

In Re: Madegowda

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Court : Karnataka

Decided On : Aug-02-1956

Reported in : AIR1957Kant50; AIR1957Mys50; 1957CriLJ521

Judge : Padmanabhiah and ;Srinivasa Rao, JJ.

Acts : [Evidence Act, 1872](#) - Sections 5, 24, 25 and 27; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164, 164(3), 367 and 533; Indian Penal Code (IPC) - Sections 34, 302 and 326

Appeal No. : Criminal Appeal No. 76 of 1955

Appellant : In Re: Madegowda

Advocate for Def. : Addl. Asst. Adv. General

Advocate for Pet/Ap. : B.Y. Neelegowda, Adv.

Judgement :

Padmanabhiah, J.

1. The present appellant, who was A-1 in Mandya Sessions Case No. 7 of 1955, stands convicted and sentenced to undergo rigorous imprisonment for five years by the learned Sessions Judge, Mysore Division, for an offence under Section 326 of the Indian Penal Code, and the case for the prosecution was that he (appellant-accused) on the night of 21-1-1955 assaulted his co-brother Manche Gowda alias

Kenge Gowda with an axe M. O. 1 at Mullahalli and Malavalli Taluk and that he thus caused grievous hurt to the deceased punishable under Section 326, I. P. C.

2. Along with the appellant, there were 10 other persons who were also arraigned as accused, the case against them being that they intentionally caused the death of the said Manehegowda alias Kenge Gowda in furtherance of their common intention and that they thereby committed an offence under Section 302, I. P. C. read with Section 34, I. P. C. Accused 2 to 11 have been acquitted by the learned Sessions Judge and therefore we will concern ourselves only with the conviction of the present appellant.

3. The main point that arises for consideration is whether the guilt has been brought home to the appellant. From a perusal of the evidence, it appears to us that the conviction of the appellant cannot be sustained. Admittedly there is no direct evidence to implicate the appellant with the offence alleged. The conviction has been based on some unsatisfactory circumstantial evidence and on the alleged admissions of the appellant.

The materials made use of by the learned Sessions Judge for convicting the appellant are Ext. P-10, an alleged statement of the appellant given before P. W. 4, the Sub-Inspector of Police in the Police Station at Malavalli. Ext. P-30, an alleged confession made by the accused in the presence of P.W. 22 the then First Class Magistrate, Maridya, and on the seizure of a blood-stained axe M. O. 1 from the possession of the accused. We will now proceed to consider the probative value of these statements and circumstances and see whether on the basis of these materials, the conviction of the appellant can be sustained. In our view, the learned Sessions Judge was not right in convicting the appellant on these doubtful materials.

4. The appellant is said to have appeared before P. W. 4 in the Police Station at Madavalli at 1-30 A.M. on 21-1-55, the date of the occurrence, and made a statement as contained in Ext. P-10, the admissible portion of which is said to prove the presence of the accused on the scene of occurrence with the deceased, and the ill-will that existed between the accused and the deceased, The contention urged on the side of the defence is that the statement as found in Ext. P-10 is

inadmissible under Section 25 of the Indian Evidence Act. We are not in full agreement with the proposition of law enunciated by the learned counsel for the accused.

5. Section 25 of the Evidence Act runs thus:--"No confession made to a police officer shall be proved as against a person accused of any offence.' According to this section, no confession made to a police officer shall be proved as against a person accused of an offence except to the limited extent as provided in Section 27 of the Evidence Act. Therefore the prohibition enjoined by Section 25 of the Evidence Act is directed against proof of confessions made to a police officer. That section does not prohibit the proof of any other matter unconnected with the confession of the crime.

6. The admissibility of Ext. P-10 or its validity cannot be questioned under Section 25 of the Evidence Act inasmuch as the portion in the nature of a confession of guilt by the accused has been excluded from consideration by the learned Sessions Judge and he has not made use of any such confession in convicting the present appellant. From the admissible portion of Ext. P-10, the learned Sessions Judge seems to have inferred the guilt of the appellant. We do not think that such a course as adopted by the learned Sessions judge is irregular though we may not agree with him that Ext. P-10 gives rise to any such inference.

We are also unable to countenance the argument advanced on the side of the prosecution that any statement of an accused made to the police before he is actually implicated, and when that statement is taken down as the first information of the offence, would not become inadmissible under Section 25 of the Evidence Act In this connection, we may refer to a case reported in *Lal Khan v. Emperor*, AIR 1948 Lah 43 (A). Their Lordships of the Lahore High Court have therein held that where an accused person himself makes a statement which is taken down as a first information report, the statement is inadmissible against the accused as it amounts to a confession to a police officer.

We would also like to refer to a case of the Nagpur High Court reported in *Bharosa Ramdayal v. Emperor*, 193 Ind Cas 6: (AIR 1941 Nag 86) (B), which was also a case where the accused after committing murder went to the Police Station and

lodged the first information of the crime and that report contained statements in the nature of confessions and also statements having no connection with the actual narrative of the crime. Their Lordships held that statements in the nature of confessions cannot be admitted. Again, a case of this Court in 11 Mys LJ 438 (C), further goes to negative the contention urged on the side of the prosecution that a confession made to a police officer by a person when he is not accused of any offence is admissible subsequently when he is accused of an offence. Their Lordships of this Court have held to the contrary in the above case.

