

Rajendran and Others Vs. State

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Court : Chennai

Decided On : Jun-25-1998

Reported in : 1998(1)ALT(Cri)402; 1999(1)CTC259

Judge : T. Jayarama Chouta and ; V. Bakthavatsalu, JJ.

Acts : Penal Code 1861 -- Sections 34, 201 and 302

Appeal No. : Crl. Appeal No. 488 of 88

Appellant : Rajendran and Others

Respondent : State

Advocate for Def. : Mr. Syed Fasiudeen, Additional Public Prosecutor

Advocate for Pet/Ap. : Mr. N. Doraiswami, Adv.

Judgement :

ORDER

Judgement pronounced by T. Jayarama Chouta, J.

1. The appellants, who are four in number and were accused in S.C.No. 191 of 1987 on the file of the Sessions Judge, South Arcot, have filed this criminal appeal, challenging the judgment of conviction dated 7.9.88.

2. Accused No.1 was tried for the offences under section 302 of Indian Penal Code for committing murder of Ali and under section 302 read with 34 of Indian Penal Code on two counts for sharing the common intention to commit the murder of Ali. He was also tried for an offence under section 201 of Indian Penal Code on three counts for causing the evidence to disappear so as to screen himself from the legal punishment of the murder of Ali, Sekar and Nehru. He has been convicted under sections 302, 302 read with 34 (2 counts) of Indian Penal Code and sentenced to undergo imprisonment for life and also under section 201 (3 counts) Indian Penal Code and sentenced to under go R.I for 3 years on each account.

3. Accused No. 2 was tried for offence punishable under section 302 of Indian Penal Code on two counts for committing the murder of Sekar and Ali, under Section 302 read with 34 of Indian Penal Code on two counts for sharing common intention to commit the murder of Ali and under section 201 of Indian Penal Code on three counts for causing the evidence to disappear so as to screen himself from the legal punishment of murder of Ali, Sekar and Nehru. He has been convicted under section 302 of Indian Penal Code on two counts and under section 302 read with 34 of Indian Penal Code and sentenced to undergo imprisonment for life and also under section 201 of Indian Penal Code on three counts, and sentenced to undergo R.I. for 3 years on each count.

4. Charges framed against the accused No.3 and 4 are punishable under section 302 read with 34 of Indian Penal Code on 3 counts for sharing common intention to commit the murder of Ali, Sekar and Nehru and under section 201 of Indian Penal Code on 3 counts for causing the evidence to disappear so as to screen themselves from legal punishment of the murder of these persons and they have been convicted and sentenced to undergo imprisonment for life and R.I for 3 years on each count.

5. The prosecution case in brief is as follows: Accused No.1 Rajendran was running an illicit arrack shop in which accused 2 to 4 Manoharan Perumal and Pachaiyappan and P.W.4 were working as employees. They are all residents of Suthukulam Village within the jurisdiction of Cuddalore Police Station. On 7.7.87,

all the three deceased Ali, Nehru and Sekar along with P.Ws. 2 and 3 Kumar and Nethaji came to accused No.1's shop and ordered for illicit arrack. There was wordy quarrel between these persons and P.W.4. employee of accused No.1 namely Mottai Veni, regarding quantity of liquor supplied to these persons. All the three deceased assaulted P.W.4 with hands. It was at 11 p.m. They consumed the liquor and left the place and lied on the heap of sand near the shop in the open place. Accused No.1 owner of the shop scolded that these people were creating problems always and hence took the assistance of other 3 accused and went to the place, where 3 deceased were lying, with casuarina stick. Accused No.1 assaulted on the head of the deceased Ali; Accused No.2 who also had a stick with him attacked Nehru and Sekar. They left the place and went to a nearby fishing tank. They sat for some time, then went near the place and when they saw Sekar was alive, assaulted and throttled him and after making sure that he was dead, all the accused took the bodies from that place and buried them in a small well behind the house of P.W.5 Kalamani. P.Ws.2 and 3 who had accompanied the deceased after consuming the illicit liquor leaving three deceased persons to lie down on the sand, went to a distance to answer nature's call. Sitting behind the bushes, they have noticed all the incident from there.

