

In Re: R. Muniswami

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SooperKanoon Citation : sooperkanoon.com/375471

Court : Karnataka

Decided On : Feb-09-1961

Reported in : 1961CriLJ512

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

Appellant : In Re: R. Muniswami

Judgement :

K.S. Hegde, J.

1. The appellant has been convicted both under Section 302 I.P.C. as well as under Section 392 I.P.C in Bangalore Sessions Case No. 32 of 1958 on the file of the Principal Sessions Judge, Bangalore. For the offence of robbery he was sentenced to suffer rigorous imprisonment for ten years and for the offence of murder he was sentenced to suffer imprisonment for life. He challenges the correctness of his convictions as well as the sentences imposed on him.

2. The offence under Section 392 I.P.C. was tried by the learned Sessions Judge with the aid of a jury, whereas the offence under Section 300 I.P.C. was tried by him.

3. The learned Sessions Judge has not discussed the evidence in considering the case of the accused under see. 302 I.P.C. He merely relied on his charge to the Jury. The charge to -the Jury is very short but can hardly be said to be adequate; It

is undoubtedly lacking in details and has failed to comply with the requirements of law. The prosecution case is that the accused decoyed the deceased Lourda Mary alias Lourdamma Mary on the night of 16-11-1958 and robbed and murdered her. We shall presently quote the relevant portions of the charge to the Jury to show how inadequate it is.

But before doing so we may mention that at no stage of the address to the Jury the learned Sessions Judge took pains to explain to the Jury the elements of the offences with which, the accused were charged. We shall say something more about this aspect at a later stage. Now we shall proceed to consider the charge to the Jury. The relevant portions are found in paragraphs 5, 6, 7 and 8 of the charge.

4. Dealing with the question of motive the learned trial Judge observed:

The motive of the crime is said to be the financial urgency that the accused had on 16-11-1958. P. W. 9 Gnana Prakash has stated that the accused had been to his house thrice during the day for demanding a loan from him. When he came in the evening, he brought a bottle containing toddy and offered it to him. The accused made him drink it forcibly. In the statement given at the police station house, he has stated that he and his wife had taken toddy. After drinking toddy, he felt somewhat giddy and he slept in his house. He has no knowledge as to when his wife left his house. This is also contrary to what he had stated at the police station house. P. W. 10 Philomina is the daughter of the deceased who states that she had accompanied her to the house where the marriage was being celebrated- The accused took her and her mother to that place, but she returned to her house. She did not know where the accused was at that time. This is the evidence that had been led to show that the accused and the deceased were together prior to the commission of the crime.

5. Proceeding to the offence proper he said:

The second circumstance relates to the witnesses seeing the accused passing through jewar crop from the direction of the scene of the occurrence. The three witnesses that speak to this incident are P. Ws. Gnana Prakash, Philomina and

Ganesh. P. W. Gnana Prakash states that he went, in Search of his wife and he saw the accused passing through the jewar crop. During the course of the cross-examination, he has admitted that when he went in search of his wife, 50-60 people followed him and some of them had torches. Out of these 50 or 60 persons, only the relatives of the deceased have been examined, for Philomina is the daughter of the deceased and Ganesh is also related to the deceased. In fact, Ganesh was taking food with the deceased, since the last two years. Merely because witnesses are relatives or interested in a case, their evidence should not be discarded. But, at the same time, the evidence of such witnesses should be cautiously scrutinised by you. Whether it was probable or not that P. W. Gnana Prakash and others would have chased the accused or had gone to his house is a matter which I leave it to your mature consideration. P. W. Gnana Prakash says that seeing the accused he cried out 'Muniswamy is running, Muni swamy is running, the brother of Dabba Muniswamy is running'. This fact is not to be found in the police statements of the other witnesses. P. W. HO Philomina is a girl of tender years. There are discrepancies in her evidence, as can be seen from Exs. D-3 and D-3(a) to (d). P. W. 11 Ganesh has stated that nobody addressed or talked to the accused when he was seen passing through the jewar crop. This fact also may be taken into consideration while appreciating the evidence.

6. It would have been desirable if the learned Sessions Judge had enumerated the circumstances put forward, analysed the evidence and marshalled it under the several heads, and thus assisted the Jury to find out which of the circumstances alleged were established and which were not established. More than that he should have guided them about the requirements of circumstantial evidence. He should have warned them that the circumstances established should so connect themselves as to make out a conclusive case against the accused; they should not only be consistent with his guilt but inconsistent with his innocence.

