

**A.Ravikumar Alias Ravi Vs. State, Rep by**

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**Court :** Chennai

**Decided On :** Jan-18-2013

**Judge :** M.Jaichandren

**Appellant :** A.Ravikumar Alias Ravi

**Respondent :** State, Rep by

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED:18/01/2013 CORAM THE HONOURABLE MR.JUSTICE  
M.JAICHANDREN AND THE HONOURABLE MR.JUSTICE S.NAGAMUTHU  
CRIMINAL APPEAL (MD).No.144 of 2012 A.Ravikumar alias Ravi ... Appellant Vs.  
State, rep by The Inspector of Police, Trichy, Crime No.71 of 2005, Trichy District.  
... Respondent PRAYER Appeal is filed under Section 374(3) of the Code of  
Criminal Procedure to call for the records in S.C.No.117 of 2006, on the file of the  
Additional Sessions Court [Fast Track Court not I] Trichy, dated 09.01.2007 and  
set aside the same. !For Appellant ... Mr.E.Somasundaram ^For Respondent ...  
Mr.K.S.Duraipandian Additional Public Prosecutor :JUDGMENT \*\*\*\*\*  
[Judgment of the Court was delivered by S.NAGAMUTHU, J.] The appellant is the  
sole accused in S.C.No.117 of 2006, on the file of the Additional Sessions Court  
[Fast Track Court not I], Trichy. He stood charged for offence under Section 302 of  
the Indian Penal Code. By Judgment dated 09.01.2007, the Trial Court convicted  
him under Section 302 of the Indian Penal Code and sentenced him to undergo  
imprisonment for life. [No fine amount was imposed]. Challenging the said

conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mr.Balamurugan. One Mr.N.Murugesan, [who died subsequently], the appellant, the deceased Mr.Balamurugan and one Mr.M.Sekar [PW-10] were all friends. On 04.03.2005, at about 07.00 PM, all the above four persons travelled in a train bound for Trichy from Erode. At about 08.45 PM, the train made a halt at Karur Railway Station. All the four persons got down from the train and proceeded towards west along with the railway line. On their way, they found a boy and a girl sitting together in a dark place. With a view to sexually assault the girl, the deceased Balamurugan ran towards her. On seeing the same, the boy and the girl took to their heels and disappeared. Thereafter, all the four persons came to the Railway Bridge and they were eating Briyani. At that time, the said N.Murugesan told the deceased Balamurugan that it was because of him, the girl escaped, otherwise, according to him, they could have sexually enjoyed her. While so saying, N.Murugesan attacked the deceased Balamurugan with hands. The deceased Balamurugan retaliated. N.Murugesan fell down. On seeing the same, the present appellant and N.Murugesan started mounting attack on the deceased Balamurugan with hands and stones repeatedly. The deceased Balamurugan fainted. Then, the accused and N.Murugesan dragged him to the railway line and put him across the railway track. Soon thereafter, a train passed through. It hit the deceased and as a result, the body was cut into two pieces at the abdomen level. The deceased died of the injuries. Thereafter, the accused and N.Murugesan fled away from the scene of occurrence. The entire occurrence was witnessed by M.Sekar [PW-10]. [During trial, M.Sekar has turned hostile and he has not supported the case of the prosecution in any manner]. 2.1. PW-1 was the Railway Station Master at Karur Railway Station during the relevant time. On 05.03.2005, at about 05.30 AM, some of the passengers, who came to the Railway Station, told him that a male dead body was found near Vengamedu Railway Gate indicating that the deceased had been hit by a running train. PW-1 directed one Balasekaran to visit the spot and to report back. Accordingly, he reported to him that there was a male dead body in two pieces. Based on the said information, PW-1 made a complaint to the Railway Police at Trichirappalli. PW-21, the Head Constable, attached to the said Railway Station, registered a case in Crime No.71

