In Re: Chervirala Narayan

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Court : Andhra Pradesh

Decided On : Jul-31-1957

Reported in : 1958CriLJ476

Judge : K. Subba Rao, C.J. and; Jaganmohan Reddy, J.

Appellant : In Re: Chervirala Narayan

Judgement :

K. Subba Rao, C.J.

1. The accused was convicted under Section 302, IPC and sentenced to death by the Sessions Judge, Medak District.

2. The version of the prosecution may be summarised thus. The accused is the husband of the deceased. P.Ws. 9 and 10 are the parents of the deceased and are residents of the village of Ailure. After some persuasion and with reluctance, they allowed the accused and his sister P.W. 7 to take the girl to the house of P.W. 7 at Venkatataipalli for performing the nuptials of the deceased. After the nuptials, the couple lived together amicably for a few days. Suspecting that the girl had illicit intimacy with the son of the Dora of Ailure and had become pregnant by him, on the night of 9-12-1955 the accused strangled her to death. The learned Sessions Judge accepted the evidence produced on the side of the prosecution and convicted the accused and sentenced him as aforesaid.

3. There are no eye witnesses to the occurrence. The case falls to be decided on circumstantial evidence. It is well-settled principle of criminal jurisprudence that 'circumstantial evidence must be consistent and consistent only with the guilt of the accused and that if the evidence is consistent with any other rational explanation, then there is an element of doubt of which the accused must be given the benefit.' Bearing in mind the said caution, we shall proceed to consider the evidence in this case.

4. The doctor, who performed the autopsy on the dead body, described the condition of the body and the wounds thereon thus:

1. A horizonal mark in front of the neck measuring 2 ' in length 1/2' in breadth: abrasions and eccbymosis were present in front of the neck: the horizontal mark had brown and parchment appearance: there was congestion under the skin.

2. Abrasion on the chin and the lower lip.

3. Abrasions on the posterior side and left and right elbow joints.

4. Abrasion on the left and right inguinal and left inguinal.

5. Abrasion on the right thigh.

6. Abrasions on the right temple.

7. Abrasion on the lateral side of the left knee joint; and8 Half digested, food was present in the stomach.

5. The witness expresses his view that, in his opinion, death was due to asphyxia caused by pressure in front of the neck by some blunt weapon and that in view of the presence of half digested food, death must have been caused one or one and half hours after she took her meals. This uncontradicted evidence of the doctor clearly establishes that the deceased was strangled to death by pressing a blunt weakon in front of her neck one or one and half hours after she took her food. That the deceased had a violent death at the hands of somebody admits of no doubt.

6. Who is the culprit that caused the death of this young girl can be ascertained only by other circumstantial pieces of evidence placed before the Court. P.Ws. 9 and 10 are the parents of the deceased. They describe the circumstances under which the accused took the deceased to his sister's house. Their version1 is the deceased was ill and they were getting her treated by a Hakim. The accused came and lived with them for three days and thereafter he requested them to send his wife to his sister's house, but they refused for reasons of health. Thereafter, he brought his sister and both of them took her in spite of their protest. P.W. 10 followed them to the sister's house wherein the nuptial ceremony was performed. P.W. 9 went to the village. of the sister to bring back the accused and his wife but as the accused refused to send her, he and his wife returned to his place.

After five or six days of their return,, they were informed that their daughter died. The evidence of these two witnesses proves that the deceased was taken to the house of the accused's sister, that in her house the nuptial ceremony was performed and that the deceased continued to live in that house till she died. What happened in the house of P.W. 7 is narrated by P.W. 7 and her husband P.W. S. P.W. 7 says that, after the marriage was consummated, the couple were living in her house and they were sleeping on a wooden cot spread with a bedding in a room. On the night of the murder, they slept as usual in that room and she was sleeping at a distance of 8 or 9 yards from the room. In the morning, she found that the back door of the house was open and, suspecting some theft in her house, called for the accused but she did not get any response.

When she opened the door of the room wherein the couple were sleeping, she did not land any one on the cot. She sent her daughter Narasavva to fetch her husband and after he came, she saw behind the wooden cot, the corpse of the deceased lying on her face and her body was covered with new clothes. The evidence of this witness is sought to be impugned by suggesting to her that the accused had given her five toast of gold at the time of her son's marriage and that she had not returned to him, presumably insinuating that she had done away with the deceased so that her brother might be inculpated in the murder.

