

Sampath Vs. the State

Sampath Vs. the State

SooperKanoon Citation : sooperkanoon.com/790183

Court : Chennai

Decided On : Sep-18-1995

Reported in : 1996CriLJ1487

Judge : J. Kanakaraj and ;Janarthanam, JJ.

Acts : Indian Penal Code (IPC), 1890 - Sections 201 and 302; Criminal Porcedure Code, 1973 - Sections 313; Evidence Act - Sections 27

Appeal No. : Criminal Appeal No. 181 of 1987

Appellant : Sampath

Respondent : The State

Advocate for Def. : R. Raghupathy, Addl Public Prosecutor

Advocate for Pet/Ap. : S.E. Victor, Adv.

Judgement :

Janarthanam, J.

1. The appellant was an accused in S.C. No. 11 of 1986 on the file of Court of Session, Tiruchirappalli, Division Tiruchirappalli. He was found guilty for the offences under Sections 302 and 201 I.P.C., convicted thereunder and sentenced to imprisonment for life for the offence under Section 302 I.P.C. and to rigorous

imprisonment for two years, for the offence under Section 201 I.P.C. with a direction for the sentences to run concurrently.

2. Aggrieved by the said conviction and sentence, the present action had been resorted to.

3. Brief facts are :

(a) The scene village Thirumakkoodalur village lies within the jurisdiction of Vangal Police Station. The accused bails from the said village. He had been etching out his livelihood by engaging himself in weaving mosquito nets. The marriage between one Vijayalakshmi (since deceased) and the accused took place some two years prior to the occurrence, which event happened on 13-8-1985. A male offspring came into existence to the spouses.

(b) The material abode of the accused and the deceased were always found in troubled waters. There were very often bickerings and quarrels between them for one reason or the other. Such bickerings and quarrels between them always centred around the accused denying his wife, the deceased the legitimate amount for defraying the family expenses. This apart, the accused was having some sort of suspicion in his mind that the deceased had swerved away from the path of virtue and that she had incestuous connection with one Kathirvel and this sort of suspicion also led to frequent quarrels between the spouses;

(c) P.W. 1 and P.W. 6 are respectively the brother and sister, while P.W. 2 is the mother of the deceased. The accused and the deceased had been living together in a separate house. The house of P.W. 2 the mother of the deceased is situated at a distance of 150 feet away on the east of the house of the accused.

(d) On the morning of the day of the occurrence at or about 11 a.m. the deceased, as usual took the cattle for the purpose of grazing. Usually, she would return by about 1.30 p.m. On the date of occurrence, unusually, she did not at all return home even late in the evening. P.W. 2 the mother feeling something suspicious about her daughter, the deceased went in search of her and she appeared to have made a hectic search in and around the river bed in the village. During such

search operation, she was able to identify a pair of chappals of the deceased - her daughter near the vicinity of the river bank at an elevated place. She also found certain bloodstains there.

(e) When she returned to the house, at about 6.00 p.m. after search, she again with the help of some villagers and her daughter, P.W. 6 made a hectic search of her daughter - the deceased and such search also proved futile. Again she returned home. At that time, the accused was standing in front of his house. On seeing her, the accused was stated to have proclaimed that he had done away with her daughter the deceased his wife and that he would not leave her i.e. P.W. 2 without being killed and so saying he had been running after her with an aruval in his hand. In order to protect P.W. 2 from being assaulted by the accused, she was kept under a lock and key in the house of one Subramaniam by P.W. 3, a neighbour.

(f) In the meantime at about 5.00 p.m. the villagers, viz., P.Ws. 4 and 5 had the fortuitous opportunity of seeing the accused near the river bed, while they were grazing the cattle in the vicinity of the lake (eari) and at that time, the accused was found to be wearing wet clothes, presumably after taking bath in the river. He was also found to be in possession of M.O. 1 aruval in his hand by P.W. 5.

(g) The accused, who attempted to cut P.W. 2, mother of the deceased was subsequently apprehended at or about 6.30 p.m. near Bajani Madam in the village by P.W. 8 and others. At that time, the accused was in possession of M.O. 1 aruval, which had been snatched away by P.W. 1. P.W. 8 was stated to have recovered from the trouser pocket of the accused M.O. 2, a packet containing insecticide. One Subramaniam was stated to have snatched from the accused a diary M.O. 3 and thereafter the accused was stated to have been tied to an electric lamp post. Keeping one Chandran and another to keep a watch over the accused, P.Ws. 1 and 8 went to Vangal Police Station, alongwith M.Os. 1 to 3 for the purpose of lodging an information respecting the occurrence.

