

**Sivakumar Vs. State represented by The Inspector of Police, Thiruchirappalli District**

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**Court :** Chennai Madurai

**Decided On :** Oct-09-2015

**Judge :** S. Nagamuthu & V.S. Ravi

**Appeal No. :** Crl.A(MD)No. 123 of 2012

**Appellant :** Sivakumar

**Respondent :** State represented by The Inspector of Police, Thiruchirappalli District

**Judgement :**

(Prayer: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction passed by the learned Principal Sessions Judge, Tiruchirappalli, made in S.C.No.52 of 2011, dated 19.06.2012.)

**S. Nagamuthu, J.**

1. The appellant is the sole accused in S.C.No.52 of 2011, on the file of the learned Principal Sessions Judge, Tiruchirappalli. He stood charged for the offence under Sections 302 and 392 I.P.C. By Judgment, dated 19.06.2012, the Trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo rigorous

imprisonment for six months for the offence under Section 302 I.P.C. and to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months, for the offence under Section 392 I.P.C. The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court, with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:

(i) The deceased in this case was one Mr.Jeyaraj. He was residing at K.K.Nagar, Tiruchirappalli. The accused in this case was an auto driver. The family of the deceased used to engage the auto of the accused for their journey for about two years prior to the occurrence. This accused was closely known to the members of the family of the deceased. The deceased was a retired Sub Inspector of Police.

(ii) On 04.03.2010, the wife of the deceased had fallen ill. The deceased took her to a hospital and after consultation, he brought her back to his house. After leaving his wife at his house, the deceased went out for purchasing drugs for his wife. The time at which the deceased left his house was 08.30 p.m. Till 09.00 p.m., the deceased did not return. Therefore, P.W.1, who is the daughter of the deceased, had gone in search of the deceased. She was accompanied by her sister also. But, they could not find him anywhere, including the houses of her relatives. They continued the search till 11.00 p.m. and since they could not find him anywhere, they returned home. On the next day morning at 06.00 a.m., they had some information from the people of that locality that there was a dead body lying at L.I.C. Colony, Jai Nagar. P.W.1 immediately rushed to the L.I.C. Colony, Jai Nagar, where, in a small land between two houses, the deceased was found dead. The body was found, his face facing the earth. It was a place meant for storing garbage. Immediately, P.W.1 went to the Police Station and made a complaint, under Ex.P.1. P.W.19, the Sub Inspector of Police at K.K.Nagar Police Station, Tiruchirappalli City, received the complaint from P.W.1, under Ex.P.1 and registered a case in Crime No.174 of 2010, under Section 174 Cr.P.C. Ex.P.14 is the First Information Report. He forwarded Ex.P.1 and Ex.P.14 to the Court and handed over the Case Diary to the Inspector of Police for investigation.

(iii) P.W.20, the then Inspector of Police, took up the case for investigation, proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness at 10.00 a.m. Then, he conducted inquest on the body of the deceased and forwarded the body for postmortem.

(iv) P.W.9 conducted autopsy on the body of the deceased on 05.03.2010 at 05.00 p.m. She found the following injuries:

1. Dark brown colour abrasions, two in number, on either side of nose, each measuring 2 cm x 1 cm, on the left side of upper lip 0.5 cm x 0.5 cm, front of left side of abdomen, multiple in number, of varying dimensions, back of left heel, 3 cm x 1 cm; inner aspect of right ankle, 3 cm x 2 cm.
2. Fracture of left collar bone. 1 to 5 left side ribs present. Fluid blood present in the pleural cavity.
3. Dark brown colour abrasion, 3 cm x 1 cm, on the front of centre of the neck.

On Bloodless dissection of neck:- Contusion of soft tissues of neck “ Dark red. Diffusion of blood into the soft tissues of the neck. Fracture of right greater cornu of Hyoid bone present. Fracture of lower laryngeal cartilages and upper tracheal rings present. Haemorrhagic spots in the mucous membrane of wind pipe and food pipe present. Contusion of Esophageal wall “ Dark red ?.

She preserved the viscera for Chemical Examination. Ex.P.5 is the Report, which revealed that there was alcohol detected in the visceral organs. She finally gave opinion that the death was due to compression of neck. Ex.P.4 is the Postmortem Certificate.

(v) Since the Doctor gave opinion that the death was due to manual strangulation, P.W.20 altered the case on 10.03.2010, under Sections 302 and 379 I.P.C. During the course of investigation, from the examination of P.W.1 and P.W.2 and other witnesses, it came to light that the gold jewels, namely, a gold chain with dollar, a gold ring and a gold bracelet, worn by the deceased, were also found missing. Based on the same, he altered the case by including Section 379 I.P.C. Ex.P.18 is

the Alteration Report. Then, he handed over the investigation to P.W.21.

