

Kaliammai Vs. State

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Court : Chennai

Decided On : Apr-17-2000

Reported in : 2000CriLJ3440

Judge : I. David Christian, J.

Acts : Pawn Brokers Act; Code of Criminal Procedure (CrPC) , 1974 - Sections 161(3) and 452

Appeal No. : Cri. Appeal No. 836 of 1999

Appellant : Kaliammai

Respondent : State

Advocate for Def. : M. Saravanan, Govt. Adv.

Advocate for Pet/Ap. : D. Veerasekaran, Adv.

Disposition : Appeal allowed

Judgement :

I. David Christian, J.

1. This appeal is preferred by the petitioner Kaliammai against the order passed in Cri. M.P. No. 372 of 1999 in SC No. 115 of 1998, on the file of II Additional Sessions Judge, Thanjavur dated 18-8-1999.

2. The petitioner Kaliammai is the wife of late Karuppiyah and the petitioner and Karuppiyah were residents of Melapoongudi village in Sivaganga Taluk in Sivagangai District. The petitioner Kaliammai is residing in her house in the native village where her children are also residing. The husband of Kaliammai, namely late Karuppiyah was running a hotel under the name and style 'Nithyakalyani Hotel' at Mary's corner in Thanjavur Town. Said Karuppiyah was residing in a house nearby situated in Pappupillai colony and looking after the hotel business. On 21-9-1997 Karuppiyah left the hotel at 2-00 p.m. in the afternoon and went to his house to take rest. Karuppiyah used to return to the hotel by 8-00 or 8-30 p.m.

One Sivaraman, a nephew of late Karuppiyah was assisting Karuppiyah in running the hotel and he was residing in Thanjavur and working in the hotel for the post more than 20 years. He used to be in charge of the hotel during the absence of Karuppiyah. On 21-9-1997 also he was looking after the hotel. Karuppiyah who had gone to his house for taking his afternoon nap and did not return even after 8-30 p.m. and therefore Sivaraman sent some of the employees to the house to look for Karuppiyah. They returned and stated that the door of the house where Karuppiyah was residing was bolted from inside and inspite of their knocking the door, Karuppiyah did not answer and therefore they came back and informed this to Sivaraman. Sivaraman went to the house where Karuppiyah was residing and since front door was bolted from inside, he went to the backside and found the backdoor remaining opened. When he entered the house, he saw the dead body of Karuppiyah lying in the front room near his bed and he had an injury on the head, a stab injury on the neck, besides other injuries all over the body. There was profused bleeding and Karuppiyah was found dead and by the side of Karuppiyah, a gold chain was found lying. The wooden almirah kept in the room was found opened and ransacked. One Narasappan who is the uncle of Karuppiyah who is also a native of Melapoongudi village was running a pawn broker shop at Thanjavur and he is also settled in Thanjavur for the past many years and was closely associated with late Karuppiyah. He used to advance monies on pledge of gold articles and whenever he was short of money, he used to take the pledged jewels and in turn give them to Karuppiyah and used to borrow money. In this manner till the date of occurrence, he has handed over to Karuppiyah gold jewels of varying in size, weight and type and the total value of the pledged articles will be

about Rupees 1,30,000/- and roughly they would be weighing about 35. 1/2 sovereigns. All of them were gold jewels. He also knew that Karuppiyah used to keep all the jewels in the wooden almirah in his house under lock and key. At 9-00 p.m. when he heard about the murder of Karuppiyah, he immediately went to his house and found Karuppiyah lying dead in the house with injuries on his head and other parts of the body. He found the bureay has been ransacked and gold jewels have been removed.

Sivaraman, the nephew of late Karuppiyah went to the police station on the same day at about 10-30 p.m. and lodged a complaint with regard to murder of Karuppiyah and missing of jewels. In the same report, Sivaraman also has pointed out the suspicion about involvement of three persons namely Jayaraj, Lakshmanan and Karikalan. Jayaraj and Lakshmanan were employed as workers in the hotel run by Karuppiyah and Karikalan was previously employed in the same hotel, but subsequently was dismissed by Karuppiyah. Some blood-stained clothes belonging to Jayaraj and Lakshmanan were also found in the back portion of the house. Karuppiyah has been done to death by beating with wooden logs and three wooden logs were found thrown in the backyard of the house. Karuppiyah used to store fire wood in front of the house for his use in the hotel. The Sub-Inspector of Police, south police station, Thanjavur on receipt of the complaint from Sivaraman, registered a case in his station Cr. No. 613 of 1997 under Sections 302 and 380, IPC.

