

Paramasivam Vs. the State

Paramasivam Vs. the State

SooperKanoon Citation : sooperkanoon.com/775641

Court : Chennai

Decided On : Jan-23-1989

Reported in : 1990CriLJ1491

Judge : Janarthanam and ;S.T. Ramalingam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 173 and 313; Evidence Act - Sections 27

Appeal No. : Criminal Appeal No. 554 of 1984

Appellant : Paramasivam

Respondent : The State

Advocate for Def. : N. Dinakar, Govt. Adv. (Crl. Side)

Advocate for Pet/Ap. : K.V. Sridharan, Adv.

Judgement :

Janarthanam, J.

1. The accused aggrieved by the conviction and sentence of life imprisonment imposed by the trial Court, has come forward with this appeal.

2. The brief facts are : The accused and Kupppammal (since deceased) are husband and wife. They are residents of Pavalangudi village, ten k.m. away from

Mangalampettai Police Station. The spouses were in good terms for about two years prior to the occurrence, which happened on 17-8-1983. The accused actually suspected the fidelity of his wife thereafter and this led to frequent quarrels between them. The accused even went to the extent of complaining about the fidelity of his wife, the deceased to P.W. 3, who in turn reprimanded the conduct of the deceased number of times, without any effect.

3. The deceased, on the morning of the occurrence, went to her fields for work. P.W. 4 is an adjoining landowner. He was also attending to certain agricultural operations in his field. The deceased was carrying on the weeding operations with an instrument 'Kalaikottu' weeding implement (M.O. 4). The agricultural operations in the field on P.W. 4 was over by about 1 p.m. P.W. 5 had the opportunity to see the accused and the deceased in their fields at 2 p.m. Thereafter, he saw the deceased lying on the ground with her face downwards and the accused leaving from the place. P.W. 2, the mother of the deceased finding that her daughter had not returned from the field actually went in search of her and found her daughter lying dead with cut injuries on her person.

4. In the meanwhile, the accused appeared before P.W. 9, the Sub Inspector of Police Mangalampettai at 7 p.m. and gave a statement the admissible portion of which is Ex. P. 1, which was attested by P.W. 1, P.W. 9 registered a case in Crime No. 148/33 under S. 302 of the Penal Code. He prepared express reports and sent the same to the concerned official. Ex. P. 7 is the printed first information report sent to the court. He seized from the accused M.O. 1 lungi and M.O. 2 towel under Ex. P. 2 attested by P.W. 1.

5. Thereafter, P.W. 10 the Inspector of Police, on receipt of the phone-message at 7.30 p.m. proceeded to Mangalampettai police station, perused Ex. P. 7 and took up further investigation. He went to the place where the material object M.O. 3 'Koduval' was stated to have been dropped by the accused along with P.W. 9 and P.W. 1. He seized it under Ex. P. 3 mahazar attested by P.W. 1. At 9.30 p.m. he prepared an observation mahazar Ex. P. 5 attested by P.W. 1. He drew a rough sketch marked at Ex. P. 15. He caused photographs to be taken of the scene through the photographer P.W. 8. He held inquest over the body of the deceased

between 10 and 12 midnight. He examined P.Ws. 1, 2 and 5 and others during the inquest. Ex. P. 16 is the inquest report. He sent the body of the deceased through a constable for purpose of autopsy to the Government Hospital, Ulundurpet.

6. P.W. 6 the doctor attached to the Government hospital Ulundurpet conducted autopsy over the body of the deceased on 18-8-1983 at 11.30 a.m. Ext. P. 9 is the post-mortem certificate issued by him. The injuries found on the body of the deceased have been more fully described in Ext. P. 9 certificate. The doctor opined that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained by her 20 to 22 hours prior to post-mortem examination. He further opined that all the injuries could have been caused with a weapon like M.O. 3 and the severance of the head is necessarily fatal.

7. On 23-8-1983, the Inspector of Police P.W. 10 sent Ex. P. 10 requisition to the court for sending the material objects for chemical examination. P.W. 7 the Head Clerk attached to the Judicial Second Class Magistrate's Court Ulundurpet sent the material objects to the Chemical Examiner as per the directions of the Magistrate for the purpose of analysis under the original of Ex. P. 11 office copy of the letter. Exs. P. 12 and P. 13 are the reports of the Chemical Examiner and Serologist respectively.

8. After completion of the investigation P.W. 10 Inspector of Police filed a report under S. 173 of the Criminal P.C. against the accused before the Judicial Second Class Magistrate, Ulundurpet on 10-9-1983 for an offence under S. 302 of the Penal Code appeared to have been committed by the accused.

9. Upon committal of the case, the learned Sessions Judge framed a charge under S. 302 of the Penal Code against the accused and when questioned as respects the charge framed against him, the accused denied the same and claimed to be tried.

10. The prosecution, in proof of the charge examined P.Ws. 1 to 10 filed Exs. P. 1 to P. 17 and marked M.Os. 1 to 11.

11. The accused, when questioned under S. 313 of the Criminal P.C. as respects the incriminating circumstances appearing against him in the evidence, denied his complicity in the crime. He did not choose to examine any witness on his side.

