

In Re: Ramachandran and anr.

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Court : Chennai

Decided On : Feb-16-1956

Reported in : AIR1957Mad505; 1957CriLJ863

Judge : Somasundaram and ;Ramaswami Gounder, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 162 and 286

Appeal No. : Criminal Appeal Nos. 577 and 638 of 1955

Appellant : In Re: Ramachandran and anr.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : T.A. Bhyme, Amicus Curiae

Disposition : Appeal allowed

Judgement :

1. The first and second accused' in Sessions Case No. 68 of 1955 on the file of the Sessions Judge, Salem, are the appellants in the above two appeals. They were tried on five charges: firstly, for an offence under Section 302. I.P.C. against the first accused for having caused the death of a person called Pookaran alias Krishnan, the second charge is against the second accused for abetment of the offence of murder, punishable under Section 302 read with Section 109 I.P.C., the

third charge is against the first accused for having caused hurt to P.W. 2 in the case, an offence punishable under Section 323 I.P.C., the fourth charge is against the second accused for having caused hurt to P.W. 2, an offence punishable under Section 323 I.P.C., and the fifth charge is against the second accused for having caused hurt to P.W. 1, an offence punishable under Section 323, I.P.C. The learned Judge convicted the first accused on the first charge, and the second accused on the second and fourth charges; and acquitted both the appellants on the other charges. The appellants were sentenced to transportation for life for the offence of murder by the first accused and abetment thereof by the second accused. The second accused was awarded a further term of imprisonment for three months for the offence under Section 323 I.P.C. both the sentences on this accused being ordered to run concurrently.

2. The prosecution case, briefly stated is as follows:

The deceased Pookaran alias Krishnan was the son-in-law of P.W. 1 living in P.W. 1's land called Kattuvalavu in Kongarapatti village. P.W. 1 had built three huts in one of which he, his wife and his son, P. W. 2 were living and in the other his sister, P.W. 3 was living. In the third one, his daughter P.W. 4 and his son-in-law, the deceased Pookaran alias Krishnan, were living. All these huts or KOTTAIS as they are called are near one another. The deceased married the daughter of P.W. 1 about 11 months prior to the Occurrence which was on the 6th of April 1955.

Two months after the marriage he had come to his father-in-law's place and was living in one of the huts above mentioned. About a month before the occurrence P.W. 1 his wife, his son and his son-in-law went to Mecherl to witness a car festival. His sister, P.W. 3 and daughter, P.W. 4, are said to have remained without accompanying the others. P.W. 1 and others who went to attend the car festival remained there for about five days and returned. During their absence, the first accused who lives in Kongarapatti is said to have allowed his sheep to graze the crops raised in P.W. 1's land, and when P.W. 4 the daughter, protested, the first accused beat her. P. W. 4 complained to her father as soon as he returned.

It is stated that the first accused was a rowdy and an influential man and therefore, P.W. 1 did not complain to any of the panchayatdars. On the morning of the day of

the occurrence, (6-4-1955) the first accused is said to have come again with about 50 sheep and allowed them to graze the ragi and castor-seed plants which were in P.W. I's land. The deceased Pooka-ran alias Krishnan abused the first accused for doing this and was driving the sheep to the pound. The first accused then rescued them from being taken to the pound and is said to have issued a threat saying that he would deal with the deceased in a proper manner very soon.

At about noon when the deceased was taking his food in his hut, the two accused herein are said to have come with another man called Nanjan, and dragged the deceased from inside the shed asking him to accompany them to the village munsif's house for a panchayat. P.W. 1 interceded on behalf of his son-in-law and he was also asked to accompany, but he refused. Then Nanjan is said to have stuck a match stick which he had and threatened to set fire to the hut. The first accused then dragged the deceased and fearing that the huts might be set on fire to, P.W. I, his son-in-law, the deceased P.W. I's wife and his son and sister (P.Ws. 2 and 3) are said to have accompanied the two accused and Nanjan. When they passed the sheds of one Madalamuthu, Vellapsillan and two others P.W. 1 and his party refused to move further saying that the village munsif was not in his house.

