

Ravindran Vs. State of Kerala

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Court : Kerala

Decided On : Feb-04-1999

Reported in : 1999CriLJ2364

Judge : N. Dhinakar and; P.V. Narayanan Nambiar, JJ.

Acts : Evidence Act - Sections 8, 27 and 32(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 162

Appeal No. : Criminal Appeal No. 896 of 1998

Appellant : Ravindran

Respondent : State of Kerala

Advocate for Def. : N. Santha, Public Prosecutor

Advocate for Pet/Ap. : Ajayagosh, Adv.

Disposition : Appeal dismissed

Judgement :

N. Dhinakar, J.

1. The accused in S.C. No. 146 of 1997 was tried and convicted under Section 302, IPC by the learned Sessions Judge, Thalassery. He was sentenced to imprisonment for life. The allegation against him before the trial Court was that on

the noon of 14-7-1996 he caused the death of his wife Thankamani by strangling her with a towel as he suspected her chastity. To prove the above allegation, the prosecution examined P. Ws. 1 to 19 and marked Exts. P1 to P1 1 as well as M.Os. 1 to 9.

2. The appellant, who hereinafter will be referred to as 'the accused' is the husband of the deceased. P.Ws. 1,2 and 4 are the elder brothers of the deceased. P.W. 3 is the wife of P.W. 2 and P.W. 5 is the wife of P.W. .4. P.W. 11 is the husband of the niece of the accused. The accused and the deceased were residing at Edoor adjacent to the house of P.W. 4. The accused suspected that the deceased was in illicit intimacy with P.W. 11, the husband of his niece. On account of such suspicion he was picking up quarrels with the deceased and beating her and on one such occasion he even attempted to strangle her. The deceased escaped from the clutches of the accused by running to the house of P.W. 4 where she made a complaint about this to her brother. The deceased also told about this incident to her Mend P.W. 7 who found nail marks on the neck Of the deceased. The elders of the locality mediated between the deceased and the accused. Two weeks prior to the date of incident the accused left Edoor with the deceased and took up his residence at Kondambra colony, a tribal settlement. P.Ws. 1 and 2 the brothers of the deceased were already residing in the said colony. After they settled at Kondambra colony both the deceased and the accused took up employment under P.W. 8 in his rubber plantation. The accused and the deceased normally used to leave their residence by about 7.30 a.m. and return home after taking lunch in the house of their employer, P.W. 8.

3. On 14-7-1996 the deceased and the accused as usual left for their work at 7.30 a.m. and were seen by P.W. 1. In the afternoon on the same day the deceased and the accused after completing their work took their food served by P.W. 9, the son of P.W. 8 and left together for their residence. When they left, the accused was seen having a towel, M.O. 9 tied around his head. They were also in possession of M.O. 6 and M.O. 6(a) the knives which they used for tapping rubber. Thereafter the deceased was not seen alive by anyone.

4. P.W. 1 the elder brother of the deceased went to Edoor on 15-7-1996 since the accused and the deceased did not return home on the previous day. He enquired his elder brother P.W. 4 at Edoor who told him that they might have gone to Peratta to the house of the accused. P.W. 1 returned to Kondambra colony.

5. On 17-7-1996 the accused went to Iritti Police Station and appeared before P.W. 16, the Asstt. Sub-Inspector. The accused gave a statement to P.W. 16 and on the basis of the said statement a case in Crime No. 228 of 1996 was registered under Section 302, IPC against the accused. Ext. P5 is the first information report. Express reports were sent to the higher officials.

6. On receipt of the express first information report P.W. 19, the Circle Inspector of Police, Iritti Police Station, reached the police station and questioned the accused. The accused thereafter took P.W. 19 and the witnesses to a cashew garden and pointed out the place where the body of the deceased Thankamani was seen by the police officer and the witnesses. P.W. 17, a police constable was thereafter posted to guard the dead body.

7. P.W. 19 returned to the scene of occurrence on 18-7 1996 and conducted inquest over the dead body of Thankamani in the presence of panchayatdars including P.W. 13 between 9 a.m. and 11.30 a.m. during which he recovered M.Os. 1 to 8. The body was sent with a requisition to the Medical College Hospital, Calicut, through P.W. 17.

8. On receipt of the dead body and the requisition P.W. 12, Lecturer in Forensic Medicine, Medical College Hospital, Calicut, conducted postmortem examination on the body of Thankamani on 19-7-1996 and found a ligature mark 30 x 3.4 cm. around the upper part of neck transversely with superficial grooving. It had a breadth of 3 cm. on the left side and 4 cm. on the other portions over thyroid cartilage and 6 cm. below tip of chin. On dissection he found soft tissues deep to the ligature mark. On internal examination he found the brain liquified and it was greenish yellow in colour. He also found partly digested rice without any characteristic smell. He was of the opinion that Thankamani died on account of ligature strangulation. He issued Ext. P2, the postmortem certificate.