To put it differently, the suggestion is that to escape her liability to her brother, she conceived the diabolical act of murdering her innocent sister-in-law so that she could at one stroke get rid of her sister-in-law as well as her liability to give back the gold to her brother. This suggestion is as extravagant as it is far-fetched and there is no justification or even foundation for it on the evidence. If it was the intention of this witness to get at the jewels of her sister-in-law, she would not have allowed the jewels to continue to remain on the dead-body of the deceased.

7. It is then said that there are some discrepancies between her evidence and that of her husband. We shall deal with them in considering the evidence of P-W. 8. We may say at this Stage that the discrepancies pointed out are not such that would discredit this evidence. The evidence of this witness has a ring of truth and we do not see any reason to reject it. P.W. 8 corroborates her evidence. In cross-examination, he says that he went to his garden after his two sons, daughter-in-law, and his daughters had taken meals and had talked together for some time and slept none in his garden. It is pointed out that, while P.W. 7 says that she alone slept in the house. P.W. 8 deposes that his sons and daughter-in-taw were in the house when he left for the garden and that while P.W. 7 denoses that her son and daughter slept in the garden.

There are no such irreconcilable discrepancies in the evidence of these two witnesses. Though the sons, daughters and daughter-in-law were all in the house of P.Ws. 7 and 8 and took; their meals there, their elder daughter and son according to P.W. 7 left for their father-in-law's house and the other two children went to the-garden. P.W. 8 does not say in his evidence that, on the night of the occurrence, his second son and daughter did not sleep in the garden. His statement in the evidence that he alone slept in the garden and that none of his servants slept there obviously is an answer to the question whether he sleeps in his garden or whether his-servants also sleep there.

This statement is not inconsistent with the fact that one of his sons and daughters slept with-Mm in the garden on the particular night when the incident took place. We do not, therefore, find in the evidence of P.Ws. 7 and 8 any such grave discrepancy as to stamp the evidence with the imprint of obvious falsehood. The

evidence of tfiese two witnesses proves' that the accused and the deceased slept as usual that night in one of the rooms of the house, that in the morning they saw the dead body of the deceased lying by the Sid of the cot and that the accused also had left the place.

8. P.W. 6 is the husband of the deceased's-maternal aunt. He says that at 5 p.m. on the day when Purnamma was murdered, the accused met him at VenkataipaJli and told him that the deceased has illicit intimacy with the son of Krishna Reddy the Dors of Ailur, that she had pregnancy of five months, that the result of it would be known to them and*'that he should inform about it to his father-in-law. Kis cross-examination discloses that he did not mention this fact to anybody till he gave evidence in Court. We are inclined to think that this witness had been improvised for the occasion for, if really the accused informed him of his suspicions and threatened to do some thing which would be known to them all, it is not likely that he would not have mentioned that fact to the father of the deceased, or, at any rate, to his wife immediately when he went to his place. We, cannot therefore, accept the evidence of this witness.

9. Ex. P-5 is the letter found on the dead-body. P.W. 1, the Police Patel of Venkataipall speaks to the fact that the letter was found on the deadbody and that the hand-writing of that letter was that of the accused. In cross-examination, he would say that he knows the handwriting of the accused from his childhood. P.W. 5 took part in the panchanama relating to this letter. He says that Ex. P-5 is in the hand-writing of the accused. His knowledge of the handwriting of the accused is derived from the fact that his sister used to bring letters written to her brother by the accused for being read. The learned .Tudse refused to rely upon Ex. P-5 on the ground that no hand-writing expert was examined to prove that Ex. P-5 was in the handwriting of the accused.

Having regard to the acceptable evidence in the case that the letter was found on the dead-body of the deceased and also having regard to the evidence of P.Ws. 1 and 5 who depose that they know the hand-writing of the accused, we do not see any reason to reject this document. We arc satisfied that Ex, P-5 was written by the accused. This letter contains the outpourings of rialtos and troubled mind.

Therein he describes the manner in which the accumulation of otherwise inconsequential acts or words of the deceased generated a strong suspicion in his mind and how the pricking of a conscience goaded by an unremitting questioning by him led to a confession : by her of her illicit intimacy with and pregnancy by another. The accused says in that document:

In Ailur Goppiah Dora's son had sexual intercourse with her and said that she became pregnant since two months. I grew very angry and I attempted to commit this act.

This letter has a ring of truth and appears to have been written by the accused in a state of emotional stress after he committed the act. We accept the contents of the letter as representing the true state of facts and the circumstances in which the deceased was killed by the accused. On the aforesaid evidence, we hold that the accused strangled the deceased to death in a fit of uncontrolled jealously and anger when she confessed that she was pregnant by another man.

