

In Re: Samiappan

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Court : Chennai

Decided On : Apr-29-1969

Reported in : (1970)1MLJ229

Appellant : In Re: Samiappan

Judgement :

P. Ramakrishnan, J.

1. There were three accused before the learned Sessions Judge of Tiruchirappalli division in S.C. No 107 of 1968. Periakkal, accused 1, was charged and convicted of the offence of abduction in order to commit murder under Section 364, Indian Penal Code, and sentenced to rigorous imprisonment for three years. Accused 3 Samiappan, brother's son of the first accused, was convicted under Section 302 read with Section 34, Indian Penal Code, and sentenced to be hanged by neck till he is dead. He was also convicted under Section 201, Indian Penal Code, for concealing evidence regarding murder and sentenced to rigorous imprisonment for two years. Accused 2 was acquitted of all the charges. Accused 1 and 3 have appealed against their conviction and sentence. The sentence of death imposed on accused 3 in also before use for confirmation.

2. The deceased Rasammal was a Harijan woman. She marreid Raman P.W. 16 about 10 years prior to the occurrence. Rasammal and her husband fell out, because he refused to get divided from his brother, as desired by her. This

quarrel, led her to abandon her husband's roof. She returned, to the house of her parents Pichaikaran Moopan and Palayee, P.W. 17 and P.W. 18 respectively, in Valandur village. While Rasammal was in Valandur village, she contracted criminal intimacy with P.W. 5 Ramu, the son of the first accused. P.W. 5 was already married. He was living in Kulitalai. He is a Vellala by caste. When the parents of Rasammal insisted on her returning to her husband's house, she decided to elope with P.W. 5 Ramu for the purpose of living in some other place of their choosing. They, first of all, went to the house of Sirumbayee P.W. 12. P.W. 12 is the sister of accused. 2. P.W. 12 Sirumbayee and her paramour Ramaswami Nadar P.W. 7 were living in a cocoanut tope near Karur. The day of their visit has been identified by the witness as the day after the Thai Poosam, which would correspond to 12th February, 1968. When the caste of Rasammal was discovered as Harijan, P.W. 12 did not like Rasammal continuing to stay with her. Thereupon, P.W. 5, and Rasammal went to Karur town to live. With some difficulty, they were able to take on rent a small house in Karur from P.W. 11 on a monthly rent which was paid to P.W. 11 by P.W. 5. At Karur, Rasammal purchased certain house-hold-articles M.O. 8 series from the shop of Mancharan P.W. 15. After having settled down in this manner, P.W. 5 appears to have left for Kulitalai the next day, leaving Rasammal in Karur itself.

3. During the visit of P.W. 5 and the deceased to the house of Sirumbayee and Ramaswami Nadar and also during their arrangements to obtain a house in Karur, accused 2 Malaikolundu was present with them. Apparently, he did not object to the arrangements which the couple were making for their residence at Karur. But after leaving them, accused 2 appears to have informed accused 1 about what was going on between P.W. 5 and Rasammal. Accused 1 appears to have resented her son eloping with a Harijan woman. She is alleged to have met her daughter P.W. 12 four days after the latter had seen P.W. 5 and the deceased and taken her to task for harbouring the deceased. She is also alleged to have asked P.W. 12 as to why she did not do away with her (Rasammal) and bury her since she was-spoiling her son. This conversation was overheard by P.W. 8 Mookan alias Kuppaswami, who warned accused 1 that, if anything untoward happened to Rasammal, he would be the first to disclose it.

4. Thereafter, accused 1 came to the house of P.W. 11. P.W. n has deposed that on the same day Rasammal took leave of her and left her house in the company of accused 1. When questioned, Rasammal told P.W. 11 that accused 1 was her mother-in-law and that she was going to her husband's place after vacating the house. The next day, P.W. 5 went to the house and when he questioned P.W. 11 about Rasammal, she told him that his mother had taken her away.

