

A.Anwar Ali Vs. The State Rep By

A.Anwar Ali Vs. The State Rep By

SooperKanoon Citation : sooperkanoon.com/66021

Court : Chennai

Decided On : Sep-08-2015

Judge : S.Nagamuthu

Appellant : A.Anwar Ali

Respondent : The State Rep By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 09.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.457 of 2010 A.Anwar Ali : Appellant Vs. The State rep by the Inspector of Police, Cumbum North Police Station, Theni District, Crime No.197 of 2007. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 02.11.2010 made in S.C.No.116 of 2007, on the file of the Additional Sessions Judge cum Fast Track Court, Periyakulam. !For Appellant : Mr.A.Velan For M/s.Ajmal Associates ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :

JUDGMENT

[

JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J. The appellant is the sole accused in S.C.No.116 of 2007, on the file of the learned Additional Sessions Judge cum Fast Track Court, Periyakulam. He stood charged for the offences punishable under Sections 376, 302 and 201 of the Indian Penal Code. By Judgment dated 02.11.2010, the Trial Court has acquitted the appellant from the charge under Section 376 of the Indian Penal Code, but convicted him, as detailed below:- Convicted under Sections Sentence imposed Fine amount 302 IPC To undergo imprisonment for life Rs.1,000/- in default to undergo rigorous imprisonment for three months. 201 IPC To undergo rigorous imprisonment for one year Rs.1,000/- in default to undergo rigorous imprisonment for three months. The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has 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.Sujana. PW-2 is her father. Originally, the deceased was given in marriage to one Mr.Babu. Since there arose misunderstanding between them, the marriage was dissolved as per the customary Thalaq. Thereafter, the deceased was given in marriage to one Mr.Abuthakir. The accused is the younger brother of Mr.Abuthakir. The deceased and Mr.Abuthakir were residing in Thiruppur. Seeking some employment, on daily wages, PW-2, the deceased and her husband had gone to Kerala. While in Kerala, Mr.Abuthakir fell from a palmirah tree accidentally and he died. In respect of the said incident, on the complaint of PW-2, a case was registered by the Kerala Police. 2.1. After the above incident, the deceased and PW-2 returned to Thiruppur. At that time, the deceased was pregnant. After few months, she gave birth to a child. When Mr.Abuthakir died in the above accident, the accused was in prison in connection with some other case. After he was released from prison, he used to visit the house of PW-2 under the pretext of seeing the child. In due course, the accused developed intimacy with the deceased. The deceased also expressed her desire to marry him. Sometime before the occurrence, the accused took the deceased and the child to his house at Cumbum. He presented cloth materials to the deceased and the child and then, he took them back to Thiruppur and left them at the house of PW-2. Thereafter, the deceased received back her jewels from PW-2 and leaving the child in the custody of PW-2, she left for Cumbum along with the accused to have a separate

living with him. Accordingly, the accused and the deceased stayed in Cumbum in a rented house. 2.2. It is further alleged by the prosecution that the accused had suspicion that there was a foul play in the death of Mr.Abuthakir at the hands of the deceased. In short, according to the accused, he was lamenting to others that Mr.Abuthakir was killed by the deceased in Kerala. This is now projected as the motive for the accused against the deceased. While so, on 22.05.2007, at about 09.30 PM, a dead body of a woman with extensive injuries were found in the bathroom of a Mosque, known as "Mohideen Andavar Kattuppallivasal" at Cumbum. PW-1 is the Imam Asarath of the said Pallivasal. According to him, at 10.00 AM, on 22.05.2007, he had left for Uthamapalayam to see his sister and he returned to the Pallivasal only at 09.30 PM. At that time, he found the dead body of a woman. Immediately, he proceeded to the Cumbum North Police Station and made a complaint. 2.3. PW-19, the then Sub-Inspector of Police, Cumbum North Police Station, received the said complaint and registered a case in Crime No.197 of 2007, under Section 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P14 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the case diary to the Inspector of Police for investigation. 2.4. On 22.05.2007, at 12.15 PM, taking up the case for investigation, PW-22 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-9 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased. EX-P23 is the inquest report. Then, he forwarded the dead body for postmortem. 2.5. PW-17 - Dr.S.Amuthini conducted autopsy on the body of the deceased, at 01.00 PM, on 23.05.2007. She noticed the following injuries:-

"External injuries:-

1. A lacerated wound measuring 5 X2X12 cm over right mandibular area.

2. A lacerated wound measuring 3 X12 X12 cm over left mandibular area.

3. A large broad cut injury measuring 12 X10X3over the centre and lower part of neck extending 5 cms below right angle of mandible to 5 cm below left angel of mandible.

4. Underlying muscles teared and congested. Blood clots seen in the bed of injury. Trachea cut and exposed outside. No external injuries over breast, thigh and external genitalia. Internal examination:- Skull - No fractures. Membranes intact. Brain substances pale. Neck - Hyoid bone intact. Trachea cut and both cut ends exposed outside. All ribbon muscles of neck teared and congested. Left carotid artery teared. Chest - Heart chamber empty. Lungs pale. Abdomen - Spleen and liver pale. Stomach contains 20 ml of brown colour liquid. Intestines distended with gas. Both kidneys pale. Uterus normal. External genitalia normal". EX-P12 is the postmortem certificate. She forwarded the visceral organs for chemical examination. According to EX-P19, the report, there was no poison detected. She did not notice any seminal stains on the private parts of the body. Finally, she gave opinion that the deceased would appear to have died of shock and hemorrhage due to injuries.

2.6. During the course of investigation, PW-22 recovered bloodstained cloth materials from the dead body of the deceased and forwarded the same to the Court with a request to forward the same for chemical examination. Then, he handed over the investigation to PW-23.

2.7. PW-23 took up the case for investigation, on 26.05.2007. Earlier, PW-22 had taken photographs of the dead body and kept the same in the case diary. After ten days of the occurrence, PW-2 and the other family members of the deceased heard that there was a dead body found in the mosque with injuries. Therefore, PW-2 and the other family members went to the Cumbum North Police Station and during enquiry, they identified the deceased from the photographs of the dead body. The investigation further continued.

2.8. It is further alleged that some materials were collected during investigation that the accused took the deceased to the Pallivasal early in the morning at 06.00 AM. The accused told PW-2 that they were going to marry. After sometime, PW-1 left the Pallivasal. It is the allegation that thereafter, the accused had committed the murder of the deceased by stabbing her and dropped the dead body in the bathroom of Pallivasal. During the course of investigation, it came to light that the accused had surrendered before the learned Judicial Magistrate at Theni. On the orders of the learned Judicial Magistrate, PW-23 took him into the police custody, on 02.07.2007. While in custody, at 01.00 PM, on 03.07.2007, he gave a voluntary confession, in the presence of PW-13 and PW-15, in which he disclosed the place, where he had hidden the knife [MO-19]..

The same was recovered under a mahazer in consequence of the said disclosure statement. Then, he identified one Mrs.Rajitha from whom a gold chain weighing 11/2 sovereigns was recovered. Then, he forwarded the accused to the Court for judicial remand. He handed over the investigation to his successor - PW-24. 2.9. On 12.09.2007, PW-24 took up the case for investigation, collected the medical records, chemical analysis report, examined all the other witnesses and finally, on completing the investigation, he laid charge sheet against the accused. 2.10. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 24 witnesses were examined, 26 documents and 21 material objects were marked. Out of the said 24 witnesses, PW-1, the Imam Asarath of the Pallivasal, has stated that on 22.05.2007, when he was in the Pallivasal, the accused and the deceased came to the Pallivasal around 06.00 to 07.00 AM. The accused wanted PW-1 to recite Quranic verses for the upkeep of himself and his deceased brother. He gave a sum of Rs.15/- as consideration. PW-1 has further stated that when he enquired the accused, he told him that he had come from Thiruppur along with a woman and he wanted to marry her. Then, PW-1 left for Uthamapalayam at 09.30 AM. When he returned to the Pallivasal, he found a dead body. 2.11. PW-2 is the mother of the deceased, who has stated about the relationship between the accused and the deceased and the fact that they were living together in Cumbum for some time. She has further stated that she identified the deceased from the photographs of the dead body. PW-3 ? the sister of the deceased, PW-4 ? the brother of the deceased, PW-5 - a relative of the deceased and PW-6 yet another sister of the deceased have spoken about the above facts. PW-7 is the owner of the house, where the accused and the deceased were residing together for few days. He has spoken about the same. 2.12. PW-8 is an Auto Driver. He has stated that on 22.05.2007, he took the accused and another woman in his auto to the Pallivasal early in the morning. PW-9 has spoken about the preparation of the Observation Mahazer, the Rough Sketch and the recovery of bloodstained earth and sample earth from the place of occurrence. PW-10 has stated that on 10.05.2007, the accused came to him and wanted him to pledge a ring, which the accused was in possession. PW-10

