A

MANI

v.

STATE OF TAMIL NADU

(Crl.A. No. 443 of 2006)

JANUARY 8, 2008

B

[P.P. NAOLEKAR AND V.S. SIRPURKAR, JJ.]

Penal Code, 1860 – s. 302 – Murder – Prosecution of two accused – Circumstantial evidence – Deceased last seen C *with both the accused – Motive for murder alleged to be strained relation between the co-accused and father of the deceased – Offence alleged to have been committed in the house of the accused – Blood stained articles found in the house – Delay in lodging FIR – Recovery of clothes and* D *weapon of offence at the behest of both the accused – Witnesses to the recovery turning hostile – Conviction of both the accused by trial court – High Court convicting the accused, but acquitting the co-accused disbelieving the circumstances of motive and discovery – On appeal held: Conviction not justified – Prosecution failed to prove exclusive ownership and* E *possession of the house where blood stains found – No proof that the discovered clothes belonged to the accused – In the circumstances of the case discovery is without any credence – Motive against the accused not proved.*

Evidence Act, 1872 – s. 27 – Discovery – Evidentiary F *value of – Held: It is a weak kind of evidence – Conviction on the basis of such evidence alone, not permissible.*

Appellant-accused along with another accused (A-2), was prosecuted for having killed one person. According G **to the prosecution case, the motive for murder was on account of strained relationship between A-2 and father of the deceased. Circumstances leading to the incident were that the appellant-accused took the deceased alongwith him at about 6.00 P.M. on the day of the incident. When the deceased did not return home till 10.00 P.M.,** H

PW-1 (father of the deceased) went to the house of the appellant, he saw that blood was oozing from the water passage underneath the door frame of the locked house of the appellant. He returned back and was told by PW-2 that the deceased was last seen in the company of the appellant and A-2. On the next day morning, when PW-1 went to the house of the appellant, he found trail of blood near the house. The body of the deceased was traced lying in the field belonging to PW 5. Thereafter PW-1 lodged the complaint with police. During investigation, when the house of the appellant was broke open, blood-stained materials like cement flooring, human hair and brass lock were found. Appellant surrendered before the court. Blood stained clothes of accused (MO 15-17) and koduval (MO 18) were recovered as his behest. A-2 was also arrested and his blood-stained clothes were recovered. Trial Court convicted both the accused u/s 302 IPC. High Court acquitted A-2 disbelieving the circumstances of motive and recovery. However, appellant was convicted. Hence the present appeal against the conviction.

Allowing the appeal, the Court

HELD: 1. This is not a case where the prosecution has proved the guilt of the accused beyond reasonable doubts. This is clearly a case for benefit of doubt. [Para 25] [242-D]

2. The first circumstance held by the High Court against the appellant is that the Koduval (M.O.18) was found with sticking hair and it is proved that the scalp hair of the deceased was found similar to the hair sticking to the Koduval and that M.Os 15, 16 and 17 were the clothes found with stained blood. This circumstance by itself is of no consequence. Even if it is accepted that the Koduval and the alleged clothes had the blood stains, that does not connect the appellant with the crime.[Paras 15 and 22] [237-D, E; 241-F]

3.1 High Court suggested that if the appellant took

A the deceased at 6.00 p.m. on 24.11.1996 to his house where the deceased was done away with, the burden shifted on the first accused to show how the deceased died in his house. This is not the correct position of law. The appellant had very clearly stated in his examination B under Section 313 Cr.P.C. that the house did not belong to his father and that it was lying vacant and nobody had occupied it. There is no evidence worth the name lead by the prosecution to suggest the exclusive ownership or the possession of the house belonged to the appellant. C Much could have been done to establish its ownership by filing the revenue record of that house. No such documentary evidence was collected by the prosecution. The High court has not discussed this aspect of exclusive ownership and possession at all and has proceeded on the presumption that the house belonged to and was D possessed by the appellant herein. [Para 16] [237-F, G, H; 238-A, B, C]