5. The next evidence we have in this case is that of P.W. 2 and P.W. 6, who belong to Pichaigoundanur village in Karur taluk. Accused 3 who is the son of another brother of accused 1, as well as his another brother Rajalingam own a garden. On a certain day, P.W. 2 met accused 1, accused 2 and a woman aged about 25 years in the above-said garden. The woman was wearing at that time a saree and blouse, M.Os. 1 and 2, and ear-rings studded with white stones and also a gold nose-screw, which he identified as M.Os. 3, 4 and 5 series. P.W. 6 also saw in accused 3's garden near Vellagoundanpatti, a woman aged about 25 years along with accused 1. She was wearing at that time the saree M.O. 1 and the blouse M.O. 2. That was the last occasion when anybody else appears to have seen the deceased woman alive. But P.W. 2 and P.W. 6 did not identify the woman who was in accused 1 's company in the garden. They identified her only with reference to the saree, blouse and the jewels.

6. On 16th March, 1968, the village Head-man, P.W. 1, of Pichampatti, on information, noticed flies swarming at a place near the railway line. The earth was dug out and the body of a woman was found buried there. P.W. 1 sent reports to the police and the Magistrate. The Circle Inspector of Police, P.W. 22, on receiving the report, came to the scene and removed the dead body. Autopsy was conducted on the body by P.W. 20 Dr. John, Assistant Surgeon, Government Hospital, Karur. The doctor noticed that the body was in an extremely advanced stage of decomposition. The orbits were empty and the bones were exposed. There was no fracture of any bone. Uterus was decomposed. The skull was empty. The internal organs had become a semi-solid mass. The doctor could not give any opinion regarding the cause of death, because of the high decomposition of the body. In cross-examination, he said that death could be due to natural causes like heart failure, and consumption of poison, and that the possibility of

strangulation also could not be excluded. From the circumstance that the uterus had decomposed, the doctor gave his opinion that death must have taken place more than three weeks earlier to the date of the post-mortem examination. He observed that uterus starts decomposing only after three weeks after death, but it would take three months for the uterus to get completely decomposed. The doctor stated that hyoid bone was absent.

7. Accused 3 was arrested by the police during investigation. In pursuance of a Statement, the admissible portion of which is Exhibit P-5, Accused 3 took the police and the mediators to his house in Vasukumaranpatti and produced M.Os. 4 to 7 series from a mud-pot inside his house. Accused 3 was then taken before the Sub-Magistrate of Kulitalai, who after administering the usual warnings and giving him more than 24 hours time for reflection, and after satisfying himself that the prisoner was going to give a voluntary statement, recorded the confession statement Exhibit P-11. This is what accused 3 stated in this statement.

On Friday, my aunt, Periakkal brought a woman with her to the garden. She brought vessels in a bag. An hour later, Malaikolundhan came. The three were talking. Afterwards Malaikolundhan went away. Three days thereafter my aunt told that the woman should be killed, otherwise she will take Raman, her (aunt's) son with her and go away. I refused. She said 'Malaikolundhan is coming. You may also come.' I agreed. After dusk myself and Malaikolundhan went southwards with spade and crowbar. We kept them near the railway line and went to take food. After supper, we carried food for aunt and the woman. They ate. Then we went south to dig pit. After digging the pit we returned to the garden. We laid ourselves near the hay rick and were awake. Periakkal called us. We both called aunt and the woman to come with us to go to Raman and took them towards south. Immediately on climbing the (rail) bund Malaikolundhan caught hold of the neck of the woman and she fell down. Aunt also held her neck. I held her legs. Periakkal and Malaikolundhan throttled her. She died after half an hour. I removed a thodu and had it with me. I had the nose screw also with me. I kept the vessels in the farm house, the thodu and the nose screw inside the pot. We buried the dead body in the pit and went away. He kept the spade and the crowbar near the hayrick. We three slept in the garden. Malaikolundhan went in the morning. My aunt also left

for her place. That was all happened. Then police arrested me.

8. The learned Sessions Judge found that there was no satisfactory evidence to connect accused 2 with any offence. There was an extrajudicial confession referred to on the evidence of P.W. 9 and P.W. 12 but it was retracted. In his opinion, so far as accused 3 is concerned, the judicial confession of accused 3, though retracted, could be considered as adequately corroborated by the recovery of M.Os. 4 to 8 series from his house. Accused 3 had pleaded that M.Os. 4 to 7 belonged to his brother's wife. But the learned Sessions Judge repelled this explanation as unlikely. He also accepted the evidence of the prosecution witnesses regarding the identification of M.Os. 4 to 7 as the jewels which could have belonged to Rasammal. On these evidence, he convicted accused 3 of murder under Section 302 Indian Penal Code as well as under Section 201, Indian Penal Code, and sentenced him as mentioned above.

