

**P.Sankar Vs. State**

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**Court :** Chennai

**Decided On :** Jul-14-2014

**Judge :** V.Dhanapalan

**Appellant :** P.Sankar

**Respondent :** State

**Judgement :**

In the High Court of Judicature at Madras Date :

14. 07.2014 Coram : The Hon'ble Mr. Justice V.Dhanapalan and The Hon'ble Mr. Justice G.Chockalingam Criminal Appeal No.454 of 2012 P.Sankar ... Appellant/Sole Accused .. Vs .. The State rep. by The Inspector of Police Karimangalam Police Station Dharmapuri District. [Crime No.842/2010]. ... Respondent/Complainant - - - - Criminal appeal filed under Section 374 (2) of Cr.P.C., against the judgment of the learned Additional Sessions Judge, Fast Track Court, Dharmapuri, made in S.C.No.72 of 2011, dated 26.12.2011. For Appellant :: Mr.M.G.Udhayasankar for M/s.S.Shanthakumari 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 Additional Sessions Judge, Fast Track Court, Dharmapuri, in S.C.No.72 of 2011 for an offence under Section 302 I.P.C. and by a judgment dated 26.12.2011, the learned

trial Judge found the appellant guilty of the charge and convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/- and in default to undergo six 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-Rajathi is a resident of Paisuhalli Village. She is an agriculturist. Her husband is doing vegetable business. She is having one male child viz., Vinayakamoorthy and two female children viz., Umavathi and Vinothini. She had two elder brothers viz., Ponnusamy and Munusamy and one elder sister viz., Muniammal. All of them were married. Her two brothers had passed away. Her mother viz., Kaliasammal is residing at Periapudhur separately. She receives old age pension. Further, she also earned money through renting her coconut trees. P.W.1 and her sister used to visit her mother at her residence then and there. The accused is the son of Ponnusamy, who is the brother of P.W.1. The accused is a drunkard. He got married. Before ten years back, the accused murdered his wife and was in jail. P.W.1's mother Kaliasammal only spent money and got bail to the accused. The accused was also having illicit intimacy with one Thavamani, who is the wife of his paternal uncle. One year back, her sister gave a sum of Rs.5,000/- to her mother towards chit amount. On the next day, P.W.1's sister went to the house of P.W.1 and enquired about her mother. P.W.1 replied to her sister that their mother had not come to her house. [ii]. On the next day, when P.W.1 went to the house of her mother Kaliasammal at about 5.00 p.m. she found the house locked. Suspecting something wrong, when the roof tiles of the house were removed, P.W.1 found her mother's body was hanging. At that time, the accused also was present. By breaking opening the door, the body was brought down. P.W.1 noticed that the gold ear studs with mattal were removed from the body by cutting the ear of the deceased Kaliasammal. Further, cut injuries were found on the chest and hands of the deceased. By doubting the accused, he was enquired by the villagers viz., Sakthivel, Nataraj and Kaliappan. The accused admitted that he demanded money from the deceased, as the deceased refused to give the money, he murdered her by cutting. The accused ran away from the scene of occurrence with two gold ear studs and Mattals. Then, P.W.1 went to Eriyur Police station and gave a complaint-Ex.P.1, in writing. [iii]. P.W.10-Marimuthu, Sub-Inspector of Police,

Karimangalam Police station, on 19.09.2010, upon receiving the complaint from P.W.1, registered a case in Crime No.842 of 2010 for the offences under Sections 302, 454 and 380 I.P.C. and prepared the First Information Report-Ex.P.11. He sent the original F.I.R. to the Judicial Magistrate, Balacode and the Xerox copy of the F.I.R. to the Inspector of Police, in-charge at Karimangalam police station for further investigation. [iv]. P.W.11-Sampathkumar, Inspector of Police, in-charge at Karimangalam police station received the copy of F.I.R. and took up investigation in this case. He went to the scene of occurrence and prepared an Observation Mahazar-Ex.P.7 and a Rough Sketch-Ex.P.12 in the presence of P.W.7-Arul and one Ilanchezhiyan. Then he enquired the witnesses Rajathi, Nataraj, Kaliyappan, Sakthivelu, Lakshmanan and Silambarasan and recorded their statements. Then, 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.13. Then, he sent the dead body for post-mortem, with a requisition under Ex.P.2, through Head Constable Chinnasamy to the Dharmapuri Government Hospital. He enquired the witnesses, recorded their statements and also recovered M.Os.2 to

