

In Re: Subramaniam Alias Rangaswami

In Re: Subramaniam Alias Rangaswami

SooperKanoon Citation : sooperkanoon.com/807125

Court : Chennai

Decided On : Jul-01-1970

Reported in : (1971)2MLJ110

Appellant : In Re: Subramaniam Alias Rangaswami

Judgement :

R. Sadasivam, J.

1. Appellant Subramaniam alias Rangaswami has been convicted Under Section 302, Indian Penal Code, for the murder of his concubine Pavayee on the night of 27th August, 1969 in Parayan-kadu in the village of Ettikuttaipalayam, and sentenced to death subject to confirmation by this Court. He was also charged Under Section 404, Indian Penal Code, for having misappropriated the gold saradu weighing about 3 sovereigns from the dead body of Pavayee, but he was acquitted of the said charge.

2. The deceased Pavayee was the third of seven daughters of P.W. 1 Komaragoundan. She was married to one Pachai Kozhi about 15 years prior to this case. But she lived with him only for a couple of months and then she returned to her parents' house. It is stated by P.W. 1 that his daughter Pavayee divorced her husband according to the caste custom by removing thali. Pavayee was eking out her livelihood by weaving carpets and she even purchased some jewels out of the earnings, and one such jewel is the gold saradu alleged to have been stolen in

this case. During Karthikai 1968, she opened a tea stall in Modakurichanur village, north of Andhiyur. It is stated that the appellant, a widower with several children, became friendly with the deceased as he used to frequent the tea shop. There was loss in the business of the tea stall and it was closed down. P.W. 1 used to visit his daughter once in a fortnight or a month. In Adi prior to this occurrence, during one such visit, Pavayee is said to have told P.W. 1 that she was being cruelly treated by the appellant and that she would go over and live with him and that she would not return to the appellant. But P.W. 1 was asked not to divulge this fact to any one as she was afraid that the appellant would otherwise kill her. P.W. 1 invited the appellant and the deceased Pavayee to attend the festival of Thambikalayaswami in Podhiamoopanur village which is near his village, and they both went to P.W. 1's house about 8 days prior to the occurrence. On the evening prior to the occurrence, P.W. 1 gave money for purchase of mutton as Pavayee would not take fowl curry. The deceased Pavayee took mutton and wheat dosai and left the house at 10 p.m. in the company of her sisters P.W. 2 Ayyammal and P.W. 3 Parvathy, and the appellant, to attend the koothu in the temple festival. P.W. 1 did not accompany them. At about midnight the appellant returned with the deceased Pavayee to the house of P.W. 1 and asked P.W. 1 to accompany them again to attend the koothu at the festival. But P.W. 1 declined to do so. Though the deceased Pavayee was unwilling to return to the temple to attend the koothu, the appellant compelled and took her. On the next morning P.Ws. 2 and 3 returned home and on finding that Pavayee was not in the house, they questioned P.W. 1 and P.W. 1 became suspicious. P.W. 1 took the alternate cart track and found the dead body of the deceased Pavayee on the cart track within half a mile from the village. Except the gold saradu, the other jewels were intact on the body of Pavayee. P.W. 2 removed the jewels and subsequently handed them over to the police. P.W. 1 went about searching for the village munsif and he ultimately found him at 10 a.m. and gave the complaint Exhibit P-1 in this case. The inquest was held that evening between 6 and 9 p.m. and P.Ws. 1 to 3 and others were examined at the inquest. The Inspector of Police searched for the appellant in his house on that day and the next day but he could not find him.

3. The evidence of P.W. 4 Dr. Chenna-krishnan, who conducted the postmortem on the body of the deceased Pavayee, discloses as many as 17 injuries. Injuries 3,

10 and 14 are stab injuries on the right breast, left scapula and right scapula, and in the opinion of the doctor each of the injuries is necessarily fatal. There can be no doubt that the deceased Pavayee was murdered either on the night of 27th August, 1969 or the early hours of 28th August, 1969.

