

**State Represented by Vs. Anand**

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**SooperKanoon Citation :** [sooperkanoon.com/1169729](http://sooperkanoon.com/1169729)

**Court :** Chennai

**Decided On :** Aug-29-2013

**Judge :** S.Rajeswaran

**Appellant :** State Represented by

**Respondent :** Anand

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 29.08.2013 CORAM THE HONOURABLE MR.JUSTICE S.RAJESWARAN AND THE HONOURABLE MR.JUSTICE T.MATHIVANAN Criminal Appeal (Md.No.35 of 2010 State represented by The Inspector of Police, Keeramangalam Police Station, Pudukottai District [Crime No.42/2007]..Appellant versus Anand ..Respondent Prayer Appeal is filed under Section 378 of the Code of Criminal Procedure, to allow the appeal and set aside the judgment of acquittal dated 07.10.2008 in S.C.No.115/2008 on the file of the learned Additional District cum Sessions Judge, Fast Track Court, Pudukottai.

!For Appellant : Mr.Mayil Vahana Rajendran, APP ^For Respondent : Mr.G.Bhagavath singh :

**JUDGMENT**

(Judgment of the Court was made by S.RAJESWARAN, J.) This Criminal Appeal is preferred by the State as against the order of acquittal passed by the learned

Additional District and Sessions Judge, Fast Track Court, Pudukkottai in S.C.No.115 of 2008 dated 07.10.2008.

2.The respondent/accused was subjected to trial for the offences punishable under Sections 449, 302 and 392 IPC.

The Trial Judge found the accused not guilty and acquitted him of the charges under Section 235(1) Cr.P.C.3.The brief facts of the case are that on 28.03.2007 at about 8.30 a.m, the President of Mel Panirudi Panchayat, P.W.1 preferred a complaint before P.W.16, the Sub-Inspector of Police, Keeramangalam Police Station stating that the deceased Samsubbivi, a NuRs.in a Primary Health Centre, Mel Panikadu North was found dead in her house.

He suspected that someone might have entered the house of the NuRs.and murdered her and based on his complaint, P.W.16 registered a case in Cr.No.42/2007 for the offences punishable under Section 302 IPC against the unknown accused.

Printed FIR is marked as Ex.P16 and the complaint of P.W.1 was marked as Ex.P1.

P.W.19, Inspector of Police, Vadakadu Police Station was incharge of Keeramangalam Police Station on 28.03.2007 and he took up the investigation, went to the place of occurrence, prepared the observation mahazar Ex.P6 and a rough sketch, Ex.P18 in the presence of P.W.9 and one Tirupati.

He also recovered the lock, M.O.7 in the presence of the above witnesses.

He conducted the inquest, Ex.P19, in the presence of the panchayathars and thereafter sent the dead body for Postmortem.

P.W.19 had also examined P.W.1 to P.W.4, P.W.7, P.W.8, one Kannan and others on 28.03.2007.

P.W.5, Civil Assistant Surgeon, Government Hospital, Aranthangi conducted autopsy on 28.03.2007 at 12.30 p.m.P.W.5, by his final Postmortem certificate, Ex.P5 gave his opinion that no poison was detected in the viscera and there is an

Outward compression fracture on both side of the body at the junction with greater corner on the Hyoid bone and the said injury was ante mortem in nature.

Further the Doctor, P.W.5 has opined that the deceased appears to have died of ?Asphyxia?.

due to compression by cloth.

4.P.W.20, Inspector of Police, Keeramangalam Police Station continued the investigation from 01.04.2007.

He took the thumb impression from the suspected persons, the accused, P.W.11, P.W.8 and one Raju.

Those finger prints were sent to P.W.13, Finger Prints Expert on 05.04.2007 and P.W.13 informed P.W.20 that the finger print of the accused tally with one of the finger prints taken from the deceased house.

Based on the same, P.W.20 searched and arrested the accused on 06.04.2007 at 1.15 a.m.at Periyalur Vilaku Road, in the presence of P.W.10 and the Village Assistant one Palanivel.