introduced the accused to one Valli & Co Pawn Brokers Shop, where the same was pledged. Again, he came to him and wanted him to pledge a gold necklace, which was also again pledged with Valli & Co Pawn Brokers Shop. After four days, the accused came and with the help of PW-10 redeemed the said jewels. 2.13. PW-11 is the proprietor of Valli Pawn Brokers Shop. He has also stated about the above facts. PW-12 is the Manager of the Villi Pawn Brokers Shop, who has also stated that on 12.05.2007, the accused pledged a gold necklace, for a sum of Rs.6,000/-, which he redeemed on 19.05.2007. PW-13 has spoken about the confession of the accused, the disclosure statement made and the consequential recoveries of knife [MO-19]. and the jewels. PW-15 has also stated the same facts. PW-14 has stated that on 22.05.2007, the accused, who was working in Sri Kumar Hotel, took a pant and a shirt of the accused and handed over the same for his use. PW-16 has stated that the accused was working in Sri Kumar Hotel, at Cumbum, where he was also working. He has also stated that on 09.05.2007, the accused had brought a woman to Cumbum and introduced her as his brother's wife. On 10.05.2007, according to him, the accused told him that he had pledged a gold ring at Valli Pawn Brokers Shop through an Auto Driver, by name, Mr.Senthil. He has further stated that on 12.05.2007, again, the accused pledged a necklace. 2.14. PW-17 has spoken about the autopsy conducted by her and her final opinion. PW-18 is the Head Constable, who took the dead body from the place of occurrence to the hospital for postmortem. PW-19 has spoken about the registration of the case, on the complaint of PW-1. PW-20 is the Head Clerk of the Court, who has spoken about the forwarding of the material objects to the Forensic Lab for chemical examination, on the orders of the learned Judicial Magistrate. PW-21 is the Assistant Director and Assistant Chemical Examiner to Government, Regional Forensic Science Laboratory, Madurai, who has spoken about the chemical examination conducted by him on the material objects. According to him, human blood of 'O' group was found on all the material objects. But, no blood was found on the knife [MO-19].. PW-22 to PW- 24 have spoken about the investigation done by them and the filing of final report. 2.15. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any

document. His defence was a total denial. Having considered all the above materials, the Trial Court has acquitted the appellant from the charge under Section 376 of the Indian Penal Code, but convicted him, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. This is a case based on circumstantial evidence. Indisputably, the dead body of the deceased was found in the bathroom of Mohideen Andavar Kattuppallivasal, on 22.05.2007. At that time, the identity of the deceased was not known to anybody. PW-1 had seen the dead body, at 09.00 PM, on 22.05.2007. Immediately, PW-1 preferred a complaint to the police. In EX-P1, he did not say anything about the name of the deceased, because, he was not aware of the identity of the deceased. For about 10 days, the identity of the deceased was not known. PW-22 had arranged for a photographer, who took photographs of the dead body. PW-22 kept the same in the Police Station. Somehow or the other PW-2 and the relatives of the deceased had gone to the Police Station and from and out of the photographs, they identified the dead body as that of the deceased. It is only from this evidence, the prosecution has tried to prove the identity of the deceased. It is not known as to why the dead body was not exhumed and any other scientific test, like DNA test or superimposition examination, was not done to establish the identity of the deceased. It is only from the photographs, now, the prosecution tries to identify and establish that the dead body was that of the deceased. Since it is not seriously disputed, we do not go further into the said question and we proceed on the assumption that the dead body was that of the deceased.