(vi) P.W.21 took up the case for investigation on the orders of his superior, transferring the investigation to him. During the course of investigation, he arrested the accused on 19.04.2010 at 04.00 p.m. in the presence of P.W.14 and another witnesses at Vadugapatti Aerikkarai. On such arrest, he made a voluntary confession, in which, he disclosed the place, where he had thrown a pair of chapels and also the place, where, he had hidden the gold jewels. In pursuance of the said confession, he produced a pair of chapels from a bush near the place of occurrence and then he took the police and witnesses to his house, from where, he produced the gold jewels, namely, M.O.1 (gold chain with Matha dollar) and he produced M.O.6, auto bearing Registration No.TN-48-L-1768. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. Then, he made a request to the Court for forwarding the material objects for Chemical Examination. Finally, on completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of this Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as, 21 witnesses were examined and 20 documents were exhibited, besides 6 Material Objects.

4. Out of the said witnesses, P.W.1 is the daughter of the deceased, who has stated that the accused left the house at 08.30 p.m. on 04.03.2010 and the dead body was found on the next day at 08.30 a.m. at L.I.C. Colony, Jai Nagar. She has further stated that a gold chain, a gold ring and a gold bracelet, which were worn by the deceased were found missing. She has identified M.O.1 as the gold chain worn by the deceased lastly. P.W.2 is the wife of the deceased. She has also stated the same facts. P.W.3 is yet another daughter of the deceased and she has also stated that the deceased was lastly seen alive at 08.30 p.m. on 04.03.2010 and on the next day, the dead body was found. She has also identified M.O.1 as the gold chain belonging to the deceased. P.W.4 is the grandson of the deceased, who was also residing with the deceased. He has also stated about the same facts. P.W.5 has spoken about the preparation of the Observation Mahazer and

the Rough Sketch from the place of occurrence. P.W.6 is the medical shop owner, where the deceased is said to have gone to purchase medicines. According to him, on 04.03.2010, between 08.00 p.m. to 08.30 p.m., the deceased came to his shop to purchase medicines. Since the drugs, which he wanted to purchase, were not available in the shop, the deceased returned. He has further stated that on the next day, he came to know that the deceased was dead. P.W.7 is a neighbour of the deceased, who has stated that he found the dead body at Jai Nagar. P.W.8 is the Doctor, to whom, the deceased had taken his wife for treatment, on the previous day. He has stated about the said facts. P.W.9 is the Doctor, who conducted postmortem on the body of the deceased, has spoken about the same and also has spoken about the opinion given, regarding the cause of death. P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 is yet another neighbour of the deceased, who has stated that he went in search of the deceased along with P.W.1 and their family members. He has stated that the accused also joined with him, when he was searching for the deceased. P.W.12 and P.W.13 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.14 is the Village Administrative Officer, who has stated that on 19.04.2010, at 01.30 p.m., the accused was arrested near Vadugapatti lake. He has further stated that after such arrest, the accused was taken to K.K.Nagar quarters, where, in a Marriage Hall, the accused was interrogated and at that time, he gave a voluntary confession, in which, he disclosed the place, where he had hidden the jewels. He has further stated that in pursuance of the same, he took the police and witnesses to his house and produced M.O.1. P.W.15 is the financier, from whom, the accused had taken loan for purchasing the auto. He has stated that the loan was reimbursed by him after the demise of the deceased. P.W.16 has turned hostile. He is the brother of the accused, who has stated that the accused had purchased auto by raising loan from P.W.15. P.W.17 is the Constable, who carried the body for postmortem. P.W.18 has also spoken about the same. P.W.19 has spoken about the registration of the case. P.W.20 and P.W.21 have spoken about the investigation done by them.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. To a specific question in respect of his

arrest on 19.04.2010 at 01.30 p.m. and the consequential recovery of M.O.1 and the chapels, he has stated that he was arrested on 15.04.2010 itself and he was illegally detained by the respondent police in the Police Station. He has marked Ex.D.1, telegram issued by his wife at 10.20 a.m. on 19.04.2010, which was received by the learned Magistrate at 01.25 a.m. on 19.04.2010. Thus, according to him, he did not give any confession and he did not produce any material objects. On the side of the accused, his wife, by name, Mrs.Valarmathi, was examined as D.W.1. Having considered all the above materials, the Trial Court convicted the appellant under both the charges and punished him accordingly. That is how, the appellant is before this Court with this Criminal Appeal.

6. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. This is a case based on circumstantial evidence. Admittedly, the deceased was lastly seen alive at 08.30 p.m. on 04.03.2010 by P.W.1 and other family members as well as the medical shop owner, P.W.8. Thereafter, he was not seen anywhere alive. The search made by P.W.1 and other family members for the whole night, could not fructify. The dead body was found at 08.30 a.m. at Jai Nagar on 05.03.2010. Thus, it is crystal clear that the deceased had died somewhere between 08.30 p.m. on 04.03.2010 and 08.30 a.m. on 05.03.2010. The medical evidence would go to prove that the death was due to manual strangulation. Though, alcohol was found in the internal organs, that is not the cause of death. We do not find any reason to reject the medical evidence regarding cause of death. Therefore, we hold that the death was a homicide.

