

1.Perumal Vs. The State,

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Court : Chennai

Decided On : Aug-31-2015

Judge : S.Nagamuthu

Appellant : 1.Perumal

Respondent : The State,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

31. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.421 of 2010 1.Perumal S/o.Mariappan 2.Perumal S/o.Raman 3.Gopal S/o.Raman 4.Senthil S/o.Karuppasamy : Appellants Vs. The State, Rep. by its Inspector of Police Palani Taluk Police Station Dindigul District. in Crime No.131 of 2009 :Respondent PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Additional Sessions Judge cum Fast Track Court, Dindigul, in S.C.No.129 of 2010 dated 27.10.2010. !For Appellant : Mr.ARL.Sundaresan Senior counsel for M/s.AL.Gandhimathi ^For Respondent : Mr.C.Mayilvahana Rajendran Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) The appellants are the accused in S.C.No.129 of 2010 on the file of the Additional Sessions Judge,

FTC, Dindigul. The trial Court framed as many as four charges. The first charge was against all the four accused under Section 364 IPC. The 2nd charge was under Section 341 IPC against the accused 2 and 4 alone. The third charge was under Section 341 IPC against the accused 3 and 4 alone and the 4th charge was under Section 302 IPC against all the accused. By judgment dated 27.10.2010, the trial Court convicted all the four accused under all the charges and accordingly sentenced them. For the offences under Section 364 IPC, the trial Court sentenced all the four accused to undergo rigorous imprisonment for 10 years, for the offence under Section 341 IPC, the trial Court sentenced all the four accused to undergo simple imprisonment for one month, for the offence under Section 302 IPC, the trial Court sentenced the accused 1 and 2 to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for six months and for the offence under Section 302 read with Section 34 IPC, the trial Court sentenced the accused 3 and 4 to undergo imprisonment for life and to pay a fine of Rs.2,000/- each in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

2. The case of the prosecution in brief is as follows: The deceased in this case was one Mr.Jeyaraman. The first appellant/first accused and the accused 2 and 3 are brothers-in-law. The sister of the accused 2 and 3 by name Mrs.Padma (P.W.5) is the wife of the first accused. The 4th accused is the relative of the first accused. Mrs.Padma (P.W.5) was once abducted by the deceased on 19.07.2008 to Mysore. The accused 1 to 3 went in search of her to various places. The first accused gave a complaint also to the police. Finally, they secured Mrs.Padma and produced her before the police. The police compromised the matter between the first accused and his wife and advised her to go and live with the first accused. From then onwards, Mrs.Padma was happily living with the first accused. 2.1. While so, the deceased did not stop interfering in their matrimonial life. Often, he used to speak either to the first accused or to his wife over cell phone and used to speak ill of them so as to disturb their matrimonial life. This is stated to be the motive for the occurrence. 2.2. On 07.03.2009, again, the deceased spoke to the first accused and his wife over cellphone and used abusive language in derogation of their marital life. According to the further case of the prosecution, therefore, the

first accused decided to do away with the deceased. 2.3. Thereafter, it is alleged that the accused went with the help of accused Nos.2 to 4, took the deceased in the Ambassador Car bearing registration No.TN47C2225 near the theatre in Kulumam Village and abducted him to Andipatti Gowndanpatti Kallumarikadu. In order to prevent the deceased from crying, it is alleged that the accused 3 and 4 tied his hands with a rope and the 2nd accused tied his neck. On reaching the place of occurrence, they brought down the deceased and the first accused took out an aruval from the car and cut him indiscriminately. Then, the 2nd accused got the said aruval from the first accused and he also indiscriminately cut the deceased. The deceased died instantaneously succumbing to the injuries. Then, they threw the dead body and the aruval in a bush near the place of occurrence. The ropes were also thrown in the same place. Then, the accused fled away from the scene of occurrence. 2.4. P.W.1 is the Village Administrative Officer of Vadakavunji village in Kodaikanal Taluk. On 29.01.2009, he was in-charge Village Administrative Officer for Andipatti Village as well as Pappampatti Village. At about 5.00 p.m., when he was in the office, the first accused appeared before him and confessed to his guilt. Then, P.W.1 took the first accused to the place of occurrence. It happened at 7.00 p.m. He ascertained that the dead body was lying there. Then, he returned to his office along with the first accused. They returned to the office of P.W.1 at 9 p.m. At that time, it is alleged that the first accused again gave a voluntary confession, which was reduced to writing by P.W.1 under Ex.P2. Then, at 10 p.m., P.W.1 took the first accused to the police station and produced him before P.W.12, who was the then Sub Inspector of Police at All Women Police Station at Palani Taluk Police Station. P.W.1 produced Ex.P2 and a special report under Ex.P1. On the basis of Ex.P2, P.W.12 registered a case in Crime No.131 of 2009 under Sections 342, 363 and 302 IPC. Ex.P13 is the FIR. Then, she forwarded Exs.P1, P.2 and P13 to the Court and handed over the case diary to the Inspector of Police at 08.03.2009 along with the accused at 12.30 a.m. 2.5. P.W.16 took up the case for investigation at 12.30 a.m. on 08.03.2009. He examined the first accused in the presence of P.W.13 and another witness. The first accused again gave a voluntary confession in the presence of P.W.16 and P.W.13. Then, he proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of witnesses. Then, he

conducted inquest on the body of the deceased. Ex.P24 is the inquest report. He recovered bloodstained earth and sample earth from the place of occurrence under a mahazar. The first accused took out an aruval and produced the same to P.W.16 in the presence of P.W.13 and another witness. He recovered the same under a mahazar. He forwarded the body for postmortem. 2.6. P.W.2 conducted autopsy on the body of the deceased on 08.03.2009 at 2.50 pm. He found the following injuries:

1. A lacerated injury on left side back of ear 14 x 1 x 1 cm.
2. A lacerated injury over front of left ear 8 x 2 x 1 cm.
3. A laceration on mandible 8 x 2 x 1 cm.
4. Laceration over right ear 5 x 4 x 1 cm.
5. A laceration over right palm 12 x 6 x 1 cm.
6. Laceration over right hand 9 x 4 x 1 cm.
7. Laceration on bare of right (back) ring finger 6 x 4 x 1 cm.
8. Laceration over right scapula 6 x 4 x 1 cm.
9. Laceration over lateral side of right chest 8 x 6 x 1 cm.
10. A cut injury on left ear 7 x 5 x 1 cm.
11. Laceration over left shoulder 8 x 6 x 1 cm.
12. Laceration on left forearm 21 x 13 x 1 cm.
13. Laceration over back of left ring finger 6 x 4 x 1 cm.
14. Laceration over left scapula 6 x 4 x 1 cm.
15. Laceration over right upper thigh 4 x 2 x 1 cm.
16. Multiple abrasion over back of Both shoulder.

According to him, all the injuries could have been caused by a weapon like aruval. He further opined that the death was due to the cumulative effect of all the injuries due to shock and hemorrhage.

2.7. During the course of investigation, P.W.6 arrested the 2nd accused in the presence of P.W.13 and another witness at 1.00 p.m. Then, at 1.45 pm. he arrested the 4th accused in the presence of the same witnesses. At 3.00 p.m., the 4th accused identified a rope (M.O.5) near the place of occurrence and the same was recovered. Based on the disclosure made by the 2nd accused, the motorcycle bearing registration No.TN59P2007 was recovered (The said motorcycle has not been marked in evidence). Then, the first accused identified the Ambassador Car bearing registration No.TN47C2225 at Dindigul road that was seized on the same day. (The said case has not been marked in evidence). Then, he forwarded all the accused to Court for judicial remand. Since he was transferred, he handed over the case diary to P.W.18.

2.8. P.W.16 had earlier given a request to the Court for sending the material objects for chemical examination. P.W.18 received the report from the chemical analyst. He examined the Doctor, collected the medical records. On 17.04.2009, he arrested the third accused at 9.00 a.m. in the presence of

P.W.13 and another witness. Then, he forwarded him to the Court for judicial remand. Finally, he laid charge sheet against all the four accused. 2.9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. (It needs to be mentioned that there is no charge against the accused 3 and 4 under Section 302 read with Section 34 IPC). The fourth charge was under Section 302 IPC simpliciter against all the four accused. The accused denied the same. In order to prove the same, on the said of the prosecution, as many as 18 witnesses were examined, 27 documents and 11 material objects were marked.

3. Out of the said witnesses, P.W.1 is the Village Administrative Officer, who has spoken about the fact that the first accused appeared before him on 07.03.2009, made confession and he also found the dead body of the deceased at the place of occurrence. P.W.2 has spoken about the postmortem conducted by her and the final opinion. P.Ws.3 and 5 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4 has spoken about the dead body at the place of occurrence and he has not spoken anything incriminating against the accused. P.W.6 is the owner of the car bearing Registration No.TN47C2225 and he has stated that the car was all along only in his custody and he never gave the car to anybody. He has not stated anything incriminating against the accused. P.W.7 ?. Assistant Chemical Examiner, who has stated that during chemical analysis, it was found that there was human blood on all the items sent to him. P.W.8 is the Head Constable, who has stated that he carried the dead body to the hospital for postmortem.

4. P.W.9 is yet another Head Constable attached to the Palani Taluk Police Station. According to him, on 22.07.2008, at 9.00 p.m., the first accused made a complaint to him against one Jeyaraman, namely, the deceased herein. He has further stated that the same was entered in the GD under Petition No.215/2008. According to the allegation, the first accused had stated that the deceased had taken his wife. P.W.10 is the Constable, who has stated that he carried the FIR and Exs.P1 and P2 to the learned Magistrate and handed over the same to him. P.W.11 is the Sub Inspector of Police, who enquired into the complaint made by the first accused and closed it. P.W.12 is the Sub Inspector of Police, who has

stated that he has registered the present case. P.W.13 is a star witness for the prosecution, who has spoken about the confession made by A1, A2 and A4 and the consequential discoveries of material objects. P.Ws.14 and 15 are the Constables, who have stated that they guarded the dead body throughout the night. P.W.16 is the Inspector of Police, who investigated the case first. He has given all the details of the same. P.W.17 has turned hostile. He was examined to speak about the confession of the third accused and the consequential discovery. P.W.18 has spoken about the further investigation done by him and the final report submitted.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witnesses nor to mark any documents on their side. The defence was a total denial. Having considered all the above, the trial Court convicted all the four accused and accordingly punished them. Challenging the same, the appellants are before this Court with this appeal.

6. We have heard the learned senior counsel for the appellants Mr.ARL.Sundaresan, Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

7. The learned senior counsel would submit that this being a case based on circumstantial evidence, the prosecution has not proved any of the circumstances projected by it and thus, the prosecution has miserably failed to prove the case against the accused. The learned senior counsel would submit that though it is stated that it was a motive and there was enmity between the deceased and the first accused, the same has not been established. He would further submit that the prosecution mainly relies on Ex.P2, the so called confession said to have been given by the first accused to P.W.1. He would further submit that since the first accused had no acquaintance with P.W.1, it is highly unbelievable that the first accused would have chosen P.W.1 to make any such confession. He would further submit that the time, at which, Ex.P1 was made, has not been clearly established by the prosecution, which itself creates doubt about the genuineness of Ex.P2. He would further submit that Ex.P2 is squarely contradicted by the

evidence of P.W.6. He would submit that in his evidence P.W.6 has stated that the car in question was all along in his custody and he never gave the same to anybody, whereas, according to the extra judicial confession, (Ex.P2), the said car was taken from P.W.6 by the first accused and the same was used to abduct the deceased. The learned senior counsel would further submit that though in the confession, it is stated that the deceased was strangled with rope and his hands were also tied, there was no corresponding injury found.

8. The learned senior counsel would further submit that the place, where the alleged occurrence had taken place could not have been reached by a car. Then, regarding the recovery of material objects, absolutely, there is no connection between the facts discovered and the alleged crime. Thus, according to him, the prosecution has failed to prove the case beyond reasonable doubts.

9. The learned Additional Public Prosecutor would, however, oppose this appeal. According to him, as per the settled law, the extra judicial confession given to P.W.1 can be the sole foundation for conviction. He would further submit that the said extra judicial confession draws corroboration from the other evidences like medical evidence. He would further submit that the inconsistencies pointed out by the learned senior counsel for the appellants are immaterial and they would not cause any dent in the case of the prosecution. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubts and therefore, the conviction and sentence imposed by the trial Court does not warrant any interference at the hands of this Court.

10. We have considered the above submissions.

11. As rightly submitted by the learned senior counsel for the appellants, the prosecution is required to prove all the circumstances beyond reasonable doubts and such proved circumstances should have a close link with each other and the same should form a complete chain unerringly pointing to the guilt of the accused and there should not be any alternative hypothesis, which would be inconsistent with the guilt of the accused. Now, let us examine whether the prosecution has proved the circumstances relied on.

12. The first circumstance projected by the prosecution is that the first accused had a motive against the deceased. The deceased was frequently interfering with the matrimonial affairs of the first accused and his wife. To some extent, we feel that the prosecution has established this enmity between them. But the motive being a double edged weapon cannot be the sole foundation for conviction. It can only be one of the adverse circumstances against the accused.

