

Kesavan Gopalan Vs. State

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Court : Kerala

Decided On : Oct-12-1953

Reported in : 1954CriLJ1468

Judge : Koshi, C.J. and; Kumara Pillai, J.

Appellant : Kesavan Gopalan

Respondent : State

Judgement :

Koshi, C.J.

1. