

In Re: Zahirabi

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Court : Karnataka

Decided On : Oct-28-1965

Reported in : 1966CriLJ921

Judge : A.R. Somanath Iyer and ;Ahmed Ali Khan, JJ.

Appellant : In Re: Zahirabi

Judgement :

A.R. Somanath Iyer, J.

1. Johra Bee, a young woman, thirty years of age, and her husband Mohammed Sadiq who was five years older than his wife, were both residents of the village of Muttangi in the District of Gulbarga. According to the evidence of P.W. 1, a Police constable attached to the Police station in Chincholi, the dead body of Mohammed Sadiq was found at 2 A.M. in the night of 4.3.1964 inside a waiting room attached to the bus stand in Chincholi. P.W. 1 was then in the company of P.Ws. 2, 3 and 4 who were assisting P.W. 1 on his beats since there was a scare in Chincholi caused by thefts.

2. The dead body of Mohammed Sadiq was subjected to post-mortem examination by P.W. 10, a Medical Officer of Chincholi on 6.3.1964. He observed on the body one incised wound on the right parietal region, a lacerated wound on the back of the skull and on dissection he found a horizontal fracture of the occipital bone besides hemorrhage in the right cerebral region and the back of the brain. He was

of the opinion that Sadiq died on account of shock and hemorrhage caused by the fracture of his skull.

3. Sadiq's wife was charged with having murdered her husband. The Sessions Judge convicted her of an offence punishable under Section 302 of the Penal Code and sentenced her to imprisonment for life. So, this appeal, which was presented by the accused and in which she is defended by the Legal Aid Society on whose behalf of Mr. Dodda Kale Gowda appears for Mr. Shivappa.

4. The argument presented by Mr. Dodda Kale Gowda was that since the Sessions Judge based his conviction upon the confession made to a Police Officer which was inadmissible under Section 25 of the Evidence Act, this appeal has to succeed.

5. It seems to us that this contention has no answer.

6. The only evidence upon which the Sessions Judge based his conviction was that given by P.Ws. 1, 2, 3 and 4 to whom, according to them, the accused made a confession that she killed her husband.

7. The evidence of P.W. 1 was that he was a Police constable attached to the Chincholi Police Station on 4.3.1964. After having attended the Police Station for a roll call at 8 P.M. he began his rounds at 11 P.M. and was near the bus stand at 2 A.M. in the company of P.Ws. 2, 3 and 4 who were assisting him in the discharge of his duty. His evidence was that at that place, they heard a sound resembling that which is heard when something falls down. He added that he went to a hotel and woke up a boy who was sleeping there and asked him what the matter was and that on this disclaiming knowledge about it, the witness flashed his torch in the direction of the waiting rooms attached to the bus stand where he found the accused sitting in the waiting room reserved for women.

8. The witness proceeded to state that he saw a person lying near her and on her being asked about it, the accused stated that he was her husband.

9. The witness then recounted what next happened. He said that he flashed the torch and found blood all around the body and a stone lying nearby which was

also bloodstained. The husband of the accused, according to him, was dead in consequence of an injury on his head.

10. In regard to the interrogation which he made of the accused, the witness stated that when he threatened her and directed her to tell the truth, she stated that the deceased was subjecting her to cruelty which she was unable to bear and that she had therefore 'finished him' by throwing a stone on his head.

11. In another part of his evidence P.W. 1 stated that he then asked the home guards P.Ws. 2, 3 and 4 to remain near the body and that he would go and inform the police station which he did.

12. The evidence of P.Ws. 2, 3 and 4 was similar to that given by P.W. 1, But in regard to the confession said to have been made by the accused, the effect of the evidence of P.W. 2 was that the accused was interrogated by all the four persons present, and, that it was upon such interrogation that she came out with her confession. P.W. 3 did not explain who questioned the accused and to whom she made the confession. He stated that 'when questioned' the accused stated that her husband had brought her there saying that he would take her to Hyderabad and that since he was subjecting the accused to cruelty, she killed him.

13. The evidence of P.W. 4 was similar to the evidence given by P.W. 2 and the effect of his evidence was that the interrogation was made by all the four persons and that the confession was made thereafter.

14. The Sessions Judge repelled the argument advanced on behalf of the accused that the confession about which P.Ws. 1, 2, 3 and 4 gave evidence was inadmissible. In his opinion, the confession was not made to P.W. 1 but had been made to P.Ws. 2, 3 and 4. That is the effect of what the Sessions Judge stated although he did not say so in many words.

