

**R.Baskar Vs. State**

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**Court :** Chennai

**Decided On :** Mar-27-2013

**Judge :** K.N. Basha

**Appellant :** R.Baskar

**Respondent :** State

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

27. 03.2013 CORAM: THE HONOURABLE MR.JUSTICE K.N. BASHA and THE HONOURABLE MR. JUSTICE P. DEVADASS CrI.A.No.509 of 2012 R.Baskar .. Appellant/Accused Vs. State by : Inspector of Police, Perambalur Police Station, Crime No.137 of 2011 .. Respondent/Complainant Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 14.06.2012 made in S.C.No.89/2011 passed by the learned Sessions Judge, Mahila Court, Perambalur in P.R.C.No.30/2011 on the file of the Court of Judicial Magistrate, Perambalur. For Appellants : Dr.A.E.Chelliah, Senior Counsel for M/s.Vasanthakumari Chelliah For Respondent : Mr. V.M.R. Rajendran Additional Public Prosecutor

(Judgment of the Court was delivered by K.N.BASHA, J) The challenge in this appeal is to the judgment of the learned Sessions Judge, Mahila Court, Perambalur dated 14.06.2012 made in S.C.No.89/2011, convicting the appellant for the offence under Section 302 IPC and sentencing him to undergo life

imprisonment with a fine of Rs.5,000/- in default to undergo 2 years simple imprisonment.

2. The accused/appellant faced the trial under the following backdrop:

2. 1. PW1 is the husband of the deceased Premavathi. The deceased was working as Craft Teacher in Moulana School at Perambalur. PW1 was working as Watchman in Dhanalaxmi Srinivasan Polytechnic College, Perambalur. They have been blessed with two female children, namely, Rekha and Priya. Everyday, PW1 used to drop the deceased to School in his cycle. 2.2. The accused is also a resident of the same place. PW1 alleged that the accused was troubling his daughter Rekha frequently for the last two years. On one day, the deceased, wife of PW1 along with Rekha, daughter of PW1 was proceeding near Uzhavar Sandhai and at that time, the said Rekha pointing out the accused and stated to the deceased that he was frequently troubling her. The deceased warned the accused. Rekha also complained to PW1 about the frequent trouble given by the accused. Fifteen days prior to the occurrence, PW1 and the deceased made marriage arrangements for their daughter Rekha and the marriage was also over. In view of the same, there were strained feelings between the accused and the deceased family. 2.3. On the fateful date of occurrence, i.e., on 09.03.2011, at 8.45 a.m, PW1 took his wife, the deceased, in his cycle and left her in the School. Thereafter, while he was returning at 9.30 a.m, he heard the hue and cry of the deceased. When he turned back, he saw the accused cutting the deceased on her chest and neck with an Aruval. Thereafter, the accused ran away from the scene with the Aruval. PW1 lifted the deceased and found that the deceased already dead. 2.4. The above said occurrence was also claimed to have been witnessed by PW2, who was working as English Teacher in the same school viz., Moulana School, Perambalur, where the deceased was working. PW3, who was residing in a different place, claimed to have seen the accused running with an Aruval on 09.03.2011 at 09.00 a.m. 2.5. Thereafter, PW1 went to Perambalur Police Station and narrated about the occurrence to PW15, the Sub-Inspector of Police, which was recorded by PW15 under Ex.P1. PW15 registered a case in Crime No.137/2011 for the offence under Section 302 IPC. Ex.P14 is the Express F.I.R. PW15 sent the Express F.I.R, Ex.P14 and Ex.P1 to the higher officials and to the