(h) P.W. 11 was the then Inspector of Police, Vangal Police Station. At or about 11.45 p.m. on 13-8-1985, while he was in the Police Station, P.Ws. 1 and 8 appeared before him. P.W. 1 gave Ex. P. 1 information, on the strength of which,

P.W. 11 registered a case in Crime No. 100 of 1985 for an alleged offence under Section 302 I.P.C. He seized M.Os. 1 to 3, as produced by P.W. 1 under Ex. P. 2 Mahazar attested by P.W. 8 Ex. P. 13 is the printed F.I.R.

(i) P.W. 12 was the then Inspector of Police, Vangal Police Station. At 6.00 a.m. on 14-8-1985, after receiving a copy of the F.I.R., he took up further investigation of the case. He then, rushed and reached the scene by 7.00 a.m. He arrested the accused, who was tied up to the electric lamp post in the village. On interrogation, the accused gave voluntary confession statement under Section 27 of Indian Evidence Act. Ex. P. 3 is the admissible portion of the confession. At 7.00 a.m. he seized M.O. 9 rope utilised for fastening the accused to the electric lamp post, M.O. 7 shirt, the accused was wearing then and his dhoti M.O. 8 under Ex. P. 6 mahazar. Exs. P. 3 and P. 6 were arrested by P.W. 8. Pursuant to Ex. P. 3 confession, the accused was stated to have been P.Ws. 8 and 12 to the scene of occurrence. After inspecting the scene, he prepared Ex. P. 4 observation mahazar in the presence of P.W. 8. He drew a rough sketch of the scene Ex. P. 14. He also seized from there bloodstained earth M.O. 4, sample earth M.O. 5 and a pair of chappals M.O. 6 series under Ex. P. 5 mahazar in the presence of P.W. 8. At about 9.00 a.m. he recovered the body of the deceased from a bush at the instance of the accused with the help and aid of P.W. 7. Between 9.00 a.m. and 12.00 noon, he held inquest over the body of the deceased. During inquest, he examined P.Ws. 1 to 3 and 6. Ex. P. 15 is the Inquest report.

(j) P.W. 9 was the then Assistant Surgeon attached to the Government Hospital, Karur. On receipt of Ex. P. 7 requisition, he held autopsy over the body of the deceased at 3.00 p.m. Ex. P. 8 is the post-mortem certificate, he issued. He would opine that the deceased would appear to have died due to shock and haemorrhage by about 20 to 30 hours prior to autopsy. He would further opine that the injuries found described in Ex. P. 8 could have been caused by a weapon like M.O. 1.

(k) After the autopsy was over, the Constable No. 2883 seized from the body of the deceased M.O. 10 saree, M.O. 11, Skirt and M.O. 12 blouse and handed over them at the Police Station. Then were all seized under Form 95.

(l) P.W. 12 on the same day, examined P.Ws. 4, 5, 7 and 8 and others. He took the accused to the Police Station at 5.00 p.m. and arranged to send him to Court for remand. On 15-8-1985, he examined P.W. 9. On 21-8-1985, he produced the incriminating material objects before the Judicial Second Class Magistrate, Karur. On 28-8-1985, he sent Ex. P. 9 requisition to the said Court for sending those material objects to the chemical examiner for the purpose of examination.

(m) P.W. 10 was the then Head Clerk attached to the Judicial Second Magistrate, Karur. On receipt of Ex. P. 9 requisition, pursuant to the directions of learned Magistrate, he separately packed and sent the incriminating material objects to the Chemical Examiner for the purpose of examination under the original of Ex. P. 10, officer copy of the letter. Exs. P. 11 and P. 12 are respectively the reports of the Chemical Examiner and the Serologist.

(n) In the meantime, P.W. 12 appeared to have been transferred and his successor Inspector, by name Natarajan, after verifying the investigation already made, laid the final report before the Judicial Second Class Magistrate, Karur against the accused for the alleged offences under Section 302 and 201 I.P.C. on 15-11-1985.

4. On committal, learned Sessions Judge, Tiruchirappalli Division, Tiruchirappalli framed charges against the accused under Sections 302 and 201 I.P.C.