10. The next question is what is the nature Of the offence committed by the accused? Exception 1 to Section 300 of the Indian Penal Code reads;

Culpable homicide is not murder if the offender, ; whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following proviso:

1. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

x x x xExplanation:Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

11. To come under this exception, the act of causing death should have been done by the offender under the influence of some feeling depriving him of al] self-control engendered by a provocation, which is both grave and sudden. In this

case, the accused, who was a young man and who had lurking suspicions of the conduct of his wife who newly joined him was confronted with the confession of illicit intimacy with and consequent pregnancy by another. We have no doubt, that, under these circumstances, the provocation was both sudden and grave and that the accused, deprived of his power of self-control, strangled his wife to death. This is not a case covered by the proviso to Exception 1.

The evidence does not disclose that this provocation was sought or voluntarily provoked by the accused as an excuse for killing his wife. It is true that he had his suspicions and also questioned her about it. But he did not extract the confession as an excuse to kill her but the confession of adultery and pregnancy by another made him lose his self-control and commit all act, which he did not either contemplate or prepare to do Drior to the confession. We, therefore, hold that the accused is only guilty of culpable homicide not amounting to murder.

12. learned Counsel for the accused contends that the committal proceedings were vitiated by non-compliance with the mandatory provisions or Section 207-A(4) and (9) of the Criminal Procedure Code and, therefore, the entire trial was void. Section 207-A was e dded by Act XXVI of 1955. It, prescribes a procedure in a simplified form preparatory to commitment in a proceeding instituted on a police report. Sub-section 4 of Section 207-A reads:

The Magistrate shall then proceed to take the evidence of such persons, if any, as may of produced by the prosecution as witnesses to the actual commission of the ollence alleged; and II the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution he may take such evidence also

13. The contention of the learned Counsel is that, under the provisions of Sub-section (4), the committing Magistrate is empowered to take the evidence of other witnesses only in a case where he has already taken the evidence of the eyewitnesses and, therefore, the order of committal made by him in the absence of eye-witnesses on the basis of other evidence is illegal. In the present case, admittedly no witnesses, who have seen the killing of the deceased by the accused, were examined by the Magistrate and the order of committal was made

on the basis of circumstantial evidence. The argument is based upon the use of the conjunction 'and' between the two limbs of the Sub-section and the presence of the adverb 'also' at the end of the Sub-section.

Section 207-A was added to the Criminal Procedure Code by Act, XXVI of 1955 and its object is to expedite committal proceedings by providing a simplified procedure. 'Under Section 173, Cr.PC the Officer in charge of the Police Station, after forwarding the report prescribed under the Section to the Magistrate, is enjoined before the commencement of the enquiry or trial to furnish to the accused a copy of the said report and of the first information report recorded under Section 154 and of all other documents or relevant extracts thereof on waves the prosecution proposes to rely, including the statements and confessions if any recorded under Section 164 and the statements recorded under sub-s. 3 of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

The Magistrate on the receipt of the report fixes a date not later than 14 days from the date of the receipt of the report, unless for reasons to be recorded he fixed any later date, for holding an enquiry. In addition to the documents referred to in Section 173, he will have to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged. The witnesses, who will depose to the prosecution case may he of different categories viz., among others (i) witnesses who are eye-witnesses to the actual occurrence; (ii) witnesses who speak to the facts which afford a motive for the commission of the offence; (iii) witnesses who speak to the investigation and the facts unfurled by the investigation and (iv) witnesses who speak to circumstances and facts probabilising the commission of the-offence, which is technically described as circumstantial evidence.

One of the said categories of witnesses, sub. Section 4 enjoins on the Magistrate to examine witnesses to the actual commission of the offence alleged, produced by the prosecution. The word 'actual' qualifying the word 'commission' emphasises the fact that the said witnesses should be those who have seen the commission of the offence. If the word 'actual' is not in the section, it may perhaps be contended

that circumstantial evidence of the facts in establish the offence. is comprehended by 1 he said word.

In our view, the section, therefore, by using t the words 'actual commission', clearly is meant [to indicate evidence which goes directly to prove the fact in issue. But, there may not be eye-wit, nesses in a case or, if there are, the prosecution may not have produced all of them before the Court, In such a contingency, in the interests of justice, the Magistrate may examine some or all of the other eye-witnesses not produced before him but whose names are disclosed in the report. He may also for the same reasons examine witnesses other than eye-witnesses.