Court. 2.6. PW16, the Inspector of Police, took up the investigation on receipt of the F.I.R. He went to the scene of occurrence at 10.45 a.m and prepared Observation Mahazar, Ex.P2 and Rough Sketch, Ex.P3 in the presence of the witnesses PW7 and another. He held inquest on the dead body of the deceased at 12.00 noon. Ex.P15 is the Inquest Report. During inquest, he has also examined the witnesses. He has sent the body for postmortem. 2.7. PW12, the Doctor attached to the Government Hospital, Perambalur conducted postmortem on 09.03.2011. He found the following injuries: A cut injury over back of middle neck 10 cm from both ear lobes runs transversly from lateral margin of left side neck up to right side neck stemo leiomartoid with injury right carotid and jagalar vessel and transection of spinal cord at C4 level. Dimension 15 x 5 x 7 in centimeter. The Doctor is of the opinion that the deceased would appear to have died of shock and hemorrhage due to injury to vital organs like spinal cord and blood vessels of neck about 3 to 8 hours prior to autopsy. 2.8. PW16, in continuation of his investigation, recovered blood stained earth, M.O.1, ordinary earth, M.O.2, one pair chapels, M.O.3, one black colour rexin bag, M.O.4 from the scene under Mahazar in the presence of the witnesses. He has examined the other witnesses and recorded their statements. At 4.00 p.m., on the same day i.e., 09.03.2011, he has arrested the accused near Samathuvapuram Arch. In pursuance of the admissible portion of the confession of the accused under Ex.P5, he recovered M.O.5, Aruval, as produced by the accused. He has produced the accused before the Court for remand. He has examined the police constables. He has sent the seized articles for chemical examination through the Court. After examining the witnesses PWs.1 to 3, including the Doctor, PW12 and others, he has received the Postmortem Certificate, Ex.P9, Biological Report, Ex.P12 and Serological Report, Ex.P13. After completion of the investigation, he has filed the final report on 18.05.2011 for the offence under Section 302 IPC against the accused/appellant.

3. The prosecution, in order to bring home the charges against the accused, examined PWs.1 to 16, filed Exs.P1 to P15 besides marking M.Os.1 to 11.

4. When the accused was questioned under Section 313 of the Criminal Procedure Code in respect of the incriminating circumstances appearing against him through the evidence adduced by the prosecution, he has come forward with

the version of total denial. He has not chosen to examine any witness or mark any document on his side.

5. The learned trial Judge on consideration and appreciation of the entire evidence adduced by the prosecution, has found the accused guilty and convicted and sentenced him as stated above. Hence the present appeal.

6. Dr.A.E.Chelliah, learned Senior Counsel appearing for the appellant, while assailing the impugned judgment of conviction, vehemently contended that the prosecution has miserably failed to prove its case by adducing clear, cogent and consistent evidence and the evidence of the eyewitnesses PWs.1 and 2 suffers from serious infirmities and inconsistencies and the evidence of PW3 is unbelievable and unreliable and put forward the following contentions: (i) PW1, apart from being the husband of the deceased and being the interested witness, could not have been present at the time of occurrence at the scene as he was working as Watchman in a college and also admitted that he has signed in the Attendance Register on the date of occurrence and he has not clearly stated as to whether he was on day duty or evening duty. (ii) The prosecution has not seized the Attendance Register of the College where PW1 was working in spite of the fact that PW1 admitted that he has signed in the Attendance Register and as such, adverse inference could be drawn against the prosecution case. (iii) Though PW1, an eyewitness, claimed that he has lifted the deceased immediately after the occurrence and admittedly the deceased sustained some stab injuries, there should have been profuse bleeding, but PW1 has not produced any blood stained shirt or the Investigating Officer, PW16 has not recovered any blood stained shirt from PW1, which raises serious doubt about the presence of PW1 at the time of occurrence. (iv) PW1 categorically stated in his cross examination that the police station is only 10 feet away from the scene of occurrence and in spite of the same, he has not chosen to give any report immediately to the police and further, he has admitted that he went to the police station only after 45 minutes, which raises serious doubt about his presence at the scene and his version is unreliable. (v) PW1 also admitted that on hearing the hue and cry, police officials came to the scene and if such version is true, the police could have recorded a report from PW1 much before the time now claimed by the prosecution to the effect that PW15

