

Ravirajan Vs. State

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Court : Chennai

Decided On : Aug-30-1997

Reported in : 1998CriLJ3086

Judge : K.P. Sivasubramaniam, J.

Acts : [Evidence Act, 1872](#) - Sections 3, 24 and 59; [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : C.A. No. 580 of 1990

Appellant : Ravirajan

Respondent : State

Advocate for Def. : P. Venkatasubramaniam, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : Miss N. S. Nappinai, Adv. for ;K. Selvarangam

Judgement :

1. The above appeal arises out of the Judgment of the learned II-Additional Sessions Judge, Salem, in S.C. No. 64/90D/-27-7-90.
2. The Accused/Appellant herein was charged under S. 302, I.P.C. for having allegedly killed one Khalyboy Shahnawaz on 22-5-89 at about 10.00 p.m. in front of the Durga Hotel near Anna Statue, Salem. The learned Sessions Judge found the accused guilty under S. 304, Part II and convicted and sentenced him to

undergo rigorous imprisonment for 3 years. As against the said judgment, the above appeal has been filed.

3. The case of the above appeal has been filed, Mohan is resident of Salem who is running a cool drink stall in the portion of the Durga Hotel situated near the bus stand of Salem Town. Both the accused Ravirajan as well as one Ravi were employed as helpers under him on daily wage basis and that the accused was working for the past 1 1/2 years. PW 2 is therefore known to the accused and Ravi and PW 3 is the owner of the Beeda stall which is situated adjacent to the shop of PW 2. Before being employed by PW 2, the accused was in Madras and he was introduced by one Ravi to PW 2, PW 2 also knows PW 4 Prakash who used to come to the Beeda stall. One Khalyboy is the resident of Salem Fort. He used to come to the bus stand and also to the shop of PW 2. It appears that Ravirajan the accused had given some money to Ravi while he was working at Madras and that Ravi had not repaid the amount to Ravirajan. The deceased Khalyboy who was not having any employment used to be loitering in the bus stand and it appears that the accused had sought the help of Khalyboy for recovery of money due to him from Ravi and PW 4. On the date of incident when PW 2 was sitting in the cool drink stall, the accused was working in the shop and Ravi and the deceased Khalyboy were standing outside the stall talking among themselves and they were making fun of the accused and when the accused enquired Ravi as to what they were talking about Khalyboy had shouted at the accused as to whether he was bold enough to question and whether he could collect the money from Ravi and others. Khalyboy also appears to have questioned the accused as to how dare he threaten Ravi and others demanding money. It is further alleged that the accused left the shop of PW 2, went and caught hold of the deceased by his shirt, took out M.O. 1 pen knife from his pant pocket and stabbed Khalyboy on his abdomen twice. Khalyboy fell down and the accused ran away with M.O. 1 knife and Ravi, PW 4 and others brought an autorickshaw and took the injured Khalyboy to Government Hospital, Salem. PW 5 is the Civil Asst. Surgeon attached to Govt. Hospital Salem and according to his evidence, on 22-5-1989 at about 10.30. One Ravirajan brought who was found already dead with injuries on his chest. He made entries in Ex.P. 5 Accident Register. He prepared P. 6 and P. 7 intimation report about the unnatural death and sent the report to the Hospital Police Station,

PW 11 is the Inspector of Police, Salem Town. On having received message at about 4.30 a.m. on 22-5-1989, he took up the investigation and went to the scene of occurrence. M.O. 5 torn shirt was found lying in the scene of occurrence and there was also blood stain in the tar road. He prepared Ex. P3 Mahazar, seized M.O. 5 shirt, M.O. 6 series of blood stain Karai, M.O. 7 series of sample karai under P. 4 Mahazar in the presence of PW 1 Village Administrative Officer. He held inquest over the body at Govt. Headquarters Hospital on 22-5-1989 at about 6.00 a.m. and examined PW 2 Mohan, PW 3 Sathiyaseelan PW 4 Prakash and others. Ex.P. 17 is the inquest report and he sent the dead body to the constable attached to the town police station for post mortem examination.

4. PW 6 is the Civil Assistant Surgeon attached to the Government Hospital and on 23-5-1989, he conducted the post mortem over the body of the deceased and noticed the following injures.

