

**Mathai Mathew Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/718231](http://sooperkanoon.com/718231)

**Court :** Kerala

**Decided On :** Mar-12-1952

**Reported in :** 1952CriLJ1304

**Judge :** Sankaran and; Subramania Iyer, JJ.

**Appellant :** Mathai Mathew

**Respondent :** State

**Judgement :**

**Sankaran, J.**

1. The appellant is the accused In Sessions Case No. 18 of 1951 on the file of the Sessions Court at Parur. He stood charged for the offence of murder punishable under Section 302, Indian Penal Code. After considering the evidence in the case, the learned Sessions Judge found that the act proved against the accused did not amount to the offence of murder, but only to culpable homicide not amounting to murder. Accordingly the accused was convicted under Part I of Section 304, I.P.C. and sentenced to undergo rigorous imprisonment for 7 years. It is against such conviction and sentence that the accused has preferred this appeal.

2. The case against the accused is that at about 10 O'clock on the night of 2.5.1124 the accused attacked deceased Ulahannan Ouseph alias Kunju, inflicted a deep cut on the right side of his neck with a knife and thus caused his death.

The occurrence is stated to have taken place at the point marked A in the Arappamattom lane in Thondikuzha Kara, Karikode Pakuthy, Thodupuzha Taluk. The situation of this lane as well as the point at which the occurrence is stated to have taken place are shown in the sketch Ext. I prepared and produced by the Investigating Officer. On the Question that Ulahannan Ouseph alias Kunju met with his death on the night of 2.5.1124 as the result of a cut sustained by him on the right side of his neck, there is no dispute in this case.

This fact is also conclusively proved by the evidence recorded at the trial. P.W. 1 is the brother and P.W. 2 is the widow of Ulahannan Ouseph. P.Ws. 5, 7 and 8 are independent witnesses who are well acquainted with him. All these witnesses identified the dead body found in the Arappamattom, lane on 3.5.1124 and which is described in Ext. B report prepared after holding an inquest on the dead body, as that of Ulahannan Ouseph. After the inquest the body was subjected to post-mortem examination by the Medical Officer P.W. 10 and Ext. G is the post-mortem certificate issued by him. Of the 8 injuries found on the body of Ulahannan Ouseph and which are described in Ext. G, the first injury was a gaping wound 4' 1' bone-deep-across the right side of the neck beginning from the thyroid cartilage and cutting the cartilage and all the soft tissues up to the cervical bone. This was a fatal injury according to P.W. 10. These items of evidence establish beyond doubt that Ulahannan Ouseph, the husband of P.W. 2, had sustained the wound on the right side of his neck and that he died as the result of that injury, on the night of 2.5.1124.

3. The plea of the accused is that he had nothing to do with the injury which resulted in the death of Ulahannan Ouseph. It is urged on behalf of the accused-appellant that the evidence adduced by the prosecution is extremely unreliable and that such evidence does not establish the case-alleged by the prosecution. At the outset it may be mentioned that there is no direct evidence to prove the act attributed to the accused. That act is sought to be proved by the several items of circumstantial evidence adduced by the prosecution witnesses and also by a confessional statement given by the accused. According to the prosecution, the accused made the fatal attack on deceased Ulahannan Ouseph on the night of 2.5.1124 while they were returning home from the toddy-shop at Ezhumuttam,

after getting themselves fully drunk. The several connecting links in proof of this version are furnished by the evidence given mainly by P.Ws. 1, 2, 5, 7, 8, 9, 12 and 13 and; also by Exts. A to C, J, H and N.

The learned Sessions Judge has believed such oral and documentary evidence.

Then after discussing the oral and other circumstantial evidence His Lordship proceeded as follows:

4. The question for consideration is whether the several items of circumstantial evidence already referred to are sufficient to warrant a conclusion that it was the accused who inflicted the fatal injury on Ulahannan Ouseph on the night of 2.5.1124 and thereby caused his death. It will not be wrong or opposed to any rule of law to find the accused guilty of the offence charged against him merely on the strength of the circumstantial evidence provided that such evidence is so conclusive as to lead only to one conclusion, viz., that it establishes beyond doubt the guilt of the accused; when the circumstantial evidence is so thorough and convincing it can be accepted and acted upon as good as direct evidence.