recorded the report Ex.P1 from PW1 only at 9.45 a.m, whereas the occurrence said to have taken place between 8.45 to 9.00 a.m. (vi) PW1 also admitted in his cross examination that he has not stated to anyone about the occurrence till his examination by the police and such conduct is most unnatural, raising doubts about the credibility of his version. (vii) The evidence of PW2, the other eyewitness, is also highly doubtful and he could not have been present at the time of occurrence. If really he was present at the scene, PW1 could have stated about his presence, but PW1 has not stated anything about the presence of PW2 in his evidence. PW1 categorically admitted in his cross examination that none of the witnesses arrived at the scene for a period of 10 minutes after the occurrence inspite of raising hue and cry and on the other hand, PW2 claimed that he was present even at the time of occurrence, which raises serious doubt about the presence of PW2 at the scene at the time of occurrence. (viii) The prosecution suppressed the earliest report in view of the admission of PW2 to the effect that the police arrived at the scene on hearing hue and cry, as PW2 stated that the police examined him at 9.30 a.m itself and recorded his statement whereas the prosecution version is to the effect that the report was recorded only at 9.45 a.m and such being the position, the possibility of recording earlier report from PW2 and suppression of the same cannot be ruled out. (ix) PW2 admitted in his cross examination that he has not seen the accused earlier and the accused was unknown to him and he has identified the accused only for the first time before the Court, as the prosecution has not conducted any identification parade and as such, the evidence of PW2 is unbelievable and unreliable. (x) Though PW3 claimed that he has seen the accused running with Aruval after the occurrence, he has not informed the police immediately and he was examined subsequently. PW3 also admitted that he has not seen the accused earlier and the accused was unknown to him and he identified the accused only for the first time before the Court and he has also not stated to the police about the identifying features of the accused during examination by the police and as such, the identification of the accused by PW3 for the first time before the Court is unreliable. (xi) Even the recovery of Aruval, M.O.5, is doubtful as the prosecution has miserably failed to prove the same by adducing clear evidence.

7. Per contra, Mr.V.M.R.Rajendran, the learned Additional Public Prosecutor contended that the prosecution has established its case through the evidence of the eyewitnesses, PWs.1 and 2. It is contended that the evidence of PWs.1 and 2 is also corroborated by the evidence of PW3, who has seen the accused running with the weapon, Aruval, after the occurrence. It is further contended that the evidence of the eyewitnesses is also corroborated by the medical evidence through the Doctor, PW12, who has conducted postmortem and found corresponding injuries. It is also contended that there is no delay in giving report to the police as the report was given within 45 minutes after the occurrence and the report reached the Magistrate Court at 1.00 p.m itself on 09.03.2011.

8. We have given our careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and perused the impugned judgment of conviction.

9. At the outset, it is to be stated that the entire prosecution case bristled with suspicious circumstances and the evidence of the eyewitnesses PWs.1 and 2 are suffering from serious infirmities, inconsistencies and inherent improbabilities. The learned Senior Counsel for the appellant pointed out several infirmities in the evidence of the eyewitnesses PWs.1 and 2. It is true that PW1, being the husband of the deceased, is an interested witness and on that score, his evidence cannot be discarded and on the other hand, we have to scrutinize such evidence with great care and caution.

10. PW1 was admittedly working as Watchman in a college at the time of occurrence. It is his version that everyday he used to take his wife to the nearby school in his cycle in the morning, but such version is highly doubtful as the school is not far away from his house and further, it was initially stated by PW1 that the deceased used to attend the school in her own cycle but subsequently he has stated that he used to drop her everyday. Added to such infirmity, it is seen that the PW1 signed in the Attendance Register of the College even on the date of occurrence i.e., 09.03.2011, as per his specific admission in his cross examination, but strangely he has stated that after signing the Attendance Register, he has not attended the work. It is also admitted by him that there is an

Attendance Register in the School, but the Investigating Officer, PW16, has not produced the said Attendance Register, which is a vital document to test the veracity of the version of PW1. PW16, the Investigating Officer has also admitted in his cross examination that he has not verified the Attendance Register of the College and he has further admitted that if PW1 was on duty during morning time, he could not have witnessed the occurrence. PW16 has not able to give any reasonable and probable explanation for not seizing and producing the Attendance Register, which is a vital document to substantiate the presence of PW1 at the time of occurrence at the scene. Therefore, we are constrained to draw adverse inference for withholding the vital document, namely, Attendance Register in view of the admission of PW1 that he has signed in the Attendance Register on the date of occurrence i.e., 09.03.2011 and his version that after signing the Attendance Register, he has not attended the college, is unbelievable and unreliable.