15. Whether a confession was really made to a Police Officer so as to fall within Section 25 of the Evidence Act or whether it was not made to a Police Officer, is a question of fact, the answer to which, should depend upon the circumstances in which the confession was made. It is true that the confession may fall outside the

orbit of Section 25 of the Evidence Act notwithstanding the presence of a Police Officer at the time when the confession was made if it is established that the confession was not made to him but to someone else who was not a Police Officer; but if, on the other hand, it is clear that although there were persons who were not Police Officers present when the confession was made, the confession was made to a Police Officer who was also present, the confession would be plainly inadmissible since it would be one to a Police Officer and so would be within the mischief of Section 25.

16. So, the question is whether the confession said to have been made by the accused was a confession made really to a Police Officer like the constable P.W. 1 or a confession made to P.Ws. 2 and 3 who were not Police Officers, as found by the Sessions Judge in the presence of P.W. 1 to whom it was not made.

17. In taking the view that the confession was made not to P.W. 1 but to P.Ws. 2 and 3, the Sessions Judge entirely missed the evidence of P.W. 1 which is unmistakable and clear. His evidence was that he was the person who insisted upon the accused telling him the truth and he admitted that he administered some kind of a threat to her and that it was, after the administration of that threat, that the accused made the statement that she had killed her husband. As already observed, P.Ws. 2 and 4 tried to make it appear that the interrogation of the accused was made by all the four persons and P.W. 3 did not state who made the interrogation and to whom the confession was made. P.Ws. 2 and 4 did not also state that the confession was made to P.Ws. 2, 3 and 4 and not to P.W. 1.

On the contrary, the evidence of P.W. 2 that after the accused had made the confession P.W. 1 asked them to stay near the dead body so that he might go to the police station and give information about it, makes it clear that the confession was made really to P.W. 1 upon his asking the accused to make the confession. Exhibit P-6 is the first information report which incorporates the report made by P.W. 1 to the Sub-Inspector of Police. It is seen from that document that P.W. 1 told the Sub-Inspector that he and his colleagues made a collective interrogation. But, it is clear from the evidence of P.W.' 1 that the interrogation was only by P.W. 1 and that the confession was made in reply to that interrogation.

18. Section 25 of the Evidence Act rests upon the principle that it is dangerous to depend upon a confession made to a Police Officer which cannot extricate itself from the suspicion that it might have been procured by the exercise of coercion or by enticement. Since the evidence of P.W. 1 demonstrates beyond doubt that the accused came out with her confession on being intimidated by P.W. 1 to speak the truth, the mere fact that P.Ws. 2, 3 and 4 who were not Police Officers were also present when the confession was made would not take the confession out of the prohibition which the Section incorporates.

19. We have, therefore, no doubt in our minds that the confession upon which the Sessions Judge depended cannot escape from the denunciation that it was inadmissible.

20. Both in the committal court and the Court of Session, the accused pleaded not guilty and there was no evidence before the Sessions Judge other than given by P.Ws. 2, 3 and 4 which could implicate the accused.

21. It is true that the prosecution produced evidence given by P.W. 7 the Police Patil of Muthangi and P.W. 8 the Sarpanch of that village that Sadiq was subjecting his wife to cruelty. P.W. 9, the factor of the accused was also called by the prosecution to prove that on one occasion the accused had threatened to kill her husband. P.W. 9 did not support that part of the prosecution case and he was permitted to be cross-examined by the Public Prosecutor. So, what remains is the evidence given by P.Ws. 7 and 8, but the fact that Sadiq was subjecting his wife to cruelty in manner mentioned by P.Ws. 7 and 8 cannot carry the case of the prosecution very far beyond suggesting a motive on the part of the accused to retaliate, but the fact that there was such motive does not mean that that motive translated itself into the murder of Sadiq by the wife, which is to be established by the prosecution by other evidence which brings home the guilt to the accused beyond reasonable doubt. Of such evidence there is none.

22. The only other evidence which we should notice and which is of very little utility, is that given by P.W. 6. His evidence was that in a place called Changaleri of which he was a resident, he saw the deceased near the toddy shop drinking toddy and that the accused was with him. He gave no particulars about this and

not even the distance between Chincholi and Changaleri. However that may be, the mere fact' that the accused was found in the company of the deceased when P.W. 6 saw him is of very little significance. It is clear from the prosecution case that long after P.W. 6 saw them together, they must have been together in the waiting room near the bus stand, but, that by itself -means very little. Since, the village of Chincholi was infested with robbers and that appears to be the reason why P.Ws. 2, 3 and 4 the home guards were assisting P.W. 1 in his rounds the possibility of Siddiq having been killed by some one else cannot be excluded.

23. That being the position, we should allow this appeal and we allow it. We set aside the conviction of the accused and the sentence imposed upon her and we direct that she shall be forthwith set at liberty.

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