

**In Re: Rayappa Asari**

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**Court :** Chennai

**Decided On :** Sep-15-1971

**Reported in :** 1972CriLJ1226

**Judge :** Venkataraman and ;Maharajan, JJ.

**Appellant :** In Re: Rayappa Asari

**Judgement :**

**Venkataraman, J.**

1 This is an appeal against the judgment of the learned Sessions Judge of Salem convicting the appellant Rayappa Asari for the murder of his concubine Karnala alias Venkatammal and sentencing him to rigorous imprisonment for life. The murder is said to have been committed about 3 a. m. on the night of 30/31-1-1970 at Avuthipalayam by the appellant stabbing her with a bichuva knife on her throat, neck etc. The evidence against the appellant. is purely circumstantial, but: in our opinion, the evidence is sufficient to sustain the conviction and the only reasonable inference from the evidence is that it was the appellant who committed the murder. In the first place. there is evidence that the appellant and the deceased Kamala lived in the house of P. W. 7 at Kannankurichi. part of Salem. and that they used to quarrel. That was about nine months prior to the occurrence and the period of their stay was for about a year P. W. 7 began his evidence by saying that they were altogether living happily and there used to be only occasional quarrels between

them and that he did not know the cause of their quarrel. But in view of his contrary statement to the police in the investigation. he was allowed to be cross-examined by the learned Public Prosecutor and in that cross-examination he admitted that he had made a statement to the police that the appellant . and Kamala used to quarrel because she was not faithful, and that was why they left the house. He further admitted that that statement was true. No doubt he stated in further cross-examination by the Counsel for the accused that he did not know personally about the infidelity of Kamala and the reason for the quarrel. But , personal knowledge is not necessary in such matters. We could infer the real reason for the quarrel from the conduct of the parties.

2. Similarly. P. W. 8. a neighbour of P. W, 7. stated in chief examination that the appellant and Kamala lived in the house of P. W. 7 for about a year, that they were living cordially and that he did not know about the behaviour of Kamala. He was also allowed to be cross-examined by the learned Public Prosecutor and therein he admitted that he had made a statement to the police that the appellant and Kamala used to have frequent quarrels because Kamala was not faithful to the appellant and that he used to pacify them and he further admitted that that statement was true. In further cross-examination by the counsel for the accused he stated that he did not know personally about the quarrel between the appellant and Kamala. In view of that. we will leave the evidence of PW. 8 out of account. But then there is the evidence of PW. 7 which shows that previously the appellant and Kamala used to quarrel because Kamala was not faithful to the appellant.

3. Then there is evidence to show that the appellant and Kamala took up residence in a portion of the house belonging to P. W. 1. the Karnam of Avuthipalayam in Tiruchengode taluk.

4. There is further evidence to show that on the night of 30-1-1970 about 8-30 p, m. the appellant and Kamala were in their portion. P. W. 1 whose residence is within 60 feet speaks to this. He says that they were then shouting.

5. Then there is the evidence of P. W. 5 that about 3 a. m that night when, he was on his way to irrigate his field with the aid of his pumpset. he passed the residence of the appellant and Kamala and that he found the appellant bolting the outer door

of his house by fastening the chain and then going very fast. P. W. 5 asked him where he was going fast. The appellant replied that there was nothing and went towards Pallipalayam road. There was moon light and P W 5 was able to identify the appellant.

6. P. W. 2. the wife of PW. 1. woke up on the morning of Saturday 31-1-1971 about 5-30 a. m and found that Kamala had not washed the front of her house with cowdung as usual hence she sent her servantmaid PW. 3 aged about ten years. P. W, 3 opened the door and found to her horror Kamala lying in a pool of blood. She informed P. W. 2 of this. P. W. 2 sent word to her husband through P. W. 4. P. W. 1 was then talking with his friends. He came to the house and found Kamala lying dead in a pool of blood. He prepared the statement Ex. P, 1 and took it himself to the police station at Pallipalayam about 12 miles away. He claims to have handed it over to the Head constable PW 12 at 6 a.m. in Ex. P. W. 1, expressed his suspicion against the appellant.

