

In Re: Marudai Prisoner

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SooperKanoon Citation : sooperkanoon.com/805207

Court : Chennai

Decided On : Feb-17-1960

Reported in : 1960CriLJ1102

Judge : Ramaswami and; Anantanarayanan, JJ.

Appellant : In Re: Marudai Prisoner

Judgement :

Anantanarayanan, J.

1. This is a reference by the learned Sessions Judge of Tiruchirapalli in Sessions Case No. 93 of 1959 on his file, convicting; the first accused in that case (Marudai) both of murder (Section 302 IPC) and causing disappearance of the evidence of crime (Section 201 I. P. C), and sentencing him to death upon the first charge, and to rigorous imprisonment for two years upon the second. At the outset itself, it is important to note that the prosecution related to the murder of one Sellayee, the wife of this accused 1, aged at about 18 when she was killed, and to the disposal of her body. Further, that accused 2 in the case, who was tried upon the charge Under Section 201 IPC alone but acquitted by the learned Sessions Judge, was the Village Munsif of Irunagalur (Lalgudi Taluk), apparently a man of some influence and some local status. The appeal of the condemned prisoner is also before us.

2. The case rests entirely upon circumstantial evidence, and those pieces of evidence have to be carefully set forth, and considered in their cumulative effect. Another difficulty in this case relates to the very imperfect police investigation at crucial stages, which has led us to consider anxiously the nature of the comments that we feel constrained to make, in the interests of justice, upon this aspect, particularly as the time or suggestion is also present that the local influence of the accused might not be unconnected with the lethargy of the police.

We may add, at this stage itself, that the case, in its original frame as presented by prosecution, also depended in large measure for its strength upon the evidence of Nallu (P.W. 19), the approver, whose confessional statement had been judicially recorded (Exhibit P. 25). But, unfortunately for the prosecution, P.W. 19 declined to stand by the confession in his testimony at the trial, and had to be treated as a hostile witness by the Public Prosecutor in the Court below. That certainly added to the difficulties of the prosecution, in this already difficult and somewhat complicated case upon the facts. The learned Sessions judge has attempted to deal with the pieces of circumstantial evidence appearing against the present accused in a careful and lucid manner, but, unfortunately, he has not set forth the facts in their details, in a chronological sequence.

The result of this is that the exact relationship' between the facts of evidence, as gathered and presented at trial, and the manner in which the Police-investigation was conducted, has not been fully brought to light in the judgment. We think that this is very important. We have no doubt that the most unfortunate apathy displayed by the Police authorities, at critical stages, has not merely affected the entire case even against the present appellant, but also rendered certain facts themselves somewhat doubtful. We hence propose both to set out the facts chronologically, and, subsequently, to analyse them critically, in order to see how far guilt has been brought home to the appellant before us.

3. Sellayee (deceased) was the eldest daughter of Veeran (P.W. 1) and she was married to the appellant at Perumalmalai in June-July 1958, A. jacket (which, in a torn condition is M. O. 2) was presented by P.W. 1 to her before her marriage; When she came with her newly-married husband' to the house of P.W. 1, a few

days after the marriage, she was also wearing a saree (M. O. 1), which was said to have been presented to her by accused 2, Later, the deceased and the appellant again came to the house of P.W. 1 for 18th-of Adl (July-August 1958), when P.W. 1 presented her with a bead necklace (M. O. 3). At this visit, for the first time Sellayee complained that accused IV mother (her mother-in-law) was asking her to have illicit intimacy with the Village Munsif (accused 2), and that accused 2 was also attempting to seduce her.

A week after this, P.W. 1 received a letter from Sellayee to the effect that the appellant and herself were at Nilgiris, earning their livelihood.-Four months later, which takes us to about November, 1958, the deceased came alone to the house of P.W. 1, and expressed some reluctance to return to Irungalur, repeating the story that accused 2 was attempting to have illicit intimacy with her. A few days later, the appellant arrived, and the deceased and accused 1 went back to Irungalur, not without some reluctance as far as the girl was concerned. In January, 1959, shortly before Pangal deceased again returned to the house of P.W. 1 alone, and explicitly complained on this occasion that her mother-in-law (accused 1's mother) was in illicit intimacy with accused 2, and was pressing the deceased also to consent to such intimacy. She left for her husband's house, and this was the last time when P.W. 1 saw her alive.