6. It was the further case of the prosecution that Accused No.4 Pachaiyappan, out of fear, on 12.7.87 appeared before P.W.1, Village Administrative Officer of Cuddalore and narrated the incident which was recorded as Ex.P1 by P.W.1. He forwarded Ex.P1 along with his report Ex.P2 to Cuddalore O.T. Police Station along with accused No.4 on 12.7.87, on the basis of which a case in CrI.No.473 of 1987 was registered under sections 302 and 201 of Indian Penal Code by P.W.26, the Sub Inspector of Police. P.W.26 prepared the F.I.R. and forwarded the same to the jurisdictional Magistrate as well as to his superiors. P.W.27, the Inspector of Police after receiving the said F.I.R., took up the investigation. After completing the investigation, charge sheet has been filed against the accused for the offences punishable under sections 302, 302 read with 34 and 201 of Indian Penal Code.

7. On committal, the learned Sessions Judge examined 27 witnesses on behalf of the prosecution and got marked Ex.P1 to 35 and M.C.Nos.51 to 52 were produced before the Court. Except marking Ex.D1, no witness was examined on behalf of

the accused. The learned Sessions Judge, after concluding the trial and after examining the accused under Section 313 of Criminal Procedure Code with regard to the incriminating circumstances against them, by judgment dated 7.9.88, convicted and sentenced them as mentioned above.

8. We heard Mr. Doraiswamy, learned advocate on behalf of the appellants and Mr. Syed Fasiuddin, learned Additional Public Prosecutor on behalf of the respondents. They took us through the material evidence and relevant documents. The learned advocate for the appellants submitted that the Court below was not justified in placing reliance on the evidence of P.Ws. 2 and 3, so called eye witnesses to convict the appellants and their evidence suffers from serious legal infirmity. He pointed out that P.Ws. 2 and 3 were not the eye witnesses and they could not have witnessed themselves and a false case has been foisted against the appellants. His further submission was that Sessions Judge was not Justified in placing reliance on the evidence of P.Ws. 4 and 5 whose evidence cannot be believed at all, in view of the fact that their conduct did not inspire confidence in the mind of the Court. He has also argued that there was inordinate delay in lodging the complaint and the statements of the witnesses being received by the Court. According to him, the incident has taken place on 7.7.87 and as per the prosecution, the witnesses were examined on 13.7.87 and those statements were received by the Court only on 4.11.87 nearly after four months. No explanation for the said delay has been offered by the prosecution.

9. Heard the learned Additional Public Prosecutor. He tried to support the judgment of conviction passed by the learned Sessions Judge. According to him, the learned Sessions Judge was right in believing the version given by P.Ws.2 to 5. P.Ws. 2 to 5 are the eye witnesses to the incident whereas P.W.4 has seen accused No.4 going from that place of occurrence with blood stain in his hand. When he was questioned by P.W.4 he narrated to him that he and the other accused have committed murder of 3 persons. He has also submitted that such statement revealed to P.W.5 who corroborated the version of P.W.4 and hence the learned Sessions Judge was right in convicting the appellants for the offences for which they have been charged.

10. The prosecution has relied upon the evidence of P.Ws.2 to 5. to prove the guilt of the accused. In this case, even though according to the prosecution, the murder has taken place on 7.7.87 in the night hours, the dead bodies were seized only on 13.7.87 and the doctor who conducted the post-mortem examination has clearly admitted that the bodies were in a decomposed stage and were not in a position to be identified by anybody. Even though the prosecution tried to establish the identity by examining the persons related to the deceased, as per the version given by the Doctor, since the dead bodies were not in a position to be identified, the evidence of these witnesses could not be believed. The prosecution was successful in establishing that three dead bodies were recovered on 13.7.87 and they were subjected to post-mortem examination by the Doctor P.W.19. P.W.19 conducted post-mortem on the dead body of Sekar on 13.7.87 and stated that since the body was highly decomposed identification marks could not be made out. He noticed that rigor mortis passed away and on examination of the skull, depressed fracture of the skull measuring 3'x 2' on the right temporo-parietal area, left leg disarticulated and separated, left femur separated out the burned, lacerated muscles, nerves and vessels exposed. He has furnished opinion that the deceased would have died of shock and haemorrhage due to the injuries sustained 5 to 7 days prior to post-mortem and has issued post-mortem certificate Ex.P-21. He also conducted autopsy on the dead body of Ali and noticed depressed fracture of the skull on the left temporo-parietal area measuring 3' x 2'. He has also mentioned that since the body was highly decomposed, identification marks could not be made out. He has furnished his opinion that the deceased would appear to have died 5 to 7 days prior to the post-mortem due to shock and haemorrhage due to the injury sustained and issued certificate Ex.P22. He conducted the post-mortem examination over the body of Nehru on the same day and noticed that the body was highly decomposed and the skin was completely peeled off from the body in an incomplete manner and the identification marks could not be made out. He has not noticed any external injuries except both the legs from the knee joint completely disarticulated. He was of the opinion that the deceased would appear to have died due to strangulation and asphyxiation 5 to 7 days prior to the post- mortem.

