Supreme Court of India
State Of Tamil Nadu vs Karuppusamy And Ors on 31 March, 1992
Equivalent citations: 1993 SCR (2) 415, 1993 SCC Supl. (1) 78
Author: S Mohan
Bench: Mohan, S. (J)

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
KARUPPUSAMY AND ORS.

DATE OF JUDGMENT31/03/1992

BENCH:
MOHAN, S. (J)
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MOHAN, S. (J)
AHMADI, A.M. (J)

CITATION:
1993 SCR (2) 415 1993 SCC Supl. (1) 78
JT 1992 (2) 451 1992 SCALE (1)747

ACT:
Penal Code, 1860-Sections 34, 354, 302-Appeal against acquittal by High Court-Appreciation of evidence by High Court-Erroneous and resulting in miscarriage of justice.

HEADNOTE:
The prosecution's case was that on 28.7.1976 at about 4P.M., P.W.1, aged 22 years was grazing her sheep in the field. Accused 1 and 2 (the respondents) and one Selvaraj were also grazing their sheep nearby. The accused persons approached P.W.1. When Accused 1 pushed P.W.1 down and pulled up her saree in order to outrange her modesty, the other two stood on either side of her. P.W.1 managed to escape and ran towards the road. The respondents (Accused 1 and 2) were armed with aruvals (sickles).

P.W.1's paternal uncle (the deceased) was passing by on his bicycle carrying his 11 year old daughter (P.W.2) from the School. On hearing the shouts of P.W.1, her uncle got down from his bicycle. When P.W.1 was narrating the incident to the deceased, the accused reached there, the accused persons threatened the deceased with dire consequences, when he questioned the accused and told them that the matter would be reported to the Village Panchayat. Accused 2 caught hold of the right hand of the deceased

while Accused 1 cut the hand. When the deceased attempted toward off the cut the hand, the thumb and the fingers were severed. Receiving cuts form the Accused 1 on the left hand, head, neck and right shoulder, the deceased fell down. Then the Accused cut off his head with his aruval.

When P.W.1 cried on seeing the ghastly sight, P.Ws. 4 and 5 and one Sarvanan came running to the place of occurrence. Accused 2 ran away throwing his aruval and Accused 1 also ran away carrying the head of the deceased and his aruval. Though P.W.5 and one Sarvanan were chasing Accused 1, were returned when they were threatened by the Accused 1. P.W.4 chased Accused 2 but could not catch him.

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At about 5.30 P.M., P.W.1 reported to the P.W.6 (the Village Munsif) about the occurrence, which was written down by P.W.6. He went to the place of occurrence. Along with his own report, he sent the P.W.1's Written Statement to the Police Station, sending copies of the same to the local Magistrate. P.W. 10 (the Sub-Inspector) registered a case u/ss.302 and 354 IPC and commenced investigation. The accused-respondents were tried before the Sessions Judge. The defence denied the charges.

The Session Judge convicted both the accused-respondents. But they were acquited by the High Court, against which this appeal was filed by the State, by special leave.

The appellant-State contended that the High Court had completely misdirected itself with regard to the appreciation of evidence, by lightly dealing with the evidence of the four eye-witnesses, P.Ws. 1, 2, 4, and 3; that merely because P.W.1 a rustic village Woman did not know the names of P.Ws.4 and 6 it did not mean her evidence was liable to be rejected; that the High Court erred in holding that the evidence of P.W.1 was unreliable, merely on the ground that she was not able to identify P.Ws.4 and 5 and she could not name them properly; that the evidence of P.W.2, a child witness, who was having no motive against the accused, ought to have been accepted; that the evidence of P.Ws.4 and 6 was rejected on the ground that they did not mention the accused severing the head and carrying the head away; and that the failure of P.W.11 to note the presence of sheep or goats around the scene of occurrence was immaterial.

The respondents contended that unless the appreciation of evidence by the High Court was perverse, this Court normally would not interfere against an order of acquittal; that in this case it could not be contended that the appreciation of the evidence by the High Court was perverse, and that it was the duty of the prosecution of establish the guilt beyond all reasonable doubt, which was not established in this case; hence this Court's intereference not warranted.

