

G.Thangadurai Vs. the State, Rep by

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Court : Chennai

Decided On : Jan-08-2013

Judge : M.Jaichandren

Appellant : G.Thangadurai

Respondent : The State, Rep by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN AND THE HONOURABLE MR.JUSTICE S.NAGAMUTHU CRIMINAL APPEAL (MD).No.605 of 2005 G.Thangadurai ... Appellant Vs. The State, Rep by Inspector of Police, Kambam South Police Station, Crime No.375 of 2001, Tirunelveli District. ... Respondent PRAYER Appeal is filed under Section 374(2) of the Code of Criminal Procedure to call for the records in S.C.No.231 of 2003, on the file of the learned Additional Sessions Judge, Fast Track Court, not IV, Madurai, at Periyakulam, dated 03.02.2004 and set aside the same. !For Appellant ... Mr.K.Samidurai Legal Aid Counsel ^For Respondent ... Mr.A.Ramar Additional Public Prosecutor :JUDGMENT ***** [Judgment of the Court was delivered by S.NAGAMUTHU, J.] Challenge in this Criminal Appeal is to the conviction and sentence imposed on the appellant in S.C.No.231 of 2003, on the file of the learned Additional Sessions Judge, Fast Track Court, not IV, Madurai, at Periyakulam. The appellant is the sole accused in the said case and he stood charged for an offence under Section 302 of the Indian Penal Code. By Judgment

dated 03.02.2004, the Trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life. [No fine amount was imposed].

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Dhanalakshmi, who was the wife of the accused. PW-6 is the mother of the deceased. As a matter of fact, there was no marriage celebrated as per the local custom. The deceased was elder than the accused. The accused wanted to marry the deceased. Accordingly, he took the deceased to Kuppanapuram Village and started living together as husband and wife. After two months of the said incident, the accused alone returned to his village. PW-6 enquired about the deceased. The accused told PW-6 that he would bring back the deceased within ten days. While so, PW-6 found the photograph of the dead body of a woman in the local newspapers. She found that it was his daughter - Dhanalakshmi. Immediately, she went to the Cumbum South Police Station. There, the photograph of the dead body of the deceased was shown to her by the police. The dress materials found on the deceased were also shown. PW-6 identified from the photograph and the clothe materials that the deceased was his daughter - Dhanalakshmi. 2.1. PW-1 was the then Village Administrative Officer of Cumbum. PW-2 was his Assistant. On 20.11.2001, PW-1 and PW-2 and the other Village Assistants were proceeding to Cumbam Nelguthi Puliymaram for the purpose of distributing free dhoties and saris to the beneficiaries as per the Government Scheme. On their way, they found near Kaluthaipuli Odai a dead body of a woman. The dead body was found on the land comprised in S.No.837, at Tamarind Garden belonging to one Rabhia Beebi. PW-1 estimated the approximate age of the dead body at 35 years. The sari was tied around the neck. PW-1 suspected foul play. Therefore, he proceeded to the Police Station at 03.00 PM and made a complaint [EX-P1] in respect of the same. PW-20 was the then Inspector of Police, attached to the Cumbum South Police Station. On the basis of the complaint given by PW-1, he registered a case in Crime No.375 of 2001 under Section 174 of the Code of Criminal Procedure [suspicious death]. EX-P14 is the First Information Report. He forwarded EX-P1 and EX-P14 to the Court and then proceeded to the place of occurrence. At the place of occurrence, he prepared an Observation Mahazer, EX- P2, in the presence of PW-3 and another witness.

