

Mohan and Another Vs. State

Mohan and Another Vs. State

SooperKanoon Citation : sooperkanoon.com/788216

Court : Chennai

Decided On : Aug-01-1995

Reported in : 1996CriLJ48

Judge : A.R. Lakshmanan and ;J. Kanakaraj, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201 and 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164, 173(2), 313 and 316; Evidence Act - Sections 133

Appeal No. : Criminal Appeal No. 178 of 1987

Appellant : Mohan and Another

Respondent : State

Advocate for Def. : Mr. R. Raghupathy, Addl. P.P.

Advocate for Pet/Ap. : Mr. S. Ashok Kumar, Adv.

Judgement :

Kanakaraj, J.

1. Accused 1 and 2 in Sessions Case No. 15 of 1986, on the file of Sessions Judge, Dharmapuri at Krishnagiri, are the appellants in this appeal. They were convicted by learned Sessions Judge for offences under Sections 302 and 201

I.P.C. and sentenced to file imprisonment under Section 302 I.P.C. two years Rigorous Imprisonment under Section 201 I.P.C. with a direction that the sentences should run concurrently.

2. The deceased Amudha was married to the first accused about eight years prior to the occurrence which event took place on 23-4-1984. They were residing in the village of Sungara Halli. They have a female child by name Sangeetha aged about six years at the time of occurrence. The second accused is the younger brother of the first accused. The relationship between the first accused and his wife Amudha were not cordial and they used to quarrel with each other very often. The deceased was also not in good terms with her mother-in-law. About two years prior to the occurrence there was a compromise under which the first accused and the deceased were asked to reside in a separate house and the parents of the first accused were asked to reside in the garden belonging to the village Munsif. However, they did not bring any solution and the first accused was continuing to suspect to fidelity of his wife Amudha. The first accused started taking meals in his parents house rather than in his own house. After a period of six months from the date of compromise the parents of the accused came back to the village of Sungara Halli and were residing in the house of one Chinnaraj. During Pongal time in January, 1983, the first accused had beaten the deceased and had removed the 'thali' and her earring from the deceased. However, the villagers pacified the first accused and caused the return of the jewels to the deceased Amudha. The first accused went back to his parents and resided with them in the house of Chinnaraj. The deceased was given half-an acre of land by her mother and she eked out her livelihood by doing cooly work. From January, 1983, the first accused was not meeting the deceased. The first accused had a further grievance that the deceased was going to the village Bommidi during night hours and was acting as a prostitute. About a week prior to the occurrence at about 5.00 p.m. the second accused was talking to P.W. 1 (who has been given pardon under Section 316 Cr.P.C.) in the pial of the local school. The first accused came there and told them that the deceased was a prostitute and therefore, he felt terribly ashamed and he wanted to finish with her. P. W. 1 and the second accused advised the first accused not to undertake any such course but seek justice through the villagers. On the day of occurrence viz., 23-4-1994 at about 7.00 p.m. when P. W. 1 was