The investigation of the case was taken by the Inspector of Police, Thanjavur west police station and he conducted inquest over the dead body in the presence of Panchayatdars. He prepared an observation Mahazar indicating the position of the dead body and wooden almirah, having been opened and contents ransacked. The body was sent for post-mortem. The Inspector of Police during the course of investigation on 23-9-1997 arrested the accused Jayaraj, Lakshmanan and Karaikalan at the Central Bus stand in Salem. All the three accused separately gave confession statements and on the information furnished by these accused the Inspector of Police traced one Nallathambi, resident of Salem, who is the elder brother of Karikalan. When the Inspector examined Nallathambi, he produced the stolen jewels, cash and other articles. These jewels were seized by the Inspector

of Police. The Inspector of Police has sent the seized articles including the jewels to Court for remand. After completing the investigation, he laid the charge-sheet. The accused were charged for the offences under Sections 449, 302, 392 r/w. 397 IPC and they were committed to take their trial before the Sessions Judge, Thanjavur by the Judicial Magistrate No. 1, Thanjavur.

3. The case was taken on file as S.C. No. 115 of 1998 before the II Additional Sessions Judge, Thanjavur and by the judgment dated 18-1-1999 he held that the charges against the accused were not proved beyond reasonable doubt and therefore acquitted the accused of the charges. During the course of trial Sivaraman was examined as P.W. 1 and Narasappan was examined as P.W. 2. The prosecution also examined other employees in the hotel run by Karuppiah as P.Ws. 3 and 4. Nallathambi from whom the jewels were recovered on the information furnished by the accused was examined as P.W. 5. However, P.W. 5, turned hostile. P.W. 6 another witness from Salem who was also examined to prove the confession and seizure of jewels, did not support the prosecution case and was permitted to be treated as hostile. The expert attached to forensic science Laboratory who has made an observation mahazar of the scene and who has examined the bloodstained articles taken from the scene was examined as P.W. 7. P.W. 8 is the Photographer, who took photographs of the scene. P.W. 9 is the Doctor who conducted postmortem over the dead body of Karuppiah. P.Ws. 11 and 12 are the Inspectors of police who have conducted investigation, who have arrested the accused and who have seized the properties. P.W. 10 is the Head clerk attached to Judicial Magistrate Court, Thanjavur who has spoken to sending the blood-stained articles for chemical examination. P.W. 13 is also an Inspector of Police who completed the investigation and laid charge-sheet.

The prosecution has filed Exs. P-1 to P-27 documents and has marked M.Os. 1 to 68, Besides blood-stained articles namely the wooden logs, sample blaster, sample clothes worn by the deceased, other M.Os are all gold chain recovered from the scene, gold jewels or articles seized on the information furnished by the accused during the course of investigation.

4. By the judgment dated 13-1-1999, the learned Sessions Judge has passed orders with regard to disposal of material objections (objects) marked in the case by stating that M.Os. 1, 7, 32, 51, 52 and 63 shall be returned to Kalliammai wife of late Karuppiiah. It is ordered that M.Os. 18 to 31, 39 to 59, 57 to 62 which are all gold jewels and a wrist watch, have to be returned to the persons entitled to the same and since sufficient evidence is not available at the time of trial with regard to persons who are entitled to receive them, the Sessions Judge ordered a separate enquiry under Section 452, Cr. P.C. and to decide with regard to return of those valuable articles.

5. The judgment of the learned II Additional Sessions Judge in S.C. No. 115 of 1998 was delivered on 13-1-1999. The accused have been acquitted and there is no appeal preferred by the State against the accused or by the persons who are interested in late Karuppiiah.