3.2 The Panch witness P.W.6 though had referred to the said house as the house of the appellant, has clearly E admitted in his cross-examination that he did not know as to in whose name stood the said house. [Para 17] [238-C]

3.3 The Investigating Officer PW 14, has never asserted that the concerned house was appellant's house F though he, in his examination-in-chief referred to that house as appellant's house. He had to admit in his cross examination that he did not interrogate any other resident. He also had admitted that he had never questioned the Village Administrative Officer as to in whose name was G the said house. Though this witness commonly referred to that house as appellant's house, it is difficult to hold that the prosecution had established the exclusive ownership and possession of that house as against the appellant. [Para 18] [238-E, F, G]

H 4.1 The two witnesses to the discovery had turned

hostile. They completely disowned the prosecution case that the appellant was examined by the Inspector and during that examination, appellamt was enquired and he gave confessional statement and that he would show the hidden clothes which he worn at the time of the incident and also the koduval which was used at the time of the incident. They only accepted that they had signed the said statement. Both these witnesses were chance witnesses, they being the regular visitors to the police station, and it appears that they were merely used by the investigating agency. In fact, there is no explanation on how these two witnesses reached the police station at all. [Para 20] [239-B, C, E, F]

4.2 A very important circumstance was missed by the courts below while considering the evidence regarding the discovery. This is about the place where the articles were found. This was nothing but a farce of discovery and could never have been accepted particularly because all the discovered articles were lying bare open barely 300 feet away from the body of the deceased. Where the discovery of the relevant articles have been made from the open ground though under the bush, that too after more than 10 days of the incident, such discovery would be without any credence. [Para 20] [239-C, D; 240-C, D, E]

4.3 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. The prosecution has failed to prove that the house where alleged blood stains were found belonged exclusively or was possessed exclusively by the appellant, it has been further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both the courts that the prosecution never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to that effect.

A **Therefore, even if the discovery is accepted it does not take one anywhere near the crime. Once these two important circumstances are disbelieved, there is nothing which would remain to support the prosecution theory. [Para 21] [240-G; 241-A, B, C]**

B **5. There was no motive whatsoever much less entertainable by the present appellant. He had nothing to do with the straying cattle nor was he a party to subsequent altercation between P.W.1 and the accused No. 2. Lastly, there is nothing on record to show that he** C **was a henchman set up to take revenge by accused no. 2 and he was set up by the accused no. 2 to revenge. If there was no motive for accused No. 2 how could there be any motive entertainable by the appellant. Therefore, even that circumstance has to go. [Para 21] [241-C, D, E]**

D **6. The only other circumstance left with is that the appellant called the deceased at 6 0'clock and took him away, in the absence of any other clinching circumstances, this circumstance by itself cannot lead to the only conclusion that the appellant murdered the** E **deceased. Therefore, this circumstance has to be ignored. [Para 23] [241-F, G]**

7. The evidence of P.W.1 who had though found the corpse at night or atleast had realized that something F **unusual had happened, did not bother to go till next day at 10 0'clock for reporting the matter is not impressive. Evidence of P.W.5 in whose field the body was found cannot be ignored. She had specifically claimed that this fact was known to P.W. 1. [Para 25] [242-B, C]**

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 443 of 2006.

From the Judgment and final Order dated 17.4.2003 of the High Court of Judicature at Madras in Crl. A. No. 589/2000.

H Prasanthi Prasad for the Appellant.