taking meals, the first accused came there and told him that the deceased had gone to Bommidi with the female child. The first accused further stated that they could go there and bring her back and on the way she can be done away with. P. W. 1 again advised him not to do like that, but bring her to the village and talk over the matter, P.W. 1 however, said that he would come behind the accused, P.W. 1 proceeded in his cycle and both the accused were having only one cycle. Thereupon the first accused proceeded to the shop of P.W. 4 and took a cycle for hire. All the three proceeded in their cycles to Kavitha theatre at Bommidi. It is about five kilometers from Sungara Halli village. They found the deceased with her child in a petty shop belonging to P.W. 7 talking to a stranger. While the others were standing a far off the first accused alone talked to the deceased and brought her. The deceased along with her child were asked to sit in the cycle driven by the second accused and all of them proceeded to the village of Sungara Halli. On the way, they stopped at the hospital belonging to one Muniratnam. The first accused wanted to get some pills from the compounder for his stomach-ache. It was about 9.00 p.m. P.Ws. 5 and 6 who are younger cousin brothers of P.W. 1, were employed as compounders in the said hospital. The first accused went in and brought the pills and all of them continued their journey when they passed Omkalimman temple, the first accused stopped everybody and took the child from the deceased and gave it to P. W. 1 and asked P. W. 1 to take the child to the parents of the first accused. P.W. 1 proceeded to the village and after travelling a distance of one-quarter furlong he turned back to see what the accused and the deceased were doing. The first accused was taking the deceased towards a field belonging to Dr. Muniratnam and the second accused was following behind. A little later P. W. 1 heard the cries of the deceased. Since the child in his hand was also crying P.W. 1 pacified the child. A little later the first accused alone returned and when questioned he told P.W. 1 that he had finished off the deceased Amudha. The first accused took back the child from P.W. 1. P.W. 1 proceeded to the village and he could not sleep properly. On the early morning of 24-4-1984, he proceeded to Salem to see his ailing father. P.W. 3 is the father of the first and the second accused. He had turned hostile in the witness box, but according to his statement before police, on the night of 23-4-1984, the first accused came to the house with the child Sangeetha, and had woken up P.W. 3. When questioned the first

accused told P.W. 3 that he had finished with the deceased Amudha. When further questioned, the accused is said to have told P.W. 3 that he could not bear the shame for too long a time and therefore, he had finished with the deceased. The first accused is said to have taken a coir-rope and went out of the house. P.W. 3 is said to have followed him and near the Omkalimman temple in the land of Dr. Muniratnam, he saw the deceased Amudha lying dead.

3. P.W. 2 an ex-village Munsif, is related to the accused. On 24-4-1984 at about 7.00 a.m. he was taking milk from his field to supply the same to the Society in the village. He heard that the deceased Amudha was hanging by a rope in a tamrind tree. He went and saw the place where the deceased was hanging and then proceeded to the house of Manickam Naidu who is a respected person of the village. They sent for the first accused and the first accused is said to have confessed to the whole crime and as to how he and his brother the second accused brought the deceased from Bommidi and near the Omakalimman temple in the road leading to the field of Dr. Muniaratnam, they took the deceased to a thorny bush, put a towel around her neck and tightened the same, that the second accused had caught hold of the hand of the deceased and the deceased was thus strangled. The first accused then went to the house and brought a coir-rope and both A. 1 and A. 2 carried the body of the deceased along with narrow-path to Regada Halli and hanged the body there in a tamrind tree situate near the land of Narasimha Reddy. P.W. 2 and the said Manicka Naidu then sent for the second accused and he also confessed to the crime in the same manner. Thereupon P.W. 2 and Manicka Naidu took both the accused to the Sub-Inspector of Bommidi Police Station (P.W. 15) and narrated the incident to P.W. 15. The same was taken and shown own as Ex. P. 1 and the signature of P.W. 2 and Manicka Naidu were obtained in the same. It was registered as a Crime No. 64 of 1984 under Sections 302 I.P.C. and 201 I.P.C. P.W. 15 prepared printed First Information Report, Ex. P-17 and sent the same to the Magistrate and higher authorities. The first accused came forward to give a confession statement, admissible portion of which is Ex. P-2. Further investigation was taken up by P.W. 16, Inspector (Law and Order), Harur Circle. He received information on telephone at about 12.30 p.m. from the Sub-Inspector, P.W. 15. P.W. 16 proceeded to Bommidi Police Station and reached there at 1.30 p.m. He received Ex. P. 17 and took up the

