

Baskaran and Others Vs. State Rep. By The Inspector of Police, Ammapet Police Station, Salem District

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Court : Chennai

Decided On : Aug-10-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal No. 125 of 2016

Appellant : Baskaran and Others

Respondent : State Rep. By The Inspector of Police, Ammapet Police Station, Salem District

Judgement :

(Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned I Additional Sessions Judge, Salem, in S.C.No.212 of 2008 dated 25.01.2016.)

S. Nagamuthu, J.

1. The appellants are A1 to A3 in S.C.No.212 of 2008 on the file of the learned I Additional Sessions Judge, Salem. There was yet another accused by name Annadurai S/o.Arumugham. The trial court framed three charges against the accused. The first charge was against A1-Baskaran under Section 302 of IPC; the second charge was against A1-Baskaran, A2-Ravi @ Ravichandran and

Annadurai for offence under Section 201 r/w 302 of IPC; and the third charge was against A1-Baskaran, A2-Ravi @ Ravichandran, A3-Dhanalakshmi and Annadurai for offence under Section 404 r/w 302 of IPC. Mr. Annadurai, died during the pendency of the trial and thus, the charges against him stood abated. These appellants/A1 to A3 alone faced the trial. The trial court, by judgement dated 25.01.2016, convicted A1, A2 and A3 as detailed below:-

Rank of the Accused	Penal provision under which conviction recorded	Quantum of Sentence Imposed
A1	Section 302 of IPC	Imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for a further period of six months

A1 and A2	Section 201 r/w 34 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each in default to suffer rigorous imprisonment for a further period of six months
A1, A2 and A3	Section 404 r/w 302 of IPC	Rigorous imprisonment for three years and to pay a fine of Rs.10,000/- each in default to suffer rigorous imprisonment for a further period of six months

Challenging the above said conviction and sentences, A1 to A3 have come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Rajeswari. She was born to one Mrs.Lakshmi and Mr.Shanmugam. Mrs.Lakshmi and Mr.Shanmugam had two daughters including the deceased.

Mr. Shanmugham thereafter died. Mrs. Lakshmi remarried P.W.3. Out of the said wedlock a male child was born to them. However, P.W.3 was maintaining the deceased and the other two children also. They were residing at Kitchipalayam village in Salem District. When the deceased Rajeswari was hardly aged 15 years, she had fallen in love with one Mr. Baskaran and married him. She lived with Mr. Baskaran in Chennai. Out of the said wedlock, a male child by name Balamurugan was born. After three years of the marital life, there arose misunderstanding between them and, therefore, she deserted Mr. Baskaran. Then, she remarried one Mr. Solaimuthu and lived with him in Chennai. Out of this wedlock another male child by name Sudarvannan was born. This marital life continued only for three years. Thereafter, the deceased deserted Solaimuthu also. Then, she remarried one Mr. Kumar. Mr. Kumar was working in a bank in Chennai. This relationship continued for 15 years. She shifted her family along with Mr. Kumar and the children to S.K. Township in Salem District. While she was so living there, she developed an illicit intimacy with A1. When this illicit relationship between A1 and the deceased came to light, Mr. Kumar deserted her and went back to Chennai. A1 took the deceased to Vidhya Nagar and settled her in a rented house. This happened in the year 2006. A1 was already married having two children. He constructed a new house for his wife and children near the bus stand. For that purpose, A1 received money from the deceased. When the deceased started demanding A1 to pay back the amount, there arose quarrel between them. This kind of quarrel became frequent. While so, it is alleged that the deceased insisted that A1 should marry her. A1 refused. He was enraged over the same.

3. On 20.03.2007, actuated by the above motive, it is alleged that between 12.45 a.m. and 01.00 a.m. at the house of the deceased, A1 cut her with koduval on her head, hands, face, legs and other parts of the body and caused her death. It is further alleged that with a view to erase the evidence of murder, along with A2 and the deceased-accused Annadurai, he removed the dead body in an auto rickshaw belonging to A2 and on the way to Kammalapatti, they threw the same at Panamarathupatti Kattur Pallam. Then, A1 and A2 and the deceased-accused Annadurai fled away from the scene of occurrence. While doing so, A1 had removed the gold jewels worth Rs.2,00,000/- from the person of the deceased and

handed over the same to A4.