9. In the meanwhile P.W. 19 continued his investigation and prepared Ext. P4, the scene mahazar attested by P.W. 14. He questioned the witnesses and recorded their statements. The material objects were despatched to the Court with a request to forward them to the chemical analyst. Ext. P10 is the report of the chemical analyst. On the instructions of P.W. 19, P.W. 18, the Village Officer prepared Ext. P6, the plan. On completion of the investigation the final report was filed against the accused.

10. We have heard the counsel for the appellant/accused and perused the grounds of appeal and also heard the Public Prosecutor. It is the case of the prosecution that the deceased was done to death on the afternoon of 14-7-1996 and that the accused strangled her to death as he suspected her chastity. It is of course true that the incident was not witnessed by anyone. The prosecution tried to prove its case through circumstantial evidence. As held by the Supreme Court in *Deonandan Mishra v. State of Bihar* AIR 1955 SC 801 : 1955 Cri LJ 1647 that in case of circumstantial evidence not only the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused and in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We will now analyse the evidence available on record to find out whether the prosecution has succeeded in proving its case against the accused by producing all the links in the chain of circumstance.

11. The accused has no dispute that the body that was traced by P.W. 19 at about 8.45 p.m. on 17-7-1996 is not the body of his wife Thankamani. P.W.2 the elder brother of the deceased who reached the scene of occurrence also identified it as the body of his sister. We accordingly hold that the body that was traced on 17-7-1996 and on which the post-mortem was conducted by P.W. 12, the post-mortem doctor, is the body of the deceased Thankamani, the wife of the accused.

Similarly, the accused has no dispute that the deceased died on account of homicidal violence. P.W. 12, who conducted autopsy on the dead body gave evidence before the trial Court that the deceased died on account of ligature strangulation. He also marked Ext. P2, the post-mortem certificate. It is of course true that though the accused has no dispute that the deceased died on account of homicidal violence he has suggested to the post-mortem doctor as well as to the investigating officer that the deceased was done to death after she was raped. The post-mortem doctor stated that he cannot give any opinion as to whether she was raped before death since the body was in a decomposed stage at the time when he conducted autopsy. This suggestion of the defence will be dealt with by us at a later stage when we discuss the other evidence. Suffice it to say for us at this stage that the deceased Thankamani died on account of homicidal violence and that the accused has also no dispute regarding the said fact.

12. According to the prosecution, the accused and the deceased were initially residing at Edoor and the accused suspected the chastity of his wife. The accused was under the impression that the deceased was in illicit relationship with P.W. 11, the husband of his niece. He used to beat the deceased and during one such quarrel he even attempted to strangle the deceased. The deceased ran to the house of P.W.4, her elder brother and complained about the conduct of the accused. P.W.7, the friend of the deceased had given evidence to the effect that the deceased told her that the accused attempted to strangle her and that she found nail marks on the neck of the deceased. This evidence of P.W.7 is, in our view, admissible in view of the second part of Section 32(1) of the Evidence Act as a statement regarding the circumstances of the transaction which resulted in her death in a case in which the cause of the person's death had come into question. Under the said section such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of her death had come into question. Even otherwise P.Ws. 1 to 6 have in unison deposed before the trial Court that the accused used to ill-treat the deceased on account of his suspicion regarding her chastity. We have no reason to reject their evidence. We accordingly hold that the accused had a strong motive to murder the deceased and this motive is a circumstance against the accused.

13. According to P.W. 1 the accused and the deceased were in the habit of leaving their house at 7.30 a.m. everyday to attend to their work in the rubber plantation of P.W.8 and that on a Sunday (14-7-1996 was a Sunday), the deceased and the accused left their house as usual to the rubber plantation of P.W.8. P.W.1 has further deposed that since they did not return on that day he went in search of them at Edoor on the next day where P.W.4 told him that they might have gone to Peratta. Then P.W. 1 returned. It is not disputed by the accused that he was not available in the locality after 14-7-1996 who was earlier seen leaving with his wife by P.W. 1 from his house.