investigation. He examined the accused 1 and 2 at the police station and perused Ex. P. 2. He took the accused and the witnesses to the place of occurrence. He also examined P.Ws. 5, 6 and 7. At the place of occurrence he prepared Ex. P-3 Mahazar attested by P.W. 2. He arranged photographs to be taken by P.W. 10. The photographs are M.O. 11 and the negatives are M.O. 10. He recovered M.Os. 1 and 2 series, the pieces of bangles found at the spot heir pin M.O. 3, one piece of brass drops, M.O. 4, a 50 paise coin, M.O. 5 under Mahazar, Ex. P. 4 attested by P.W. 2. The accused took P.W. 16 to their house and in the presence of their father P.W. 3 the house was searched. P.W. 16 recovered a rose colour towel, M.O. 21, a dhoti M.O. 22, a yellow colour shirt, M.O. 23, a cut banian, M.O. 24, a blue Shorts, M.O. 25, a bed-sheet M.O. 26, all of which were blood-stained. They were recovered under Ex. P. 19 arrested by P.Ws. 8 and 9. A copy Ex. P-19 was handed over to P.W. 3. He then proceeded to the place where the deceased was hanging and reached there by about 3.15 p.m. He prepared an observation Mahazar, Ex. P-5 and a sketch Ex. P-19. He found that below the body. The earth was bloodstained. He recovered the bloodstained earth M.O. 6 and sample earth M.O. 7 in the presence of the same witnesses under Mahazar Ex. P-6. He conducted an inquest on the body between 3.45 p.m. and 6.00 p.m. Ex. P. 20 is the inquest report. He had examined P.Ws. 2, 3 and 4 at the inquest. With a requisition Ex. P-18 he handed over the body to the constable, P.W. 13 for the conduct of an autopsy. He examined more witnesses and at 8.00 p.m. he arrested P.W. 1 and recovered M.Os. 8 and 9 being cycles, under Ex. P-7 Mahazar attested by P.Ws. 8 and 9. He sent the Material Objects to the Magistrate. P.W. 11 was the Civil Assistant Surgeon attached to the Government Head Quarters Hospital, Dharmapuri and he received Ex. P-8 from P.W. 16 for conducting an autopsy on the body of the deceased. He commenced postmortem at 11.50 a.m. on 25-4-1984. Ex. P-9 is the post-mortem certificate. He found the hyoid bone fractured on the left side. He reserved his final opinion till the report of the Chemical Examiner was obtained on the soft tissues of the skin bearing rope mark. Ex. P-10 is the report of the Chemical Examiner and it reads as follows :-

'The skin shows petechial sub-epidernal and dermal haemorrhages, Appearance suggestive of an antemortem rope mark.'

On the basis of the said report P.W. 11 gave a final opinion that the deceased would appear to have died of asphyxia due to strangulation 48 to 60 hours prior to autopsy. On 25-4-1984 he examined P.W. 11 and arranged for the statement of P.W. 1 to be recorded under Section 164 Cr.P.C. by the Judicial Second Class Magistrate, Oethankarai.

4. P.W. 12 was the Chief Judicial Magistrate at Dharampuri District. He received requisition Ex. P-11 for giving pardon to the witness P.W. 1. P.W. 1 appeared before the Magistrate on 18-10-1984 at 1.00 p.m. He read over the statement recorded under Section 164 Cr.P.C. from P.W. 1 and P.W. 1 accepted the same as true. He then explained to P.W. 1 the purpose for which he had been produced. He was cautioned that there was no need for him to give such a statement. P.W. 1 was also given sufficient time to ponder over the matter and was asked to come again on 22-10-1984. On 22-10-1984 P.W. 1 again accepted his statement under Section 164 Cr.P.C. and agreed to depose in the same manner at the trial of the case. Considering all the circumstances of the case and the fact that P.W. 1 was not a prime accused, P.W. 11 gave pardon under conditions. Ex. P-12 is the order regarding the same.

5. P.W. 16 gave requisition Ex. P-13 to the Judicial Second Class Magistrate, Harur for sending the material objects for chemical analysis. P.W. 14 was the Head Clerk in the Judicial Second Class Magistrate, Harur and he acted on Ex. P. 13 and sent the Material Objects for Chemical analysis under Ex. P-14. Ex. P-15 is the report of the Chemical Analyst and Ex. P-16 is the report of the Serologist. On completion of the investigation, P.W. 16 filed a final report under Section 173(2) Cr.P.C. before the Judicial Second Class Magistrate, Harur.

