

## Rangaswami vs State Of Tamil Nadu on 8 March, 1989

**Equivalent citations: AIR1989SC1137, 1989(1)CRIMES692(SC), JT1989(1)SC508, 1989(1)SCALE559, 1989SUPP(1)SCC686, AIR 1989 SUPREME COURT 1137, 1989 (1) JT 508, (1989) 1 CRIMES 692, (1990) EASTCRIC 47**

**Bench: A.M. Ahmadi, S. Natarajan**

### JUDGMENT

Natrajan, J.

1. This appeal by special leave has been preferred by accused No. 3 in Sessions Case No. 40 of 1978 on the file of the Sessions Judge, Pudukkottai. The prosecution case was that an occurrence took place at about 11.45 A.M. on 16.8.1973 in the Big Bazar Street in Aranthangi town in which one Jayaraman was murdered by A-1, PW 1 Kandaswamy was attempted to be murdered by A-2 and PW 2 Mani was attempted to be murdered by A-3. In respect of these offences, each of the three accused was directly charged for his overt act and constructively charged for the overt acts of the other accused. The Sessions Judge found all the charges proved against A1, A2 and A3 and accordingly convicted them. He imposed a sentence of death on A-1 and a sentence of 8 years RI on A2 and A3 for the offence of murder of Jayaraman. In so far as the charges under Section 302 as well as under Section 307 read with Section 34 I.P.C. are concerned, the Sessions Judge awarded varying terms of imprisonment to the three accused.

2. The Sessions Judge made a reference under Section 366 Cr.P.C. to the High Court for confirmation of the sentence of death awarded to A1. All the three accused preferred appeals to the High Court against their convictions and sentences. The High Court initiated a suo moto revision against A-2 and A-3 for enhancement of the sentence for their conviction under Section 302 read with Section 34 I.P.C. since the Sessions Judge had wrongly awarded them a sentence of 8 years R.I. only. All these matters were heard together by the Judgment dated March 8, 1989 in Criminal Appeal No. 60 of 1983. High Court and by a common judgment the High Court confirmed the conviction of A-1 under Section 302 I.P.C. but modified the sentence of death to imprisonment for life. As regards A-2 and A-3, the conviction under Section 302 read with Section 34 I.P.C. was confirmed and they were sentenced to imprisonment for life. The conviction of A-2. under Section 307 I.P.C. was modified to one under Section 324 I.P.C. and consequently the conviction of A-1 and A-3 under Section 307 read with Section 34 I.P.C. was also modified to one under Section 324 read with Section 34 I.P.C. The conviction of A-3 under Section 307 was modified to one under Section 506 Part II I.P.C. and consequently the conviction of A-1 and A-3 under Section 307 read with Section 34 I.P.C. was also modified to one under Section 506 Part II I.P.C. read with Section 34 I.P.C. By reason of the altered convictions the sentences were also modified but for the purpose of

this appeal it is enough if we refer to the modified sentences awarded to A-3, the appellant herein. For the convictions under Section 324 read with Section 34 I.P.C. and Section 506 Part II I.P.C. he was sentenced to undergo RI for 3 years and 2 years respectively, the sentences to run concurrently with the imprisonment for life awarded under Section 302 read with Section 34 I.P.C. While A-1 and A-2 do not appear to have preferred appeals to this Court, A-3 alone has preferred this appeal to assail the convictions and sentences awarded to him.

3. The prosecution case was that on 23. 6. 78 the eldest brother of A-1 by name Dakshinamurthy had been done to death in the course of a quarrel between him and two bus drivers and a report was made to the police about his murder by another brother by name Ghanapanditham. Case was registered and investigated into and thereafter a charge sheet was laid against deceased Jayaraman and PW-1 Kndaswamy, both of them being drivers of a tourist bus. In connection with that case deceased Jayaraman and PW-1 Kandaswamy, who were on bail, appeared at the Court of of the Judicial Magistrate, Aranthangi at 11 A.M. on 16. 8 78. They were accompanied by PW-2 Mani, a friend of Jayaraman. As the committal enquiry was adjourned to 30. 8 78, Jayaraman and PW-1 bound themselves over to appear in Court on that day and left the Court premises. Thereafter they went along the Bazar street accompanied by PW-2. At about 11.45 A.M. when they were near the shop of PW-3 Selladurai they were attacked by the accused in order to avenge the murder of Dakshinamurthy.