4. This murder is supposed to have occurred on 12-3-1959, as nearly as can be determined. On-or about 14-3-1959, accused 1 alone came to the house of P.W. 1 in Kallulaidi, and stated that the deceased had eloped with an unknown person two days before. P.W. 1 gave the appellant Rs. 10/-, and sent him away in order to make a search, P.W. 1 then sent his son Andi to Irungalur. and the appellant alleged that his wife (deceased) had gone with someone to Nilgiris, On 16-3-1959 or 17-3-1959, Samban (P.W. 11) and Chellakutti (P.W. 15) both went to the Upper River bed at about 5 p. m., and saw some bones of a body, the head and left hand being missing. Because of a part of a saree (M. O. i) lying there, these persons suspected that the corpse might be that of Sellayee.

They went and told accused 1, who was in the garden of accused 2 along with P.W. 19, and accused 1 seems to have shown some initial reluctance to go and

view the body. Later he came with P.W. 11, and dug out the body with his spade, after which he said that it was not that of his missing wife. Accused 1 then dug a pit and again buried the body in the river bed. On or about 26-3-1959, P.W. 1, his nephew Chelliah (P.W. 7), and another came to Irungalur, and met some villagers who informed him that Sellayee had not gone to the Nilgiris, but had been murdered and buried in the bed of the Uppar, and that, if high officials came, they would point out the place of burial. In view of the subsequent facts of exhumation, we have no reason to think that P.W. 1 and P.W. 7 are deposing falsely when they state that they heard this information from some villagers. But failure of the police to enquire of these villagers and to discover these human remains as early as practicable, is one of the lamentable features of the tardy and inefficient investigation of the case.

5. However, this might be, after contacting the Village Munsif (accused 2), who stuck to the version the deceased was alive and must have eloped with someone to Nilgiris, P.W. 1 and his nephew P.W. 7 decided to take action, P.W. 7 went to Siruganur Police Station, and handed over a complaint to the Sub Inspector which is the original of Exhibit P. 17. A remarkable feature of this case is the failure to examine this Officer, or to produce the original complaint. Exhibit P. 17 is important in that it contains specific information, as given by certain villagers, that the girl had been cut and buried in the Uppar river bed.

On 27-3-1959, P.W. 1, P.W. 7 etc., met the Sub Inspector at about 6 P.M., who told these persons that he could not proceed to Irungalur to make enquiries, and that P.W. 1 could bring the villagers who, according to him, gave information about the murder. P.W. 1 and P.W. 7 went back and called the villagers, but those persons declined to go to the Police Station. We do not think that this is at all surprising, considering the facts of human psychology in the village areas. What is astonishing, on the contrary, is the attitude of the Police Officer, if the evidence is true, that he would not make enquiries at the village about what might be a very brutal murder, but that the witness should come to him first.

It is indisputable that on 30-3-1959, disgusted with the attitude of the local police, the father (P.W. 1) preferred a further complaint (Exhibit P.I) to the Assistant

Superintendent of Police at Tiruchirapalli. We consider that the endorsement of this Officer on the same date, is very significant, and we shall therefore quote it. It runs as follows :

V. E. (Very emergent' N. C. (name cover).

Inspector F for personal enquiry, necessary-action and urgent report to reach me before 6th April, 1959.

It is sufficient to note here that Exhibit P.I gives 'the facts of the previous infirmation by villagers, the complaint to the Sub Inspector of SiniKanur, and the evasion of the Village Munsif (accused 2). It further alleges that the murder was jointly committed by accused 1, Arulsami (P.W. 9) and another.

6. The Circle Inspector of Police Sri Ahmed (P.W. 17) states that Exhibit P.I reached him only on 6-4-1959. This has to be further verified, in view of the nature of the endorsement of the Officer (the Assistant Superintendent of Police) that we have earlier set forth. On 7-4-1959, P.W. 17 appears to have handed over Exhibit P.I to the Sub Inspector of Police, Siruganur for necessary action. This was at least sheer inefficiency, if not worse; for Exhibit P.I already contained more than a hint that the attitude of the Sub Inspector of Police, Siruganur, amounted to an abnormal reluctance to investigate this allegation of murder.

On 22-4-1959, P.W. 17 went to Siruganur in the course of his routine visits, and found that the Sub Inspector had taken no action on Exhibit P.I. He registered the case on 22-4-1959 under the caption 'Woman Missing', took up investigation, and sent Police Constables Nos. 2302 and 615 to Nilgiris to explore if Sellayee was there. Meantime, on 13-4-1959' P.W. 1, naturally disgusted with the apathy and indifference of the Police, and apparently despairing of redress through the usual channels, had printed a notice, the translation of which is Exhibit P. 3. This remarkable document is headed 'Mysterious murder of Irungalur, Lalgudi Taluk, Tiruchi District. Will the Madras State Government render Justice?' and is addressed to the District Superintendent of Police, Tiruchirapalli.