14. learned Counsel, while conceding that the Magistrate has power to examine witnesses other than eye-witnesses, contends that the said power is conditioned by the previous examination of some of the eye-witnesses by the Magistrate. If this argument be accepted, it will lead to an obvious anomaly. While the Magistrate can examine witnesses other than eye-witnesses when the said eye-witnesses were already examined by him, he would not be in a position to examine any witnesses at all if there were no -eye-witnesses or though there were eye-witnesses the prosecution did not choose to examine them.

The Magistrate would then be a helpless spectator and should either commit the accused to Sessions or discharge him only on the documents referred to in Section 173, Cr.PC This construction, therefore, would enable the prosecution to dictate the conduct of the committal proceedings sometimes to the obvious detriment of the accused. If the words of the section are clear and unambiguous, possible anomalies may not stand in the way of our construing the section accordingly.

The phrase 'if any' in the first limb of the section indicates that the Magistrate shall proceed to taite the evidence of persons who speak to the actual commission of the offence if they exist and are produced before him. The conjunction 'and' no doubt makes the operation of the two wings of the Sub-section cumulative and brings into operation the latter power after the exercise or exhaustion of the former one. The former power is exercised if there are eye-witnesses and, if there are none, it becomes ineffective and thereafter the Magistrate will be within his rights

in invoking his power to examine other witnesses.

15. Nor can we agree with the learned Counsel that the adverb 'also' indicates that the Magistrate may take the evidence of other witnesses only in addition to the eye-witnesses examined by him. In our view, the word 'also' denotes the extent of the power of the Magistrate rather than its limitation. What it means is that the Magistrate, after exhausting his power under the first part of the Sub-section, may also take such evidence i.e., evidence other than the evidence of witnesses to the actual commission of the offence.

Thereafter, under sub-ss. 6 and 7 the Magistrate, after considering the evidence that has been taken by him and the documents referred to in Section 173 and if necessary after examining the accused either commits him to Sessions or discharges him. We realise that there is considerable force in the argument of the learned Counsel for the accused but the aforesaid construction would, without doing any violence to the language, avoid anomalies and, as often as not, work to the advantage of the accused rather than to his detriment. We hold that the Magistrate in committing the accused to Sessions on circumstantial evidence has not contravened the provisions of sub-s. 4 of Section 207-A, Cr.PC

16. The next provision alleged to have been violated by the Magistrate is Sub-section 9 which reads:

The accused shall be required at once to give in, orally or in writing, a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial.

Provided that the Magistrate may in his discretion, allow the accused to give in his list or any further list of witnesses at a subsequent time; and where the accused is committed for trial before the High Court, nothing in this subsection shall be deemed to preclude the accused from giving, at any time before his trial, to the clerk of the State a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Sub-sections 10 and 11 may also be noticed:

10. When the accused, on being required to give in a list under Sub-section (9) has declined to do so, or when he has given in such list, the Magistrate may. make an order committing the accused for trial by the High Court or the Court of Session, as the case may be, and shall also record briefly the reasons for such commitment.

11. When the accused has given in any list of witnesses under sub-s. 9 and has been committed for trial, the Magistrate shall summon the witnesses included in the list to appear before the Court to which the accused has been committed.

17. These provisions appear after sub-s. 7, where under the Magistrate frames a charge after he has decided to commit the accused to Sessions. The said provisions are intended to enable witnesses to be summoned by a Magistrate for appearing before the Sessions Court to which the accused has been committed, so that the Sessions trial may expeditiously be conducted. Either before or after the charge is framed, under the amended procedure, the accused has no right to examine any defence witnesses nor can the Magistrate discharge the accused after examining the witnesses shown in the list given by him. This list is intended only for expediting the trial in the Sessions Court.

For that purpose, the accused shall be required to give in orally or in writing a list of the persons, if any, whom he wishes to be summoned to give evidence on his trial. In this case, the Magistrate, after framing the charge, did not require the accused to give the said list. We must, therefore, hold that the Magistrate has contravened one of the provisions of Section 207-A, Cr.PC

18. Even so, the question is whether the breach of such a provision invalidates the en' tire trial. Section 537, Cr.PC the residuary section, which cures irregularities committed by a Court of competent jurisdiction, reads:

Subject to the provisions herein before contained, no finding sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account-

(a) of any error, commission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice.Explanation:In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

19. It has now been firmly established, though at an earlier stage there was a conflict of judicial opinion on the question that an illegality committed in the course of the proceedings1 may be cured by the operation of the provisions of the said section if the conditions laid down therein are complied with. The Judicial Committee in Fulukuri Kottayya v. Emperor, 51 Cal WN 474 : A.I.R. 1947 PC 67 (A), considered the scoped of the said section and observed as follows:

If the trial is conducted substantially in the manner prescribed by the Code but some irregularity occurs in the course of such conduct, the irregularity can be cured under Section 537 and nonetheless so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the classes in India between an illegality or an irregularity is one of degree rather than of kind.

