

Supreme Court of India

Nagarajan vs State Of Tamil Nadu on 6 December, 1994

Equivalent citations: AIR 1995 SC 1926, 1995 CriLJ 3211

Bench: M Punchhi, K J Reddy

JUDGMENT

1. The respective two appellants in these appeals faced charges under Sections 376 and 302, Indian Penal Code for raping a young student named Mala aged about 20 years in the house where she was staying at Anna Nagar, Madras. The victim, a Malaysian, was a student of 3rd year of M.B.B.S. living under the care of Mrs. P. Perira PW-5 owner of the house as a paying guest. On the date of occurrence PW-5 had, as usual, gone for a walk at 5.30 p.m. and her routine was known to A-1 Nagarajan, who stood employed by her as a cook. He was also aware that the deceased would be alone in her room after 5.30 p.m., for a couple of hours. On the ostensible reason that some repairs had to be done to the electric lines, A-2 Venkatesan came to the house sometimes earlier and again at the behest of A-1. They assaulted the deceased and committed the ghastly act by locking the house doors and raping Mala one after another. She met her death in that struggle. When she was first assaulted, she raised a loud cry which attracted the attention of PW-1 a neighbour living across. Showing his great sense of responsibility he rang up the police. The police party arrived there within a few minutes. With the aid of PW-1 and some others the police party made effort to have the door opened but a voice came from inside that it was a doctor's house and so it could not be opened. The police party then opened the door forcibly. On stepping inside, the police party discovered that the deceased had been raped and murdered in her room but her body stood dragged in the bathroom. To camouflage, A-2 was shown lying under a table with his hands tied while A-1 sat on the sofa set. On questioning, however, A-1 made confession to the police, giving details therein as to how the crime was committed. F.I.R. was lodged on the statement of A-1.

2. The appellants were put to trial before the Court of Session. Since there was no eye witness to the crime and confession to the police officials being not admissible as also retracted the prosecution had to rest content with the evidence of PW-1 as also of the police officials who had got the door broken to find the two inmates of the house at the relevant time in the condition they were. The absence of PW-5 was also noted which gave an opportunity to the appellants to commit a crime. The Court of Session, however, acquitted the appellants on certain grounds which bear no scrutiny. It was palpably a wrong judgment. In appeal, at the instance of the State of Tamil Nadu, the Division Bench of the High Court thoroughly examined the matter and by an elaborate and convincing judgment recorded conviction of the accused appellants for the offences for which they were charged. Hence these appeals.

3. We have heard learned Counsel. We are of the view that no blemish could ever be cast on the evidence of PW-1 and PW-5. Equally, no departmental bias could instantly be attributed to the evidence of the police officials PW-4, PW-7 and PW-13 supportive of recovery to the effect that both the appellants were found inside at the time when the door was got broken and had earlier been seen inside the house trying to avoid opening the door showing their guilty mind that they had something to conceal by putting up resistance. The entry of PWs 1, 4, 7 and 13 to the room of the deceased could reveal what the accused appellants wanted to conceal. That the deceased was raped

and murdered stands proved by the medical examination. This is beyond question. Then one has to see on the test of probabilities who could have brought the deceased to that condition. It is in the evidence of PW-5 that she found her alive at 5.30 p.m. when she left for a walk. The inmates of the house then was A-1 and at the time of the forcible opening of the door were A-1 and A-2. They were both young and capable of committing the crime. The doctor certifying their health had opined that they were of good body built. They were examined after 20 hours of the crime and smegma was found absent on their respective male organs. But that by itself may not be a conclusive factor of its removal by sexual intercourse. This can thus be kept aside. It otherwise can be spelt from the conduct of the appellants, as exhibited to the rescuing party, that there was far more to tell than their mere presence at the house. Obviously when the crime was committed in that duration, there could be no other conclusion except that the appellants were responsible for it. The High Court was thus right in upsetting the order of acquittal and convicting the accused.

4. Agreeing with the view taken by the High Court, we have no hesitation in dismissing the appeals of the appellants. Accordingly the appeals are dismissed. The appellants who are on bail are required to surrender forthwith to their bail bonds.