

Selveraj

Vs

The State of Tamil Nadu

Criminal Appeal No. 92 of 1976

(P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali JJ)

12.08.1976

JUDGMENT

BHAGWATI, J. -

1. This is an appeal by special leave against the conviction and sentence of death imposed by the Additional Sessions Judge, Salem and confirmed by the High Court of Madras.
2. One Natesan and his wife Ranganayaki, to whom we shall, for the sake of convenience, refer as the deceased, were living together in a house situate at Mutthu Undal Lane in Nammakkal. Natesan was a tailor by profession and he had his tailoring shop in Sannadhi Street about a furlong away from his house. He had also a small petty shop adjoining his house on the western side which was looked after by the deceased. The appellant, who is the son of the maternal uncle of Natesan, was regularly taking his meals with Natesan since sometime before the date of the incident, as he was unmarried and had no employment at the relevant time. According to the prosecution, about three months prior to the date of the occurrence, the appellant made advances to the deceased and wanted to satisfy his lust by sexual intercourse with her, but she spurned him and drove him out of the house. Natesan was not then in the house and when he came back at night, the deceased complained to him about the improper conduct of the appellant, on which Natesan chastised the appellant on the next day.
3. On March 11, 1974 at about 8.15 p.m. Natesan was in his tailoring shop. He had an apprentice by the name of Manisekaran. He sent Manisekaran to his house with some edibles for his children. Manisekaran went to the house of Natesan and finding the deceased in the petty shop, he handed over the edibles to her and she took the edibles and went into the house. Natesan left his tailoring shop at about 8.30 p.m. and reached the house at about 9 p.m. Manisekaran was at that time standing in front of the petty shop and Natesan also stopped there and started talking to Manisekaran. When Natesan was talking to Manisekaran, he heard a noise from inside the house and he immediately rushed into the house. On entering the house, he was the appellant standing with a knife in his right hand and asking the deceased to have sexual intercourse with her (sic) and threatening her that if she refused, he would kill her. The deceased defiantly stated that she would refuse to submit to him even if she were to die. Natesan, on seeing this shouted to the appellant "chandal : this is an atrocity". The appellant thereupon threatened that he would stab Natesan also, if he came near him. The appellant then tried to stab the deceased with the knife and in her effort to ward off the attack, she received three stab wounds on her left hand forearm. Natesan did not take any steps to save the deceased, but, to use his own words "stood a little bit away". The appellant then stabbed the deceased twice on the left side and she fell down crying 'ayyo amma' with her face downwards. Even after she fell down, the appellant again stabbed her thrice on her back and then

left the house. In the mean time, Manisekaran had also come inside the house on hearing the noise and he also witnessed the stabbing of the deceased by the appellant. When the appellant was running away after stabbing the deceased, he was seen by three persons, namely, Angamuthu, Madhavan and Sunderarajan, who were sitting at Mariamman Temple situate in the same street on which the petty shop was situate. When they saw the appellant running with a knife in his hand, they questioned him and he replied stating that he had stabbed the wife of Natesan tailor and wreaked vengeance. Angamuthu, Madhavan and Sunderarajan thereupon proceeded to the house of Natesan and saw the deceased lying with her legs inside the house and her head and body in the verandah. They asked Natesan as to why he was standing quietly when the appellant was running away stating that he had stabbed Natesan's wife. Natesan narrated to them the details of the incident and then a taxi was brought and Natesan, Manisekaran and Angamuthu placed the deceased in the taxi for taking her to the hospital. However, on the way, the deceased died and so Natesan asked Manisekaran and Angamuthu to take the deceased to the hospital and he proceeded to the police station to lodge the first information report. Soon after the lodging of the first information report, the appellant, according to the prosecution, presented himself at the police station with the knife and the police arrested him and seized the knife as also the shirt and pant which he was wearing. The knife was seized under mazahar Ex P-10 and the pant and shirt under mazahar Ex P-11. These two mazahars were attested by A. Saleem and Rajarathnam. The appellant was thereafter chargesheeted for the offence of murdering the deceased and he was convicted and sentenced to death by the learned Additional Sessions Judge, Salem. The appellant preferred an appeal to the High Court of Madras and the case was also referred to the High Court for confirmation of the death sentence. The High Court confirmed the conviction and sentence of death passed on the appellant. Hence the present appeal by special leave obtained from this Court.

4. The conviction of the appellant rests on the oral testimony of Natesan and Manisekaran who claimed to be eyewitnesses to the murder of the deceased. Both the learned Additional Sessions Judge as well as the High Court have believed the evidence of these two witnesses and ordinarily we would be loath to disturb the concurrent view taken by both these courts as regards the appreciation of their evidence, but we find that there are inherent improbabilities in the story put forward by these two witnesses and we do not think it would be safe to act upon their uncorroborated testimony. In the first place, it is difficult to believe that the appellant was so inflamed with passion as to demand sexual intercourse with the deceased who happened to be the wife of his cousin, and that too, not while she was alone, but in the presence of her husband. Even if he was made with lust, he would not have chosen to come at this particular time, namely, 9 p.m. for making advances to the deceased, when he must have known that her husband Natesan would in all probability be at home. In any event, when Natesan came into the house, the appellant would have run away and not continued to insist that the deceased should submit to sexual intercourse with him. The entire story appears to be highly improbable and inconsistent with the ordinary course of human nature. Then again, look at the conduct of Natesan on seeing this highly explosive situation. He finds that the appellant is demanding sexual intercourse with his wife and is threatening her with a knife in his hand. And yet, he does not step out of the house and shout for help. He does not even try to go to the rescue of the deceased. He silently and shamefully watches his wife being murdered by the appellant. He is not alone in the house. Manisekaran has come in the meantime, with the result that there are two persons on his side and yet, both of them quietly watch the proceedings without making any attempt to save the deceased. This conduct is highly unnatural and we find it difficult to accept it.