An appellate Court will not interfere with the sentence passed by a subordinate Court on the simple ground of illegality in the conduct of the proceedings unless there has actually been failure of justice. In this case, not only was this objection not taken before the learned Sessions Judge, but it has not been contended before us that the said illegality or irregularity has occasioned any failure of justice. But the learned Counsel, relying upon the decisions of the Calcutta ' High Court, contends that the entire Sessions trial is void on the ground that a mandatory and substantive provision of the Criminal Procedure Code had been contravened.

20. Where the Magistrate did not follow the procedure under Sections 211 and 212, Cr.PC namely, to ask the accused to give a list of defence witnesses and if a

list is given, to exercise his discretion as to whether he should examine any witnesses from that list, the Calcutta High. Court in Sripati Duley v The State, : AIR1953 Cal10 , held that the provisions of these two sections were substantial provisions of procedure inasmuch as the Magistrate after hearing such witnesses might, instead of committing the accused, cancel the charge and discharge him and that therefore, non-compliance with these provisions was not curable under Section 537, Cr. P. C

21. This decision was followed by two other Benches of the same High Court in Kashinath Das y. Kalipada Das. : AIR1953 Cal12 and Abaniti Pramanik v. The State A.I.R. 1953 Cal 620 (D). Krishna Rao, J. followed those decisions in Tatikavela Ayyappa Naidu v. The State A.I.R. 1056 Andhra 110 (E). It may be mentioned that the aforesaid decisions turn upon the construction Of Sections 211, 212 and 213, Cr.PC whereas we are concerned in this case with the provisions of Section 207-A introduced by Act XXVI of .1955. While the amended Section applies to a proceeding instituted on a Police report, the former set of sections apply to a proceeding instituted other than on a Police report or by the Court suo motu or under Sections 195, 476, Cr.PC etc.

22. The essential distinction between the two sets of sections is that, under the amended section, after the charge is framed and the accused; is asked to give a list of witnesses, the Magistrate has no power to discharge the accused for he decides to commit him before that stage is reached, while under Sections 211, 212 and 213, Cr.PC the Magistrate may .in his discretion summon and examine any witnesses named in the list given by the accused under Section 211 and on the basis of such evidence discharge the accused-Non-compliance, therefore, with the provisions of Section 211 substantially affects the rights of the accused whereas non-compliance with the provisions of Section 207-A(9), though it may regard the progress of the trial, may not ultimately affect the accused. There is no analogy between the operative effect of the two sets of provisions and, therefore, the decisions on the effect of infringement of the provisions of Section 211 cannot be invoked or applied to the ease of violation of the provisions of Section 207-A(9).

23. That apart, another Division Bench of the same High Court in The State v. Abdul Rahaman : AIR1953 Cal792 , distinguished those decisions on the ground that those decisions related only to interlocutory orders and held that, after the sentence was passed, even though the provisions of Section 211 were not complied with, the trial would not be void unless the said contravention' occasions failure of justice. In other words, the learned Judges held that Section 537 may not apply to orders of committal, which are only in the nature of interlocutory orders, while it may be invoked if the accused has been finally sentenced.

We agree with the conclusion arrived at by the learned Judges. It is not necessary in this case to express our opinion on the question of the applicability of Section 537 to orders of committal for, in this case, the accused was convicted and sentenced by the Sessions Judge and the question arises only after the final sentence was imposed. As it has not been established that the irregularity or error committed by the Magistrate has occasioned failure of justice, we hold that the defect is cured under Section 537, Cr.PC

24. Now, coming to the sentence, we have held that the accused is not guilty of murder but only culpable homicide not amounting to murder. It is clear from the facts of the case that the accused strangled his young wife with the intention of causing her death- Though he had committed the act under grave and sudden provocation, he put an end to a young life in a gruesome manner. We therefore sentence him to imprisonment for 10 years.

25. In the result, we set aside the conviction for murder and the death sentence and instead convict the accused for culpable homicide not amounting to murder and sentence him to rigorous imprisonment for ten years.