6. Even though the learned Sessions Judge himself in the judgment has ordered that a separate enquiry under Section 452, Cr. P.C. shall be held for deciding the entitlement of persons to receive the M.Os., he himself has not taken up the enquiry and he also did not forward the material objects to the Chief Judicial Magistrate for holding enquiry as ordered in the judgment for disposal of the valuable articles seized and marked in the Sessions case.

7. However, Kalliammai the wife of late Karuppiiah, filed Cri. M.P. No. 372 of 1999 before the II Additional Sessions Judge, Thanjavur himself who has taken up the petition for enquiry and passed orders with regard to disposal of M.Os. marked in the Sessions case. It is significant to note that Kalliammai, the widow of Karuppiiah, filed the petition praying for return of the jewels and cash, namely M.Os. 1, 7, 32, 51, 52 and 63 which were already ordered to be returned to her as per the judgment in the case. She has also preferred a claim in respect of M.Os. 18 to 31, 39 to 50, 57 to 62 and also a Wrist watch. Learned Sessions Judge during the course of enquiry into the claim petition has examined the petitioner Kalliammai as P.W. 1 and Narasappan as P.W. 2. But, by the impugned order dated 18-8-1999 the learned Additional Sessions Judge has dismissed the application and ordered confiscation to state of all the jewels cash and wrist watch stating that the

petitioner has not established her claim for return of these jewels to her.

8. The petitioner Kaliammai has prayed for return of not only the jewels pledged with late Karuppiah but also prayed for return of M.Os. 1,7,32, 51,52 and 63 stating that they belonged to her husband and therefore she is entitled to receive the same. Learned Sessions Judge himself by the judgment made in the Sessions case has already ordered return of these articles to Kaliammai the wife of late Karuppiah. But, even though such an order has been passed and an enquiry u/S. 452, Cr. P.C. was ordered only with regard to return of other jewels, while dismissing the petition, the learned Sessions Judge also dismissed the claim made by Kaliammai in respect of the jewels and cash admittedly belonged to her late husband Karuppiah. Learned Sessions Judge was completely wrong in rejecting the claim of Kaliammai in respect of M.Os. 1, 7, 32, 51, 52 and 63 ordered by the same Sessions Judge to . returned to her. Therefore, when the learned Sessions Judge has chosen to dismiss the petition in to which included these articles, it becomes obvious that the learned Sessions Judge has not applied his mind while disposing the claim made by the widow of late Karuppiah.

9. M.O. 1 is the gold chain worn by the deceased and which has fallen down during the struggle in course of which he was murdered brutally and this has been recovered from the scene from the side of the dead body by the police spon after the occurrence. In fact M.O. 1 has been proved through the evidence of P.W. 2 Narasappan, who has visited the scene soon after the occurrence before the Police Officials. M.Os. 32, 51, 52 and 63 are all cash change and currency notes which were recovered from the persons of the accused as result of the confession made by them to the police during investigation. These articles have been identified as belongings to late Karuppiah and therefore rightly they have been also ordered to be returned along with M.O. 1 gold chain to Kaliammai. So, so far as the order of confiscation made by the learned Sessions Judge in respect of M.Os. 1, 7, 32, 51, 52 and 63 is concerned, there can be no two opinions that it is liable to be set aside and they have to be delivered to Kaliammai, the wife of late Karuppiah as per the judgment of the learned Sessions Judge made in S.C. No. 115 of 1998.

10. I have perused the case diary, the statements recorded from the witnesses during investigation, the statements recorded from the accused when they were arrested by the Police, mahazar, prepared by the police and also the judgment made in S.C. No. 115 of 1998, Moreover we have the additional piece of evidence by way of examination of the petitioner and Narasappan during the enquiry into Cri. M.P. No, 372 of 1999 by the Sessions Judge himself.

11. The documents above referred to disclose the following facts which are not controverted and no contra evidence has been adduced.

Late Karuppiah is a resident of Melapoongudi village in Sivagangai district and P.W. 1, the appellant, namely, Kaliasammai is the wife of late Karuppiah. On being informed about the brutal murder of her husband at Thanjavur, where he was residing and running a hotel Kaliasammai has reached the house of Karuppiah even on the same night and she has seen the dead body lying at the scene, even at that time she has identified M.O.I gold chain which late Karuppiah was wearing and which belonged to him. It is unfortunate that Kaliasammai, the widow of late Karuppiah was not even examined during the trial of Sessions case in respect of murder of Karuppiah.