6. On committal learned Sessions Judge, Dharmapuri, framed two charges against both the accused for having committed murder along with approver Boopathi, by intentionally causing the death of the deceased Amudha, by the first accused strangulating her with a towel around her neck while the second accused catching hold of the hands of the deceased and thereby committing an offence punishable under Section 302 read with Section 34 I.P.C. The second charge was that the first and the second accused along with the approver Boopathi caused the

evidence connected with the offence to disappear by removing the dead body and hanging the same with a rope and thereby having committed an offence punishable under Section 201 read with Section 34 I.P.C. As already stated the said Boopathi was given pardon by an order dated 22-10-1984 under Ex. P-12 and he was examined as P.W. 1. The appellants having pleaded not guilty to the charges, the prosecution examined 16 witnesses and 20 documents by way of proving the charges. That apart as many as 26 Material Objects were also exhibited. On the appellants being questioned under Section 313 Cr.P.C. they denied complicity of the offence but did not examine any witnesses or file any document. It is on the above evidence that the trial Judge has rendered the conviction and imposed penalty as stated already.

7. Before advertng to the arguments to Mr. Ashok Kumar, learned counsel for the appellant we would like to analyse the evidence and see how far they could be accepted. We are aware that the evidence of P.W. 1 has to pass the double test of reliability and the test of corroboration. So far as the previous history regarding the life style of the first accused and the deceased there could be no dispute because the evidence as narrated by P.W. 1 is corroborated by P.W. 2, Ex-Village Munsif and P.W. 3, father of the accused. So far as the complicity of P.W. 1 with the offence, we find that P.W. 1 would have this Court believe that at all times, he was against the murder of the deceased and he was advising the first accused to get relief by the conduct of Panchayats by the villagers. He would have it that he agreed to accompany the accused on the fatal day only in the hope that the accused will bring the deceased to the village, so that an amicable settlement could be arrived. He did not participate in the actual strangulation by the first and the second accused, but had taken some part in the sense that he took the child from the deceased with the idea of taking the child to the parents of the first accused. He had also not taken part in the removal of the body and hanging the same by the rope. According to the defence, the police had tempted him with a job and had in fact, given him a job of a peon in the Prohibition Wing of the Circle. We proceed to examine his evidence knowing fully well that he is a most unworthy friend who had bargained for his immunity. The evidence is no doubt, a little unnatural in the sense that he had no complicity in the offence and there appears to be no need for giving pardon to him. It may be that because he had gone along

with the accused in bringing the deceased from Kavitha theatre, at Bommidhi and taking her near Omkaliaamma temple, and participated in the drama by playing a small part by taking the child away from the deceased. In fact he did not even proceed far after taking the child, but he says he had heard cries of the deceased and the first accused coming soon thereafter and announcing that he had finished with the deceased. The first accused is said to have taken the child back from P.W. 1, before P.W. 1 left the place. In other words, it appears to us that P.W. 1 had some part to play in the offence in the sense he had taken the child and was allowing the first and the second accused to perpetrate the offence. He might have either seen the action of the accused or might have been proceeding to the house of the father of the accused. But one thing is clear that it is only after the deceased was done away with and the same was announced to P.W. 1 that he left the place. We do not therefore, accept his evidence that he had advised the first accused not to murder the deceased, but bring her only for talks with the villagers. He had agreed to go with them to Bommidhi and he had agreed to take the child leaving the accused with the deceased, in a lonely place. He must have been privy to the common intention of the accused in doing away with the deceased.

8. However, his evidence regarding the fact that he proceeded along with them in three cycles to Bommidhi and finding the deceased at a petty shop cannot be disbelieved. The Petty shop owner P.W. 7 speaks to the fact that the second accused came to the shop and took the deceased Amudha in the Cycle of the second accused. No doubt, P.W. 7 does not refer to the presence of P.W. 1. But that will not affect the case of the prosecution that the accused had gone to the Petty Shop to take the deceased to some other place.

