

Deveeramma Vs. State

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SooperKanoon Citation : sooperkanoon.com/372444

Court : Karnataka

Decided On : Oct-27-1959

Reported in : AIR1960Kant199; AIR1960Mys199; 1960CriLJ1108; ILR1959KAR978

Judge : K.S. Hegde and ;M. Ahmed Ali Khan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 164 and 174

Appeal No. : Criminal Appeal No. 351 of 1957

Appellant : Deveeramma

Respondent : State

Judgement :

Hegde, J.

(1) The appellant was tried for the murder of her daughter-in-law, in Mandya Sessions Case No. 5 of 1957 on the file of the learned Sessions Judge, mysore. She was convicted under the second part of S. 304 I.P.C. and sentenced to undergo rigorous imprisonment for a period of three years. She has appealed to this Court against her conviction and sentence.

(2) The accused has two sons. The eldest son Sivappa had married the deceased about two years prior to the occurrence. The prosecution case is, that even since the marriage, there were constant quarrels and bickerings between the mother-in-law and the daughter-in-law. The accused is alleged to be one of those proverbial mother-in-law. It is said that the deceased was made to work from morning to evening without any rest; she was harassed, abused and beaten; due to the ill-treatment meted out by the accused the deceased several times ran away from her husband's house and sought shelter at her parents house; but on each of those occasions the deceased was persuaded to go back to her husband's house with persons of better treatment; but these promises were never kept up.

The further case for the prosecution is that on 16-6-57 the deceased was made to toil as usual from morning to evening; on that day her father had sent P.W. 9 Madappa, a cousin of the deceased with certain religious ceremony in his house on the next day; P.W. 9 had conveyed this information to the deceased and asked her to take the permission of her mother-in-law to go to her father's house, but when the deceased requested the accused to permit her to go to her father's house that evening, that request was unceremoniously turned down and she was asked to wash the clothes: in obedience to the mother-in-law's command the deceased washed the clothes till evening; a little before sun-set the accused happened to return with her sheep after grazing them; then the deceased asked her (accused) whether the washed clothes should be dried immediately; this provoked a volley of abuses from the accused who took the deceased to task for not drying the clothes as and when they were washed; provoked by the behaviour of the accused, the deceased in turn called names to the accused; infuriated at this the accused took a stone which was lying nearby a stone which was about the size of a palm, and threw it at the head of the deceased; the stone struck the temple of the deceased; on receiving the blow the deceased fell down dead; thereafter the accused pushed the dead body into the tank and went home; during the night the accused told her son Sivappa that the deceased must have gone to her father's house without her permission; on the next morning even before others had got up from their bed the accused went to the tank in question and there she saw the dead body of her daughter-in-law floating; soon after she went to the house of the Village Patel and informed the Patel's son P.W. 5 Shivanna, as the

Patel was absent from the village, that her daughter-in-law had accidentally slipped and fallen into the tank and that her dead body was floating in the tank.

P.W. 5 recorded this information (Ex. 8) and sent a report to the Mandya Rural Police Station. On receipt of this report, S. 1. Narayan went to the scene of occurrence and held an inquest over the dead body of the deceased and thereafter submitted a report under s. 174 of the Criminal Procedure Code. After the inquest was over, he sent the dead body to the Medical Officer at Mandya for post-mortem examination. The Post-mortem examination revealed that the deceased must have died due to external violence. The post-mortem examination disclosed the following injuries:

'(1) A horizontal depressed scar over the right cheek extending from the lobules of the ear midway between the mouth and the ear 2' long and 1/2' broad. The skin over the scar was parchment like and a section showed extravasation of blood to surrounding tissues and the clot could not be easily washed off from the tissues,' and

'(2) A punctured wound 1/2' in diameter over the left cubital fossa. The punctured wound communicated with blood vessels below and a section showed extravasation of blood and blood was difficult to wash out.'

The doctor opined that the death was due to intracranial haemorrhage as a result of external violence. After receiving the P. M. report, the Investigating Officer elicited some more information from P.W. 3. The opinion of the doctor gave a new turn to the case. The suspicion of the police naturally fell on the accused and her son Shivappa. Soon after they were found absconding. It is in evidence that the accused was arrested at a place called Chikkayana Hundi, several miles away from her residence on 28-6-57. Her son Sivappa was also arrested on that date. The evidence of P.W. 15 the Investigating Officer shows that after arrest the accused made a statement before him and thereafter took him and the deceased was found and from the side of the tank she picked out a stone (M. O. 1) and produced the same before P.W. 15. After the seizure of M. O. 1, P.W. 3 was again questioned. The accused was produced before the First Class Magistrate, Mandya, P.W. 2, V. Shankarappa on 6-7-57 for recording her confessional

statement under S. 164 Cr.P.C. On that day he remanded her to judicial custody giving her time for reflection till 10-7-57. On 10-7-57 the accused made a confessional statement before P.W. 2 and the same is marked as Ex. P4.