Sivaraman was examined as P.W. 1 in the case and P.W. 2 is Narasappan. During the course of evidence, both P.Ws. 1 and 2 have stated that P.W. 2 is a money lender and he is a licensed pawn broker. He used to lend money on receipt of pledge of gold jewels. P.W. 2 is also closely associated with the deceased Karuppiah. Karuppiah seems to have been doing well and was running the hotel for many years and he was a man of means and was possessed of lot of cash. It has also come out in evidence of P.Ws. 1 and 2 that whenever P.W. 2 was short of funds, he used to go to Karuppiah and by offering the pledged jewels with him, he used to take money from Karuppiah for his business. So, number of gold jewels which have been originally pledged by third parties with P.W. 2 Narasappan thus happened to be entrusted with late Karuppiah, who himself has advanced amounts to P.W. 2 keeping those jewels as security for the amount thus lent.

P.W. 1 Sivaraman is non-else than the nephew of late Karuppiah. He was assisting Karuppiah in running the hotel and he was with Karuppiah for 20 years.

He has also spoken to the fact that Karuppiyah used to lend money to P.W. 2 and he used to receive jewels as pledge from P.W. 2 with whom third parties have already pledged and raised loans it is now Karuppiyah who was living alone in Thanjavur running a hotel was possessed of lot of cash and jewels obviously Karuppiyah was living alone in the house which is also situated close to the hotel.

Of the three accused who were charged for the murder of Karuppiyah, accused 1 and 2 were employees working under Karuppiyah even at the time of murder while the third accused Karikalan was a dismissed employee of Karuppiyah since Karuppiyah was living alone in the house and since these accused were all employees under him. They must have come to the house of Karuppiyah now and then and they must have also come to know that Karuppiyah was always possessed of cash and jewels. It is only with the object of committing robbery of jewels and cash, these accused have entered the house and in course of robbery they have also committed murder and Karuppiyah died due to multiple injuries sustained by him, The evidence of P.Ws. 1 and 2 in the Sessions case with regard to the fact of late Karuppiyah being entrusted with jewels and being in possession of lot of cash was spoken to by them and in this aspect there was no cross-examination and this has not been denied even by the accused.

12. No doubt on going through the judgment of the learned Sessions Judge, I am including to hold that prosecution has not been conducted in an efficient manner expected in a murder case and P.W. 2 has not even asked to identify these gold jewels during the time of trial. He was asked to identify M.O. 1 which was recovered from the scene and which belonged to late Karuppiyah. The definite case of the prosecution is Karuppiyah was possessed of lot of gold jewels which he received as pledge on the strength of which he advanced money to P.W. 2 Narasappan.

So, P.W. 2 Narasappan would be the proper witness to identify the gold articles which were subsequently recovered from the accused in the course of investigation in pursuance of their arrest and discovery statements given by them. So far as enquiry with regard to return of properties concerned in a criminal case, it is permissible and lawful even to rely upon the statements made by the

witnesses during the course of investigation recorded under Section 161(3) Cr. P.C. perhaps the only judicial enquiry in which these statements can be relied upon as evidence is an enquiry with regard to disposal of properties in a criminal case. If only the learned Sessions Judge has gone through the case diary and has perused the statements recorded from these witnesses and correctly appreciated the evidence of prosecution at the time of trial, there could have been no difficulty for the learned Judge to make orders with regard to proper disposal of these valuable items. Learned Sessions Judge seems to have examined witnesses in a mechanical way and the learned public Prosecutor who was in charge of the prosecution case also seems to have been not bestowed enough attention over examination of witnesses as a result of which P.W. 2 during his examination as a witness has failed to identify and mark these valuable M.Os. in which case even at that stage he would have stated that originally those items were pledged with him by third parties and he in turn pledged them with Karuppiyah as security for the money borrowed by him from Karuppiyah. Anyhow even at the time of trial, there is no contra evidence of P.Ws., 1 and 2 with regard to pledging of jewels by P.W. 2 with late Karuppiyah.