of 2005 under Section 174 of the Code of Criminal Procedure. EX-P1 is the complaint and EX-P15 is the First Information Report. Then, he forwarded EX-P1 and EX-P15 to the Court and handed over the case diary to the Inspector of Police for investigation. 2.2. PW-22, the then Inspector of Police, attached to the Railway Police Station, Karur, took up the case for investigation on 05.03.2005 and proceeded to the place of occurrence. He prepared an Observation Mahazer [EX-P2] and Rough Sketch [EX-P17] showing the place of occurrence. He also arranged for photographs of the deceased being taken from various angles. Then, he conducted inquest on the body of the deceased and prepared EX-P16, Inquest Report. Then, he forwarded the dead body for postmortem. 2.3. PW-13, Dr.A.B.Subramaniam, was an Assistant Surgeon at the Government Hospital, Karur. On 05.03.2005, he conducted autopsy on the body of the deceased. He found the following injuries:- "1.A lacerated injury 5 X 3 bone depth over forehead near medial end of left eyebrow. 2.Crushed injury abdomen with all internal organs exposed out. 3.Multiple abrasions of ranging sizes and shapes all over body. Skull: Fissured fracture frontal bone around which contusion and haematoma present. Cranial cavity contains 150 ml of blood. Hyoid intact. Thorax: Fracture ribs 11 & 12 both sides around which contusion and haematoma present. Heart chambers contain 150 ml of Blood. Abdomen all the internal organs are lacerated and crushed - Bladder empty. Traumatic amputation of trunk at the level of L,3,4,5 around which contusion and haematoma present." EX-P4 is the Postmortem Certificate. He opined that the deceased would have died of the head injuries and the injuries to the other vital organs and the death would have occurred 12 to 24 hours prior to autopsy. 2.4. After postmortem, since there was nobody to claim the dead body and since the dead body could not be identified, the same was buried by the police with the help of PW-12 at Thirumanilaiyur Cremation Ground, on 06.03.2005. 2.5. PW-11 is the sister-in-law of the above said N.Murugesan. PW-7 is the mother of N.Murugesan. According to PW-11, on 04.03.2005, at about 07.30 PM, Murugesan was taken by the accused under the guise of going to Coimbatore in connection with a work. Thereafter, N.Murugesan did not return. PW-7 and PW-11 were under the impression that Murugesan had gone to see his wife at her house. But, on 07.03.2005, they found the dead body of the deceased in the local forest. According to them, the said Murugesan was murdered by some one.

Therefore, PW-11 proceeded to the local Village Administrative Officer and preferred complaint in connection with the death of the said Murugesan. The Village Administrative Officer, in turn forwarded the said complaint to the Arachalur Police Station in Karur District. 2.6. Based on the said complaint, PW-19 registered a case in Crime No.38 of 2005 under Section 302 of the Indian Penal Code. The said case was investigated into by PW-19, the then Inspector of Police, attached to the Arachalur Police Station. In connection with the said case, he arrested the present accused on 10.03.2005 at 02.00 AM in the presence of PW-15 and another witness. On such arrest, the present accused gave a voluntary confession. From the said confession, PW-19 came to know that he was responsible for the murder of the deceased Balamurugan whose dead body was found lying near the Railway track. Therefore, PW-19 passed on information to PW-22 about the arrest of the accused and the consequential confession given by him. 2.7. PW-25, the Inspector of Police, was investigating the case from 08.03.2005 onwards. He received message about the arrest of the accused and the consequential confession. On 14.03.2005, he proceeded to the Arachalur Police Station and obtained a copy of the confession given by the said accused. Then, he altered the case into one under Section 302 of the Indian Penal Code. EX-P19 is the Alteration Report. Then, he placed the photographs before PW-4, PW-5 and PW-6 and from the said photographs, they identified that the dead body was that of the deceased Balamurugan. Then, he made a request to the Tahsildar Karur, to exhume the dead body for the purpose of further postmortem. Accordingly, on 19.03.2005, in the presence of PW-14, Dr.A.Karthikeyan and PW-20, the then Tahsildar, Karur, the body was exhumed. PW-20 conducted inquest on the body of the deceased and prepared EX-P14 Inquest Report. Then, he made a request to PW- 14 to conduct autopsy on the body of the deceased. Accordingly, PW-14 conducted autopsy on the body of the deceased on 19.03.2005, at 12.40 PM. He found the following injuries:- "1.Fissured fracture of frontal bone, to a length of 7 cm present. 2.Crushing fracture of lumbar vertebrae present. 3.Crushing fracture of 11th and 12th ribs on both sides present." EX-P6 is the Postmortem Certificate prepared by him. EX-P7 is the Viscera Report, according to which, there was no poison noticed. 2.8. PW-25 continued the investigation. He took custody of the accused on the orders of the learned Judicial

