

Raju and Another Vs. State by Inspector of Police Erode North Police Station

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Court : Chennai

Decided On : Jan-13-2000

Reported in : 2000(3)CTC151

Judge : S. Jagadeesan and; A. Subbulakshmy, JJ.

Acts : [Penal Code \(IPC\), 1860](#) -- Sections 34 and 302; [Evidence Act, 1872](#) -- Sections 27

Appeal No. : C.A. No. 10 of 1991

Appellant : Raju and Another

Respondent : State by Inspector of Police Erode North Police Station

Advocate for Def. : Mr. C.M. Gunasekaran, Government Adv. (Crl. side)

Advocate for Pet/Ap. : Mr. K.M. Subramanian, Adv.

Judgement :

ORDER

Judgment pronounced by A. Subbulakshmy, J.

1. The accused/appellants were charged for the offence under Section 302 read with Section 34 of the Indian Penal Code on the allegation that on 7.4.1989 at 4.30 AM at Ellapalayam Bypass Road, Erode, due to previous enmity, the first

appellant/ A1 stabbed the deceased Kumarasamy on his head and the second appellant/A2 Perumal squeezed the testicles of the deceased and caused death to him.

2. The case of the prosecution briefly is as follows:

PW2 is the second wife of the deceased Kumarasamy. A2 is the paternal uncle's son of the deceased Kumarasamy. A1 is the son of A2. There is previous enmity between the family of the deceased and the accused. PW2 went to her parents house at Pallipalayam and while she was there, PW4 came and informed her that her husband was lying dead on the date of occurrence due to lorry accident.

3. PW2 immediately along with her parents came to the scene of occurrence. When she reached the scene of occurrence, she found the police people there. PW2 has turned hostile. On 7.4.1989 at 9.30 AM, when, the Village Administrative Officer of Villarasampatti village was in his office, PW2 came to his office and informed him that her husband was lying dead and she orally stated the matter. PW1 recorded her complaint ExP1 and obtained her signature. PW1 prepared three copies of it and he send one copy to the Tahsildar, one copy to the Judicial Magistrate III, Erode, and retained one copy with him.

4. In ExP1, PW2 stated before PW1 that she suspects that A1 and A2 would have caused the death of her husband Kumarasamy. PW1 along with his menials went to the scene of occurrence and he was present, when the Inspector of Police prepared observation mahazar ExP3, which is attested by PW1 and one Kaviyarasu. PW1 was also present, when the Inspector recovered the blood stained earth MO.1, plain earth MO.2, Hercules Cycle MO.3, Gunny bag MO.4, coconuts contained in the gunny bag MO.5 series, knife MO.6 under mahazar ExP4. which is also attested by PW1 and kaviyarasu.

5. PW3, the mother of the deceased has stated that there is enmity between her family and the family of the accused and about twenty years back, the accused stabbed her husband Ramasamy Gounder. On the date of occurrence, the deceased, son of PW3 was going in the cycle MO.3 carrying gunny bag MO.4 containing coconuts MO.5 series to Erode. PW5 came and informed PW3 that her

son Kumarasamy was lying dead with cut Injuries. PW5 has turned hostile and he speaks in his evidence that while he was in his house, Ponnusamy and Chinnasamy, not examined, came and informed him that the deceased Kumarasamy was lying dead due to lorry accident.

6. PW10 the Sub-Inspector of Police on 7.4.1989 at 11.30 AM received ExP1 and ExP2 from PW1 and registered it in Crime No. 431 of 1989 under Section 302 of the Indian Penal Code and prepared the first information report ExP15. he sent the first information report Ex.P15 along with ExP1 and ExP2 to the Judicial Magistrate III, Erode and he also sent a copy of the first information report ExP15 to the higher authorities. PW11, on receipt of ExP15, took up investigation, visited the scene of occurrence at 12.45 PM and prepared the observation mahazar ExP3 in the presence of PW1 and Kaviyarasu and also drew rough sketch ExP16 and recovered the material objects. PW11 held inquest over the dead body of Kumarasamy between 2 and 5 PM on that date and prepared inquest report ExP17 and also sent the deadbody of Kumarasamy to post mortem through PW8 along with his requisition Ex: P6.

