Sangili @ Sanganathan vs State Of Tamil Nadu Rep. Insp.Of Police on 10 September, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3756, 2014 (10) SCC 264, 2014 AIR SCW 5177, AIR 2014 SC (CRIMINAL) 2092, 2014 (10) SCALE 433, (2014) 143 ALLINDCAS 157 (SC), 2014 (4) MAD LJ(CRI) 252, (2014) 3 ALLCRIR 3172, (2014) 59 OCR 964, (2014) 4 ALLCRILR 791, (2014) 4 CURCRIR 5, (2014) 2 ORISSA LR 925, (2014) 3 UC 1908, (2015) 2 MH LJ (CRI) 210, 2015 CALCRILR 1 269, 2015 (1) SCC (CRI) 71, (2015) 1 RAJ LW 739, (2014) 87 ALLCRIC 632

Bench: A.K. Sikri, J. Chelameswar

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 639 OF 2011

Sangili @ Sanganathan …Appellant

Versus

State of Tamil Nadu …Respondent

J U D G M E N T

Chelameswar, J.

1. This appeal arises out of the judgment dated 6th January 2010 of the Madurai Bench of the Madras High Court in Criminal Appeal No.506 of 2004.

2. By the impugned judgment, the High Court confirmed the appellant's conviction and sentence of imprisonment for life and a fine of Rs.10000/- under Section 302 of the Indian Penal Code, 1860 (for short "IPC") awarded by the Sessions Court, Madurai in Sessions Case No.490 of 2003.

3. The deceased Muthuramaligam was a high school going child studying Plus-Two. PWs 1 and 2 are his parents. PW-5 Ramathilaga another young girl was also a student of the same school where the deceased was studying. The appellant herein was working for the father of PW-5.

4. According to the case of the prosecution, on 12.6.2002 at about 5.15 p.m., there was a phone call from the appellant herein to the deceased which was initially picked up by PW-1. According to PW-1 the caller identified himself by his name (same as the appellant). After some conversation with the caller the deceased went out by bicycle informing his parents that he would return soon. Unfortunately, he never returned. On 14.06.2002 at about 10 a.m., PW-1 went to the Oomachikulam Police Station and lodged a complaint Ex.P1 to the effect that Muthuramaligam was missing.

5. PW-12 Head Constable received the complaint and registered a Crime No.204 of 2003. PW-15 Tr. Ponnuchamy is the Inspector of Police of the abovementioned police station.

6. On the same day, the appellant was arrested at about 8 p.m. According to the prosecution, the appellant made a confessional statement which led to certain recoveries. The admissible portion of the statement made by the appellant is Ex.P5. On the basis of such a statement, PW-15 altered the First Information Report (FIR) and registered the case under Section 302 IPC and dispatched the FIR to the Court. Thereafter, he went led by the accused to the spot from where the dead body of the deceased was recovered around 9.45 p.m. Thereafter, he got the inquest conducted and prepared a report Ex.P18 around 2.30 a.m. i.e. in the early hours of 15.06.2002. The dead body was sent to the hospital for post mortem examination. PW-15 thereafter proceeded to the house of the appellant and seized MOs 7 and 8 (two knives) from the backyard of the house of the appellant. They proceeded further to the house of PW-9 at around 3.30 a.m. at the instance of the appellant and recovered the bicycle, M.O. 1. Subsequently, Nagarajan (A2 who was acquitted by the trial court) was arrested. After completion of the investigation, PW-16 Inspector of Police who succeeded PW-15 (in office) filed the charge sheet.

7. In all prosecution examined 16 witnesses apart from marking 18 documents and producing 8 material objects to establish the guilt of the appellant herein. The prosecution case rests on the circumstantial evidence. The circumstances are:

> (i) That the deceased was trying to woo PW-5 which was objected to by the appellant herein and in that context there was an earlier incident of beating up of the deceased by the appellant;
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> (ii) That the deceased left the house on the fateful day on receiving call from the appellant and never returned thereafter;
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> (iii) That the appellant knew as to where the dead body of the deceased was lying and also the place where the bicycle of the deceased was available;
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> (iv) The appellant also knew where MOs 7 and 8 (two knifes) which are said to have been used for killing the deceased were hidden.

8. The trial Court on the basis of the abovementioned circumstances recorded a conclusion that the appellant is guilty of murdering Muthuramaligam which finding is confirmed by the High Court.

9. Shri R. Balasubramanian, the learned senior counsel for the appellant argued that the evidence on record is wholly inadequate to record the finding of guilt against the appellant. (a) It is submitted that PWs 3 to 5 who were examined to establish the motive and the background for the offence turned hostile. Therefore, there is no evidence on record to establish the motive. (b) With regard to the fact that the deceased left his residence on the fateful day on receipt of a phone call from the appellant herein is not clearly established as there is nothing in the evidence of PW-1 to indicate that he knew the appellant prior to the telephonic conversation and he could identify the voice of the appellant. Assuming for the sake of argument that the caller identified himself by the name "Sangili", it is not conclusive that the caller was the appellant herein. There is no evidence on record that anybody saw both the deceased and accused together on the evening of the fateful day. (c) The recoveries made pursuant to Ex.P5 are highly doubtful as the evidence of PW- 7 who happens to be the Panch witness both before the arrest of the appellant and also various recoveries made pursuant to Ex.P5 is full of contradictions and does not inspire any confidence in the truthfulness of the witness.

10. On the other hand, Mr. M. Yogesh Kanna, learned counsel appearing for the State argued that the concurrent findings of fact recorded by both the courts below ought not to be interfered with and this Court would not re- appreciate evidence in exercising its jurisdiction under Article 136.

11. There cannot be any second opinion that this Court in exercise of its jurisdiction under Article 136 does not re-appreciate evidence. But when the submission is that it is a case of no evidence at all, we are bound to examine the matter.