Then the two accused and Nanjan are said to have dragged P.W.I and Madalamuthu. Vell. appallan, Kallavayan (the last two persons were examined as P.Ws. 6 and 5 in this case) and another Madalamuthu persuaded P.W. 1 to go with the accused to Kongarapatti saying that they would also accompany them. So they all went to the village munsif's house for a panchayat. It is stated that at that time Nanjan was fully drunk. When they went to the village Munsif's house he was not to be found as he had gone out of the village. Thereupon the two appellants took P.W 1 and his party to A-I's aunt's house.

There his aunt is said to have abused P.W.I. Nanjan who had also accompanied them was so intoxicated that he fell down there. Then P.W. 1. and the first accused are said to have carried Nan-Jan to the village Munsif's house and after Jay-ing him in front of that house set out for home. On the way they had to pass the house of one Pallikudathan alias Sithan. In front of Palliku-dathan's hut, three

persons namely, Mottayyan, Manthi alias Mari Goundan and Pallikudathan alias. Sothal were standing. P.W. 1 complained to them about the first accused's conduct.

As he was complaining, P.W. 2 who was coming behind was attacked by the two accused; the second accused is said to have pressed the neck of P.W. 2. When P.W. 1 intervened the second accused is said to have hit him on the left arm with a piece of stone. Then, neighbours came and separated, and advised the prosecution party to go away. When the prosecution party had gone a little distance and had reached almost the outskirts of the village, the two appellants are said to have come, running after them with Stones.

The first accused is said to have hit Pookaran alias Krishnan on the hip with a stone and felled him. The second accused is said to have held the deceased down and the first accused is said to have hit the prostrate man on the head with a stone. Then the first and second accused are said to have attacked P.W. 2. The deceased is said to have got up and walked some distance, which is variously stated as ten steps or 40, or 50 or 100 yards, and then fell down. P.W. 3 and others ran up to him and attempted to give him water but he could not drink water,

Krishnan was then taken to the village munsif's house and within a short time he died. The Village Munsif who was out in the village came back in the evening at about 8-30 P.M. In the meantime, P.W. 1 who went in search of the village munsif found him at the place where he was collecting kist and told him what had happened. Both of them came back and then the Village munsif took a statement Ex. P-1 from P.W. 1. Then he prepared his reports and sent them to the Devattipatti police station and to the Omalur Magistrate.

The report reached the police station the next morning at 5 as there was no proper road and the path was through a forest. The police arrived at the scene at 'about 10 A.M. on the 7th and found Krishnan's corpse in a cot near the village munsif's house. The Sub Inspector, P.W. 13, held the inquest over the body and examined P.Ws. 1 to 4 at the inquest. After the inquest the body was sent to Omalur hospital. Then P.W. 13 examined P.Ws. 5, 8, and 7 and others the same day. The doctor at the Omalur Hospital was absent and therefore the body was sent to the Salem

Headquarters Hospital where P.W. 8 conducted the Post mortem.

3. The doctor, P.W. 8 found the following injuries on the person of the deceased Krishnan:

EXTERNAL.

1. Abrasion 2 inches into 1/2 inch horizontally placed 2 inches below angle of the left scapula; on cutting through the abrasion there is echymosis underneath it.

2. Abrasion 1/4 inch by 1/4 inch . placed 1 inch above (1).

INTERNAL.

Depressed fracture involving the right temporal and occipital bones of the following description, (1) Fracture line running horizontally from before backwards 2 inches above the right ear. The length of fracture 4 inches.

(2) From the middle of this fracture line running downwards and backwards for 2-1/2 inches cutting through temporal and occipital bones,

(3) Fracture line starting 1/2 inch in front of (2) running upwards and backwards for 1-1/2 inches.'

He further found the following;

'The sides of the brain covered with dark! blood clots underneath the duramater. The cerebral veins in these distended with dark red blood about 10 oz. of clotted blood in the anterior and middle cranial fossae.... ..

On opening the head . extravasation of the blood in the right side of the scalp above the ear. No injury to spinal column.'