4. The attack began with A-1 inflicting an incised injury 16 cms. x 3 cms. x bone deep on the left side of the neck and face of deceased Jayaraman with a billhook. On receipt of the cut Jayaraman dropped the dead on the road. The attack on Jayaraman was followed by A-2 inflicting a semi-circular incised wound 5 cms. x 0.5 cm. x bone deep over the scalp of PW-1 Kandaswamy with a bill-book. On receipt of the cut injury PW-1 ran to the shop of PW-4 Nathar and took shelter. Lastly A-3 attempted to cut PW-2 Mani with his bill-book but PW-2 Mani escaped sustaining injuries by running away. All the three accused then went away from the scene of occurrence carrying with them their weapons.

5. PW-1 went to the Police Station forthwith and gave a report Exhibit P-1 to PW-11 the Sub Inspector of Police and on the basis of it, a case was registered against A-1 to A-3. PW-15 Nambiar Inspector of Police promptly proceeded to the scene of occurrence and held inquest over the dead body of Jayaraman. After sending the dead body to the hospital for postmortem examination, PW-12 returned to the Police Station. Soon after his return, A-1 to A-3 appeared before him and surrendered themselves and produced their respective bill-hooks. The three accused were arrested and their weapons were seized. PW-6 Dr. Devarajan examined the injury on PW-1 and also performed the autopsy on the dead body of Jayaraman and he certified that PW-1 and Jayaraman would have sustained the injuries on their person due to being attacked with bill-hooks and that Jayaraman's death was on account of shock and haemorrhage resulting from the injuries sustained by him.

6. During the trial of the case Pw-1 Kandaswamy turned hostile to the prosecution even though he was one of the Victims of the attack and he was the person who had laid the First information Report Exhibit P-1. The case, therefore, rested upon the direct evidence of the remaining eye witness

PW-2 Mani. Besides, the prosecution also relied upon the evidence of PW-12 regarding the surrender of A-1 to A-3 at the Police Station within hours after the occurrence and the handing over of their weapons by them. Reliance was also placed on the evidence of PW-6 the doctor who had examined PW-1 Kandaswamy and also conducted the autopsy on the dead body of Jayaraman. The plea of all the three accused was one of total denial of their complicity in the alleged offences.

7. The Sessions Judge accepted the prosecution case and awarded convictions and sentences to the three accused in the manner set but above. The High Court affirmed the conviction in so far as the murder of Jayaraman is concerned, but modified the sentence of death imposed upon A-1 to imprisonment for life and enhanced the sentence for A-2 and A-3 to imprisonment for life from the sentence of 8 years RI awarded by the Sessions Judge. As regards the charges pertaining to the attempted murder of PW-1 Kandaswamy and PW-2 Mani, the High Court altered the Sections of offence and the sentences therefor in the manner already set out above.

8. Mr. Ratnaparkhy, learned counsel for the appellant (A-3), took us through the relevant portions of the evidence of the main witnesses and also the judgments of the Sessions Judge and the High Court. Realising the fact that A-1 and A-2 have not preferred appeals against their conviction, the counsel restricted his arguments to contend that even if A-1 and A-2 are the assailants of deceased Jayaraman and PW-1 Kandaswamy respectively, the appellant ought not to have been constructively held liable for their acts and convicted under Section 302 read with Section 34 IPC and under Section 324 read with Section 34 IPC. The argument of the learned counsel was that from the mere presence of the appellant at the scene of occurrence alongwith A-1 and A-2, it cannot be concluded that the appellant must have known before hand that A-1 and A-2 had planned to attack deceased Jayaraman and PW-1 Kandaswamy on the Bazar road and that he had shared a common intention with them for the two victims being attacked in the manner it was done. The learned counsel also contended that no adverse inference should be drawn against the appellant either because of his carrying a bill-hook, in as much as he was an agriculturist or because of his appearing at the Police Station alongwith A-1 and A-2 and producing his bill-hook. Mr. Ratnaparkhy stated that the appellant would have thought that if he failed to appear at the Police Station when A-1 and A-2 were themselves going there, he would be laying himself open to greater suspicion and it was because of that he should have gone to the Police Station alongwith A-1 and A-2. His last contention was that even the conviction of A-3 under Section 506 Part II, IPC was not called for because on seeing the unexpected attack on Jayaraman and PW-1 by A-1 and A-2, his reaction would have been to run away from the scene at once rather ' . than tarry there and threaten to cut PW-2 Mani.

