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

In Re: Thangaswami

In Re: Thangaswami

SooperKanoon Citation : sooperkanoon.com/788778

Court : Chennai

Decided On : Oct-23-1959

Reported in : AIR1963Mad476; 1963CriLJ651

Judge : Ramaswami and ;Anantanarayanan, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 299, 300 and 302; Evidence Act, 1872 - Sections 3, 114 and 166

Appeal No. : Referred Trial No. 93 of 1959, (Criminal Appeal No. 600 of 1959)

Appellant : In Re: Thangaswami

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : R. Santanam and ;B. Sriramulu, Advs.

Disposition : Petition dismissed

Judgement :

Anantanarayanan, J.

1. This is a reference by the learned Sessions Judge, Ramanathapuram, in S. No. 79 of 1959 upon his file. The accused, Thangam alias Thangaswami Thevar, has been convicted of murder under Section 302, I. P. C. and robbery under Section 392, I. P. C. and sentenced to death upon the first charge, and to rigorous

imprisonment for ten years upon the second, the sentence of imprisonment to merge with the sentence of death. Since the case rests entirely upon circumstantial evidence, and the facts involve the application of a legal principle, which is of some interest and significance, we shall first set out the facts in detail.

2. Briefly, the offence relates to the murder of an old woman named Nacharammal, and there can be no doubt that this woman was murdered at a lonely spot for the sake of her jewels, and that the jewels she habitually wore were missing from her person when the body was discovered. Nacharammal (deceased) belonged to Keelaka- vanur village and was aged about 60 at the time of (sic) she met with her death. It appears that the accused was acquainted with her. Raman Chetti, P. W. 6, is a man of this village who used to send bags of paddy to one Ponnuswami Chettiar P. W. 7, a merchant of Paramakudi and a commission agent for paddy and other grains. Three months before this murder, P. W. 6 sent six bags of paddy through the accused, who carted the bags for the witness, to P. W. 7. But the accused delivered only three bags and apparently misappropriated the rest. There was a panchayat onthis matter, and the accused was compelled to give P. W. 6 Rs. 30 for the paddy taken away. P. W. 6, P. W. 7 and the village munsif, P. W. 8 all speak to these facts. It appears that Nacharam- mal, decesed, used to taunt the accused often with the misappropriation. But this is really of no significance in the case, except as showing that the accused was acquainted with the old woman, and presumably aware of the jewels that she ordinarily wore. There can be no doubt at all that the victim was murdered for the sake of gain and the evidence relating to the misappropriation of the bags by the accused merely amounts to proof of knowledge of the old woman as the wearer of certain jewels, and not any proof of an adequate motive.

3. It may be further stated here itself that the accused belongs to a different village (Radha-puli) and not to the village of Keelakavanur, where Nacharammal was living. This is also made dear by the evidence of P. W. 6 and the village Munsif, P. W. 8, that P. W. 6 had to proceed to Radharapuli for the panchayat at which he was given redress.

4. We now come to the actual facts of the murder. Poochendu Ammal, P. W. 3 is the daughter-in-law of the deceased. She states that early that morning, 15th April 1959, the old woman left the house to get grass for her kid that she was rearing. She took with her, her basket and weed-cutting spade, M. Os. 4 and 5. She was then wearing four ear-rings and a gold chain with a particular kind of link, M. Os. 1 to 3 series. She was not seen alive after this.

5. Shammugham, P. W. 2, is a boy aged about ten, belonging to this village. Sometime about 7 a.m. he saw Nacharammal lying in Koothappa Udayar's punja. Her ears had been cut, and her neck wounded, and she was dead. The basket and spade, M. Os. 4 and 5, lay near the body. P. W. 2 went and informed Raman Chetti, P. W. 1, a nephew of the victim. P. W. 1 came and saw the body, and found that jewels of the old woman, namely, the ear-rings and neck chain missing from the body. He went and made a report to the village munsif, P. W. 14, within whose jurisdiction the locality of offence lay, at about 10 a.m., Ex. P.1. It is hereby sufficient to observe that in Ex. P.1 itself the definite allegation is that Nacharammal was apparently murdered for the sake of robbery of the jewels, and no suspects are mentioned in this report. The village munsif thereupon sent his yadasts Ex. P.10 to 13,. The station writer P. W. 15 came to the scene at about 3 p.m. and blood-stained earth was recovered from the spot of offence, and inquest was held.