Allowing the appeal of the State, this court,

HELD :1.01. Only a tutored witness can depose in a parrot-like fashion. On the contrary, a natural witness is bound to commit mistakes. In the instant case the mistakes are so inconsequential and immaterial when she mentions the name of Muthu wrongly instead of Deiveegan. On

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that score it should not be held that her evidence does not inspire confidence. The presence of absence of the sheep or goats, whether noted or not, can have no hearing on the case of the prosecution. Therefore, the failure of P.W.11 to note their presence would not affected the case of the prosecution. [422F-G]

1.02. P.W.2 being a child of tender age witnessed a ghastly murder where her father himself was killed. One cannot brush aside the agitated mood and the mind in which the tender child would have been. It must have been the rudest shock of her life. To expect her in that situation to give the details as to who chased Accused 1 or 2 or to expect her to go to the scene of occurrence on that very night would be asking for too much. After all, she did state the two persons chased the accused. That should be enough. [423F-G]

1.03. P.W.2's failure to inform her mother is not a factor which would make her evidence not credit-worthy, because by then the mother had come to know of the murder. [422H-424A]

1.04. Normally in a village no woman would come forward, unless it is true, with a plea that her modesty was outraged, by such statement, her very honour was at stake. Coming as she does from a cloistered society her whole future would become bleak. P.W.1 does not inspire confidence as the High Court has held, seems to be wrong. [422H-423A]

1.05. On the evidence of P.Ws.1 and 2 alone that the prosecution has fully established its case. Besides, there is the evidence of P.Ws.4 and 6. The appreciation of the evidence by the High Court is erroneous and has resulted in miscarriage of justice. [424B, F]

State of Jammu & Kashmir v. Hazara Singh & Anr., [1980] Supp. SCC 641 at page 644 (para 10), Distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 688 of 1980.

From the Judgment and Order dated 20.2.1978 of the Madras High Court in Crl. Appeal No. 306 of 1977.

K.V. Venkataraman and K.V. Vishwanathan (N.P.) for the Appellant.

R.K. Garg and V.J. Francis for the Respondents. The Judgement of the Court was delivered by MOHAN, J. The respondents were accused 1 and 2. They were tried by the learned Session Judge of the Tiruchirapalli Division in Sessions Case No.73 of 1976. Both the accused along with a juvenile Selvaraj were tried for using criminal force to Anjali (P.W.1) with the intention of outraging her modesty at about 4.30 P.M. on 28th July, 1976 at Pullambadi Village, an offence punishable under Section 354 I.P.C. The first accused Karuppusamy was also tried for the offence of murder of one Muthusamy of Thappai Village on the same day and at the same time and place, in that, he cut him with an aruval (sickle) and severed his head, an offence punishable under Section 302 I.P.C. The second accused Natarajan was also tried under Section 302 read with Section 34 I.P.C. In that the murder of Muthuswamy was committed by the first accused, in furtherance of the common intention of both the accused.

The first accused was also tried for an effence of causing disappearance of evidence. In that, the severed head of Muthusamy was concealed in bush, an offence under section 201 I.P.C.

Juvenile Selvaraj who was present at the time of outraging the modesty of Anjali (P.W.1) was also tried for an offence under Section 354 I.P.C.

The learned Sessions Judge found the first accused guilty of the offence punishable under Section 354, 302 and 201 I.P.C. Accordingly he was convicted and sentenced to undergo rigorous imprisonment for three months under section 354 I.P.C., imprisonment for under Section 302 I.P.C. and rigorous imprisonment for two years under Section 201 I.P.C. The sentences were to run concurrently.

The second accused was acquitted of the charge under Section 354 I.P.C. However, he was found guilty under Section 302 read with Section 34 I.P.C. and was convicted and sentenced to undergo imprisonment for life.

The juvenile accused was acquitted.

Aggrieved by the conviction and the sentence accused 1 and 2 took up the matter in appeal to the High Court of Madras in Criminal Appeal No. 306 of 1977. Both the accused were acquitted by the High Court holding that the prosecution had not proved the case against any of the accused satisfactorily and beyond all reasonable doubt.