5. The accused, when questioned as respects the charges so framed denied the same and claimed to be tried.

6. The Prosecution in proof of the charges so framed examined P.Ws. 1 to 12, filed Exs. P1 to P15 and marked M.Os. 1 to 12.

7. The accused, when questioned under Section 313 of the Code of Criminal Procedure as respects the incriminating circumstances appearing in evidence against him, denied his complicity, in the crime. He also filed a written statement, denying his complicity in the crime. He did not, however, choose to examine any witness on his behalf.

8. Learned Sessions Judge, on consideration of the materials placed and after hearing the arguments of the respective learned counsel for the accused and learned public prosecutor, however, rendered a verdict, as stated above.

9. Mr. S. E. Victor, learned counsel appearing for the accused/appellant would with all force and vehemence, submit that all materials available on record in the case on hand relatable to certain incriminating circumstances stated to show the hand of the accused in the commission of the heinous crime of murder of the deceased his wife, if scanned and sifted in a broad spectrum analysis can by no stretch of imagination be stated to point out that the accused and him alone could have committed the murder of the deceased and such being the case, it would be fit and proper for this Court to acquit him, by giving him the reasonable doubt to which submission Mr. R. Raghupathi, learned Additional Public Prosecutor would strike a discordant note.

10. The various pieces of circumstances relied upon by the prosecution to bring home the guilt of the appellant/accused are as below :-

(1) The incriminating circumstances of the deceased meeting the fateful end due to the homicidal violence, as disclosed by the testimony of the doctor P.W. 9, coupled with Ex. P8, the Postmortem certificate, he issued.

(2) Want of cordial atmosphere in the marital abode of the accused and the deceased ever since the marriage, as a consequence of the accused not giving sufficient and adequate money for defraying the family expenses, besides suspecting the fidelity of his wife, the deceased as spoken to by P.Ws. 1 and 2.

(3) The factum of the deceased going out of the house as usual at about 11.00 a.m. on the date of occurrence and not at all returning back to the house till late in the evening and her pair of chappals, M.O. 6, series being found in the vicinity of Cauvery river in the village late in the evening on the date of occurrence by her mother, P.W. 2.

(4) The accused being found near the river bed in the evening by P.Ws. 4 and 5., sporting wet clothes on his person, presumably pointing out his having taken bath

in the river at or about the relevant point of time. He was also found in possession of M.O. 1 aruval by P.W. 5.

(5) The extra judicial confession stated to have been made by the accused to P.W. 2 as if he committed the murder of the deceased, his wife, and making an attempt on the life of P.W. 2 proclaiming that he would not leave her also without being killed.

(6) The apprehension of the accused near Bajani Madam in the Village at or about 6.30 p.m. by P.Ws. 1 and 8 and his being tied to an electric lamp post and the recovery of M.O. 1 aruval from his possession by P.W. 1.

(7) Ex. P. 3 the admissible portion of the so called confession statement given by the accused to P.W. 12 leading to recovery of the body of the deceased from a bush.

11. The fact that the deceased died of homicidal violence, as disclosed by the testimony of P.W. 9 coupled with Ex. P. 8 the postmortem certificate, he issued admits of no doubt. The most important question that arises for consideration is as to whether there is sufficient and adequate evidence in whatever form to point out that the accused and him alone had committed the murder of the deceased at or about the relevant point of time.

12. As stated earlier there is no pale of controversy that there is no evidence direct and what all the evidence available, consists of the pieces of incriminating circumstances as stated above in a case resting on circumstantial evidence, it is incumbent on the part of the prosecution to establish beyond any shadow of doubt each and every circumstances and the proved circumstances must lead to the one and only hypothesis that the accused and him alone had committed the heinous crime of murder with which he was charged.

13. (a) The motive suggested by the prosecution for the accused to have arisen in revolt against his wife - the deceased to commit her murder arose this way. The marriage between the accused and the deceased took place some two years prior to the occurrence. The spouses were stated to have resorted to frequent quarrels

and skirmishes on account of the accused not giving adequate payment to his wife the deceased for defraying the family expenses. Such skirmishes and quarrels usually do arise in all families and there cannot be any family without such a quarrel. Therefore, such a quarrel cannot at all be stated to operate as a motive on the part of the accused to have committed the act of murder of his wife, the deceased.

