

SUNDARAMURTHI

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v.

STATE OF TAMIL NADU

DECEMBER 16, 1994

[M.M. PUNCHHI AND K. JAYACHANDRA REDDY, JJ.]

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Indian Evidence Act, 1872: Section 3.

Circumstantial evidence—Conviction based on—Validity of Indian Penal Code, 1860:

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Sections 302/34, 392 and 449—Conviction under—Conviction based on circumstantial evidence—Validity of.

The appellant, alongwith two other co-accused, was prosecuted for offences punishable under Sections 302/34, 392 and 449 of the Indian Penal Code, 1860. The prosecution case, based entirely on circumstantial evidence, was that appellant, A2, and his father, A3, were running a rice mill, while A1 was working for them. A3 had obtained loan from the deceased B and in lieu thereof deceased B and his brother-in-law, PW 8, who were doing business in sale and purchase of sago on commission basis, were occupying a portion of the house, without payment of rent, which was within the mill premises. It was further case of the prosecution that A-3 borrowed two sums of Rs. 20,000 and Rs. 15,000 and executed two promissory notes, Ex.P.1 and P.2, in favour of the deceased. Two days before the date of occurrence deceased B obtained a loan of Rs. 25,000 from PW 16 and 17 and out of the said amount paid Rs. 10,000 to PW 10 in part payment towards sago purchase from him while the balance cash remained with him. On 9.10.1983, in the presence of PW 10, A3 demanded a sum of Rs. 10,000 from the deceased and on his refusal to pay A3 vowed to recover the possession of the house at any cost. On 10.10.1983 i.e. the day of occurrence at about 10.00 P.M. PW 11, who used to see sago through the deceased, came to see the deceased in his house and the deceased told him that A3, who owed him Rs. 47,000 including the two promissory notes, was pestering him to vacate the house without paying the loan amounts. It is alleged that after PW 11 left, the murder of B was committed. PWs 1 to 4 deposed that sometime after 10.00 P.M. on the night of 10.10.1983 they saw A1 and A2 entering the car shed of A3 to gain access to the house where the deceased used to sleep. After two

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A hours A1 was seen coming out of the car shed carrying a bag and 10 minutes later A2 also came out of the shed closing the gate of the mill compound and walking away. Next morning i.e. on 11.10. 1983 body of B was found lying on a cot in the house. Deceased's safe was found open and the cash and pronotes were missing. At the instance of A1, a bag containing 240 currency notes of Rs.50 each hidden in a pit in the village and a blood stained shirt and lungi were recovered from the house of A1. Pursuant to the statement of A2, 80 notes of Rs.50 each were seized from his house. Pursuant to the statement of A3 two undischarged promissory notes were seized from him. The Expert opinion confirmed that the finger prints taken from the scene of occurrence tallied with those the A1.

C Relying on the evidence of PWs 1 to 4 as well as the evidence of finger prints expert and on the basis of the recoveries made, the Trial Court convicted A1 and sentenced him to death but acquitted A2 and A3 on the ground that circumstantial evidence was not sufficient to connect them with the crime. On appeal the High Court reduced the death sentence of A1 to life imprisonment and confirmed the acquittal of A3. However, it set aside the acquittal of the appellant, A2, holding that the evidence of PWs 1 to 4 coupled with other circumstantial evidence sufficiently establish is guilt also and consequently convicted him under section 392, 449 and 302/34 and sentenced him to life imprisonment. A2 preferred an appeal to this Court.

E Dismissing the appeal, this Court

F HELD: 1. The High Court has considered all the circumstances and has rightly convicted the appellant. The Sessions Judge has erroneously rejected the evidence of PWs 1 to 4. There is nothing to show that these four witnesses were interested in any manner. What really they have stated regarding the movements of the appellant in the company of A1 appears to be true and natural. Their evidence has been believed by both the courts as against A1 and their evidence equally establishes that the appellant was also in the company of A1 during that period when the murder took place. No doubt this circumstance by itself at the most may throw some suspicion, but one should remember that the appellant and A1 going inside more or less at the same time and coming out about two hours later during which interval the murder has taken place, is very incriminating in nature.

G [660 G, 659 F to H]

H 2. The next important circumstance is Ex.P.1 and Ex.P2 i.e. promissory notes being found in the possession of A3, which were

enforceable by the date of occurrence and were not containing endorsement of discharge. On this there is the evidence of PW 11. PWS 10 and 11 are independent witnesses and there is no reason whatsoever to doubt their evidence which establishes that the amount in promissory notes were not paid and they were not discharged and therefore they must have been in the possession of the deceased and must have been in his iron safe. Therefore, the irresistible inference is that somebody who after committing the murder and having removed the promissory notes from the iron safe, must have handed them over to A3. He could be none else than A2 in the circumstances. This is a highly incriminating circumstance. [660 A to F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 670 of 1985.

