

Shivaraj Vs. State by The Inspector of Police, Dharmapuri Police Station

Shivaraj Vs. State by The Inspector of Police, Dharmapuri Police Station

SooperKanoon Citation : sooperkanoon.com/1189110

Court : Chennai

Decided On : Aug-10-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : CRL.A.No. 108 of 2016

Appellant : Shivaraj

Respondent : State by The Inspector of Police, Dharmapuri Police Station

Judgement :

(Prayer:Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional Sessions Judge at Dharmapuri in S.C.No.119 of 2012, dated 08.10.2015.)

S. Nagamuthu, J.

1. The appellants are the accused 2 to 5 in S.C.No.119 of 2012 on the file of the learned Additional Sessions Judge, Dharmapuri. The 1st accused was one Velmurugan and the 6th accused was one Palani. The 1st accused Velmurugan died during the trial of the case and thus, the charges framed against him stood abated. So far as the 6th accused is concerned, the trial court, by judgment dated 08.10.2015, acquitted him from all the charges. All these 6 accused stood charged for offence under Section 396 of IPC, in the alternative, under Section 302 (2 counts) of IPC. The trial court, convicted these appellants/the accused 2 to 5

under Section 396 read with 34 of IPC (2 counts) and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellants/accused 2 to 5 are before this Court with this Criminal Appeal.

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

(a) There were two persons by name Nataraj, hereinafter referred to as "D1" and Raman, hereinafter referred to as "D2", who were working as Watchman in a private Spinning Mill known as "Sridevi Spinning Mill" situated at Salem Royakottai Main Road. P.W.1 was working in the said Mill as a Spinning Master. Due to some financial problems and other causes, the Mill became non-functional. Therefore, the entire Mill premises was closed. The workers were also not allowed to enter. But, the deceased alone were allowed to be there in the premises, guarding the property.

(b) On the night intervening 07.07.2010 and 08.07.2010, inside the premises of the Mill, both the deceased were on duty. It is alleged that during the night hours, these 6 accused somehow trespassed into the Mill premises, attacked both the deceased with an iron rod and a crowbar and killed them. It is further alleged that they removed the Aluminium Coils from the Transformers in the premises which were non-functional. The worth of the properties so stolen away was around Rs.1,50,000/-. The occurrence was not witnessed by anyone. Thus, according to the case of the prosecution, these two accused had committed robbery with murder of both the deceased.

(c) P.W.1, the Spinning Master in the Mill, has stated that he used to go to the Mill everyday between 07.00 a.m. and 08.00 a.m. Both the deceased used to be in the Mill Premises until the arrival of P.W.1. P.W.1 was staying in the Mill premises itself. On 07.07.2010, around 8.00 a.m., P.W.1, as usual, came to the Mill and he was in the Mill till 07.00 p.m. Both the deceased came and reported for duty. Then, P.W.1 left for his house. On the next day, that was on 08.07.2010 around 08.30 a.m., as usual, P.W.1 came to the Mill premises. The small gate of the Mill, which would be normally kept under lock and key, was found open. He found the lock of the gate broken. Then, he called both the deceased by name. But, there was no

response from inside. Then, he entered into the Mill premises. There, he found both the deceased tied to cot. There were extensive injuries on the bodies of both the deceased. Both were dead. When he inspected the premises, he found that the Copper and Aluminium wires from the Transformers worth Rs.1,50,000/- had been stolen away. He was shocked to see the sorry atmosphere. Then, he immediately went to the Dharmapuri Police Station and made a complaint at 09.00 a.m. on 08.07.2010.

(d) P.W.16, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.1051/2010 under Sections 302 and 379 of IPC. Ex.P.1 is the complaint and Ex.P.32 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 10.00 a.m. on 08.07.2010.