6. [v]. P.W.6-Dr.Vijayaveeran, conducted autopsy on the body of the deceased on 19.09.2010 at 11.15 a.m. and found the following injuries:- ".1. Laceration over (L) ear lobe 2 x 1 x 1 cm

2. Laceration over (R) side neck 3 x 1 x 1 cm

3. Laceration over nose 2 x 1 x 0.05 cm

4. Laceration over (L) ear lobe 2 x 1 x 0.05 cm

5. Laceration over (L) arm 4 x 3 x 4 cm to bone depth

6. Laceration over (R) curricular region 3 x 2 x 3 cm

7. A contusion over centre of occipital region 5 x 5 cm

8. Contusion over back of neck 4 x 4 cm". Ex.P.3 is the Post-mortem Certificate wherein, the doctor has opined that the deceased would appear to have died due

to head injury and intracerebral haemorrhage. [vi]. On 22.09.2010 at about 6.30 a.m., P.W.11 arrested the accused, who was standing near the Chinnamatlampatti Panchayat Union Elementary School. The accused gave a voluntary confession statement. P.W.11 recorded the confession statement given by the accused and in pursuance of the confession, he recovered M.O.1-Gold ear stud with 'Mattal' [khl;ly;]. [each one pair]. under a cover of mahazar. Then he enquired the witnesses and recorded their statements. He also enquired P.W.6-Dr.Vijayaveeran, who conducted autopsy on the body of the deceased. He then enquired the Head Constable Chinnasamy, recorded his statement and gave a requisition under Ex.P.14 for sending the Material Objects to Chemical Analysis. Ex.P.15 is the requisition given by the learned Judicial Magistrate. Ex.P.16 is the Hyoid Bone Report. Then he handed over the case file to the Inspector of Police, Karimangalam police station. [vii]. P.W.12-Jeganathan, Inspector of Police attached to Karimangalam Police Station, who took up the further investigation, received the case files from P.W.11. After receiving the Chemical Analysis report and after enquiring the Doctor-P.W.6 and Head Constable-Chinnasamy, he filed a final report before the court against the accused for the offences under Sections 302, 454 and 380 IPC. [viii]. 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 12, marked Exs.P.1 to P.16 and produced M.Os.1 to

6. [ix]. 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. [x]. The Trial Court, on consideration and appreciation of the evidence adduced by the prosecution, found the appellant/accused guilty for the offence under Section 302 IPC and convicted and sentenced him as already stated above. Hence the present appeal at the instance of the appellant/accused.

3. Mr.M.G.Udhayasankar, 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, a reasonable doubt has 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 relatives and therefore their evidence cannot be relied upon. Hence, some reasonable doubt had arisen with regard to 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. Further, there is some contradiction in the name of the material objects recovered. The alleged confession given by the accused and recovery have not been proved by the prosecution and there is no connecting circumstances in the alleged crime with the present appellant/accused.