5.P.W.20 had also recorded the confession statement of the accused and recovered M.O2 from the accused's house in the presence of P.W.10.

6.A DVD player was recovered from P.W.11 based on the confession statement of the accused, two other studs M.O.4 and these were recovered from a Pawn Broker Shop belonging to P.W.12.

The recovered material objects were shown to P.W.1 to P.W.3 and a further statement was recorded.

P.W.1 to P.W.3 have identified those recovered MOs as that of the deceased.

7.The Investigation Officer, P.W.20 had examined the Hand Writing Expert, P.W.13, the Doctor, P.W.5, Forensic Expert, P.W.6 and filed his final report against the accused under Sections 449, 392 and 302 IPC.

8. On the side of the prosecution, 20 witnesses were examined and 22 documents were marked during the trial.

The prosecution had also produced 14 material objects before the trial court.

9. The case of the prosecution was explained to the accused and an opportunity was given to the accused under Section 313 Cr.P.C. The accused denied the prosecution case as false and stated that he was taken from the College on 04.04.2007 by the Police and was detained in the Police Station upto 07.04.2007.

He further stated that he was taken to the deceased house on 05.04.2007 and his finger prints were taken in the Almirah of the deceased house.

The accused had also examined his friend one Peer Mohammed as D.W.1, his friend's grandmother as D.W.2 and his mother as D.W.3.

D.W.1, Peer Mohammed would state that the accused was his classmate and on 04.04.2007 around 1.00 p.m., when they were talking in a tea stall adjacent to the College, two persons came in a TVS50 took the accused Anand in an Ambassador car and when he contacted the accused, somebody attended his phone stating it was his paternal uncle and the accused Anand was seeing a movie in a theatre.

Thereafter he could not contact the accused on his mobile phone.

Since the record note of D.W.1 was with the accused, he went to the accused's house to collect the same, but came to know that the accused was taken to the Police Station.

Then D.W.1 went to the Police Station and found the accused in the Police Station on 05.04.2007 and asked him about the record note and the accused said that it was with another friend, one Kumaresan.

So he returned back.

10. D.W.2, Lakshmi, grandmother of one Naveen.

Her grandson Naveen and the accused were classmates and for the purpose of paying College Fees she gave the studs of her grand daughter Nandhini to pledge the same.

She would further state that the Police had recovered the Pawn Brokers receipt from her grandson Naveen.

11.The mother of the accused Solaimmal was examined as D.W.3.

She would state that the Police had brought the accused to her house by tying his hands on 04.04.2007 at 2.00 p.m.and when she questioned them the reason for tying her son's hand, the Police abused her.

On the next day, a news item was published in the daily newspaper about the case and the said newspaper has been marked at Ex.D1.

12.Heard the learned Additional Public Prosecutor appearing on behalf of the appellant and Mr.Bhagavath Singh, learned counsel appearing for the accused.

We have also perused the records made available including the judgment of the Trial Court.

13.The learned Additional Public Prosecutor contended that the prosecution has established the case through the prosecution witnesses in a cogent and convincing manner, that the deceased died due to homicide and the Postmortem certificate would reveal the injury on the neck of the deceased and the deceased died due to Asphyxia and Strangulation.

That the accused was last seen with the deceased and the same was established through P.W.4, P.W.7 and P.W.8.

Finger prints taken from the Almirah from the deceased house tallied with the accused's finger prints and the ornaments and DVD Player belong to the deceased were recovered through confession statement of the accused, that the P.W.1 to P.W.3 have identified those recovered articles as one belong to the deceased, that the jewels were pledged by the accused two days after the occurrence and all the above circumstances were cogent and continuous and the

same would expose the guilt of the accused without any break in the link.

However he would add that the learned Trial Judge had acquitted the accused without appreciating the evidence in the proper perspective.

14.Per contra, the learned counsel appearing for the accused would contend that the accused was arrested on 04.04.2007 and it was published in the daily newspaper on 05.04.2007.

The arrest and recovery made on 06.04.2007 is false from the evidence of D.W.1 and D.W.3.