9. In regard to accused the learned Sessions Judge disbelieved the evidence about her participation in murder. But he took into account the fact that she was seen by P.W. 11 taking the deceased with her from Karur. He also took into account her subsequent statement when questioned about the whereabouts of the deceased. P.W. 5 stated that, when he asked his mother as to where she had taken Rasammal, she had replied that Rasammal had accompanied her up to the bus-stand in Karur and that she thereafter refused to come with her to Kulitalai on the ground that she wanted to go elsewhere. There was also the evidence given by P.W. 7 who had questioned accused I about the whereabouts of Rasammal. At first, accused I had replied that Rasammal came with her only as far as the bus-stand, and when the witness told her that the relations of Rasammal had come and they were searching for her and that they wanted to give a complaint to the police, accused I said that she would pay hush-money if P.W. 7 could silence Rasammal's relations. But accused did not pay the hush-money but told P.W. 7 that she was going to Karur the following Wednesday. Sometime later P.W. 8 had questioned accused 1 about the whereabouts of Rasammal and accused 1 asked him why he was taking such undue interest in the matter. Thereafter, P.W. 17 got a petition, Exhibit P-9 prepared by P.W. 19 and presented it to P.W. 23 the then Sub-Inspector of Police, Kilitalai, who endorsed the petition to the Assistant Sub-

Inspector for enquiry and report. The learned Sessions Judge has relied upon the evasive replies of accused 1 as to the whereabouts of the deceased and also her conduct in trying to offer hush-money to P.W. 7 for coming to the conclusion that she abducted the deceased woman with a view to murder her.

10. We will take up first for consideration the charge against accused 3, for which he was convicted, viz., the offence of murder of Rasammal under Section 302 Indian Penal Code. The initial difficulties arise from the identity of the murdered woman, whose body was found in a pit near the railway line and the cause of her death. So far as the identification is concerned, the body has been identified with reference to the garments (saree and blouse), M.Os. 1 and 2. Owing to the advanced stage of decomposition, according to the doctor who conducted the autopsy, no identification by appearance was possible. Even the age of the victim could not be determined. Only the police gave her age in the requisition as 26 years ; but the doctor stated that the age of the woman whose body he examined might be 30 or 35 years. The identification by the saree and the blouse is supported by the statements of the witnesses for the prosecution that when Rasammal was seen in the company of P.W. 5, she was wearing a violet coloured saree with yellow stripes and a white blouse with red spots. That there has been an artificial overstraining on the part of the prosecution on this aspect of the evidence can be inferred from the circumstances that even the witnesses who saw the woman only casually are able to describe, long after the event, the colour, stripes and spots of the saree and the blouse worn by the deceased woman. P.W. 7 Ramaswami Nadar, P.W. 5 Ramu and P.W. 2 Pichaimuthu are all male witnesses, who would not ordinarily make note of the colour or the design of the saree worn by a woman they see casually. But in the testimony of these witnesses, the precise description and particulars of the saree and the blouse of the deceased woman are found. No doubt, women relations like P.W. 18, the mother of the deceased, can be expected to identify her daughter's clothes. But the fact that other people, who cannot be expected to keep a clear recollection of such particulars, are also prepared to come forward to give an account is a circumstance which taints the prosecution version of the identification of the deceased woman by her saree and blouse with considerable artificiality. P.W. 5 has deposed that the saree M.O. 1 is of a pattern readily available in the market and that he can only say that Rajammal was

wearing a saree similar to M.O. 1. These circumstances should make one hesitate before identification of the body as that of Rasammal can be satisfactorily upheld.