8. In Ex.P.1, P.W.1 had not stated that the gold jewels worn by the deceased, were found missing from the body. For that, there is an explanation by P.W.1 also. She has stated that since she was in a perturbed mood, she had forgotten to mention about the jewels in Ex.P.1. We accept this explanation. Thereafter, when the family members were examined, they had stated that the jewels were found missing. This is found in the Alteration Report, sent on 10.03.2010. Until 10.03.2010, the accused was not in the picture at all. Thus, it is crystal clear that

the murder and robbery had taken place in one and the same occurrence. Therefore, it is inferable that the person, who committed the murder, had committed the robbery also.

9. Now, the question is who was that person, who committed the murder and robbery? ?. The accused was not anywhere seen near the place of occurrence. The deceased was also not found in the company of the accused at any point of time at or about the time of occurrence. The only piece of evidence available on the side of the prosecution, is the arrest of the accused on 19.04.2010 at 04.00 p.m. and the disclosure statement made by the accused and the alleged recovery of M.O.1, which was the gold jewel worn by the deceased lastly. In this regard, the learned counsel for the appellant would submit that the accused was not arrested actually on 19.04.2010 and as a matter of fact, he was arrested on 15.04.2010 itself and he was illegally detained in the Police Station. The wife of the deceased had given a telegram to the learned Magistrate on 19.04.2010 at 10.20 a.m., which was received by the learned Magistrate at 01.30 p.m. itself. Though, we cannot give much weightage for this document, this is a piece of evidence available, however, in favour of the accused. One can say that if it is not true that the accused was not arrested before the telegram was given at 10.20 a.m. on 19.04.2010, there would have been no occasion for the wife of the accused to give such a telegram. The wife of the accused has given evidence that the accused was arrested on 15.04.2010. The telegram would also indicate that the accused would have been taken into custody at least before 10.20 a.m. on 19.04.2010. It is not only on this ground that we are going to reject the case of the prosecution. There are other circumstances also.

10. The learned counsel for the appellant would point out that according to the case of the prosecution, the arrest was made near Sathanur Aerikkarai. But, the Village Administrative Officer, P.W.14, in whose presence, the accused was allegedly arrested at 04.00 p.m. on 19.04.2010, has stated that the accused was arrested near Vadugapatti Aerikkarai. There is no possibility to construe that Vadugapatti Aerikkarai and Sathanur Aerikkarai are one and the same. P.W.14, during cross-examination, has stated that there is one Aeri (lake) at Vadugapatti and another Aeri (lake) at Sathanur and the distance between the two, is more

than two Kilometres. This contradiction has not been explained by the prosecution. The Investigating Officer, P.W.21, on his part, also has given evidence contrary to his own records. He has stated that the arrest was made only near Vadugapatti Aerikkarai and not near Sathanur Aerikkarai, whereas, according to the records, such as, the arrest memo, the mahazer, the arrest card, etc., the arrest was made not at Vadugapatti Aerikkarai, but near Sathanaur Aerikkarai. When, this was brought to the notice of P.W.21, during cross-examination, he did not have any explanation to offer. This also creates further doubt.

11. Then, according to P.W.14, as soon as, the arrest was made at Vadugapatti Aerikkarai, the accused did not give any confession at all, instead he was taken to a Marriage Hall at K.K.Nagar. He has further admitted that the distance between the place of arrest and the Marriage Hall, is 2 Kilometres again. It was only in that Marriage Hall, while under interrogation, the accused confessed. This is quite contrary to the evidence of P.W.10 and the prosecution case. According to P.W.21, as soon as arrest was made at Vadugapatti Aerikkarai, the accused started confessing to his guilt and only in that confession, he disclosed the place, where he had hidden M.O.1, the gold chain with dollar. Thus, there is enormous doubt as to whether the accused was arrested at 04.00 p.m. on 19.04.2010, as it is projected by the prosecution, that too, at Sathanur Aerikkarai and whether the discovery of M.O.1 was discovered on his confession. Therefore, it is difficult to accept the case of the prosecution in this respect.

12. Yet another circumstance, which is in favour of the accused is that according to P.W.1 to P.W.3, on 04.03.2010, the accused also joined with them, in search of the deceased. This conduct of the accused also assumes much importance. After the dead body was found, the accused did not abscond and he was very much available there in the company of the family members of the deceased. This conduct of the accused also would be inconsistent with his alleged guilt.

13. It is needless to point that in a case based on circumstantial evidence, the circumstances projected by the prosecution, should be proved beyond reasonable doubts and all such proved circumstances should have close link with each other, thereby forming a complete chain unerringly pointing to the guilt of the accused

and there should not be any other hypothesis, which would be inconsistent with the guilt of the accused. Here, in this case, the only circumstance against the accused is that he was alledgedly found in possession of the stolen articles, thereby giving rise to a presumption under Section 114 of the Indian Evidence Act, 1872 that he would have only committed the murder and robbery. But the same has not been proved beyond reasonable doubts. For these reasons, we find it difficult to sustain the conviction.

14. In the result, the Criminal Appeal is allowed; the conviction and sentence imposed on the appellant/accused by the learned Principal Sessions Judge, Tiruchirappalli, made in S.C.No.52 of 2011, dated 19.06.2012, is set aside and the appellant/accused is acquitted. The fine amount, if any, paid by him, shall be refunded to him. Bail bond executed by the appellant/accused and the sureties shall stand terminated.

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