Magistrate on 21.03.2005. While in the Police Station, on 23.03.2005, he made a confession voluntarily in the presence of PW- 15 and another witness. In the said confession, he disclosed the place, where he had thrown the bloodstained stones. In pursuance of the same, he took the police and the witnesses to the said place and produced the bloodstained stones from the railway track. PW-25 recovered the same. Finally, on completing the investigation, he laid charge sheet against the accused under Section 302 of the Indian Penal Code.

3. Based on the above materials, the Trial Court framed a lone charge under Section 302 of the Indian Penal Code. The accused pleaded innocence, and therefore, he was put on trial. In order to prove the charges, the prosecution has examined twenty five witnesses and twenty six documents were exhibited, besides, nine Material Objects. Out of the said witnesses, PW-1 and PW-2 have spoken to about the dead body lying near the railway track, that too, in two pieces. PW-3 has spoken to about the Observation Mahazer prepared by the local police. PW-4, PW-5 and PW-6 have identified the dead body from the photographs as that of the deceased Balamurugan. PW-8 has also identified the dead body. PW-13 and PW-14 have spoken to about the postmortem conducted by them. PW-15 has spoken to about the confession given by the accused to the police. PW-18 is the Forensic Expert, who conducted superimposition examination on the skull of the dead body and opined that the dead body was that of the deceased Balamurugan. The others are the official witnesses.

4. When the above incriminating materials were put to the accused, under Section 313 of the Code of Criminal Procedure, he denied the same as false. However, he did not choose to examine any witness on his side nor to exhibit any document in his defence. Having considered all the above materials, the Trial Court found him guilty under all the charges, and accordingly, punished him. That is how, the appellant is now before this Court with this Criminal Appeal.

5. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor for the State and also perused the records carefully.

6. This is a case based on circumstantial evidence. Though PW-10 was examined as an eye witness to speak about the entire occurrence, he has turned hostile, and

therefore, the prosecution has to rely only on the evidences of the rest of the witnesses, who have spoken to about various circumstances. The said circumstances are as follows:- i. The deceased was lastly found alive on 04.03.2005 by PW-4. ii. On 05.03.2005, at about 05.30 AM, the dead body of the deceased was found near the Railway Track in two pieces. iii. According to the medical evidences of PW-13 and PW-14, the death was due to the injuries, and thus, it was a homicide. iv. The accused was arrested on 10.03.2005, at 02.00 AM, by PW-19 in connection with the case in Crime No.38 of 2005, on the file of the Arachalur Police Station. In the confession given to PW-18, he disclosed about the identity of the dead body, which was found near the railway track. v. After the accused was taken into police custody on 23.03.2005, he made a voluntary confession, out of which bloodstained stones were recovered.

7. According to the learned Additional Public Prosecutor, from these circumstances, it has been clearly established by the prosecution that it was this accused and Murugesan, [since dead], who had committed the murder of the deceased by placing him across the railway track in front of a train.

8. But, the learned counsel appearing for the appellant would submit that none of the above circumstances had been proved and even assuming that some of the circumstances have been proved, they do not form a close link with each other, thereby forming a complete chain unerringly pointing to the guilt of the accused. Thus, according to the learned counsel, the appellant is entitled for acquittal.

9. The learned Additional Public Prosecutor, per contra, would submit that until the accused was arrested by PW-19, the identity of the dead body was not known. It was only based on the disclosure statement made by the accused to PW- 19, the identity of the dead body came to light. It was only thereafter, the photograph was shown to the family members of the deceased, who identified the dead body. The disclosure of the above fact, according to the learned Additional Public Prosecutor, is relevant under Section 27 of the Indian Evidence Act, 1872, [for brevity, "the Act"] and this is a very strong circumstance against the accused. Coupled with the other circumstances, according to the learned Additional Public Prosecutor, this circumstance clearly goes to prove the charge against the accused.