We would certainly discountenance the recourse to methods of this type, for attracting the attention of the authorities in a matter of an alleged grave crime, but, in the present case, it must be admitted that there was considerable justification for the publication of Exhibit P. 3. The last paragraph of Exhibit P. 3 contains a further allegation that accused 1 (appellant) was roaming about with an aruval, threatening that if anyone charged him with the murder of his wife, he would immediately kill that person just as he had inflicted cuts and killed his own wife. This allegation might be entirely false, but certainly it was verifiable in the village.

7. On 25-6-1959, the Sub-Inspector of Police, Siruganur sent intimation that Samban (P.W. 11) and other had seen what appeared to be the remains of a female body in the Uppar river bed. At 9-30 a.m. on 25-6-1959, certain human remains were exhumed in the presence of the Tahsildar Magistrate Sri Subramaniam (P.W. 5). 60 Bones, were so recovered, as well as the piece of saree (M.O.1), a torn jacket (M.O. 2) and certain plastic bangles (M. O. 4 series) Exhibit P. 11 and Inquest Report (Exhibit- P. 12). The remains were later forwarded to the Chemical Examiner, and we shall deal, in proper context, with the report of the Chemical Examiner (Exhibit P. 16a).

On 6-7-1959 this appellant (accused 1) was arrested, and examined. He made a statement to the Police (Exhibits P. 22a and b), in pursuance of which the Circle Inspector (P.W. 17) claims that he made two recoveries from the river bed, the wig or false hair (M.O. 7), and the bead necklace (M.O. 3). On 6-7-1959, the case of murder was registered Under Section 302 IPC In pursuance of information given by the appellant to the Police, P.Ws, 12, 13 and 14 were traced and examined. Exhibits P. 7, P. 19. P. 20 and P. 20(a) were recovered. The boy (P.W. 10) was also similarly traced, who is supposed to have written two Inland Letters (Exhibits P. 2 and P. 18), to the dictation of this accused.

On 12-7-1959 the ' approver (P.W. 19) was arrested. P.W. 19 was taken as approver on 24-8-1959. The confession of accused 1 was recorded ' by the Sub Magistrate, Musiri (P.W. 2) on 13-7-1959, 14-7-1959 (Exhibits P. 5 and P. 5a). The confession of the approver, who has not supported prosecution, is Exhibit P. 27.

8. We shall comment later upon the investigation of this case, and the extent to which the inefficiency, delay and neglect, evidenced by that investigation, may be said to have affected the facts alleged in prosecution evidence, For the present, we shall proceed to scrutinise and analyse the various categories under which guilt is attempted to be brought home as against this appellant, upon the charge of murder. They may be classified as follows : (1) motive (2) identification of the body or the corpus delicti (3) the extent to which the re-ytracted judicial confession of accused 1 could be acted upon, and (4) other pieces of evidence, concerning disposals of property by accused 1 (P.Ws. 12, 13 and 14), and the letters written by P.W. 10 at the dictation of accused 1, Exhibits P. 2 and P. 18.

We may here briefly state that the appellant denies the occurrence altogether, or that he had any motive to murder his wife, claims that he disposed of certain jewels only of his younger sister Karupayee in order to search for his wife in Nil iris, retracts his confession as made under Police coercion and threats of torture, and states that the letters Exhibits P. 2 and P. 18 were not written at his instance at all,

9. The aspect of motive is very unsatisfactory, in the present case. It is perfectly true that the law does not require that the element of motive should be proved by the prosecution; criminals have certainly been punished for apparently motiveless murders, upon proof of crime. But, in a case resting entirely upon the probabilities of circumstantial evidence, it may be significant where the alleged motive also fails to fit the few circumstances actually established. From the facts set out by us earlier, it will be clear that the suggested motive is that Sellayee was proving inconvenient to the Village Munsif (accused 2), as she would not yield to his solicitations. The mother of accused 1, was in league with the Village Munsif (accused 2), and accused 1 was himself a servant under accused 2, The story of the approver (P.W. 19) in his confession (Exhibit P. 27) is somewhat different, but significantly part of the same background.

According to this confession (Exhibit P. 27), 'Sellayee complained that the Village Munsif (accused 2) dragged her by the hand and attempted intimacy with her, and this incensed accused 2 so much, as the entire Village was laughing at him for the

rumour, that he (accused 2) directed that Sellayee should be done away with. In pursuance of this command, accused 1 and the approver together murdered the woman. But the story is different in the confession of accused 1 himself -(Exhibit P,5). Accused 1 claims that Sellayee and a maistry in the Nilgiris became intimate, and that Sellayee and the approver (PW. 19) were later talking jovially together which the appellant did not like.