7. PW7, the doctor conducted post mortem on the dead body of Kumarasamy and he found on him the following injuries:

1. Abrasion 2' X 1' over left upper arm.
2. Lacerated injury 1' X 1/2' right side forehead downwards and medially bone deep
3. Incised wound over the right parietal region 2' X 1' bone deep downwards laterally
4. Incised wound over the left side scalp 5' X 2' extending medially up to the forehead exposing the bone and brain matter
5. Punctured wound over the eyebrow left side 1' X 1/2' bone deep
6. Abrasion over the neck circular 2' X 1/2' left side

7. Ecchymosis serotal skin present vester and cord normal, Contuelon right side face 2' X 2'

8. PW7 in of the opinion that the deceased Would have died of shock and hemorrhage due to head injury about 24 to 32- hours prior to autopsy. He has given the post mortem certificate Exp9. He stated that injuries No. 2 and 4 are possible by cutting with an aruval like MO.7 and external injuries No.3 and 5 are possible by stabbing with a knife like MO.6 and all the fracture of bones in the head are the corresponding internal injuries to the external injury Nos. 3 and 4 in Exp9. The death could have been instantaneous and the external injuries No.3 and 4 mentioned in Exp9 are not possible by hit by a lorry. External injuries No.3 and 4 and the corresponding internal injury mentioned in Exp9 are fatal and they are sufficient to cause death in the ordinary course of nature. PW8, after post mortem, recovered the dress worn by the deceased MO.9 and MO.10 and produced it before PW.11.

9. On 10.4.1989, at 9 AM at Erode Sithode Road, PW11 arrested the accused in the presence of PW6 and recorded his confessional statement Exp5 and as per the admissible portion of the confessional statement Exp5, PW.11 along with the witnesses went to Umaiyanthottam and A1 produced MO.7 knife and PW.11 recovered it under mahazar Exp6. Then, A1 took PW.11 and others to the house of his father-in-law and produced the motor cycle MO.8. PW.11 recovered it under mahazar Exp7 in the presence of witnesses. MO.8 contained two boxes and the box on the right side was found blood stained. PW11 sent both the accused for remand, the material objects to the Court and gave requisition Exp0 for sending the material objects for chemical analysis and the chemical analysis's report Exp12 was received. PW11 examined the witnesses and after completing the investigation, laid the charge sheet against the accused.

10. The case was tried by the Principal Sessions Judge, Erode and he found both the accused guilty under Section 302 read with Section 34 of the Indian Penal Code and convicted and sentenced them to undergo life imprisonment. As against the conviction and sentence, the appeal is directed.

11. The point for consideration is as to whether the conviction and sentence imposed by the learned Sessions Judge is sustainable.
12. Learned counsel for the appellants contended that there is not even an iota of evidence in this case to link the accused with the alleged offence and the finding of the learned Sessions Judge that the accused are found guilty for the offence under Section 302 read with Section 34 of the Indian Penal Code is not sustainable.
13. Learned Government Advocate on the criminal side has also fairly submitted that except the motive and the recovery of MO.7 knife under Section 27 of the Evidence Act, there is no evidence available in this case to connect the accused with the alleged occurrence.
14. There is neither direct evidence nor circumstantial evidence in this case to link the accused with the alleged occurrence. PW2 the second wife of the deceased has turned hostile, While PW2 was in her parents house in Pallipalayam village, she was informed by PW4 about the death of her husband due to lorry accident. Immediately, she came to the scene of occurrence with her parents and saw the dead body of her husband Kumarasamy.
15. PW1 is the Village Administrative Officer. The evidence of PW1 shows that PW2 appeared before him on 7.4.1989 at 9.30 AM and narrated that due to some cart track dispute, her husband Kumarasamy - the deceased would have been done to death. He recorded her statement ExP1. The evidence of PW1 also shows that PW2 narrated before PW1 that the assailants would have been A1 and A2 and they would have caused the death of her husband Kumarasamy. PW1 prepared ExP1 as per the narration of PW2 before him. Accordingly, he has prepared three copies of ExP1 and sent one copy to the Tahsildar, one copy to the Magistrate and retained one copy with him. But PW2 has stated a different version in her evidence. When she was examined in Court, she has categorically stated that her husband died due to lorry accident and she was informed only like that. Her oral evidence before the Court is contra to what was narrated before PW1.
16. The evidence of PW1 shows that at 12 noon, he along with his menials went to the scene of occurrence where he found the Inspector of Police, who had also

arrived there, Exp3 observation mahazar was prepared and MOs 1 to 6 were also recovered under mahazar Exp4 . But the evidence of PW10 is that on 7.4.1989 at 11.30 AM, he received Exp1 and Exp2 through PW1, registered the case in Crime No, 431 of 1989 under Section 302 of the Indian Penal Code, prepared Exp15 and sent Exp1, EXP2 and Exp15 to theJudicial Magistrate and also sent 3 copy of that to the Inspector of Police PW11 for investigation. PW11, the Inspector of Police on 7.4.1989 at 12.30 PM received Exp15, took up the investigation and visited the scene of occurrence and also prepared observation mahazar. He also recovered MOs 1 to 6 under Exp4,

17. The evidence of PW1 varies from the evidence of PW10. PW1 does not speak in his evidence that he went to the police station and gave Exp1 and Exp2, The evidence of PW1 is that after recording Exp1, he straightaway went to the scene of occurrence along with his menials and there, he saw the Inspector of Police PW11, the observation mahazar was prepared and the material objects were recovered. The evidence of PW1 is that only after the receipt of Exp1, Exp2 and Exp15, he took up investigation and visited the scene of occurrence. It is not known from the evidence of PW1 as to how Exp1 and Exp2 reached the police station. There is no connecting link for the receipt of Exp1 and Exp2 from PW1 in the police station by PW10, who registered the case.