From the Judgment and Order dated 26.7.85 of the Madras High Court in Crl.A.No.408 of 1985.

Raju Ramachandran and Joseph Pookkatt for the Appellant.

V. Venkataraman for the Respondent.

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. This is an appeal under Section 2(a) of the supreme court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 filed by Sundaramurthi, original accused no. 2 in the case. He alongwith his father S.K. Palaniappa Gounder, original accused no. 3 and one Illangovan alias Pachan, original accused no. 1 was tried for offences punishable under Sections 302/34, 392 and 449 I.P.C. A-3 was also charged under Sections 302/109 I.P.C. alternatively. The Sessions Judge acquitted the appellant (A-2) and his father A-3 but convicted A-1 under Section 302 I.P.C. and sentenced him to death subject to confirmation by the High Court. He was also found guilty under Sections 392 and 449 I.P.C. The State preferred an appeal against the acquittal of A-2 and A-3 and the same alongwith reference for confirmation of death sentence were heard together and disposed of by a common judgment by a Division Bench of the High Court which confirmed the acquittal of A-3 but reduced the death sentence of A-1 to one of life imprisonment and also set aside the acquittal of Sundaramurthi, A-2 and convicted him under Sections 302/34 I.P.C. and sentenced him to undergo imprisonment for life. He was also convicted under Sections 392 and 449 I.P.C. and sentenced to undergo seven years' R.I. under each count and the sentences were directed to run concurrently.

A Hence the present appeal by A-2 only. It appears that A-1 has not preferred any appeal.

The facts that emerge from the prosecution case may briefly be stated. A-2 is the son of A-3 and they are the residents of Sehvapettai, Salem District and A-1 is the resident of Avarangatur, Dharumapuri District. A-3 had a rice mill and he and his son A-2 used to manage the affairs of the mill. A-1 used to work in the mill and used to collect wages and distribute the same to other workers. As the work in the mill dwindled, A-1 stopped away from the work. The deceased Bhaiyaji and his brother-in law, P.W.8 belong to Uttar Pradesh and for the last 15 years both of them had been residing in a portion of a house bearing No. 82 which was within the mill premises belonging to A-3. Both of them used to do business on commission basis in purchase and sale of Sago. P.W.8 used to occupy the office portion of the building while the deceased used to occupy the kitchen portion of the building. A-3 borrowed money from the deceased and the understanding between them was that in lieu of the interest, P.W.8 and the deceased were to occupy a portion of House no. 82 without payment of rent. A-3 borrowed two sums of Rs. 20,000 and Rs. 15,000 and two promissory notes Ex.P.1 and Ex.P.2 dated 19.1.1979 were executed and they were kept alive by means of endorsements made on 17.1.1982 by making payment of small amounts. P.W.8 went away to Gorakhpur (U.P.) on 25.7.1983 and thereafter the deceased Bhaiyaji was living alone in that house. About two days prior to his death, Bhaiyaji obtained a sum of Rs. 15,000 from P.W.16 and another sum of Rs. 10,000 from P.W.17 for his trading activities. Presumably out of the said amount he paid Rs. 10,000 to P.W.10 in part payment towards Sago purchase from him. Their evidence shows that Bhaiyaji possessed of sizable amount of cash. On 9.9.1983 when P.W.10 was at the office of the deceased, A-3 came and asked Bhaiyaji for a sum of Rs. 10,000 for purchasing tyres but the deceased refused saying that he had already advanced considerable amounts. A-3 asked him to vacate the building for which the deceased told him that he would vacate the building only when the monies due to him were repaid. A-3 became angry and vowed that he would recover the possession of the building at any cost. So saying he went away. On the night of 10.10.1983, P.W.11 who used to sell sago through the deceased met him at about 10 P.M. in his house and conversed with him for about half an hour. During the course of the talks the deceased told him that A-3 owed him Rs. 47,000 out of which Rs. 35000 were covered by two promissory notes and that without paying the loan amounts, A-3 was pestering him to vacate the building. According to the prosecution some time after P.W.11 left, the murder of the deceased is said to have taken place in his own residence.