V. Krishnamoorthy, V.G. Pragasam and S. Prabu Ramasubramanian for the Respondent. A

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. This appeal challenges the judgment of the High Court whereby the conviction of the appellant- Mani for an offence under Section 302 Indian Penal Code, 1860 read with Section 34 as also the conviction under Section 201 I.P.C. have been confirmed by the High Court. B

2. Originally, there were two accused persons, however, accused No.2 Moyyasamy has been acquitted by the High Court. State has not challenged the acquittal of accused Moyyasamy. We have to therefore consider only whether the High Court was justified in confirming the conviction of the appellant for the offences stated above. C

3. The prosecution case was that the two accused persons had murdered one deceased Sivakumar who had strained relationship with Accused No. 2 Moyyasamy. The relationship was strained on account of the cattle belonging to the father of the deceased namely P.W.1 Arunachalam having grazed in the field belonging to accused Moyyasamy. In fact, both P.W.1 Arunachalam and accused Moyyasamy are the real brothers while deceased Sivakumar and P.W.2 Amulnathan were the sons of Arunachalam. On account of the cattle trespass into the field of A.2 Moyyasamy, there was a quarrel. This trespass incident, seems to have taken place on 19.9.1996. Since there was an altercation between accused Moyyasamy and his brother in which accused Moyyasamy had stabbed on the neck of Arunachalam, he (Arunachalam) had reported the matter to the police. D E F

4. The occurrence in question, according to the prosecution, took place about two months thereafter on 24.11.1996. It seems that according to the prosecution, P.W.1 Arunachalam and deceased Sivakumar were chatting with the family members when accused no. 1- Mani came there and had a cup of coffee with P.W.1 Arunachalam and his family. Mani is said to have taken Sivakumar to his house. This was at about G H

A 6.00 p.m.. Since Shiv Kumar did not turn up till 10.00 p.m., P.W.1 went to the house of the appellant Mani and found that blood was oozing from the house through the water passage underneath the door frame. The house was found locked. P.W.1 Arunachalam therefore came back and he was informed by B PW.2 Amulnathan that Sivakumar was found in the company of appellant Mani and acquitted accused Moyyasamy at about 7.00 p.m. Though P.W.1 Arunachalam was disturbed on account of this, he did nothing and only on the next morning at 6'O clock he went to the house of the accused and found trail of blood near C the house of Mani and ultimately from that he traced out the body of the deceased which was lying down in the nearby field belonging to one P.W.5 Chinnammal. It is then that P.W.1 Arunachalam rushed to Yercaud policestation and gave a complaint. The case was registered under Section 302 I.P.C.

D 5. During investigation which was done on 25.11.1996 the house of appellant which was locked was broken open by the police and the house was searched. Some blood stained materials like cement flooring, human hair and blood stained brass lock were seized by the investigating officer. It was found E in the post-mortem examination that the deceased had suffered six injuries on various parts of the body including the neck and that he had died due to the injuries to the vital organs and also due to the hemorrhage. The seized material was sent for the chemical analysis.

F 6. The investigating officer came to know that accused appellant had surrendered before the Court. He, therefore, filed an application for the police custody on 28.11.1996 and ultimately obtained the same on 06.12.1996. The prosecution further contended that on the same day on the basis of the G discovery statement made by the accused appellant, blood stained clothes of the accused namely M.Os 15-17 and blood stained Koduval namely M.O. 18 were recovered from the place pointed out by the accused. The second accused (Moyyasamy) was arrested on 08.12.1996 and his blood stained clothes were H also recovered. On the basis of the investigation, charge sheet

came to be filed. A

7. As many as 15 witnesses were examined. The accused had denied their guilt. The Trial Court concluded that the prosecution established its case beyond reasonable doubt and convicted both the accused of the offences as aforesaid. B

8. During the appeal, the High Court came to the conclusion that there was no evidence worth the name against accused no. 2 Moyyasamy. The High Court further held that the motive attributed by the prosecution to Moyyasamy was not established. Thus, the High Court held on the basis of the fact that the C prosecution had not placed any material to show that subsequent to 19.9.1996, any incident took place so as to provide motive for murder of the deceased. The High Court also held that there was no evidence led in to show that appellant Mani and accused no. 2 Moyyasamy were the close associates and that accused Moyyasamy had set up the present appellant D to commit the murder of the deceased. Thus, the High Court held that there was nothing to link the accused Moyyasamy with the crime particularly because there could be no motive suggested to it. The High Court also disbelieved the discovery made by accused Moyyasamy of the blood stained clothes on E the ground that the discovery was belated. For these reasons, accused Moyyasamy was acquitted. However, the High Court dismissed the appeal in so far as the present appellant is concerned.

