

Pakkirisamy

Vs

State of Tamil Nadu

(M. M.Punchhi, S. P. Kurdukar JJ)

30.09.1997

JUDGMENT

S.P.KURDUKAR, J.

1.The Sessions Court of East Thanjavur at Nagappattinam as also the High Court at Madras by their concurrent judgments and orders found the appellant guilty of the offences punishable under Section 302 and 392 IPC and accordingly sentenced him to suffer life imprisonment on first count and RI for ten years on second count.Both the sentences were directed to run concurrently.The appellant by Special Leave has filed this appeal to this Court.

2.The facts of the prosecution case lie in a very narrow compass and shorn of details may be summarised as under:-

Panchapagesa Iyer, a stone deaf in his sixties was staying with his wife Mahambal since deceased in Mel Agraharam in Mudikondao.The couple had no child.They owned some agricultural lands which were supervised by Mohambal with the help of appellant. They belonged to an affluent family having various jewellery items of jewels, diamonds and gold. The appellant was said to be a trusted servant and a man of her confidence. Mohambal was fond of wearing the jewellery on her person. The appellant was a young boy of 29 years at the time of occurrence. The appellant being trusted servant had an easy access in the house of his master and was friendly with the couple.Rangam (PW 2) is the resident of the same village and happened to be a close relative of Mohambal and has been residing just opposite her house. Mohambal used to attend to her house. Mohambal used to attend to her house hold duties in addition to the supervising of her agricultural lands. The appellant has got a sister called Bharani Ammal (PW 9) who had come to the said village for some medical treatment. Bharani Ammal (PW 9) was unmarried and the appellant was trying to find out a match for her. For the said marriage, the appellant needed some money and 14 sovereigns. The appellant being on agricultural labourer was unable to collect money. It was this need which according to the prosecution made the appellant to commit the present crime.

3.It is alleged by the prosecution that Mohambal very often used to sit on the steps of her house in the evening and used to spent sometimes in chitchatting with the neighbours and other acquainted passer-byes from the road. At about 8.30 p.m., on August 24,1986, the appellant had come to the house of Mohambal and at the time, she was wearing ear rings and nose ring studded with diamonds. Some gold ornaments were also worn by her. Late in the evening, when there was lull on the road, the appellant is alleged to have throttled Mohambal and thereafter carried the dead body to a nearby shed at a distance of about 100 yds.and tied a saree around her neck and kept her hanging

to the rafter in the said shed.

4. On August 25, 1986, in the morning, another maid servant Lakshmi @ Chappi (PW 4) as usual came to the house for doing house hold duties but at that time Mohambal was not found got up a usual. After finishing her work, she went to the house of Rangam (PW 2) and told him that Mohambal was not seen in the house. It is alleged by the prosecution that Narayanan (PW 1), Rangam (PW 2), Krishnamoorthy (PW 3), Vaidyanathan (PW 5) and Savithri (PW 6) and other people in that locality started searching for Mohambal. In the meantime, Chappi (PW 4) came to the house of Mohambal and told the crowd that she could not be traced anywhere. Search continued and at about 10.00 a.m., they noticed the dead body of Mohambal inside the cattle shed in a hanging position. The said cattle shed belonged to Vanchinathan Iyer. Narayanan (PW 1) who is the son of Ramamoorthy Iyer and a cousin of Panchapagesa Iyer. He and other prosecution witnesses noticed that valuable ornaments were missing from the dead body of Mohambal. Narayanan (PW 1) therefore, went to the police station at Nannilam and gave the complaint Ex.P-3. Kali Das (PW 16) after recording the FIR proceeded to the scene of offence and after reaching there at about 11.30 a.m. commended the investigation. After completing the inquest panchanama, the dead body was sent to the Govt. Hospital at Nannilam, During investigation, Statements of various person were recorded. A search was undertaken to trace the appellant. It was then noticed that appellant was not available in the village and was absconding. On 28th August, 1986, at about 2.00 p.m., Ramasami (PW 12), a Village Administrative Officer and Marimuthu (PW 13), a village assistance brought the appellant to the police station with a confessional statement Ex.P-8 recorded by earlier. The Investigating Officer took charge of the said confessional statement and arrested the appellant. During interrogation, the appellant made a voluntary statement under Section 27 of the Evidence Act which led to the recovery of incriminating articles (MOs 1 to 4). Mahazar in that behalf was prepared by the investigating officer. After completing the investigation, the appellant came to be charge sheeted for the offences punishable under Section 302 and 392 IPC.

