PW.5 just before the time of occurrence near the place of occurrence and also that A.1 was already involved in an identical offence in Crime No.288 of 2009 on the file of Kadayam Police Station, by murdering a woman for snatching a chain.

23. In the case of circumstantial evidence, the Court has to examine whether the prosecution has been able to establish the chain of events and circumstances which, certainly point out towards the involvement of the guilt of the accused. All these evidence would clearly establish that the chain is complete and the prosecution has proved the guilt of the accused beyond reasonable doubt and also the recovery of MO.1 gold chain from the house of A.1 based on Ex.P.24 confession made by him.

24. Section 27 of the Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of unknown fact. The rationale of Sections

25 and 26 of the Evidence Act, is that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The rationale behind Section 27 of the Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. The discovery of facts itself, therefore, substantiates the truth of the confessional statement and since it is truth that a court must endeavor to search, Section 27 of the Evidence Act has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Evidence Act.

25. If the exception postulated under Section 27 of the Evidence Act is applied to the present case, it would be clear that MO.1 gold chain was recovered from A.1's house based on Ex.P.24 confession statement. That apart, as already stated, it is not the case of the first accused that gold chain belongs to him and he had not explained as to his having possession of the gold chain which was worn by the deceased.

26. The circumstantial evidence available in this case corroborates with each other and leads to an irresistible conclusion that A.1 alone had committed the offence charged under Sections 302, 452, 342 and 380 IPC. Since it is a case of circumstantial evidence, the evidence of PW.5, was pressed into service to speak about the last seen theory. PW.5 was very specific and categorical with regard to seeing A1 near the place of occurrence at 3.15 p.m., when the offence had occurred between 3.00 p.m. and 4.00 p.m.,. Therefore, taking into consideration the evidence of PW.5, the confession made by A.1 which led to the recovery of MO.1, Gold Chain from his house and also taking into consideration the fact that no other possible explanation was forthcoming for having possession of MO.1 Gold Chain in A.1's custody which belongs to the deceased and also taking into account the previous antecedents of A.1, we are of the considered view that the prosecution had established the case by placing cogent and convincing circumstantial evidences before this Court which chain of evidence is complete without any break. Therefore, we are of the considered opinion that absolutely, there is no compelling circumstances warranting this Court to make any interference in the conviction and sentence made by the Trial Court. The Trial

Court has marshalled the evidence properly, considered the same and came to a correct conclusion. This Court is of the considered opinion that all the contentions put forth by the learned counsel for the appellant and narrated above, do not carry any merit whatsoever and they are liable to be rejected. Accordingly, they are rejected. The Trial Court has rightly convicted and sentenced the first accused/appellant. The judgment of conviction and sentence imposed on the first accused/appellant by the Trial Court, are sustained.

27. In these circumstances, we do not find any ground to interfere with the judgment of conviction and sentence dated 9.8.2011 made in S.C.No.107 of 2011 on the file of the Additional Sessions Judge, Fast Track Court No.II, Tirunelveli District. Accordingly, the Criminal Appeal is dismissed. asvm/jikr To 1.The Additional Sessions Judge cum Fast Track Court No.II, Tirunelveli District. 2.The Inspector of Police, Tenkasi Police Station, Tirunelveli District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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