Then, he prepared a Rough Sketch, EX-P16, showing the place of occurrence. Then, he conducted inquest on the body of the deceased between 05.00 PM and 06.30 PM. EX-P15 is the Inquest Report. At that time, the identity of the deceased was not known. He arranged for taking photograph of the dead body. Then, he forwarded the dead body for postmortem. PW-8, Dr.S.Manimohan, conducted autopsy on the body of the deceased. He found the following injuries:- "Ligature mark seen continuously around neck. Transversely. Such (NC) tissue (NC). Neck muscle minute haemorrhage seen. Hyoid bone intact. Trachea congested. Thorax: no fracture ribs; Lungs congested. Heart empty. Abdomen: Liver Kidney, spleen congested, stomach about 50 ml of Brown colour fluid present. Intestine distended with gas. Uterus Normal size - Bladder empty. Skull: No bony injury on opening membrane Intact. Brain substance partly liquified." The doctor opined that the death would have occurred due to asphyxia due to strangulation. 2.2. On 21.11.2001, PW-20, based on the opinion of the doctor, altered the case into one under Section 302 of the Indian Penal Code. After postmortem, PW- 16, a Constable, attached to the Cumbum Police Station, brought back the dress materials [MO-5 to MO-12] of the deceased. PW-20 recovered the same. He arranged for giving wide publicity of the photographs of the dead body in the newspapers. On seeing the photograph of the dead body in the newspapers, PW-6 came to the Police Station on 22.11.2001 and identified the deceased as that of her daughter - Dhanalakshmi. From the identification made by PW-6 from the newspapers, [EX- P18 and EX-P19], PW-20 confirmed that the deceased was Dhanalakshmi, the daughter of PW-6. 2.3. On 30.11.2001, at 03.00 PM, the accused was arrested by PW-20 in the presence of PW-10 and another witness. On such arrest, he gave a confession voluntarily, in which he had disclosed that he had hidden a pair of ear studs and dress materials in his house. EX-P20 is the said disclosure statement. In pursuance of the same, he took PW-20 and the witnesses to his house and produced MO-13, a Rexene bag, MO-14, a shirt and MO-15, a pair of gold ear studs. PW-20 recovered the same in the presence of PW-10 and PW-19. Then, he examined few more witnesses and recorded their statements. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the Material Objects to the court. He continued to examine few more witnesses. Finally, on completing the investigation,

on 27.03.2002, he laid charge sheet against the accused under Section 302 of the Indian Penal Code.

3. Based on the above materials, the Trial Court framed a lone charge under Section 302 of the Indian Penal Code. The accused pleaded innocence. In order to prove the case of the prosecution, on the side of the prosecution, as many as twenty witnesses were examined and twenty documents were exhibited, besides eighteen Material Objects. Out of the said witnesses, PW-1 to PW-3 have spoken to about the dead body of the deceased lying on the field of one Rabhia Beebi on 20.11.2001. PW-5 was the one, who took photographs, MO-1 and MO-2 and he has spoken to about the same. PW-5 was the one, who took the dead body for postmortem to the hospital. PW-6, the mother of the deceased, has spoken to the fact that the deceased and the accused were living together in a different village, and thereafter, the accused alone returned to the village. She has further spoken to about the identification of the dead body made by her from and out of the photographs and the dress materials of the deceased. PW-7 is a villager. He has spoken to regarding the living of the deceased and the accused together and also the fact that the accused alone returned to the village after four months. He has also stated that the panchayatars questioned the accused about the whereabouts of the deceased, for which he gave an undertaking, [EX-P3] in writing that he would get back the deceased within ten to fifteen days. PW-8, Dr.S.Manimohan is the one, who conducted autopsy on the body of the deceased. He has stated that the deceased would appear to have died of asphyxia due to manual strangulation. PW-9 and PW-10 have turned hostile and they have not supported the case of the prosecution in any manner. PW-11 is a resident of Kuppannapuram Village. PW-12 is the photographer, owning a Photo Studio at Srivilliputhur. According to him, on 07.09.2001, the deceased and the accused came together and took photograph jointly, MO-3 series. PW-13 is the Sub - Registrar at Srivilliputhur. According to him, on 07.09.2001, the accused and the deceased came and got their marriage registered. EX-P8 is the marriage certificate. PW-14 is the one, who issued the marriage certificate. PW-15 is the Head Clerk of the learned Judicial Magistrate, Uthamapalayam, who had forwarded the Material Objects for chemical examination on the orders of the learned Judicial Magistrate. PW-16 is the constable, who recovered the dress materials of the deceased from the dead body

