

Ramachandran Vs. State of Kerala

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Court : Kerala

Decided On : Nov-30-2004

Reported in : 2005CriLJ1843

Judge : J.B. Koshy and; K.P. Balachandran, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 498A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 663 of 2003

Appellant : Ramachandran

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor and; Noorjie Noushad, Adv.

Advocate for Pet/Ap. : G. Janardhana Kurup, Adv.

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. Appellant, the accused in Sessions Case No. 90 of 1999 on the file of the Additional Sessions Court (Fast Track Court No. 11), Palakkad was convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced

to undergo imprisonment for life. The Court charge levelled against the accused was as follows :

'That on 10-3-1998, after 1 o'clock at midnight, there was a quarrel between you and your wife Remani in continuation of the quarrel on suspicion that you have illicit connection with the wife of your brother, from your room on the eastern side of House bearing No. VI/385 at Vellacheriparamb, at Chalavara Panchayat at Kayiliad Desom wherein Kunjandi and family are residing and on account of that enmity, with the intention to kill your wife and knowing that will result in death, you forcibly administered 'Furadan' to your wife Remani and while she ran out and fell on the eastern side of your house, you accompanied her and smothered her by closing her nose and mouth by your hands, resulting in her death and thereby committed murder punishable under Section 302, IPC.'

2. There are no eye-witnesses to the incident and the Sessions Court convicted the accused only on the basis of circumstantial evidence. It is settled law that for convicting an accused on the basis of circumstantial evidence, the circumstances must be so complete without any missing link or reasonable doubt as held by the Apex Court in *Prem Thakur v. State of Punjab*, AIR 1983 SC 61 : (1983 Cri LJ 155). The chain must be so complete and the only hypothesis possible on the basis of evidence adduced is that the accused and the accused alone is guilty of the offence and the Court has to be on its guard to avoid damages of being swayed by emotional considerations as held by the Apex Court in *Balwinder Singh v. State of Punjab*, AIR 1996 SC 607 : (1996 Cri LJ 883). It has been held by the Apex Court that the distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations and each circumstance must be covered by clear and unobjecting evidence by the prosecution before the accused is condemned as a culprit.

3. Now, we will briefly analyse the evidence adduced in the case. PW1 is the father of the deceased. PW2 is the mother and PW3 is the sister. PW7 is the neighbour. Their evidence are more or less on the same lines. They deposed that on 10-3-1998 early morning, two persons from the place of accused came to the house of the deceased and informed that Remani is not well and thereafter they

said that she died and they all went in the same jeep to the house of the accused and they found she was lying near the haystack near the house of accused. They also saw Furadan in a bottle on the eastern side of the house. There were injuries on her legs, hands, neck and below the breast and that a coloured liquid oozed from her mouth. PW1 father went to the police station at 12.30 noon. PW1 also deposed that 20 days before the date of incident, when he visited her, she told him that accused used to beat and abuse her frequently and required him to take her back. PWs. 2, 3 and 7 deposed that elder brother of the accused Velayudhan told them that his brother had made a mistake (Vernacular Matter omitted--Ed.) and requested for pardon. It has come out in evidence from the evidence of PWs. 1, 2, 3 and 7 that the relationship between the accused and the deceased was strained. Deceased told them that accused used to harass her both mentally and physically and he had illicit connection with CW12 wife of brother (Sankaran) of the accused. She disclosed to them about that illicit relationship. The deceased had two children. After the birth of the first child, she left the matrimonial house and started living with the parents and accused filed a petition for restitution of conjugal rights. Ext. D4 marked on behalf of the defence is the counter statement filed by the deceased where she described that she was behaved with cruelty by the husband and she was justified in residing separately. But, Ext. D5 is the joint statement dated 1-6-2000 by which they agreed to reside together and Ext. D6 is the certified copy of the order in the above O.P.No. 72 of 1996. On the basis of the above order, they started living together. She became pregnant and after the second delivery she was taken back to the house of the accused for the 28th day function. The incident happened on 90th day of her second delivery in the fourth year of marriage. PW2 also deposed that she will never commit suicide. She used to say that she has studied upto pre-degree, typewriting and shorthand and she will anyhow look after the children by doing typing work etc. PW7 is also a witness to the inquest report (Ext. P2) along with PWs. 4 to 6.

4. PW8 is the father of the accused who was declared hostile. According to him, accused and CW9 went to see temple festival and returned only at 5-30 a.m. When they returned, deceased was not seen in the room and accused found her near the haystack. He further deposed that he purchased Furadan for plantain cultivation and balance in the bottle was kept in the house PW8 also deposed that

there is no need for the deceased to commit suicide.