According to the doctor, death would appear to have been caused by shock and haemorrhage due to the head injury; and that the injuries on the head were necessarily fatal. The two accused were arrested at 8 P.M. on 7-4-1855 at Kongarapattl. During the investigation the Sub Inspector recovered M. O. 1 series (two stones) at the scene of occurrence which is called Innasi Kadu and it belongs

to the Village Munsf.

4. The learned Judge found that the injuries on the head were caused by the first accused hitting him with a stone and as these injuries were necessarily fatal he found him guilty of murder. So far as the second accused was concerned, he found him guilty of the abetment of the murder as he had Joined the first accused in the attack upon the deceased man and felled him and held him while that first accused caused an injury on the head of the deceased. From the finding, therefore, it is quite clear that the fatal Injuries are attributed to the first accused. The question now is whether on the evidence it can be said with certainty that it was the first accused who was responsible for those head injuries.

5. The prosecution examined P. Ws. 1 to 3 and 5 to 7 as eye witnesses for the occurrence. So far as P.W. 3 is concerned, she has admitted in the committing court that she heard about the fight near the munsif's house and so the learned Judge found that her presence at the Munsif's Kadu where the occurrence is said to have taken place was doubtful and has not relied upon her evidence. As regards P.Ws. 5 and 6, the learned Judge found that in their statements under Section 164 Cr. P.C. they did not give a consistent account of the manner in which the deceased was attacked and if really they had accompanied P. W. 1 on his way back home. P.W. 1 would have noticed these witnesses' and mentioned their names in the first information report and since their names have not been mentioned, the learned Judge doubted their presence and therefore did not rely on their evidence. The learned Judge, therefore relied only on the evidence of P. Ws. 1, 2 and 7 In the case to support the conviction of the two appellants.

6-10. (Their Lordships after examining the evidence of the prosecution witnesses proceeded to state as follows:) On the Question therefore, whether these injuries were caused by the first accused only, or by the second accused only or by both, the versions are so varying that we do not think we can safely come to the conclusion that it was the first accused who caused those injuries on the head resulting in the death of Pookaran. If, according to the version given by P.W. 1 himself, these two stones were used by the second accused, certainly the first accused is not liable at all for the injuries; and when the present evidence is not

that the second accused caused those injuries to the deceased, then neither of them can be held responsible for the injuries caused to the deceased. In this view we have necessarily to acquit the two accused.

11. It has been elicited in the cross-examination of the Sub Inspector that Pallikudathan alias Sithan Lakshmanan and Kullu were examined in the committal court and that Lakshmanan and Kullu were examined as eye witnesses to the occurrence, and that the three witnesses ' mentioned were not treated as hostile by the prosecution. In those circumstances, in our opinion, the three witnesses examined in the committal court should have been examined in the Sessions Court as well. There is no satisfactory explanation for not examining those witnesses in the Sessions Court. In our opinion the omission to examine those witnesses is a serious defect in the conduct of the prosecution.

12. A number of contradictions were elicited between the statements of these witnesses made to the police in the course of the investigation and their evidence in the trial Court. The learned Judge does not appear to have attached any importance to those contradictions and the reasons for the same are contained in paragraphs 11 and 12 of his judgment. The learned Judge says:

'It is seen from the evidence of the Sub. Inspector that P. Ws. 1 to 4 were examined only at the inquest and not on any subsequent occasion. Obviously the statement made by them at the inquest is not the statement on the basis of which this contradiction is elicited. The inquest statement is recorded by the Sub Inspector in Tamil. Their statements found in English in the case diary, on the basis of which alone, this and other contradictions have, been elicited by the defence appear to be translations of their statements made during the inquest. It is apparent that the English translation was not a record prepared on the examination of P.Ws. 1 to 4, for a second time by the investigating officer. The practice obtaining in this district seems to be that the version of the witnesses examined at the inquest is recorded in Tamil and a translation of this version is embodied in the diary prepared by the investigating officer at a subsequent period. Obviously this English translation could not be taken as the statement made by the witnesses during investigation' (underlining (here into , ') is ours).