4. The evidence of P.Ws. 1 to 3 shows that Pavayee was kept as a concubine by the appellant and that the appellant and Pavayee were on cordial terms on the night prior to the occurrence. The only reason for the appellant to have killed Pavayee is left to be inferred namely, that she refused to return with him to his village. The appellant totally denied that he kept Pavayee as concubine, though he admitted that he used to go to her tea shop. The probabilities are that the appellant was intimate with the deceased Pavayee. But the more important question is whether the appellant was in the company of the deceased Pavayee on the night of the occurrence. There is only the evidence of P.Ws. 1 to 3 about this aspect of the case. P.W. 10 Muthan is a neighbour of P.W. 1. He deposed that about 20 days prior to the festival in Thambikalayaswami temple, the appellant and Pavayee came to P.W. 1's house and on the next day they returned to their place. He was treated as a hostile witness. P.W. 11 Sengodu is a resident of Ettikuttaipalayam. He deposed that he did not know if the appellant and Pavayee were in P.W. 1's house for about a month prior to her death. He went to the extent of stating that prior to the said one month the deceased Pavayee was living in her husband's house. If the appellant was living with Pavayee in the house of P.W. 1 for some days prior to the occurrence, a large number of villagers could have been examined to speak to that fact. If really the appellant and the deceased Pavayee attended the Koothu in the Thambikalayaswami temple, several persons who attended the festival could have seen them and they could have been examined. In fact, the witness could have spoken to the fact that the deceased Pavayee was wearing a gold saradu on the night of occurrence, if really she had attended the temple festival. In paragraph 10 of the judgment the learned trial Judge has observed that there is only the interested testimony of P.Ws. 1 to 3 that the deceased Pavayee was wearing the gold saradu on the night of occurrence and he has proceeded to comment on the fact that P.W. 2 had removed the jewels from the dead body of Pavayee even before the police arrived. The learned trial Judge has even proceeded to observe that it is not unlikely that the gold saradu if

it had been found on the neck of the deceased could have been taken and kept back. If these comments are justified, it is surprising how the trial Judge could have relied on the evidence of P.Ws. 1 to 3 that the appellant was in the house of P.W. 1 or that he went with the deceased Pavayee.

5. P.Ws. 1 to 3 speak to the fact that the appellant accompanied P.Ws. 2, 3 and others to attend the koothu in Thambikalayasami Temple. P.W. 3 does not know when the appellant and the deceased Pavayee left the temple and whether they left together, as she remained in the first row to witness the 'koothu'. The evidence of P.W. 2 is that when the koothu was in progress, the appellant called Pavayee to return home, but she stated that she wanted to witness till the end and that thereupon the appellant got angry and insisted that she should accompany him saying that they would go and fetch P.W. 1 to attend the koothu. The appellant himself could have gone and fetched P.W. 1 for the koothu. It is unlikely that the appellant would have insisted on the deceased leaving the koothu in the middle in order to bring P.W. 1 to attend it. If he had any evil design against the deceased at that time, it is unlikely that he would take her back to her home. The evidence of P.W. 1 is that the appellant returned with Pavayee at about midnight. According to him, it was a full moon night. But P.W. 1 did not want to attend the festival as it was drizzling. Even Pavayee was unwilling to go back to the temple to attend the rest of the koothu. But the evidence of P.W. 1 is that the appellant compelled Pavayee to accompany him and he forcibly took Pavayee with him to see the koothu. According to P.W. 1 the deceased Pavayee had complained to him about the threat of the appellant that he would do away with her. It is extremely unlikely that P.W. 1 would have allowed the appellant to take Pavayee by force on the night of the occurrence. In the complaint Exhibit P-1 there is no reference about the alleged threats or of the appellant returning home with Pavayee and going back with her to attend the koothu. It is stated in the complaint that Pavayee had come to his house about 15 days earlier, that the appellant having taken her to see koothu at about 1 o'clock in the night of 27th August, 1969, had murdered her by stabbing her with knife inside the field east of the village and had snatched away a gold saradu of three sovereigns and also a few other jewels. But the evidence of P.Ws. 1 and 2 is that only the gold saradu was removed and the rest of the jewels were in tact, on the body of Pavayee. It is strange that P.W. 1 should

have taken the footpath on the morning after the night of occurrence instead of going by the shorter route by the road to go to Podhiamoopanur. The evidence of P.W. 1 about the search for the village munsif and his finding him only at 10 a.m. for giving the complaint also appears to be artificial. The suggestion made to P.W. 1 which was however denied, appears to be probable, namely, that one Anaigoundan came and informed him that the dead body of Pavayee was lying in Parayankadu and that on getting the said information he went and saw the body there. It is extremely unsafe to act on the evidence of P.Ws. 1 to 3 that the deceased Pavayee left the house of P.W. 1 in the company of the appellant on the night of the occurrence.