(3) In this case there are no eye-witnesses to the commission of the offence. The evidence available against the accused can be classified under four heads i.e., (1) Her confessional statement made before P.W. 2 under S. 164 Cr.P.C. And marked as Ex. P. 4; (2) The discovery of M. O. 1 on the information supplied between the accused; (3) The enmity that existed between the accused and the deceased; and (4) The absconding of the accused from about 18-6-57 till 28-6-57.

(4) In this case the confession in Ex. P-4 is the most important piece of evidence. Before any reliance can be placed on it the prosecution must prove that it was voluntarily made and the Court must be satisfied that the facts stated therein are true. As mentioned earlier the accused was produced before P.W. 2 on 6-7-57 and he immediately remanded her to judicial custody giving her time for reflection till 10-7-57. On 10-7-57 she was produced before him again at about 11 A. M.

But as P.W. 2 was busy with some meeting, he commenced recording her statement only at 5 P. M. P.W. 2 assures us that he had given the accused the necessary warning and that he was satisfied that she made her statement voluntarily. He is a responsible officer. The record maintained by him shows that he had discharged his duties not in a mechanical manner but scrupulously and honestly. He had clearly told the accused that she was not required to make a statement and any statement that she may choose to make was likely to be used against her. By questioning her he had satisfied himself that the accused's desire to make a statement was not prompted or compelled by others. P.W. 2 appears to have faithfully complied with all the requirements of the law. We are not shown any material or circumstances from which we could reasonably draw the conclusion that the statement was not voluntarily made.

(5) Sri V. Krishnamurthy, the learned Counsel for the appellant took strong exception to the delay in producing the accused before the Magistrate for recording her confessional statement. According to him, the accused is likely to have confessed to the Police on 28-6-57, on the day when M. O. 1 was recovered,

yet she was not produced before the Magistrate till 6-7-57. He contended that once an accused expresses a desire to make a confession before a Magistrate, the police are duty bound to produce her immediately before a Magistrate for Cr.P.C. In support of his contention he relies on the decision in Savlimiya Miyabhai v. Emperor, AIR 1944 Bom at page 338, wherein a Bench of the Bombay High Court observed:

'Under S. 164 when an accused person desires to make a confession, he should be brought before the Magistrate and the confession should be taken by him after taking care that no policeman was present in Court. Although the section does not say anything as to when the accused can be brought before the Magistrate after he show his willingness to confess, there is no doubt on general principles that the accused must be sent to Magisterial custody as soon as he expresses such willingness. It may be that the Police might not have at that time started any investigation or that the investigation might be incomplete but there is no justifiable reason why the police should keep an accused person in their custody for several days after they know that he wanted to confess, merely on the ground that his presence was necessary for further investigation. In all cases where the investigation by the police is either conducted or continued after the accused expresses his desire to confess, and if ultimately after the investigation is over the accused does make a confession, there would not be an unreasonable ground for apprehension that the confession was made to fir in with the result of the investigation so that it may be regarded as having been corroborated. For that reason it is necessary that the accused should be sent to the Magistrate as soon as he express his desire to confess and the Magistrate, at the time of recording the confession, should ascertain when the accused first expressed his willingness to confess and to record it in the confession.' (as summarised in the head-note).

Reliance is also placed on the decision of Mukerji J. of the Calcutta High Court in Emperor v. Panchakari Dutt. AIR 1925 Cal 587 in support of the same proposition. In the instant case, we have no material on record from which we could ascertain the day on which the accused expressed her desire to make a confession before a Magistrate. Neither the accused had stated that fact in her statement nor was it elicited from the Investigating Officer. All that the Investigating Officer was asked

is, why he did not produce the accused for recording a confession earlier than 6-7-57.

To this question he answered that he required the presence of the accused for further investigation and according to him once an accused is produced for making a statement under Section 164 Cr.P.C. she will not be returned back to the police custody. In the Bombay case referred earlier the learned Judges pointed out a Circular Order issued by the Bombay High Court under which an accused can be returned to the Police custody even after he had given a confessional statement. We asked Sri V. Krishna Murthy whether a similar Circular Order had been issued by the former High Court of Mysore. He informed us that there are no such orders. We think it is as it ought to be.

Hence the reasoning adopted by the learned Judges in Savlimiya Miyabhai's case AIR 1944 Bom 338 is not of assistance in this case. Moreover in this case we have no positive material from which we can ascertain when the accused first expressed her desire to make a confession before a Magistrate. In the absence of such evidence on record we requested both the Government Pleader and the learned counsel for the Appellant to examine the Case Diary both of them informed us that the case diary for 6-7-57 contained a note to the effect.

