

CASE NO.:
Appeal (crl.) 406 of 1997

PETITIONER:
State of Tamil Nadu

RESPONDENT:
Sundar

DATE OF JUDGMENT: 11/12/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

Respondent herein was convicted by the Sessions Judge, Dharmapuri Division at Krishnagiri for an offence punishable under section 302 IPC and was awarded the extreme penalty of death. In a reference made by the learned Sessions Judge for confirmation of the said sentence and also in an appeal filed by the respondent against the said conviction and sentence, the High Court of Judicature at Madras by the impugned judgment while dismissing the reference for confirmation of the sentence, allowed the appeal, setting aside the judgment of the learned Sessions Judge. The State of Tamil Nadu is in appeal against the said common judgment of the High Court.

The allegation against the respondent in this case is that he committed the murder of one D. Rathinam who was the Incharge Sub-Post Master of K.R.P. Dam Post Office on 16.3.1984 with a view to wreak vengeance against him for having accused him of stealing Rs.10 and also with a view to rob the Post Office. It is the case of the prosecution that at the relevant time the respondent was working temporarily as an extra departmental mail carrier in place of his father who was on leave. The prosecution alleged that since the Post Office was found locked on a working day namely on 16.3.1984, PW-4 who was also working in the said Post Office, informed PW-1 who was then the Sub-Divisional Post Inspector about this locking of the Post Office who, in turn, informed PW-6, the Deputy Superintendent of Post Office over the phone as to this unusual incident of finding the Post Office locked on a working day. On instructions from PW-6, PW-1 made necessary arrangements to safeguard and protect the properties of the said Post Office and on the morning of 17.3.1984 said PW-1 went to the Post Office and broke open the lock in the presence of the Village Administrative Officer and other office personnel and on taking an inventory of the said office, they found certain cash, postal stamps, postal orders and cash certificates etc. valued at Rs.850.55 missing. They also found Rathinam who was the Incharge of the office on 16.3.1984 missing but found his shoes in the Post Office, hence on a suspicion they searched for him during which process they found the body of said Rathinam inside the septic tank situated in the backyard of the said Post Office. On lodging a complaint in this regard, a case was registered in Taluk Police Station, Krishnagiri being Crime No.142 of 1984 under sections 302 and 380 IPC. PW-12 who took up the investigation, came to the spot on 17.3.1984 and inspected the scene of occurrence and drew up the inquest Panchnama Ex. P-19. He made inquiries during the said inquest proceedings and recorded the statements of PWs.1, 3, 6 and one

Rajan. He made arrangement to send the dead body for autopsy. As per the medical report it was found that the deceased died due to injuries suffered by him on his head also due to asphyxia. It is the further case of the prosecution that on 18.3.1984 at about 5 a.m. PW-2 arrested the respondent near the river-bed adjacent to Kaveripattinam Travellers' bungalow and on a disclosure statement made by the accused in the presence of PW-8, he recovered MO-28, a blood stained shirt belonging to respondent kept concealed in the river-bed. He also recovered a bunch of keys belonging to the Post Office at the instance of the respondent, kept in a post-box kept in front of a textile shop. On a further statement made by the respondent the I.O. recovered MO-13 a yellow bag from a cycle shop of one Pattu (not examined) in which he found various properties like the inland letters, postcards, postal stamps, revenue stamps etc. allegedly stolen by the respondent. On a further statement made by the respondent he also recovered certain sums of money kept concealed under a hill as also a blood stained towel kept concealed under a tree in the backyard of the Post Office. From the statement of PW-3, the I.O. found out that on 16.3.1984 in the afternoon the respondent was seen coming out of the Post Office locking the same, carrying a yellow bag like MO-13 and on an inquiry by PW-3 she was told by respondent that he was locking the office since it was a holiday for the Post Office. From the evidence of PW-11 he came to know that the respondent had kept the yellow bag MO-13 in the shop of Pattu of which PW-11 was the owner of the building. Based on this a chargesheet was filed before the Judicial Second Class Magistrate, Krishnagiri against the respondent for offences under Sections 302, 201 and 381 IPC and on committal and after trial the learned Sessions Judge found the respondent guilty of all the 3 offences but punished him only for the offence under Section 302 and imposed the sentence of extreme penalty of death which as stated above was not confirmed by the High Court and the appellant's appeal against his conviction was also allowed.

In the absence of any direct evidence the prosecution case depended on various circumstances which were accepted by the trial court but were held not proved by the High Court. The High Court after noticing the law in regard to basing a conviction on circumstantial evidence enumerated the various circumstances placed by the prosecution in this case. They are :

1. The accused being found in the company of the deceased at 12 noon on 16.3.84 within the office premises;
2. The accused emerging out of the said Post Office where he was working, carrying in his hand M.O.13 yellow bag;
3. The so called explanation given by the accused to P.W.3 that holiday had been declared to the Post Office after lunch recess, when P.W.3 questioned him as to when the Post Office was to commence business after lunch recess;
4. His absconding from the Office on and from 16.3.1984;
5. His arrest on 18.3.1984. Consequent confession he was stated to have made and recovery of certain material objects pursuant to such confession, viz., M.O.12 series, M.O.13 bag containing M.Os.14 to 25, M.O.26 series, M.Os.27 and 28;
6. M.O.27 towel recovery at the instance of the accused pursuant to Sec.27 of the Evidence Act confession-statement, containing human blood as disclosed by Serologist report, Exhibit P.25.
7. The motive aspect of the case of the prosecution getting reflected by the testimony of P.W.4 to whom the deceased appeared to have told either on 14th or 15th March 1984 about the commission theft of Rs.10/- by the accused from

the shirt pocket and on hearing the same, P.W.4 reprimanded him for his abominable conduct and requested the deceased to pardon the accused for such an act of his and the deceased also complied with such a request."