13. Learned Sessions Judge cannot be found fault with when he has ordered a separate enquiry under Section 452, Cr. P.C. with regard to disposal of these valuable jewels which are weighing about 35 1/2 sovereigns and which are valued at Rs. 1,30,000/-. Kaliasammai who was not examined at the time of trial has filed criminal Miscellaneous petition praying for return of jewels and one has also clearly stated in the enquiry that barring certain valuable jewels which belonged to her late husband, all the other jewels were pledged with her husband by P.W. 2 Narasappan, who in turn obtained these gold jewels from third parties. In fact it is not as if that during enquiry under Section 452 Cr. P.C. P.Ws. 1 and 2 have just made bald statement asking for return of these jewels without disclosing the source and basis of their claim. P.W. 1 has clearly admitted that barring few items which belonged to her husband, rest of the items were all pledged by P.W. 2 Narasappan and the persons who have pledged them with Narasappan, after coming to know of the recovery of the jewels in the murder case have been coming and pestering her demanding return of jewels. P.W. 2 has also clearly stated that these jewels have been pledged with him by third parties and he in turn

pledged them with Karupiah for borrowing money on security of those jewels. P.W. 2 besides being closely related to Karupiah, was running a pawn shop under the name and style 'Sri Murugan Bankers'. In fact P.W. 2 has produced receipts for accepting those jewels as pledges from third parties which have been produced and marked in the enquiry as Exs. P-2 to P. 82. Learned Judge has also found that writings made in those receipts are all made in the hand of P.W. 2. P.W. 2 has also stated that he is running the pawn shop under the name and style 'Sri Murugan Bankers' and he has also obtained a licence for running the pawn shop. Even during the investigation at the earliest opportunity in the statement made under Section 161(3) Cr. P.C, P.W. 2 has clearly stated that he has got a ledger showing pledge of these articles with him and he also seems to have produced the ledger to the investigating officer at the time of investigation. Learned Judge has discussed the records produced by P.W. 2 stating that they are not maintained in the form required under the Pawn Brokers Act.

14. In the enquiry conducted with regard to disposal of properties concerned in a crime, the learned Sessions Judge is expected to appreciate the evidence and order disposal of the same and it is only a summary enquiry and the learned Judge is called upon to decide as to from whom they have been recovered and as to who are entitled to possession of those articles. In fact if any complicated question is raised with regard to title of those properties, the learned Sessions Judge need not bother himself because his decision will always be subject to any decision by a competent civil Court with regard to title and possession of movables concerned in a crime. This is especially so when there has been no contra evidence and there is no rival claim made by any person. The Sessions Judge has not rejected the case of P.W. 2 that all these Jewels have been entrusted to P.W. 2 by third parties as pledge for money borrowed. I can understand if those third parties have come forward to claim over and above the head of P.W. 2, in which case the learned Judge would be even justified in refusing to return the jewels to P.W. 2. Moreover, the learned Sessions Judge seems to have found fault with P.W. 2 for not producing more evidence and documents. As per the judgment, an enquiry has been ordered under Section 452, Cr. P.C. to find out the correct persons who are entitled to receive the gold jewels which are marked in the Sessions case and he could have even directed enquiry by the Chief Judicial

Magistrate, but the enquiry has to be conducted in the manner provided under the Code of Criminal Procedure and if the Judge has entertained any doubt it would have been open to him to summon those persons who are said to have pledged those jewels with P.W. 2. Even P.W. 1 the wife of late Karuppiyah stated that owners of those jewels are coming and demanding jewels because they were finally found to have been given to her husband by P.W. 2 who was the original pawner.

15. P.W. 2 has also spoken in support of the claim made by P.W. 1 and he had no objection for all these jewels being given to P.W. 1, the widow of late Karuppiyah because Karuppiyah was entitled to get back the money lent by him as a security for which these jewels were entrusted to him by way of pledge to P.W. 2. It is unfortunate that Karuppiyah was murdered and these jewels were removed, within two days after the murder, the Police have done a good job and have seized the jewels from the accused at a place far away from the scene of crime. Statements have been recorded from the accused, jewels have been recovered in the presence of mahazar witness. Who unfortunately turned hostile during the course of trial. It is not as if the accused have made a claim in respect of these jewels. The accused have just denied the possession of incriminating jewels or the information furnished by them. Nallathambi from whom these jewels were recovered by the Police as a result of discovery statements given by the accused has also naturally turned hostile because he is non-else than the elder brother of third accused Karikalan. But, the fact remains that the jewels which have been removed from the house of late Karuppiyah after brutally murdering him were all recovered intact and cash also have been recovered and produced before the criminal Court.