9. Controverting the arguments of the appellant's counsel, Mr. Mohan, learned counsel for the State argued that the conduct of A-3 in accompanying A-1 and A-2 on the day in question and his attempting to cause injury to PW-2 Mani and his, subsequent conduct in appearing at the Police Station along with A-1 and A-2 and surrendering himself clearly proved A3's complicity in the offences committed by A-1 and A-2 besides establishing his own guilt for the offence committed against PW-2 Mani. Mr. Mohan, therefore, contended that A-3 has been rightly convicted for the offence committed by him as well as for the offences committed by A-1 and A-2.

10. We have given the matter our careful consideration and we find considerable force in the contentions of Mr. Ratnaparkhy. While the evidence on record clearly establishes the presence of A-3 alongwith A-1 and A-2 at the scene of occurrence, the evidence is certainly not adequate to hold that A-3 had shared a common intention with A-1 and A-2 in the commission of the offences by them against Jayaraman and PW-1 Kandaswamy respectively or that in the course of the transaction he had threatened to cut PW-2 Mani. It is no doubt true that A-3 had accompanied A-1 and A-2 on the day in question but there is no material on the basis of which it can be held that A-3 had done so full well knowing that deceased Jayaraman and PW-1 Kandaswamy would be attending the Magistrate's Court on that day and that A-1 and A-2 had planned to attack them after they had appeared at the Court and it was for that purpose he had accompanied A-1 and A-2 to the Bazar road. Except that he was on friendly terms with A-1, A-3 had no scores to settle with Jayaraman or PW-1 Kandaswamy. A-3 had not assisted A-1 and A-2 in any manner in the attack made by them on deceased Jayaraman and PW-1 Kandaswamy. He had not even uttered any words of instigation when the two persons were cut. As regards the subsequent conduct of A-3 in surrendering at the Police Station, it cannot warrant a conclusion that there was a prior meeting of minds between A-3 on the one hand and A-1 and A-2 on the other and it was on account of a consensus reached between them, the victims had been attacked at the Bazar Road and thereafter all the three of them went together to the Police Station to surrender themselves. It may well be that A-3 may have thought that if he did not go to the Police Station when A-1 and A-2 were themselves going, he would be incurring their displeasure and also inviting the suspicion of the Police authorities about his complicity in the offences. In such circumstances, A-3 cannot be held constructively liable for the acts of A-1 and A-2.

11. Even as regards his conviction under Section 506 Part II, the prosecution evidence affords room for doubt. PW-2 Mani is the only witness to speak about the threat uttered by A-3. It is highly unlikely that either A-3 or Mani would have remained at the scene even for a few minutes after seeing the attack on Jayaraman and PW-1 Kandaswamy instead of each one taking to his heels forthwith. While attempting to run away it is likely A-3 may have raised his billhook in orders to make good his escape and this may have been mistakenly construed as an attempt by him to cut PW-2 Mani. In such circumstances, we are of the view that A-3 is entitled to the benefit of doubt in respect of the conviction under Section 506 Part II IPC also.

12. For the aforesaid reasons the conviction of A-3 under all the three charges framed against him cannot be sustained. Consequently, we allow the appeal and set aside the conviction of A-3 of all the offences held proved against him and acquit him of the concerned charges and set him free. As A-3 has already been released on bail his bail bond will stand cancelled.