

Peria Rajendran and Etc. Vs. State

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Court : Chennai

Decided On : Jul-10-2006

Reported in : 2007CriLJ1242

Judge : M. Chockalingam and ;M.E.N. Patrudu, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 120, 302, 380, 398 and 451;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. A. Nos. 1179 of 2002 and 551 of 2004

Appellant : Peria Rajendran and Etc.

Respondent : State

Advocate for Def. : P.N. Pandidurai, A.P.P.

Advocate for Pet/Ap. : K. Thirumalai Raj, Amicus Curiae

Judgement :

M. Chockalingam, J.

1. This judgment shall govern these two appeals in Cri. A. Nos. 1179/2002 and 551/2004.

2. These two appeals are preferred by A-1 and A-2 respectively in S.C. No. 191 of 2000 wherein they stood charged namely A-1 and A-2 under Section 120(b) of

I.P.C., A-2 under Section 451 of I.P.C., A-1 under Section 302 read with 109 of I.P.C., A-2 under Section 302 of I.P.C. and A-1 and A-2 under Section 398 of I.P.C, and on trial, they were found guilty and sentenced to life imprisonment along with fine under Section 120(b) of I.P.C., life imprisonment along with fine under Section 302 read with 109 and 302 of I.P.C. respectively, and 7 years rigorous imprisonment along with fine under Section 398 of I.P.C., and A-2 was sentenced to 3 years rigorous imprisonment along with fine under Section 451 of I.P.C.

3. The short facts necessary for the disposal of these appeals can be stated thus:

(a) P.W. 1 is the sister of the deceased Kanagavelammal. P.W.3 is her son. The deceased was employed in a Government Department, and due to her ill-health, she came out on V.R.S. She was living in Door No. 372/6, 5th Street, Rajiv Nagar, Kovilpatti, along with her husband. Her husband was also employed as a Development Officer in a nearby station, who used to go over there the early hours of the day. She was suffering from paralysis, due to which she could not move about. P.W. 5 was working as a servant-maid. Before a month, she was stopped from service as she could not carry on the work. But, on the request of the deceased, she took the first accused to serve under the deceased. Accordingly, the first accused was serving during the relevant time. P.W.3, the son of the deceased and a practising lawyer, and the wife of P.W.3 were also in the same house staying with the deceased. Due to the quarrel, just before the occurrence, the wife of P.W. 3 left for her parental home in a nearby place. Thus, on the date of occurrence, the deceased alone was available in the house. P.W.4 was having a firewood shop in the next street. Whenever she found time, she used to go to the house of the deceased and used to chat with her. A few days prior to the occurrence, she came over to the house of the deceased and found A-1. She enquired about her and came to know that A-1 was put in service. On seeing A-2, she enquired whether he was her husband, and the deceased also answered as such. On the date of occurrence namely 28-10-1977, as usual A-1 came for work. At about 9.00 a.m., P.W.5 came to the house of the deceased and found A-1 working in the kitchen. At the same time, she also found A-2 standing outside the house. After having a chat with the deceased, she went home. Following the same, P.W.4 just about 15 minutes prior to the occurrence, found both the

accused crossing her shops and after half an hour also, she found them crossing back and going through the street.

(b) At about 10.30 a.m., P.W. 1, the sister of the deceased, reached Kovilpatti from her village in a bus, got down at the bus stand and went to the house of the deceased. When she was proceeding, on the way she was questioned by a teacher whether she was coming only then, P.W. 1 was telling that she came over to see her sister. Thereafter, P.W. 1 went inside the house of the deceased and found her sister lying dead in a pool of blood, and she shouted. All the persons assembled there. At about 12.00 noon, she proceeded to Kovilpatti West Police Station where she gave a complaint, Ex. PI, to P.W. 12, who was the Sub-Inspector of Police, present at that time. On the strength of Ex.P1, P.W. 12 registered a case in Crime No. 582/97. Under Sections 380 and 302 of I.P.C. The printed First Information Report, Ex.PI6, was despatched to the Court.