5. It is pertinent to note that even though husband (accused) informed PW8, his father at 5.30 a.m., about the death, nobody from the house of the accused informed the police. PW1 came to the scene on information from PW6 and another and then after arrival, they informed the police and the shocked father suspected that it was a suicide due to the cruelty of the accused and the FIR was registered. In the FIR, Section 498A was only charged. But, after investigation, offence was converted under Section 302 of the Indian Penal Code.

6. Unnatural death of the wife of the accused is not disputed. The question is whether the death is suicide or homicide. PW2 mother of the deceased and PW8 father of the accused who was declared hostile deposed that there is no cause for committing suicide. To prove whether the death is due to homicide or suicide, most important evidence is the medical evidence. PW10 Associate Professor of Forensic Medicine, Kozhikode Medical College conducted autopsy and issued Ext. P4 postmortem certificate. Ext. P12 is the chemical examination report. Following antemortem injuries were found on the body :

'1. Abrasion 8.5 x 3 cm vertical over the left side of face extending from the chin in the midline up to the ala of nose and just outer angle of mouth.

2. Abrasion 5 x 3.4 cm vertical over the right side of face extending from the chin in the midline up to the upper lip just below the ala of nose.

3. Abrasion 5.5 x 2 cm horizontal over the chin and extending to either sides of midline just below the lower lip.

4. Abrasion 6 x 1.5 cm horizontal over the upper lip.

5. Multiple small abrasions over an area of 4 x 3.5 cm over the right half of nose and face varying in size from 1 x 0.5 to 0.1 x 0.1 cm

6. Multiple small abrasions over an area 5 x 3 cm on the right side of forehead 0.07 cm outer to midline and varying in size from 0.3 x 0.3 cm T 3 x 0.5 cm

7. The abrasions 1.2 x 1 cm and 1.3 x 0.7 cm placed over the prominence of left forehead from within outwards separated by a distance of 0.8 cm
8. Multiple small abrasions over an area 8 x 3 cm over the prominence of left side of face varying in size from 1.5 x 1 cm to 0.3 x 0.2 cm
9. Multiple superficial laceration with marginal bruising on the mucosal aspect of lower lip over an area 6 x 2 cm extending from one canine to the other.
10. Contusion 6.2 x 2 x 0.2 cm over the mucosal aspect of upper lip extending from one canine to the other.
11. Two abraded contusion 0.8 x 0.4 cm and 0.2 x 0.2 cm placed one below the other over the front of right side of chest in a line and separated by a distance of 2.7 cm and the former being just below the inner end of collar bone and 4 cm outer to midline.
12. Abrasion 8.5 x 5 cm over the back of right elbow.
13. Abrasion 7 x 4 cm over the top and back of right shoulder.
14. Abrasion 0.8 x 0.3 cm over the back of chest on the midline 16 cm below the root of neck.
15. Abrasion 1.5 x 0.7 cm over the inner border of 1.ft. shoulder blade in its middle 2/3.
16. Abrasion 2 x 1.3 cm over the inner aspect of right knee.
17. Abrasion 4.5 x 2 cm over the outer aspect of right knee.
18. Abrasion 0.7 x 0.3 cm over the outer aspect of right leg just above ankle.
19. Abrasion 1 x 0.8 cm over the right leg just in front of ankle.
20. Abrasion 9 x 4 cm over the outer and front aspect of left knee.
21. Abrasion 5.5 x 3.5 cm over the outer aspect of left elbow.

