

# **SUPREME COURT OF INDIA**

Paramsivam

Vs.

State Thr. Inspector of Police

CrI.A.No.593 of 2010

(Sudhansu Jyoti Mukhopadhaya and Dipak Misra JJ.)

01.07.2014

## **JUDGMENT**

### **SUDHANSU JYOTI MUKHOPADHAYA, J.**

1. This appeal is directed against judgment dated 27th April, 2009, passed by the High Court of Judicature at Madras in Criminal Appeal No.441 of 2007. By the impugned judgment appeal preferred by the appellants- accused nos.1 to 3 has been dismissed and conviction of accused nos.1 to 3 u/s 364 IPC and accused no.1 u/s 302 IPC and accused nos.2 and 3 u/s 302 r/w 34 IPC and the sentence of life imprisonment and fine imposed upon them have been confirmed.

2. The case of the prosecution in a nutshell is as follows: Deceased Mani alias Parai Mani took lease of the land in S.F. No. 427/1 of Vadapudur village belonging to PW3-Krishnasamy and PW6-Ramasamy. Accused No.6-Nagarathinam was the neighbouring land owner. Since Accused No.1- Paramasivam and Accused No.6-Nagarathinam threatened the deceased not to break the stone, deceased Mani alias Parai Mani filed suit in O.S. No. 5/2004 before DMC, Pollachi for Permanent Injunction restraining Accused no.6 and PWs.3 and 6 from interfering with quarrying. There was animosity between the deceased and the family of Accused no.6-Nagarathinam.

About 10 days prior to the date of occurrence, Accused no.1-Paramasivam,

Accused no.6-Nagarathinam and Accused no.7-Revathi threatened the deceased. About 4 days prior to the date of occurrence, Accused no.2-Selvaraj alias Selvan and another person approached the deceased for purchase of stone and since it was late hours, deceased refused to accompany them and asked them to come on some other day.

Again Accused no.2 and another person approached the deceased on 18.1.2004 and asked for stones and deceased accompanied the accused to the quarry. PW1-Kannaiyan and PW2-Kala witnessed that deceased went along with Accused no.2-Selvaraj alias Selvan and Accused no.3-Nirmal. On the said date i.e.18.1.2004, PW8-Sivakumar and PW9-Doraisamy who were returning from the Petrol Pump, saw white colour Maruthi Van bearing registration No. TN-23 E 5951 (MO1) was parked on the road side. PW9 saw the deceased and Accused no.1 were sitting inside the Maruthi Van.

Next day on 19.1.2004, PW23-Pugazhenthii (Railway Key Man), Thirupur saw the dead body on the railway track and informed PW20-Ramachandran (Station Master) who in turn informed the Out-post Police Station, Thirupur. PW24-Sankaralingam (Head Constable) received the report and registered the case for 'suspicious death' in Cr. No. 12/2004 u/s 174 Cr.P.C. PW24-Head Constable went to the scene of occurrence and found the dead body of a male on the railway track, prepared Observation Mahazar (Ex.P15) and Rough Plan (Ex.P16). PW24 also held Inquest on the body of the deceased (Ex.P18) and sent the dead body for autopsy to Government Hospital, Thirupur. On his request PW27-Nizar Ahemad had taken photographs (MO18 series) of the body lying on the railway track.

PW33-Dr.Parimala Devi conducted autopsy over the dead body and noted the injuries, Dr. Devi opined that death was due to multiple injuries on the neck and head injuries about 70 to 80 hours prior to autopsy. Since there was no clue about the identity of the dead body, body was buried at Chellandiamman grave yard Tirupur by PW24-Head Constable with the aid of PW22-Murugasamy (Grave yard watch man).

Since, deceased not returned home, PWs.1 and 2 searched for him and on 20.1.2004 PW1 lodged written complaint [Ext.P1]. On the basis of written

complaint, PW39-Rajendran (Inspector of Police) registered the case in Cr. No. 27/2004 u/s 363 IPC. PW39 went to the scene of occurrence and prepared Observation Mahazar and Rough Plan. He also enquired PWs.1 to 6 and 15 and recorded their statements.