(c) On receipt of the copy of the F.I.R., P.W. 13, the Inspector of Police, took up the investigation, proceeded to the scene of occurrence, made an inspection of the spot and prepared Ex.P4, the observation mahazar, and Ex. PI7, the rough sketch. He conducted inquest on the dead body of Kanagavalammal in the presence of witnesses and panchayatdara. Ex.PI8 is the inquest report prepared by him. Thereafter, the dead body was sent to the Government Hospital, for the purpose of autopsy along with a requisition Ex.P2.

(d) On receipt of the said requisition, P.W.2, the Assistant Surgeon, attached to the Government Hospital, Kovilpatti, conducted autopsy on the dead body of Kanagavalammal and found 7 external injuries. The doctor issued Ex.P3, the postmortem certificate, with her opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries sustained.

(e) P.W. 13, pending investigation, arrested the first accused on 29-10-1997 at 6.00 a.m. A-1 gave a confessional statement, which was recorded in the presence of two witnesses. Following the same, she produced a gold chain and ear studs, which were recovered by the Investigating Officer. The second accused was arrested on 31-10-1997 at about 7.30 a.m., when he gave a confessional statement. It was also recorded in the presence of witnesses, and M.O. 1, thali

chain, M.O.2, gold chain, M.O.9, aruval, and M. Os. 10 and 11, the clothes, produced by A-2, were recovered under the mahazars, Exs. P13 and P14 respectively. The jewels recovered from A-1 and A-2, were identified by P.W.3. Following the same, the material objects were sent to Court, and the accused were remanded to judicial custody. All the material objects recovered from the place of occurrence and from the dead body were subjected to chemical analysis pursuant to a requisition, Ex.P8, made by the Investigating Officer through the Court. The Chemical Analyst's report, Ex. PIO, and the Serologist's report, Ex.P11, were received by the Court. On completion of investigation, the final report was filed by the Investigator.

4. The case papers along with the accused were committed to Court of Session, and necessary charges referred to above, were framed. In order to substantiate the charges, 13 witnesses were examined on the side of the prosecution. Apart from that, the prosecution relied on 18 exhibits and 15 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of the Code of Criminal Procedure Code, as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. No defence witness was examined. The trial Court, after perusal of the materials and hearing the arguments advanced, came to the conclusion that the prosecution has proved the case beyond reasonable doubt, found them guilty and awarded the imprisonment as found above, which is the subject-matter of challenge before this Court in these two appeals.

5. The learned Counsel Mr. K. Thirumalai Raj, arguing on behalf of the appellant in both the appeals, raised the following submissions.

(i) In the instant case, the prosecution has no direct evidence to offer, and what were all available was only the evidence of P.Ws. 4 and 5, and apart from that, the alleged confession and recovery. Even then, the prosecution has not proved the case beyond any reasonable doubt. In a case like this, the prosecution must not only place, but also prove the necessary circumstances pointing to the guilt of the accused without any snap whatsoever. In the instant case, the prosecution neither placed necessary circumstances nor proved them.

(ii) It is pertinent to note that P.W.4 was treated hostile by the prosecution, and thus, what was available was only the evidence of P.W.5. According to P.W.5, it was she who took A-1 to the house of the deceased and put her in service. But, in the instant case, her evidence is highly improbable.

(iii) So far as P.Ws. 4 and 5 are concerned, their statements reached the Court after number of months, and they were not actually examined at the time of the inquest by the Investigating Officer.

(iv) Apart from the above, the recovery part is also thoroughly unbelievable. According to the prosecution, it was a case of murder for gain. If that is so, there is no need for stealing only a few jewels that were available and leaving all other jewels. It could be seen from the evidence of the post-mortem Constable that even that were recovered from the dead body at the time of postmortem were two bangles and also a gold ring. This would clearly show that it was not a murder for gain.

(v) Even as per the observation mahazar, Ex.P4, and the rough sketch, Ex.P17, there were number of houses in and around the house of the deceased. Had it been true, there would have been some alarm, and all witnesses would have come to the rescue; but, no independent witness was examined.

(vi) Apart from the above, the alleged recovery and confession are thoroughly unbelievable. The occurrence has taken place on 28-10-1997, but the recovery of articles from A-2 was on 31-10-1997. Thus, it is highly improbable that both the accused even after committing the murder and also after taking the gold jewels, were also roaming around the place for a few days. Apart from that, the aruval recovered from the second accused, even as per the Serologist's report, did not contain the blood group of the deceased.