7. Admittedly several independent witnesses who would have given useful evidence have not been examined in the case and no explanation is forthcoming for their non-examination. The learned trial Judge failed to tell the Jury that it is open to them to draw an adverse inference against the prosecution for its failure to examine those witnesses. Further there is no point in telling the Jury that the

prosecution evidence is contradicted by Exs. D-3 to D-3(e). They cannot be expected to remember the contents of those Exhibits. The contradictions in question should not only have been placed before the Jury but explained as well. Their implications as well as their importance should have been explained to Jury.. Proceeding further in paragraph 7 of his judgment, the learned Sessions Judge observed:

The most important piece of evidence in this case relates to the seizure of the bloodstained clothes of the accused and the recovery of the stolen ear-rings from his knicker pocket. Besides Philomina and Ganesh, P. Ws. 5 to 7 (Raju. Mallaih and Jayadev) have tendered evidence in this regard. There have been some discrepancies in the evidence of these witnesses. P. W. 5 Raju states that the accused was taken to the police station with the same clothes on his person, while the other witnesses state that the clothes on his person had been seized and removed. This witness has further stated that a mufflar and a bed-sheet were seized and sealed at the hut and the knicker and the coat were on the person of the accused. P. W. 6 and P. W. 7 have both stated that all the four clothes were seized at the hut only. The other discrepancy relates to whether the mahazar was written inside the hut or outside the hut. P. W. 7 M. V. Jayadev states that he wrote the mahazar sitting just at the threshold of the hut of the accused. P. W. 6 Mallaiah states that the mahazar was written outside the hut. There has also been some discrepancy as to the number of lamps that were in the hut when the mahazar was written. Whether these discrepancy; are material or not is a point which you shall have to consider, for it is only material discrepancies that affect a case and not others.

8. Dealing with the first information in the case the learned Sessions Judge observed in para 8 of his charge to the Jury:

Sec. 154, Cri. P C. requires that, when information relating to the commission of a cognizable offence is given orally to an officer in charge of a police station, it shall be reduced by him to writing and a F.I.R. must be issued under Section 157 of the said Code forthwith. In the instant case, P. W. 8 Sri Narayana Murthy has admitted that after receiving Oral information he deputed Mr. Jayadev, Sub Inspector for the

search of the accused and then got the statement of the informant recorded to his dictation. This means that, when the mahazar was being made at the hut of the accused, the statement of the complainant was being written in the police station house. This is not the proper procedure. Mr. Jayadev ought to have been deputed after the statement of the complainant had been recorded. The law is, that delay in the issue of the F.I.R. makes the circumstances suspicious, but that alone cannot be a ground for rejecting the oral testimony produced in the Court. So, you should keep the point also in mind while assessing the value of the evidence in the case.

9. The learned Sessions Judge's charge to the Jury is open to the criticism that it had all the appearance of story telling rather than an intelligent analysis and a thorough marshalling of the evidence.

10. The learned Sessions Judge did not with sufficient clearness bring home to the Jury the implications of the failure to record the first information at the earliest stage. In short in discharging their difficult task the Jury did not get any assistance from the learned Judge, to which they were entitled to in law.

11. In the present case the evidence against} the accused is entirely circumstantial. As observed by their Lordships of the Calcutta High Court in Emperor v. Mujjaffar Sheikh AIR 1941 Cal 106:

When the guilt of the accused is sought to be established by circumstantial evidence a theoretical discourse of what is circumstantial evidence couched in language which is unintelligible to a mofussil Jury is quite worthless. The Judge should tell the Jury that if the circumstances are capable of a reasonable interpretation consistent with the innocence of the accused then the accused are entitled to be acquitted even if the circumstances raised a strong suspicion against them. He should summarise the circumstances alleged against the accused and ask the Jury to decide whether from these circumstances the only reasonable inference-to be drawn is the guilt of the accused and should tell them that if that is not the only reasonable inference they should acquit the accused.

12. From a reading of the charge to the Jury, the impression gathered is that the learned Session.; Judge himself was not satisfied with the evidence kink before

him. In fact in our opinion the; Jury to return a verdict of not guilty. But the difficulty was that the Jury only knew the outlines of the case but was not sufficiently familiar with the evidence.