9. Challenging the judgment of the High Court, learned F counsel points out that firstly there could be no motive whatsoever on the part of the appellant. Our attention was invited to the finding that there was no thick relationship between the two accused persons so that the present appellant could take up the cause of the acquitted accused Moyyasamy and go to the extent of G murdering the deceased. It is further pointed out that if at all, there was any motive, it could be on the part of the acquitted accused since it was he who had fought on 19.9.1996 with the father of the deceased and it was he who was reported against by P.W.1 Arunachalam. Learned Counsel was at pains to point H

A out that the appellant had nothing to do either in the first incident of the cattle straying into the complainant's field or the subsequent altercation between Moyyasamy and P.W.1 Arunachalam wherein P.W.1 Arunachalam was allegedly injured by accused Moyyasamy. Learned counsel further pointed out
B that the theory of last seen together if at all was to be believed, then it applied with equal force to the second accused also. At any rate, the theory was unworkable as the exact time of death was not established by the medical evidence. Learned counsel argued that at any rate, this could not be a clinching circumstance
C against the appellant particularly when the second accused was acquitted by the High Court.

10. The counsel further urged that the High Court erred in relying upon the discovery evidence as admittedly the so called discovered articles were found from the open ground barely 300
D feet away from the body and that it was nothing but a farce. Learned counsel pointed out that the investigating officer was bound to know about the so called blood stained clothes (Koduval) as those articles were lying barely within three hundred feet from the body. Lastly, learned counsel urged that the
E evidence of discovery could not be held to be sufficient and could not be relied upon to convict the appellant. Learned counsel also urged that the prosecution had miserably failed to establish that the alleged house which was visited by P.W.1 Arunachalam at about 10 0'clock at night actually belonged to
F and was possessed by the appellant. The learned counsel also pointed out that though P.W.1 Arunachalam had found the body at night in the field of P.W.5, Chinnamal he did not even bother to report the matter to the police and in fact the First Information Report was hopelessly delayed. He pointed out that this delay
G was also not considered by the High Court.

11. As against this, learned senior counsel appearing for the State supported the prosecution and tried to point out that though this was a case of circumstantial evidence, the prosecution has not only established each circumstance but had
H also discharged its burden to show that the circumstances

pointed out only to the guilt of the appellant and also suggested that he alone and nobody else was responsible for the murder. A

12. We have closely examined the evidence as also the original records of the matter and we are convinced that the prosecution has not been able to establish the guilt of the appellant beyond reasonable doubt and that the High Court as well as the Trial Court have erred in convicting the accused. Our reasons are as follows : B

13. There can be no dispute that deceased Sivakumar had died homicidal death. The question is whether the prosecution has been able to connect the present appellant with the crime? The case undoubtedly depends upon circumstantial evidence. It will be therefore our task to examine all the circumstances relied upon by the courts below. C

14. Though the Trial Court has discussed nine circumstances, the High Court has not discussed are the circumstances in seriatum. D

15. The first circumstance held by the High Court against the appellant is that the Koduval (M.O.18) was found with sticking hair and it is proved that the scalp hair of the deceased was found similar to the hair sticking to the Koduval and that M.Os 15, 16 and 17 were the clothes found with strained blood. In our opinion, this circumstance by itself is of no consequence unless those material objects are connected with appellant. E

16. An interesting statement was made by the High Court suggesting that if the appellant took the deceased at 6.00 p.m. on 24.11.1996 to his house where the deceased was done away with, the burden shifted on the first accused to show how the deceased died in his house. In our opinion, this is not the correct position of law. In order to hold this circumstance, the High Court has recorded the finding that the house belonged to the present appellant. The appellant had very clearly stated in his examination under Section 313 Cr.P.C. that the house did not belong to his father and that it was lying vacant and nobody had occupied it. In our opinion, atleast from the evidence on record, it cannot be F G H