In the present case there is clear and conclusive evidence definitely proving the following facts; the accused and the deceased were together in the toddy shop at Ezhumattam on the evening of 2.5.1124 till about 9 P.M. They left the shop together and both of them proceeded towards the south along the Arappamattam lane. They were fully drunk and while they were proceeding along the lane they were engaged in a wordy quarrel by using foul and abusive language against each other. They were seen in that condition at about 9.30 P.M. by P.W. 5. A little later, the accused alone was seen going towards his house, by P.W. 13. On the next morning the dead body of Ulahannan Ouseph was found in the Arappamattam lane and at a point to the south of the spot where the accused and deceased were together seen by P.W. 5 and some distance to the north of the place where the accused alone was seen by P.W. 13. The clothes worn by the accused on the night were washed by him and spread for drying. In spite of such washing human blood was detected on these clothes when they were subjected to chemical examination after they had been recorded from the accused's house. M.O. II knife which belonged to the accused and which was in his possession on the night of

2.5.1124 and which was recovered from him at the time of his arrest, was also subjected to chemical examination and human blood was detected on that knife also. The accused was seen to have sustained certain minor injuries as described in Ext. H wound certificate on the night of 2.5.1124. These injuries were admitted by him to have been sustained at 10 P.M. on the crucial night and in the course of a struggle.

The cumulative effect of all these circumstances is to lead to the irresistible conclusion that the accused sustained the minor injuries already mentioned, in the course of a tussle between himself and the deceased and that the fatal wound on the deceased was inflicted by the accused himself at that time. The several links in the chain of the circumstantial evidence are complete in themselves and it is impossible to explain them away in favour of the innocence of the accused. Thus we hold that the lower court was fully justified in holding that the circumstantial evidence already adverted to has conclusively proved and established the fact that it was the accused who inflicted the cut on the neck of the deceased Ulahannan Ouseph and caused his death.

5. There is also a confessional statement given by the accused. Ext. O is that statement. It was duly recorded by a competent Magistrate who has been examined as P.W. 23. As already stated, the accused was arrested at 8.30 A.M. on 5.5.1124. He was produced before the Magistrate within a few hours of the arrest and the confessional statement 32xt. O was recorded at 12 noon on the same day. Even though the accused has pleaded that he had been arrested even on 3.5.1124 and that it was on account of the police torture that he happened to give the confessional statement as embodied in Ext. O there is nothing in the evidence in the case to show that there is any basis for this allegation. The internal evidence furnished by Ext. O is sufficient in itself to expose the hollowness of the plea that the version given in Ext. O was put to the accused by the police and that he was compelled to repeat the same. The prosecution case against the accused was that he was guilty of the offence of murder. The confessional statement in Ext. O is couched in such a manner as to make out a case of private defence (or the accused. It is too much to believe that the police would have induced the accused to put forward such a version as to undermine the very charge against the

accused.

Exhibit O shows that the Magistrate proceeded to record the confession after interrogating the accused on all the relevant aspects and after satisfying himself that the accused was making the confession of his own free will. The questions directed towards that end are recorded in Ext. O together with the answers given by the accused. On a perusal of Ext. O in the light of all the attendant circumstances, we see no reason to differ from the lower court's conclusion that the accused was making a voluntary confession. At the foot of the confession the Magistrate has certified that the confession has been recorded by him after he was fully satisfied that it was a voluntary confession. There is no inherent defect in Ext. O as it stands. However the lower court has rejected Ext. O for the simple reason that the fact that the necessary warning was given to the accused is not recorded in the body of the confession. The view taken by the learned Sessions Judge is that the failure to record that fact in the body of the confession is a fatal defect rendering the confession as illegal and inadmissible. This view of the learned Sessions Judge is not correct and it is not supported by the relevant provisions of the Code of Criminal Procedure.

The directions to be followed in recording a confession are contained in Section 162 of the Travancore Criminal Procedure Code (corresponding to Section 164 of the Indian Code). Clause 3 of the section directs that the Magistrate shall before recording the confession explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and that no Magistrate shall record any such confession unless upon questioning the person making it, he has reason to believe that it was made voluntarily. It is significant to note that this clause only insists that the Magistrate should explain to the person making the confession that he is not bound to make a confession and that if he does so it may be used as evidence against him. This explanation of warning is not part of the confession.

Clause 2 of the section lays down that the confessional statement shall be recorded and signed in the manner provided for in Section 301 of the Travancore Criminal Procedure Code corresponding to Section 364 of the Indian Code.