4. Further, the learned counsel for the appellant/accused vehemently contended that P.W.1, in her evidence, has stated that on Saturday at 5.00 p.m., she had climbed the roof tiles at the house of the deceased Kaliasammal and opened the roof of the house. P.W.2 also deposed like that. The deposition of P.Ws.1 and 3 is contravening and the same was not at all considered by the trial Court. P.W.1, in her deposition, has stated that she has given a complaint on seeing her mother's body i.e., on the day itself on Saturday at 10.00 p.m., but the Inspector of Police/P.W.11, in his deposition, has stated that the complaint was lodged on 19.09.2010 at 3.00 a.m. So, the lower Court has failed to consider the above contradiction between the deposition of P.Ws.1 and 11 and the F.I.R. Further, the learned counsel for the appellant/accused argued that P.W.3 had deposed that on 16.09.2010 at 12.00 p.m., the deceased and the appellant were sitting on the Pyl portion of the house of the deceased and were having conversation around 3.00 p.m. to 4.00 p.m. The lower Court has failed to consider regarding the date of death. Even according to the Post-mortem Certificate, the deceased might have died from 36 to 48 hours before Post-mortem. So, according to the above calculation, the deceased might have died on 17.09.2010 from 11.15 a.m. to 11.15 p.m. But, P.W.1, in her deposition, had stated that she saw the body of the deceased by hanging from 5.00 p.m. to 6.00 p.m. Hence, the trial Court has failed to appreciate the fact put forth on the side of the appellant that the death might not have been caused by a single person and the F.I.R. is not clear in the above fact

and it was also highly belated. In view of the above contradiction and omissions, the prosecution has not proved its case beyond any reasonable doubt against the accused. The learned counsel for the appellant/accused argued that no motive was proved on the side of the prosecution for the alleged murder committed by the accused. Hence, the learned counsel for the appellant/accused prays for acquittal of the appellant/accused.

5. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor vehemently contended that in this case, the trial Court, after analysing all the evidences and documents and material objects produced before it, considered each and every material and found the accused guilty for an offence under Section 302 I.P.C. It is further argued that even though P.Ws.1 to 4 are the relatives, their evidence cannot be discarded. The law on the point is well settled that the testimony of relative witnesses cannot be disbelieved on the ground of relationship. The only requirement is to examine their testimony with caution. Their testimony cannot be thrown out at the threshold on the ground of animosity and relationship and this is not a requirement of the law. Hence, the learned Additional Public Prosecutor contended that there is no reason to interfere with the well considered judgement of the trial Court and prayed that the judgment of the trial Court has to be confirmed.

6. In this case, it is admitted by both parties that the deceased Kaliammal is having two daughters. One of the daughter is Rajathi, who was examined as P.W.1 and another daughter is Muniammal. The deceased is also having two sons viz., Ponnusamy and Munusamy. The accused is the son of Ponnusamy. Both the sons of the deceased Kaliammal are no more. The deceased Kaliammal was living separately. P.W.2-Nataraj and P.W.3-Sakthivel are the own brothers of the accused. P.W.4-Lakshmanan is the husband of P.W.1.

7. Since all the witnesses viz., P.Ws.1 to 4 are close relatives, their evidences cannot be discarded. Further, P.Ws.1 to 4 are the close relatives of the accused also. In the absence of any particular allegation or any reason to disbelieve their evidence, their evidence cannot be rejected simply because they are the interested or related witnesses. 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.

8. It is the admitted case of the prosecution that a case for an offence under Section 302 IPC is already pending against the accused for murdering his wife. It is further admitted that there is no eye-witness in this case. But the prosecution mainly relied upon the circumstantial evidence to connect the accused with the crime.

9. As per the case of the prosecution, one year back, the sister of P.W.1 gave a sum of Rs.5,000/- to her mother for safe custody, which fact was known to the accused and the accused demanded the said amount from the deceased Kaliasammal. As the deceased refused to give that amount, the accused had murdered the deceased and removed gold ear stud and 'Muttal' [khl;ly;]. from the body of the deceased Kaliasammal. Since the accused is in need of money, he committed the offence and the above fact was proved from the recovery of gold ear stud and 'Muttal' [khl;ly;].