The case of the prosecution can be briefly stated as under:

On 28th of July, 1976 at about 4 P.M., P.W.1 Anjali, aged 22years was grazing her sheep in the fields of Pullambadi. Accused 1 and 2 and juvenile Selvaraj were also grazing their sheep nearby. They came near P.W.1. Accused 1 suddenly pushed her down. The other two stood on either side of P.W.1. Accused 1 pulled up her saree in order to outrage her modesty. However, she managed to escape and ran towards the road between Thappi and Pullambadi. Accused 1 was armed an aruval (sickle) (M.O.2), while accused 2 had also an aruval (M.O.3). At that time the deceased Muthusamy, paternal uncle of P.W.1 was going on a bicycle. His 11 year old girl P.W.2 Rajamani was carried by

Muthusamy on the carrier of the bicycle as she was returning from the school. On hearing the shouts of P.W.1 the deceased got down from the bicycle. P.W.1. narrated the incident. By then the accused also came there. Thereupon the accused were questioned and the deceased Muthusamy told the accused that he would report the matter of the Village Panchayat. The accused became defiant and threatened the deceased only if he were left alive he would be able to report the matter to the Panchayat. At that time one Daiveegan from Thappai Village came along the road. He advised them to go to their village and went away. Accused 2 caught hold of the right hand of the deceased. Accused 1 cut the hand. The deceased warded off the cut with his left hand. In that process, the thumb and the fingers were severed. Accused 1 cut the deceased on the left hand, head, neck and right shoulder. The deceased fell down. Then Accused 1 cut off his head with his aruval. When P.W.1 cried on seeing this ghastly sight P.Ws. 4 and 5 and one Sarvanan came running to the place. Accused 2 ran away throwing his aruval (M.O.3). Accused 1 also ran away carrying the head of the deceased and his aruval (M.O.2). When P.W.5 and Sarvanan chased the first accused he threatened them with dire consequences. Therefore, they returned. P.W.4 also chased Accused 2 for some distance but could not catch him. He also returned. In the meanwhile, P.W.1 ran shouting to the Village, P.W.2, the daughter of the deceased who was at the scene of occurrence was taken to her house by some of her classmates.

At about 5.30P.M., P.W.1 gave a report to P.W. 6 (the Village Munsif). That statement was reduced to writing under Ex.P-1. He went to the scene of occurrence. Then he sent Ex. P-1 with his own report (Ex.P-5) to the Kallaikudi Police Station. Copies of the same report were sent to the Magistrate at Lalgudi. Sub- Inspector (P.W.10) registered a case acting on Ex. P-1 at 7.30 P.M. under Section 302 and 354 I.P.C. Immediately he sent express report to his superiors and proceeded to the scene of occurrence at 8.45 P.M. Thereafter he went in search of accused.

The Inspector (P.W.11) came to the scene of occurrence at 11.30 P.M. and took up investigation. He prepared an observation mahazar (Ex.P-7). He held an inquest at which P.Ws. 1, 2, 4 and 5, Sarvanan, Deiveagan and others were examined. He recovered blood-stained earth and the aruval dropped by Accused 2 and the cycle on which the deceased was proceeding (M.O.5) under mahazar (Ex.P-8).

The next morning P.W.11 arrested Accused 1. In the presence of P.W.6 the Village Munsif Karnam, Accused 1 gave a confessional statement. Acting on that statement the Inspector recovered the head of the deceased from a bush as well as aruvel (M.O.2) from another place which was rolled up Accused 1's underwear (M.O.7). On the same day the Inspector examined P.W.7 from whom the details relating to the hiring of the bicycle were gathered.

P.W.3(the doctor) conducted the post-mortem at 4.00 P.M. and fond the head and the body belonged to the same person. The head had been completely severed by cutting through the third and forth vertebra. He also found the incised injuries on the right and the left side of the neck, on the right shoulder, on the middle of the left forearm, on the left hand exposing bones and muscles of the hand. He opined that the death was due to shock and haemorrhage. He further opined that the injuries could have been caused by an aruval like (M.O.3).

The respondents were tried before the learned Sessions Judge of Tiruchirapalli on four charges. The defence was one of denial. According to accused 1 who filed the written statement the deceased saw him talking and laughing with P.W.1. On that account he became very angry, abused accused 1 and beat P.W.1. He denied that he either molested P.W. 1 or cut the deceased and the case was foisted on him. Though as stated above the learned Sessions Judge convicted both the accused the High Court acquitted them. Special Leave was granted by this Court on 22nd of October, 1980. Hence the present appeal by the State.