PW41-Shahul Ahmeed (Inspector of Police) took charge of the case on 26.1.2004 and made further investigation. On 28.1.2004 at about 1.45 P.M., PW41 arrested accused no.2-Selvaraj near Vanjipalayam railway gate. On being interrogated, accused no.2 voluntarily gave a confession statement which led to the recovery of Ropes (MO10 series), Banian (MO11), Bag (MO12), Diary (MO2) and Money purse containing the photo of the deceased (MO3) Seizure Mahazar (Ext.P5) was prepared. Thereafter, along with accused no.2, PW41 went to the scene of occurrence i.e. railway track and prepared Observation Mahazar (Ext.P34) and Rough Plan (Ext.P35).

PW41 on the same day i.e. 28.1.2004 at 6.15 P.M. arrested accused no.5-Gudalingam alias Lingasamy and recorded his confession statement which led to recovery of MO1-Maruthi omni van under Ex.P37-Seizure Mahazar. On the same day, at about 8.50 P.M., PW41 arrested accused no.1- Paramasivam and recorded his confession statement which led to recovery of Lungi (MO4), Shirt (MO5) and Voters ID Card (MO9) of deceased under Seizure Mahazar (Ext.P39). Thereafter, PW41 went to Thirupur Out-post Police Station and enquired PW24-Head Constable and received copy of FIR in Cr. No. 12/2004. Thereafter, PW41-Investigating Officer altered the FIR in Criminal No. 27/2004 from Section 363 IPC to Sections 120- B, 364 and 302 IPC.

On 17.2.2004, PW41 sent requisition for exhumation of dead body of the deceased which was exhumed in the presence of PW31-Tahsildar, PW21-R.I. and other witnesses. PW41 seized Waist Cord with Silver Amulet under Seizure Mahazar (Ext.P12). Observation Mahazar (Ext.P13) was prepared by PW-41 in respect of the place where body was buried. Rough Plan (Ext.P44) was also prepared. Blood samples of the dead body was taken. Blood samples of PW14 (Manickammal) and PW15 (Subramani) -mother and brother of the deceased were taken and forwarded for DNA examination. PW40-Vanaja (Asst. Chemical Examiner and Asst. Director) conducted DNA examination and opined that "the bone pieces etc. described belong to a human male individual". He further

opined that "the person Mani alias Parai Mani to whom the bone pieces etc. belong is the biological offspring of Ms.A.Manickammal."-PW14.

Accused no.3-Nirmal and Accused no.4-Sureshkumar alias Suresh alias Pambatti surrendered before Judicial Magistrate, Pollachi on 05.2.2004. PW41 was permitted to take them to police custody. Confession statement recorded from accused no.3 led to recovery of Torch (MO6), Battery (MO17 series), Knife (MO16), Hundred rupee Note [MO13], Bag (MO15) under Seizure Mahazar (Ext.P7). Confession statement recorded from accused no.4 led to recovery of Watch (MO8), Fifty rupee Note (MO14), Plastic bag (MO19) under Seizure Mahazar (Ext.P9).

PW38-Judicial Magistrate No. II, Pollachi conducted Test Identification Parade in respect of Accused nos.2 and 3 on 13.2.2004. PWs.1, 2 and 5 participated in the Test Identification Parade and identified the accused. On receipt of chemical analysis report and DNA report and after completion of due investigation, PW41 filed final report u/s 147, 148, 120-B, 364 and 302 IPC.

3. To substantiate the charges against the accused, prosecution examined 42 witnesses and brought on record Exts.P1 to P44 and Mos.1 to 18. Accused were questioned u/s 313 CrI.P.C. Accused denied all the charges and pleaded not guilty and stated that a false case is foisted against them.