(b) The other part of the motive is that the deceased developed some sort of infatuation towards one Kathirvelu and that the deceased swerved away from the path of virtue. For proof of such incestuous connection between the deceased and the said Kathirvelu, no best evidence had been produced in the sense of examination of her paramour viz., Kathirvelu. What all evidence that is available in this regard is the evidence of P.W. 1., the brother and P.W. 2 the mother of the deceased, who would simply state that the accused was harbouring some sort of suspicion that the deceased - his wife had swerved away from the path of virtue in the sense of having illicit connection with one Kathirvelu. As such, it cannot be said that there was sufficient and adequate motive for the accused to have thought of committing the murder of his wife - the deceased. The motive, as suggested by the prosecution therefore bristles next to nothing.

14. The fact of the deceased going out of the house at or about 11 a.m. on the fateful day of the occurrence and not returning back home till late in the evening and her pair of chappals M.O. 6 series alone being found near cauvery river, where the accused was stated to be found during evening hours at 5 p.m. by P.Ws. 4 and 5 sporting wet clothes on his person cannot at all be said to point out any sort of criminality on the part of the accused and therefore such a circumstance is of no consequence.

15. The signal circumstance of vital importance if at all pointing out some criminality on the part of the accused lies in the extra judicial confession stated to have been made by him to his mother-in-law P.W. 2. It is the evidence of P.W. 2 that when she returned to her house after making a hectic search of her beloved missing daughter-the deceased in the vicinity of the Cauvery river, she found the accused standing in front of his house and at that time, he stated that he had done

away with her daughter and by so saying, he was also stated have proclaimed that he would not leave P.W. 2, also without being killed.

16. (a) P.W. 6 her daughter would also tread on the path chosen by P.W. 2., in the sense of lending support to her evidence on the aspect of extra judicial confession. It is to be taken note of here that P.W. 6 did not advert to the aspect of the accused making an extra judicial confession while she was examined during the course of investigation and this aspect of the matter had been brought to light by hurling necessary questions to P.W 12, the Investigating Officer during the course of cross examination. In such state of affairs, the evidence of P.W. 6 relatable to the so called extra judicial confession made by the accused cannot at all be given any credence and weight.

(b) No doubt, there remains the testimony of P.W. 2 as to the extra judicial confession of the accused. If really the accused had made such a confession, it would not have escaped the notice of P.W. 3 who was stated to have been present at the relevant time, when especially she was the person who put P.W. 2 and her daughter inside the house of one Subramanian and had locked the house in order to prevent them from the attack to be made by the accused. But PW 3 did not utter a word on this aspect of the matter. In such a situation, we rather feel that the testimony P.W. 2, as relatable to extra judicial confession stated to have been made by the accused is not above reproach and beyond suspicion. We are therefore unable to place any reliance upon her testimony.

17. We are also unable to place any safe reliance under Ex. P-3 confession statement of the accused made under Section 27 of Indian Evidence Act. P.Ws. 1 and 8, before even P.W. 12 came to the scene of occurrence, Apprehended the accused, as if he was the culprit in committing the heinous crime of murder of his wife-the deceased and tied him to the electric lamp post.

18. The accused himself was available in the Village being tied to an electric lamp post for more than 12 hours till upto the arrival of P.W. 12 to the scene at 7.00 a.m. on the next day morning. In such a situation we rather feel that the recovery of the body of the deceased from the bush pursuant to the so called confession statement under Ex. P-3 of the accused is rather a stage managed show to suit

the exigencies of the case of the prosecution. It is also to be pointed out here that M.O. 1 aruval was not at all recovered, pursuant to the confession given by the accused. But, it was stated to have been recovered by P.W. 1 from the accused at the time of his apprehension, and the connection between the crime and the weapon of offence also had not been established, in the sense of the said aruval did not even contain any blood, leave alone the group of human blood as that of the deceased as being found therein as revealed in Ex. P. 11, the Chemical examiner's report.

19. Thus, the circumstances as pointed above, each by itself or coupled with the other circumstances did not at all lead to point out that the hand that was responsible for committing the murder of the deceased was none else than that of the accused. In this view of the matter, the conviction and sentence as had been imposed upon the accused/appellant by the Court below for the offences under Sections 302 and 201 I.P.C. deserve to be set aside.

20. In the result, the appeal is allowed. The conviction and sentence as had been imposed upon the appellant/accused by the Court below for the offences under Sections 302 and 201 I.P.C. are set aside and the accused is acquitted thereof. The bail bond, if any executed by the appellant/accused shall stand cancelled.

21. Appeal allowed.