

K. Natarajan Vs. State

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Court : Chennai

Decided On : Jan-05-2001

Reported in : 2001CriLJ1135

Judge : A.S. Venkatachalamoorthy and ;C. Nagappan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; ;Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 5 of 1992

Appellant : K. Natarajan

Respondent : State

Advocate for Def. : G.M. Syed Fasiuddin, Addl. P.P.

Advocate for Pet/Ap. : S. Pichai, Adv.

Disposition : Appeal dismissed

Judgement :

C. Nagappan, J.

1. The appellant who hereinafter will be referred to as the accused was tried for a charge of murder by the Sessions Judge, Trichy.

2. The allegation in the charge sheet is that at 6.30 p.m. on 13-11-1990, the accused Natarajan cut Velusamy with Aruval indiscriminately and caused his death. To prove the above charge, the prosecution, before the trial Court examined P.Ws. 1 to 12 and marked Exs. P-1 to P-19 as well as M.Os. 1 to 12.

3. The case of the prosecution as discernible from oral and documentary evidence can be summarised as follows :

The deceased is the younger brother of P.W. 4 Ramasami. P.W. 5 Palanisami is their sister's son. On the evening of 13-11-1990, P.W. 4 Ramasami, after watering his chilly plants in his garden land, was returning home on the itteri pathway and at that time, he heard the screaming voice of his brother Velusamy about the assault on him and he ran there and saw the accused cutting his brother Velusamy by M.O.1 Aruval five or six times. The accused ran away with Aruval and out of fear P.W. 4 Ramasami did not go near and stood there weeping. At that time, P.W. 5 Palanisami was returning to his place on cycle from Paramathi and he saw accused going with Aruval. He found his uncle lying with cut injuries in the occurrence place and when he enquired, P.W. 4, who was standing there, informed him about the occurrence. When they examined Velusamy, he was found dead. P.W. 4 and P.W. 5 went to their house and informed the occurrence and proceeded to Paramathi Police Station for giving a report about the occurrence.

4. On 13-11-1990, at about 7.00 p.m., Village Administrative Officer P.W. 1 Kandasami and P.W. 2 Thalayari Marudan were in their office in Kuppam and at that time, the accused Natarajan came there wearing bloodstained clothes. P.W. 1 Kandasami enquired the accused and he recorded Ex. P-1 statement given by the accused and obtained his signature in it. P.W. 1 made his Ex. P-2 endorsement in it and he along with P.W. 2 took the accused to Paramathi Police Station. P.W. 11 Sub-Inspector Nadakumar, in the Paramathi Police Station, received Exs. P-1 and P-2 at 8.00 p.m. from P.W. 1 and registered a case in Crime No. 237/90 under Section 302, I.P.C. and prepared Ex. P-16 First Information Report and sent it to Court through P.W. 8 Constable and informed the Inspector and other higher officials. P.W. 11 arrested the accused and seized his bloodstained M.O. 11 Dhoti and M.O. 12 Towel under Form 95.

5. P.W. 12 Inspector Ramaiyan reached the Paramathi Police Station at 10.00 p.m. and after receiving the F.I.R., took up the investigation. At 10.15 p.m., he enquired the accused before P.W. 1 Kandasami and P.W. 3 Kandasami and recorded the Statement of accused and the admissible portion of it is Ex. P-3. The accused took the Inspector and the witnesses to Noyyal Channel and from the bush nearby, the accused produced M.O. 1 Aruval and the Inspector seized it in Ex. P-14 Mahazar at 12.45 hours in the night and obtained the signature of the witnesses in it.

6. P.W. 12 took photographs of the deceased and the occurrence place through P.W. 10 Photographer Raja. P.W. 12 prepared Ex. P-17 rough sketch about the occurrence place and prepared Ex. P-5 observation mahazar before P.Ws. 1 and 3. At 7.00 a.m. in the morning, he seized M.O. 2, M.O.3 and M.O. 4 in the presence of P.Ws. 1 and 3 under Ex. P-6 Mahazar. He conducted the inquest on the body of the deceased between 7.30 a.m. to 10.00 a.m. before Panchatdars and witnesses including P.Ws. 4 and 5 and prepared Ex. P-18 Inquest Report. He sent the body along with Ex. P-8 requisition for post-mortem through P.W. 9 Constable. On the same day, P.W. 12 examined P.W. 1 and P.W. 3 and recorded their statements and he sent the accused for judicial custody.