12. We have gone through the judgments of the trial court and the High Court. We are sorry to place on record that both the judgments leave much to be desired.

13. There is no discussion as to the basis on which the courts below reached the conclusion that there was a motive for the appellant to kill Muthuramaligam. PWs 3 to 5 who are examined to prove the motive, turned hostile. PW-1 is the only other witness who spoke about the motive but he does not claim any personal knowledge of the motive. At best the evidence of PW-1 with respect to motive is only hearsay evidence.

14. Coming to the circumstance that the deceased left his residence on the fateful day after receiving the call allegedly made by the appellant herein, the prosecution sought to establish the said fact on the basis of the evidence of PW-1 and PW-8, of whom PW-8 turned hostile. PW-1 the father of the deceased stated in his evidence that on the fateful day the deceased received a phone call from the appellant herein at about 5.15 p.m. which call was initially picked up by him and on his enquiry the caller identified himself by his name "Sangili". In his cross-examination he clearly admitted that he neither saw nor knew the appellant before his arrest by the police. He did not know anything about the appellant's place of residence, father's name etc. The only other witness who was examined in this context was PW-8 who allegedly stated before PW-15 Inspector of Police that on the fateful day the appellant accompanied by another person went to the telephone booth where PW-8 was said to be working and made a phone call to the deceased. As noticed, PW-8 did not support the prosecution case. That being the case, there is no legally admissible evidence on record to come to

the conclusion that the deceased left the house only after being called up by the appellant herein.

15. The other circumstance relied upon by the prosecution accepted by both the Courts is the recovery of MOs 1 (bicycle) and 7 & 8 (two knives) at the instance of the appellant pursuant to the statement before the police, the admissible portion which is Ex.P5.

16. PW-7 Mathivanan is the Panch witness along with Shenbagamoorthy (who was not examined), for the arrest of the appellant and also for the recovery of abovementioned material objects.

17. PW-9 Chinnathambi is the person according to whose evidence on 12.6.2002 at about 7 p.m. the appellant herein left MO-1 bicycle at his residence. However, the appellant never went back to take the bicycle. On the other hand, in the early hours of 15.6.2002 at around 3.30 a.m. PW-15 and others came to his residence and seized the bicycle MO-1.

18. The learned counsel for the appellant argued that there are discrepancies in the evidence of PW-7 and, therefore, his evidence cannot be relied upon and his evidence should be discarded. There is nothing else on record to establish the trustworthiness of the recovery of the MOs 1 (bicycle) and 7 & 8 (two knives) at the instance of the appellant.

19. The learned counsel also argued that PW-9 never stated that when the police party led by PW-15 came to seize MO-1 from his residence, the police party was accompanied by the appellant and, therefore, the recovery of the bicycle is also unreliable piece of evidence.

20. We have carefully scrutinized the evidence of PWs 7 and 9. We find one aspect, which is material, and is quite intriguing. As per the prosecution, the appellant had made confessional statement; there is a recovery of blood; recovery of knife; and recovery of bicycle. In the panchnama drawn for these recoveries, there is only one person who has allegedly witnessed these recoveries, namely PW-7 Mathivanan, son of Thangamani. Though this by itself may not be very suspicious, when we examine this aspect in conjunction with other evidence emerging on record, such recoveries become little doubtful. The Investigating Officer himself, who appeared as PW-15, has stated in his deposition that the witness who signed the confessional statement of the appellant is not Mathivanan, son of Thangamani, thereby doubting the identity of PW-7. The manner in which PW-7 reached the spot and was allegedly requested by the Investigating Officer to accompany him to witness the recoveries is also shrouded in mystery. Further, in his chief-examination he stated that on that day from 8.00 p.m. to the next morning 3.30 a.m. he was with the Police on the request of PW-15. In his cross-examination he stated that he was taken to the police station at about 6.00 p.m. for a short while and let off by the Police thereafter. All these facts taken together, which are not considered by the Courts below, make the recoveries little doubtful.

21. It is to be emphasized at this stage that except the so-called recoveries, there is no other circumstances worth the name which has been proved against the appellant.

22. To sum up what is discussed above, it is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to

be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. In the present case, we find, in the first instance, that the appellant was roped in with suspicion that it was a case of triangular love and since he also loved PW-3, he eliminated the deceased when he found that the deceased and PW-3 are in love with each other. However, we are of the view that this motive has not been proved. The evidence of last seen is also not established. Father of the deceased only said that the deceased had received a call and after receiving that call he left the house. In his deposition, he admitted that he had not seen the appellant before and he did not recognize his voice either. Therefore, he was unable to say as to whether the phone call received was that of the appellant. Proceeding further, we find that the deceased was not seen by anybody after he left the house. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

23. In Mani v. State of Tamil Nadu, (2009) 17 SCC 273, this Court made following pertinent observation on this very aspect:

> "26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case...."

24. There is a reiteration of the same sentiment in Manthuri Laxmi Narsaiah v. State of Andhra Pradesh, (2011) 14 SCC 117 in the following manner:

> "6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

25. Likewise, in Mustkeem alias Sirajudeen v. State of Rajasthan, (2011) 11 SCC 724, this Court observed as under:

> "24. In a most celebrated case of this Court, Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185) "(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;
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> (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution." (emphasis supplied)

26. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only to one conclusion, that is, the guilt of the accused. In our opinion, it is not safe to record a finding of guilt of the appellant and the appellant is entitled to get the benefit of doubt. We, therefore, allow the appeal and set-aside the conviction and sentence of the appellant. The appellant be set at liberty unless required in any other case.

.....J. (J. Chelameswar) .....J. (A.K. Sikri) New Delhi;

September 10, 2014
