

Vallon Kochol Vs. State

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Court : Kerala

Decided On : Dec-12-1955

Reported in : 1956CriLJ1099

Judge : Koshi, C.J. and; Varadaraja Iyengar, J.

Appellant : Vallon Kochol

Respondent : State

Judgement :

Koshi, C.J.

1. The appellant Vallon Kochol has been convicted by the learned Sessions Judge of Anjikaimal for committing the murder of his wife Kali Ku-rumba and sentenced to transportation for life. The case against him was that at about 5-30 P.M. on 15-10-1954 he inflicted some injuries on his wife with a sickle (M.O.I.) and that as the result of the injuries she died the next day evening while she was an in-patient in the Trippunithura Government Hospital.

The learned Sessions Judge tried the case with the aid of three assessors and while all of them agreed that the appellant's wife died as a result of the injuries inflicted upon her by the appellant as alleged, two of them alone were of the opinion that he was guilty of murder. The third assessor doubted whether he had the necessary intention to cause death.

The learned Judge agreed with the majority opinion and accordingly convicted the appellant of the offence of murder. As for the sentence the learned Judge took the view that the lesser penalty provided by law will meet the ends of justice. The present appeal is against the said conviction and sentence.

2. That the appellant's wife Kali Kurumba died as a result of a certain abdominal injury sustained by her in the evening of 15-10-1954 is amply borne out by the evidence on record. She was taken to the Trippunithura Hospital wounded at about 9-30 P.M. on the said date and the wound certificate (P. 4) granted by P. W. 7, the Medical Officer shows that she had a deep penetrating wound on the right side of the abdomen. The wound was found to be not less than 2 1/2' deep. Besides she had incised wounds on the left fore arm and the left thigh.

The post-mortem certificate (Ext. P. 6) and the testimony of P. W. 7 make it abundantly clear that Kali Kurumba died of the abdominal injury referred to above. Even the appellant's statement at the trial admitted that at the time and place mentioned by the prosecution Ms wife sustained some injuries and that she was taken to the hospital soon afterwards. He only disputed the truth of the prosecution case that he inflicted the injuries noted in Exts. P. 4 and P. 6.

3. To establish that the appellant had inflicted the injuries of which his wife died the prosecution depended mainly on the testimony of P.W. 1, the younger sister of the deceased, the deceased's statement to the police (Ext. P. 14) made at 11 P.M. on 15-10-1954 while she was in the hospital, the confession made by the appellant to P. W. 12, the First Class Magistrate of Ernakulam and the circumstantial evidence furnished by the testimony of P. Ws. 2, 3 and 5.

The learned Judge disbelieved the evidence of P.Ws. 2, 3 and 5 and held that as spoken to by them they would not have arrived at the scene of the crime so soon after the occurrence as to see the accused making good his escape by running away. We are far from satisfied that the reasons given for disbelieving P. Ws. 2 and 3 are convincing or satisfactory.

Be that as it may, the other evidence in the case is in our opinion sufficient to bring home the guilt to the appellant. It is therefore unnecessary to pursue the question

whether the learned Judge was right in disbelieving these two witnesses. We think that P. W. 5 was rightly disbelieved when he said that he had seen the accused running away.

However we wonder why the learned Judge should have disbelieved the statements of these three witnesses that the deceased told them that her husband it was that inflicted the injuries on her. It is only natural to expect her to have told them who her assailant was.

4. The only eye-witness to the occurrence is P. W. 1 and she has remained consistent in her evidence throughout. Ext. P. 14, the deceased's statement to the police, mentions that she had seen the appellant inflicting injuries on the deceased. The learned Judge below has elaborately discussed her evidence and we see no reason to differ from his conclusion that P. W. 1 had given a, substantially true account of the occurrence. She spoke of the infliction of the abdominal injury as also of the injuries on the left forearm and the left thigh.

Learned Counsel briefed to represent the appellant did not rightly refer to many of the criticisms urged before the lower court to discredit the testimony of P. W. 1, but she laid great emphasis that the learned Judge had himself disbelieved certain parts of the witnesses' testimony to be untrustworthy.

However as the learned Judge placed great reliance on the testimony it is unnecessary for us to examine whether the learned Judge was justified in discrediting P. W. 1 in certain respects. Her evidence and the testimony of the medical witness are in fact sufficient to establish the appellant's guilt. However as stated earlier those pieces of evidence are not the only materials in the case to prove the prosecution case.

5. Ext. P. 14 is the First Information of the case. Had not the deponent died that document would have been useful only to corroborate or contradict her testimony in court. By reason of the deponent's death it has become a piece of substantive evidence under Section 32(1) of the Indian Evidence Act as a declaration as to the cause of the informant's death or as part of the informant's conduct under Section 8, see *Azimaddy v. Emperor* 1927 Cal 17 AIR V 14 (A), *Kapur Singh v. Emperor*

1930 Lah 450 AIR V 17 (B); Gajjan Singh v. Emperor 1931 Lah 103 (AIR V 18) (c).

It was pointed out that Ex. P. 14 was not really the First Information of the case to the police but that prior to it one Madhavan had told P. W. 14, the S. I. of Police, about the incident. The evidence of P. W. 14 shows that the said Madhavan did not even know as to how the injuries happened to be caused or who inflicted them. Madhavan happened to tell the Sub-Inspector at the latter's residence that he heard that a pulaya woman had been taken to the Trippunithura Hospital with injuries.

It is in our opinion puerile to argue that that statement of Madhavan should be treated as the first information. To attract the application of Section 154, Criminal Procedure Code, the statement must be an 'information' and secondly it must relate to a cognisable offence on the face of it and not merely in the light of subsequent events. The said section does not contemplate that any sort of information would fall under it so long as it was the first in point of time-see Mani Mohan Ghose v. Emperor 1931 Cal 745 AIR V 18 at 748 Col 2 (D).

The facts of the cases cited at the bar to show that Ext. P. 14 cannot be treated as the First Information do not at all resemble the facts of the present case. Of the three cases cited in Sahed ali Mirdha v. Emperor 1937 Cal 309 AIR V 24 (E) and in Moti Singh v. Emperor, 1948 All 289 (AIR V 35) (F) the Police had definite information as to the commission of the crime but they proceeded to the scene of the crime without making a record of the information and what was sought to be used as First Information was that recorded at the scene.

In the third case, Dr. Jainand v. Rex 1949 All 291 AIR V 36 (G) the statement in question was on the face of it one recorded during the course of the investigation. The police had not only registered a case but also prepared the inquest over the dead body. It was a subsequent statement recorded from the murdered person's wife that was sought to be used as First Information and that attempt was rightly repelled.

It needs no comment to show that these cases are clearly distinguishable from the one before us. To return to Ext. P. 14. that gives how and why the appellant

happened to inflict injuries on the deponent thereof. The statement corroborates the direct testimony P.W. 1 gave at the trial.

6. The third item of evidence depended upon by the lower court is Ext. P. 13, the appellant's confession before P. W. 12. The confession was sought to be discredited on the familiar grounds that its recording was defective, that the Magistrate had not satisfied himself before he commenced to record it that it was a voluntary confession and that the appellant's statement that it was the result of police torture should have been believed by the lower court.

We have carefully examined the evidence of P.W. 12 and the certificate appended to Ext. P. 13 and feel fully satisfied that the criticisms are ill-founded. Ext. 13 would, if believed, undoubtedly establish the appellant's guilt and as indicated, we see no reason to discredit it.

7. On the whole the appellant has been rightly found guilty of murder. The sentence awarded is only the lesser one prescribed. We accordingly confirm the conviction and the sentence and dismiss the appeal.

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