4. Upon consideration of oral and documentary evidence, the Sessions Court held that the prosecution has adduced cogent and convincing evidence establishing that due to previous enmity in respect of quarrying, accused nos.1 to 3 abducted the deceased and committed murder of the deceased. The Sessions Court also held that accused nos.1 to 3 were identified in the Test Identification Parade and incriminating material objects recovered from them would substantiate the charges. With regard to accused nos.4 to 7 the Sessions Court held that the prosecution failed to establish the guilt against them and acquitted them.

5. Learned counsel appearing on behalf of the appellants challenged the impugned judgment mainly on the following grounds:

There is inconsistency in the prosecution story. For example, the evidence of

PW 15-Subramani brother of the deceased is contrary to the evidence of PW1 and 2.

The Sessions Court failed to consider the question whether the prosecution has proved the fact that the deceased was abducted.

There is no eye witness for the alleged murder in absence of any contemporaneous evidence to establish that the body found on the railway track on Vanjipalayam is that of the deceased-mani.

There are contradictions with regard to exhumed body. For example, while PW 21 stated that when the body was exhumed it was found in pieces in a gunny bag whereas PW 23 stated that dead body was found in pieces and no dress was found on it.

6. On the other hand, the Prosecution relied upon the following circumstances to bring home the charges.

(i) Existence of motive.

(ii) Circumstance that deceased was last seen alive in the company of the appellants/accused nos. 1 to 3.

(iii) Death was homicidal and the body was found on the railway track mutilated.

(iv) Body was identified as that of deceased through DNA test.

(v) Arrest of the accused and recovery of incriminating articles at their instance.

7. PWs.3 and 6 are brothers and accused no.6-Nagarathinam is brother's wife of PWs.3 and 6. Deceased Mani alias Parai Mani took lease of PWs.3 and 6's land in S.F. No. 427/1 (Part) of Vadapudur village for quarrying. While the deceased was carrying on quarrying work, accused no.6-Nagarathinam and her son and daughter i.e. accused no.1-Paramasivam and accused no.7-Revathi objected for quarrying. Alleging that without any lawful right, accused no.6 was objecting to quarrying, deceased filed suit

in O.S. No. 5/2004 on 02.1.2004 on the file of DMC, Pollachi against accused no.6 and PWs.3 and 6. This is evident from Ext.P-22 pleadings in O.S. No. 5/2004, PWs.1 and 2 have spoken in one voice about deceased taking quarry of lease from PWs.3 and 6 and that accused no.6, accused no.1 and accused no.7 were raising objection to carry out quarrying work. Evidence of PWs.3 and 6 also strengthens prosecution version about the grant of lease.

8. Filing of suit on 02.1.2004 about two weeks prior to the occurrence heightens the probability of prosecution case. In cases of circumstantial evidence proof of motive is material consideration and a strong circumstance.

9. The case of the prosecution is that deceased was last seen alive in the company of the accused. Evidence of PWs.1 and 2 that accused nos.2 and 3 had taken the deceased from his house in Chikkalampalayam. Evidence of PW9-Doraisamy is that he saw the deceased along with accused no.1- Paramasivam in Maruthi Omni Van Registration No. TN-23 E 5951 (MO1) near Kinathukadavu Checkpost. PW5-Balan stated that the deceased had left with accused no.1 from the quarry in Ealoorkarar thottam.

About four days from the date of occurrence, accused nos. 2 and 3 went to the house of the deceased asking for size of the stones. When being asked about them, accused no.2 disclosed his name as Selvaraj. As they appear to be strangers and as it was very late in the evening, deceased asked them to come on some other day. After four days thereafter accused nos.2 and 3 went to the house of the deceased and asked him to come along with them for seeing the stones. In spite of disinclination of deceased, accused nos. 2 and 3 insisted the deceased to come along with them stating that their owner has come and therefore, stones are to be seen. As it was late in the evening, deceased asked his wife for torch and PW2-Kala gave him torch (MO6) and deceased went along with accused nos.2 and 3.