7. P.W. 6 Dr. Periyasamy conducted the post-mortem on the body of Velusamy at 12.15 p.m. on 14-11-1990 and found the following injuries on the body :

An incised Deep capitatin wound level between C3 x C4 cutting through all the muscles, Blood vessels nerves, desophagas, Larynx and spinal cord & cervical vertebra except a tag of skin at back of the neck.

2. An incised wound of 12 x 3 cm x bone deep over the left lower jaw extending jaw angle of mouth to the neck. O/D fracture left mandible.

3. An incised wound 7 x 2 cm x muscle deep over the left lower neck O/D trapezius muscle cut.

4. A semicircular incised wound over left shoulder 10 cm x 2 cms x bone deep O/D shoulder joint left exposed.

5. A penetrating wound with incised margin 3 x 1 cm x 1 cm below middle of right collar bone directed downwards.
6. An incised wound 6 cm x 1 cm x bone deep over middle finger, right exposing knee phalanges.
7. A contusion 5 cm x 2 cm x right middle thigh.
8. An incised wound 2 cm x 2 cm bone deep over middle of left leg. O/D fracture Fibula middle third.
9. Abrasions of 2 x 2 cm over right and left knee and right hip.

P.W. 6 Doctor issued Ex. P-9 post-mortem certificate and has opined that the deceased would have died of shock and haemorrhage due to injury to vital structures, major blood vessels, spinal cord, larynx in the neck about 18 to 22 hours prior to autopsy. After postmortem, P.W. 9 Constable Kathan took M.O. 7 bloodstained Dhoti, M.O. 8 bloodstained Shirt, M.O. 9 Underwear and M.O. 10 Waistcord and they were seized by the Inspector under Ex. P-15 Form 95.

8. P.W. 12 Inspector Ramaiyan continued the investigation and perused the case papers in Paramathi Police Station Crime No. 40/90 and took Ex. P-19 the copy of the F.I.R. in that case. He examined P.W. 6 Dr. Periyasamy on 15-11-1990 and he also examined P.Ws. 8 to 11 on the same day and recorded their statements. He gave Ex. P-10 requisition on 20-11-1990 to send the bloodstained clothes for chemical examination to the Court and P.W. 7 Head Clerk Natarajan sent the concerned material objects for chemical examination by Ex. P-11 letter of the Court. Exs. P-12, P-13 Chemical Examiner Reports and Ex. P-14 Serologist Report were received in the Court. P.W. 12 Inspector Ramaiyan examined P.W. 7 Head Clerk Natarajan on 20-11-1990 and he completed the investigation on the same day and filed the final report.

9. When questioned under Section 313 of Cr.P.C., the accused denied complicity and filed written statement.

10. The prosecution version is that Velusamy was brutally murdered in the occurrence. P.W. 6 Doctor Periyasamy, who conducted autopsy on the body of Velusamy, has found 8 incised wounds and has opined in Ex. P-9 post-mortem report that the deceased appeared to have died of injuries to vital organs. During his examination, he has confirmed that the death is due to the injuries sustained by him. Hence, it is proved that Velusamy died on account of homicidal violence.

11. P.W. 4 Ramasamy was examined by the prosecution as having seen the occurrence. P.W. 4 Ramasamy is the elder brother of the deceased Velusamy and according to him, on the occurrence day in the evening, after watering his chilly plants in his garden land, he was returning home on the itteri pathway and at that time he heard the screaming voice of his brother Velusamy and he ran there and saw the accused Natarajan cutting his brother Velusamy by M.O.1 Aruval five or six times and the accused ran away with the Aruval. He has also stated that immediately after the occurrence P.W. 5 Palanisamy came over there and he informed him about the occurrence and both found Velusamy dead and they proceeded to Paramathi Police Station for giving report about the occurrence.

12. The learned counsel for the accused contends that P.W. 4 could not have seen the occurrence and his evidence has to be rejected in toto. The prosecution case is that the occurrence happened at about 6.30 p.m. on 13-11-1990. The occurrence has happened in agricultural land and there is no electric lighting facility. The accused had filed written statement when he was questioned under Section 313 of Cr.P.C. and along with that statement he had filed the Hindu Newspaper, dated 13-11-1991 and in that paper the sun set time on that date was mentioned as 5.39 p.m. and based on that, an argument was raised by the defence that the occurrence had happened one year before that date and on the date of occurrence also the sun set must have been at 5.39 p.m. During the month of November in any year, the sun set usually would be before 6.00 p.m. In this case, the occurrence is said to have taken place at about 6.30 p.m. in agricultural field and the area must have been in darkness at that time. In those circumstances, how P.W. 4 claims to have seen the occurrence is not made clear and his version is doubtful.

