

CASE NO.:
Appeal (crl.) 182 of 2005

PETITIONER:
Krishnamoorthy & Anr

RESPONDENT:
State by Inspector of Police & Ors

DATE OF JUDGMENT: 01/03/2007

BENCH:
Tarun Chatterjee & R. V. Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

This appeal is preferred by Accused 3 & 4 against the judgment dated 17.6.2004 of the Madras High Court dismissing Criminal Appeal No. 273 of 2001 filed by accused 1 to 4 against the judgment dated 28.2.2001 passed by the Addl. Sessions Judge, Vellore in Sessions Case No. 187 of 1998.

2. The prosecution case in brief is that the deceased Dhanabagyam, a resident of Thippasamudram Village, went to her groundnut field on 5.10.1996. Mahadevan (PW-2) who was doing some work in a nearby field heard some noise in Dhanabagyam's field and saw A-1 (Vijayan) running from that field. PW-6 (Manavalan) who also belonged to Thippasamudram village, while going towards Kuchipalyam on a bicycle at about 12 Noon, saw two persons, each holding a stone running from east to west. He also saw two others running from West to East. At that time, he did not know that any mishap had occurred. At about 2.30 p.m., Suresh Kumar (PW-1), son of the deceased, went to the field with food for his mother. As he did not find her, he shouted her name and searched for her. As he could not find her, he came back to the house and searched for her. Thereafter around 4 to 4.30 p.m., he went back to the field along with one Padma (who was from the neighbouring field) and again searched for her mother. Then he found his mother lying dead on her back in the portion of the field containing some Toor (Thuvarai) plants. He noticed head injuries and blood oozing out. He also noticed that her Mangalsutra and ear-rings were missing. The bruise marks caused by snatching/pulling the Mangalsutra were visible on her neck and her ear was torn. He informed the incident to the villagers and thereafter the Pallikonda Police Station. On the strength of the complaint (Ex.P.1), the Inspector of Police, Pallikonda - Jothimani (PW-13) registered the First Information Report and took up investigation. In the presence of PW-3 and Subramani, he prepared an observation mahazar Ex.P.2 and rough sketch (Ex.P.22). Inquest Report was prepared as per Ex.P.31 and statements of some witnesses were also recorded. In the meanwhile, at about 5 p.m., while returning to the village, PW-6 learnt about the incident and saw the body. PW-6 went to Bangalore on the same day, and returned after four days and was questioned by the police. He told them about the four persons he saw on the day of the incident near the field of the deceased and that he knew them as they were from the neighbouring village.

3. Dr. Chandra (PW-8) attached to Government Hospital, Vellore, performed autopsy on the dead body on 6.10.1996 and recorded the following injuries on the body of Dhanabagyam : -

(1) A lacerated bone deep wound extending from the left parietal region upto the right ear - 15 cm x 2.3 cm.

(2) A lacerated bone-deep wound over the occipital region on the left side 4 cm x 2 cm.

(3) A lacerated wound on the left side of the neck 4 cm x 1 cm.

(4) A lacerated wound on the back of the left ear 2 cm x 1 cm.

(5) Multiple irregular wounds on both the earlobes.

(6) Ligature mark 3 mm breadth around the neck with small multiple irregular abrasions over the back of the neck and contusion of the tissues underneath. Thyroid bone normal.

He also found blood clots present beneath the scalp and a linear fracture 2.5 cms over the left parietal bone; and on opening the skull, he found blood clots over the surface. PW-13 issued a post-mortem certificate (Ex.P.18) and opined that Dhanabagayam had died of shock and haemorrhage due to head injuries.

4. On 9.10.1996, PW-13 examined PW.1 and recorded his statement in regard to the details of the missing jewels \026 that is 'Mangalasutra' (with one golden piece, one pair of gold quarter coins and four silver coins) and ear studs. On 8.12.1996, A-3 surrendered before Venkatesan -- Village Administrative Officer, North Virinjipuram (PW-4) and made an extra-judicial confession that he and other accused robbed Dhanabagayam and killed her and shared the jewels. PW-4 recorded the said confession (Ex.P.4) and produced A-3 before the Inspector of Police (PW-13). A-3 produced four silver coins (M02). PW-13 recovered the silver coins under mahazar Ex.P.6 and recorded his confession. Ex.P.33 is the admissible portion of the confessional statement of A-3.

5. Thereafter, on the information furnished by A-3, PW-13 and PW-4 along with A-3 went for recovering the stones used in the offence. On the way, A-3 identified A-1 and A-4 near the Forest Check Post, who were arrested by PW-13. A-1 and A-4 gave confessional statements voluntarily which were recorded as per Ex. P.4 and P.8 respectively. In pursuance of it, they were taken to their houses. A-1 produced the ear studs (M03), which was recovered under mahazar Ex.P.10. A-4 produced the two gold coins (M0.4) from his house which were recovered under a mahazar Ex.P.11. At about 2 p.m., A-1, A-3 and A-4 identified A-2 who was arrested by PW-13. A-2 also gave a confessional statement voluntarily and admissible portion thereof was marked as Ex.P.9. A-2 produced the Mangalsutra Golden attachment (M01) which was recovered by PW-13 under Ex. P-12. A-2 and A-3 also showed the stones (M0.7 and M0.8) used by them against the deceased from near a cinema-theatre which was recovered under mahazars -- (Ex.P.13 and P.14).