5. The appellant denied the charged and according to him, he had committed no offence. He also denied to have made any confessional statement. He also denied to have made any statement which led to the recovery of MOs 1 to 4.

6. There is no eye witness to the crime and the entire prosecution case rests on the circumstantial evidence. In order to prove the various circumstances to complete the chain thereof, prosecution examined many witnesses and relied upon the confessional statement (Ex.P-8) which was recorded by Ramasami (PW 12) and the recovery of MOs 1 to 4 at the instance of the appellant. The fact that Mohambal died a homicidal death was not seriously challenged before the courts below as also before us. It is, therefore, sufficient to state that Dr. Padma Nammalwar (PW 10) who performed the autopsy on the dead body of Mohambal on 28th August, 1986, testified that there were innumerable nail marks all around the neck and the chest. There was also an abrasion on the left hand (hand inside) and on the right and; there was a deep nail mark. All these injuries were ante mortem. Mohambal died due to asphyxia due to strangulation of the neck. The death might have occurred about 30 to 40 hours prior to autopsy. The final opinion of the doctor is Ex.P-6. In view of this medical evidence, we confirm the findings of the courts below that Mohambal died a homicidal death.

7. Apart from various circumstances pressed into service by the prosecution which were held proved by the courts below, it mainly relied upon two vital circumstances, namely, extra judicial confession (Ex.P8) recorded by Ramasami (PW 12) and (B) the recovery of Mos 1 to 4 at the instance of the appellant. The extra judicial confession (Ex.P*) was said to have been recorded by Ramasami (PW

12) on August 28, 1986 when the appellant himself went to him and made a statement admitting his guilt. After recording the confessional statement, Ramasami (PW 12), Marimuthu (PW 13) and the appellant then went to the police station where he was produced before the investigating officer. Confessional statement (Ex.P8) was handed over to the police officer. Both the courts below found Ex.P8 a voluntary statement of the appellant which was recorded by Ramasami (PW 12) being trustworthy. While assailing the concurrent findings of the courts below, learned counsel for the appellant urged that (Ex.P8) ought to have been rejected by the courts below as the possibility of the same being recorded in the police station in the presence of the police officer could not be ruled out. It was further contended that there was no reason for the appellant to make such an extra judicial confession before Ramasami (PW 12). Assuming such a statement was made by the appellant, he retracted the same at the earliest opportunity before the CJM when his statement under Section 164 Cr.P.C. was recorded. He drew our attention to the said statement recorded by CJM and urged that in the face of this retraction, no value could be attached to the alleged extra judicial confession (Ex.P8). This document was although part of the present proceedings yet both the courts below have not read the same in proper perspective. Taking the last contention first, on perusal of the statement before the CJM, we find that it cannot be called a retraction for the simple reason that the appellant did not make any reference to the extra judicial confession (Ex.P8). All that he says in his statement before the CJM was that he is innocent and had not committed any crime. It is, therefore, just a denial of the crime. We, therefore, do not attach any importance to the statement recorded by the CJM. Coming to the first part of the argument, we have gone through the extra judicial confession (Ex.P8) as also through the evidence of Ramasami (PW 12), who had testified that the appellant came on his own to his office and confessed the guilt and his statement was recorded verbatim. It is only after recording Ex.P8, he along with Marimuthu (PW 13) and the appellant went to the police station and submitted the same to the police officer whereupon appellant was arrested. Ramasami (PW 12) is an independent witness and held a responsible post in the village. He is not related or anyway connected with the family of the deceased. Nothing was suggested to this witness as to why he should go out of the way to record a false statement of the appellant. He emphatically stated that Ex.P8 was recorded in his office and thereafter they went to the police station. We, therefore, find no substance in any of these contentions raised on behalf of the appellant as regards the genuineness of Ex.P8 or admissibility thereof.

