

Jayakumar Vs. State Rep.by Police

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Court : Chennai

Decided On : Apr-29-2014

Judge : V.Dhanapalan

Appellant : Jayakumar

Respondent : State Rep.by Police

Judgement :

In the High Court of Judicature at Madras Date :

29. 04.2014 Coram : The Hon'ble Mr. Justice V.Dhanapalan and The Hon'ble Mr. Justice G.Chockalingam Criminal Appeal No.179 of 2012 Jayakumar S/o. Gunasekar, No.86, Ranuka Ammal 3rd Street, Vyasarpady, Chennai 39. ... Appellant/Accused .. Vs .. State rep. by The Inspector of Police V.5, Thirumangalam Police Station Chennai. [Crime No.319/2007]. ... Respondent/Complainant - - - - Criminal appeal filed under Section 374 (2) of Cr.P.C. against the judgment of the learned VI Additional Sessions Judge, Chennai, made in S.C.No.297 of 2010, dated 11.07.2011. For Appellant :: Mr.S.Nambirajan For Respondent :: Mr.M.Maharaja, Additional Public Prosecutor J U D G E M E N T G.CHOCKALINGAM, J.

The appellant, who is the sole accused, was tried by the learned VI Additional Sessions Judge, Chennai, in S.C.No.297 of 2010 for offences under Sections 302 and 380 I.P.C. and by a judgment dated 11.07.2011 the trial Judge found the

appellant guilty of both the charges and convicted and sentenced him to undergo life imprisonment for the offence under Section 302 I.P.C. and also to pay a fine of Rs.1,000/- and in default to undergo three months simple imprisonment and convicted for the offence under Section 380 I.P.C. and sentenced him to undergo seven years rigorous imprisonment and also to pay a fine of Rs.1,000/- and in default to undergo three months simple imprisonment. Challenging the said judgment, the appellant is before this Court in this appeal.

2. The case of the prosecution in brief is as follows: [i]. P.W.1-C.Thangamani is a resident of Anna Nagar, residing at No.403/3 Manasa Apartments, Anna Nagar West, Chennai. He is a retired Financial Controller from Tamil Nadu Police Department, Chennai. He was residing with his wife Tamilselvi and his daughter Aarthi. His son Arun is working in America. On 12.05.2007 at 10.45 a.m., he left to his office for some job. He took his daughter Aarthi along with him and left her at his brother-in-law Kalignan's house at Anna Nagar. Around 2.00 p.m. he came back from his office. As the front door was closed, he just opened and went inside and found his wife Tamilselvi lying on the floor of the hall with extensive injury on her neck and he informed to his relatives. They came to the spot and had taken away the victim to the Kilpauk Medical College Hospital, Chennai. Two gold chains, a Thali and two bangles which were worn by his wife were found missing. Doctor [P.W.10]., attached to Kilpauk Medical College Hospital, examined the deceased and found her dead. Then, P.W.1 went to Thirumangalam Police station and gave a complaint-Ex.P.1, in writing. [ii]. P.W.14-Inspector of Police, Thirumangalam Police station on 12.05.2007, upon receiving the complaint from P.W.1, registered a case in Crime No.319 of 2007 for the offences under Sections 302 and 380 I.P.C. and prepared the First Information Report-Ex.P.10. He went to the scene of occurrence; prepared an Observation Mahazar-Ex.P.2 and a Rough Sketch-Ex.P.11 in the presence of P.W.4-Rajendiran and one Prabhu. He recovered bloodstained mosaic floor and sample mosaic floor from the scene of occurrence under a cover of mahazar-Ex.P.3. He then enquired 15 witnesses and recorded their statements. He went to the Kilpauk Hospital and took photographs of the deceased with the help of the photographer and the CD is marked as M.O.4. He found a cut injury in front of the neck of the deceased caused due to a sharp object; a cut injury above the wrist of the right hand, i.e., in the elbow and an

abrasion on the right hand side shoulder. He held inquest on the dead body of the deceased in the presence of panchayadhars, enquired the witnesses and recorded their statements and also prepared inquest report-Ex.P.12. Then, he sent a requisition through B.Mani, Head Constable on 13.05.2007 to the KMC Hospital, for conducting the Post-mortem on the dead body of the deceased. [iii]. P.W.12, Doctor attached to KMC Hospital during the relevant point of time, received the requisition from the Head Constable on 13.05.2007 and conducted the post-mortem on the dead body of the deceased at 11.25 a.m. on the same day. He found the following injuries:- ".1. A deep cut would seen over the front of middle of neck extending on both sides of the neck measuring 13 x 4 x 2 1/2 cm wound margins are clean cut. O/E There is complete avulsion of the 3rd and 4th tracheal rings and complete avulsion of neck vessels on both sides.