11. The prosecution has relied upon the evidence of P.Ws. 2 and 3, the main witnesses to the occurrence. Both the witnesses in a stereo type have deposed that they all gone with the three deceased to the illicit arrack shop of the accused No.1 on the night of 7.7.87 and there arose quarrel between them and P.W.4, servant, who was supplying arrack. Since the arrack supplied to them was less in quantity, the deceased Ali questioned P.W.4 and there was exchange of words between them and all of them attacked P.W.4. He has further stated that they left the arrack shop at about 11 p.m. and all the three deceased lied on the heap of the sand in the open place when P.Ws. 2 and 3 went for attending nature's call and at that time all the accused came there, armed with sticks and they noticed from that place where they were sitting. Accused 1 and 2 assaulted the deceased with sticks. After seeing the incident, they left that place and out of fear they had gone to some other place without revealing this fact to any other persons. Admittedly, according to these witnesses, they were present with the deceased in the arrack shop and they also took arrack along with them and there was wordy quarrel between them and P.W.4 and in that they had assaulted P.W.4. If really the accused had any grievance, they had grievance against these two witnesses also. These witnesses have not been attacked by the accused. It looks as if they have been spared by these accused only to depose against them. Further more, the incident has taken place at about 12.30 night and these witnesses have spoken that they have gone for answering nature's call behind bushes and from there they witnessed the incident minutely. Even though the incident had taken place on 7.7.87, these witnesses did not reveal this facts to anybody till they were examined by the police on 13.7.87. The conduct of these witnesses in not revealing this fact to anybody gives an impression that they were not eye witnesses to the incident. These witnesses went to the shop with all the three deceased. They used to go to the arrack shop together for consuming arrack. On that date also, all the five of them had gone together and these witnesses were very close to the three deceased persons. When the three deceased were assaulted and done to death, atleast these witnesses, if they are really present at the time of incident, would have raised hue and cry, but they have not done. Even they have not revealed this fact to anybody till they were secured by the police on 13.7.87. That place where the incident had taken place is surrounded by some

houses and lorries and some other vehicles used to be parked nearby. When these three deceased were being attacked by the four accused, then one would have expected to raise hue and cry so as to attract the attention of the persons who are residing. No witness has been examined from the residential houses near the incident, even during the investigation to find out whether any person has witnessed the incident. The conduct of these witnesses in keeping quite for a long period of 6 days without revealing this fact to anybody is most unnatural and artificial. The learned Sessions Judge was not justified in placing reliance on the evidence of these witnesses. These are the witnesses who have been secured by the prosecution to depose against the accused. We are not prepared to accept the evidence of witnesses P.Ws. 2 and 3.