after postmortem. PW-18 is a jewellery shop owner at Moonar. According to him, on 19.11.2001, the accused came to his shop and pledged a pair of gold ear studs, and then, on 21.11.2001 he redeemed the same. He has identified EX-P11, a receipt issued by him. PW-19 is the witness, who has spoken to about the arrest, the confession of the accused and the consequential recovery of the ear studs. PW-20 has spoken to about the investigation done by him.

4. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same as false. However, he did not choose to examine any witness on his side nor to exhibit any document in his defence. Having considered the above materials, the Trial Court found him guilty under the charge, and accordingly, punished him. That is how, the appellant is now before this Court with this Criminal Appeal.

5. In this Criminal Appeal, one Mr.V.Kathirvelu, learned counsel, was on record for the appellant. By order dated 03.03.2006, the substantive sentence imposed on the appellant has been suspended. Thereafter, when the Criminal Appeal was listed on several occasions, neither the counsel for the appellant nor the appellant appeared. Therefore, this Court, by order dated 12.12.2012, appointed one Mr.K.Samidurai, as a Legal Aid Counsel, to argue the case on behalf of the accused. Therefore, we have heard the learned Legal Aid Counsel for the appellant and the learned Additional Public Prosecutor for the State and also perused the records carefully.

6. This is a case based on circumstantial evidence. The following are the circumstances projected by the prosecution:- i. The deceased and the accused got married and they were living together at Kuppanapuram Village. ii. After four months, the accused alone returned to his village and when enquired, he had assured that he would bring back the deceased within ten to fifteen days. iii. In the meanwhile, the dead body of the deceased was found in a decomposed condition on 20.11.2001. iv. According to the doctor, who conducted autopsy on the body of the deceased, the death was due to manual strangulation, and thus, it is a homicide. v. On the arrest of the accused, he gave a voluntary confession, out of which, the ear studs of the deceased were recovered on 30.11.2001 at 03.00 PM.

7. According to the case of the prosecution, these circumstances have been clearly established by the prosecution and they form a complete chain unerringly pointing to the guilt of the accused.

8. In this Criminal Appeal, it is contended by the learned Legal Aid Counsel for the appellant that the above circumstances projected by the prosecution have not been proved beyond reasonable doubts and assuming that some of the circumstances have been proved, such proved circumstances do not form a complete chain unerringly pointing to the guilt of the accused.

9. The learned Legal Aid Counsel for the appellant would further submit that the accused was not actually arrested on 30.11.2001, as it is spoken to by PW-20. He would point out that PW-6, during cross-examination, has admitted that on the day, when she identified the deceased from the photographs at the Police Station, the accused had already been brought by the police to the Police Station. This means, the accused was brought to the Police Station on 21.11.2001 itself. She has further stated that he was kept in the Police Station for two days, during which period, PW-6 and her family members were also asked to come to the Police Station for the purpose of investigation. From the above admission made by PW-6, according to the learned counsel, the so-called arrest of the accused on 30.11.2001 cannot be true, and therefore, the consequential recovery of the ear studs [MO-15] cannot be believed. The learned counsel would also submit that there is no other evidence against the accused to incriminate him.