(e) P.W.19, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch at the place of occurrence in the presence of P.W.4 and another witness. He recovered the blood stained earth and sample earth and also the other material objects from the place of occurrence. He recovered the lock from the gate. Then, he conducted inquest on the bodies of both the deceased one after the other and forwarded the same for postmortem.

(f) P.W.10 Doctor Subash conducted autopsy on the body of "D1" at 03.15 p.m. on 08.07.2010. He found the following injuries:

"A body of male lying on its back arms by the sides, eyes and mouth closed. Bleeding from tooth and both nostril.

External injuries : Lacerated wound over left forehead 2X1cm; Contusion over left cheek 4X1c.m.; Lacerated wound over left lower tongue 2 X 1cm mandible; Contusion over left cheek 5 X 5 cm.; Lacerated wound over left lower jaw 2 x 1 c.m. mandible fractured; Lacerated Wound over left side neck 1 x 1 x 2 c.ms. in depth; Left arm fractured; Contusion over left chest 5 x 5 cms. Abrasion left back chest 3X3cm.; Contusion over neck 2X2cms. Right shoulder fractured.

Internal examination: Sternum fracture, hyoid bone, Ribs left side all rib fractured; Right side Heart empty, pale; Lungs left lose tone. Right pale; Thorox 200ml blood present; Stomach contains partially digested rice; Liver right pale; Spleen - normal pale; Kidney- normal, pale; Bladder empty; External Genitalia normal; Skull - a contusion over temporal region base at skull normal, Vault normal ; Brain- pale."

Ex.P.18 is the Postmortem Certificate. Ex.P.20 is the Viscer a Report and Ex.P.19 is the Hyoid Bone Report. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body.

(g) On the same day at 04.30 p.m., he conducted postmortem on the body of "D2". He found the following injuries:

"A body of a male lying on its back, arms by the side, eye closed, tongue bite and protruding out, nasal bleeding present, Teeth 8/8 8/8.

External injuries:

1. A cut injury on left ear 5cm x 1cm;
2. Contusion over left chest 5X5cm;
3. Left mandible fracture present;
4. A contusion over right shoulder;
5. A contusion over left side chest 5X5cm present ;
6. A rope mark wound on left arm 20 x 1 c.ms.;
7. Hematomus seen in temporal region.

Internal examination: Hyoid bone-intact and preserved. Hemotomus seen in neck; Middle side or left side fracture all ribs; Heart: Empty, pale; Lungs left lobe torn; Stomach 50 ml partially digested rice; Liver pale; Spleen pale; Kidney pale; Bladder empty; External genitalia Normal; Skull, brain, skull bare vault fractured; Brain hematomus seen all over brain surface."

Ex.P.22 is the Postmortem Certificate. Ex.P.23 is the Hyoid Bone Report and Ex.P.24 is the Viscera Report. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased.

(h) P.W.19 was not able to make any breakthrough. While so, it is alleged that on 16.07.2010 in the investigation. While so, it is alleged that on 16.07.2010, around 5.30 p.m., the accused 2 to 6 appeared before P.W.7 the then Village Administrative Officer of Vellagoundapalayam Village. On such surrender, it is alleged that they gave voluntary confessions. P.W.7 wanted them to give it in writing. It is alleged that the 4th accused gave a written voluntary confession under Ex.P.4. The other accused signed Ex.P.4. P.W.7 then took the accused 2 to 6 to the police station and produced them before P.W.19. P.W.19 arrested them in the presence of the same witnesses. While under custody, the accused 2 to 6 gave voluntary confessions one after the other. In pursuance of the disclosure statement made by the 2nd accused, on 17.07.2010 at 7.00 p.m., he took the police and the witnesses to a Mango Grove and produced a gunny bag containing 30 kgs. of Aluminium and Copper Wires. He also produced a Crowbar, a shirt and a full hand shirt. P.W.19 recovered the same under a Mahazar. In pursuance of the disclosure statement made by the 3rd accused, he took the police and the witnesses to the place of hide out at 07.30 a.m. on 17.07.2010 and produced 54 kgs. of Transformer Aluminium and Copper wires, a crow bar, a shirt, a pant and a polyester shirt. He recovered the same under a Mahazar. In pursuance of the disclosure statement made by the 5th accused, he took the police and the witnesses to the place of hide out and produced 50 Kgs. of Transformer Aluminium and Copper Wires in a gunny bag. He recovered the same under a Mahazar. Then, the 4th accused, in pursuance of the disclosure statement made by him at 08.45 a.m on 17.07.2010 took the police and the witnesses to his house and from a bush near his house, he produced 54 Kgs. of Transformer Aluminium and Copper Wires in a gunny bag. P.W.19 recovered the same under a mahazar. Then, he took all the accused to police station along with the material objects. Then, he forwarded the accused to court and handed over the material objects also to court. He altered the case into one under Section 396 of IPC. Ex.P.38 is the Alteration Report.