6. Even assuming the fact that the appellant left the house of P.W. 1 in the company of the deceased Pavayee, the facts and circumstances of the case are not sufficient to prove the guilt of the appellant. We have already referred to the fact that the appellant has been acquitted of the charge Under Section 404, Indian Penal Code. The evidence of the Inspector of Police only shows that he searched for the appellant for a couple of days in his house and did not find him. When the appellant was questioned about it Under Section 342, Criminal Procedure Code, in the Sessions Court, he stated as follows:

I do not know whether they searched or not. People going to Oonjakattu colony said 'report has made only against you, that you stabbed and came away. What is it that you are sowing kambu ?...' and laughed. I dressed up and came to Pudupalayam. Nachiappa Chettiar said that it was only against me that report had been made. Immediately on being told so, I absconded and went direct to Erode and surrendered.

Even in the case of an accused person absconding on account of fear, it is a question to be considered, as pointed out at page 141 of Wills on Circumstantial Evidence, Seventh combined English and Indian Edition, by Sri M. Krishnamachariar:

Whether that fear proceeds from the consciousness of guilt, or from the apprehension of undeserved disgrace and punishment, and from deficiency of moral courage, is a question which can be judged of only by reference to

concomitant circumstances.

It is clear from this case that on coming to know of the accusation made against him, the appellant went and surrendered before the Sub-Magistrate. At page 139 of the same book there is reference to the observation of Abbott, J.'s charge to the jury on a trial for murder where evidence was given of flight that:

A person, however, conscious of innocence, might not have courage to stand a trial; but might, although innocent, think it necessary to consult his safety by flight.

It is unnecessary to discuss the principles of circumstantial evidence, apart from referring to Rules 1 and 4 found in Chapter VI of Wills on Circumstantial Evidence:

Rule 1 : The facts alleged as the basis of any legal inference must be clearly proved, and beyond reasonable doubt connected with the factum probandum.

Rule 4 : In order to justify the inference of guilt, the inculpatory facts; must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

In Eradu v. State of Hyderabad : 1956 CriLJ559 it was held, on the strength of the above principles, that:

Where the accused enticed away the deceased on the evening of the day of murder and the deceased was found hanging in the backyard of his house, these circumstances by themselves, are not enough, without anything more, to connect the accused with the crime.

Dangeti Satteyya, In re A.I.R. 1967 A.P. 213, is a case more relevant to the present discussion. The accused and the deceased in that case were living as husband and wife and the accused was charged with having committed the murder of the deceased. He and the deceased were seen moving together on the day of the occurrence. He had reasons to suspect the faithfulness of the deceased to him. After the occurrence of murder in that case he made himself scarce in the neighbourhood until he surrendered to the police after five days of the occurrence. It was held in that decision that these circumstances were insufficient to sustain a

conviction of the accused for the offence of murder. It is unnecessary to refer to the principles of circumstantial evidence in detail to justify the decision. Even if the evidence of P.Ws. 1 to 3 is accepted in this case, it will only raise very strong suspicion against the appellant. But that is not sufficient to constitute legal proof as contemplated in Rules 1 and 4 referred to in Wills on Circumstantial Evidence. But we have already pointed out how there are grave doubts even on the crucial fact, relied on by the prosecution as incriminating the appellant.

7. We need only refer to one or two circumstances appearing in the medical evidence to show how the doubt entertained by us in this case is enhanced by the opinion expressed by the doctor who conducted the post mortem. The evidence of P.W. 1 is that the deceased took mutton and wheat dosai and left his house in the company of P.Ws. 2 and 3 and the appellant at about 10 p.m. The evidence of P.W. 4, Dr. Chennakrishnan is that the deceased Pavayee should have died 24 to 30 hours prior to post mortem, that is, roughly between 4-45 and 10-45 a.m. on 28th August, 1969. He found 10 ounces of semidigested kambu rice mixed with meat and that the digested contents would show that it had come into the stomach about 2 1/2 to 3 hours prior to the death of Pavayee. This would indicate occurrence took place a little after midnight and not in the early hours of the morning, Further, the stomach contents disclosed kambu, but there is nothing in the evidence to show that the deceased Pavayee took kambu on the night of the occurrence. This throws doubt about the movements of Pavayee on the night of occurrence.

8. Thus the evidence in this case is hardly sufficient to sustain the conviction of the appellant on the charge of murder. The appellant is clearly entitled to the benefit of doubt in this case. The conviction of the appellant Under Section 302, Indian Penal Code, and the sentence of death imposed on him are therefore set aside. The appellant is acquitted and ordered to be released.