9. We also believe the evidence of P.W. 1 to the effect that all of them returned from Bommidhi towards their own village, Sungara Halli and on the way, stopped at the hospital of Dr. Muniratnam. P.W. 1 questioned the first accused as to why he was stopping at the place. The first accused is said to have told him that he was going to get some pills for his stomach-ache. P.Ws. 5 and 6 who are the cousin brothers of P.W. 1 were working in the hospital as compounders, While P.W. 5 turned hostile to the prosecution case, P.W. 6 has clearly spoken to the fact : that at about 9.00 p.m. on 23-4-1984 the first accused came there for taking pills for

stomach-ache. The only discrepancy which is sought to be pointed out by the defence is that while P.W. 6 says that along with the first accused his wife Amudha also came inside the hospital, P.W. 1 has stated that.

We do not find any discrepancy in the evidence because P.W. 1 did not say that the deceased was standing outside. He has only stated that.

In other words, he has not specifically spoken about the deceased standing outside or proceeding inside the hospital. In other words, the fact that the accused was in the hospital at 9.00 p.m. on 23-4-1984, is clinchingly established. Lastly, we come to the fact that when P.W. 2 sent for the accused on 24-4-1984 at 7.00 p.m., both the accused confessed to the crime, and had also stated that the child was entrusted to P.W. 1. We do not see why P.W. 1 should give false evidence especially because P.W. 2 is related to the accused. P.W. 2 had participated in the Panchayat two years prior to the occurrence and had also accommodated the parents of the first accused in his own garden field. This is precisely the reason why P.W. 2 had sent for the accused and questioned them as to how the deceased was found hanging in a tree. The Criticism of the defence counsel that P.W. 2 had no business to conduct an investigation, but he should have simply recorded a complaint and forwarded the same to the police authorities. It is argued on behalf of the defence counsel that it is unbelievable that P.W. 2 would have sent for the first and the second accused and the resultant confession is totally unacceptable. In this connection we have to notice the fact that P.W. 2 had gone to the head of the village Manicka Naidu and both of them had questioned the first and the second accused. This evidence is trustworthy because Ex. P-1 is attested by both P.W. 2 and Manicka Naidu. The last aspect of the case is the evidence of P.W. 3, the father of the accused. No doubt he turned hostile regarding the visit of the first accused at mid-night on 23-4-1984 and having confessed to him that he had finished with the deceased and having taken a coir-rope from the house. He had also denied the fact that he had proceeded behind the accused to Omakaliamman temple and had seen the wife of the first accused lying dead on the ground.

10. Taking now the medical evidence, the final opinion of P.W. 11 is that the deceased had died of asphyxia due to strangulation. He has also deposed that due to strangulation the fracture of hyoid bone is possible and in this case the hyoid bone was in fact broken. He has denied the suggestion that protruding of tongue was only due to hanging. We have already referred to the report of the Professor of Forensic Medicine, Kilpauk Medical College, on the basis of which P.W. 11 had given his final opinion.

11. With the above analysis of the evidence we will now advert to the argument of Mr. Ashok Kumar, learned counsel for the appellants. He argues that the evidence of P.W. 1 is unreliable and that it is not corroborated by independent evidence. The manner in which the evidence of an approver should be assessed, is laid down in several cases and one of the latest decision is in Chandran v. State of Rajasthan, : 1988 CriLJ842 . It is observed at page 600.

'So far as the question about the conviction based on the testimony of the accomplice is concerned the law is settled and it is established as a rule of prudence that the testimony of accomplice if it is thought reliable as a whole, conviction could only be based if it is corroborated by independent evidence either direct or circumstantial connecting the accused with the crime. In Haroon Haji Abdulla v. State of Maharashtra, : [1968]2SCR641 , it was observed as under :

'An accomplice is a competent witness and his evidence could be accepted and a conviction based on it if there is nothing significant to reject it as false. But the rule of prudence, ingrained in the consideration of accomplice evidence, requires independent corroborative evidence first of the offence and next connecting the accused against whom the accomplice evidence is used with the crime.'

