

Madras High Court

Murugesan And Ors. vs State Of Tamil Nadu on 7 April, 2000

Equivalent citations: 2000 CriLJ 3318

Author: K Natarajan

Bench: N Dhinakar, K Natarajan

JUDGMENT K. Natarajan, J.

1. This Criminal Appeal has been preferred by the appellants against the conviction and sentence imposed by the learned Sessions Judge, Chengalpattu, dated 20-8-90 in S.C. No. 174 of 1989.

2. The appellants will hereinafter be referred to as "accused 1 and 2". The acquitted accused will be referred to as "the third accused". They stood trial before the learned Sessions Judge, Chengalpattu. Three charges were framed against the accused. Under charge No. 1 A. 1 and A. 2 were charged for an Offence under Section 302, IPC read with Section 34, IPC on the allegation that on 19-5-1984 between 8-00 p.m. and 10.00 p.m. in front of Pazhandiamman Temple near the Seashore, Panayarkuppam, in furtherance of their common intention, they committed the murder of Radhakrishnan, who came from Andhra Pradesh by strangulating his neck. Under charge No.2, the appellants were charged for an offence under Section 392, IPC on the allegation that in the course of the same transaction, they committed theft of cash, clothes M.Os. 1 to 5 and a suit case, M.O. 6 from Radhakrishnan. Under charge No. 3, the acquitted accused was charged under Section 201, IPC on the allegation that he caused the evidence of the said offence to disappear by dragging the dead body of Radhakrishnan and throwing it in the sea. The appellants were found guilty under charges 1 and 2. For the offence under Section 302, read with Section 34, IPC each of the appellants was sentenced to undergo imprisonment for life. Under charge No. 2, each of them was sentenced to undergo rigorous imprisonment for a period of seven years. The learned Sessions Judge found charge No. 3 has not been proved and acquitted the third accused.

3. The case of the prosecution as disclosed by the witnesses and the Exhibits marked is the following :-

P.W. 18 deposed while he was walking at about 6-00 a.m. on 24-5-1984 along the Mylapore seashore, South of Nochikuppam, he found the dead body of a male in a decomposed condition. He said immediately he went to Mylapore police station and lodged a report with the Head Constable, P.W. 14, P.W. 14 stated on the basis of the report given by P.W. 18, he registered a case in Crime No. 783 of 1984 under Section 174, Cr.P.C. under the caption "suspicious death". Ex. P. 21 is the copy of the printed first information report prepared by him. He sent the original of Ex. P. 21 and the report given by P.W. 14 to the Taluk Magistrate (the Tahsildar, Mylapore) P.W. 15, the Sub-Inspector of Police, Mylapore deposed on receiving a copy of the first information report from P.W. 14 at 8-00 a.m. he reached the place where the dead body was lying at 9-00 a.m. It was an unidentified body of a male aged about 30 years. He said he conducted inquest over the dead body in the presence of panchayatdars. Ex. P. 22 is the copy of the Inquest Report. He said he arranged photographs of the dead body to be taken and sent the original of Ex. P. 22 and the seized six articles from the dead body to the Tahsildar, Mylapore under Ex. P. 23, Form 595. Thereafter, he sent the dead body for post-mortem through P.W. 8, Constable to the Government General Hospital, Madras along with his

requisition Ex. P. 3.

4. P.W. 7, the police Surgeon and the Professor of Forensic Medicine, Madras Medical College deposed on receiving Ex. P. 3 and the dead body at 7.00 a.m. on 24-5-1984, he conducted post-mortem. At the time the body was brought, the legs were found to have been tied with a nylon rope, and around the neck there was a coconut fibre rope with a knot and the body was in a decomposed condition. He said he found injuries on the right and left side of the neck and elbow. There was a cut injury on the left side of the lower jaw. Skin was peeled off. Eyes were popping out, Tongue was protruding. P.W. 7, said he noticed the following injuries :-

1. 1st and 2nd toe of left foot absent.

2. A well defined horizontal complete ligature mark on the neck 11/2 cms in width, at the level of thyroid cartilage. It is situated 10 cms below the left mastoid, 9 cms. below the right mastoid and 9 cms above the sternal notch. Behind the neck the ligature mark is 2 1/2 cms above 7th Cervical spine. On dissection of the ligature mark the tissues underneath were found bruised measuring 1 1/2 cms in width. Bruising 6 x 5 x 1/2 cms on left side of neck. On further dissection bruising 4x3 x 1/2 cms on front of left side of thyroid cartilage. Fracture of greater horn of the hyoid bone on left side.