5. It may be noted that Manisekaran's presence at the time of the incident is rather unusual. Manisekaran was, according to his evidence, working as an apprentice in the tailoring shop of

Natesan, and it is difficult to believe that he should have been at the house of Natesan at 9 p.m. after tailoring shop was closed. Manisekaran was admittedly not staying with Natesan. He was living in a house which was little distance away from the house of Natesan. He was living in a house which was little distance away from the house of Natesan. He would ordinarily go back to his house after the tailoring shop was closed. But, in order to make Manisekaran an eyewitness, the prosecution came forward with the story that he was sent by Natesan with edibles for his children at 8.15 p.m. This is a tall story which is difficult to believe. There is no reason why at 8.15 p.m. Manisekaran should have been asked by Natesan to purchase edibles from the market and carry them to the house for the children. In all probability the children would have finished their meals. Even if Manisekaran carried edibles to the house of Natesan, there is no reason why he should have waited there for half an hour from 8.30 p.m. to 9 p.m. in order to be able to witness the incident. It is again strange and unusual that though Manisekaran saw the appellant stabbing the deceased, he did not utter any shout or attempt to run out of the house for purpose of seeking help for the deceased. We are not at all satisfied that Manisekaran was an eyewitness to incident and his testimony cannot be relied upon for the purpose of supporting the conviction of the appellant.

6. The oral testimony of Natesan and Manisekaran was sought to be supported by the evidence of Angamuthu. But we do not think that the evidence of Angamuthu is of such a nature as to inspire any confidence. In the first place, out of three persons, namely, Angamuthu, Madhavan and Sunderarajan, who were supposed to have come to the house of Natesan after the stabbing of the deceased, Angamuthu alone was examined as a witness. Secondly, the story narrated by Angamuthu is inherently improbable. What Angamuthu said was that when he and others were sitting at the Mariamman Temple. They saw the appellant running away with a knife in his hand and when questioned, the appellant said that he had stabbed the wife of Natesan tailor and wreaked vengeance. Now, it is difficult to believe that after committing the murder of the deceased, the appellant would be running in the open street holding in his hand, for everyone to see, the knife with which he had stabbed the deceased. Moreover, when he is questioned as to why he is running away, he would hardly stop for the purpose of answering the question and boastfully proclaim that he had killed Natesan tailor's wife and wreaked vengeance. The entire evidence of Angamuthu in this regard sounds highly improbable and we find ourselves unable to accept it.

7. The prosecution relied strongly on the evidence of recovery of the knife from the appellant. But this evidence is also far from satisfactory. The recovery of the knife was made under mazahar Ex. P-10 which was attested by A. Saleem and Rajarathnam. Now, out of these two witnesses only one came to give evidence, namely, A. Saleem. He stated that at the time of the incident he was in his shed carrying out repairs to the lorry of Rajarathnam and when they heard about the incident, they proceeded towards the hospital, but on the way then learnt that Natesan had gone to the police station and so they also went to the police station. Whilst they were at the police station, the appellant came running to the police station with the knife in his hand and gave a statement and then the Head Constable seized the knife under mazahar Ex P-10 which was signed by both of them. Now it is difficult to accept this evidence at its face value. In the first place, it is difficult to see why A. Saleem and Rajarathnam should have gone to the police station on their own, merely on learning about the incident. It is not stated by A. Saleem that he was in any way friendly with Natesan so that on hearing about the occurrence, he would be induced to go to the police station in order to help Natesan. It is a well-known fact that ordinarily people do not willingly go to the police station unless there is some compelling reason to do so. And even if A. Saleem had some reason to go to the police station, why should Rajarathnam also have accompanied him? It is also rather significant that the Head Constable, who prepared the mazahar Ex. P-10, did not even bother to take down father's name and address of Saleem and Rajarathnam. He did not know these two witnesses before

and if he did not take down their addresses, it is difficult to understand how he could hope to be able to secure their presence at the time of the trial. Then again, if we look at the mazahar Ex. P-10, it appears to be a suspicious document. The words "blood stained" seem to have been added subsequently on the back side of the mazahar Ex. P-10 and it does appear from the way in which the last paragraph has been compressed in order to accommodate it within the space above the signature of Saleem that the signature of Saleem and Rajarathnam were first taken on a blank sheet of paper and then the contents of the Mazahar Ex. P-10 were written out. The learned Additional Sessions Judge also doubted the genuineness of the mazahar Ex. P-10 and declined to place any reliance on the recovery of the knife. The High Court unfortunately did not refer to this infirmity in the prosecution evidence. We are afraid it is not possible to place any reliance on the recovery of the knife from the appellant and if the evidence in regard to the recovery of the knife is suspect, it would equally be unsafe to place reliance on the evidence in regard to the recovery of the shirt and the pant.

8. It would thus be seen that the evidence led on behalf of the prosecution is wholly unsatisfactory and it cannot be regarded as sufficient to found the conviction of the appellant for the murder of the deceased. The appellant, must, therefore, be acquitted of the offence charged against him.

9. We accordingly allow the appeal, set aside the order of conviction and sentence recorded against the appellant and acquit the appellant of the offence of murder of the deceased. We direct that the appellant be set at liberty forthwith unless he is required in connection with some other offence.

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