

Rajagopalswamy Konar And Another vs State Of Tamil Nadu on 31 March, 1993

Equivalent citations: AIR1994SC1621, 1994CRILJ2195, AIR 1994 SUPREME COURT 1621, 1994 AIR SCW 1343 1995 SCC(CRI) 184, 1995 SCC(CRI) 184

Author: G.N. Ray

Bench: G.N. Ray

JUDGMENT

K. Jayachandra Reddy, J.

1. This is an appeal under Section 379 of the CrPC read with Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The two appellants Rajagopalswamy Konar (A-1) and Sundaramurthy (A-2) were tried along with Amminiammal (A-3) for the offence of causing the death of Ramaswamy and Ponnuswamy, the two deceased in the case and for causing injuries to P.Ws. 1 and 2. The trial Court acquitted all of them. The State preferred an appeal. The High Court relying on the evidence of the eye-witnesses P.Ws. 2-4 convicted the two appellants under Sections 302 and 302 read with Section 34, I.P.C. and sentenced each of them to undergo imprisonment for life. The High Court convicted A-2 under Section 323, I.P.C. for causing injuries to P.W. 2 and sentenced him to undergo Rigorous Imprisonment for three months. Both the accused were also found guilty for causing injuries to PW-1 under Section 307 read with Section 34, I.P.C. and sentenced to undergo Rigorous Imprisonment for five years. Sentences were directed to run concurrently. Hence this appeal.

2. Since this is a Regular Appeal, through the judgment of both the Courts below as evidence of direct witnesses PWs 2-4 and also PW-1, injured witness who spoke about part of the occurrence.

3. The prosecution case is as follows:

The first accused and PW-1 are brothers. Deceased Ramaswamy and deceased Ponnuswamy were the sons of PW-1. PW-1 and the first accused and one Muthuswamy, another brother of PW-1, who pre-deceased him, divided their ancestral property. The shares of the first accused and PW-1 were separated by a cart-track in respect of which there were litigations between the first accused and PW-1. PW-1 succeeded in two courts at the time of occurrence. Second accused is the son and accused No. 3 is the wife of the first accused. Because of this litigation there

was an enmity among them. The deceased, Ramaswamy used to stay with his wife, PW-2 during agricultural seasons in the farm-house while deceased Ponnuswamy and his father, PW-1, and his step-mother PW-4, Jayalakshmi, the second wife of PW-1, used to stay in the farmhouse of their land. On the date of occurrence i.e. 24-2-1979 the deceased Ramaswamy and PW-2, his wife, were thrashing read gram in the thrashing floor in front of their house. Deceased Ponnuswamy was grazing buffaloes near the cart-track. PW-1, father of the deceased, was lying on the pial of the farmhouse of Ponnuswamy. PW-3, wife of Ponnuswamy at that juncture was working. A-1 to A-3 came to the thrashing floor of A-2 asked Ramaswamy whether he is ploughing his land and also the cart-track together to which deceased Ramaswamy replied that he is ploughing his own land. Thereupon A-2 and A-3 pulled Ramaswamy by the legs and pushed him down. PW-2 the widow of Ramaswamy, cried aloud. Hearing her cries, Ponnuswamy, brother of deceased Ramaswamy, came running. The first accused thereupon stabbed Ponnuswamy with a knife on his left flank. Ponnuswamy fell down. When PW-2 again cried A-2 came and dealt a blow with a stick on her throat. She warded off the blow with her hands. The blow fell on her right hand and broke her glass bangles M.O. 5 series. Later, both accused Nos. 1 and 2 beat deceased Ramaswamy and Ponnuswamy. Thereafter the accused ran away. PW-2 went and gave a report on the basis of which a crime was registered. PW-4 came back to the farm-house and found her husband lying with injuries and Ramaswamy died at about 4 P.M. Thereafter PW-2 gave a report. The doctor, PW-5 examined PW-1 and found on him several contusions and lacerated wound and on X-Ray disclosed fracture of right ulna, fracture of metacarpals bones and fractures of metacarpal fingers. The doctor opined that these injuries were grievous. On the two dead bodies postmortem was conducted. PW-6, the doctor, who conducted the post-mortem on the dead body of Ramaswamy, found a stab wound on the left upper abdomen and another incised wound in the right palm and a lacerated wound on the right temporal region. The injury No. 1 was found to be fatal and sufficient in the ordinary course of nature to cause death. The same doctor conducted the post-mortem on the dead body of Ponnuswamy and found a curved sutured wound on the upper abdomen. After completion of the investigation, the charge-sheet was laid. The prosecution mainly relied on the evidence of eye-witnesses and PWs 2-4. When examined under Section 313, Cr.P.C. the accused pleaded not guilty. It was found that accused No. 1 had also received one injury. He, however, pleaded not guilty thereby virtually denying his presence.