A number of other contradictions have also been elicited on the basis of the English translation of the statements made by P.Ws. 1 to 4. They could not be relied upon as contradictions, because 'they are not statements made by these witnesses during investigation' (underlining (here into ' ') is ours.)

13. We are unable to follow the reasoning of the learned Sessions Judge with regard to the statements contained in the case diary. The learned Judge seems to think that as the statements found in the case diary are only translations of the statements made by the witnesses in Tamil, they could not be taken as statements made by the witnesses during the investigation. If witnesses therefore speak in their own language and if the English translations of those statements are not to be considered as statements made by those witnesses, then we do not see how, when the witnesses in this case who admittedly must have spoken only in Tamil in Court, the English translation of the statements recorded by the Judge as the deposition of the witnesses can ever be considered as depositions of these witnesses. To accept the view of the learned Judge is to hold that these depositions now recorded in -English which is only a translation of the evidence given by these witnesses in Tamil, cannot be treated as evidence in Court and, therefore, the convictions have been based on no evidence whatsoever. The view of the learned Judge leads to this *reductio ad absurdum*.

14. Assuming for a moment that the English Translations of the statements of the witnesses are not to be considered as statements of the witnesses, then when the accused applied for copies of the statement under Section 162 Cr. P.O. what was the statement that was given to him as statements made under Section 162 Cr. P.C. in the course of the investigation? It is only the case diary statements which are the translations of the statements, that are given as copies. Copies of the statements in Tamil presumably are not being given because only copies of the statements in the case diary are generally furnished. The accused applied for copies of the statements under Section 162 Cr. P.C., and if the statements in the case diary are not, according to the Judge, statements made by the witnesses, and if the Tamil statements are not given, then the accused have not been given copies of the 162 statements. Right to get the 162 statements is a valuable right given to the accused by the Statute and if the view of the learned Sessions Judge

is correct this has been denied to them.

15. As pointed out by their Lordships of the Privy Council in *Pulukuri Kotayya v. Emperor*, ILR 1948 Mad 1 :AIR 1947 PC 67 (A):

'Courts in India have always regarded any breach of the proviso to Section 162 as a matter of gravity. *Balirarn v. Emperor*, ILR (1945) Nag 151: AIR 1945 Nag 1 (B), where the record of statements made by witnesses had been destroyed, and *Emperor v. Bansidhar* : AIR1931 All262 where the Court had refused to supply to the accused copies of statements made by witnesses to the police, afford instances in which failure to comply with the provisions of Section 162 have led to the convictions being quashed. There, as in those two cases, . the statements were never made available to the accused, an inference which is almost irresistible, arises of prejudice to the accused.'

In this case the. case diary contained only the English statements and only copies of those statements would have been given to the accused; and by the failure to give copies of the original state merits in Tamil, which according to the Sessions Judge are really statements under Section 162 Cr. P. O. and not the English translations in the case diary, an inference of prejudice to the accused certainly arises and in such circumstances, as pointed out in ILR (1945) Nag 151: AIR 1945 Nag 1 (B) the accused cannot be said to have had a fair trial. In our opinion the learned Judge is not correct in holding that the English translations could not be taken as statements made by the witnesses during the investigation, as that will lead to the absurd result that the evidence taken by the Judge cannot be considered as evidence given by the witnesses. We hold that the statements in the case diary though they are English translations of the Tamil statements are statements made during investigation. The statements if recorded in Tamil must be preserved and copies of them must be given when the accused applies for copies of the statements under Section 162. If it is proved that the statements were taken in Tamil and if they are destroyed, as pointed out by the Privy Council in ILR (1946) Mad I: AIR 1947 PC 67 (A) prejudice can be presumed and the accused will have to be acquitted. The investigating officers must bear this in mind and not destroy the original statements in Tamil and must furnish copies of the

same when the accused applies for statements under Section 162 Cri. P. C.

16. As we have already stated, on the evidence we are satisfied that the guilt of the two accused has not been brought home to them beyond all doubt. Their convictions and sentences are therefore set aside and both of them are acquitted. The appeals are allowed.

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