'That as the accused was volunteering to give her confessional statement before a Magistrate, she will be produced before the Magistrate for recording her confessional statement.'

From this note it is not clear when she first expressed her desire to make a confessional statement. It was also pointed out to us, that the Magistrate had failed to ascertain from the accused the day, on which she first expressed her desire to give the confession. It is desirable to elicit this information though it is not very common in this part of the country. But we do not think that this omission would in any manner vitiate the confession given voluntarily. We may mention at this stage that in Savlimiya Miyabhai's case. AIR 1944 Bom 338 the learned Judges even after noticing this and other defects in the confessional statement given by the first accused therein still made use of the same in conforming his conviction.

While arguing this point the learned Counsel for the Appellant tried to draw support for his arguments from the observations of Venkataramana Iyer, J. in the case of *Nathu v. State of Uttar Pradesh*, : 1956 CriLJ152 wherein his Lordship has observed that the prolonged custody of the accused immediately preceding the making of the confession by him is sufficient, unless it is properly explained by the prosecution, to stamp it as involuntary. In that case the accused was in police custody for over two and half months before he gave his confessional statement.

In that case there were also other circumstances militating against the voluntary character of the statement given. Whether a confessional statement was voluntarily made or not is essentially a question of fact. In ascertaining the voluntary nature of the statement, different tests will have to be applied to different sets of facts. The tests evolved by constant process of judicial thinking are important. But in the very nature of things there can be no rigidity about them. What test is best applicable to a given set of facts is for the Judge of facts to decide. It may be noted that in this case no contravention of either Section 164 Cr.P.C. or any rules framed, or any Circular orders issued, is alleged.

(6) The next point urged is, that the learned Magistrate did not give an assurance to the accused that she would not be sent back to the police after the confessional statement was made. There is no force in this contention. This contention was not urged in the Court below. The accused is the best person to say what influenced her mind when she gave her statement. When the accused was questioned under Section 342 Cr.P.C. about Ex. P-4 she gave the following explanation:--

'I did not make a statement like that before the Magistrate. No, I have made a statement as recorded by the Magistrate. As I made a statement accordingly before the Magistrate. But I have not made it (of my own accord)'

But P.W. 15 was not questioned about the alleged police pressure. From the available facts, it is clear that the statement in question was made voluntarily without any compulsion or pressure from any quarter.

(7) It is then urged that the confession in question is vitiated because the same was recorded after Court hours. In this connection, reliance is sought to be placed

on the decision of this High Court in Shivbasappa Rayappa v. State, AIR 1959 Mys 47 wherein their Lordships observed that:

'It is a highly undesirable practice to produce the accused for recording confessional statements after Court hours.'

In that case the accused had been produced before the Magistrate at 8-30 P. M. There were also other circumstances throwing doubt on the voluntary character of the confession made. The next case relied on is the one reported in Shantappa Yamanappa Samagar v. State of Mysore, 37 Mys LJ 462. In that case, it was remarked:

'Recording a confession out of court hours and not noting in the record of the confession that the accused had been given two days' time for reflection as required by the Circular Orders of the Bombay High Court are not immaterial omissions or irregularities.'

In the said case, the accused had been produced before the Magistrate at 9 O' clock in the morning. In both these decisions this Court was not able to place reliance on the confessions in question for various reasons mentioned in the judgments. The circumstance that the accused in question had been produced before the Magistrate either after or before Court hours was one of the several circumstances taken into consideration by the Court in assessing the voluntary character of the statement made. These decisions have not laid down as a proposition of law that all confessions recorded either before or after court hours are per se bad. The time, at which and the place where, the confession is recorded are two of the several circumstances to be considered in assessing the voluntary character of the confession made. In the instant case, the accused was produced before P.W. 2 at 11 A. M. For reasons explained by the learned Magistrate he was not able to examine her till about 5 P. M. Hence, we do not think that there was anything illegal or improper.

(8) This takes us to the question whether the facts stated in Ex. P-4 are true. The story told therein appears to be full and complete. There is a ring of truth in the version given. It is full of details as to what happened on the day of the

occurrence. Those details could not have been imagined or woven out by imaginative minds and thereafter tutored to the accused. No portion of the confession is shown to be false. Prima facie the facts stated in Ex. P-4 appear to be true.