6. The manner in which the accused came into the picture of the crime was this. Laksh-manan, P. W. 12, is a resident of Paramakudi, who is previously acquainted with the accused. At about 3-30 p.m., that day, i.e., about nine or ten hours after the crime, the accused called upon the witness, and took him to a park. The accused then produced an ear-ring for sale, M. O. 1, because he (accused) had to go to Tanjore. As the manner of the accused was somehow nervous and hesitant, and the accused could not properly explain the occasion for sale of this jewel, P. W. 12 handed over the accused to the Head Constable, P. W. 16, whom he met near the bridge. The Head constable arrested the accused on suspicion, and recovered from the accused three other ear-rings, M O. 2 series, in addition to the earring, M. O. 1, which the accused had attempted to sell to Lakshmanan, P. W. 12, and which P. W. 12 had produced. In pursuance of a statement made by him,

the accused and the police party proceeded by jeep to a spot about 4 1/2 miles away, and from here the accused produced a gold chain, M. O. 3, as well as an umbrella, M. O. 6. We might here immediately state that the earring, M. Os. 1 and 2 series, and the gold chain M. O. 3 have been identified as the jewels of the deceased, by her immediate relatives like her nephew, P. W. 1, and her daughter-in-law, P. W. 3.

7. The autopsy was held in this case (report P. 2) by Dr. Rangarajan, P. W. 9, the medical officer attached to the Government Dispensary, Paramakudi. He noticed the following injuries on the body. Firstly the lower pendulous portion of both thr ears were found irregularly cut. Secondly, there was a circular punctured wound 1/5th inch in diameter, on the centre of the front of the neck, 1 1/2 inches above the jugular notch of the sternum. The cut section showed congestion of the underlying tissues, with a big clot of blood. Thirdly, there was an horizontal incised injury 3 inches in length 1/4 inch in breadth and bone deep over the left shoulder joint. Injury No. 2 was the cause of death, according to the doctor. But it is highly regrettable that the medical witness P. W. 9 was not asked anything about the character of the injury, and whether it was an injury merely likely to cause death, or sufficient in the ordinary course of nature to cause death. We need not emphasise that it is of the greatest importance that, in murder cases, such facts should be carefully elicited by the prosecution from the medical officer who has held the autopsy. But, considering the nature and location of the injury, we are assuming that it was ordinarily sufficient to cause death. Injury No. 3 was perhaps caused by contact with a sharp surface, or due to sharp-edged instrument. We whall later discuss the relation, if any, between the Medical evidence and the umbrella, M. O. 6, produced by the appellant.

8. At this stage itself, we may state that, both in the committal Court and at the trial, the accused contented himself with a denial of knowledge of all the relevant pieces of testimony. Throughout he has affirmed that he did not attempt to sell M. O. 1 to Lakshmanan, P. W. 12, and that M. O. 2 series were not recovered from him. He did not produce the gold chain M. Section 3 or the umbrella M. O. 6, and the police tortured him and got some statement out of him. It may be also convenient here to notice that some blood-stains were found upon the ear-rings,

but the chemical analysis showed that they were too disintegrated for their origin to be determined. We cannot hence say whether they were human blood-stains, or not. No blood Whatever was detected upon the umbrella, M. O. 6; we shall comment later upon the significance of this fact.

9. There is the evidence of a woman selling sweet toddy, Arulayee, P. W. 4, that she sold sweet toddy at Gopalapatnam that morning to the accused and Subbiah and Thangavelu P. W, 5, The record is not precise as to the exact occasion, but if it Was upon the date of offence all that it proves is that the accused had at least two companions with him that morning.