There are no eye-witnesses and the prosecution relied on circumstantial evidence. P.Ws. 1 to 4 spoke about the movements of A-1 and A-2 on that night. According to their evidence some time after 10 P.M. on the night of 10.10.1983 they saw A-1 and A-2 entering the car shed of A-3 to gain access to the house where the deceased used to sleep. About two hours later A-1 was seen coming out of the car shed carrying a bag and 10 minutes later A-2 also came out of the shed closing the gate of the mill compound and walking away. Next morning i.e. 11.10.1983 P.W.18, a milk vendor knocked the front door of House no. 82 to deliver milk to the deceased. As there was no response she requested P.W.11 to find out what the matter was. P.W.11 went to the rear side of the house and saw through the open door on the western side the dead body of the deceased lying on a cot. He at once sent the message to A-3 who came there and also saw the dead body. A-3 prepared a report Ex. P.30 and handed over the same to P.W. 31 who registered a crime under Section 302 I.P.C. P.W.31 proceeded to the scene of occurrence and found door of the almirah open and photographs of the place of occurrence as well as finger prints found on the bureau were taken. P.W.32, Circle Inspector, took over the investigation. He examined P.Ws. 1 to 4, 8,10 and others. After the inquest the dead body was sent for autopsy and P.W. 29 conducted the autopsy and he found 10 incised wounds, one contusion and several irregular abrasions on the dead body. On dissection he found fractures of the left temporal and frontal bones as well as occipital bone. The Doctor opined that all the injuries could have been caused with a bill-hook like M.O.24 and the deceased would have died within three hours after taking his last meal and that the death was due to shock and haemorrhage from those injuries. On 23.10.1983 at about 9 A.M., P.W.32 arrested A-1 at Salem and recorded his statement under Section 27 of the Evidence Act. A-1 took P.W.32 and the police party to a piece of land in the village and he produced a bag taking it out from a pit where it was hidden. The bag contained 240 currency notes of Rs.50 denomination and two insurance receipts, one relating to the life insurance of the deceased and other related to insurance of a scooter belonging to P.W.8. A-1 thereafter took the police party to his house in Avarangatur and produced blood-stained shirt and lungi. Thereafter A-1 took P.W. 32 to the office of A-3 and from a room behind the office portion A-1 took out a bill-hook, M.O.24 which was seized. P.W.32 arrested A-2 and questioned him who also gave a statement and pursuant to the same A-2 took P.W.32 to his house and produced a purse, M.O. 2 and 80 currency notes of Rs. 50 denomination which were seized. Thereafter A-3 was arrested near the railway gate and pursuant to his statement two promissory notes Ex.P.1 and Ex.P.2 which were executed by him in favour of the deceased, were seized. The photographs of the finger prints taken at the scene of occurrence along

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A with the finger prints of A-1 taken were sent to the expert who gave the opinion that they tally. The prosecution also examined P.W.12 to speak about an extra-judicial confession said to have been made by A-1. However, P.W.12's evidence was not accepted.

B When examined under Section 313 Cr.P.C. the accused denied the prosecution case and the appellant (A-2) stated that the purse, M.O.2 and the cash of Rs.4,000, M.O.25, belong to him. A-3 stated that he repaid the amounts to the deceased due in Ex.P.1 and Ex.P.2 and obtained the return of the same after the said discharge.

C The trial court relying on the evidence of P.Ws. 1 to 4 as well as the evidence of finger-print expert and on the basis of the recoveries, held that they fully prove the case against A-1 and convicted him and acquitted A-2 and A-3 on the ground that the circumstantial evidence was not sufficient to connect them with the crime.

D The High Court while allowing the State appeal against A-2, the appellant herein, took note of the fact that the evidence of P.Ws. 1 to 4 has been believed in respect of A-1 and no good reasons were given whatsoever to reject their evidence in respect of A-2 who was also seen entering the car shed at the relevant time and also came out just behind A-1 and since the murder had taken place during that time, the High Court held that the evidence of P.Ws. 1 to 4 who spoke about the movements of A-2 as well as that of A-1 coupled with other circumstantial evidence sufficiently establish the guilt of A-2 also and accordingly convicted him.

E Before we advert to the circumstantial evidence we may state a few facts which are beyond dispute. The fact that the deceased and his brother-in-law had been residing in Salem for nearly two decades and doing business and that they were staying in Door No. 82 belonging to A-3 is not disputed. There were many dealings between the deceased and A-3 and Ex. P.1 and Ex. P.2 are the promissory notes which establish the same and they were executed by A-3 on 19.1.1979. On the day of occurrence, P.W.8 was not in the portion of the house and the deceased was alone occupying the kitchen portion on the western side which had a door way. Since the portion was within the mill compound of A-3 the deceased used to keep the door open for fresh air as he did not feel it to be risky. That the deceased met his death on the night of 10.10.1983 is also a factor beyond any dispute and his dead body was noticed only in the morning. The medical evidence establishes that it was homicidal death and there were 12 injuries which could have been caused by a lethal weapon. The iron safe was found open and the cash was missing. According to the prosecution the pronotes, Ex. P.1 and

Ex. P.2 also were missing. They were recovered from A-3. No doubt, A-3 has given an explanation that they were discharged and therefore they were returned to him and thus they were in his possession. This explanation, we shall consider at a later stage. From the medical evidence it is also clear that the death should have occurred between 2 to 3 hours after the deceased had taken his last meal i.e. between 10 P.M. and midnight.