7. PW. 12 says that he registered a case under Section 302. 1. P.C. on the basis of Ex. P. 1 at 6 a. m. and sent express reports. He further says that about 6-30 a. m. PW. 6 produced the appellant We have now to describe the evidence of PW. 6.. After discussing the evidence His Lordship proceeded.

8. We are therefore satisfied that the evidence of PW. 5 is true.

9. At this stage itself. we may ?permit ourselves the comment that if the appellant's version were true. namely, that when he returned home he found to his horror that his concubine had been murdered by some stranger, he would have proclaimed that fact loudly to the neighbours. in particular to P. W. 1 and would have mentioned that to PW. 5 also.

10. As regards the evidence of PW. 6 we find that there are three discrepant versions as to when he met the appellant and the extra judicial confession was made to him whether it was when P. W. 6 was going to answer calls of nature. or was answering calls of nature or was returning after answering calls of nature. We, therefore, leave his statement out of account. There can be no doubt, however. that the appellant appeared at the police station with the bloodstained clothes M.

Os. 1 and 2. It is immaterial for our purpose whether it was actually P. W. 6 who produced him. Suffice it to say that there is no material to make us think that he made any statement to the police that on returning home from the cinema he found that his concubine had been murdered by a stranger. That he made such a statement has been denied by PW. 12. and we accept the evidence of PW. 12 on the point. If he had indeed made such . statement, it could have been used by the appellant in his favour. The prohibition contained in Section 25 of the Evidence Act is only the use of the statement against the accused. See also the judgment of Somasundaram J in re Mottai Thevar : AIR1952 Mad586 See also Hasil v. Emperor AIR 1942 Lah 37 & Lalkhan v. Emperor AIR 1948 Lah 43, quoted in Sarkar's Law of Evidence. 11th Edn PP. 270 and 271. We have also ourselves looked into the case diary to satisfy ourselves that it does not contain any statement of the accused favourable to him. The appellant has not offered any explanation for the human blood on his clothes M. Os. 1 and 2. but he would simply deny that they were recovered from him.

11. In our opinion. Ex. P4 has also been proved to have been written by the appellant. It is true that there is no direct proof that the appellant wrote it. nor even proof by any witness that it is in the handwriting of the appellant. But in law that is not necessary. Section 3 of the Evidence Act says:

A fact is said to be proved when. after considering the matters before it, the court either believes it to exist. or considers its existence so probable that a prudent man ought. under the circumstances of the particular case, to act upon the supposition that it exists.

There is nothing in this to show that the proof must be direct. In fact. just as the fact that a murder was committed by an accused may be inferred from circumstantial evidence, it is also permissible in law to infer the authorship and genuineness of a document from circumstantial evidence. That is in fact what their Lordships of the Supreme Court have pointed out in Mobarik Ali Ahmed v. State of Bombay : 1957 CriLJ1346 .

The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating

thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the contents of the document.

In this particular case there are the following circumstances to prove that Ex. P. 4 was written by the appellant. (1) It was recovered from inside the house of the appellant. (2) The contents of Ex. P. 4 strongly suggest that the appellant was the author. It refers in detail to the relationship between the appellant and Kamala and in particular it also refers to their stay in the house of Planiasari of Chinnamariamman Koil Street, Kannakurichi. Salem 8. Reading it with the evidence of PW. 7, we have no doubt that it refers to PW. 7. Thus the evidence of PW 7 itself lends corroboration to the contents and the authorship and truth of Ex. P. 4. (3) It seems to us that the handwriting in Ex. P. 4 is similar to the admitted signatures of the appellant in his statements under Section 342 CrI. P.C. before the committal court and the trial court. We may also observe that as a matter of probability it is unlikely that any other person wrote out such a letter and kept it on box. Ex. P. 4 shows that Kamala was unfaithful to the appellant and that he was not at all happy with her,

12. Further, it seems under the circumstances of the case that it may have been written after the appellant committed the murder of Kamala and before he wanted to commit suicide. But at the last moment he did not have the courage to commit suicide and merely left the letter there and went out.