P.W. 7 is of the opinion that the deceased had died of strangulation of the neck and issued the post-mortem certificate, Ex. P. 4.

5. P.W. 15 gave evidence that on receiving the post-mortem Certificate on 29-5-1984, he altered the Section of the offence from Section 174 Cr.P.C. to Section 302, IPC and prepared the express report, Ex. P. 24. He sent copies of the same to his higher officials. P.W. 19, the Inspector of police, Mylapore, namely, the Investigating Officer deposed, that on receiving the copy of Ex. P. 24, he took up investigation and examined P.W. 7 on 2-6-1984. He went to Panayurkuppam and examined some witnesses. On 3-6-1984, he examined P.Ws. 4 and 6 and some others on 26-6-1984 he examined P.Ws. 4 and 6 and some other. In the shirt removed from the dead body, a Tailor's label with the letters "Diploma Holders" "Vijaya Tailors, T.P. Gudam" was found. P.W. 15, the Sub-Inspector of police stated on the orders of P.W. 19, he proceeded to Thadepallekudam in Andhra Pradesh and enquired the tailor, P.W. 5 Maheswara Rao by showing the photographs of the dead person and M.O.I shirt. P.W. 5 deposed on the first occasion he was unable to identify the dead person, as many persons are stitching clothes in his shop. However, on the second occasion, when the suitcase M.O. 6 and the clothes M.Os. 1 to 5 were shown to him, he recognised the dead person to be Radhakrishnan belonging to Kagupadu village. According to P.W. 15, there after he contacted P.W. 4, the father of the deceased Rama Rao and when the shirt M.O. 1 and the photographs were shown to him, he identified the same and said the dead person is his son. P.W. 4 said he was brought to Madras and was taken to the mortuary. After seeing the dead body, he identified the same to be his son Radhakrishnan. According to P.W. 4, his son Radhakrishnan used to grow his nails very long and colour the same, which feature was noticed in the dead body.

6. P.W. 19 added he launched a vigorous search for the accused and arrested the first accused on 12-7-1984 in the presence of P.W. 10 and another at 4-00 p.m. at the five furlong road in Guindy and

at that time the first accused gave statements, the admissible portions of which have been marked as Exs. P. 11 and P. 12. According to P.W. 19, on the information given by the first accused and at his instance, M.Os. 2 to 14 have been seized by him under cover of Mahazar, Ex. P. 13 at 6-45 p.m. the same day attested by P.W. 10 and another from a screwpine flower bush, East of Pazhandiamman Temple at Panayurkuppam. He also said he arrested the second accused on 13-7-1984 at 8-00 p.m. near the Pallavan Bus Depot Adayar. When the second accused was enquired into in the presence of P.W. 11 and another Ravi, he gave a confession statement, the admissible portion of which is Ex. P. 14. The second accused took him and the witnesses to his house at Panayurkuppam and produced the shirt M.O. 1 which he seized under mahazar Ex. P. 15 in the presence of witnesses. P.W. 19 further said he arrested the third accused at 6-00 p.m. on 20-7-1984 at Saidapet and recorded the confession statement given by the third accused, the admissible portion of which has been marked as Ex. P. 16. According to P.W. 19, the third accused took him and the witnesses to his house at Panayurkuppam and produced the lungi M.O. 23 and the towel M.O. 24, which were seized by him under Mahazar Ex. P. 17 attested by P.W. 12 and another. P.W. 19 further said that he sent a requisition, Ex. P. 19 to the Director, Forensic Science Laboratory, Chennai to superimpose the photographs. M.Os. 17 to 19 over the skull of the deceased, namely, M.O. 15 and the jaw bone, M.O. 16 and give a report P.W. 13, the Assistant Director, Forensic Science Laboratory, Chennai deposed that on making a superim-position as requested by P.W. 19, he gave the report, Ex. P. 20 and according to him, the skull and the jaw bone tallied with the person in the photograph, M.O. 19, further deposed he gave a requisition Ex. P. 25 for recording the Section 164, Cr.P.C. statement of P.Ws. 1 and 2 to the chief Metropolitan Magistrate, Chennai, on 12-7-1984. According to P.W. 17, the then 13th Metropolitan Magistrate, Chennai on the orders of the Chief Metropolitan Magistrate and on receiving Exs. P. 25 and P. 26, he issued summons to P.Ws. 1 and 2 and recorded their statements under Section 164, Cr.P.C. on 18-7-1984 which are Exs. P. 28 and P. 29 respectively. The signatures of P.Ws. 1 and 2 in their statements are Exs. P. 1 and P. 2. As the second accused was in a mood to give confession statement, P.W. 19 arranged for recording his statement under Section 164, Cr.P.C. by giving his requisition, Ex. P. 5 to the Chief Metropolitan Magistrate, According to P.W. 9 he was working as a 5th Metropolitan Magistrate at the relevant time and on receiving the orders of the Chief Metropolitan Magistrate, Ex. P. 6 and the requisition, Ex. P. 5, he ordered the second accused to be produced before him on 19-7-1984. He further deposed that he observed the formalities as contemplated under law and after explaining to the second accused that he is not bound to give a confession and in case he gave the confession statement it would be used against him and after satisfying that the second accused was willing to give a confession statement, he gave time to him for contemplation and Ex. P. 7 is the proceedings for the first day. As per orders, the second accused was again produced before him on 20-7-84 at 3-30 p.m. after taking necessary precautions and observing the formalities laid down under law and after putting the necessary questions and satisfying himself that the second accused was willing to give a voluntary confession, he recorded the confession statement given by the second accused and Ex. P. 8 is his proceedings for the second day and thereafter recorded the confession statement of the second accused, which is Ex. P. 9 and the Certificate given by him is Ex. P. 10.