12. Next set of evidence is P.Ws. 4 and 5. P.W.4 is none other than the worker, working under the accused No.1 in the said shop along with other accused. According to him, after serving the liquor to the deceased and P.Ws. 2 and 3, he left the shop after collecting that days wages and was sleeping in his house. At about midnight, he heard barking of the dog. He and his wife got up and saw accused No.4 coming to the scene of occurrence with blood stain in his hands. When he questioned the accused No.4, he along with other accused warned those persons and asked him to keep quiet. This witness has not revealed this fact to anybody till he was examined by the police on 13.7.87. He has admitted that the shop of the accused No.1 was run on the next day as well as on 10.7.87 as usual. All the accused were present. If really the accused had attacked the deceased and committed the murder, it is hard to believe that these accused would remain in village running the shop without any kind of fear and tension. This conduct of the witness, is not above doubt. He has stated that on the next day morning, he met P.W.5 and informed him about the incident which has taken place near the house of P.W.4. Even this P.W.5 Kalamani has not revealed this fact to anybody till he was examined by the police. The incident has taken place behind his house. He has admitted that on 8.7.87, he was examined by the police. But he did not reveal this fact before them. It is surprising how he could be examined on 8.7.87 by the police, because criminal law was set in motion only on 12.7.87. This witness has further stated that he has revealed this fact of the information given to him by P.W.4 before the police only on 13.7.87. He is the person who has been convicted

for offences and his name was registered in the K.D. register and police were keeping vigilance about his movement and daily he was appearing before the police to mark the attendance. It will not be safe to place reliance on the evidence of this witness. The learned Sessions Judge without considering these aspects in the evidence of P.Ws. 4 and 5, has simply relied upon their evidence and held that their evidence corroborates the version given by P.Ws. 2 and 3.

13. It is pertinent to mention here that the criminal law was set in motion in this case only on 12.7.87, when the accused No.4 appeared before P.W.1, the village Administrative Officer of Cuddalore. P.W.1 has stated that on 12.7.87 at about 7 p.m. Accused No.4 appeared before him and he narrated before him about the commission of murder of 3 persons by the other accused. On the basis of such statement, P.W.1 went to the scene of occurrence and saw the leg of one dead body. Even though he had gone to the scene of occurrence and found the dead bodies, the Village Administrative Officer has not made any arrangement to post somebody to keep watch over the dead bodies. Even though the police station is 10 feet away from the office of P.W. 1, he has not lodged a complaint before the police station on the same day night. Instead he forwarded the statement of accused No.4 which he referred as Ex.11 along with his report Ex.P2 only on 13.7.87. He has further admitted that the dead bodies were found, surrounded by residential houses and people used to park the lorries during night time. According to him on the next day, P.W. 18 the Tahsildar came there and held an enquiry. The learned Sessions Judge has discarded the evidence of P.W.18, Tahsildar.

14. It is the prosecution case that after committing the murder of these three persons, they shifted the dead bodies to the well and buried. Next day they burnt the dead bodies. Where these dead bodies were burnt is surrounded by residential houses and people used to move about. One would have felt bad smell of burning the dead bodies and nobody came forward to inform this to the police till 12.7.87 when A-4 revealed this fact before P.W.1. These facts were not known to anybody. This part of prosecution case cannot be believed. It has come in the evidence that number of dogs were there where the dead bodies were buried and, they would have given some clue to the persons who are residing in that locality,

when the bodies were there for a period of six days, and their evidence gives an impression that the prosecution has tried to build up the case against the accused.

15. The statement of the witnesses even though was recorded on 13.7.87, it was received by the Court on 4.11.87, nearly after four months. No explanation was offered by the prosecution why there was such a delay in sending the statements to the Court. From the evidence, it is revealed that all the accused were present in the village and the shop of the accused No.1 was being run regularly even after the date of incident. If really the accused had committed the murder of three persons, one would have expected these persons not to be there in the village to run the said shop near which the murder has taken place.

16. The prosecution has adduced the evidence of P.W.8 to show that on 7.7.87 at about 3 a.m. the accused 1,2 and 4 went to his tea shop and AI took some kerosene. In the cross examination this witness has admitted that he did not know the date of selling and he has not stated before the police that accused No. 1 asked for the kerosene and he has not mentioned the quantity of kerosene. It is hard to believe one would keep open the shop even during night time, so as to people can go and purchase at 3 a.m. The learned Sessions Judge had believed the version of these witnesses without considering the impropriety in the evidence. We are not prepared to place any reliance on the evidence.

17. After reassessing the entire evidence in the light of the materials placed before the trial Court and on the basis of the arguments advanced before us, we are of the opinion that the learned Sessions Judge was not justified in convicting the accused. Accordingly the criminal appeal is allowed setting aside the conviction and sentence imposed on the accused and acquitted. The bail bond of the appellants stand discharged.