13. The evidence which has thus been let in against the appellant may be summarised. The appellant was in his house with Kamala at 8-30 p. m on 30-1-1970, PW 1 heard them quarrelling. At 3 a. m. PW. 5 saw the appellant coming out of his house after fastening the chain and going hurriedly towards pallipalayam To the query of PW. 5 why he was going so fast. the appellant offered no explanation and said that nothing had happened. It shows his consciousness of guilt and is incompatible with his innocence. If really the murder had been committed by somebody else and the appellant on returning home discovered it, his conduct

would have been entirely different. He would have raised an alarm attracting the neighbours and would have informed the neighbour PW 1 and also PW. 5. Not merely did he refrain from raising an alarm as we would expect if he were not the murderer himself, but he tried to screen suspicion away from himself by telling PW. 5 that nothing had happened. That shows his guilty conscience.

14. He appeared at the police station in the morning. His clothes M. Os. 1 and 2 were stained with human blood. Ex. P. 4 show that Kamala was not faithful to him and that they had decided to put an end to their lives. Actually on that portion of Ex. P. 4. we think that the appellant has deliberately suppressed the fact that he himself committed the murder. but wanted to make it appear that it was a case of suicide. It may be noticed that the medical evidence is that the serious injuries could not have been self-inflicted.

15. In our opinion. the only reasonable inference from these proved facts is that the appellant committed the murder of his concubine. The circumstantial evidence is incompatible with his innocence because as we have pointed out more than once if he was innocent his conduct on discovering the murder would have been entirely different. He would have shouted that somebody had murdered his concubine.

16. The learned Counsel for the appellant has urged that in view of the medical evidence it must be held that the murder was committed before 9-30 P. M. He relies on the fact that the stomach contained 100 grams of undigested rice and the evidence of the doctor in cross-examination that death should have been occurred about one hour after taking food. The learned Counsel also refers to the fact that the bladder was empty and argues that Kamala must have emptied her bladder before retiring to bed about 9-30 p. m. This second circumstance is not necessarily conclusive because it is possible that after emptying her bladder at about 9-30 p. m. she might have emptied her bladder again by about 2-30 a. m. The other circumstance is certainly weighty, namely. according to the stomach contents, death would have occurred about one hour after taking food. From these premises that death occurred before 9-30 a. m, the learned Counsel urges that if the appellant was seen by PW. 5 emerging from his house only at 3 a. m, anything

could have happened in the interval between 9-30 p. m and 3 a. m and that we cannot exclude the possibility of some stranger having murdered the woman. In this connection he refers to the fact contained in the observation mahazar Ex. P. 3 that the green skirt on the corpse had rolled itself and that portion of the body was exposed. The learned Counsel argues that this suggests that some stranger might have come to have sexual union with her. that she might not have agreed to that and that the stranger might have killed her. We think. however, that this inference is farfetched under the circumstances of this case. because firstly, the conduct of appellant is clearly incompatible with such a version. As we have pointed out more than once. if somebody other than the appellant had murdered her and the appellant discovered it on coming home at 2-45 a. m, as we would have it he would have raised an alarm at once attracting the neighbours and it is not even his case that he did so. Secondly, we think that Ex. P, 4 itself affords an explanation for the interval between the commission of the murder and the time of his exit. It is dated 30-1-1970 at the top and the contents in our opinion, suggest that he wrote it after committing the murder and tried to give a garbled version of the murder by making it appear that death was due to a suicide pact.

17. We. therefore. feel constrained to confirm the conviction under Section 302. I. P.C. and the sentence of imprisonment for life. The appeal is dismissed.

18. We must record our appreciation of the strenuous and able arguments put forward by the amicus curiae Sri Nallasivam.

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