4. The dead body of the deceased was found at 10.00 a.m. on 22.03.2007 by the Village Assistant of Thumbalpatti village. He informed the same to P.W.1, the Village Administrative Officer. P.W.1, in turn, immediately rushed to the place of occurrence and found the dead body. But, the identity of the dead body was not known then. Therefore, he went to Panaimarathupatti police station and at 11.00 a.m. on 22.03.2007 he made a complaint (Ex.P.1). P.W.9, the then Sub Inspector of Police, Panaimarathupatti Police Station on receipt of the said complaint registered a case in Crime No.41 of 2007 under Section 302 of IPC. Ex.P.6 is the FIR. In the complaint P.W.1 stated that the identity of the dead body was not known and the assailants were also not known. P.W.9, thereafter, forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.6) to the jurisdictional court which were received by the learned Magistrate at 02.00 p.m. on 22.03.2007. In the mean time, P.W.9, handed over the case diary to the Inspector of Police for investigation.

5. P.W.20, the then Inspector of Police took up the case for investigation at 12.15 p.m. on 22.03.2007. He went to the place of occurrence, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P38) in the presence of witnesses. Then, he recovered the blood stained shirt (M.O.1), blood stained blanket (M.O.2) which were found at the place of occurrence. Then, he held inquest on the body of the deceased and forwarded the same to the hospital for postmortem. He made a wide publicity of the photographs of the dead body through news papers in an attempt to find out the identity of the deceased. On 23.03.2007, P.W.3, the foster father of the deceased came to the police station and identified the dead body before postmortem.

6. P.W.15, Dr.Kesavalingam, conducted autopsy on the body of the deceased at 01.10 p.m. on 23.03.2007. He found the following:

"Injuries:

(1) An oblique gaping cut injury right palm 6 x 1 x bone deep.

- (2) An oblique gaping cut injury on lower third of inner aspect of right forearm 4 x 2 cms x bone deep.
- (3) An oblique gaping cut injury right forehead 10 x 2 cms x bone deep with cut fracture of right frontal bone of skull.
- (4) An oblique gaping cut injury on left frontal region of scalp 4 x 1 cm x bone deep.
- (5) An oblique gaping cut injury on centre of forehead 3 x 1 cm x bone deep
- (6) An oblique gaping cut injury of left temporal region of scalp parietal region of scalp 3 x 2 cm x cavity deep.
- (7) An oblique gaping cut injury on left parietal region of scalp 8 x 2 x cavity deep
- (8) An oblique gaping cut injury on left side of chin 5 x 1.5 cm x cavity deep.
- (9) An oblique gaping cut injury over front of neck 3 x 5 x 1 cm.
- (10) An oblique gaping cut injury over left dorsum of hand 4 x 1.5 x 1 cm
- (11) An oblique gaping cut injury over ulnar aspect of lower third of left forearm 4 x 4 cm x muscle deep
- (12) An oblique gaping cut injury left palm 6 x 1 x 3 cm . All the above injuries have clear cut sharp margins and are antemortem in nature. Ant bite marks seen over face, neck, both shoulders , both arms and both forearms (postmoretm).
- (13) Subdural and subarachnoid haemorrhage seen over both cerebral hemispheres
- (14) Fracture anterior cranial fossa 10 cms in length (Antemortem)

Findings:- Finger toe nails found pale. Heart Cavities empty. Myocardium and valves Normal. Lungs Cut section pale. All neck structures intact. Hyoid bone intact. Stomach Empty. No specific smell. Mucosa Cut section pale. Liver, Spleen both kidneys on cut section pale. Bladder empty. Anal canal intact. Genitalia No

fresh injuries seen. Uterus Normal, Cavity empty. Brain cut section pale. Pelvis, Membranes and spinal column intact.