A concluded that the house belonged to the appellant. There is no evidence worth the name lead by the prosecution to suggest the exclusive ownership or the possession of the house belonged to the appellant. Both the courts have proceeded on the presumption that the house was owned or possessed exclusively B by the appellant. Much could have been done to establish its ownership by filing the revenue record of that house. No such documentary evidence was collected by the prosecution. The High court has not discussed this aspect of exclusive ownership and possession at all and has proceeded on the presumption C that the house belonged to and was possessed by the appellant herein.

17. The Panch witness P.W.6 Ganesan, though had referred to the said house as the house of the appellant, has clearly admitted in his cross-examination that he did not know D as to in whose name stood the said house. It is very significant to note that he has lastly given the admission to the effect "**to say that (blood stained) that house is not Mani's house and it was built by Mani's father, cannot be objected**". This witness was a Village Administrative Officer through whom the E investigating officer could have easily obtained the records of this house. Unfortunately, that was not done.

18. The only other evidence in this behalf is that of PW-14 Karunakaran who was one of the Investigating Officer. He has never asserted that the concerned house was appellant's house F though he, in his examination-in-chief referred to that house as Mani's house. He had to admit in his cross examination that he did not interrogate any other residents residing near Andiammal's house. He also had admitted that he had never questioned the Village Administrative Officer as to in whose G name was the said house. Though this witness commonly referred to that house as Mani's house, it is difficult to hold that the prosecution had established the exclusive ownership and possession of that house as against the appellant.

19. The High Court has undoubtedly referred to the written

statement filed by the accused under Section 313 Cr.P.C. but has chosen not to discuss the matter further. It is therefore difficult to hold that the said house where allegedly the blood stains were found belonged to the appellant. A

20. Same and similar is the story regarding the alleged discovery. Both the witnesses namely P.W. 8 Dilip Kumar and P.W.9 Loganathan had turned hostile. They completely disowned the prosecution case that the appellant was examined by the Inspector and during that examination, Mani was enquired and he gave confessional statement and that he would show the hidden clothes which he worn at the time of the incident and also the koduval which was used at the time of the incident. They only accepted that they had signed the said statement. Now, when we consider the evidence regarding the discovery, a very important circumstance was missed by both the Trial Court as well as by the High Court about the place where the articles were found. P.W. 15 Govindan who was the Investigating Officer in respect of this discovery deposed that the accused Mani had made voluntary confession statement which he had recorded in presence of the two witnesses namely P.W. 8- Dilip Kumar and Loganathan. We are already seen that both the witnesses had completely disowned the stouts There is no cross examination worth the name to these witnesses by the public prosecutor. Both these witnesses were chance witnesses, they being the regular visitors to the police station, and it appears that they were merely used by the investigating agency. In fact, there is no explanation on how these two witnesses reached the police station at all. P.W. 15 Govindan did assert that he recovered one blood stained rose colour full sleeve shirt, blood stained green coloured sweater, blood stained lungi having green, red and black stripes and one blood stained Koduval with human hair produced by the accused at 11.30 a.m. near the sloppy rock on the way to Chinnammal Coffee Estate in Salaipara village. Accordingly, the witness asserts that he recovered M.Os 15, 16, 17 and 18 under Exhibit P.26 Mahazar. Now, unfortunately, the High Court has missed a very important of B C D E F G H