14. P.W.8 , the employer of the accused and the deceased in his evidence has stated that on 14-7-1996 the accused and the deceased came to work as usual and in the afternoon after taking lunch served by his son, P.W.9 they left together. He further deposed that while leaving, the accused obtained Rs. 50/- from him saying that it is required to sharpen the knife. The evidence of P. W.8 is supported by P.W.9 who in his evidence has stated that he served food to the accused and the deceased and that they left together. P.W.9 further deposed that the accused was seen wearing a towel, M.O.9 tied around his head and that M.O.6 and M.O.6(a) are the knives used by the accused and the deceased for tapping rubber. After they were seen leaving the house of P.W.8 by both P.Ws. 8 and 9 the deceased was not seen alive by anyone and even the accused was found missing from the locality till he reappeared before P.W.16, the Asst. Sub-Inspector of Iritti Police Station at 8 p.m. on 17-7-1996. It is for the accused to explain as to what transpired in the afternoon of 14-7-1996 after he and the deceased left together from the house of P.W.8. The accused had no case before the trial Court that he was available in the locality in the afternoon of 14-7-1996 or on the subsequent dates. As the deceased was seen last alive in the company of the accused it is for him to explain as to what transpired after they left the house of P.W.8 and the absence of any such explanation is an additional link in the chain of circumstances as held by the Supreme Court in the judgment referred to supra, AIR 1955 SC 801 : (1955 Cri LJ 1647). There is yet another circumstance against the accused. According to P.W.16, the accused appeared at Iritti Police Station at about 8 p.m. on 17-7-1996 and gave a statement on the basis of which a case in Crime No. 228 of 1996 was registered against the accused under Section 302, IPC under Ext. P5,

the first information report. Though the said statement given by the accused to P.W.16, the Asst. Sub-Inspector of Police is not admissible, the evidence of P.W.16 that the accused appeared at the Police Station and gave a statement resulting in registration of a crime can be taken into consideration as a conduct of the accused relevant under Section 8 of the Evidence Act. After the crime was registered P. W. 19, the Circle Inspector of Police reached the Police Station where he questioned the accused and in pursuance of a statement Ext. P1 (a) the accused took the police party and the witnesses to the cashew garden and pointed out the dead body of Thankamani. It is of course true that Ext. P1(a) cannot be accepted as a statement relevant under Section 27 of the Evidence Act, as contended by the learned Counsel, since the accused had already given a statement to P. W. 16, the Asst. Sub-Inspector on this aspect and a further statement under Ext. P1 (a) cannot be said to be a statement which led to the discovery of a fact. Even if it is to be held that Ext. P1 (a) cannot be treated as a statement under Section 27 of the Evidence Act the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where the commission of offence was found hidden would be admissible as conduct under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act as held by the Supreme Court in Prakash Chand v. State (Delhi Administration) 1979 MLJ (Cri) 419 : 1979 Cri LJ 329. In the above judgment the Supreme Court further held that there is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162, Cr. P.C. Even if Ext. P1(a) becomes inadmissible in view of Section 162, Cr. P.C. the conduct of the accused in taking the Police Officer to the place where the dead body was found becomes admissible under Section 8 of the Evidence Act. This conduct of the accused in taking the Police Officer to the place where the dead body was found is yet another circumstance. When the Police Officer reached the scene of occurrence he posted a Police Constable to guard the dead body and on the next day he conducted inquest on the dead body during which he recovered

M.Os. 1 to 8. M.Os. 6 and 6(a) are the knives which were found lying near the dead body which according to P.W.9 are the knives of the accused and the deceased which they normally used for tapping rubber. Similarly when the body was noticed a towel was seen tied around the neck and this towel was later recovered after the postmortem and the same was identified by P.W.9 as the towel worn by the accused tied around his head. There is no challenge in the cross-examination to any of the witnesses who had spoken about these aspects and as the accused did not dispute the identity of M.Os. 6 and 6(a) and in view of the evidence of P.W.9 that the towel, M.O.9 was 'actually seen tied around the head of the accused on the relevant date which was seen tied around the neck of the deceased and later recovered after the post-mortem indicate that the accused after leaving the house of P.W.8 must have strangled the deceased with the towel and left the scene in a hurry leaving the material objects to speak in silence at a later date. The suggestion of the accused that Thankamani was raped and murdered cannot be accepted by us and if it is so it is for the accused to explain as to how he and the deceased got separated after they left the house of P.W.8 for her to be raped and murdered by someone else. As we stated earlier it is for the accused to explain as to what transpired in the afternoon of 14-7-1996 and the non-explanation of the accused is an additional link in the chain of circumstances. On the materials available on record we are of the view that the accused was rightly convicted for an offence of murder and we see no reason to interfere with the findings and conclusions arrived at by the learned Sessions Judge. The appeal is, therefore, dismissed.