10. We have considered the rival submissions. There is no dispute that the deceased was lastly found alive on 04.03.2005. Thereafter, there is no evidence as to where did the deceased go?. He was not found either in the company of the present accused or in the company of the second accused. PW-10, who was examined to speak about the occurrence, has turned hostile. Thereafter, the dead body was found on 05.03.2005, at 05.30 AM, near the railway track. At that time, the identity of the dead body was not known, and therefore, after postmortem, the dead body was buried. The identity of the dead body was discovered only from the disclosure statement made by the accused on 10.03.2005.

11. In our considered opinion, this should have been a very strong circumstance against the accused, provided the same is believable. In this regard, we may state that to make a statement relevant under Section 27 of the Act, it is essential for the prosecution to establish the relevancy between the crime and the fact so discovered. Here, in this case, the fact discovered was the identity of the dead body found near railway track. But, for the disclosure statement made by the accused, the fact that the dead body was that of the deceased Balamurugan would not have come to light. Thus, the fact regarding the identity of the dead body was discovered out of the disclosure statement made by the accused. Therefore, the said statement is relevant under Section 27 of the Act.

12. But, the question is whether to believe the case of the prosecution that the accused was arrested on 10.03.2005 and he gave a voluntary confession on the said date leading to the discovery of the above fact. In this regard, the learned counsel for the appellant would rely on the evidence of PW-7, the mother of the second accused, who has stated that even on 07.03.2005 itself, when she went to the police station, she found the accused in the custody of the police. She has further stated that on 07.03.2005, the police told her in the Police Station that it was this accused and Murugesan, who jointly committed the murder of the deceased Balamurugan. Yet another witness has also stated so. It is PW-6, the sister of the deceased. She has also stated that on 08.03.2005 itself, she was told that the deceased was done to death by the accused and the said Murugesan. PW-4, the mother of the deceased has also stated that on 07.03.2005, when she visited the Police Station, she found the accused in the custody of the police. On

07.03.2005 itself, at Arachalur Police Station, she was told by the Inspector of Police that the deceased Balamurugan was done to death by the accused and Murugesan.

13. From the evidences of these three witnesses, it is crystal clear that even on 07.03.2005, the accused was in the custody of the police and he continued to be in the custody of the police. If that be so, it is difficult to believe that he was arrested only on 10.03.2005 and on such arrest, he gave a voluntary confession leading to the discovery of a relevant fact. We would only say that we are not prepared to believe that the accused was arrested on 10.03.2005.

14. Apart from the above, to connect the accused with the crime, there is no other evidence. The prosecution has, of course, proved the identity of the dead body by means of superimposition examination conducted by PW-18. According to the medical evidences of PW-13 and PW-14, the deceased died due to the injuries. Thus, the prosecution has succeeded in proving that the deceased was Balamurugan and the death was a homicide. But, the crucial question, as to who is the perpetrator of the crime, has not been proved.

15. The learned Additional Public Prosecutor would submit that on the confession made by the accused on 23.03.2005, bloodstained stones were recovered from the railway track. In our considered view, the body was crushed by the train, and therefore, there would have been bloodstains on the stones. So, this is not an incriminating evidence.

16. At this juncture, we would like to state that in a case based on circumstantial evidence, the circumstances projected by the prosecution should be proved and they should form a close link with each other, thereby forming a complete chain unerringly pointing to the guilt of the accused. There shall be no other hypothesis, which is consistent with the innocence of the accused.

17. Applying the said basic principle of Criminal Law to the facts of the present case, we hold that the prosecution has failed to prove the case beyond reasonable doubts. In the result, the conviction and sentence dated 09.01.2007 made in S.C.No.117 of 2006, imposed by the Additional Sessions Court [Fast Track Court

not I] Trichy, is set aside and the Criminal Appeal is allowed. The fine amount, if any, paid by him shall be refunded. The bail bond executed by him shall stand discharged. NB To 1.The Additional Sessions Court [Fast Track Court not I] Trichy. 2.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. 3.The Inspector of Police, Trichy, Trichy District.

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