7. P.W. 19 further deposed that he enquired some other witnesses and recorded their statements. As it was noticed that the offence had taken place within the jurisdiction of Thiruvannamiyur police station, he sent his report Ex. P. 32 with the investigation file to the Inspector of Police,

Thiruvannamiyur. P.W. 20, the Sub-Inspector of Police, Thiruvannamiyur gave evidence and on receiving the report, Ex. P. 32, he registered a case in crime No. 1666 of 1987 under Sections 302 and 379, IPC on 30-11-1987 and prepared the first information report, Ex. P. 33 and despatched the same to the Court and the concerned superior officials. P.W. 21, the Inspector of Police, Thiruvannamiyur said that he filed a final report against the accused under Section 302, read with Sections. 32 and 201, IPC.

8. When questioned under Section 313, Cr. P.C. in respect of the incriminating circumstances appearing against them, all the accused denied them to be false and they are innocent. The first accused stated he went to a marriage at Cuddalore with his wife and from Cuddalore, the Sub-Inspector of Police brought him to Madras and got a statement. The second accused stated that he is short of hearing and he has got 50% of eyesight only. He was kept in Saidapet Sub-Jail for four or five days and the Sub-Inspector of Police, Mylapore beat and threatened him to give a statement before the Magistrate, Due to the beating, two teeth fell down and after washing his mouth he went inside the Court of the Magistrate and he found the Magistrate and the Sub Inspector talking and as directed by the Sub-Inspector, he gave the statement before the Magistrate. The acquitted third accused stated that while he was sleeping in his house, he was arrested and was put in the jail.

9. The learned counsel for the appellants strenuously contended that the alleged eye witnesses to the occurrence P. Ws. 1 to 3 have turned hostile and the case of the prosecution rests only on circumstantial evidence. According to him, many links in the chain have not been explained by the prosecution. It was stressed by the learned counsel for the appellants that the photographs said to have been taken of the dead person at the first instance when the dead body was found have not been filed in Court. As per the evidence of P.W. 15 the Sub-Inspector of police, he sent the six articles recovered from the dead body to the taluk Magistrate, namely, the Tahsildar, Saidapet. However, according to him, he showed the shirt containing the label of the tailoring shop of P.W. 5 to both P.Ws. 4 and 5 and enquired them. There is no evidence to show he gave a requisition to the taluk Magistrate and got return of the shirt containing the label and carried the same with him to Thadepallekudam to the shop of P.W. 5 and the same remains unexplained in the evidence and, therefore, a doubt is created. On a careful perusal of the evidence, we notice there is no evidence to show P.W. 15 gave a requisition to the Taluk Magistrate and got the permission and carried the shirt to Andhra Pradesh. However, the fact remains that as per the evidence of P.Ws. 4 and 5 a shirt with a label of the tailoring shop of P.W. 5 and the Photographs of the dead person had been shown to them and only after showing the same, they identified the dead person to be Radhakrishnan, the son of P.W. 4, which makes it clear that P.W. 15 carried a shirt with a label of the shop of P.W. 5 and the photographs of the dead person and showed the same to P.Ws. 4 and 5. In the above circumstances, the absence of giving a requisition to the Taluk Magistrate in the evidence, in our view, would only be an irregularity in the investigation conducted by P.W. 15 and on that account the trustworthy evidence of P.Ws. 4 and 5 that the shirt with the label of the tailoring shop of P.W. 4 and photographs are shown to them cannot be rejected. The Supreme Court of India on a similar situation had held in the decision (*Leela Ram v. State of Haryana*) in paragraph 8 that it is now a well settled principle that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution theory. For making such an observation, reliance was placed by the Supreme Court of India on an earlier decision of the same Court reported in 1996 SCC