1. An incised wound on the interior aspect of the chest close to axilla 3' x 1/2' and muscle deep.
2. An incised wound on the left side chest 2' x 1/2' entering into thorasic cavity below the injury No. 1.
3. An incised wound on the left side chest 2' x 1/2'.
4. An incised wound on the left lung 1/2' x 1/2' entering into peritonal cavity.
5. Abrasion over the right elbow 2' x 2'.
6. Abrasion over the left knee 2' x 1'.
7. Incised wound on the left side back close to the midline below scapula 1/2' x 1/2' muscle deep.
8. Abrasion over the left hand dorsum 1/2' x 1/2'. He was of the opinion that the deceased died due to shock and haemorrhage and the injury Nos. 2 and 3 were fatal and that death could have been caused due to stab with a weapon like M.O. 1 knife. The Inspector examined PWs 5, 7, 8 and others and in the middle of the investigation, he Was transferred and the investigation was taken over by his

successor karumbu Loganahan, who examined, PW 6 the Doctor and on completing the investigation, he laid the charge sheet against the accused on 7-9-1989.

5. In this case, an extra Judicial confession is also put forth by the prosecution. This is said to have been made to PW 5 the Village Administrative Officer of Salem Town. On the day of occurrence at about 11.00 p.m. when he was at his office situated in Kitchipalayam, according to PW 1, the accused presented himself before him and gave a confessional statement and that he had recorded the statement of Ex. P1 as given by the accused in Ex. P1. He also prepared Ex. P2 report and took the accused to the Salem town police station and the accused had also produced M.O. 1 knife to PW 1. As regards the evidence of PW 1, the learned Sessions Judge has commented adversely and that the extra Judicial confession alleged to have been made to the Village Administrative Officer was nothing but a manipulating of the evidence by the police and that it was unfortunate that the Inspector of Police thought it fit to manipulate the evidence and fabricate documents which did not speak well of the police. Therefore, the learned Sessions Judge thought it fit to reject the evidence of PW 1. The learned Counsel appearing for the appellant has also contended that confession made to a Village Administrative Officer was inadmissible in evidence. She had relied on the judgment of the Division Bench of this Court report in (1996) 2 LW (Cri) 662 : 1996 CLJ 535 to support her contention that the evidence of the Village Administrative Officer was not admissible in evidence. The observations made in the judgment of the Division Bench has to be understood only in the context of the facts arising in the said case. A statement made to a village Administrative Officer cannot be equated to a statement made to a police, officer which is inadmissible as provided under Section 25 of the Evidence Act. In the Judgment of the Division Bench the improbabilities of any such statement alleged to have been made to the Village Administrative Officer, have been stated in the detail and the observations in the said judgment cannot be taken to hold that any statement made to a Village Administrative Officer under any circumstance would be inadmissible in evidence. In the present case also, the learned Sessions Judge Judicial Confession in view of the fact that the office of PW 1 was at Kitchipalayam which was about 3 Kilometers away from the scene of occurrence. If the accused had really wanted to

surrender to the police, he would have naturally approached the police station first and not the Village Administrative Officer who was very far away. Therefore there is enough justification for ignoring the so called extra Judicial Confession alleged to have been made to the Village Administrative Officer and there is no need to hold that any statement which is made to a Village Administrative Officer under any circumstance should be held to be as inadmissible in evidence. Therefore, for the reasons stated above the evidence of PW 1, can be ignored.

6. On a perusal of the oral and documentary evidence in the present case, it is seen that prosecution has not established its case beyond all reasonable doubt. Firstly, there is contradiction in the case of the prosecution as to who actually took the deceased to the hospital. The Doctor who had received the deceased namely PW 5 has positively stated that the body of the deceased was brought by one Ravirajan. In Ex. P.5 the Accident Register also, the name of Ravirajan is recorded as the person who had brought the injured. Even though the Doctor was not able to identify the accused in the Court, he was positive that the name of the person who had brought the deceased was only Ravirajan. No doubt the father's name of Ravirajan is written as Somu and the name of the father of the accused is not Somu. A suggestion has been made that the name of Somu was subsequently inserted in Ex. P.5 at the instance of police but the Doctor has denied the said suggestion. Nonetheless, a strong doubt arises as to whether it was the accused who took the deceased to the hospital or by one Ravi as alleged by the prosecution. In fact, the Learned Sessions Judge has also positively recorded finding that it was only the accused who had taken the deceased to the hospital. The said finding goes against the case of the prosecutions.