The learned counsel appearing for the State of Tamil Nadu Mr. K.V. Venkataraman urged that the High Court had completely misdirected itself with regard to the appreciation of evidence. In this case there are four eye- witnesses P.Ws. 1, 2, 4 and 5. Their evidence has been lightly dealt with. Merely because P.W.1 did not know the names of P.Ws.4 and 5 it does not mean her evidence is liable to be rejected. She being a rustic woman, ignorance of names would not matter. She has graphically spoken as to what actually happened prior to the murder and about the murder as well. When her modesty was about to be outraged she escaped and came to the road and narrated the incident to the deceased. Normally, in a village no woman would come forth with such a plea since by that statement her honour itself would be at stake.

The High Court erred in holding that the evidence of P.W.1 is thoroughly unreliable, merely on the ground that she was not able to identify P.Ws. 4 and 5 she could not name them properly.

As regards evidence of P.W.2 she being a child witness and having no motive against the accused her evidence ought to have been accepted. So long as the trial court had found that she was in a position to discern as to what was truth and what was falsehood the failure to administer oath would be of no consequence. To expect a child of that tender age to come to the scene of occurrence during night is to ask something unnatural. Where P.Ws.1 and 2 were in an agitated mood after witnessing a gruesome murder they could not be expected to behave in a calm and collected way.

The evidence of P.Ws. 4 and 5 have been rejected solely on the ground that they did not mention the accused severing the head and carrying the head away. As regards identification also to characterise it, as force, is not correct. The failure of P.W. 11 to note the presence of sheep or goats around the scene of occurrence is immaterial. Thus looking from any point of view the acquittal, as ordered by the High Court, is unsupportable.

Mr. R.K. Garg, learned counsel for the defence would submit first and foremost on the basis of a decision of this Court in State of Jammu & Kashmir v. Hazara Singh & Anr., [1980] Supp. SCC page 641 at 644 para 10 that unless the appreciation of evidence by the High Court is perverse this Court normally would not interfere against an order of acquittal. In this case it cannot be contented that the appreciation of the evidence by the High Court is perverse. P.Ws. 4 and 5 from the age of her discretion. Therefore, normally speaking, she should have had no difficulty in mentioning their names and properly identifying them. That she should mention the name of Deiveegan as Muthu is rather strange. Even the case of prosecution is that Deiveagan advised the parties to amicably go away from the scene of occurrence. Such a person cannot be mistaken for Muthu. It is against all probability that she would return home without even caring for the sheep or the goats which she was

grazing. Equally, for very valid reasons the evidence of P.W.2 had to be rejected by the High Court. P.Ws. 4 and 5 have been purposely introduced in order to bolster up the case of the prosecution. There is also a good deal of doubt as to whether P.W.11 prepared the report on that day or later. Whatever it be, if it is an axiomatic principle that it is the duty of the prosecution to establish the guild beyond all reasonable doubt that has not been so established in this case. Hence no interference is warranted.

We will now proceed to examine the merits of the respective contentions. The learned trial judge has held that in appreciating the evidence of P.Ws. 1 and 2 one has to take into account their state of mind, at that time, when they saw a ghastly murder in that, the head of the deceased was completely severed. Unfortunately, this important factor has not been properly appreciated by the High Court.

From the evidence of P.W.1 it is clear that she graphically gave an account as to the happenings. Being a rustic woman, in that agitated mood she might have committed one or two mistakes in the actual identification or as to who chased Accused 1 or Accused 2. These, in our considered view, are bound to happen. Only a tutored witness can depose in a parrot-like fashion. On the contrary, a natural witness is bound to commit mistakes. In the instant case the mistakes are so inconsequential and immaterial when she mentions the name of Muthu wrongly instead of Deiveegan. We are unable to see as to how on that score it should be held that her evidence does not inspire confidence. Equally, we are of the view that the presence or absence of the sheep or goats whether noted or not can have no bearing on the case of the prosecution. Therefore, the failure of P.W. 11 to note their presence would not affect the case of the prosecution.