(i) On 20.07.2010, P.W.19 came to know that the 1st accused had surrendered before the learned Judicial Magistrate at Erode. On the orders of the learned Magistrate, P.W.19 took police custody of the 1st accused on 24.07.2010 at 07.00 a.m. While in custody, in the presence of P.W.7 and another witness, he gave a voluntary confession in which he disclosed the place where he had hidden a Tempo Van bearing Registration No.TN 29 L 5437, 2 Iron Rods with Cutter, a Spanner and 74 kgs. of Aluminium and Copper Transformer Wires, a Blood Stained Shirt and a Blood Stained Pant. P.W.19 recovered the same under a Mahazar. Then, he forwarded the accused to court for judicial remand and handed over the materials objects also to court. On the request made by P.W.19, the material objects were sent for chemical examination. The report revealed that there were human blood stains found on all the material objects.

(j) The investigation was thereafter taken over by P.W.20, his Successor. He examined few more witnesses and handed over the investigation to his successor. P.W.21 took up the case for investigation and 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 the 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 38 documents and 29 material objects were also marked.

4. Out of the said witnesses, P.W.1, the Spinning Master in the Mill has stated that on 07.07.2010 around 06.00 p.m., he lastly saw the two deceased inside the premises of the Mill. He has further stated that on 08.07.2010, early in the morning at 8.30 a.m., he found both the deceased lying dead with multiple injuries. The bodies were tied to a cot. He has further stated about the theft of Aluminium and Copper Transformer Wires worth Rs.1,50,000/- from the Mill premises. He has also stated about the complaint given by him. P.W.2 is the wife of "D1". She has stated that on 07.07.2010 around 04.30 p.m., "D1" went for duty and on the next day, she came to know that her husband was found dead with multiple injuries. P.W.3 is the wife of "D2". She has also stated that on 07.07.2010 around 06.00 p.m., "D2" went to the Mill for duty. On the next day, his dead body was found.

P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and also the recovery of the material objects. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has not stated anything incriminating against the accused. He has stated that in a Tempo Van, 5 to 6 people came to a Hotel at Sohathur Koot Road. He has not identified these accused. P.W.7 is the Village Administrative Officer. He has stated that the accused 2 to 6 gave voluntary confessions on 16.07.2010. He has further stated about the arrest of all the accused and the consequential recoveries made out of the disclosure statements. P.W.8 is the Proprietor of the Mill. He has spoken about the missing of the properties from the Mill.