13. Now, turning to the next circumstance, viz., Ex.P2. The learned senior counsel for the appellants states that regarding this extra judicial confession, there are lot of doubts. We have also analysed the said submission carefully. First of all, according to P.W.1, the first accused appeared before him at 5.00 p.m., at that time, he confessed. If that is so, it is not explained to the Court, as to why P.W.1 did not choose to reduce to writing the said confession allegedly made by the first accused. P.W.1 also has not stated as to what was the statement made by the first accused at the first instance. Thus, the prosecution has suppressed the earliest statement said to have been made by the accused to P.W.1. Then, after the said statement, it is alleged that P.W.1 proceeded to the place of occurrence found the dead body, returned to the office at 9.00 p.m. Thereafter, it is alleged that the accused again confessed, which was reduced to writing under Ex.P2. Now, at 10.00 pm., he handed over Exs.P1 and P2 along with the accused to the police. In the absence of the earliest statement allegedly made by the first accused to P.W.1, there arises an initial doubt about the genuineness of Ex.P2. When there is doubt regarding the extra judicial confession, prudence requires corroboration for the same. Though we are aware of the legal position that extra judicial confession can be the sole foundation for conviction, the law requires that such extra judicial confession should inspire the confidence of the Court.

14. It is also too well settled that if the extra judicial confession is surrounded by doubts, then, as a rule of prudence, the Court should look for corroboration from other independent sources on material particulars. Here, in this case, instead of drawing corroboration from other sources, Ex.P2 draws only contradictions. The foremost contradiction is that the evidence of P.W.6. According to Ex.P2, the accused 1 to 4 took the deceased in the car bearing registration No.TN47C2225 Admittedly, the car belongs to P.W.6. P.W.6 has stated that he never gave the car

to anybody and the car was all along only in his custody. This witness has not been treated as hostile. If the evidence of P.W.6 is taken into consideration, then, the story mentioned in Ex.P2 that the deceased was carried in that car by the accused becomes false. There is no explanation regarding this material contradiction between Ex.P2 and the evidence of P.W.6.

15. According to Ex.P2, the accused 2 and 3 tied the hands of the deceased with a rope and the 2nd accused tied the neck of the deceased with a rope and they were tightly catching him hold, while he was in the car. The car was driven by the first accused. But the Doctor, who conducted autopsy, has found not even a small abrasion either in the neck or in the hands. This would also create doubt about the case propounded by the prosecution that the deceased was carried in the car by tying his hands and his neck. This contradiction also creates doubt in Ex.P2. It is the evidence of P.W.1 that the place, where the dead body was found, could not be reached, as the road was not motorable. He has so categorically stated that one cannot reach the said place by a car. If that is so, the theory propounded by the prosecution that the deceased was taken up to that point by a car also becomes doubtful. From these contradictions and since there is no corroboration to support Ex.P2, we find it difficult to place reliance on Ex.P2. There is yet another reason for us to doubt Ex.P2. As pointed out by the learned counsel for the appellants, there was no acquaintance for the first accused with P.W.1. It is doubtful whether the first accused would have chosen a stranger with whom he had no acquaintance for the purpose of confession.

16. Lastly, the arrest of the accused 1, 2 and 4 has been spoken to by P.W.13 and P.W.16. But P.W.13 has been used as an omnibus witness for all purposes. Further, since we do not believe Ex.P2, as a corollary, we are not inclined to believe the so called confession said to have been made by the first accused to P.W.16, in the presence of P.W.13 also. Above all, the material objects discovered on the confession of these accused have not been connected to the crime in any manner. It is well settled that for the purpose of Section 27 of the Indian Evidence Act, it is not the discovery of every fact, that makes the information admissible, but it is only the discovery of the relevant fact, which makes the information admissible. Such relevancy is to be established by the

prosecution by establishing the connection between the objects discovered and the disclosure statement made. Here, in this case, the prosecution has failed to establish the connection between all these discovered objects and the crime as well as the accused. In such view of the matter, the arrest and the recovery, the arrest of the accused 1,2 and 4 and the consequential discovery of material objects also cannot be relied on.

17. Now, so far as the accused 2 to 4 are concerned, absolutely, there is no evidence, except the extra judicial confession made by A1 to P.W.1. It is too well settled that under Section 30 of the Indian Evidence Act, though the extra judicial confession of a co-accused is relevant, that cannot be the sole foundation for conviction. This has been too well settled by the Hon'ble Supreme Court in *Kashmira Singh vs. State of Madhya Pradesh* reported in 1952 AIR159 In such view of the matter, we find absolutely there is no evidence against the accused 2 to 4. So far as the first accused is concerned, we have already stated that it is too difficult to act upon Ex.P2. Thus, we hold that the prosecution has miserably failed to prove the case against the accused 1 to 4.

19. In the result, the criminal appeal is allowed, the conviction and sentence imposed on the appellants are set aside. They are acquitted of all the charges. Fine amount, if any paid by them, shall be refunded to them. Bail bonds shall stand terminated. To 1.The Additional Sessions Judge cum Fast Track Court, Dindigul, 2.The Inspector of Police Palani Taluk Police Station Dindigul District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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