(Cri) 646 : 1996 Cri LJ 2003. In para 18 of the decision, it has been observed at page 2009, of Cri LJ :-

It is equally true that the investigating Officer P.W. 8 committed grave irregularity in omitting to send the burnt clothes and other incriminating material for chemical examination to lend corroboration to the evidence. Mere fact that the investigating officer committed irregularity or illegality during the course of the investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account. It is seen from the Panchanama recovery of the incriminating material from the scene of offence that there was an attempt to screen the offence by destroying the evidence. Others were prevented from entering the room. That by itself indicates an attempt on the part of the accused to destroy the incriminating evidence and to prevent others from saving the life of the deceased. Therefore, the absence of smell of Kerosene on the hair sent for Chemical examination does not render the dying declaration of the deceased suspect nor would it become unbelievable.

If the evidence of P.W. 15 coupled with the evidence of P.Ws. 4 and 5 is read in the light of the observation made by the Supreme Court of India, we are convinced that the omission of Investigating Officer of P.W. 15 to explain the absence of submitting a requisition to the Taluk Magistrate to take return of the shirt and the photographs would be only an irregularity and the same would not effect the case of the prosecution, in any way, for the reason stated supra.

10. It was next contended by the learned counsel for the appellant that the dead body had not been satisfactorily identified. It was argued the body was found bloated and highly decomposed as per the evidence of the post-mortem doctor and, therefore, it would have been impossible to say that it is the body of Radhakrishnan. On a careful perusal of the evidence of P.W. 4, the father, P.W. 5, the tailor P.W. 6 the brother-in-law and P.W. 7, the post-mortem doctor, we find it difficult to accept the submission of the learned counsel for the appellants. P.W. 5 though had stated that the first instance, he was unable to identify the dead person to be Radhakrishnan, the son of P.W. 4 on the second occasion, when P.W. 15 came with the suitcase, M.O. 6 and the clothes, M.Os. 1 to 5, he recognised the dead body from the photographs as Radhakrishnan belonging to Kagupadu Village. P.W. 4 and P.W. 6, the father and the brother-in-law have asserted in their evidence that it is the body of Radhakrishnan. P.W. 7, the post-mortem doctor had said the first and second toe of the left foot were absent. We are convinced that P.Ws. 4 and 6, the close relatives and the tailor, P.W. 4 had no reason to say that it is the dead body of Radhakrishnan if it is the body of some other person, as they have no axe to grind against the appellants. No close relative would identify the body of a stranger to be the dead body of their relative. From the evidence of the post-mortem doctor, it is clear that the body was not highly decomposed but had been moderately decomposed as it was drowned in the sea. At this juncture, it is important to remember that not even a suggestion had been put in the cross-examination of the witnesses that it is not the body of Radhakrishnan, the son of P.W. 4, P.Ws. 4 and 6 have denied the suggestion that they identified the body before the Investigating Officer as though it resembled Radhakrishnan. On the other hand, they were categorical that it is the body of Radhakrishnan and from their evidence it is clear that they did not entertain even the slightest doubt about it. In the above circumstances, we find no other alternative except to reject the contention of the learned counsel for the appellants and hold that the identify of

the dead man had been satisfactorily established as the son of P.W. 4.