10. In this case, the accused was arrested by the police and the accused had given a voluntary confession statement and his confession was recorded in the presence of P.W.7-Arul and one Ilanchezhian. The admissible portion of the confession given by the accused was marked as Ex.P.10, in which, the accused had stated as follows:- ".vd;id miHj;Jr; brd;why; ehd; vd; ghl;oia bfhiy bra;Jtpl;L jpUo te;j fk;ky;fs; 2. khl;oy; 2. ,itfis vd; tPl;oypUe;J vLj;J xg;g[tpf;fpmwd;/".

11. The above confession statement given by the accused was proved by the evidence of P.W.7 and the same was also corroborated by the evidence of P.W.8. In pursuance of the admissible portion of the confession statement, the accused had produced the gold ear stud and 'Muttal' [khl;ly;]. which were recovered by the Investigating Officer in the presence of P.W.7 and P.W.8. During the course of examination of P.W.1-Rajathi, she identified M.O.1-Gold ear stud with 'Muttal' [khl;ly;]. to be that of her mother and P.W.1 was not cross-examined on the side of the defence on this point. Hence, it is proved that M.O.1-gold ear stud with 'Muttal' [khl;ly;]. were recovered from the accused. The alleged confession leading to recovery was clearly proved on the side of the prosecution. Consequently, it is

proved that gold ear stud was removed from the body of the deceased Kaliasammal by causing lacerated injury on the ears. Hence, the motive of the accused is clearly proved by the prosecution beyond any reasonable doubt.

12. The learned counsel for the appellant/accused argued that identification of the material object M.O.1-gold ear stud creates doubts and contravenes by mentioning the name in some places as ".Manga thodu". and in some places as ".Star kammal.". Hence, M.O.1-gold ear stud was figured as star and the outer portion was shown as manga design. P.W.11/Inspector of Police, has stated in his re-examination as follows:- ".rh/bgh/1 njhl;oy; !;lhh; Rw;wp kh';fh totpyhd oird; mike;Js;sghy; ,J kh';fh njhL vd;W jhd; TWthh;fs; vd;why; rhp/". Hence, M.O.1-gold ear stud is shown as manga design. Hence, the argument of the learned counsel for the appellant that M.O.1-gold ear stud was wrongly stated in one place as ".manga thodu". and another place as ".star kammal". is not at all acceptable. P.W.8, Village Administrative Officer, has given deposition regarding the confession and recovery of M.O.1. There is no reason to disbelieve the evidence adduced by P.W.8. Since there is no reason to disbelieve the evidence of P.W.8, M.O.1-Gold ear stud with 'Matta' [khl;ly;]. was produced by the accused in the presence of Investigating Officer and witnesses, is proved by the prosecution beyond any reasonable doubt.

13. According to the prosecution, P.W.1 went to the police station on Saturday [18.09.2010]. at 10.00 p.m. itself, but the case was registered only on 19.09.2010 at 3.00 a.m. The said fact was proved by the prosecution by production of F.I.R. On seeing the body of the deceased, P.W.1 had immediately gone to the police station and gave the complaint-Ex.P.1. Hence, there was no delay in lodging the F.I.R. in this case. Further, inquest was done on the body of the deceased on 19.09.2010 between 8.00 a.m. and 10.00 a.m. The Doctor, who conducted autopsy on the body of the deceased, had stated in his evidence that he commenced post-mortem on 19.09.2010 at about 11.15 a.m. He finally gave his opinion stating that the deceased would have died 36 to 48 hours before post-mortem due to head injuries, blood clotting and shock. Ex.P.6 is the Serology report. Hence, it is clear that the deceased would have died before 36 to 48 hours before post-mortem i.e., 19.09.2010 at 11.15 a.m. due to head injuries.