22. Skin contusion 5 x 3.5 cm over the left iliac fossa.'

The doctor also found that 'mouth and pharynx contained violet coloured granules. Trachea and bronchi contained violet coloured granules upto the terminal divisions of bronchi'. After seeing the chemical examination report, Ext. P5 final opinion was given by the doctor. Doctor deposed that injury Nos. 1 to 10 are around mouth by using MO4, pillow cover. The doctor further deposed that injury, Nos. 1 to 10 can be caused by an act of smothering and injury Nos. 11 to 22 could be caused in order to accomplish an act of smothering and possibility of causing suffocation by using MO4. He, opined that the cause of death is combined effects of smothering and carbofuran poisoning. Ext. P12 chemical examination report shows that all the articles, MOs. 1 to 7, contained remnants of furadan. It is the toxic sold under the trade name 'Furadan'. MO7 bottle was seen at the eastern side of the house. It is seen by PW1, 2 etc. when they arrived at the place of occurrence. Availability of Furadan in the house is spoken to by PW8. In 313 statement, accused also affirmed this. MO7 bottle with violet coloured crystalline particles was seen near the scene of occurrence. MO4 pillow cover was found out from the bed room of the house of the accused which is marked as 3 in Ext. P7 scene plan. Ext. P12 chemical examination report (item 7) would show that carbofuran was detected in MO4. MOs. 1, 2 and 3 are the dresses worn by the deceased. MOs. 5 and 6 were the soil taken from the scene as per the scene mahazar. They contained some substance which was detected in chemical analysis to be Furadan. PW10 doctor during chief examination deposed that by using MO4, suffocation can be caused and this point was not cross-examined. There was subconjunctival haemorrhage on the left eye and the doctor deposed that injury Nos. 1 to 10 are seen around the mouth in side of both lips over the nostrils, forehead, left side of the face etc. PW10 further deposed that injury Nos. 1 to 10 could be caused during an act of smothering and injury Nos. 11 to 22 could be produced while restraining an individual in order to accomplish the act of smothering. Ext. P4 postmortem certificate shows that mouth and pharynx contained violet coloured granules. Trachea and bronchi contained violet coloured granules up to the terminal division of bronchi. This indicates that the deceased was alive when she inhaled the granules. Ante-mortem injuries would show that these granules (Furadan) was forcefully administered in her mouth and the external respiratory passages could

have been closed with assailants hands and while struggling for breath she could have inhaled these particles. Stomach contained three handful of partly digested rice and other food particles without any unusual smell. No violet granules were detected in this stomach contents. With available postmortem finding and nature of stomach contents it can be seen that the deceased died due to combined effect of smothering and aspiration of violet coloured granules (Furadan). Ext. P5 final opinion as to the cause of death also reveals that the deceased died due to combined effect of smothering and carbofuran poisoning. The possibility of the above injuries during struggle for existence after self-consumption of poison stated as highly remote in this case. PW10 has also stated that in this case resistance involved because the injuries are on the back of the elbow. He has also stated that if a person consumes poison carbofuran, it gets absorbed from mouth itself. After considering evidence in question from approved text books, the learned Sessions Judge observed that furadan is a highly toxic substance and it can cause death within ten minutes. There is no poison other than cyanide which can cause immediate death when consumed orally. Effect of furadan as observed by the Sessions Judge is not questioned by the advocate for the defence. In this case, the mouth and pharynx contained violet granules. Trachea and bronchi contained violet coloured granules up to the terminal division of bronchi. Therefore, only conclusion is that administration of furadan by smothering was done and death was due to smothering and poisoning. Therefore, as held by the Sessions Judge, only conclusion possible is that it is a homicide and not a suicide.

7. Then the question is who committed the murder. Some of the circumstances pointed out by the prosecution against the accused were as follows :

- (1) Motive;
- (2) Police was not informed till PW1 arrived even though accused informed his father PW8 at 5.30 a.m. about the death of his wife;
- (3) Conduct of the accused and his family members after death;
- (4) Evidence to show that there was no circumstance or mental frame for the deceased to commit suicide;

(5) Nature of injuries on the deceased and medical evidence that death was due to smothering and poisoning;

(6) MO4 pillow cover with carbofuran particles found from the bed room of the house of the accused and findings of smothering by medical evidence;

(7) Non-explanation of death of his wife by the accused;

(8) Presence of Furadan in the bottle MO7 found on the eastern side of the house and availability of the same in the house;

(9) Chemical examination report showing presence of carbofuran in MOs. 1 to 7.

8. With regard to the motive, apart from the evidence of PWs 1, 2, 3 and 7, even as per the defence story, deceased left the house of the accused earlier, before the second delivery, on the allegation of cruelty and torture. Accused filed a petition for restitution of conjugal rights and it was compromised. PWs. 2 and 3 deposed that even after they started to live together, as per the compromise entered through the Court, there were complaints of cruelty and assault on the deceased by the accused. It is true that in the compromise petition alleged illicit relationship with the sister-in-law was not mentioned. That was also clearly mentioned by PWs. 1, 2, 3 and 7 on the basis of the statement of the deceased when she was alive. Motive is the strained relationship and that strained relationship is established to the effect that she once left the house alleging cruelty and she again joined with him on the basis of the compromise, as the Court advised that since there is a child, it is better to live with the husband. She continued to complain against the cruelty by the accused to the parents and near relatives. As held by the Apex Court in *Nathuni Yadav v. State of Bihar*, (1998) 9 SCC 238 : (AIR 1997 SC 1808), it is difficult to prove motive as it is a psychological disposition of the accused. After quoting Lord Chief Justice Campbell, the Apex Court observed as follows (Para 16 of AIR) :

'17. Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be

proportionally grave to do grave crimes. Many a murder has been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in *R.V. Palmer* thus :

'But if there be any motive which can be assigned, I am bound 'to tell you that the adequacy of that, motive is of little importance. We know, from experience of criminal Courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.' Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant.'