10. We accept the evidence for prosecution that the accused was attempting the sale of one of the jewels of the murdered woman, about ten hours after the crime. We also accept the evidence that he produced the other jewels, M. O. 2 series, and the chain M. O. 3 to the police. Weare at pains to emphasise here that, this is all the evidence which does connect the accused with the crime of murder. For the evidence makes it abundantly clear that the production of the umbrella M. O. 6 by the accused is of no significance. Indeed, upon a careful assessment of the facts and probabilities here, we are definitely inclined to the view that this umbrella M. O. 6 was probably not the weapon of offence at all. The doctor P. W. 9 no doubt states that the iron end or ferrule of the umbrella could have caused the fatal injury. He even thinks that the incised wound injury No. 3 could have been caused by the umbrella, or equally by contact with a sharp surface, or by some sharp-edged instrument. It appears to us, judged from the description, that injury No. 3 is far more likely to have been caused by sharp instrument like an aruval. There is no evidence that the woman struck any sharp surface in falling at the spot of offence. Injury No. 3 is an incisea and not a punctured wound, and is far more suggestive of a blade. As regards the umbrella M. O. 6 it is indisputable that this is a common household object, which anyone might possess. The accused is supposed to have dug it out from a spot of concealment, but, while we are clear that the accused certainly produced this object, we are very doubtful about the truth of this allegation. For, it is very clear that the object contained no trace of any blood-stains, anywhere upon it. Since the accused was not even aware that there were some blood-stains upon the ear-rings, M. Os. 1 and 2 series, for, in that case, he

would certainly have removed them, whether he was the murderer, or a person who had been commissioned by the murderer to dispose of the jewels, it is difficult to believe that the accused used the umbrella as the weapon of offence, and then cleaned it in such a thorough manner as to leave no room for the detection of even minute specks of hlood. It may be a different question with regard to the cleaning of the blood on a weapon like aruval, where mere washing will remove the blood-stains. In this connection we extract the following observations by the Chemical Examiner of Madras on the interpretation of reports of blood-stains (App VII the Criminal Rules of Practice and Circular Orders, 1958 paragraph 6):

'Blood or the red colouring matter of it, can obviously be removed by scraping or rubbing, or washing etc., and may even if on a very shining or greasy object fall off in handling. To most surfaces, however, blood sticks very tightly, and it is exceedingly improbable that even the roughest handling would entirely remove a stain from any object, so that not even a small speck sufficient to give the tests remains. Sufficient of the red colouring matter to give the tests sometimes remains on a cloth, even after it has been washed.'

11. We are therefore of the opinion that the analysis of the evidence in this case amounts to this. As a person who was acquainted with the deceased, and who had knowledge that she habitually wore certain jewels, the accused had a possible opportunity and motive to commit the crimes of robbery and murder. But there is absolutely nothing to connect the movements of the accused with those of the victim, either that morning or after the crime. On the contrary, the only evidence is that the accused was in the company of two other persons at Gopalapatnam, namely one Subbiah Udavar and Thangavelu P. W. 5. The accused definitely attempted the sale of one of the jewels of the victim at Paramakudi that ening to Lakshmanan P. W. 12. He produced the other jewels also to the police. There is nohing to indicate that the umbrella produced by the accused M. O. 6 was the weapon o offence, and the probabilities are against it. Considering the character of this object blood-stains would have been detected upon it, had it been used as the weapon of offence, since the removal of even minute blood-stains from such an object would have been difficult. The accused has not given any explanation for the possession of the jewels. The question is whether upon these bare facts, and

these alone, the accused can be convicted upon the main charge of murder.

12. With regard to an inference of this kind, which has to be established upon the circumstan-trial evidence our attention has been drawn to several cases of this court and of the Supreme Court, which contain an exposition of the law. We might conveniently commence with Singaram v. State, 1953 Mad W. N. 572 : AIR 1954 Mad 152, for that is a land mark in the case law and it discusses the earlier case such as Narayana v. Emperor, ILR 56 Mad 231 : AIR 1933 Mad 233. After a discussion of the cases, Govinda Menon ana Basheer Ahmed Sayeed JJ. observed :

'It seems to us that mere possession by an accused person of articles which were on the person or custody of a murdered man without any explanation for such possession, cannot lead to an inference that he took part in the murder or that he was privy to it. The presumptions mentioned in the illustration to Section 114 of the Evidence Act, cannot be stretched to that extent. One can verw well imagine a case where a jewel on the person of a murdered individual came to be in the possession of another, without any kind of reasonable explanation being offered by that individual. The fact that no rational explanation is possible, or that the explanation offered is unacceptable, should not militate against the innocence of the individual with regard to the offence of murder. Something more is necessary than mere possession of articles.'