13. According to the prosecution case, after the occurrence, the accused at about 7.00 p.m. met P.W. 1 Village Administrative Officer Kandasamy and gave Ex. P-1 Statement to him. P.W. 1 alongwith P.W. 2 Thalayari Maruthan took the accused to the Paramathi Police Station and produced him before P.W. 11 Sub-Inspector Nandakumar. The accused in his Ex. P-1 Statement has stated that at the time of occurrence there was nobody around the place and hence he cut the deceased Velusamy with Aruval. So, the accused has not stated that P.W. 4 was in the vicinity at the time of occurrence. According to P.W. 4, he along with P.W. 5 reached Paramathi Police Station at about 8.30 p.m. and he found P.Ws. 1 to 3 and the accused there and he was directed to wait outside and he came out and waited there till 10.30 p.m. P.W. 1 Village Administrative Officer Kandasamy has not stated that P.W. 4 Ramasamy came to Paramathi Police Station on the night of 13-11-1990. On the contrary, he has stated that he saw P.W. 4 Ramasamy at about 11.00 p.m. on that day in Kangeyampalayam when he alongwith the Inspector and the accused proceeded to recover the weapon of offence. If really the Village Administrative Officer had seen P.W. 4 in the Police Station, he must have stated so in his evidence. Hence, it is doubtful as to whether P.W. 4 would have gone to the Police Station as spoken to by him.

14. The learned counsel for the appellant/accused contends that the conduct of P.W. 4 Ramasamy would belie his version. As already seen, P.W. 4 Ramasamy is the elder brother of the deceased and he claims to have seen the brutal attack of the accused on his brother and he did not even attempt to prevent the accused during the occurrence. According to his version, he rushed to the police to lodge a complaint about the occurrence and he actually met the police officer inside the station and he did not inform him that he had seen the occurrence. In the cross-examination, P.W. 4 has categorically stated that he did not inform about his witnessing the occurrence either to P.W. 1 or to the Sub-Inspector or to the Inspector in the Police Station and he returned to the occurrence place. Further, according to him, the Inspector along with P.W. 1 came to the occurrence place at about 11.30 p.m. in the night and stayed there for half-an-hour. Even at that time, he had not informed the Inspector about his witnessing the occurrence. The Inspector had conducted the inquest on the next day between 7.30 a.m. and 10.00 a.m. and only when he enquired P.W. 4, he had stated about his witnessing the

occurrence. This conduct of P.W. 4 is not natural and does not inspire confidence. A close relation like brother would not have kept quiet for such a long time without reporting about the witnessing of the occurrence. In the above circumstance, it is highly doubtful as to whether P.W. 4 would have seen the occurrence as spoken to by him and his version cannot be accepted.

15. The next piece of evidence relied on by the prosecution to prove the guilt of the accused is the extra judicial confession made by the accused to P.W. 1. The Apex Court in the latest decision in Gura Singh v. The State of Rajasthan, reported in has held that it is settled position that extra Judicial confession, if true and voluntary, it can be relied upon by the Court to convict the accused and if the Court believes that witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In the present case, the extra judicial confession made by the accused is sought to be proved by the testimony of P.W. 1.

16. P.W. 1 is the Village Administrative Officer of Kuppam Village and according to him, on 13-11-1990 in the evening by 7.00 p.m. he and P.W. 2 Thalayari Maruthan were in their office and at that time the accused Natarajan came there wearing bloodstained clothes and when he enquired him, he gave Ex. P-1 statement and P.W. 1 recorded it and read it over to him and obtained his signature. P.W. 1 has further stated that he made Ex. P-2 endorsement on it as having recorded it and took the accused along with Ex. P-1 and Ex. P-2 to Paramathi Police Station and produced him before the Sub- Inspector. P.W. 2 Thalayari Maruthan also confirms about the coming of the accused to their office on that evening and the giving of the statement to P.W. 1. The prosecution case is that occurrence happened at 6.30 p.m. and according to the above witnesses the accused came to their office by 7.00 p.m. on that day.

17. The learned counsel for appellant/accused contends that the accused would have preferred to surrender before Court and would not have chosen to go before village Administrative Officer. After the crime, the behaviour pattern of the accused can never be predicted and each has his own way. The accused in Ex. P-1 statement has stated that he was afraid to go to Police Station and hence he came

to the Village Administrative Officer.