A evidence in his cross examination where the witness very specifically admitted that the material objects said to have been produced by Accused No. 1 and Accused No. 2 were recovered about 300 feet away from the dead body of Sivakumar. Now, it is nobody's case that at the time the discovery was made by B accused no. 1, accused no. 2 also made certain discoveries. Therefore, the witness was not certain as to who made the discovery. This is apart from the fact that discovery admittedly was made from 300 feet away from the dead body of Sivakumar and after Sivakumar's body was inspected by P.W.14 as early C as on 25.11.1996. It would be impossible to believe that the inspector did not search the nearby Spots and that all the articles would remain in open unguarded till 6th December, 1996 when the discovery had allegedly been made. This was nothing but a farce of discovery and could never have been accepted D particularly because all the discovered articles were lying bare open barely 300 feet away from the body of the deceased Sivakumar. Even this witness had to admit that he never enquired as to in whose name the house of Mani stand. He claims that P.W.14 had done the same whereas P.W.14 is completely silent about such investigation. It is, therefore, obvious this discovery E could have never been accepted by both the courts below & both the court have completely ignored this vital admission. It need not be stated that where the discovery of the relevant articles have been made from the open ground though under the bush, that too after more than 10 days of the incident, such discovery F would be without any credence. It does not stand to any reasons that the concerned investigating officer did not even bother to look hither and thither when the dead body was found. We are, therefore, not prepared to accept such kind of farcical discovery which has been relied by the courts below without even taking G into consideration the vital facts which we have shown above.

21. The discovery is a weak kind of evidence and cannot be wholly relied upon on 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 H

prosecution case. We have already held that the prosecution has failed to prove that the house where alleged blood stains were found belonged exclusively or was possessed exclusively by the appellant, we have further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both the courts that the prosecution never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to that effect. Therefore, even if we accept the discovery, it does not take us anywhere near the crime. Both the Courts below have ignored this very important aspect. Once these two important circumstances are disbelieved, there is nothing which would remain to support the prosecution theory. We also fail to understand the finding of the High Court in respect of the motive. In our opinion, there was no motive whatsoever much less entertainable by the present appellant. He had nothing to do with the straying cattle nor was he a party to subsequent altercation between P.W.1 Arunachalam and the accused No. 2 Moyyasamy. Lastly, there is nothing on record to show that he was a henchman set up to take revenge by accused no. 2 Moyyasamy and he was set up by the accused no. 1 to revenge. We also did not understand that if there was no motive for Moyyasamy, how could there be any motive entertainable by the appellant. Therefore, even for that circumstance has to go.

22. Even if we accept that the Koduval and the alleged clothes, i.e. the material object nos. 15-18 had the blood stains that does not connect the appellant with the crime.

23. The only other circumstance left with is that Mani called Sivakumar at 6 0'clock and took him away in the absence of any other clinching circumstances, this circumstance by itself cannot lead to the only conclusion that Mani murdered Sivakumar. Therefore, we have to ignore that circumstance.

24. Lastly, the Trial Court has obviously committed an error in suggesting that the appellant was absconding and that he was surrendered before the Court on 06.12.1996. It is

A mentioned in sub- para 6 of the judgment of the Trial Court of para 28. We are afraid this is a factual mistake because it has come in the evidence of the prosecution witnesses that the accused had surrendered before the Magistrate much earlier to that, i.e. on the very next day or so and that it took the B investigating officer almost 10 days to obtain his custody. That has clearly come in the evidence of P.W. 14.

25. We are also not impressed by the evidence of P.W.1 Arunachalam who had though found the corpse at night or atleast had realized that something unusual had happened, did not C bother to go till next day at 10 0'clock for reporting the matter. We cannot ignore the evidence of P.W.5 Chinamal in whose field the body was found. She had specifically claimed that this fact was known to P.W. 1 Arunachalam. Having seen all the evidence and having considered both the judgments very D carefully, we are of the clear opinion that this cannot be a case where the prosecution has proved the guilt of the accused beyond reasonable doubts. We would therefore accept the plea of the accused raised by the defence counsel that this is clearly a case for benefit of doubt. We would therefore choose to grant E the benefit of doubt to the accused holding that the prosecution has not been able to prove its case beyond the reasonable doubt. We therefore, allow the appeal. Accordingly the appeal is allowed. Impugned Judgments and conviction are set aside.

The accused be set to liberty forthwith unless required in F any other case.

K.K.T. Appeal allowed.