11. As regards the cause of her death, the autopsy provides no help whatever. On the other hand, the doctor's opinion leaves the question open as to whether she died through a variety of causes including poisoning, natural causes or strangulation. We have, therefore, to fall back upon the retracted confession of accused 3, and the extra judicial confession of accused 2, which has also been withdrawn, for the purpose of identification as well as for determining the cause of death as strangulation. While the principle of proof of corpus delicti which has been considered in such cases as the proof that before the accused is found to be the author of the crime, it must be established that the crime charged has been committed-in theft that the property has been stolen, in murder that somebody has been killed the strongest proof of corpus delicti in murder is the body of the victim or a vital part of the body by which he could be identified, in the absence of any such evidence, direct evidence may also come from a person who saw the killing or the murderer may confess to the crime. The fact of death should be proved by such circumstances as render the commission of the crime certain and leave no ground for reasonable doubt; the circumstantial evidence should be so cogent and compelling that upon no rational hypothesis other than murder can the facts be accounted for. Vide Sarkar on Evidence (Eleventh Edition) page 27. The learned author has referred, in this connection to Ram Chandra v. U.P. State : 1957 CriLJ559 . We are of the opinion that in the present case, in view of the complete failure of the medical examination to establish the possibility of identification of the murdered woman, the cause of her death and also the doubtful features of the identification by the saree and the blouse she wore, it will not be proper to hold beyond reasonable doubt that it was the body of Rasammal that was unearthed behind the railway line and secondly that Rasammal met with her death by strangulation, relying for the purpose solely on the retracted judicial confession of accused 3 and the non-judicial confession of accused 2, which has got infirmative features as mentioned below.

12. Regarding the judicial confession itself of accused 3, it has got several infirmative features. Accused 3 is not directly concerned with the deceased in any

way. P.W. 5 is his father's sister's son. He was not seen in the company of the deceased at any time by any witness. The evidence is that the deceased, accused 1 and accused 2 were seen together in accused 5's garden. From the point of circumstantial evidence the complete absence of motive and absence of evidence to prove the movements of accused 3 with the deceased at a time immediately proximate to the occurrence will normally rule out accused 3's participation in the murder. In the retracted confession, he allots to himself a minor part namely holding of the deceased woman by her legs. The act of strangulation is attributed to accused 1 and accused 2. Accused is an old woman of 55 years of age. It is difficult to believe that she would have taken a prominent part in the strangulation, when two young man accused 2 and 3 were present for the purpose. The confessional statement itself carries with it an air of artificiality, which makes it unsafe to accept it, without material corroboration, both as to the crime and the criminal.

13. The recovery of the jewels of the deceased woman from the house of accused 3 on the information supplied by accused 3 can be briefly referred to. The jewels themselves have been identified as the jewels worn by the deceased woman. But P.W. 5 states that these jewels M.Os. 4 to 7 do not have any identification marks and that if they are mingled with other jewels of similar type, he would not be able to identify them. They are ordinary jewels worn by women. Accused 3's explanation was that the jewels belonged to his brother's wife. Apart from this circumstance, this is one of those cases where mere possession of the jewels even if they have been found to be those worn by the deceased woman cannot by itself fasten upon the possessor complicity in the murder. It is proper to expect other independent corroboration to prove the connection of the person who possessed the jewels. But such independent corroboration is lacking in this case with the main offence. For the above reasons, we are of the opinion that it is not safe to uphold the conviction of accused 3 either under Section 302, Indian Penal Code or under Section 201, Indian Penal Code. We give him the benefit of the doubt. The convictions and the sentences on accused 3 are set aside. We acquit him and direct him to be set at liberty.

14. Regarding the part of accused in abducting the deceased woman, in the absence of satisfactory proof of murder, it will not be safe to convict accused of the offence of abduction of the deceased woman with a view to murder her, under Section 364, Indian Penal Code. What remains against her is only suspicious evidence regarding her evasive replies to people who questioned her about her movements with the deceased. There is also the evidence of P.W. 7 about her offer to pay hush-money for silencing the relations of the deceased woman. But even on this part of the case, her evidence in the committal Court is different. What she then said was : I will give you money. Don't tell anybody else. The woman is not to be found.' P.W. 7 admits that accused I never paid him any money. In the above circumstances, it is not safe to convict accused I under Section 364, Indian Penal Code. We give her the benefit of the doubt, set aside the conviction and sentence, acquit her and direct her to be set at liberty.

15. The Criminal appeals are allowed.

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