SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Antappa

In Re: Antappa

SooperKanoon Citation : sooperkanoon.com/375606

Court : Karnataka

Decided On : Mar-31-1959

Reported in : AIR1959Kant250; AIR1959Mys250; 1959CriLJ1349

Judge : M. Sadasivayya and ;A. Narayana Pai, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164 and 342; Indian Penal Code (IPC), 1860 - Sections 201, 302 and 326

Appeal No. : Criminal Appeal No. 374 of 1957

Appellant : In Re: Antappa

Advocate for Def. : M. Santosh, Govt. Pleader

Advocate for Pet/Ap. : V.S. Malimath, Adv.

Judgement :

Sadasivayya, J.

1. Appellant Antappa had been charge-sheeted before the Magistrate at Yadgir for having committed the murder of his son Girappa, about four days prior to the Ugadi day of 1957. After the necessary preliminary enquiry, the said Magistrate framed a charge against the accused for an offence Punishable under Section 302 of the I. P. C. and committed him to take his trial before the Court of Sessions at Gulbarga. The learned Sessions Judge of Gulbarga who tried the appellant, in

Sessions Case No. 31/8 of 1957 or the file of his Court, modified the charge by adding thereto an additional charge for an offence under Section 201. of the I. P. C., for the accused having buried the corpse on the next day after the offence.

The case of the prosecution was that Girappa who was the son of the accused person had been working somewhere at Bombay and that he used tobe coming now and then to his native village, namely Konakal of Yadgir Taluka and that on such occasions there used to be quarrels between himself and his father the accused; it had been suggested by the prosecution that Girappa was a drunkard and that he used to frequently quarrel with his father demanding money from the latter. The prosecution case was that in consequence of those quarrels, the accused had killed his son Girappa about four days prior to the Ugadi of 1957 and had buried the dead body in the bed of a stream.

The investigation by the Police appears to have started as a result of rumours in the village that Girappa had been murdered by the accused. The accused was arrested on 13-5-1957 by the Police Sub-Inspector P. W. 14; according to the prosecution on the information furnished by the accused, an exhumation took place on 15-5-1957, in consequence of which, portions of a dead body in a highly decomposed stage were recovered from the bed of a stream near Konkal village. According to the medical evidence, the dead body had been buried more than a month previously. There were no eyewitnesses to the occurrence; the prosecution rested their case on three main grounds, namely,--

(1) the evidence of certain P. Ws. including the wife and the twelve year old son of the accused (P. Ws. 5 and 4 respectively), to show that the accused had admitted before them that he had murdered the deceased Girappa;

(2) the confession as per Ex. P-21 made by the accused before P. W. 15 who was the Munsiff-Magistrate. Yadgir, and

(3) the pointing out by the accused person of the place where the corpse had been buried. The accused had pleaded not guilty. In the course of his examination under Section 342, Cr. P. C. by the learned Sessions Judge, the accused retracted the confessional statement by saying that he had been beaten by the

Police and that he had got fever due to that beating and that he does not remember what he told the Magistrate in that condition. He also denied having murdered his son and stated that the case had been cooked up by the Police. The prosecution witnesses who had been expected to speak to the accused having admitted before them about his having murdered, Girappa turned hostile and did not support the prosecution.

There was no direct evidence with respect to the commission of the alleged murder and the learned Sessions Judge was not very much impressed with the evidence which had been let in by the prosecution in regard to the quarrel which had led to the alleged murder of Girappa. From what is stated at para 8 of the judgment, it would appear that the Additional Public Prosecutor had to eon-cede that the circumstantial evidence was not such as to justify an inference of guilt on the part of the accused in regard to the alleged murder. As regards the confessional statement Ex. P-21, the learned Sessions Judge was not inclined to place any reliance on the same for two reasons; firstly, because the Magistrate who recorded this confessional statement had earlier conducted the inquest on 15th May, 1957 and the learned Sessions Judge thought that the accused might have felt that he was not free to state in his confessional statement, anything other than what he had already stated at the time of the inquest; nextly, the learned Sessions Judge took the view that the confessional statement had not been sufficiently corroborated in material particulars.

In consequence of his having taken the above view in regard to the above two aspects of the case, the learned Sessions Judge acquitted the accused of the offence under Section 302 of the I. P. C., but onthe basis of the fact that it was on the informationof the accused that the corpse had been discovered in the bed of a stream and that the medical evidence showed that there was a fracture of the law bone, the learned Sessions Judge held that the accused was guilty of causing disappearance of evidence of an offence under Section 326 of the I. P, C., he convicted the accused for an offence under the second part of Section 201 of the I. P. C. and sentenced him to undergo two years rigorous imprisonment. It is against this conviction and sentence, that the accused had preferred the present appeal.

2. The main contentions which have been urged by Sri Malimath the learned Advocate on he-half of the appellant are, (1) that it has not been established that the dead body is that of Giroppa and (2), that the confessional statement having been excluded by the learned Sessions Judge, there is absolutely no evidence to show that the person disposing of the dead body knew or had reason to believe either that any offence had been committed or that the dead body constituted evidence of the commission of any such offence.

On these grounds, it is urged by him that the appellant is entitled to an acquittal. On the other hand, Sri Santosh the learned High Court Government Pleader appearing for the State while supporting the conviction by the learned Sessions Judge had contended that the learned Sessions Judge was not right in refusing to place any reliance on the confessional statement as per Ex. P-21. He contends that the confessional statement considered together with the fact that it was the accused that pointed out the place at which the corpse was discovered would be sufficient to justify the conviction for an offence under Section 201 of the I. P. C.