(vii) In the instant case, there was a flat denial of the first accused being in service under the deceased, and there is no acceptable evidence.

(viii) Under the circumstances, without considering all the contentions put forth, the learned trial Judge has accepted the prosecution case as one proved beyond

reasonable doubt, and hence, they are entitled for an acquittal in the hands of this Court.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. The Court paid its anxious consideration on the submissions made and had a thorough scrutiny of the materials available.

8. In the instant case, it is not in controversy that Kanagavelammal met with an instantaneous death in an occurrence that took place on 28-10-1997. It is also not in dispute that she died on account of homicidal violence. In order to prove that fact, the prosecution relied on the evidence of the postmortem doctor, P.W.2, and also the postmortem certificate marked through her, wherein she has opined that the deceased died out of shock and haemorrhage. Added further, at no point of time, the accused either before the lower Court or before this Court have questioned the said fact that she died out of homicidal violence. That apart, the scene of occurrence is also not disputed. Thus, it would be quite clear that Kanagavelammal met with an instantaneous death by homicidal evidence.

9. Now, the question that would arise for consideration is whether the prosecution has proved the case beyond reasonable doubt. True it is, in the instant case, the prosecution had no direct evidence to offer. The law would come out with the principle that in a given case like this, all the circumstances must make a complete chain and without a snap, and it must be pointing to the guilt of the accused and also the hypothesis that except the accused, no one could have committed the offence. If this test is applied to the case on hand, after careful consideration of the available materials, the Court has to answer in the affirmative. P.W. 1 is the sister of the deceased, and according to her; the deceased was not doing well and was also hospitalised, and just before 2 days prior to that she came over there, and it was she, who took the deceased from the hospital and left in the house, where the occurrence has taken place. P.W.1 has clearly spoken to the fact that A-1 was employed in service under the deceased as a servant maid during the relevant time. P.W.4 was the person who was having a firewood shop in the next street. Further, according to her, she used to come over to the house of the deceased

and used to chat with her for number of hours, and she knew personally A-1, who was employed as servant-maid in the house of the deceased and also A-2, who was introduced as the husband of A-1 within a few days prior to that. At the time of cross-examination, since she did not support the prosecution case, she was treated hostile, and thus, her evidence was not available to the prosecution. In such circumstances, the prosecution to its benefit had the evidence of P.W.5. According to P.W.5, she was in service of the deceased as servant-maid just one month prior to the occurrence, and she could not do the work due to her ill-health, and when the deceased knew about the same and stopped her from service, there was a request from the deceased to get some other person, and on that request, it was she who took A-1 and put in service under the deceased. Thus, it would be quite clear that A-1 was actually serving under the deceased during the relevant time.

10. Added circumstance is that according to P.W.5, she went to the house of the deceased that day at about 9.00 a.m., when she found A-1 cooking inside the kitchen and A-2 standing outside the house. She was in the house for nearly 1 hours, and she left the house at about 10.30 a.m. After she left the house, she came to know about the occurrence only at about 3.00 p.m., and she rushed over to the house and found the dead body in a pool of blood. At this juncture, it has to be pointed out that P.W.1 who got down from the bus at Kovilpatti bus stand, at 10.30 a.m., rushed to the house of the deceased and saw the dead body within 15 minutes from the time of occurrence. When P.W. 1 went inside the house, she found the dead body in a pool of blood. Therefore, it would be quite evident that the occurrence has just preceded, and when P.W.5 went to the house of the deceased, she found A-1 inside the house and A-2 standing outside the house, that was about 10.15 a.m. At about 10.45 a.m. the dead body was witnessed by P.W.1, At this Juncture, it has to be pointed out that there was a total denial by A-1 that she was never in service under the deceased. In the opinion of this Court, this total denial is a strong circumstance against A1. In the instant case, there is no reason or circumstance to disbelieve the evidence of P.W. 5. P.W. 5 is neither interested in the deceased or her family nor in any way inimical to the accused before this Court. In such circumstances, her evidence is thoroughly believable and inspired the confidence of the Court. That apart, she is also a poor lady of

equal status as that of the first accused. It is to be remembered at this stage that she was also a servant-maid under the deceased, and through her, A-1 came into the service under the deceased. Under the circumstances, the Court has to rely her evidence as one trustworthy.