2. A superficial incised would of 5 x 1 x 1/2 cm seen over the front of middle of Rt forearm.

3. A brown colour irregular linear abrasion seen over the front of Right shoulder. 5 x 1, 4 x 1 cm.

4. A reddish sub scalp contusion seen over the left occipital region. All the above injuries are antemortum in nature.". Ex.P.8 is the Post-mortem Certificate wherein the doctor has opined that the deceased would appear to have died of shock and haemorrhage due to cut throat injury. [iv]. Since P.W.14, was transferred, the case file was handed over to one Sugumar, Inspector of Police attached to Thirumangalam Police Station at the relevant point of time. PW.15, Sugumar, took up the further investigation on 03.06.2008 and he enquired the witnesses and recorded their statements. On 27.06.2008 at about 5.30 p.m., he arrested the accused near Anna Nagar Railway Station. The accused came forward to give a confession statement in the presence of witnesses, the admissible part of which is marked as Ex.P.4. Based on the confession of Jayakumar, wife of Jayakumar, viz., Malini was also arrested by P.W.15 on the same day. Pursuant to the confession statement of Jayakumar, PW.15 recovered a knife with blood stains [MO2]. under the cover of Mahazar. He recovered 3 sovereigns of gold chain from the said Gajalakshmi which was entrusted by the accused under the Mahazar. The

accused was remanded to judicial custody. On 11.07.2008, P.W.1 came to the Police Station and identified the gold chain. P.W.15 recorded the statement of P.W.1 and after receiving the Chemical Analysis report and Serologist report, he filed a final report as against Jayakumar for the offences u/s.302 and 380 IPC. [v]. The case was committed to the Court of Sessions and necessary charges were framed. In order to substantiate the charges, the prosecution examined P.Ws.1 to 15, marked Exs.P.1 to P.13 and produced M.Os.1 to 4. [vi]. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating materials appearing against him through the evidence adduced by the prosecution, he has come forward with the version of total denial and he has stated that he has been falsely implicated in this case. The accused has not chosen to examine any defence witnesses nor mark any defence documents on his side. [vii]. The Trial Court, on consideration and appreciation of the evidence adduced by the prosecution, found the appellant/accused guilty for the offences under Sections 302 and 380 IPC and convicted and sentenced him as already stated above. Hence the present appeal at the instance of the appellant/accused.

3. Mr.S.Nambirajan, learned counsel for the appellant/accused mainly argued that the prosecution has failed to prove the motive in this case. Since no motive is proved, there is reasonable doubt arisen in this case. Secondly, the learned counsel for the appellant/accused argued that all the witnesses examined on the side of the prosecution are the relative witnesses and therefore their evidence cannot be relied upon. Hence, there is some reasonable doubt arisen regarding the evidence of prosecution witnesses. Further, the learned counsel for the appellant vehemently contended that since it is a case of no eye-witnesses and the prosecution mainly relied upon the circumstantial evidence, the alleged confession given by the accused herein was not proved and the alleged recovery was also not proved by the prosecution. Hence, there is no connecting circumstances in the alleged crime with the present appellant/accused. The prosecution has failed to prove the above factor also. It is further contended that according to the prosecution, the stolen properties are gold chain and other properties also. But the prosecution recovered only the gold chain. So the prosecution has not proved its case that the accused has stolen the property. Lastly, it is argued by the learned counsel for the appellant that since the

prosecution case depends upon the circumstantial evidence, all the witnesses connected to the incident were not properly examined. Hence, in view of the above circumstances, the prosecution has not proved its case beyond reasonable doubt and therefore, the accused is entitled for the benefit of doubt and he is entitled for acquittal.

4. Mr.M.Maharaja, learned Additional Public Prosecutor argued that the prosecution has examined all the material evidences since there is no eye-witness in this case. This case depends upon circumstantial evidence and the chain of circumstances related to the offence including the motive was clearly proved and the alleged gold chain-M.O.2 was recovered on the confession of the accused and there is no satisfactory explanation on the side of the accused. Hence, after analysing all the evidences and documents, the trial Court found the accused guilty for the offences under Sections 302 and 380 I.P.C. Hence, the learned Additional Public Prosecutor prayed that the judgment of the trial Court has to be confirmed.

5. In this case, it is admitted by both parties that P.W.1 is the husband of the deceased Tamilselvi and P.W.2-Aarthi is the daughter of both P.W.1 and the deceased. P.W.3-Thambikalaingan is brother-in-law of P.W.1. Further, it is admitted that the deceased Tamilselvi was residing at No.403/3 Manasa Apartments, Anna Nagar West, Chennai, along with her family and it is not denied that the accused was working as a Painting Contractor with P.W.3-brother of the deceased. It is admitted by both sides that in this case, there is no eye-witness to the occurrence and the prosecution relied upon circumstantial evidence.

6. Learned counsel for the appellant/accused contended that since P.W.1 is the husband of the deceased, P.W.2 is the daughter of the deceased and P.W.3 is the brother of the deceased, their evidence has to be discarded. It is well settled principles of law that even though some witnesses are related or interested witnesses, their witnesses cannot be discarded on the sole ground that they are related or interested witnesses. There must be some sufficient reason shown on the side of the defence to reject their evidence. In the absence of any such allegation or any reason to disbelieve their evidence, their evidence cannot be

rejected simply because they are the interested or related witnesses. In this case, on the side of the appellant/accused, has not able to show any reason to disbelieve or discard the evidence adduced on the side of the prosecution. Hence, in the above circumstances, the argument of the learned counsel for the appellant that the prosecution examined only interested witnesses and thus, failed to prove the case does not hold good.