12. The learned Sessions Judge, South Arcot at Cuddalore, on a perusal of the materials placed before him and after hearing the arguments of the learned counsel for the accused and the learned Public Prosecutor found the accused guilty under S. 302 of the Penal Code, convicted him thereunder and sentenced him to undergo imprisonment for life, giving rise to this appeal.

13. The learned counsel appearing for the appellant-accused would submit that the materials available on record are so scanty and flimsy as is not possible for the Court to fasten criminal liability upon the accused for any offence. In the light of the submissions made by the learned counsel for the appellant we proceed to sift the materials available on record.

14. That there is no direct evidence and the prosecution relied upon the circumstantial evidence available on record is admitted. The prosecution relies upon the Following pieces of circumstances :

1. The conduct of the accused in appearing before the Police Station with bloodstained clothes and giving a statement Ex. P. 1 which led to the recovery of M.O. 3 weapon;

2. The deceased and the accused having been found together at or about the time of occurrence in their fields, and the accused going away from there, leaving the deceased lying on the ground with her face downwards and her subsequently being found dead by her mother P.W. 2 at about 3 p.m.;

3. The clothes of the accused viz., MOs. 1 and 2 were found to contain human blood; and

4. The weapon of offence M.O. 3 was found to contain A group blood, which is the bloodgroup of the deceased.

14-A. Learned counsel for the appellant would submit that even if there is evidence proving all these circumstances enumerated above, still it is not legally permissible to fasten criminal liability upon the appellant, leave alone the existence of any evidence towards establishing the circumstances.

15. The conduct of the accused in appearing at the police station and giving Ex. P. 1 statement is spoken to by P.W. 1. Of course nothing is shown to say that P.W. 1 is having any sort of animus or illwill towards the accused so as to falsely depose against the interest of the appellant while stating that on the day in question the appellant had appeared before P.W. 9 and Ex. P. 1 statement was recorded. Ex. P. 1 statement is stated to have resulted in the recovery of M.O. 3 weapon. It is interesting to note that this weapon had not been recovered at the instance of the appellant-accused. The information contained in Ex. P. 1 also does not disclose the exact place where the weapon was kept concealed by the appellant. What he had stated therein is that the weapon had been thrown by him and he was unable to give the exact details of the place where he had thrown it. In such state of affairs, it is not known how it was possible for P.W. 10 Inspector of Police to unearth the weapon M.O. 3 in the absence of the accused. Even if it is recovered, it cannot be stated that the same had been recovered, in pursuance of the information furnished by the appellant so as to make it an admissible piece of evidence under S. 27 of the Evidence Act. In such a situation, we cannot give any weight and credibility to the testimony of P.W. 10 and 1 with respect to the recovery of M.O. 3 weapon.

16. No doubt it is true that there is the evidence of P.W. 4, who deposed that while he was turning out agricultural operations in his field he had seen the deceased doing weeding operations in her field, which is lying adjacent to his field. The agricultural work in his field was over by 1 p.m. and it appears that he had gone away from there and subsequently, the deceased and the accused were seen together in their fields by P.W. 5 at 2 p.m. on the fateful day in question. At about 3 p.m., the accused abruptly left the field and the deceased at that time was found lying on the ground with her face downwards. On this aspect of the matter, the prosecution relied upon the testimony of P.W. 5, who unfortunately turned hostile wholesale for the prosecution. The prosecution of course brought on record his

earliest statement to the police. The evidentiary value of his statement before the police is practically 'nil' and the net result is, his testimony cannot at all be utilised for any purpose whatever by the prosecution.

17. The clothes of the accused viz., M.Os. 1 and 2 were found to contain human blood as disclosed by Exs. P. 12 and P. 13 the reports of the Chemical Examiner and Serologist respectively. There is nothing to indicate that the human blood that was available in these clothes were relatable to the bloodgroup of the deceased in the sense, the same belongs to the blood group as that of the deceased. M.O. 3 weapon was found to contain human blood of 'A' group which is that of the deceased's blood group as disclosed by Ex. P. 13 the report of the Serologist. The act that the clothes of the accused M.Os. 1 and 2 containing human blood is of no use to the prosecution in advancing its case to any extent in proving that the accused had any hand in the commission of the murder of the deceased, his wife. M.O. 3 weapon containing 'A' group human blood which is the blood group of the deceased may indicate that the weapon had been utilised in the commission of the offence of murder. But, as already indicated, M.O. 3 was not at all discovered pursuant to the confession given by accused. Even if it is taken to have been recovered pursuant to the confession made by him still it cannot be said that the same by itself can form the foundation for the prosecution case in mulcting the liability upon the accused for the offence of murder. Each of the proved circumstances by itself, or the cumulative effect of all these circumstances, can, by no stretch of imagination, be stated to prove that the accused was responsible for the commission of the murder of the deceased, his wife.

18. In view of what has been stated above it goes without saying that the materials available on record are grossly inadequate to come to the conclusion that the accused had a hand in the commission of the offence of murder of the deceased, his wife. The conviction and sentence imposed by the court below upon the accused are therefore not sustainable.

19. In the result, the appeal is allowed. The conviction and sentence imposed by the court below are set aside and the appellant is acquitted.

20. Appeal allowed.

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