Sellayee complained that P.W. 19 attempted to have intimacy with her, and accused 1 beat her for this. Accused 1 then told P.W. 19 that the girl was giving a lot of trouble, and should be done away with. The murder followed, according to this plan. It will thus be seen that there are 1960 Cri. L. J. D.F. 70, three different versions, with regard to motive, not one of which has been satisfactorily established.

10. The circumstantial evidence concerning the movements of accused 1 and P.W. 19 together with Sellayee, at about the time of offence, is slender and inadequate. Chinnayan Chettiar (P.W. 8) swears that he saw the deceased at about 8 P.M. one night, about the time of this murder, and that she then told the witness that herself, accused 1 and Nallu (P.W. 19) were going to see a cinema at Somayapuram. Even as she said this, accused 1 and P.W. 19 came to that spot and those people went way westwards. Accused 1 had a spade hanging from his shoulder. This, by itself, is of very little significance.

It is true that the confession of accused 1 (Exhibit P. 5) is in corroboration, but it cannot take us much further, since, if the confession were a tutored one, it would have been made to fit the few facts revealed by the investigation. Again, Arulsami (P.W. 9) swears that he later saw accused 1 with blood on his shirt, apparently the same night, and that accused 1 was then alone. When P.W. 9 taxed accused 1 with the blood, accused 1 confessed that he had murdered his wife Sellayee, and threatened the witness that he (P.W. 9) would meet with a similar end, if he divulged her death. Accused 1 had a spade at that time (M.O. 5) as well as an aruval (M. O, 6).

This evidence looks impressive, but it is actually entitled to very little weight, under the circumstances. P.W. 9 was named as a co-accused responsible for this

murder, as early as the report Exhibit P.I. It is clear from the admission of this witness in the Lower Court (Exhibit D-1) that he was treated as a co-accused by the Police, and probably kept in custody. His evidence is, therefore, quite worthless.

11. It is obvious that, in order to bring home guilt to the accused, the prosecution must affirmatively establish that the human remains exhumed in this case were those of the deceased Sellayee. If that fails, it would obviously be most unsafe to act upon the retracted judicial confession, even if we believe that the confession might have been voluntarily made, and that it does contain elements of truth. For it is a fundamental maxim of the Criminal Jurisprudence administered in this country, that suspicion and conjecture cannot take the place of legal proof.

If there is any possibility, even apart from a probability, that Sellayee might turn up alive from the Nilgiris tomorrow, or on some future date, the accused cannot be convicted of this murder. That possibility can be excluded only upon adequate evidence of the corpus delicti. In the present case, that inference is sought to be established upon the report of the Chemical Examiner (Exhibit P. 16 a), containing the opinion of an expert, and upon the identification of the piece of saree (M.O.I) and the torn jacket (M.O. 2), and perhaps also upon the discoveries made in pursuance of information given by this appellant from the river bed, the wig or false hair (M.O. 7) and the bead necklace (M.O. 3).

Now, we desire to emphasise that, whatever might be the situation in law with regard to proof of a report of a Chemical Examiner or other expert such as (Exhibit P. 16a), where that report not merely contains the result of a laboratory test, like file presence of human blood-stains, but also contains the opinion of an expert upon inspected material, such as bones or part of a skeleton, it is certainly the duty of the prosecution to examine the expert, and not merely to rely upon the report. The Public Prosecutor at the trial should certainly have examined Dr. Asirvadham,-the expert, instead of merely contenting himself with marking the report. We have now rectified this lacuna by ourselves examining Dr. M. Asirvadham, B.A., M.B.B.S., P.H.D., F.C.A.P., Professor of Forensic Medicine, Madras Medical College, whose opinion was the basis of the report,

His explanation is sufficient to show that it would be most unsafe to base the identification of the remains exhumed in this case upon this expert testimony. Dr. Asirvadham is clear that the bones were most probably of those of a female aged between 16 and 20 years, from the bones of the Pelvic girdle examined by him, as well as the epiphyses of the shoulder bones. But he is not even clear that all the bones must necessarily relate to a single individual. Referring to the cuts noticed in the bones (items 3 and 4) he is not at all certain that they must necessarily have been caused ante-mortem.

