

**Narayanan and Another Vs. State**

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**Court :** Chennai

**Decided On :** Feb-26-1997

**Reported in :** 1999CriLJ4994

**Judge :** M. Karpagavinayagam and ;S.M. Sidickk, JJ.

**Appeal No. :** Criminal Appeal No. 623 of 1987

**Appellant :** Narayanan and Another

**Respondent :** State

**Advocate for Def. :** R. Natarajan, Addl. Public Prosecutor for ;Public Prosecutor

**Advocate for Pet/Ap. :** N.T. Vanamamalai, Sr. Counsel for ;M/s. K.S. Rajagopalan, ;V. Balu, ;C.S.S. Pillai and ;T. Sivaprakasam, Adv.

**Judgement :**

**M. Karpagavinayagam, J.**

1.This appeal by the appellants/accused 1 and 2 is directed against the judgment in S.C. No. 3 of 1987 on the of the Second Additional Sessions Judge, Pondicherry, convicting the appellants for the offence under Section 302 read with 34 I.P.C. and sentencing them to undergo imprisonment for life and to pay a fine of Rs. 100/- each in default/to undergo R.I. for one month with an allegation that on 10-2-1984 at about 8.00 p.m. in between the main road leading from Ariyur to

Anandhapuram, the appellants/accused 1 and 2 along with another 3rd accused committed the murder of one Kannayira gounder in the land belonged to one Venkatesan.

2. The brief facts leading to conviction are as follows :- a) P.W. 1 Veerappan is the son of deceased Kannayira gounder. P.W. 10 Janarthanam is the son-in-law of the deceased. P.W. 1, the deceased, P.W. 10, P.W. 11 all hailed from village called Anandhapuram. The 1st appellant/1st accused belonged to Thandavamoorthikuppam situate in Tamil Nadu area. The second appellant/2nd accused and 3rd accused belonged to Anandhapuram village. P.Ws. 6 and 7 also would belong to Thandavamoorthikuppam. The deceased Kannayira gounder was a Nattanmaikkarar, who used to mediate any of the disputes arising out of the local villages and other villages around.

(b) The deceased Kannayira gounder was engaged in constructing a cinema theatre in Pangur village, which is situated at a distance of 3 or 4 K.Ms. from his village Anandhapuram.

(c) Three years prior to the occurrence, when 1st appellant eve-teased one Selvi, the grant-daughter of the deceased, a panchayat was convened to enquire into the matter. In the panchayat, the first appellant was reprimanded and he was punished. However, the 1st appellant did not abide by the command of the panchayat. Therefore, the deceased Kannayira gounder beat the first appellant with the cheppal. At that juncture, the 1st appellant threatened Kannayira gounder that he would kill him on some day or other.

(d) One and half years prior to the occurrence, the first appellant made an attempt to raise a hut in the poramboke land situated at the village. The deceased Kannayira gounder sent his men to obstruct the first appellant from raising a hut. Even at that time, the first appellant declared that unless Kannayira gounder is done away with, he would not be safe.

(e) One and half months prior to the occurrence, the first appellant approached P.W. 10 to admit him as a member in the Milk Society of which P.W. 1 Veerappan is the president. But, both P.Ws. 1 and 10 declined to take him as a member on

the ground that he belonged to Tamil Nadu. Even on that date the first appellant picked up quarrel with the servant of the Milk Society and P.W. 10. P.W. 10 asked him to clear out from the society after giving two blows with his hand. On that date also, 1st accused threatened saying that.

(f) Next day with reference to this incident, brother of the first appellant came to the Milk Society and abused P.W. 10 and others. Therefore, first accused's brother Murugesan was tied with the rope in order to take him to the police station. However, he was released. On knowing this, the deceased asked P.Ws. 10 and 11 as to why the brother of the 1st accused was released without handing over him to the police station.

(g) The fateful day fell on 10-2-1984. On that date the deceased went in a cycle M.O. 1 to attend the construction work of a theatre at Pangur village and came back home. At or about 8.00 p.m. he came along with one Krishnan P.W. 5 working as a mason to the house of P.W. 2 Annamalai at Ariyur. Thereafter, P.Ws. 2, 5 and one Rajendiran went along with the deceased Kannayira gounder upto the Harijan colony and took leave of him. Then the deceased proceeded in his cycle M.O. 1 to his village.