16. There is absolutely nothing to suspect the claim made by P.W. 1 supported by the evidence of P.W. 2 Narasappan. There can be no hesitation in accepting the case of the prosecution that these jewels have been produced and marked in the criminal trial belonged to third parties and they have been originally pledged with P.W. 2 Narasappan who in turn pledged then with late Karuppiyah from whose possession they have been removed by thieves, who have also committed the more serious crime of murder. It is unfortunate that the persons who have been

responsible for the murder and theft of these articles have not been punished for want of evidence. But, so far as entitlement of P.W. 1 to receive the jewels from the Court is concerned, there can be no controversy. P.W. 1 also do not claim all these jewels for herself and she has also sworn to the fact that demands are being made on her by the persons who have pledged them with P.W. 2 Narasappan. Narasappan also has no objection for returning all the jewels to P.W. 1 Kaliasammai, with whose help would see to it that these jewels are returned to the persons who pledged them with him. In fact before returning the jewels the persons who have pledged them have to pay the money borrowed from P.W. 2 and since P.W. 2 has borrowed money in turn from Karupiah, the money has to go to P.W. 1, the widow of Karupiah, who is the victim of the murder and robbery. It is not as if the persons who have pledged these jewels have chosen to come to the Court making claims against P.Ws. 1 and 2. There is absolutely nothing to show that P.Ws. 1 and 2 also have any intention of cornering these jewels for themselves. Late Karupiah has been in possession of these jewels at the time of his death and all these jewels were removed by culprits and therefore when those jewels were discovered thanks to the nice investigation done by the police, they must be restored to the legal heir of Karupiah, namely Kaliasammai. Kaliasammai is definitely entitled to possession of these jewels and therefore the learned Sessions Judge was absolutely wrong in ignoring her claim.

17. The fact that the learned Sessions Judge has not applied his mind becomes obvious from the fact that he has not returned the gold chain which admittedly belonged to Karupiah which was lying in the scene and which was seized by the Police during the course of investigation. If the learned Judge wanted to return the other jewels to the persons actually who are the owners, he must have embarked upon a full-fledged enquiry by summoning these persons who have pledged the jewels with P.W. 2 because P.W. 2 has supplied the names of those persons and their names are also found in Exs. P-2 to P-82. Therefore, in the absence of third party claims and in the absence of any evidence or ground to suspect that P.W. 1 would not return the jewels to the persons who have pledged them, the learned Sessions Judge was not correct in dismissing the claim and ordering confiscation. The State is the last person to whom the jewels could have been returned and the prosecution also never claimed. In fact the learned Government Advocate also has

absolutely no objection for allowing this appeal and for returning the jewels to P.W. 1, who will be holding the jewels in trust on behalf of the persons who have pledged them with P.W. 2 who in turn has pledged them with late Karuppiah. It is only natural and reasonable that the persons who have borrowed money on pledge of these jewels shall pay back the money to P.W. 1 and get the jewels. For the reasons stated above, the order passed by II Additional District Sessions Judge, Thanjavur in Cri. M. P. No. 372 of 1999 is liable to be set aside.

17A. In the result, the appeal is allowed and M.Os. 1, 7, 32, 51, 52 and 63 and M.Os. 18 to 31, 39 to 50, 57 to 62 and the wrist watch are all ordered to be returned to P.W. 1 Kaliasammai, the widow of late Karuppiah the victim in murder case in S.C. No. 115 of 1998. Learned Sessions Judge is directed to issue notice to the claimant P.W. 1 the widow of late Karuppiah to whom these jewels have to be returned without any further delay. Consequently the appeal is allowed. Cri. M.P. is closed.

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