11. Yet another factor to be borne in mind of this Court is that PW1 has categorically stated even in his chief examination that soon after the occurrence, he has lifted the deceased, his wife and the deceased has sustained severe stab injuries, but he has not produced any blood stained shirt or clothes to substantiate the same to the effect that he was present at the scene at the time of occurrence and the Investigating Officer, PW16 has also not recovered any blood stained shirt or clothes from PW1, which raises serious doubt about his presence at the time of occurrence.

12. It is pertinent to note that according to PW1, the occurrence said to have taken place between 8.45 a.m to 9.00 a.m on 09.03.2011 and the police station is just 10 feet away from the scene and such being the position, immediately after the occurrence, normal human conduct of a person is to rush to the police station which is just 10 feet away from the scene, but in the instant case, PW1 has categorically admitted in his cross examination that he remained in the scene for 45 minutes and only thereafter, he went to the police station for giving the report and he has also admitted that he cannot give any explanation for such conduct.

13. Added to the above said infirmities, it is also admitted by PW1 that the police arrived at the scene after hearing the hue and cry. If really PW1 was present when the police arrived at the scene, nothing prevented him from giving report immediately to the police about the occurrence. Therefore, we are of the considered view that it is most unsafe and hazardous to place reliance on the evidence of PW1.

14. Now coming to the evidence of the other eyewitness, namely, PW2, it is to be stated that PW2 was working in the same school where the deceased was working and he claimed that at the time of occurrence at 9.00 a.m, he was proceeding towards the school through Moulana Mosque Road and he has witnessed the occurrence by standing at a distance of 30 feet. PW2 categorically admitted in his cross examination that he has not seen the accused earlier to the occurrence and he has seen the accused for the first time before the Court. PW2 has not given any identification features of the accused during his examination by the police as per the categorical admission of PW16 in his cross examination. It is also stated by PW16 that PW2 has not stated that he can identify the accused if he has seen the accused in person. PW16 also admitted that he has not arranged for any Identification Parade. Therefore, we have no hesitation to hold that no value could be attached by the identification of the accused by PW2 for the first time before the Court. It is quite natural for any witness to identify the single accused standing before the Court at the time of trial. It is also pertinent to note that the name of PW2 is also not mentioned in the report, Ex.P1 given by PW1 inspite of the fact that he was also working in the same school in which the deceased was working and further, PW2 admitted that he knows PW1 earlier. In view of the said factors, we are of the considered view that it is most unsafe to place reliance on the evidence of PW2.

15. At this juncture, it is relevant to refer the decision of the Hon'ble Apex Court in Kanan and Others v. State of Kerala reported in 1980 M.L.J (Cri) 1 (Vol.XXIV), wherein the Hon'ble Apex Court has held as hereunder: "It is well-settled that where a witness identified an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observation. The idea of holding T.I. parade under

Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court." The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case also, admittedly, the Investigating Officer, PW16 has not made arrangements for conducting any Identification Parade and PW2 identified the accused for the first time before the Court and admitted that the accused is not known to him earlier and as such, no value could be attached by the identification of the accused by PW2 for the first time before the Court.

16. The next piece of evidence adduced by the prosecution is the evidence of PW3, who has claimed that he has seen the accused running with an Aruval after the occurrence. The fact remains that PW3 is a chance witness and he has admitted in his cross examination that his village is 15 kms away from the scene of occurrence. It is also pertinent to note that the accused is a total stranger to PW3 as he has not mentioned about the accused name or identified the accused before the Court. PW3 clearly admitted in his cross examination that he has not seen the accused earlier to the occurrence and he has not given the identification features of the accused to the Inspector of Police at the time of his examination. PW3 has simply stated that one person running away with an Aruval. Therefore, we are of the considered view that it is unsafe to place reliance on the evidence of PW3, as the same is not helpful to advance the case of the prosecution in any manner.