11. Further in the instant case, another strong circumstance against the accused is the recovery of jewels. M.O. 1, thali chain, and M.O. 2, gold chain, were recovered from A-2, and two ear studs and one gold chain were recovered from A-1. All these four jewels were recovered pursuant to the confession made by them. A witness has also been examined for the said purpose. All these Jewels have been recovered within one day and two days respectively from the date of occurrence pursuant to the confessional Statements given by the accused. It is not the case of the accused that the jewels belonged to them. It remains to be stated that the jewels were identified by P. Ws. 1 and 3 that they belonged to the deceased. That apart, there is no explanation coming from the hands of the accused how they came to be in possession of the jewels within a few days from the date of murder. The recovery of the jewels from the accused; which were actually worn by the deceased at the time of the occurrence and that too, following the confessional statements, would be pointing to the nexus of the crime with the accused. Thus, the prosecution had sufficient circumstances to place before the Court.

12. Now, the contention put forth by the learned Counsel for the appellants that P.W. 4 has turned hostile, and hence, her evidence was of no use has got to be accepted. So far as P.W. 5 was concerned, her evidence, according to the learned Counsel, has got to be disbelieved for the simple reason that she was not enquired at the time of the inquest. P.W. 5 would depose that she came to know about the occurrence at about 3.00 p. m., and she came to the spot only at 4.00 p. m. The statements of P. Ws. 4 and 5 were recorded the very day itself. The contention put forth by the learned Counsel that these statements reached the concerned Magistrate's Court belatedly was of no use, since, in the instant case, not even one suggestion was put to the Investigating Officer how the delay was caused. Apart from that, the other contention put forth by the appellant's side that the weapon of murder, namely the aruval, did not contain the blood group cannot be a reason to reject the prosecution case, Needless to say, in a case like this,

even the non-recovery of the weapon of crime cannot be a reason to brush aside the prosecution case.

13. The other contention put forth by the appellant's side that when the prosecution came forward with a case of murder for gain and even assuming that it is true, some of the articles alone were stolen and the other articles were actually kept there cannot be accepted for the simple reason that in order to make it believe that it was not a murder for gain, the accused have acted so. It remains to be stated that they have removed what were available around, the neck of the deceased along with the gold ear studs, and so far as the bangles are concerned, they could not remove it immediately, and therefore, they ran away from the place of occurrence. At this juncture, the evidence of P.W. 1 assumes importance. According to P.W. 1, when she went inside the house and saw the dead body, what were removed from the dead body, were only ear studs and chain in the neck, and it came to her knowledge only through the husband of the deceased that the bangles and the other chain were also found missing, and she also gave a statement subsequently. All these would be pointing to the truth of the prosecution case.

14. The contention put forth by the learned Counsel for the appellants that there were number of houses situate in and around the house of the deceased but, no one independent witness has been examined has got to be brushed aside, after looking into the rough sketch available. The occurrence in the instant case, has taken place in an interior room of the house of the deceased, from where even a distressed cry could not be heard. In such circumstances, even if number of houses are situate, no one could have heard the cry. Therefore, all the contentions put forth by the appellants' side have got to be rejected as meritless.

15. Here is a case, where there is no evidence to speak about that they had shared the common intention of causing the death; but, only with the assistance of A-1, A-2 would have acted. Thus, the lower Court was perfectly correct in finding both the accused guilty and awarding the life imprisonment and other imprisonment for the offences stated supra. This Court is unable to notice anything to interfere either in the finding recorded or the punishments awarded by the Court

below.

16. Hence, both these criminal appeals fail, and the same are dismissed confirming the judgment of conviction and sentence passed by the lower Court,

Mr. K. Thirumalai Raj, appointed as Amicus Curiae to argue the appeals on behalf of the appellants, is entitled to get remuneration from the Legal Aid, Madurai.

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