(h) P.Ws. 6 and 7 are belonging to Thandavamoorthi Kuppam situate at Tamil Nadu. At about 7.30 p.m. on the said date both were proceeding towards Ariyur to reach Pondicherry and from there to Pillaichavadi. At that time, they found on their way accused 1 to 3 sitting on a road culvert near the land of one Venkatesan. When P.W. 6 asked accused as to why they were sitting, 3rd accused replied stating that they were going to see a picture. While they were proceeding after some distance, they saw the deceased Kannayira gounder coming along in the cycle.

(i) At about 9.15 p.m. P.W. 1 when he was asleep in his house, one Jayaraman of the same village came and woke him up informing that his father was beaten and found dead, near the land of one Venkatesan on the eastern side of the road. Immediately thereafter P.W. 1 son of the deceased got up, took a torch-light and went to the scene of occurrence accompanied by one Ramayya. At 9.30 p.m. they reached the scene and found his father lying dead. He also found injuries on the

head, neck and the right knee on the dead body. The cycle M.O. 1 was found at a distance of 15 feet away from the dead body. Then they came to Ariyur and informed this to P.W. 2 Annamalai and P.W. 5 Krishnan. Then all of them tried to contact Villianur police station through telephone. But they could not get the line. Therefore, P.W. 1 and P.W. 2 went to Villianur police station. P.W. 15 Sub-Inspector of Police attached to Villianur police station while he was in the station at 11.00 p.m., P.W. 1 came and lodged a complaint Exhibit P.1. P.W. 15 registered the case in Crime No. 33 of 1984 for the offence under Section 302, I.P.C. Exhibit P. 22 is the printed F.I.R. He sent copy of the F.I.R. and the complaint to the Court as well as to the senior officials. He had also informed P.W. 17 Inspector of Police over phone and briefed the facts of the case.

(j) In the meantime at about 10.00 p.m. 2nd accused-2nd appellant and 3rd accused came to the clinic at Kandamangalam and met P.W. 9 Doctor Rajan. Since he sustained a deep incised wound on the left knee, he went to the clinic for taking treatment. While he was examined by Doctor P.W. 9, he told him that while loading sugarcane in the bullock cart, the iron angle caused him that injury. Then P.W. 9 issued Exhibit P.8 the prescription recording his name as Kumar as told by 2nd accused at that time. Then he sutured the wound and asked 2nd accused to come on the next day.

(k) P.W. 17 the Inspector of Police, Villianur on receipt of the telephonic information at 11.10 p.m. regarding the Crime No. 33 of 1984, proceeded to the police station and took up investigation. Then he reached the scene of occurrence on 11-2-1984 at 12.20 midnight. He conducted inquest on the dead body from 7.00 a.m. to 10.00 a.m. on 11-2-1984. He prepared observation mahazar, Exhibit P. 23 and examined P.Ws. 1 to 3 in the inquest. Exhibit P. 20 is the inquest report. On 11-2-1984 at 8.30 a.m., he arranged for taking photographs, through P.W. 12 photographer of the dead body as well as scene of occurrence. M.Os. 9 to 11 are the negatives and Exhibits P. 11 to P. 13 are the photos of the scene of occurrence. M.Os. 12 to 17 are the negatives and Exhibits P. 14 to P. 19 are the photos of the dead body.

(l) In the mean time P.W. 117 recovered M.O. 1 cycle, M.O. 18 one gunny bag, M.O. 19 ever-silver tiffin carrier, M.O. 20 one pair of chappals of the deceased under a cover of mahazar Exhibit P. 24 attested by the witnesses. He had also seized personal belongings of the deceased M.O. 21 wrist watch, M.O. 22 series hundred rupee notes, M.O. 23 series twenty rupee notes, M.O. 24 one brown belt and M.O. 25 blood-stained mud from the scene of crime under mahazar Exhibit P. 25. Then he asked P.W. 13 constable to take the dead body along with the requisition to hand over the same to Doctor for postmortem.