With the aforesaid background we shall now examine the other circumstances which incriminate the appellant. P.Ws. 1 to 4 have been examined to speak about the movements of A-1 and A-2 on the night in question. P.W.3 deposed that he saw A-1 and A-2 going inside the mill compound at about 11 P.M. and emerging at about midnight. P.W.2 deposed that he saw on that night at the relevant time, A-1 and A-2 going inside the mill compound. P.W. 1 has spoken about A-1 and A-2 emerging out of the mill compound at about 1 A.M. He, however, deposed about A-1 going into the mill compound also. P.W.4 had stated that he saw A-2 going inside the mill compound at about 10.45 P.M. Taking the evidence of all the four witnesses together, it emerges that some time after 10 P.M., A-2 opened the car shed and that either A-1 and A-2 entered the compound together or one after the other. Then after two hours or so, A-1 was seen coming towards the railway gate carrying a bag and A-2 emerged just ten minutes later and closed the gate and went away. P.Ws. 1 and 2 clearly stated that A-2 opened the mill gate and entered the compound and A-1 more or less immediately also entered the compound. Then two hours later A-1 was the first person to come out with a bag and A-2 just a little later came out and locked the door and went away. These four witnesses were cross-examined at length but nothing significant has been elicited except making some suggestions. We do not find anything in the cross-examination which would go to show that they were interested in any manner in speaking falsehood and what really they have stated regarding the movements of the appellant in the company of A-1 appears to be true and natural. The presence of these witnesses round about that time also is quite natural and their evidence has been believed by both the courts as against A-1 so far his movements at the relevant time is concerned and their evidence equally establishes that the appellant was also in the company of A-1 during that period when the murder took place. No doubt this circumstance by itself at the most may throw some suspicion. Learned counsel in this context submitted that after all the mill belongs to the appellant and his father and there is nothing unnatural or strange if A-1 entered his own mill. But one should remember that the appellant and A-1 going inside more or less at the same time and coming out about two hours later during which interval the murder has taken place, is very incriminating in nature. The evidence of these witnesses also show that it was A-2 who

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- A opened the car shed and made way for entrance of A-1. The next important circumstance is Ex. P.1 and Ex. P.2 being found in the possession of A-3. The consideration in Ex. P.1 and Ex. P.2 is not a small sum but as large as Rs.35,000. A-3 in his statement under Section 313 Cr.P.C simply pleaded that having discharged this debt he obtained the return of Ex. P.1 and Ex. P.2 and that is how they were in his possession. He did not give any further
- B explanation as to how he could raise this large amount. P.W.10, who is an independent witness, deposed that on 8.10.1983 he met, the deceased for the last occasion. Before that he met him on 9.9.83 and at that time A-3 came to the deceased for taking a further loan of Rs. 10,000 for buying the tyres but the deceased in his presence told A-3 that he had already given money and he could not give thereafter. A-3 pleaded that he wanted the
- C money urgently but according to P.W.10 the deceased refused. His evidence clearly shows that A-3 was in financial difficulties. It is also noteworthy that Ex. P.1 and Ex. P.2 were enforceable by the date of occurrence and it is also very much relevant to note that Ex. P.1 and Ex. P.2 don't contain endorsement of discharge. If really there was such discharge as claimed by A-3 there would have been definitely an endorsement of discharge on them. Apart from this there is the evidence of P.W.11 who deposed that he met the deceased some time before his death and at that time the deceased had told him that he had given a loan of Rs. 47,000 to A-3 and that he had executed promissory notes and without discharging the debt A-3 was asking him to vacate the premises. P.W.10 and 11 are independent witnesses and doing business somewhat on a large scale and had a number
- E of transactions with the deceased. There is no reason whatsoever to doubt their evidence which establishes that the amounts in Ex.P.1 and Ex. P.2 were not paid and they were not discharged and therefore they must have been in the possession of the deceased and must have been in the iron safe. If that is the position, the irresistible inference is that somebody and after committing the murder and having removed the promissory notes, Ex. P.1 and Ex. P.2 from the iron safe, must have handed them over to A-3. He could be none else than A-2 in the circumstances. This is a highly incriminating circumstance. When questioned under Section 313 Cr.P.C, A-2 simply denied every circumstance appearing against him. The High Court has considered all these circumstances and has rightly convicted the appellant. We have carefully considered the reasons given by the learned Sessions Judge and we find that the evidence of P.Ws. 1 to 4 has been rejected erroneously. Therefore the view taken by the High Court is the only reasonable one. For all the above said reasons, the appeal stands dismissed.

T.N.A.

Appeal dismissed.