5. Now, according to PW-2, few weeks before 22.05.2007, the accused had taken the deceased to Cumbum and set up a separate family. PW-7 has stated, in his evidence, that the deceased and the accused stayed together on rental basis. From the evidence of PW-7, it has been established that the accused and the

deceased were staying together at Cumbum. From the evidence of PW-10, it has been established that on 10.05.2007, the accused pledged a gold ring at Valli Pawn Brokers Shop, which has been spoken to by PW-11 and PW-12 also. On 12.05.2007, the accused pledged a gold necklace. The gold necklace was, however, redeemed by the accused on 19.05.2007. But, the gold ring, which was pledged on 10.05.2007, was still with the Pawn Broker.

6. It is stated by the prosecution that these jewels belonged to the deceased. Assuming that these jewels belonged to the deceased, since the said jewels were pledged on 10.05.2007 and 12.05.2007, respectively, viz., long before the occurrence, this will not be construed as an incriminating evidence against the accused in any manner. At the most, this can be treated as a circumstance to prove that the deceased and the accused were living cordially and the accused was having possession of the jewels of the deceased.

7. After the dead body was identified by the parents, suspicion would have, quite naturally, fallen on the accused. Therefore, the accused had surrendered before the learned Judicial Magistrate. It is not anywhere found in the evidence that during the interregnum period, the accused was absconding. After he was taken into the police custody, on his confession, the gold ring was recovered from the Pawn Brokers Shop. As we have already pointed out, since the said gold ring was pledged on 10.05.2007 itself, the recovery of the same is of no consequence. Apart from the above, a knife [MO- 19] was recovered. But, there was no bloodstain found on the knife. Thus, the connection between the knife and the crime has not been established and therefore, the disclosure statement made by the accused itself becomes inadmissible in evidence.

8. Now, what remains for the prosecution, at last, is the evidence of PW-1. He has stated that on 22.05.2007, early in the morning, the accused and the deceased came to the Pallivasal and performed prayer. Had it been true that PW-1 had seen the accused and the deceased together early in the morning, in the complaint preferred by him, at the earliest opportunity, he would have mentioned this fact. But, in EX-P1, he has not at all stated this important fact that the accused came along with the deceased to the Pallivasal. PW-1 has been duly contradicted by

EX-P1. According to the version of EX-P1, PW-1 left Cumbum at 10.00 AM for Uthamapalaym and he returned back at about 09.00 PM. Thereafter, he found the dead body in the bathroom of Pallivasal at 09.30 PM. According to the prosecution, PW-1 disclosed the fact that he saw the accused in the company of the deceased early in the morning on 22.05.2007 only after the dead body was identified by PW-2. Absolutely, there is no explanation for this delayed disclosure. This creates doubt in the evidence of PW-1. Further, there was no test identification parade held. PW-1 accepted that he enquired the person, who came to the Mosque early in the morning. He told him that he had come from Thiruppur. Thus, it is clear that the accused was not previously known to PW- 1 and still there was no test identification parade held. In such circumstances, no reliance can be made to the evidence of PW-1.

9. Next comes the evidence of PW-8. He is an Auto Driver. He has stated that he took the accused and a woman to the Pallivasal early in the morning. He also did not have prior acquaintance with the accused. He had no occasion to see him previously. There was no test identification parade conducted to enable him to identify the accused. Therefore, in the absence of any such test identification parade, no reliance can be made on his evidence also. Apart from the above, there is no other evidence let in by the prosecution incriminating the accused.

10. In a case based on circumstantial evidence, it is the settled law that the circumstances pleaded by the prosecution are to be proved beyond reasonable doubts and every such proved circumstance should act as a link so as to form a complete chain of circumstances unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused. In this case, there are no incriminating circumstances proved by the prosecution at all so as to form a complete chain unerringly pointing to the guilt of the accused. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubts and so, the appellant is entitled for acquittal.

11. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant, by Judgment dated 02.11.2010, made in S.C.No.116 of 2007, on the file of the learned Additional Sessions Judge cum Fast Track Court,

Periyakulam, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated. To 1.The Additional Sessions Judge cum Fast Track Court, Periyakulam. 2.The Inspector of Police, Cumbum North Police Station, Theni District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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