7. The identity of the person who took the deceased to the hospital also assumes significance in the absence of examining Ravi as a witness. The said Ravi is claimed to be an eye witness of the occurrence and he is said to have taken the body of the deceased to the hospital.

8 Secondly, the non-examination of the said Ravi assumes greater importance. In spite of the fact that the said Ravi was an eye witness, and the prosecution alleges that it was he who took the body of the deceased to the hospital. No

attempt appears to have been made to examine the said Ravi as a witness. It is curious that PW 11 an Inspector of Salem Town states that in spite of search, Ravi was not available. PW 10 who had originally conducted the investigation has stated in the cross-examination that he did not take any efforts or attempts to search for the said Ravi. According to PW 1, even before the completion of the investigation, one Mr. Karumbu Loganathan, Inspector had taken up and case for investigation and it was the said Mr. Karumbu Loganathan who had examined PW 6, the Doctor, PW 8 and other witnesses and who laid a charge-sheet on 7-8-1989. The said Inspector has not been examined as witness even though he is an Officer who had completed the investigation and filed the charge-sheet. This is a serious lacunae in the case of the prosecution and it is not known as to how the said Inspector had not been cited as a witness in the case and as to how no sincere attempts have been made to secure the presence of the said Ravi.

9. Thirdly, as regards the motive alleged in the case, it is stated that Ravirajan the accused had lent money to the said Ravi as well as to others and that he was asking them to return the money. Admittedly, the accused has no motive against the deceased in any manner and that if Khalyboy was trying to make fun of the accused demanding money from his debtors, that does not provide sufficient motive for the accused to resort to the extreme step of stabbing the deceased. Therefore the case of the prosecution to the effect that the deceased having made fun of the accused about demanding money from Ravi as motive for the incident, cannot be sustained.

10. It is true that the learned Sessions Judge has given credit to the evidence of PWs 2 to 4 as independent witnesses and has accepted their testimony. As regards their evidence, the learned Judge has not given due consideration to the fact that none of them had reported about the incident to the police. The reason given by the learned Judge was that they are all respectable persons and therefore it was not surprising they have not made any report to the police and that the hesitation on the part of the decent people to go to the police station and to get involved in a murder case was only understandable etc. are not acceptable. PW 2 was the employer of the accused and the incident had taken place in front of his shop and he knows all the persons concerned and it is strange that he had taken

no effort either to take the body of the deceased to the hospital or to take any further steps. In this context, what he has stated in cross-examination assumes importance. He has stated that even after the incident, the shop was kept open and that he left the shop only at 10.30 p.m. and that he cannot say whether he closed the shop or not because he had fainted and had become unconscious. He has given this as an excuse for not reporting the matter to the police. As regards PW 3 who is the owner of the Beeda stall which is adjacent to the shop of PW 2 even though he says that there were wordy exchanges between Khalyboy, Ravi and the accused, he cannot say what were they actually talking to each other. He has also not taken steps to inform the matter to the police. As regards the evidence of PW 4, there is no proper explanation as to why he had come to the place even though he lives in Ayodhya patnaam which is far away from the place. He has admitted that he is a good friend of the deceased Khalyboy and obviously he must have accompanied Khalyboy when he had come to the shop. Therefore, there is reason to believe that he has not come forward with the complete facts.

11. It is also in evidence that it is a busy area and there were lot of people who had gathered around immediately after the occurrence and there is no attempt on the part of the prosecution to produce any other independent witness other than PWs 2 and 4 who are in some way connected with the deceased Khalyboy as well as Ravi who had not been examined as witness and who has absconded according to the police. It is in the said circumstances, one has to view the evidence of PWs 2 to 4 with caution and considering the defects pointed out earlier, I am inclined to give the benefit of doubt to the accused.

12. In the result, the above appeal is allowed. The Judgment of the learned Sessions Judge is set aside and the accused is set at liberty.

13. Appeal allowed.