The prosecution case is projected as one of murder for gain.

But P.W.1 to P.W.3 have not referred the jewels said to have been recovered from the accused as missing in their earlier statements made on 28.03.2007.

P.W.1 to P.W.3 have stated that they have identified the recovered articles in the Police Station on 05.04.2007 and this would also falsify the case of the prosecution that the articles were recovered through the accused's confession statement on 06.04.2007.

15.The point for consideration are as follows: a) The case of the prosecution is based on the circumstantial evidence through the evidence of P.W.4, P.W.7 and P.W.8 that they had last seen the deceased with the accused and the recovery of the ornaments and DVD player belong to the deceased through the confession statement of the accused.

b) The deceased was found dead in her house on 28.03.2007 by the Panchayat President, P.W.1 and the law was set in motion.

On the complaint of P.W.1, case was registered on 28.03.2007 at 8.30 a.m.The inquest and postmortem was conducted at 12.30 p.m.on 28.03.2007.

P.W.5, the Doctor who conducted the Postmortem had noticed the external injuries as follows: ?.Ligature mark passes in front of neck about the thyroid cartilage, and over submandibular area, laterally in slanting position, encircling the

whole neck.

6 cm breadth polio camp banner cloth (2-1/2?

x 1).encircling the neck 2 times, final twist was over left lateral side of neck.

Above this banner cloth, another cloth with multiple design, 1?.

x 1/2?.

encircling the neck.

16.P.W.5, the Doctor gave a final opinion that the deceased appears to have died of Asphyxia due to compression by cloth.

There was an outward compression, fracture on the hyoid bone.

But no poison was detected in the viscera.

According to the Doctor, the body was decomposed, skin peeled off here and there, the body was swollen and oedematous, maggots present all over the body.

According to the Doctor, the deceased appears to have died more than 72 hours prior to autopsy.

From the available evidence, exact date of the occurrence could not be fixed.

17.P.W.7 and P.W.4 are the husband and wife and neighbours to the deceased.

According to them, on 24.03.2007 around 3.00 p.m., the deceased brought ice for them.

At that time, the accused, P.W.11 were seen along with the deceased.

P.W.4 made chicken gravy and gave it to the deceased around 8.30 p.m.On the next day, on 25.03.2007 at about 5.00 a.m., they left to their mother's house and at that time, they found the accused with a DVD player and the accused told them that the deceased gave the DVD player for some repair work.

DVD player was recovered from P.W.11 on 06.04.2007 on the confession statement of the accused.

18. According to P.W.11, the accused gave the DVD player to him on 26.03.2007 at 12 noon.

The DVD Player is also marked as MO1.

P.W.2 and P.W.3 have identified the MO1 that it belong to the deceased.

But neither P.W.2 nor P.W.3 have stated about the missing of the DVD player in their earlier statements recorded on 28.03.2007.

P.W.11 and P.W.8 were examined by the Police as suspects on 04.04.2007 along with the accused and one Raju.

At that point of time, P.W.11 did not referred the DVD player that it was handed over to him by the accused.

P.W.4 and P.W.7 are husband and wife and they are also interested in P.W.11.

P.W.7 would admit in his cross examination that he was only helping P.W.11 for his education.

Further, the statement of P.W.4 and P.W.7 said to have been recorded on 28.03.2007 reached the Court only on 06.04.2007 and they were not examined, as Panchayatars during the inquest, that they had last seen the deceased with the accused.

Therefore much reliance cannot be given to the evidence of P.W.4, P.W.7 and P.W.11.

19. According to the inquest, it was one Ramaiah who last seen the deceased alive on 24.03.2007 at 6.00 p.m., but the said Ramaiah was not examined by the prosecution agency.

20. According to the prosecution case P.W.1, the President of the Panchayat had found the dead body on 28.03.2007 early morning and reported the incident to the

police on 28.03.2007 at 8.30 a.m. But P.W.10, VAO would state that they came to know about the death of the deceased on 27.03.2007 evening and the Police came to the place of occurrence on 27.03.2007 itself.