(m) At 11.45 a.m. Dr. Raghunath conducted post mortem and found the following injuries :-

Appearance found at the postmortem :-

- 1) 2' x 1/2' incised wound on (R) forehead first, below hairs line with fracture skull. Skull fractured in thin and narrow line in width to 1/4 inch towards the midline of the head. Piece of bone seen inside the skull.
- 2) 2' x 2' lacerated wound over medial end of clavicle. Right side with fracture of medial end of clavicle. Wound going upwards and laterally into the neck. External jugular vein cut-right.
- 3) 3 1/2 inch gaping wound running across right knee (lacerated) with fracture of the patella with fragments separate condyles of femur exposed.
- 4) 2' x 1/4' lacerated wound on dorsum of right foot.
- 5) 1 1/2' x 1/2' incised wound in occipital region left side with thin fracture line of skull measuring 3/4'.
- 6) Incised wound in left paraspinal region at D11 vertebra level 2' x 1/2' x 2' depth with fracture of rib.
- 7) Incised wound running across left ear cutting tragus and pinna 2'.
- 8) Superficial incised wound 1' x 1/4' in left mastoid region tapering off into a scratch anteriorly for 3 inches.

- 9) 1/4' lacerated wound above thyroid cartilage in mid line.
- 10) 1/2' lacerated wound behind angle of mandible (R).
11. 4 inch superficial scratch (R) deltoid region.
12. Multiple superficial scratches back of neck (L).
13. Abrasion on spine of scapula (L).
14. Superficial 1' wound lacerated (R) side of abdomen.
15. Multiple 1/2' to 1/4' incised wounds palmar aspect both hands and fingers.

External jugular vein cut. Subdural haematoma (L) side almost covering entire cerebrum (L). Subdural haematoma (R) side in frontal and parietal regions measuring 3 1/2' in diameter.

Then he gave final opinion in the postmortem certificate Exhibit P. 20 that the deceased would appear to have died of multiple stab injuries with fracture of skull and bleeding into brain matter.

(n) P.W. 13 Constable at 1.45 p.m. over the body of the deceased to the relations. In the meantime the viscera was handed over to Public Analyst for viscera report. The viscera report is Exhibit P. 21.

(o) On 12-2-1984 P.W. 15 Sub-Inspector of Police on the instruction given by P.W. 17 Inspector of Police went to the water tank of Anandhapuram and arrested the appellants and another accused, who were hiding near the said water tank. He recovered the blood-stained clothes of the first accused M.Os. 2 and 3 and the blood-stained clothes of 2nd accused M.Os. 4 to 6. He also recovered Exhibits P. 5 to P. 7 cinema tickets from 1st accused and Exhibit P. 8, the prescription given by P.W. 9 Doctor from 2nd accused. These were seized under mahazar Exhibit P. 9 in the presence of P.W. 8. P.W. 17 came to the police station and interrogated the accused. He recorded confession statements Exhibits P. 3. and P. 4 from accused 1 and 2 respectively. In pursuance of the confession, P.W. 17 was taken to a well situate near the place of occurrence and pointed out that the accused

after commission of the offence threw the weapons into the well. Since the well was fully brimmed with water on that date the police party was not able to take out the weapons thrown into the well. Therefore, P.W. 17 took the accused 1 to 3 to the clinic of P.W. 9 where the 2nd accused had treatment for the injury on the left knee on the night of 10-2-1984. P.W. 9 being pointed out by 2nd accused, P.W. 17 recorded the statement of P.W. 9. Thereafter, the accused were sent for judicial remand.

(p) On 14-2-1984 in order to recover the weapons of the offence from the well, P.W. 17 took accused 1 and 2 under police custody and brought them to the well. P.W. 17 engaged some water divers and with their help the weapons M.Os. 7 and 8 identified by the accused were recovered under mahazar Exhibit P. 10 attested by P.W. 8 and another. Then he sent all the M.Os. to Court for sending them for analysis. In turn, the Court sent those M.Os. for causing chemical examination. Exhibit P. 27 is the chemical analysis report. Exhibit P. 28 is the Serologist's report. After finishing the investigation and examining all the remaining witnesses, P.W. 17 filed a charge-sheet on 9-5-1986 against the appellants and 3rd accused for the offence under Section 302 read with 34, I.P.C.