13. There is one further and graver infirmity in the charge in question. In no portion of his address, the learned Sessions Judge analysed the elements of 'theft' or 'robbery'. In fact no reference was made to either Section 378 I.P.C. or Section 390 I-P.C. As observed by Sir Arnold White, C.J. in *Mari Valayaa v. Emperor* ILR 30 Mad 44 that

under Section 297 of the Code of Criminal Procedure, the Judge must explain to the Jury all the essential elements of the offence with which the prisoner was charged. An omission to do so is not a mere irregularity within the meaning of Section 537.

14. A somewhat similar view was expressed by a Bench of the Bombay High Court in *Emperor v. Jhina Soma* AIR 1939 Bom 457. The head note to the decision reads:

Under Section 297 it is the duty of the Judge to explain to the Jury all the essential elements of the offences charged against the accused and to give directions on the law so as to make the law clear in relation to the facts of the case and the evidence adduced. Even the mere reading of the sections to the Jury does not amount to explanation of the law. Nor can the Judge rely on the fact that advocates on both sides had explained the law to the Jury. The Judge must lay down the law by which the Jury is to be guided. This provision is imperative, and it cannot be too emphatically stated that in cases tried with the help of a jury it is the clear duty of the Judge to explain what in law are the essential requisites of an offence and what must be proved to constitute that offence. But Section 297 must be read along with the provisions of Section 537 of the Code. It is necessary that the misdirection should be such as to occasion failure of justice as would vitiate the trial or proceedings.

15. In the instant case not only the elements of Section 379 I.P.C. or Section 390 were not explained to the Jury but not even the sections were read out to the jury.

The learned Sessions Judge proceeded on the basis that the jury knew the requirements- of the law which was a wholly wrong assumption. The Jury was entirely left without any guidance on the point. Popular conceptions of 'theft' or 'robbery' may not fit in with legal requirements.

16. But the learned Government Pleader tells us that in spite of the non-directions pointed out we could still uphold the verdict of the Jury as it is not established that the non-directions in question have prejudiced the case of the accused in any manner. In this connection he invited our attention to the decision in Smt. Nagindra Bala Mitra v. Sunil Chandra Roy : 1960 CriLJ1020 . In that case S. K. Das, J. speaking for the Bench observed:

Unless it is established in a case that there has been a serious misdirection by the Judge in charging the Jury which has occasioned a failure of justice and has misled the jury in giving its verdict, the verdict of the jury cannot be set aside.

He further observed:

Sec. 297 imposes a duty on the Judge in charging the jury to sum up the evidence for the prosecution and defence and to lay down the law by which the Jury were to be guided; but summing up for the prosecution and defence does not mean that the Judge should give merely a summary of the evidence; he must marshal the evidence as to give proper assistance to the jury who are required to decide which view of the facts is true.

We have earlier mentioned that the charge to the Jury in this case does not meet the requirements of Section 297 inasmuch as the evidence before the Court was neither marshalled nor analysed; the learned Judge merely summed up the prosecution case.

17. Further this is not a case where we could, say with certainty that the non-directions referred to by us earlier have not vitiated the verdict of the Jury.

18. The more surprising part of the case is that as soon as the Jury returned a verdict of guilty under Section 392 I.P.C. the learned Sessions Judge suddenly proceeded to the conclusion that the accused must be held guilty under Section

302 I.P.C There is no further discussion of evidence. All that the learned Sessions Judge says is:

The charge of murder in this case is inextricably connected with the charge of the offence under Section 392 I.P.C When it is proved that the accused robbed the deceased and caused injuries to her while committing robbery, there can be no doubt that he can be convicted for an offence under Section 302 I.P.C. also. The nature of the stab injuries found on the dead body by the medical expert indicates the intention of the accused.

We are clear that the learned Sessions Judge had abdicated his function to the Jury. It was his duty to-examine the evidence afresh when he was considering the case under Section 302 I.P.C. Nor do we agree with him that the moment the charge of 'robbery' is established the conviction for 'murder' must follow as a matter of course. The requirements of the two offences are not ad idem.

19. For the reasons mentioned above, the judgment appealed against cannot be allowed to stand. We set aside both the convictions under Section 392 I.P.C. as well as under Section 302 I.P.C. and direct a retrial of the/case according to law.

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