18. The next contention put forth is that the accused has only stated about one cut injury he inflicted on the neck of Velusamy with Aruval in Ex. P-1 statement, whereas the deceased had 9 injuries on the body. It is true that the accused has stated only about his cutting the deceased on the neck with Aruval in his statement before the Village Administrative Officer. We cannot expect that the accused would give a vivid description of the entire attack he made on the deceased in his statement. The injury on the neck of the deceased is grievous one resulting in his death and the accused has stated about that cut in his statement.

19. The learned counsel for the appellant/accused next contended that P.W. 1 has stated that he made Ex. P-2 endorsement in his office, whereas he has stated in that endorsement that he was producing the accused at 8.00 p.m. in Paramathi Police Station and hence Ex. P-2 endorsement would not have been made in the office. According to P.W. 1, the accused came to his office at 7.00 p.m. and he recorded Ex. P-1 statement given by the accused and obtained his signature in it and then he made Ex. P-2 endorsement as having recorded it and took the accused by stopping a lorry and produced him at 8.00 p.m. in the Police Station. P.W. 1 would have made the endorsement calculating the time to reach the Police Station and there is no suspicion about it. As already seen, the occurrence had happened at 6.30 p.m. and immediately thereafter by 7.00 p.m the accused had gone to the Village Administrative Officer. The confession has been made immediately after the occurrence and the time, the manner and the circumstances clearly show that the accused had made a voluntary confession before P.W. 1.

20. The accused Natarajan was questioned on the same night at about 10.15 p.m. in the presence of witnesses and he came out with a statement and the admissible portion of the same is Ex. P-3 in the case. In pursuance of the said statement, the accused took the police party to Noyyal Channel and he took and produced M.O. 1 from the nearby bush and the same was seized by the Investigation Officer under Ex. P-4 Mahazar attested by P.Ws. 1 and 3. It is to be remembered at this stage that the injury on the deceased could have been caused with Aruval like M.O. 1 as spoken to by the post-mortem Doctor P.W. 6 Dr. Periyasamy. M.O.1 Aruval was

sent to chemical examination and human blood was found in that as per Ex. P-12 Chemical Examiner's Report and Ex. P-14 Serologist Report.

21. The learned Public Prosecutor contends that the extra judicial confession was proved by P.W. 1 who was a responsible officer and who bore no animus against the accused and he relies on the following Supreme Court decisions. The first decision is *Piara Singh v. State of Punjab* . The Supreme Court has held as follows (Paras 4 & 10) :

There is also the evidence of Balbir Singh P.W. 17, who is a Sarpanch of the Village and an independent witness and who proves that the appellant Piara Singh had made an extra judicial confession before him in which he admitted to have committed the murder of the deceased Surjit Singh along with his companions Kashmir Singh, Gian Singh and Jogindar Singh.... Law does not require that the evidence of law extra judicial confession should in all cases be corroborated. In the instant case, the extra judicial confession was provided by an independent witness who was a responsible officer and who bore no animus against the appellants. There was hardly any justification for the Sessions Judge to disbelieve the evidence of Balbir Singh particularly when the extra judicial confession was corroborated by the recovery of an empty (sic) (cartridge?) from the place of occurrence.

The next decision relied on is *Dharma v. Nirmal Singh Bittu*, . The Supreme Court held (Paras 14 & 15) :

According to us, the trial Court absolutely missed the point that the Sarpanch was approached by the accused to seek protection in as much as police was putting pressure on the members of his family. A Sarpanch being a man of authority it was nothing unnatural in the accused approaching him and apprising him as to what he had done.

15. The above is not all. There is evidence of the investigating officer P.W. 7, that a Datar had been recovered consequent upon the information given by the accused that he had kept the same concealed in his cattle shed under the heap of fuel wood. After giving this information, the accused really led the police to the

place from where recovery was made and a bloodstained Datar was found. This recovery does connect the accused with the crime.

The above decisions squarely apply to the facts of the present case. The extra judicial confession of the accused was proved by P.W. 1 who bore no animus against the accused and the confession was corroborated by the recovery of M.O. 1 Aruval at the instance of the accused. The aforesaid circumstances are sufficient to connect the accused with the commission of crime for which he was rightly held guilty by the trial Court.

22. There is no merit in the appeal and the same is accordingly dismissed.

23. It is reported that the accused is on bail. Hence, the Sessions Court will take steps to secure and commit him to jail to undergo the remaining period of sentence.

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