3. On committal, the trial Court framed charge against the appellants/accused 1 and 2 and 3rd accused for the offence under Section 302 read with 34, I.P.C. The appellants pleaded not guilty and claimed to be tried.

4. The prosecution in proof of the charge framed against them examined P.Ws. 1 to 17 filed Exhibits P.1 to P. 28 and marked M.Os. 1 to 25. After the evidence is over, the appellants and the other accused were questioned under Section 313, Cr.P.C. with reference to the incriminating materials appearing against them in the evidence brought on record. The appellants and another chose to deny their complicity in the commission of the offence and further stated that they were arrested from their respective houses and false case has been foisted against them.

5. On conclusion of trial, the Sessions Court after considering the evidence oral and documentary adduced by the prosecution and the statements given by the appellants and another under Section 313, Cr.P.C., found the appellants/accused

1 and 2 guilty under Section 302 read with 34, I.P.C. and acquitted the other accused A3 in respect of the charge framed against him and both appellants/accused 1 and 2 have been dealt with as referred to earlier.

6. Being aggrieved over this judgment, the appellants/accused 1 and 2 have presented this appeal before this Court, challenging the conviction and sentence imposed upon them. However, against the acquittal of 3rd accused, there is no appeal filed by the State.

7. Mr. N. T. Vanamamalai, learned senior counsel appearing for the appellants took us through the entire evidence and contended that the prosecution has not proved its case beyond reasonable doubt, since various pieces of evidence adduced by the prosecution would not form a complete chain in the case on hand, which is of fully circumstantial evidence. He would also further contend that even the various pieces of circumstantial evidence available in this case also would not inspire confidence of this Court to hold that the appellants are the perpetrators of the crime. Mr. Natarajan, Additional Public Prosecutor of Pondicherry is also heard.

8. Admittedly, there is no direct evidence. Since there is no eye-witness, the entire case hinges upon the circumstantial evidence. It is well settled law as held by the Apex Court that when a case rests upon the circumstantial evidence, the evidence must satisfy three tests. (1) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. (2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused. (3) Circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

9. In the light of the legal position as referred above about the circumstantial evidence, we have to examine whether the circumstantial evidence in the instant

case satisfies the requirements of the law.

10. The circumstantial evidence in the instant case may be broadly classified into three parts. (1) The evidence of P.Ws. 6 and 7 who speak to the fact that they saw the accused 1 to 3 together near the place of occurrence and at or about the time of occurrence while deceased was going alone in the cycle. (2) First accused had a strong motive to kill the deceased as spoken to by P.Ws. 10 and 11. (3) After the arrest of the accused, the blood-stained clothes and the weapons of the offence were recovered in pursuance of the confession. Apart from these three parts, one other incidental factor to be taken note of is the evidence of P.W. 9, Doctor, who states that on the date of occurrence at about 10.00 p.m., the second accused came to him and took treatment for the injury sustained on his left knee.

11. Now we shall endeavour to examine these pieces of evidence in order to decide whether these pieces of evidence are reliable and even if it is reliable whether these pieces would form a complete chain to hold that it is the appellants and the appellants alone have committed the offence of murder of the deceased.

12. The peculiar feature in this case is that though P.W. 1 is the President of Milk Society in which 1st accused attempted to become a member, which was resisted by P.Ws. 1 and 10, he has not mentioned about the motive of 1st accused against the deceased in the F.I.R. P.Ws. 2 and 5 are the close associates of the deceased. As per the prosecution case the deceased being a Nattanmaikarar used to mediate the disputes arising in the local village as well as other villages. So, it is the case of the prosecution through P.W. 6, 7, 10 and 11 that 1st accused on several occasions declared that he would commit the murder of the deceased one day or other and these witnesses would also speak that this challenge put up by the first accused against the deceased was informed to the deceased. When such is the case, P.W. 1, 2 and 5, who are closely associated with the deceased also must have known about the motive. However, P.W. 1 did not think it fit to name any person as a suspect for the offence of murder. So, upto inquest was over, i.e., 10.00 a.m. on the next day, i.e., on 12-2-1984, the Investigating Agency Was not able to find out who was the culprit. But as per the prosecution, only at 12 noon when P.W. 17 examined P.Ws. 6 and 7, he came to know that accused 1 to