10. The evidence of PWs.1 and 2 is cogent and consistent which clearly brings home the circumstance that deceased went along with accused nos. 2 and 3. In the Test Identification Parade conducted by PW38-Judicial Magistrate, PWs.1 and 2 have also identified accused nos. 2 and 3 which would strengthen the stand of the prosecution.

11. Learned counsel for the appellant raised objection with regard to non-mention of name of accused no.2-Selvaraj in Ext.P1-Complaint and submitted that accused no.3-Nirmal accompanied accused no.2 would throw serious doubts about the credibility of PWs.1 and 2. But from the evidence Ext.P1-complaint we find that PW1 has clearly stated that two persons had come to their house and took the deceased in Maruthi Omni Van. In Ext.P1-Complaint, though PW1 had expressed suspicion about accused nos. 1, 6 and 7, PW1 has clearly expressed his doubts that accused nos. 1, 6 and 7 might have engaged men for abducting the deceased. Such doubts expressed in Ext.P1-Complaint is sufficient incriminating circumstance against the accused nos. 2 and 3. Credibility of PWs.1 and 2 cannot be doubted on the ground of non-mention of name of accused no.2 in Ext.P1-Complaint. The evidence of PW9 also established that the deceased was last seen alive with accused no.1- Paramasivam in Maruthi Omni Van (TN-23 E 5951) near Kinathukadavu Checkpost. In his evidence, PW9 has stated that after taking petrol for TVS- 50 in a Petrol Pump near the Checkpost while he was proceeding along with PW8-Sivakumar, he saw the deceased along with accused no.1-Paramasivam in Maruthi Omni Van (MO1) and saw the others inside the Van. Since, deceased and accused no.1-Paramasivam were in inimical terms, PW9 wondered as to why accused no.1 and deceased are seen together and he asked PW8-Sivakumar about the same. Though, PW8-Sivakumar turned hostile, evidence of PW9 is trustworthy and we do not find any reason to take a different view.

12. Another circumstances relied upon by the prosecution is evidence of PW15-Subramani (brother of the deceased) that accused no. 1 and another person came to the quarry to see stones. When they were crushing the stones, deceased went with them to see the stones. No doubt evidence of PW15 as to how deceased went with the accused might appear to be slightly different but due to variation of time narrating the events cannot be said in manner the PW15 narrated his statement. We are of the view that evidence of PW15 does not make any dent upon the consistent version of PWs.1 and 2 and the case of prosecution.

13. Dr. Perimaladevi-PW33 conducted autopsy and noted the following injuries:

? Crush injury over the front of head and part of brain comes out [liquified].

? Fracture of left arm bone [upper] and left shoulder joint bones.

? Fracture of right upper arm bone and cut off from the shoulder joint.

? Fracture of left leg bones [middle].

? Fracture of right thigh bone and leg bones.

14. Dr. Perimaladevi opined that deceased died of 'shock and haemorrhage' due to multiple injuries and head injuries about 70-80 hours prior to the autopsy. Since identity of the body was not known, body was buried in Thirupur Chellandiamman burial ground. Later at the request of Investigating Officer, body was exhumed in the presence of PW21-Tahsildar. After the body was exhumed, PW34-Dr.Vallinayagam collected the blood for DNA test. Blood samples of PW14-Manickammal and PW15-Subramani (mother and brother of the deceased) were also collected. After conducting DNA test and upon analysis of results of DNA typing for the samples, PW40-Asst. Director gave Ext.P32-Report and opined that "bone pieces etc. described belong to a human male individual". PW40 further opined that "the person Mani alias Paraimani to whom the bone pieces etc. belong is the biological offspring of Ms. A. Manickammal.". Evidence of PW40 would amply establish identity of body recovered from the railway track as that of the deceased Mani alias Parai Mani who is the son of PW14-Manickammal.

15. When deceased is shown to be abducted, it is for the abductors to explain how they dealt with the abducted victim. In the absence of explanation, Court is to draw inference that abductors are the murderers.