4. The learned Sessions Judge discarded the evidence of PW-2 on the ground that the injuries found on her were only superficial abrasions and on the presence of these injuries it could not be said that whether she was an eye-witness having been present at the occurrence and, witnessed the same. The learned Sessions Judge, further pointed out certain discrepancies between the versions given by her in the F.I.R. and her present depositions. The discrepancies are regarding the minor details as to who held first and who commenced the aggression. In our view the learned Sessions Judge has totally misappreciated the evidence of this witness. The approach itself is quite unsound. It must be noted that this incident happened because of some land dispute between the members of the family.

No outsiders were interested in getting the land. The eye-witnesses are only witnesses who must have been present in the field, where the occurrence admittedly had taken place. They have attributed specific overt act only to A-1 namely that he stabbed both the deceased persons. They have not made any exaggerations. The learned Sessions Judge held that the origin of the occurrence has been suppressed by the eye-witnesses. In arriving at this conclusion the learned Sessions Judge went on noting that the failure on the part of the prosecution to explain the injury on accused No. 1 would go to show that the prosecution has not come out with the whole truth particularly with regard to the origin of the occurrence and therefore, their presence itself becomes doubtful. A-1 has denied having received the injury during the same incident. It is highly unnatural to expect the prosecution to explain that injury. However, an explanation has been given. Even otherwise, a superficial injury of this nature cannot be a ground to reject the evidence of the eye-witnesses. We are satisfied from the medical evidence that PW-2 received those minor injuries during the course of the same incident as narrated by her. She has given the First Information Report with all the necessary details. We do not find any traces of exaggeration or false implication in the report as well as in her depositions. Therefore, the reasons given by the Sessions Judge while rejecting her evidence are wholly untenable and unsound. PW-2 has given a simple and straightforward version about the occurrence and her evidence is amply corroborated by the evidence of PWs 3 and 4. Regarding the injuries present on PW-1, this part of the occurrence is separate and PW-1 is not an eye-witness to the attack' on the two deceased persons.

5. We have gone through the evidence of these eye-witnesses meticulously and we find that their evidence can be accepted.

6. So far as A-3 is concerned the overt act attributed to her is that she along with A-2 caught hold of Ramaswamy and fell him down. The High Court held that she would not have shared the common intention. In our view the same reasoning applies to A-2 so far as the murder charge is concerned. It is only A-1 who inflicted the two fatal blows one on each of the deceased and, therefore, a clear case of murder is made out against him. So far as A-2 is concerned he inflicted simple injuries with the stick on PW-2 and one on the deceased Ramaswamy. Therefore, common intention to kill the two deceased cannot be made out against him.

7. In the result the conviction of A-2 under Section 302 read with 34, I.P.C. and the sentence of imprisonment for life awarded thereunder in respect of the murder of both the deceased are set aside. A-2 inflicted only one simple injury on the deceased Ramaswamy. We convict him under Section 324, I.P.C. and sentence him to one years' Rigorous Imprisonment. His conviction under Section 323, I.P.C. for causing hurt to PW-2 and sentence of three months' Rigorous Imprisonment are confirmed. A-2's conviction under Section 307 read with 34, I.P.C. for causing injuries to PW-1 is also confirmed but the sentence of five years' Rigorous Imprisonment is reduced to one years' Rigorous Imprisonment. Sentences are directed to run concurrently. From the record it appears that A-2 was in jail for sometime. If he has served out the sentence of one years' Rigorous Imprisonment he shall not be arrested. This is subject to verification.

8. So far as A-1 is concerned all his conviction and sentence awarded by the High Court are confirmed. In the result appeal is dismissed so far as A-1 is concerned. If he is on bail, he shall

surrender and serve out the sentence. The appeal is allowed to the extent indicated hereinabove so far as A-2 is concerned.