6. On 27.12.1996, M. Vijayan, Judicial Magistrate (PW-7) conducted test identification parade in which PW-2 and PW-6 identified the accused. On 13.12.1996, PW-1 and one Doraiswamy identified M0s. 1 to 4 recovered from the accused. PW-14 the successor of PW-13 took up further investigation and recorded the statements of some more persons. A final report was filed under section 302 read with 34 and 392 read with 397 IPC against all the four accused.

7. The prosecution examined PW-1 to PW-14, marked Ex. P.1 to P.33 and exhibited MOS.1 to 13. On completion of evidence, the statements of A-1 to A-4 were recorded under section 313 Cr.PC. Accused did not examine any witnesses but marked Exs.D1 and D2. The trial court by judgment dated 28.2.2001 found all the accused guilty and convicted them. It held that A-2 and A-3 attacked the deceased with stones and all four accused participated in the robbery. The trial court convicted A-2 and A-3 under section 302 IPC and section 392 read with 397 IPC and sentenced them to life imprisonment under section 302, and 7 years RI under Section 392 read with 397 IPC, in addition to fine. The trial court also convicted A-1 and A-4 under section 302 read with 34 IPC and section 392 IPC, and sentenced them to life imprisonment under section 302 read with section 34, and 5 years RI under

section 392 apart from fine. All the four accused appealed and the High Court dismissed the appeal affirming the decision of the trial court. Feeling aggrieved, A-3 and A-4 (Krishnamoorthy and Murugan) have filed this appeal by special leave.

8. The trial court has considered and analyzed the evidence exhaustively. The High Court has also examined the evidence in detail. There are no eye-witnesses to the crime. The case against the accused solely rests on circumstantial evidence. The trial court and High Court held that the evidence shows a complete unbroken chain of circumstances unerringly leading to an inescapable conclusion that the accused 1 to 4 had committed the crime. The circumstances were :-

(a) The dead body of Dhanabagiam being found in the field with head injuries, her jewels having been robbed.

(b) The ligature marks around the neck with multiple irregular abrasions showed that her Mangalsutra had been snatched from her neck. The abrasions/tearing of the earlobes showed her ear-studs being robbed. Her head injuries made it clear that she had died of homicidal violence.

(c) All the accused were last seen near the field of the deceased (scene of occurrence) by PW-6 and one of the accused was also seen near the field by PW-2. The accused were identified in the test identification parade conducted by PW-7 (Judicial Magistrate).

(d) On the information furnished by PW-2 and PW-6 who knew the accused the police were searching for the accused who belonged to a nearby village. As a consequence of the pressure built on account of such search, A-3 surrendered before PW-4 and gave an extra-judicial confession. On his identification, A-1 and A-4 were also arrested and they also gave their voluntary confessional statements and on their information, A-3 was also arrested and he also gave his voluntary confessional statement.

(e) On information furnished by the accused, the stones used in the murder and jewels robbed from the deceased were recovered, which were identified by PW-1 (son of the deceased).

9. From this chain of circumstances, both courts have held that only possible conclusion is that A-1 to 1-4 had committed the murder of the deceased. Though the confessions made to Police are to be excluded and though extra-judicial confession to others in its very nature, is a weak piece of evidence, when examined with reference to the other proved circumstances, and the recoveries made on the information furnished by the accused, the guilt of the accused stood established. We find no infirmity in the reasoning or conclusions of the trial court or the High Court.

10. The main contention urged by the learned counsel for the appellants (A-3 and A-4) is that there is no direct evidence to connect them with the incident and the offence. As noticed above, the prosecution case is not based on direct evidence of eye-witnesses but purely on circumstantial evidence. The accused 3 and 4 as also the other two accused, are linked to the offence by their being sighted in the field of the deceased on the day of the incident and on account of the recovery of the jewels of the deceased as also recovery of the stones used for committing the offence, on the information furnished by them.

11. Learned counsel for the appellants next contended that the question of PW-2 identifying all four accused did not arise. She pointed out that PW-2 had stated in his examination-in-chief that on the day of the incident, he only saw A-1 (Vijayan) running away from the field of the deceased. In his cross-examination, he admitted that even in his statement under section 161 Cr.PC, he had stated that he had seen only Vijayan (A-1) running away. It is true that if PW-2 had seen only A1 near the scene of incident, the question

of his identifying all the four accused in the test identification parade is unexplained. But the fact remains that PW-6 has clearly stated that he saw all the four accused on the date of the incident running from the field of deceased and he had informed the police that he had seen them on the date of the incident. He also identified them in the test identification parade. Therefore, the discrepancy in the evidence of PW-2 by itself, will not affect the case of the prosecution. Nor is it sufficient to displace the chain of irrefutable inferences flowing from the chain of circumstances established by evidence.

12. The learned counsel for the appellants lastly contended that PW-1 son of the deceased had not given description of the jewels in the FIR. As rightly noted by the High Court, PW-1 who found the dead body of his mother, ran to the police station and reported the death and the fact that the jewels were missing. The mere fact that he did not refer to the jewels in detail in the FIR, will not in any way affect the identification of the jewellery seized from the accused as those belonging to his mother. A faint attempt was made to contend that the jewels were not of such great value as to lead to murder. It is submitted that the accused were falsely implicated. It is not possible to say that unless the jewels are of a particular value, robbery and murder would not be committed. There is also no apparent reason for the Police to falsely implicate the accused.

13. No other contention is urged. We find no reason to interfere with the judgment of the High Court affirming the well reasoned judgment of the trial court. The appeal is accordingly dismissed.