(9) Being a retracted confession it requires to be corroborated. The corroboration required is not merely on immaterial particulars but must be useful in connecting the accused with the crime. It is not the law that confession should be corroborated in every respect. Otherwise the confession becomes superfluous. Nor is it necessary that the corroborating facts or circumstances should have been ascertained subsequent to the confession. See *Kushal Rao v. State of Bombay*, : 1958 CriLJ106 . Bearing in mind these requirements we shall examine the corroborations available in this case. In the confession statement the accused had stated:

'While I was taking my food, she (deceased) said to me 'My elder brother Mariyappa has come to take me for the nuptials and he told me to ask you about it. I said 'your husband has gone for work, your brother-in-law has gone for marriage.' So I told Parvathamma to tell her brother that as she (Parvathamma) was required to go to graze the buffalo and sheep and that she could not come have not furnished the household work.' And I said to Parvathamma. 'It is not possible to send you along with your elder brother.'

This portion of the confession is amply corroborated by the evidence of P.W. 9 Mariyappa. The next relevant portion in Ex. P-4 is:

'Parvathamma said to me, 'there is endless work in this dirty house, howsoever hard I may work, the work will not be finished, you do not send me to my father's house, you engage the in work by always giving some work, you only take work from me, you did not send me in the afternoon with my elder brother, you, a sinful woman, you did not sent me thinking that I would take my elder brother as my husband. Is not so?' I scolded her, 'what you, widow where my 'Savathi', you have been abusing me in this way.' Again, she abused, you 'holegithi' etc.' I could not tolerate her abuses. 'When I picked up a stone which was lying at the edge of the well and came running. Parvathy who was standing in front of me, moved aside a

little. I took the stone and hit on Parvathamma on the right side of her face. She was hit on the right side of her head. Parvathy fell down immediately after she was hit. She fell down immediately after she was hit. She fell down as having lost consciousness.' I drove away the buffalo and sheep and stood there looking at Parvathamma, after she fell down, Parvathamma, who fell down cover got up at all. She was lying on the edge of the well. She was dead. By that time it was evening. It was drizzling. I thought 'What an act had I committed? I did not hit her so that she should die. 'I became afraid, because my daughter-in-law died.' Then I pushed her into the well, so that the people may think that she had gone to the well to wash the clothes and fell down having slipped her foot." (Underlining by us (here in ' ')).

Let us see how far these admissions are corroborated by other evidence in the case. The medical evidence shows that the injuries found on the right temple of the deceased could have been caused by a hit with M. O. 1. It is further proved by medical evidence that the injury in question could have resulted in intracranial haemorrhage which in its turn could have caused instantaneous death. We have further the evidence of witnesses to show that the dead body of the deceased was found floating in the tank on the next morning.

In addition, we have the evidence of P.W. 15, the Investigating Officer and P.W. 6 Patel Lingegowda, who swear that on 29-6-57 the accused gave a statement before P.W. 15 and thereafter took him and the panch witnesses to the trunk and picked up M. O. 1 and produced the same before the Investigating Officer. These are important circumstances which corroborate the confession in material respects. There is no reason to disbelieve the evidence of P.W. 6 and P.W. 9. Sri V. Krishnamurthy, the learned Counsel for the appellant contends that the discovery of M. O. 1 is of no value as no blood was found on it. We do not think that this contention is correct. It is proved that a hit by M. O. 1 could have caused the fatal injury. The recovery of an instrument said to have been used in the commission of a crime, on the information supplied by the accused is by itself important. The evidence of the Doctor coupled with the evidence of P. Ws. 6 and 15 are enough to corroborate the confession made by the accused. The evidence adduced leaves no doubt about the accused's culpability.

(10) The evidence of P.W. 6 Patel Linge Gowda, P.W. 7 Patel Madappa and P.W. 9 Madappa alias Mariyappa shows that there were constant quarrels between the deceased and the accused.

(11) It is also seen from the evidence of P.W. 13 Hutchamma, P.W. 14 Boriah and P.W. 15 the Police Inspector that the accused was absconding for a number of days. This undoubtedly is a small circumstance and that by itself would not be of much assistance to the prosecution. But taken along with the other circumstances it assumes some importance.

(12) It is urged on behalf of the Appellant that the facts proved in this case do not show that the accused could have had the knowledge that death is likely to result as a consequence of her act. The evidence shows that the accused picked up a fairly big stone--of the size of a palm--and threw the same at the head of the deceased. Taking into consideration the nature of the weapon used and the part of the body on which the blow was aimed, the accused must be deemed to have had the required knowledge. Hence the accused is guilty of an offence falling under the second part of Section 304 I.P.C. In the circumstances of this case, we do not think that the sentence imposed is excessive.

(13) In the result, the appeal fails and the same is dismissed.

(14) The appellant is on bail. Her bail bond shall stand cancelled and she shall forthwith surrender and serve the remaining portion of the sentence.

(15) Appeal dismissed.