The characterisation that the evidence of P.W.1 does not inspire confidence as the High Court has held, seems to be wrong. Normally, in a village no woman would come forward, unless it is true, with a plea that her modesty was outraged. As rightly contended by the learned counsel for the State, by such statement, her very honour was at stake. Coming as she does from a cloistered society her whole future would become bleak. After all, what was the motive for her to say this against the accused. It has not been brought out in cross-examination that there was any enmity between P.W. 1 on the one hand and the accused on the other. She would not even implicate a juvenile accused.

Her failure to state in the report (Ex. P-1) the details should not make the court reject her evidence.

The doubt raised by the High Court that Ex. P-1 was not prepared on that day seems unwarranted when it contains the initials bearing the time and date as 9.30 P.M. and 28.7.1976. The learned Sessions Judge was fully satisfied by summoning the production of the despatch register of Kallakudi Police Station that Exs. P-1 and P-5 were received on that day in the station. The suggestion by the defence that the learned magistrate had obliged the police to put the date as 28.7.76 and the time as 9.30 P.M. was rightly rejected as an extreme contention by the learned Sessions Judge which unfortunately was doubted by the High Court.

The line of reasoning adopted by the High Court in appreciating the evidence of P.W.2 is not correct. According to the High Court her failure to mention the names of P.Ws. 4 and 5 and Sarvanan in the course of investigation, her failure to come to the scene of the occurrence during the night and her

going to the scene of occurrence only the next day along with her mother are all factors on which the evidence of this child witness was rejected. We hardly find any justification to reject the evidence of P.W.2. The learned Sessions Judge has appreciated that she had a discerning mind as to what was truth and what was falsehood. Therefore, the failure to adminster oath is of no consequence. We have cautioned ourselves of the possibility of tutoring, she being a child of tender age. She witnessed a ghastly murder where her father himself was killed. One cannot brush aside the agitated mood and the mind in which the tender child would have been. It must have been the rudest shock of her life. To expect her in that situation to give the details as to who chased Accused 1 or 2 or to expect her to go to the scene of occurrence on that very night would be asking for too much. After all, she did state the two persons chased the accused. That should be enough as was rightly held by the learned Sessions Judge.

Then again, her failure to inform her mother is not a factor which would make her evidence not creditworthy, because by then the mother had come to know of murder. If it was a false case being foisted on the accused we do not think that such natural imperfections would have surfaced. Merely because W.P. 2 did not give details as to whether the deceased caught hold of the hair of the first accused etc. does not give rise to any doubt as to the occurrence. It will be too much to expect from a child to give such intricate details. It will be too much to expect from a child to give such intricate details. Therefore, we conclude on the evidence of P.Ws. 1 and 2 alone that the prosecution has fully established its case. Besides, there is the evidence of P.Ws. 4 and 5. We are not in a position to appreciate the finding of the High Court that they have been introduced to strengthen the case of the prosecution. The learned Sessions Judge has rightly accepted their evidence.

One important factor, in our considered opinion, was missed by the High Court. Pursuant to the confessional statement of the first accused, the recovery of the severed head and M.O.2 would be an admissible piece of evidence. After the arrest the first accused took P.W.11 and P.W.6 to a bush in a place one mile north of Thappai village and produced the head. At that place an inquest was held in which the Inspector examined P.Ws. 1, 2, 4 and 5. Then, the first accused took them to another bush in the burial ground of S.P.G. Mission Church, from where M.O. 2 had been recovered concealed in the underwear (M.O.7). This aruval, according to the analyst's report, contained human blood. The dhoti worn by the accused M.O.8 which was seized from him also contained human blood. This part of the confession which led to the recovery of the severed head and M.O.2, is clearly Admissible under Section 27 of the Indian Evidence Act. This goes a long way to corroborate the case of the prosecution. In the whole we are satisfied that the appreciation of the evidence by the High Court is erroneous and has resulted in miscarriage of justice. Therefore, we find no scope for the application of the ratio laid down at para 10 of page 644 in State of J & K (supra) on which reliance has been placed by Mr. R.K. Garg, learned counsel for the defence.

In the result, we set aside the judgment of the High Court acquitting the accused (the respondents). We restore the conviction and sentence imposed by the learned Sessions Judge and the accused shall serve their sentences. Appeal will stand allowed accordingly.

V.P.R. Appeal allowed.