7. The fact of the appellant having appeared before P.W. 4 on 21-1-55 as alleged on the side of the prosecution appears to us highly doubtful. In this connection, we would like to refer to the evidence of the Investigating Officer, P.W. 26. He has stated that his investigation did not disclose two distinct offences against A-1 on the one side and A-2 to 11 on the other, and that the offence committed by this accused was during the course of the same transaction; and it was also conceded by the learned Assistant Advocate-General at the time of arguments that there were not two incidents but only one incident in which all these accused took part.

It is significant to note that none of the witnesses who have been examined for the prosecution in support of the charge against A-2 to A-11 have made any reference to the presence of A-1 on the scene of occurrence or to his having taken part in the assault on the deceased. It was not even suggested either in the trial Court or in this Court that the prosecution witnesses have been won over by A-1.

Therefore the non-mention of the name of the accused by these witnesses as one of the assailants goes to conclusively establish that the appellant did not take any part in the assault against the deceased. When that is so, we very much doubt whether the appellant would have gone to the police station and given a statement as contained in Ext. P.10. Under these circumstances, we are of the view that no adverse inference can be drawn against the appellant from what is contained in Ext. P.10.

8. Coming to the next document, Ext. P-30, we think that this also does not help the case for the prosecution. In recording Ext. P-30 the learned Magistrate, P. W. 22 has not complied with the provisions of Section 164 of the Criminal Procedure

Code. Section 164 (3) inter alia provides that a Magistrate shall before recording a confession explain to the person making it that he is not bound to make a confession and that if he does so, it may be used as evidence against him. In the present case, from a perusal of Ext. P-30 it is seen that the warning contemplated under Section 164 (3) has not been given before recording the confession but that it is given after the accused had confessed the guilt.

The possibility of the accused refraining from making the confession if the warning had been given previously as contemplated under Section 161 (3) cannot be ruled out. The way in which the confession has been recorded offends the provisions of Section 164 (3) of the Criminal Procedure Code and has also resulted in prejudice to the accused and therefore the confession Ext P-30 must be held invalid. Further it is seen from Ext. P-30 that the learned Magistrate who recorded the confession did not apprise the accused before he commenced recording it that the accused was in the free atmosphere of a Magistrate's Court.

That such a fact should be made known to the accused is expounded in the case reported in 17 Mys LJ 238 (D). This omission on the part of the learned Magistrate seems to take away much of the force of the confession statement.

9. Another circumstance which goes to minimise the importance of Ext. P-30 is that the confession of the accused has been recorded at a time when the police were in the know of facts mentioned in the confession. As sworn to by the Sub-Inspector of Police P.W.4, the accused was arrested at about 4-30 A.M. on 21-1-55. He was produced by P.W. 26, the Investigating Officer, before the Magistrate P.W. 22 on 27-1-1955. As disclosed in the evidence of the Investigating Officer, he had examined most of the material witnesses by that date.

The observation of the learned Judges of this Court in the case cited above, 17 Mys LJ 238 (D), to the effect that much of the force of the confession Statement is taken away if what is stated in the confession was already known to the police before the confession was recorded, applies to this confession with all force. The manner in which the questions were put by the learned Magistrate P.W. 22 to the accused during the course of recording Ext. P-30 and the answers elicited, indicate that the accused was subjected to a kind of cross-examination at the

hands of the learned Magistrate. It is really surprising that a Magistrate of the standing of P.W. 22 should have committed these serious irregularities in recording such a simple confession as Ext. P-30.

10. M.O. 1 is the axe said to have been surrendered by the accused to the police when he appeared before the police on 21-1-55. For reasons already mentioned, we have doubted the very fact of the accused having appeared before P.W. 4. Even assuming that the accused was found in the possession of M.O. 1, it cannot be concluded in the absence of other corroborative evidence that the appellant assaulted the deceased with M.O. 1. No doubt, the evidence discloses that the deceased was keeping the wife of the accused and that there were some misunderstandings between the two in that connection.

Assuming that it is so, that by itself cannot give rise to the inference that the said ill will prompted the accused to assault the deceased in the way he is said to have done. The various circumstances relied on by the prosecution and which found favour with the learned Sessions Judge, do not, in our opinion, establish the guilt of the appellant beyond doubt. The nature of circumstantial evidence required to be the basis of a conviction is laid down in *Kedar Nath v. State of West Bengal* : AIR 1954 SC 660 and *Hanmant Govind v. State of M.P.* : 1953 CriLJ 129. Again we have got rulings of this Court on the same point reported in 7 Mys LJ 95 (G); 8 Mys LJ 379 and *In re Chikka Byre Gowda*, ILR (1955) Mys 372: (AIR 1955 Mys 119) (1), wherein it is pointed out that in cases dependent on circumstantial evidence, to justify the conclusion of guilt the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

In this case, the circumstantial evidence does not come up to the standard indicated in the above decisions. The evidence does not exclude the possibility of the accused being innocent. At any rate, we entertain much doubt regarding the complicity of the accused in the offence alleged against him, and he is therefore entitled to the benefit of that doubt.

11. In the result, the conviction of the appellant and the sentence passed on him are set aside and the accused stands acquitted. This appeal is allowed and the

bail bonds are cancelled.

12. Appeal allowed.

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