3 were the suspected culprits. According to P.Ws. 6 and 7, they saw the accused at about 10 p.m. on 10-2-1984 near the place of occurrence. When P.Ws. 6 and 7 enquired accused 1 to 3 as to why they were sitting there, 3rd accused replied that they were proceeding to go to cinema theatre to see a film. It is the further evidence of P.Ws. 6 and 7 that within a distance of 100 feet they saw the deceased coming alone from Ariyur side towards Anandhapuram in a cycle. It is the further evidence of P.Ws. 6 and 7 that they knew already about the enmity between the deceased and 1st accused. They also would speak that 1st accused on several occasions gave a threat that he would kill the deceased. If that be so, it is not understandable as to why he did not warn the deceased, who was coming alone in a cycle as to the presence of accused 1 to 3 near the culvert. They would further say that they knew deceased well and deceased used to be a panchayatdar for all the villages surrounding Anandhapuram including their village, viz., Thandavamoorthikuppam. So, if that be the case, P.Ws. 6 and 7 would have talked to the deceased also, who was coming alone as they did it with accused 1 to 3. According to P.W. 7, P.Ws. 6 and 7 were examined on 12-2-1984 after the inquest was over. But, the records would reveal that the statements of P.Ws. 6 and 7 reached the Court only on 4-11-1986. The distressing feature to be taken note of at this stage is the entire investigation was over and the charge sheet filed as early as on 9-5-1986 itself. Moreover, the reading of the evidence of P.Ws. 6 and 7 would make it clear that they are chance witnesses. It is not clear from the evidence as to from where they left to go to Pondicherry and Pillaichavady. Admittedly, when there are bus facilities available to Pondicherry and from Pondicherry to Pillaichavadi, there is no reason as to why they covered the entire distance from the starting point to Pillaichavadi by walking. Moreover, as per the evidence of P.Ws. 6 and 7, they came back to Ariyur next day morning at 10.00 a.m. itself. If actually they were examined on 12-2-1984, there is no reason as to why P.W. 17 the Inspector of Police had not despatched the statements of P.Ws. 6 and 7 immediately to the Court or at least at the time of filing the charge sheet. Further more, the evidence of P.Ws. 6 and 7 to the effect that they suspected the involvement of accused 1 to 3 since they were not found available in their respective houses when they were searched for, is artificial. P.W. 7 would say that they were searched for in their respective houses. P.W. 6 would say that they

have not searched in their houses but have enquired in the adjoining houses. It is not known as to why they go and search for these accused instead of informing to the police and requesting them to search for them. Therefore, on these reasonings, we are not able to place any reliance on the evidence of P.Ws. 6 and 7.

13. The next aspect of the evidence is relating to the motive. Of course, there is a strong motive for 1st accused to attack the deceased. As stated by P.Ws. 10 and 11, there were three previous occurrences in which the 1st accused was reprimanded by the deceased out of which first accused had a strong grudge against the deceased and he also declared in the presence of the witnesses to the deceased that he would kill him one day or other. But, these occurrences as narrated by the witnesses had taken place very long prior to the occurrence. The very serious incident in which 1st accused was beaten with the chappal by the deceased did take place three years prior to the occurrence. The second occurrence in which 1st accused attempted to raise a hut, which was obstructed by the men sent by the deceased also had happened one and half years prior to the occurrence. The third occurrence relates to the refusal of the admission to the Milk Society as a member by P.Ws. 1 and 10. This also took place one and half months prior to the occurrence. Even in this occurrence, the deceased had no direct part. Therefore, even though the prosecution had established the case with reference to the motive, we are of the view that the motive alone would not be sufficient to hold that the accused committed murder of the deceased on the day of occurrence, which has taken place after the earlier occurrences. Therefore, we are not able to give any importance to the aspect of the evidence relating to the motive.