7. The learned counsel for the appellant/accused argued that the prosecution has not proved the motive part of the occurrence. But in this case, according to the prosecution, the accused Jayakumar was given painting contractor work by P.W.3- Thambikalaingan, who is a Contractor and Promoter under the banner of ".India Builders". and P.W.5, who is the Manager of the above construction work and they are doing some maintenance works to Manasa Apartments in which P.W.1's house is situated and deputed the accused to P.W.1's house for some maintenance works. Further, the accused Jayakumar, who promised to supply a wooden cot to the deceased Tamilselvi for the moderate price of Rs.9,000/- and received a sum of Rs.5,000/- as advance, but the same was not done for a long time. The deceased Tamilselvi complained about the same to her brother-P.W.3, who warned the accused and instructed his Manager-P.W.5 to deduct the advance amount received by the accused from his salary and gave the said amount to the deceased Tamilselvi. The accused received a sum of Rs.5,000/- as advance from the deceased and he neither returned the amount nor delivered a wooden cot and the said advance amount was deducted from the salary of the accused by P.W.3 and the above facts are proved by corroborated evidence of P.Ws.3 and 5. Hence, the motive was clearly established by the prosecution beyond any reasonable doubt. Hence, the argument of the learned counsel for the appellant that motive was not proved on the side of the prosecution also fails.

8. In this case, the accused was arrested by P.W.15 and the accused voluntarily given a confession statement and his confession was recorded in the presence of P.W.9 and one Chinnaian. The accused had given confession statement regarding his involvement in the occurrence and he had stated that he sold the gold chain, which was removed from the body of the deceased Tamilselvi, to his mother-in-law, who was examined as P.W.8 and she has produced the said chain. In this

case, P.W.8 turned hostile, but she has not stated that the chain belongs to her or how she got the gold chain of the deceased. M.O.2-gold chain was recovered from the mother-in-law of the accused on the information given by the accused and there is no explanation forthcoming on the side of the accused or Gejalakshmi and the said chain was identified by P.W.1/husband of the deceased as it was his wife. Hence, once the property which was worn by the deceased Tamilselvi at the time of death, was recovered from P.W.8, to whom it was stated to have been sold by the accused, the prosecution has proved the case of recovery of M.O.2 beyond reasonable doubt. Hence, on his confession alone, the nexus of the accused to the crime is also clearly proved by the prosecution beyond reasonable doubt.

9. The learned counsel for the appellant/accused argued that even though some more properties were stolen at the time of occurrence, gold chain alone was recovered and other properties were not recovered. The Investigating Officer, at the time of investigation, arrested the accused and on his confession alone, gold chain-M.O.2 was recovered. Since the Investigating Officer was not able to recover other articles, the case of the prosecution cannot be doubted. Merely because the prosecution is not able to recover the other properties, the accused cannot take advantage over that.

10. The prosecution examined all the material witnesses to prove the charge against the accused in this case. Hence, the argument of the learned counsel for the appellant that the prosecution has not examined all the witnesses and the prosecution has not proved its case beyond reasonable doubt is not acceptable one.

11. Lastly, the learned counsel for the appellant/accused submitted that the accused has got two female children and prayed for leniency with regard to the conviction and sentence imposed on the accused. For that, the learned Additional Public Prosecutor argued that the accused is involved in some other case of similar nature. He has also produced a copy of the judgment before this Court to show that the accused Jayakumar is involved in another case in S.C.No.34 of 2009 and he was convicted for the offences under Sections 449, 382 and 302 I.P.C. and awarded ten years rigorous imprisonment along with a fine of

Rs.5,000/-, in default, to undergo two years simple imprisonment for the offence under Section 449 IPC; ten years rigorous imprisonment along with a fine of Rs.5,000/-, in default to undergo two years simple imprisonment for the offence under Section 382 IPC and death sentence along with a fine of Rs.5,000/-, in default to undergo two years simple imprisonment for the offence under Section 302 IPC. As against the same, Referred Trial No.3 of 2010 and Criminal Appeal No.637 of 2010 were filed and they were disposed of by this Court on 03.03.2011 modifying the death sentence to life imprisonment and confirming the other sentence imposed by the trial Court. The involvement of the present accused in S.C.No.34 of 2009 [Referred Trial No.3 of 2010 and Criminal Appeal No.637 of 2010]. is not denied by the learned counsel for the appellant/accused.

12. Since the accused is involved in some other case of similar nature, no leniency to be given to the accused in the present case. In view of the above circumstances, this Court is of the considered view that there is no reason to interfere with the judgment of conviction and sentence passed by the trial Court.

13. In the result, this criminal appeal fails, and the same is dismissed confirming the judgment of the trial Court. Index : Yes (V.D.P.,J.

) (G.C.,J.

) Website : Yes 29.04.2014 jrl To 1. The VI Additional Sessions Judge, Chennai.

2. The Inspector of Police V.5, Thirumangalam Police Station Chennai.

3. The Public Prosecutor, High Court, Madras. V. Dhanapalan, J.

and G.Chockalingam, J.

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