8. Mr. Murlidhar, learned counsel then contended that it is well settled that the evidence of extra judicial confession is a weak type of evidence and ordinarily the court would be slow to accept such type of evidence. He therefore, urged that Ex.P8 be left out of consideration. We are unable to accept this broad proposition put forth on behalf of the appellant. It is well settled that it is a rule of caution where court would generally look for an independent reliable corroboration before placing any reliance upon such extra judicial confession. It is no doubt true that extra judicial confession by its very nature rather a weak type of evidence and it is for this reason that a duty is cast upon the court to look for corroboration from other reliable evidence on record. Such evidence required appreciation with a great deal of care of caution. If such an extra judicial confession is surrounded by suspicious circumstances, needless to state that its credibility becomes doubtful and consequently it loses its importance. The same principle has been enunciated by this Court in Balvinder Singh Vs. State of Punjab, 1995 Suppl (4) SCC 259. In the facts and circumstances of this case, we hold that the courts below committed to error in relying upon EX.P8 as the same is corroborated from several other proved circumstances.

9. Coming to the next important circumstance relied upon by the prosecution was recovery of the jewels and other valuable articles MOs 1 to 4 at the instance of the appellant pursuant to a disclosure statement under Section 27 of the Evidence Act. Mahendran (PW 14) has proved the Panchanama

(PW 14) in respect of recovery of Mos 1 to 4. Narayanan (PW 1) and Rangam (PW 2) who were residing just opposite the house of Mohambal, had identified these items which were on the person of Mohambal. We have gone through the evidence of Naryanan (PW 1), Rangam (PW 2) and Ramasami (PW 12) and we find that the said evidence does not suffer from any infirmity. The courts below, in our opinion, have rightly accepted the said evidence which again is an important circumstance in the chain of circumstantial evidence.

10. Apart from the aforesaid two vital circumstances, the prosecution also relied upon the evidence of Krishnamoorthy (PW 3) who testified that late in the evening at about 10.00 O'clock, he saw a shadow of a person who was moving in the direction of the house of Mohambal and on making inquiry, the said person gave his identity (appellant). On further query, the appellant told that he is the house of his master. Thereafter within 15 minutes, he saw the appellant returning towards the tank side and were chatting with Muthu Krishanan by the side of the house of Krishnamoorthy (PW 3) at about 11.00 p.m. This evidence, therefore, shows that at odd hours, the appellant had gone to the house of his master, returned to the tank at about 11.00 p.m. and thereafter disappeared. In between what happened was testified by Sh. Vaidyanathan (PW 5). According to him, on August 24, 1986, at about 8.30 p.m., he went to bed and during the said night, he heard the noise like "Grrrr." However, he thought that the said noise might be of a dog and thereafter he went to the tank where Bhajan was going on. When he returned home, he saw the appellant near the house of Krishnamoorthy (PW 3) and was chatting with somebody and telling him that his younger sister had come here fore betrothal and the family of her bridegroom demanded 15 sovereigns but he had no means and does not know what to do. The marriage required to be performed. This circumstance was relied upon by the prosecution to show that appellant was in a dire need of funds of celebrate the marriage of his sister and it was for this reason, the appellant taking advantage of the helpless couple thought of committing the crime and robbing the valuable ornaments which were on the person of Mahambal. This evidence, therefore, corroborates the fact that appellant was in immediate need of money to perform the marriage of his sister and to secure the money, he committed the crime in question. Both the courts below have accepted this part of the prosecution story. We do not see any reason to defer from the said finding.

11. The fact that the appellant's sister Bharani Ammal (PW 9) was staying in the said village and was of marriageable age and not denied. The appellant was frantically trying to find out a suitable match was again proved from the evidence of Baharani Ammal (PW 9), the sister herself and two other witnesses, namely, Rajendran (PW 8) and Manivannan (PW 7) who was a Homeopathic doctor and giving treatment to Bharani Ammal. From this evidence, we hold that the appellant was in need of a money to celebrate the marriage of his sister.

12. The next circumstance which was relied upon by the prosecution was that the appellant was not found in the village where he ordinarily ought to be and was absconding. Only on 28th August, 1986, he went to the Village Administrative Officer and gave a confessional statement (Ex.P8) which was recorded by Ramasami (PW 12). No explanation whatsoever was given by the appellant as to where he was during these four days. The courts below, in our opinion, rightly held that the appellant was absconding between 24th August, 1986 and 28th August, 1986 and this would indicate beyond reasonable doubt that the appellant had a guilty mind.

13. After going through the judgments of the courts below and other oral and documentary evidence on recorded, we are satisfied that the impugned judgments of the courts below suffer from no infirmity and there is no substance in any of the contentions raised on behalf of the appellant.

14. In the result, the appeal fails and the same is dismissed.