16. Yet another serious disturbing feature in this case is that the possibility of the suppression of the earlier report cannot be ruled out. PW1 admitted in his cross examination that the police station is only 10 feet away from the scene and as such, on hearing the hue and cry, the police could have very well arrived at the scene immediately. Accordingly, PW1 also admitted that on hearing the hue and cry, the police arrived at the scene. PW2 categorically admitted in his cross examination that on hearing the hue and cry nearly 40 to 50 persons arrived at the scene and police constables came from the nearby police station and chased the accused. It is further admitted that police recorded his statement at 9.30 a.m itself

whereas the present version of the prosecution is that the F.I.R itself was registered at 9.45 a.m. PW3 also admitted in his cross examination that the police came to the scene immediately after the occurrence and chased the accused. PW7, the Secretary of the Moulana School, in which the deceased worked, also stated in his chief examination itself that he rushed to the scene at 9.00 a.m on hearing the hue and cry and at that time, the police was also present along with PW1. PW8, the Village Administrative Officer admitted in his cross examination that he went to the scene of occurrence at 9.30 a.m and at that time itself, 3 to 4 police officials were present at the scene. All these clear, consistent and categorical version of the above said witnesses makes it crystal clear that the police could have very well rushed to the scene immediately after the occurrence and they could have recorded the report either from PW1 or PW2, the eyewitnesses in this case and as such, the possibility of suppression of the earlier report cannot be ruled out. The said factor raises serious doubt about the genuineness of the report Ex.P1 in this case. Therefore, we have no hesitation to hold that the present report Ex.P1 is nothing but a fabricated document. At this juncture, it is relevant to refer a decision of the Hon'ble Apex Court in Marudhanal Augusti v. State of Kerala reported in AIR 198.SC 638.wherein the Hon'ble Apex Court has held as follows:- "... the entire fabric of the prosecution case would collapse if the First Information Report is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence...." The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as in this case also, we have already held that there is serious doubt about the genuineness of the report, Ex.P1 and the F.I.R in this case is a fabricated document and as such, the entire prosecution case would collapse.

17. The last but not the least evidence relied by the prosecution is the arrest and recovery of M.O.5, Aruval. In order to substantiate such version, the prosecution examined the VAO, PW8, who has admitted clearly in his cross examination that he has not stated about recording of the confession of the accused during the course of his examination by the police. It is to be stated that PW16 claimed that the accused was arrested on 09.03.2011 at 4.00 p.m and thereafter, he has

recorded his confession and recorded the blood stained Aruval, M.O.5, but the fact remains that PW2 admitted in his cross examination that the police immediately arrived at the scene on hearing the hue and cry and chased the accused and he heard that ultimately the police caught hold of the accused. PW3 also stated that soon after the occurrence, the police chased the accused. In view of the aforesaid factors, the date and time of arrest and the recording of the confession from the accused is highly doubtful. Apart from the said factor, PW16, the Investigating Officer, has not examined any independent witness to speak about the arrest and recovery, except examining the official witness, PW8, the Village Administrative Officer and as such, we cannot place reliance on the alleged recovery of M.O.5, Aruval.

18. In view of the aforesaid reasons, we have come to the irresistible conclusion that the impugned judgment of conviction is K.N.BASHA, J.

**and P.DEVADASS, J.**

jvm unsustainable. Accordingly, the appeal is allowed and the conviction and sentence imposed on the appellant by the judgment of the learned Sessions Judge, Mahila Court, Perambalur dated 14.06.2012 made in S.C.No.89/2011 is set aside. The appellant is acquitted of all the charges levelled against him. Fine amount paid, if any, is directed to be refunded to the appellant. (K.N.B.J.,) (P.D.S.J.) 27.03.2013 Index : Yes / No Internet : Yes / No jvm To 1.The Sessions Judge, Mahila Court, Perambalur. 2.Inspector of Police, Perambalur Police Station.

3. The Public Prosecutor, Madras High Court, Chennai. Judgment in Criminal Appeal No.509 of 2012

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