14. One other important piece of evidence is the recovery of the blood-stained clothes and the knives, in pursuance of the confessional statements. The arrest and recovery is spoken to by P.W. 8 mahazar witness, P.W. 15 Sub-Inspector and P.W. 17 the Inspector. The accused were arrested on 12-2-1984. In the early morning blood-stained clothes were recovered from both the accused 1 and 2 appellants. Thereafter, on recording confession the accused were taken to the well on the same day itself. Since the well was filled with water fully on that day, Police

was not able to recover the weapons. So after again getting police custody on 14-2-1984 weapons were recovered with the help of water divers. When all these M.Os. such as knives, blood-stained clothes recovered from the accused were sent to the forensic examination, the Analyst was not able to find out the blood group. Therefore, even though in pursuance of the confession the knives were recovered, in the absence of the positive proof relating to the blood group, we cannot hold in favour of prosecution, as the mere recovery of the blood-stained clothes and weapons would not in any way be helpful to the prosecution. Moreover, with regard to the time arrest and confession, there is a variation between the evidence of P.Ws. 8 and 17.

15. Apart from these three factors as referred to earlier, there is evidence of P.W. 9, who stated that he gave treatment to second accused, who came to his clinic on the date of occurrence, i.e., 10.00 p.m. on 10-2-1984. Though at the first blush it looks as though it is a very strong piece of evidence, creating some suspicion against 2nd accused, this also does not stand to the scrutiny in view of the evidence by P.W. 17. P.W. 17 would say that the accused were arrested in the morning and only at the evening at 7 p.m. they were taken to the Doctor P.W. 9, whom they identified and recorded statement from him. But on the contrary, P.W. 9 would say that P.W. 15-Sub-Inspector of Police came along with Accused 2 and 3, in the early morning of 12-2-1984. So, this would show that the accused would not have been brought before P.W. 9, at the relevant time as spoken to by P.W. 17. Even assuming that the evidence of P.W. 9 could be taken into consideration, it cannot be held that the evidence of P.W. 9 is an incriminating circumstance against the accused for the main offence. It is to be noted at this stage that Ex. P8, the prescription issued by the Doctor would contain the name of one Kumar. The Doctor would further say that 2nd accused informed him that he had injury on the left knee while he was loading sugar cane in the bullock cart.

16. Furthermore, one another artificial feature that we could see in this case is the recovery of three cinema tickets from 1st accused. According to the prosecution, accused 1 to 3 after commission of the offence went to cinema theatre and witnessed a film. If the occurrence had taken place as alleged by the prosecution, we do not think that the culprits would go to cinema theatre and see the cinema

since they would be afraid of police, because of the commission of the offence, and they would try to abscond from that place. Whatever it is, the recovery of cinema tickets and the evidence of P.W. 9 as discussed earlier would not be of any use to the prosecution since it does not form any chain so as to hold that the offence was committed only by the accused. Furthermore, P.W. 10 and P.W. 11, who speak about the motive for the accused against the deceased were examined only on 12-2-1984. So, it shows, only after these, the statements must have been obtained from other witnesses, in order to suit, the prosecution case.

17. Therefore, in view of the above discussion, we are of the view that the prosecution has failed to prove the case, and so we cannot hold that the available piece of evidence is consistent with the guilt of the accused. Whereas, we are of the opinion that these materials produced by the prosecution would not be sufficient to have hypothesis that the accused 1 and 2 were guilty. Therefore, the reasonings and conclusions arrived at by the lower Court to hold the appellants/accused 1 and 2 guilty for the offence under Section 302 read with 34, I.P.C., are not proper and justified. So, the conviction and sentence imposed upon them is liable to be set aside.

18. In the result, the appeal is allowed. The conviction and sentence imposed upon the appellants/accused 1 and 2 are set aside and they are acquitted forthwith. The fine amount, if any, paid shall be ordered to be refunded to the appellants/accused 1 and 2.

19. Appeal allowed.