10. But, the learned Additional Public Prosecutor would submit that the conduct of the accused in giving an undertaking that he would get back the deceased within ten to fifteen days is a very strong piece of evidence against him. He would further submit that MO-15 was pledged by the accused on 19.11.2001 and the same was redeemed by him on 21.11.2001. Thereafter, he was keeping MO-15 in his possession, and accordingly, the same was recovered on 30.11.2001. In respect of the same, the accused has no explanation at all, and thus, according to the learned Additional Public Prosecutor, the presumption under Section 114 of the Indian Evidence Act, 1872, needs to be raised against the accused. The said presumption, according to him, has not been rebutted. From these circumstances,

the prosecution has proved the guilt of the accused beyond reasonable doubts, it is contended by the learned Additional Public Prosecutor.

11. We have considered the above submissions. It is the settled law that in a case based on only circumstantial evidence, the prosecution is required to prove the circumstances projected by it beyond reasonable doubt and all such proved circumstances should form a complete chain unerringly pointing to the guilt of the accused. There shall be no other hypothesis, which is consistent with the innocence of the accused.

12. Applying the said basic principle of Criminal Law to the facts of the present case, let us have an analysis of the evidences available on record. From the evidences, it has been established that the accused and the deceased were living together as husband and wife at Kuppanapuram Village. As per the evidence of the Sub - Registrar, the marriage was also registered. They came to the photo studio at Srivilliputhur and took photographs, which has been spoken to by the Studio Owner [PW-12]. Thus, the prosecution has proved that the accused and the deceased were living together as husband and wife at Kuppanapuram Village. The prosecution has further proved that the accused alone came to his village and he gave an undertaking that he would bring back the deceased to the village within ten to fifteen days. Thereafter, there was a panchayat held in the presence of PW-7 and the other panchayatars, in which the accused told that on 19.11.2001, he along with the deceased came to Theni. At Theni Bus Stand, when he went to a nearby shop to take soda water, the deceased had eloped with one Prakashkumar, who is a native of Sankarankovil. He had also come in the same bus to Theni. The undertaking given by the accused was reduced into writing by PW-7. EX.P3 is the said undertaking. Thereafter, according to the accused, he was in search of the deceased and as soon as he could locate the deceased, he would bring her back. This document is a vital one, in which, as we have already stated, the accused has clearly stated that on 19.11.2001, the deceased had eloped with the said Prakashkumar. Thereafter, the dead body was found on 21.11.2001. This hypothesis that the deceased had eloped with the said Prakashkumar is consistent with the innocence of the accused. There is no reason to reject the same.

13. Now, coming to the recovery of the ear studs, according to the prosecution, on 30.11.2001, the accused was found in possession of the same. But, as per the evidence of PW-6, the accused was in the Police Station, that too, in the custody of the police from 21.11.2001 onwards. While so, it is also the case of the prosecution that on 19.11.2001, the accused pledged the ear studs and redeemed the same on 21.11.2001. When the accused was in the Police Station, that too, in the custody of the police on 21.11.2001, as spoken to by PW-6, it is highly unbelievable that the accused redeemed the pledged jewel on the said date. Though the pawn receipt [EX-P11] shows that it was redeemed on 21.11.2001, it is too difficult to believe the same. When the accused was continuously in the police custody from 21.11.2001 onwards, it is highly unbelievable that the ear studs were in his possession on 30.11.2001 and the same were recovered based on the confession made by the accused. Apart from this, there is no evidence to incriminate the accused.

14. In our considered view, the proved circumstances, as we have already narrated above, do not form a close link so as to point to the guilt of the accused and the prosecution has failed to prove the case beyond reasonable doubts. Therefore, the appellant is entitled for acquittal.

15. In the result, the conviction and sentence dated 03.02.2004 made in S.C.No.231 of 2003, imposed by the learned Additional Sessions Judge, Fast Track Court, not IV, Madurai, at Periyakulam, is set aside and the Criminal Appeal is allowed. The fine amount, if any, paid by him shall be refunded. The bail bond executed by him shall stand discharged. NB To 1.The Additional Sessions Judge, Fast Track Court, not IV, Madurai, at Periyakulam. 2.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. 3.The State, Rep by Inspector of Police, Kambam South Police Station, Tirunelveli District.

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