5. P.W.9 is an Assistant Engineer of Tamil Nadu Electricity Board. He has stated that within the premises of the Mill-in-question, there was a 11 KV Industrial Grid. On 07.07.2010, according to him, there was no supply of electricity to the Mill including the Transformer-in-question. P.W.10 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.11 has stated that he took the dead body of "D1" to the hospital and handed over the same to the Doctor for Postmortem. P.W.12 has stated that he took the dead body of "D2" to hospital and handed over the same for postmortem. P.W.13 has stated that he took the material objects to Forensic Lab from the Magistrate Court as per the orders of the Magistrate and handed over the same for chemical examination. P.W.14, the then Judicial Magistrate has stated that the 6th accused was produced before him on 24.08.2010 for recording his judicial confession. But, he refused to give any such confession. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.W.18 is the Forensic Expert from the Tamil Nadu Forensic Lab. He has stated that on 08.07.2010 as requested by the Investigating Officer, he visited the place of occurrence, then, he examined the Transformer-in-question. He found that 3/4th of the total quantity of the wires from the transformer had been removed and only 1/4th was found. He has further stated that the said copper wire is of 3.5 x 4.00 specification. He has also stated that he wanted the Investigating Officer to forward the remaining wire in the transformer to compare the same with the recovered wire from the accused. But the same was not done. Therefore, he was not able to give any opinion regarding the said wires. P.Ws.19, 20 and 21 have spoken about the investigation done and

the filing of the final report.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants/accused 2 to 5 are before this Court.

7. We have heard the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. This is a case based on circumstantial evidence. The first and foremost circumstance is that both the deceased were found alive within the Mill premises on 07.07.2010 around 07.00 p.m. by P.W.1. On the next day, around 8.30 a.m., both the deceased were found lying dead with multiple injuries. The Doctor, who conducted autopsy on the bodies of both the deceased, had found multiple injuries on the bodies of both the deceased and his opinion is that both the deceased had died due to shock and hemorrhage due to multiple injuries. Thus, the prosecution has succeeded in establishing that both the deceased had been done to death sometime between 07.00 p.m. on 07.07.2010 and 08.30 a.m. on 08.07.2010. The prosecution has succeeded in establishing that the death of both the deceased was homicide. As per the evidence of P.W.1, the Aluminium and Copper Wires from the Transformers in the Mill worth Rs.1,50,000/- had been stolen away. P.W.18, the Forensic Expert, who inspected the transformers has also stated so. We do not find any reason to reject the evidence of these two witnesses. From these evidences, the prosecution has further established that the Copper and Aluminium Wires of the transformers worth Rs.1,50,000/- were stolen away. It has also been established by the prosecution that the murder of both the deceased and the robbery of the Copper and Aluminium wires from the Transformers were committed in one and the same occurrence. Therefore, it is inferred that the person, who committed the murders, had committed the robbery also.

9. Now, the next question is as to who are the perpetrators of the said crime. In order to prove that these accused are the perpetrators of the crime, the prosecution relies mainly on the alleged extra judicial confession said to have been given by the accused 2 to 4 to P.W.7. The learned Counsel for the appellants would submit that the said extra-judicial confession cannot be believed for various reasons. First of all, the learned Counsel would submit that these accused have no acquaintance with P.W.7 at all. Therefore, there would have been no occasion for them to go over to P.W.7 reposing confidence on him to make such extra-judicial confession.

10. A perusal of Ex.P.4 would go to show that the same appears to have been given only by the 4th accused. The other accused, namely, accused 2, 3, 5 and 6 have only signed the same. There is no indication that the contents of Ex.P.4 were made by them also. At the most, it can be held that the said statement was made only by the 4th accused. As per Section 30 of the Indian Evidence Act, the extra-judicial confession of the co-accused cannot be treated as a substantive evidence against the other. As per the law laid down by the Hon'ble Supreme Court in *Kashmira Singh vs State of Madhya Pradesh* reported in 1952 AIR 159, the confession of the co-accused, cannot be taken as a substantive evidence. Therefore, Ex.P.4 cannot be the foundation to convict the accused 2 and 3. So far as the 4th accused is concerned, Ex.P.4, in our considered view, cannot be true and voluntary. As rightly pointed out by the learned Counsel for the appellants, since there was no acquaintance for the 4th accused with P.W.7, it is difficult to believe that the 4th accused would have reposed confidence in P.W.7 to make such a voluntary confession. Even otherwise, Ex.P.4 is a weak piece of evidence and unless it draws corroboration from any other independent sources, the same cannot be the foundation for convicting the 4th accused.