P.W.2, son of the deceased is working at Chennai and he would also state that he got the news about the death of his mother on 27.03.2007 at about 4.00 p.m. P.W.2 came to Trichy and went to the deceased house along with P.W.3 on 28.03.2007 at 9.00 a.m and that would strengthen the defence version that he got the information on 27.03.2007 itself.

While so, there is no reason to believe the prosecution version that the occurrence was known to them only on 28.03.2007 and this contradiction in the origin of the case itself would affect the genuineness of the prosecution case.

21. The accused was arrested on 06.04.2007 at 1.15 a.m. at Periyalur Vilaku Road and the confession statement was recorded in the presence of VAO, P.W.10.

P.W.10 and the Investigating Officer, P.W.20 gave evidence in this regard.

Articles were recovered only on 06.04.2007 pursuant to the confession statement of the accused.

But the accused denied the same and stated in his reply under Section 313 Cr.p.C. that he was taken from his College on 04.04.2007 and detained in the Police Station till 07.04.2007.

He was taken to the deceased's house on 05.04.2007 and his finger prints were taken from the Almirah.

22. In support of the defence version, the accused examined D.W.1 and D.W.3.

D.W.1, the classmate of the accused would state that the accused was taken by a person in an Ambassador car on 04.04.2007 at 1.00 p.m. when they were taking tea adjacent to their College.

When he went in search of the accused he found the accused in the Police Station on 05.04.2007.

D.W.3, mother of the deceased would state that the Police brought her son with his hands tied on 04.04.2007 at 2.00 a.m. and a news was published in the daily newspaper on 05.04.2007, in connection with the case.

The daily newspaper dated 05.04.2007 is marked as Ex.D1 and as per the news item the accused Anand was arrested for illegal intimacy.

The publication made in Ex.D1 was not denied by the prosecution and it raises a doubt on the date of arrest of the accused.

23.P.W.14, the photographer was engaged by the Police to take photographs on the place of occurrence and the deceased.

He was also examined as a prosecution witness.

P.W.14, in his cross examination would state that he took photograph of the accused on 05.04.2007 and this piece of evidence would also raise a doubt on the date of arrest of the accused.

24.The Investigating Officer, P.W.20 would admit that he had taken the accused, P.W.11, P.W.8 and one Raju on 04.04.2007 and taken their finger prints.

P.W.11 would also corroborate the same that on 04.04.2007 the Police had taken him, the accused, P.W.8 and one Raju to the Police Station and taken their finger prints.

There is no evidence whether they were let of, after taking the finger prints.

25.MO1, MO2, MO4 and MO6 have been recovered on 06.04.2007 pursuant to the confession statement of the accused on 06.04.2007.

But P.W1 to P.W.3 would state that the material objects were shown to them on 05.04.2007 in the Police Station and they identified the same that it belong to the deceased.

This piece of evidence would also falsify the case of the prosecution about the arrest and recovery from the accused on 06.04.2007.

26.The Investigating Officer had examined several persons including the accused as suspects.

He eliminated others and fixed the accused on the finger prints found in the Almirah and the recovery.

Though finger print was taken from Almirah, no finger print has been taken from the lock, MO7.

According to the Hand Writing Expert, P.W.13 he had taken three finger prints from the deceased's house and two relates to the deceased and one of the finger prints relates to the accused.

P.W.13 did not identify the finger prints with any serial number and due procedures have not been adopted in taking the finger prints from the suspected persons.

According to the Investigating Officer, P.W.13 had informed him that finger prints have been taken from the Almirah and the lock.

P.W.13 in his evidence would state that out of three finger prints taken from the place of occurrence, two belong to the deceased and one was eliminated as unknown person.

These contradictions in the finger print do not support the case of the prosecution at all.

27.Thus, the evidence is not proper and cogent to form a chain of link connecting the accused with the offence and therefore, there is no reason to interfere with the judgment passed by the trial court.

In fine, the Criminal Appeal fails and dismissed.

To 1.The Additional District cum Sessions Judge, Fast Track Court, Pudukottai.

2.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