With respect, we would associate ourselves with this exposition of the law, as fully approving it It may be stated, in this context itself, that the decision has been followed and approved by the Andhra High Court in Jam Shah, in re, 1957 1 MLJ Cri 496 : AIR 1958 AP 273 by Chandra Reddi J.

13. Of the decisions of the Supreme Court, we particularly desire to make reference to Wasira Khan v. State of U.P. : 1956 CriLJ790 , and Sanwat Khan v. State of Rajasthan, (S) : AIR 1956 SC54 . In Wasim Khan v. State of U. P., : 1956 CriLJ790 , the facts were that the deceased travelled with his goods, with the accused, in the bullock cart of the accused at night, and should have reached a particular destination (Jarwal), which he never reached. He was not seen alive later, but was found murdered. The appellant ia the case was found in possession

of the articles of the victim three days later. The appellant made no effort to trace the whereabouts of the deceased, or to lodge information of his disappearance. Under those circumstances their .Lordships held that the appellant was rightly convicted of the offences of both murder and robbery. In (S) : AIR 1956 SC54 , the murders were of two individuals living in a temple, and several days later jewels were recovered from the two appellants who had buried them. The following exposition of the fewby their Lordships is of great significance in our view :

'In our judgment, Beaumont C. J. and Sen J. in Bhikha Goper v. Emperor, AIR 1943 Bom 458 rightly held that the mere fact that an accused produced shortly after the murder ornaments which were on the murdered person, is not enough to justify the inference that the accused must have committed murder. There must be some further material to connect the accused with me murder in order to hold him 'guilty of that offence.....in our judgment, no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where however, the only evidence against an accused person is the recovery of stolen property, and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer. Suspicion cannot take the place of proof.'

In the Bench decision of this Court in Chinnappa Udayar v. State, 1956 Mad W. N. 805, the facts were that the accused was found in possession of the jewels of the victim, soon after the murder. Next, the accused had attempted to create evidence of alibi at about the time of occurrence. Not merely this, the accused was seen going towards the scene of occurrence, at about the time of murder. On those facts the offence of murder was held established, as well as an offence under Section 404 I. P. C. This case reviews the prior case law, and refers to the Supreme Court decision in Tulsiram v. State, : AIR 1954 SC1 and Sunder Lal v. State of M. P., : AIR 1954 SC28 . In the first case, no presumption of guilt upon a charge of murder was drawn, when the ornaments of the victim were found with the accused a considerable time later, In the second case, : AIR 1954 SC28 the circumstantial evidence was held sufficient, when the accused was found to be in possession of the ornaments of the victim very soon after the murdsr. But we take

it that no hard and fast rule can be laid down, upon the circumstances which would justify the inference or presumption under Section 114(a) of the Evidence Act that the accused was guilty of murder. We take it that the exposition, of the law by the Supreme Court in (S) : AIR 1956 SC54 , already extracted by us, is authoritative and binding upon us, and not in conflict with the exposition of the law in any other case including : AIR 1954 SC28 . where the inference of guilt was drawn upon the particular facts of that case. This exposition is also confirmatory of the exposition of the law in 1953 Mad WN 572 : AIR 1954 Mad 152 and the other decisions of this court including (with reference especially to its facts) the Bench decision in 1956 M.W. N. 805. Our attention has also been drawn to the un-reported judgment in Kumaraswami v. State, R. T. No. 26 of 1957 (Mad) and Velu v. State, R, T. No. 143 of 1956 (Mad) in which statements of the same principle j will be found. In brief, the inference or presumption of guilt, upon the main charge of murder can be safely drawn, where the accused is in unexplained possession of jewels or articles of the victim after the crime, and where in addition, there is some evidence at least connecting the movements of the accused with those of the victim, either before or after the crime, and in some manner or another, establishing a nexus between the accused and the offence. The mere unexplained possession or production of the jewels of the victim by the accused may not constitute a safe basis for a conviction upon a charge of murder, when that is the only bare circumstance proved in evidence. The reason for that is fairly obvious. The test of circumstantial evidence must be satisfied; the chain of links in that evidence must lead to only one reasonable inference, namely, that the accused was the murderer, and all other probable hypothesis must be excluded. But how can that be done where the sole evidence is that the accused was in unexplained possession of the jewels of the murdered woman? Since the murder was for the sake ot robbery of the jewels, that motive would apply to every person, known or unknown, who could have come across the woman at that particular spot. As we have already stated the murderer might have delivered the jewels to the appellant for dis-posal, shortly after the crime. Again, it is even conceivable that the murderer might have fled when someone approached, and that the jewels might later have been taken away by the accused from the body, or from the spot of crime. The Bench decision in 1956 M. W. N. 805 contains a hint or suggestion, in its discussion of the case law,