18. The evidence on the side of the prosecution, even with regard to the complaint Exp1, is not cogent and consistent. The evidence of PW1 and PW2 with regard to the occurrence is distinct and not corroborative. PW2 has stated that the deceased died of lorry accident and she was informed accordingly. But, PW2, before PW1 in Exp1 has stated that A1 and A2 would have caused the death of her husband Kumarasamy PW3, the mother of the deceased had also stated that on the date of occurrence at 7.30 AM, the Inspector of Police came to the scene of occurrence where the dead body of Kumarasamy was lying. Similarly, PW4 has also stated that when he along with others went to the scene of occurrence, he found the police people there. The evidence of PW3 also shows that PW5 came and informed her that the deceased Kumarasamy was involved in lorry accident.

19. So, the discrepancy in the evidence of PW1 and PW2 along with PW3 and PW4 and this part of inconsistent evidence creates doubt with regard to the genuineness of Exp1. A perusal of the evidence of PWs.1 to 4 leads to irresistible conclusion that Exp1 itself is doubtful. Even though the doctor conducted the post mortem, has found seven external injuries on the dead body of the deceased Kumarasamy and he has also given the opinion that the deceased would appear to have died of shock and haemorrhage due to head injury and because of the injuries, death would have been instantaneous and injuries No.3 and 4 and corresponding internal injury in Exp9 are fatal and they are sufficient to cause death in the ordinary course of nature. During the course of cross examination, he stated that except external injuries No.3 and 4 and the corresponding internal injuries, other injuries mentioned in Exp9 are possible by hit by a lorry. So, the medical evidence is not much corroborative and the evidence of PW7 also leads to suspicion with regard to the injuries sustained by the deceased. The medical evidence cannot be stated to be supporting to the case of the prosecution.

20. PW.11 arrested the accused at 9 AM on 10.4.1989 and recorded the confessional statement of A1. The evidence of PW11 shows that as per the admissible portion of evidence of A1 in Exp3, A1 took him and the witnesses PW6 and another Chinnasamy to Umaiyanthottam, and produced MO.7 knife from that place and PW11 recovered it under mahazar Exp6. A1 also took PW11 and PW6 and other witnesses to the house of his father-in-law and he produced the motor cycle MO.8 and PW11 recovered it under mahazar Exp7. Even though the knife MO.7 was recovered from A1, since the recovery of the weapon MO.7 from A1 was not supported by corroborated evidence with regard to the involvement of the weapon MO.7 in the occurrence, the mere recovery of MO.7 from A1 under Section 27 of the Evidence Act will not establish the guilt of the accused. None of the witnesses have spoken in their evidence with regard to the use of weapon MO.7 in the alleged occurrence. Under the circumstances, even though MO.7 was produced by A1 and recovered from him, the mere recovery alone will not lead to come to the conclusion that the accused were involved in the occurrence. There is no connective evidence to prove that the weapon MO.7 was used in the involvement of the occurrence by the accused. In the absence of such connected evidence in the alleged occurrence with regard to the weapon MO.7, recovered

from A1, from the mere recovery, it cannot be concluded that the accused were involved in the occurrence and they had committed the alleged offence.

21. It has been held in the case of *Rambilae v. State of Madhya Pradesh*, : AIR 1997 SC3954 that the recovery of certain incriminating articles at the instance of the accused under Section 27 of the Evidence Act, assuming it to be true, the same cannot form the basis for conviction. As there is no corroborative evidence with regard to the recovery of MO.7, following the said decision of the Supreme Court, we find that the recovery of MO.7 at the instance of the accused cannot form the basis for conviction.

22. Further, the chemical analysis report ExP14 also reveals that even though the blood, found in the material objects was human blood, the grouping test was inconclusive. So, even the chemical analysis report does not support the case of the prosecution. Absolutely, there is no evidence on the side of the prosecution to prove the involvement of the accused in the occurrence. The evidence on the side of the prosecution is inconsistent and not cogent and it is quite unsafe to convict and sentence the accused on the basis of such inconsistent and uncorroborative evidence. Hence, we find that the conviction and sentence imposed by the learned Sessions Judge is not sustainable and is liable to be set aside.

23. In the result, the appeal is allowed and the conviction and sentence Imposed by the learned Sessions, Judge is set aside and the accused are directed to be released forthwith, if they are confined in prison.