The account of the murder in the judicial confession, Exhibit P. 5, was read out to him, and he is not at all certain that the account inevitably fits in with the data revealed by his expert scrutiny of the bones. Apart from this, it is obvious that no reliance can be placed upon the piece of cloth or jacket (M. Os. .1 and 2). For P.W. 1 himself told the police that, in the absence of any specific marks, he could say nothing about the identification. There is another important point. Several bones were missing, including the entire skull. The account in Exhibit P. 5 is that the head was severed, and separately buried a short distance away, in the same river bed.

Why were the skull bones never recovered by the Police? As regards the bead necklace (M.O. 3) and the wig (M.O. 7), they are articles which could have belonged to any poor woman of the lower classes, and admit of no identification whatever. Dr. Asirvadham concedes that the cuts found in the bones could have been caused post-mortem, during burial or exhumation, by the sharp edge of a spade etc. In brief, it is impossible to conclude that the bones exhumed were those of Sellayee, or that the corpus delicti has been established.

12. The learned Sessions Judge placed some reliance upon the supposed reluctance of accused 1 to proceed to this spot and to see if the body was that of his missing wife, when P.Ws. 11 and 15 came and told him about the discovery of the body. We think that very little can be built upon this or even upon the two Inland letters, Exhibits P. 2 and P. 18, assuming that P.W. 10 wrote them to the dictation of accused 1. When rumours are afloat connecting a man with a grave and brutal murder, a quite innocent man may behave very foolishly, quite like a

guilty one.

He may attempt to fabricate some evidence, in order to see that he is not made to undergo the torture and suspense of a trial for murder. This has happened over and over again, in the annals of crime, and we do not think that such apparently guilt-conscious conduct should be heavily weighed against an accused, particularly where the identification itself is a matter of doubt.

13. As regards the judicial confession, it is clear enough that there is no adequate corroboration of it, which a Court of law can accept. We no doubt have the testimonies of P.Ws. 12, 13 and 14, but we have to recollect that accused 1 does admit that he disposed of certain jewels, for the sake of expenses for proceeding in search of his wife to the Nilgiris. No jewels were actually recovered, and we have no justification for an inference that the silver anklets etc, sold by accused 1 were those of Sellayee, and did not belong to some ' woman of accused 1's own family. The evidence relating to disposal of properties is, therefore, quite inconclusive. At best for the prosecution, it merely gives room for legitimate suspicion that that jewels might have belonged to the murdered woman, if she was actually murdered.

14. In this state of evidence, the sole conclusion that we can come to is that the circumstantial evidence is quite insufficient to bring home guilt to this accused, either upon the charge of murder, or of causing disappearance of the evidence. We are constrained therefore, to acquit the accused, upon both the charges. He is acquitted accordingly.

15. Finally, we desire to make a few observations upon the quality and nature of the investigation by the Police in this case. We shall be very guarded in doing so, so we gather that some departmental enquiry is pending as against one of the Officers directly concerned with the investigation. But we do feel that the conduct of all the Officials concerned in this investigation, from the Circle Inspector of Police (P.W. 17) downwards, should be the subject of a rigorous enquiry, and that appropriate action must be taken against those guilty of inefficiency or worse, in the interests of the Public.

Our feeling in this respect is strengthened by our strong suspicion that an innocent girl was probably brutally murdered, and that certain powerful local influences might have operated to smother prompt investigation, which would have brought the offender or offenders to justice. Leaving alone the extraordinary apathy and neglect of the Sub Inspector of Police, Siruganur, we are equally at a loss to account for the neglect of the Circle Inspector (P.W. 17) from 6-4-1959 to 26-6-1959, when the exhumation occurred. When the Circle Inspector (P.W. 17) could have marched straight to the village, and located the spot of burial with the help of the alleged informants referred to by P.W. 1, and arrested accused 1 at once if necessary, we find that he sends two constables instead to the Nilgiris to trace Sellayee, the missing wife.

We desire to observe that certainly the range of the Nilgiris was wider than the Uppar river bed, where the body was said to have been buried, and that too not far deep. If the remains had been promptly unearthed, after prompt arrest of accused? 1 and other suspects, it is not unlikely that far more adequate material could have been gleaned, which would have led to the fulfilment and not to the frustration, of justice. We hope that these observations will be duly noted by the authorities concerned, so that adequate action might be taken by them in this case, and the public could have the reassurance that such an episode would not occur in future, particularly where any of the citizens of this country alleges that a near and dear relative is missing under circumstances suggestive of foul play.

16. We also desire to acknowledge our indebtedness to the learned Counsel for the appellant, Sri S. Mohan Kumaramangalam, who has not been content to merely press the case for his client, but who has actively assisted the Court by painstaking elucidation of the facts, particularly in their chronological sequence.

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