11. Yet another contention that had been put forward by the learned counsel for the appellants is the learned Sessions Judge has committed an error in basing the conviction on the uncorroborated, retracted judicial confession of the second accused and the recovery of articles made at the instance of the first accused. It was pointed out that the eyewitnesses P.Ws. 1 to 3 have turned hostile and, therefore, there is no corroboration and the accused are entitled to the benefit of doubt. The learned Public prosecutor submitted the second accused had not retracted the confession at the earliest opportunity, namely, at the first instance, when he was questioned as to whether he pleads guilty or not guilty. He retracted the judicial confession after many months, namely at the stage of questioning under Section 313, Cr.P.C. only. So far as the judicial confession is concerned, only general corroboration is necessary. If the Judicial confession had been retracted at a later stage, the Court can rely on the same and there is no legal bar. Reliance was placed on a ruling of the Supreme Court of India reported in AIR 1978 SC 1248 : 1978 Cri LJ 1251 (Shankaria v. State of Rajasthan). In para 49 of the said decision, it had been held where the Judicial confession was not retracted at the earliest opportunity, but after lapse of several months and when the prosecution evidence was closed and during examination of the accused under Section 313, Cr.P.C. the circumstance reinforces the conclusion that the confession was voluntary. The same principle has been affirmed in the decision reported in AIR 1978 SC 1399 : 1978 Cri LJ 1414 (Shankaria v. State of Rajasthan). We are of the view that the principles of law laid down in the above two decisions of the Supreme Court apply to the facts of the present case in all fours. In the present case also, the second accused did not choose to retract his confession at the time when he was questioned whether he was guilty or not but only after many months at the stage of questioning under Section 313, Cr.P.C. We are inclined to accept the submission of the learned Public Prosecutor that the evidence of P.Ws. 4 and 6 corroborates the judicial confession of the second accused and proves beyond doubt that the dead man is Radhakrishnan the son of P.W. 4 and the brother-in-law of P.W. 6. The evidence of P.W. 9, the then 5th Metropolitan Magistrate, Chennai amply proves that he took the necessary precautions laid down under law and after satisfying that the second accused is willing to give a voluntary confession, recorded the same after giving sufficient time for contemplation and there is no reason to doubt his evidence also corroborates the Judicial confession of the second accused.

12. So far as the objection raised in respect of the first accused that the recovery made by the Investigating Officer, P.W. 19 at his instance may not be sufficient to base a conviction, our attention was drawn to a recent decision of the Supreme Court of India (State of Maharashtra v. Suresh). In paragraph 26 of the decision, we find the following observation :-

We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal Court that his knowledge about the concealment was on account of one of the last two possibilities the criminal Court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he "chooses to refrain from

telling the Court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal Court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

In *Baiju v. State of Madhya Pradesh* it had been held that recent and unexplained possession of stolen articles can be taken to be presumptive in evidence for the charges of murder. The evidence of the investigating Officer and the mahazar witness, P.W. 11, in our opinion, is acceptable and satisfactory which shows that M.O. 1 shirt was seized in the house of the second accused at his instance, as per Ex. P. 15 mahazar. The first accused took them to Panayurkuppam, identified screwpine flower bush and from it produced M.Os. 2 to 14 which were recovered under Mahazar, Ex. P. 13. The dead body of Radhakrishnan was found on the seashore on 19-5-1984 and M.Os. 2 to 14 were recovered on 12-7-1984, namely, within a few weeks. The first accused was unable to offer any satisfactory explanation as to how the said articles M.Os. 2 to 14 were concealed in the bush. In our opinion, the evidence of P.Ws. 10, 11 and 12 and the Investigating Officer, P.W. 19 is reliable and there is sufficient justification to presume that the first accused had concealed the same in the bush and M.O. 1 shirt had been kept in his house by the second accused, as per the principles of law laid down in the above decisions of the Supreme Court.

13. Finally, it was submitted by the learned counsel for the appellants that the cause of death as per the post-mortem doctor is by strangulation with a rope and the said rope had not been produced in Court, which cast a doubt on the case of the prosecution and the benefit of the doubt should be given to the accused/appellants and they have to be acquitted. We find it difficult to agree with the submission. The evidence of the postmortem doctor only shows that the deceased Radhakrishnan had been strangled with hands and not by rope. It appears the learned counsel for the appellants had put forward such a submission on the evidence available on record that the acquitted third accused had tied the dead body of Radhakrishnan with a rope and threw it into the sea and a legature mark was found around the neck. The post-mortem doctor had clarified that the legature mark had been caused after the death and according to him the death had been caused by pressing with, hands and, therefore, we are unable to accept the submission of the learned counsel for the appellants.

14. For the reasons aforesated, we are clearly of the view that the learned Sessions Judge has committed no error in appreciating the evidence and the appellants have been rightly convicted under Sections 302, read with Section 34 and Section 392, IPC.

15. In the result, the conviction and sentence imposed on the appellants are confirmed and the appeal is dismissed. The appellants/accused are on bail. The learned Sessions Judge shall take steps to secure the presence of both the accused and commit them to prison, to undergo unexpired period of sentence.