16. In State of W.B. v. Mir Mohammad Omar and others (2000) 8 SCC 382, this Court held:

34. When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.

17. In *Sucha Singh v. State of Punjab* (2001) 4 SCC 375, this Court held:

15. The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.

19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.

21. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle is to be laid down that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others.

18. In the present case, the prosecution brought on record the evidences that accused no.1 to 3 had abducted the deceased. Therefore, it is accused nos.1 to 3 alone knew what happened to him as the deceased was found murdered within a short time after abduction. The accused nos.1 to 3 have failed to give any explanation and the Court rightly draw presumption that the accused have murdered the deceased Mani alias Parai Mani.

19. The prosecution relied upon the statement of accused persons leading to discovery of facts as envisaged u/s 27 of Indian Evidence Act. Accused Nos. 1, 2 and 5 were arrested on 28.1.2004 at different times. Confession statement of accused no.1 led to recovery of Voter ID Card of Mani (MO9) and other articles i.e. MOs.4 and 5.

Confession statement recorded from accused no.2-Selvaraj alias Selvan] led to recovery of Pocket Diary (MO2), Money purse (MO3) with photo of deceased and other articles-MOs.10 to 12. Confession statement of accused no.5 Driver Lingasamy led to seizure of Taxi MO1-Maruthi Omni Van (TN-23 E 5951). Accused no.3-Nirmal and accused no.4-Sureshkumar alias Suresh alias Pambatti were surrendered before the Court and on application, PW41-Investigating Officer took them for police custody. Confession statement recorded from accused no.3 led to recovery of Torch light(MO6) which was handed over to the deceased by PW2 at the time when he left the house. PW2 also identified MO6 as the torch light handed over by her at the time when the deceased left the house. Recovery of various articles of the deceased from accused nos.1 to 3 is a strong incriminating circumstance connecting the appellants with the crime.

20. Section 27 of the Evidence Act reads as under:

27. How much of information received from accused may be proved.”Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

21. In Anil alias Raju Namdev Patil v. Administration of Daman & Diu, Daman and another, (2006) 13 SCC 36, this Court held:

23.The information disclosed by the evidences leading to the discovery of a fact which is based on mental state of affair of the accused is, thus, admissible in evidence.

22. This Court in State of Himachal Pradesh v. Jeet Singh, (1999) 4 SCC 370 opined that when an object is discovered from an isolated place pointed out by the accused, the same would be admissible in evidence.

23. We have noticed the confessional statement of the appellants, on the basis of which the discovery of material evidence took place.

24. From the evidence on record, we find that the Prosecution was successful in

bringing on record the circumstantial evidences i.e. existence of motive; the circumstances in which the deceased was last seen alive in the company of appellants-accused nos.1 to 3; death was homicidal and body was found on the railway track mutilated; the body of the deceased was identified through DNA test; on arrest of accused incriminating articles were recovered.

25. Upon analysis of evidence, we are of the view that prosecution has succeeded in proving the facts that the accused nos.1 to 3 took away deceased Mani alias Parai Mani. What happened thereafter to deceased is especially within the knowledge of the appellants-accused nos.1 to 3. It was for the appellants-accused nos. 1 to 3 to explain what happened to Mani alias Parai Mani after they took him away but they failed to explain the same. Mani alias Parai Mani was found dead immediately thereafter. Therefore, it is clear that the accused nos.1 to 3 who abducted deceased Mani alias Parai Mani intentionally withhold the information from the Court and, therefore, there is every justification for drawing inference that appellants-accused nos.1 to 3 murdered Mani alias Parai Mani. Stand of the appellants is a bare denial of prosecution case. In the absence of any explanation, the inevitable inference is that appellants are responsible for the death of deceased Mani alias Parai Mani. Thus, the guilt of the appellants-accused nos. 1 to 3 has been proved beyond all reasonable doubt. We find no merit in this appeal and the same is accordingly dismissed.