that something might depend upon the time interval between the crime, and the recovery of the jewels from the accused. But it is quite probable that, even during the lapse of a few hours, the jewels might have changed hands. The facts that the accused was in the company of the others that morning and that the umbrella M. O. 6 was probably not the weapon of offence, only strengthen the argument that it would be unsafe to draw the inference of murder, upon these probabilities alone.

14. The learned Public Prosecutor has addressed an argument with reference to the fact that some minute blood-stains were found upon the ear-rings. But, first of all, their origin is indeterminate. We cannot assume that they are human blood-stains. Next, even assuming that they are human blood-stains we are unable to see how this takes the case further. This is only another circumstance to prove that the jewels must have been removed from the body of the woman at or about the time of murder, and not earlier. Obviously, the murder and robbery were parts of the same transaction. The facts that the accused was ID possession of the jewels, a possession which he has not explained, some hours later, and that he was apparently unaware of the blood-stains on the jewels, would either support the inference that he must have been the muderer, or must have participated in the murder, or that he must have stolen the jewels from the spot of occurrence or must have been commisioned to dispose of them. Before it could be held by us that the circumstantial evidence establishes the guilt of the accused upon the charge of murder, some further evidence is necessary, establishing some connection between the accused and the victim, in relation to the time and locality of offence, or to the crime itself. That is not forthcoming in the present case. The learned Public Prosecutor also refers to Section 166. Indian Evidence Act but we think it is clear that, that section has no application to the present case at all. We have recently discussed the true scope and incidence of that provision of law in C. A. No. 367 of 1959 (Mad) where the case law is also examined. That section cannot apply to shift the onus of proof in a criminal prosecution, at any stage of the prosecution. It is only where the circumstantial evidence fully establishes the guilt of the accused, and where, nevertheless some explanation by the accused compatible with his innocence could possibly be put forward by him, relating to facts within his exclusive knowledge, that his failure to put forward any such explanation could be considered by the court as an additional circumstance

against him. Clearly, an accused might fail to put forward a particular explanation such as theft or dishonest retention of the jewels of the victim, which may be true, owing to fear or ignorance. Where such a probability exists the mere fact that he does not put forward the explanation, cannot justify the inference of guilt, when the chain of circumstantial evidence is other-wise incomplete.

15. We are therefore constrained to acquit the accused upon the charge of murder, and to convict him instead upon the charge of theft Section 379 I. P. C. alone. In view of the Relatively short interval between the murder and the production of jewels by the accused, we convict him only for this offence and not alternatively under Section 379 I. P. C. or Section 411 I. P. C. which would be the proper conviction if the interval were to be longer. We sentence the accused to undergo rigorous imprisonment for three years.

16. Before taking leave of the case, we areconstrained to observe that we do feel the moralconviction that the accused was probably guilty ofparticipating in the murder itself. We are mostreluctant that an offender in such a grave crimeshould escape retributive justice, and we have toobserve that this is directly due to the very defective investigation of this case. Investigation in thiscase was neither alert nor industrious. Considering that the accused lived in a neighbouring village,and that many villagers would have been astir atdawn when the old woman went out, surely industrious investigation could have unearthed pieces ofevidence relating to the movements both of the victimand the accused. If only such evidence had beenforthcoming, to show that the accused was seenin that locality at about that time, or even proceeding towards it, the situation would have beenfar different If, as we suspect, the umbrellaM. O. 6 was not the weapon of offence at all,it is clear that the investigation has been imperfect upon this vital aspect also. We desire thatour views to this effect should be forwarded to theproper authorities, so that hereafter at least analert and thorough investigation might procure allrelevant pieces of evidence, where proof of sucha grave crime depends upon circumstantial evidence alone, in order to enable the courts to meteout full justice.

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