In this case, motive is clearly established by the prosecution.

9. We have already seen that the death happened due to smothering and poisoning as per medical evidence. Medical evidence clearly suggested that it was forcefully administered to her. MO 4 pillow cover containing carbofuran poison in the bed room of the house suggest that it was administered to her in the house of the accused. Even after seeing the charges levelled against him and evidence adduced in the statement under Section 313, Cr.P.C. the accused had no case that he went to the temple to see the festival on that night as stated by P.W. 8. If it is raised as alibi, the burden is on him to prove that he was not there at the time of incident. (See : *Rajesh Kumar v. Dharamvir* 1997 SCC (Cri) 591 : (1997 Cri LJ 2242) and *Binay Kumar Singh v. State of Bihar* 1997 SCC (Cri) 333 : (1997 Cri LJ 362). It is true that evidence of hostile witness also need not be discarded as held by the Apex Court in *Gurpreet Singh v. State of Haryana*, AIR 2002 SC 3217 : (2002 Cri LJ 4688). Evidence of hostile witnesses also can be considered and admissible part of the evidence can be accepted by the Court provided the Court is satisfied with its truthfulness. In this case, apart from the bald statement of P.W. 8 to protect his son, there is no evidence to show that they went to the temple to

see the festival on that night after 8.30 p.m. and returned only in the early morning. In the statement under Section 313, Cr.P.C. also, there is no such case for the accused . Admittedly, accused and the deceased were staying together. Even according to P.W. 8 on that day at 8.30 p.m., they went from the house and came back and accused informed about the death of his wife at 5.30 a.m. So upto 8.30 p.m. accused was in the house even according to P.W. 8 his father. Accused has no case that he left the house after 8.30 p.m. So, it is the duty of the husband to explain. The statement of P.W. 8 that he along with the accused went to see the festival at 8.30 p.m. and returned only in the early morning is not corroborated by any evidence and that part of the evidence cannot be believed. While taking 313 statement, accused requested for filing a written statement. In the written statement prepared with due deliberations also, he had no case that he was not there at the time of the incident or he had gone to see temple festival along with P.W. 8 even though he was aware of the charges, which we have quoted earlier. Doctor opined that the death is due to smothering and poisoning.

10. Test laid down by the Apex Court in *State of Himachal Pradesh v. Jeet Singh* (1999) 4 SCC 370 : (1999 Cri LJ 2025) for finding of smothering are satisfied in this case by medical evidence and nature of injuries on the mouth and other parts of the body. Tests as laid down by the Apex Court in *Sharad Birdhichand Sarda v. State of Maharashtra* (1994) 4 SCC 116 : (1984 Cri LJ 1738) and *Ram Gopal v. State of Maharashtra*, AIR 1972 SC 656 : (1972 Cri LJ 473) in the case of murder by administration of poison are :

'(1) Whether there is a clear motive for an accused to administer poison to the deceased :

(2) Whether the deceased died on poison which is said to have been administered ;

(3) Whether the accused had poison in his possession;

(4) Whether he had an opportunity to administer it to the deceased.'

All these tests are satisfied in this case. Then, it is for the accused to explain how his wife who was residing with him died in the night due to smothering and poisoning. MO 4 pillow cover with furadan particles found in the bed room of the house of the accused and opinion of the doctor that it can be used for smothering causing the injuries of the deceased are circumstances against the accused. We have already found that it was not a case of suicide, but, homicide. Even according to P.W. 8 after they returned from the temple at 5.30 a.m. accused informed him that dead body of his wife is seen near the haystack. On information of P.W. 6 a neighbour and another. P.W. 1 etc. arrived on the scene and P.W. 1 informed the matter to the police. There is no explanation for the accused or P.W. 8 as to why they or their family members did not inform, the police. First information statement was given only at 12.30 p.m. by P.W. 1. Cumulative effect of all the events proved would show that the only hypothesis possible in this case is that the accused is guilty of the offences charged against him and nobody else. Considering the totality of the circumstances and evidence adduced in this case, we are of the opinion that no ground is made out for interference in the findings arrived at by the Sessions Judge.

In the above circumstances, we affirm the conviction and sentence passed by the learned Sessions Judge and dismissed the criminal appeal.