3. It is no doubt true that the accused has not made any attempt to adduce any evidence in support of his statement that he had been beaten by the Police, that he had got fever and that while he was in that condition he made the statement before the Magistrate. But, on a careful consideration of the arguments addressed by the learned Advocates, we find that there are certain circumstances in the case which raise very grave doubts about the confession as per Ex. P-21, having been a voluntary one. P. W. 15 Sri Murdikar the Munsiff Magistrate of Yadgir, had taken part in the investigation by having been present at the time of exhumation of the corpse and by drawing up an inquest report as per Ex. P-3 to which he appears to have secured the attestation of the accused.

As pointed out by the learned Sessions Judge at para 9 of his judgment, it was not proper under those circumstances, that the accused should have been produced before the same Magistrate for the confessional statement being recorded. Though P. W. 15, in the course of his evidence, has staged that he told the accused that he was a Magistrate, there is nothing in Ex. P-21 itself to show that the accused had realty been informed of his being in the presence of a Magistrate.

The fact of an accused person having been assured that he is in the free atmosphere of a Magistrate's Court is of the utmost importance for the purpose of determining the voluntariness of a confessional statement.

In a decision reported in re, Shivabasappa Rayappa, AIR 1959 Mys 47 (to which one of us was a party), it has been pointed out that the omission on the part of the Magistrate to make known to the accused that he was in the presence of a Magistrate takes away much of the force of the confessional statement. In regard to a matter of such vital importance it was necessary that the Magistrate should have left on record the fact of his having told the accused that he was in the presence of a Magistrate, so that there may be material on record from which the Court of trial could reach the conclusion as to whether the confessional statement was voluntary. In the very same decision above referred to, it has also been indicated that it is not enough if the conscience of the Magistrate is satisfied as to the voluntary character of the statement of the accused, but it is also necessary that the Magistrate should leave such materials on record as would satisfy the Court that sits in judgment in the case that the confessional statement was made voluntarily.

Again, in Shantappa Yemanappa Samagar v. State of Mysore, Criminal Referred Case No. 6 of 1958 and Criminal Appeal No. 133 of 1958 which was recently decided by us, we had occasion to point out the need for the Magistrate to put down in the record of the confession itself every circumstance and every detail which is necessary for the Court of trial to determine whether the confession was made voluntarily. In the present case, it is in no way improbable that the accused person may very well have been under the impression that P. W. 15 was connected with the Police as he had taken part in the exhumation of the corpse shortly before, ft was very necessary under those circumstances, for P. W. 15 to have made a clear record of his having informed the accused that the accused was in the presence of a Magistrate and that the accused was under no obligation to make any confessional statement. The subsequent statement by P. W. 15 that he had informed the accused that he (P. W. 15) was a Magistrate is not, in our opinion, a sufficient substitute, in the circumstances of the case, for an actual record made at that time alone to show that the accused had been so informed.

We are not satisfied as to the voluntariness of this confessional statement and we think that the learned Sessions Judge was right in refusing to place reliance on Ex. 21.

4. The confessional statement being excluded there is little in the evidence to show either that the corpse was that of Girappa or that the accused had any knowledge or reason to believe that any offence had been committed in respect of the person whose dead body it was. As pointed out by the Supreme Court in Palvinder Kaur v. State of Punjab, : 1953 CriLJ154 , in order to establish the charge under Section 201 of the Indian Penal Code, it is essential to prove that an offence has been committed, (-- mere suspicion that it has been committed is not sufficient --) and that the accused knew or had reason to believe that such an offence had been committed.

The evidence of P. W. 15 shows that the corpse was in an advanced state of decomposition and putrefaction, that the corpse could not be taken out intact and that each limb had separated itself from the body. P. W. 12 who was a pancha for the exhumation of the corpse, states that by looking at the bones he could not form any opinion as to whose corpse it was and that the clothes too had become decomposed and that it was not possible on their basis to find out whose corpse it was. In this state of the evidence, it cannot be said that the prosecution has established that the dead body was that of Girappa. The learned Sessions Judge, in convicting the accused for an offence under the second part of Section 201 of the I. P. C. was influenced by the circumstance that there was a fracture of the jaw; therefrom, he drew the inference that by disposing of the dead body the accused had caused disappearance of evidence of an offence-under Section 326 of the I. P. C.

But in doing so, the learned Sessions Judge overlooked the medical evidence to the effect that due to the advanced stage of putrefaction, it wasnot possible to state whether the injury to the jaw bone was ante mortem or post-mortem. When the possibility of the fracture being a post-mortem one, Lad not been completely eliminated by the prosecution, the learned Sessions Judge was not right in assuming that it was an ante-mortem fracture. The prosecution not having

established that the fracture was the result of an ante-mortem injury, there could be no justification for convicting the accused on the assumption that he had caused the disappearance o the evidence of an. offence under Section 326 of the I. P. C.

In this view of the case, much importance cannon be attached o the circumstance that it was on the information of the accused person, that the place where the corpse was buried was discovered. Nor does it appear to be necessary o consider the contention advanced by Sri Malimath to the effect that, according to the prosecution evidence, the Police were aware of the place where the dead body was buried and that there was really no discovery in consequence of any information given by the accused.

5. For the reasons above stated, we are satisfied that the conviction of the accused for an offence under Section 201 of the I. P. C. cannot be sustained. Consequently, this appeal is allowed and the conviction and sentence against the appellant are set aside. He is acquired and he shall be set at liberty forthwith.

6. Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com