12. Two things are apparent from the above decision of the Supreme Court of India. The first is that corroboration could be by way of direct evidence or circumstantial evidence. Secondly, the corroboration must connect the accused with the crime. We have already adverted to the fact that the evidence of P.W. 1 can be accepted regarding the motive, factum of going to Bommidi, factum of stopping at the hospital of Dr. Muniratnam and the factum of entrustment of the child to P.W. 1 before the deceased was taken to the thorny bush by the accused.

We have also adverted to the fact that the above aspects of the evidence is corroborated by P.W. 7 and P.W. 6. No doubt the entrustment of the child to P.W. 1 is not spoken to by any other witness, but is confirmed by the evidence of P.W. 2 while narrating the confession of the first accused. We have before us, the extra judicial confession made by the accused to P.W. 2. We have the evidence of P.W. 3, father of the accused. Though P.W. 3 has retracted from his statement to the police regarding confession made by the first accused at mid-night, we have to remember that P.W. 3 had also given a statement to the Judicial Second Class Magistrate, Uthankarai. Unfortunately that Statement before the Magistrate has not been marked in this case. In our opinion, therefore, the evidence of P.W. 1 passes the double test insisted on by all the Courts. In fact, Section 133 of the Evidence Act only says that a conviction is not illegal merely because it proceeds upon the uncorrobrated testimony of an accomplice. But it has become undoubtedly a rule of law or at least a rule of prudence that the testimony of accomplice could be accepted only if corroborated by independent evidence either direct or circumstantial. We therefore, hold that the conviction of the accused in this case based on the evidence of P.W. 1 cannot be held to be illegal because there is corroboration regarding the connection of the accused with the crime and there is also corroboration in other material particulars including the motive for the offence.

13. Learned counsel for the appellant relied on certain passages in Modi's Medical Jurisprudence. We have carefully gone through the Chapter on Deaths from asphyxia. We are satisfied that in this case death was due to asphyxia by strangulation. In other words, asphyxia was not due to hanging in this case. Learned author points out that in cases of death due to hanging, in addition to the cord mark, there would dribbling of saliva from the angle of mouth. In this case, there is no evidence to this effect. Learned author also says that in cases of strangulation, pure blood issues from the mouth, nose and ears, especially when great violence had been used, and the tongue is also protruding. These last aspect as pointed out in Modi's Medical Jurisprudence have been found by P.W. 11 in the post-mortem. The post-mortem certificate shows multiple abrasions over the left ankle joint. P.W. 16, investigating Officer had recovered bangle pieces and one bras ear-ring from the scene of occurrence. It is to be remembered that the

body of the deceased had only one brass kammal when it was retrieved from the tree. There was blood in the earth beneath the body and it was recovered under Mahazar, Ex. P-6. The clothes of the second accused were also seized under M. Os. 21 to 24. The towel used for strangulating the deceased was also seized. Ex. P-15 shows that the towel and dhoti were stained with human blood. Therefore, the involvement of the accused is also proved by the medical evidence and the report of the Analyst and Serologist.

14. An argument was advanced on the basis of Ex. P-10 that the appearance suggestive of ante mortem rope mark. Therefore, it was argued death had taken place only after the hanging. A study of Modi's Medical Jurisprudence shows that in a case of strangulation death could be slow. In this case strangulation was effected by tying a towel around the neck and twisting the same. Therefore, it is possible that the death was slow. This is also proved by the fact that blood was oozing from the nose and the mouth and that there was a pool of blood underneath the body of the deceased. Above all, the Doctor has come to a final opinion that the death was due to asphyxia due to the strangulation.

15. Having gone through the evidence and having analysed the case with reference to the arguments of learned counsel for the appellant as well as Public Prosecutor, we are convinced that the conviction and sentence imposed by the trial Judge are perfectly in order and not liable to be interfered with. It is clear from the evidence of P.W. 1 that to screen the offence the accused had taken the body and tied a rope and hanged the body in the tamarind tree. In fine, we confirm the conviction and sentence as imposed by the Sessions Judge. Appeal is accordingly, dismissed.

16. Appeal dismissed.