14. P.W.3-Sakthivel, in his deposition, had stated as follows:- "[Ascertaining the date i.e., on 17.09.2010]. bts;spf;fpHik md;W M\$h; vjphpa[k; vd; ghl;oa[k; gfy; 12 kzpastpy; jpz;izapy; mkh;e;J ngrpf;bfhz;oUe;jhh;fs;/ mij ehd; ghh;j;njd;/ md;W [Ascertaining the date i.e., on 17.09.2010]. bts;spf;fpHik Rkhh; khiy 5 kzpf;F vd;Dila mj;ij Kdpak;khs; ghl;oia ghh;j;jhah rPl;Lf;F U:/5000 bfhlj;Jtpl;L brd;nwd; vd;W nfl;lhh;/ mg;bgh GJ kzp ,ut[ 7 kzp ,Uf;Fk; bjhpatpy;iy/ klpak; ehd; ghh;j;njd; vd;W Twpndd;/ vd; bghpa mj;ij vd;dplk; nfl;Ltpl;L vd; rpd;d mj;ij tPl;ow;F brd;wJ m';nfa[k; ghh;j;J tpl;L m';nfa[k; ,y;iy vd;W vd;dplk; te;J TwpaJ/ ehd; v';fhtJ CUf;F brd;wpUf;Fk; ghh;j;Jf; bfhs;syhk; vd;W Twptpl;nld;/ mLj;j ehs; [Ascertaining the date i.e., on 18.09.2010]. rdpf;fpHik md;W khiy Rkhh; 6 kzp ,Uf;Fk; ghl;o tPl;L Kd; vy;nyhUk; rj;jk; nghl;Lf; bfhz;oUe;jhh;fs;/ ehDk; brd;W ghh;j;njd;/ vd;Dld; m/rh/1. 2 vd; jk;gpfs; kw;Wk; cwtpdh;fs; m';F ,Ue;jhh;fs;/ vd;J ghl;oia ehd; ghh;f;Fk; nghJ nkny K:'fpy; bjh';fpa epiyapy; ,Ue;jJ/ eh';fs; btspapy; g{l;o ,Ue;j g{l;ol cilj;J tpl;L ehDk; vd; jk;gp eluh\$; kw;Wk; mj;ijfs; brd;W g{l;il cilj;J tpl;L cs;ns brd;W fapiw mtpH;j;J gpzj;ij fPnH fplj;jpndhk;/ Kfj;jpy; bts;L fha';fs; fhzg;gl;IJ/".

15. According to the evidence of P.W.3, on Friday [17.09.2010]., he has seen the accused along with the deceased at 12.00 noon and on the same day at 5.00 p.m., his aunt Muniammal enquired about his grandmother. So P.W.3 had seen the accused along with the deceased on Friday [17.09.2010]. at about 12.00 noon. Subsequently, on the evening, the house of the deceased was locked and she was not seen by anybody. On Saturday [18.09.2010]. i.e., on the next day, the door was broke open and the body of the deceased was removed from hanging and on the same day night itself, P.W.1 had gone to the police station and lodged the complaint. According to the Post-mortem Certificate also, death would have occurred from 36 to 48 hours before post-mortem i.e., on 19.09.2010. Roughly it would be on 17.09.2010 day time to midnight. There is no error in the deposition given by P.W.1 and P.W.3. Therefore, the argument of the learned counsel for the appellant that there is contradictory evidence adduced on the side of the prosecution is not at all correct. The evidence adduced by the prosecution is clearly acceptable one and there is no contradiction. Hence, the nexus of the accused to the crime is clearly proved beyond any reasonable doubt. The prosecution examined all the material evidences to prove the charge against the accused. Hence, the argument of the learned counsel for the appellant that the

prosecution has not proved its case beyond any reasonable doubt is not at all acceptable one, since there is no reason was adduced on the side of the appellant/accused to reject the evidence of prosecution. 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.

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

) ( G.C.,J.

) 14.07.2014 Index : Yes Internet : Yes jrl To 1. The Additional Sessions Judge, Fast Track Court, Dharmapuri.

2. The Inspector of Police Karimangalam Police Station Dharmapuri District.

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

**and G.Chockalingam, J.**

jrl Pre-Delivery Judgement made in Criminal Appeal No:

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