11. The next piece of evidence, upon which much reliance has been placed by the prosecution, is the recovery of the Aluminium and Copper wires from the Transformers out of the disclosure statements made by the accused. A total of 200 kgs. of Aluminium and Copper wires were alleged to have been recovered from the accused. The total weight of the wires in each transformer was only 125 Kilograms, that means, the total weight of the wires in two transformers is only 250

Kgs. According to the evidence of P.W.18, only 3/4th wires had been removed and 1/4th remained in the transformers. If that be so, it is not explained to the court as to how from these accused 262 Kgs. of wires were recovered. This anomaly has not been explained by the prosecution.

12. Above all, P.W.18 has stated that he wanted the Investigating Officer to forward the remaining wires from the Transformers for the purpose of comparison with the seized wires from the accused so that it could be scientifically proved as to whether the recovered wires and the remaining wires in the Transformers were of the same metal or they form part of the same piece. But the same was not done. There is absolutely no explanation for the same also. Thus, the prosecution has missed an important scientific evidence which would have been made available.

13. Lastly, the learned Counsel for the appellants would submit that there is no proof that the wires recovered from the accused are the stolen properties. We find some force in the said argument of the learned Counsel for the appellants. As we have already pointed out, had there been scientific examination of these wires held as suggested by P.W.18, it could have been proved that the recovered wires from the accused are the stolen wires. Since there is no proof that the recovered wires from the accused are the stolen properties, we are unable to raise any presumption under Section 114 of the Indian Evidence Act. Thus, though two precious lives have been lost in a gruesome manner, we are unable to sustain the conviction of these accused on account of enormous doubts which remain unexplained by the prosecution. We find that there are lot of flaws in the investigation. We hold that the prosecution has failed to prove the charges beyond reasonable doubts. Therefore, the appellants are entitled for acquittal.

14. As we have pointed out, two precious lives of innocent poor workers have been snatched away in a gruesome manner by the greedy culprits for whom wealth is more precious than the human life. Unfortunately, the culprits could not be punished by this Court. In many cases, the culprits, more particularly, the big fish, escape from the net. Our hands are often tied as we cannot act like a monarch to convict anyone according to our personal opinion. We have to

administer justice within the framework of law following the established procedure. In such a situation, when a culprit goes unpunished except expressing our anguish, we are unable to move forward. Fortunately, Section 357-A of the Code of Criminal Procedure was introduced at least to give some solace to the family of the victims though the culprits go unpunished. In the instant case, the victims (D1 Nataraj and D2 Raman) were poor workers who were eking out their livelihood as watchmen in the company. We are able to perceive the agonies of their family members and the plight of their dependents. In our considered view, this is a fit case where we have to order for compensation. Accordingly, we direct the Superintendent of Police, Dharmapuri District to pay Rs.2,00,000/- to the dependents of each deceased as compensation from out of the Tamil Nadu Victims Compensation Scheme, 2013. The District Superintendent of Police shall pay the said amount to the dependents of the deceased through the Secretary, District Legal Services Authority, Dharmapuri. The Secretary, Legal Services Authority shall hold summary enquiry to ascertain as to who are all the dependents of this deceased and then assist the Superintendent of Police to disburse the compensation amount to them in equal moieties. At any rate, the said exercise shall be completed within a period of four months from the date of receipt of a copy of this judgment.

15. In the result, the appeal is allowed and the conviction and sentence imposed on the appellants by the trial court are set aside and they are acquitted. The bail bonds, if any, executed by the appellants, shall stand cancelled. The dependents of the victims shall be paid compensation as directed in para 13 of this judgment. The fine, if any, paid by the accused, shall be refunded to the respective accused.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com