Section 301 insists that the statement given by the accused shall be recorded in full, including every question put to him and every answer given by him, in the language in which he is examined and that it shall be got signed by him after the same has been read or heard read and understood by him and admitted to be correct. It is clear that this direction applies only to the statement proper given by the accused. If the warning given to the accused by the Magistrate before proceeding to record the confessional statement is also given by putting the necessary questions to him and eliciting the answers to such questions, then such questions and answers also should be recorded in the statement because it would then form part of the statement given by the accused. But the warning could also be given by simply explaining to the accused that he is not bound to make a confession and that if he does so it may be used as evidence against him.

In such a case the warning will not form part of the statement of the accused and as such it cannot be said that it should form part of the confessional statement itself. It is also significant to note that there is no express direction in the section as to the form in which the warning is to be given or that it should form part of the confessional statement itself. On the other hand from the form of the certificate to be added at the foot of the confession, it is clear that it will be sufficient compliance with the provisions of the section that if the confession has been recorded after the warning has been given to the accused in the first instance and after the Magistrate is satisfied that the accused is giving confession voluntarily in spite of the warning given to him. Such a certificate is made at the foot of the confessional statement Ext. O. There is no warrant for supposing that the statement contained in Ext. O that the Magistrate has given the necessary warning to the accused is not true and the certificate is a mere reproduction of the form given in the section itself.

When the confession contains a certificate of a memorandum at its foot as required by Section 162 (Section 164, Indian Code) a presumption arises under Section 90 of the Evidence Act that all the necessary formalities have been duly complied with and that the statements contained in the memorandum are true and correct. Such a presumption arising in the case of Ext. O has not been rebutted. On the other hand, the direct evidence given by the Magistrate as P.W. 23 has

only gone to confirm the presumption. In the course of his examination he has stated that before proceeding to record the confession, he made the accused understand that he was a Magistrate, that the accused was not bound to make a confession and that if he does so it may be used as evidence against him. The Magistrate has further stated that only after giving such a warning and after satisfying himself that the confession was being made voluntarily that he proceeded to record the same.

Thus it is clear that so far as Ext. O is concerned it is not defective in any manner and as such it could be relied on and accepted. A similar question arose for consideration in *Thukaram v Emperor* AIR 1933 Bom 145 and there it was ruled by a Full Bench of the Bombay High Court that all that is required by Section 164(3) is that before recording the confession, the Magistrate should explain it to the accused that he is not bound to make a confession and that it is not necessary that such warning should appear in the body of the confession or should appear in writing at the commencement of the recording of the confession. It is sufficient if the warning was given as a matter of fact and that fact is mentioned in the memorandum added at the foot of the confession. Since all the formalities required by Section 164 have been complied with so far as Ext. O is concerned, it can be accepted and acted upon and we hold accordingly.

6. On the basis of the confession exhibit O the accused can be found to have caused the death of Ulahannan Ouseph. But the fact remains that the accused had retracted the confession. When the confession has thus been retracted, it is only prudent and proper to see if all the material facts stated in the confession are corroborated by other independent evidence. The several items of evidence already referred to and discussed afford such corroboration. The only point on which corroboration is lacking is about the exact nature of the fight that took place between the accused and the deceased. Corroboration on that point could not naturally be expected in a case where there is no direct evidence at all. All the same the accused is entitled to get the benefit of all the circumstances which are in his favour. The lower court has construed all those circumstances in favour of the accused. From the version put forward by the accused himself in Ext. O confession it is clear that in the tussle between the accused and the deceased he

was able to easily overpower the deceased. It is also seen from the inquest report Ext. B that the small pen-knife which the deceased had with him was safely enclosed in a packet along with a few currency notes and that the packet was found enclosed in the folds, of the cloth worn by the deceased.

The witnesses who met the deceased on the evening of 2.5.1124 did not also find any weapon in the hand of the deceased. Under such circumstances it is clear that the accused could not reasonably apprehend death or even grievous hurt, at the hands of the deceased, so as to justify his using the knife for inflicting a deep-cut wound on the neck of the deceased. Both of them were drunk and the wordy quarrel that commenced between them in that drunken mood appears to have developed into a hand to hand fight and to a tussle. It was on a consideration of all these circumstances that the lower court found the accused not guilty of the offence of murder but only to culpable homicide not amounting to murder and punishable under Section 304 Part 1, I.P.C. The conviction is right and it is accordingly upheld. On the question of sentence also we are not prepared to say that the 7 years rigorous imprisonment awarded by the lower court is excessive, in the circumstances of the case.

7. The result is that the conviction entered against the appellant accused and the sentence awarded to him by the lower court are confirmed and this appeal is dismissed.

8. The bail bonds of the accused are cancelled and he is committed to custody.

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