The very same circumstances were considered by the trial court also, which held that these circumstances were proved and were sufficient to bring home the guilt of the accused. While the High Court on a re-appreciation of the evidence led by the prosecution to prove the abovesaid circumstances, came to the conclusion that the prosecution evidence led in support of these circumstances cannot be said to have been proved beyond all reasonable doubt. It also came to the conclusion that some of the circumstances cannot be treated as circumstances indicating the guilt of the accused. They are the circumstances like the presence of the accused in the Post Office and he being found in the company of the deceased on 16.3.1984. According to the High Court, it is the prosecution's own case that the respondent accused was an employee of the said post office, though a temporary one, at the relevant time, therefore, these circumstances do not implicate the respondent. In regard to the other circumstances, the High Court came to the conclusion that the witnesses who have spoken about the same, are either chance witnesses and there being contradictions in their evidence, it is not safe to place reliance on the same.

We have heard learned counsel for the parties and perused the records. The appeal before us arises out of a reversing judgment of the High Court which having considered the material adduced by the prosecution, took a view contrary to the one taken by the trial court, therefore, in the normal course unless we are satisfied that the said finding of the High Court is either arbitrary or perverse, this Court would not interfere with the said finding. In this process, we find most of the reasoning of the High Court while rejecting the evidence of the prosecution witnesses cannot be said to be either perverse or the one that cannot be arrived at by any prudent person. However, we must notice that so far as the rejection of the evidence of PW-3 by the High Court is concerned, we do not think the reason given by the High Court is proper. The High Court came to the conclusion that since PW-3 did not complain to anybody else about the fishy conduct of the accused immediately after he was seen coming out of the Post Office and locking the same, in our opinion, cannot be the sole reason to reject her evidence on the facts of this case. Be that as it may, there is yet another very good reason to discard the evidence of PW-3. PW-12, the I.O., in his evidence has stated that he recorded the statement of this witness on 17.3.1984 during the inquest proceedings but this witness in her evidence before the court has stated that her evidence was recorded a day after the inquest proceedings were conducted. This is a material contradiction in regard to which the prosecution has not taken any step to clarify this part of her evidence when PW-3 was in the witness box by way of re-examination, therefore, if PW-3's evidence is to be accepted then the inquest proceedings must have taken place on 16.3.1984 itself but that is not the case of the prosecution. Since the time and date of the incident are very material facts in this case, the contradiction in the evidence of PW-3 in this regard cannot be brushed aside. That apart, it has come in evidence that the job of the accused was to carry the mail bag daily from the K.R.P. Dam Post Office to Sundekuppam Post Office and it is not the case of the prosecution that this job was entrusted to anybody else on 17.3.1984. In this context, if we examine the evidence of PW-8, the Post Master of Sundekuppam, he states in his evidence that

even on 17.3.1984 the post bag was taken from K.R.P. Dam Post Office to Sundekuppam. No explanation whatsoever is rendered by the prosecution as to how this was possible if the respondent-accused was absconding on that day, and when the murder was detected on that day. These suspicions surrounding circumstances pleaded by the prosecution remain unexplained. That apart, we also notice some other materials from the prosecution case which compounds our suspicion in regard to the prosecution case. It is the case of the prosecution that on 18.3.1984 after the arrest of the accused, he led them to a tree just behind the Post Office building whereunder a blood-stained towel was recovered. The prosecution had earlier alleged that the body of the deceased was found in a septic tank behind the Post Office on 17.3.1984. The tree under which blood stained towel was recovered is also behind the Post Office, therefore, the septic tank and the tree must be close to each other. If that be so, how the investigating agency missed noticing the blood-stained towel under the tree on the day of inquest is not explained by the prosecution. From the evidence in this regard led by the prosecution, there is nothing to show that this blood-stained towel was concealed in such a manner that the I.O. could not have noticed it on 17.3.1984 itself. There is also one other circumstance to be taken note of. It is the case of the prosecution that the respondent-accused made a disclosure statement at the time when he was arrested at Kaveripattinam, and as per the statement, a blood-stained shirt was recovered. According to the prosecution, this is the same shirt which was worn by the accused when he committed the murder but there is no material to show that he had changed this shirt when he came out of the Post Office. Therefore, if really this blood-stained shirt is the one that was worn by the accused at the time of the murder then PW-3 would not have failed to notice the blood-stains on his shirt when she saw him and also spoke to him on 16.3.1984. This circumstance also, in our opinion, goes against the prosecution. As observed by the High Court, non-examination of Pattu who was the owner of the cycle-shop from where most important of the recoveries i.e. MO-13 containing stamps etc. were made, also goes against the prosecution. All the above lacunae in the prosecution case, in our opinion, make the prosecution case doubtful, i.e. in addition to the reasons cited by the High Court.

For the reasons stated above, we find no merit in this appeal and the same is hereby dismissed.