Ex.P.24 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage as a result of multiple cut injuries. The said injuries could have been caused by an aruval. After the autopsy was over, P.W.20, the investigating officer, recovered the blood stained dress materials from the body of the deceased and forwarded the same to the court. After postmortem, the dead body was handed over to P.W.3.

7. P.W.20, during the further course of investigation, on 25.03.2007 at 07.45 a.m. at Kendalampatti roundtana, arrested A2 in the presence of P.W.1 and another witness. On such arrest, A2 made a voluntary confession in which he disclosed the place where he had hidden a share auto. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the share auto (M.O.27) and the registration certificate and the other documents relating to the auto rickshaw. P.W.20 recovered the share auto under a mahazar (Ex.P.8) and the other documents relating to the auto rickshaw under a mahazar (Ex.P.9). Then, A2 took the police and the witnesses to one Mr.Periyasami and from Mr.Periyasami records relating to the loan raised by A2 for the purpose of purchasing share auto was recovered. Thereafter, P.W.20, on returning to the police station, forwarded A2 to the court for judicial remand. He also forwarded the material objects to the court. Then, P.W.20 altered the case into one under Section 302 of IPC on 30.03.2007 and forwarded the alteration report to the court.

8. While so, the investigation in Crime No.41 of 2007 on the file of Panamarathupatty Police Station was transferred to the file of Ammapettai Police Station. Accordingly, the investigation was thereafter continued by P.W.21, the then Inspector of Police of Ammapettai Police Station. He registered the case in Crime No.256 of 2007 under Section 302 of IPC. Ex.P.44 is the FIR. Then, he went to the house of the deceased on 28.03.2007 and prepared an observation mahazar (Ex.P.4) and a rough sketch in the presence of the witnesses. He arranged for a photographer to take photographs at the house of the deceased. Then he arrested the deceased-accused Annadurai on the same day at 06.00 p.m.

On such arrest, the deceased-accused Annadurai gave a voluntary confession out of which bank receipt (Ex.P.5) was recovered. It was the receipt evidencing pledging of gold jewels with Catholic Syrian Bank and by producing the same, the gold jewels (M.Os.20 to 25) were redeemed from the bank. On 05.04.2007 at 08.30 a.m. he arrested A3. On such arrest, A3 gave a voluntary confession in which she disclosed that she had hidden three receipts showing the pledging of gold jewels. Ex.P.21 is the disclosure statement. In pursuance of the same, she took the police and the witnesses to her house and produced three bank receipts (Exs.P.31 to 33) evidencing pledging of gold jewels. The first receipt is dated 21.03.2007 showing pledging of gold jewels for Rs.79,000/-, the second receipt is also dated 21.03.2007 showing pledging of gold jewels for Rs.71,000/- and the third receipt is dated 22.03.2007 showing pledging of gold jewels for Rs.50,000/-. P.W.21 recovered all the three receipts under Ex.P.22 mahazar. By producing these three receipts at The Co-op. Central Bank, Salem, P.W.21 redeemed the gold jewels (M.Os.7 to 13) on 16.05.2007. P.W.21, thereafter, forwarded all the accused to the court for judicial remand. He also forwarded the material objects so recovered at the instance of the accused. On completing the investigation, he laid charge sheet against all the accused.

9. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined, 52 documents and 32 material objects were marked.

10. Out of the said witnesses, P.W.1 is the Village Administrative Officer. He has stated that an unidentifiable dead body of a woman was found on 22.03.2007 at 10.0 a.m. He has further stated about the complaint made by him and the subsequent recovery of material objects at the place of occurrence and also preparation of the observation mahazar and the rough sketch by the police. P.W.2 has stated that he stitched a shirt for a male person eight years before. He has not identified any of the accused. P.W.3 is the foster father of the deceased. He has stated about the missing of the deceased. He has further stated about the relationship between the accused and the deceased. He has further identified M.Os.7 to 25 as the stolen properties.

11. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch. He was treated as hostile. P.W.5 has also turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has spoken about the photographs (M.O.26 series) taken at the place of occurrence. P.W.7 has stated that A1 had settled the deceased in the house belonging to him for rent. P.W.8, the then Branch Manager of Catholic Syrian Bank, Panamarathupatti, has stated that the deceased-accused Annadurai had pledged M.Os.20 to 25 in his bank on 21.03.2007 and obtained jewel loan. P.W.9 has stated that when he was working as Sub Inspector of Police at Panamarathupatti Police Station, he received a complaint from P.W.1 and registered the present case in Crime No.41 of 2007 under Section. P.W.10 has not stated anything incriminating against any of the accused. He has spoken only about the relationship between A1 and the deceased. P.W.11 has spoken about the arrest of A2, confession made by A2 and the consequential recovery of M.O.27 auto rickshaw and the other records relating to the said auto rickshaw to show its ownership. P.W.12 has stated that he financed to A1 for the purpose of purchasing auto rickshaw. P.W.13 is the son of the deceased. He has identified M.Os.7 to 25 as the properties belonging to the deceased. P.W.14 has spoken about the arrest of A3 on 05.04.2007 at 08.30 a.m., confession made by her and the consequential recovery of three receipts evidencing pledging of gold jewels by A3 with the Cooperative Central Bank, Salem. He has further stated that in pursuance of the disclosure statement of A3, a cash of Rs.1,34,000/- was recovered from one Mr.Periyasami on being identified by A3. P.W.15 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.16 was the then Branch Manager of Co-Op Central Bank, Salem. He has stated that on 21.03.2007 and 22.03.2007 A3 availed loan by pledging jewels. Under first receipt 8 items of gold jewels were pledged on 21.03.2007 for Rs.79,000/- ; under the second receipt, A3 had pledged 3 items of gold jewels on 21.03.2007 for Rs.71,000/- and; under the third receipt, she had pledged 1 Item of gold jewel on 22.03.2007 for Rs.50,000/-. P.W.16 has also produced the relevant records including the loan applications and the day-to-day extract. According to him, these gold jewels were handed over to the police subsequently. According to P.W.16, the gold jewels were handed over to the police on 16.05.2007 after having obtained necessary

permission from the higher-ups in the bank. P.W.17 was yet another officer working at the same bank. He has also spoken about the pledging of the above jewels by A3. P.W.18 was also an officer in the same bank. P.W.19 was the Scientist working in the Forensic Science Laboratory. He has spoken about the chemical analysis conducted on the properties recovered from the dead body. He found that there were human blood stains on the same. P.W.20 and P.W.21 have spoken about the investigation conducted by them and P.W.21 has further spoken about the filing of charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness, but, they marked 2 documents as Exs.D1 to D5. The letter given by the Inspector of Police to the Manager of District Co-op Bank requesting to hand over the jewels is Ex.D.1; the letter sent by the Bank Manager to the General Manager of District Central Coop Bank, on 05.04.2007 is Ex.D.2; and the memo of the Deputy Registrar of Cooperative Central Bank, Salem dated 17.04.2007 is Ex.D3; the remand report of A1 and the deceased-accused Annadurai is Ex.D.4; and the remand report of A3 is Ex.D.5. Their defence was a total denial.

13. Having considered all the above, the trial court convicted the appellants/A1 to A3 as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 to A3 are now before this Court with the present criminal appeal.

14. We have heard the learned counsel appearing for the appellants/A1 to A3 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

15. This is a case based on circumstantial evidence. It has been spoken by P.W.3 that the deceased was living with A1 as his concubine at Vidhya Nagar, Ammapet Main Road. M.Os.7 to 25, the gold jewels belonged to her. She was found dead on 22.03.2007. The evidence of the doctor, who conducted autopsy would go to prove that there were number of cut injuries on the body of the deceased and the death was due to shock and haemorrhage as a result of multiple injuries. It has

also been established that M.Os.1 to 25 were found missing from the house. From these evidences, the prosecution has clearly established that the deceased was done to death by somebody before 22.03.2007 and M.Os.1 to 25 were stolen away.

16. Now, the only question is, Who were the perpetrators of the crime? So far as A1 is concerned, except proving that he had illicit relationship with the deceased and that he had borrowed money from her, there is no other evidence against him at all. However, on mere surmises based on the alleged illicit relationship between A1 and the deceased and believing the fact that there were frequent quarrels between him and the deceased, the trial court has convicted A1. In our considered view, the conviction of A1 is totally unsustainable for want of any evidence against him clinchingly to prove his involvement in the crime.

17. So far as A2 is concerned, the only piece of evidence available against him is that on his arrest, he made a confession to the police out of which the share auto (M.O.27) belonging to him and the records relating to the auto were recovered. It is also in evidence that he had borrowed money for purchasing the auto rickshaw and the same was repaid after the murder of the deceased. But the connection between the discovery of these facts and the crime has not at all been established by the prosecution. In this regard, we have to state that it is not every fact that is discovered out of the such disclosure statement that makes such statement as admissible. In law it is only the discovery of a relevant fact that makes the statement relevant under Section 27 of the Evidence Act. Here in this case, the relevancy between the discovered fact namely recovery of auto rickshaw, etc. with the crime has not been established. Therefore, the disclosure statement made by A2 itself is inadmissible in evidence. If the same is rejected, we find absolutely no evidence as against A2 also to sustain the conviction. Therefore, A2 is also entitled for acquittal.

18. So far as A3 is concerned, the charge against her is only under Section 404 r/w 302 of IPC. On the arrest of A3, three receipts evidencing the pledging of gold jewels were recovered on the disclosure statement made by her. The receipts relating to pledging of gold jewels M.Os.7 to 13 by her on three different occasions

with the District Central Coop Bank, Salem. These properties have been identified to be that of the deceased. The pledging was made soon after the disappearance of the deceased. By placing reliance on Exs.D1 to D5, the learned counsel for the appellants would submit that the jewels recovered from the District Central Coop Bank, Salem, would not have been recovered on the dates as it is projected prosecution. Assuming that there is some force in the argument of the learned counsel, it is immaterial inasmuch as we are concerned with the possession of these stolen articles by A3 soon after the commission of theft. As per these receipts, the stolen properties were pledged by A3 on 21.03.2007 and 22.03.2007 which means these stolen properties were in the possession of A3 on 21.03.2007 and 22.03.2007. It is immaterial whether they were recovered from the bank on the dates as it is projected by the prosecution or on some other date. Since the prosecution has clearly established that A3 was found in possession of M.Os.7 to 13 on 21.03.2007 and 22.03.2007 for which since she has got no explanation to offer, we have to raise a presumption under Section 114 of the Evidence Act. Of course, such presumption is rebuttable. But, the same has not been rebutted in this case by A3. Thus, in our considered view, by means of the said unrebutted presumption, the prosecution has clinchingly proved that A3-Dhanalakshmi knowing fully well that the properties belonging to the deceased had misappropriated the same. Thus, the conviction of A3 under Section 404 of IPC needs to be confirmed.

19. Now, turning to the quantum of punishment, A3 is aged 70 years. She is already sick. She has already undergone imprisonment for few months. The learned counsel for the appellants would submit that A3 is prepared to pay fine. Having regard to the age of A3 , the fact that she had already undergone few months of imprisonment and having regard to the fact that she had no role to play in the murder of the deceased, we are inclined to reduce sentence of imprisonment imposed on her by the trial court to the period already undergone, but to enhance the fine to Rs.30,000/-.

20. In the result, the Criminal Appeal is partly allowed in the following terms:-

(i) The conviction and the sentences imposed on A1 and A2 by the trial court are hereby set aside and they are acquitted of all the charges. Fine amount already paid, if any, shall be refunded to them. The bail bonds executed by them shall stand terminated.

(ii) The conviction of A3-Dhanalakshmi imposed by the trial court for offence under Section 404 of IPC is hereby confirmed, however, the sentence of rigorous imprisonment for three years is reduced to the period of sentence already undergone by her and the fine of Rs.10,000/- is hereby enhanced to a sum of Rs.30,000/- in default of fine, she shall suffer rigorous imprisonment for further four weeks.

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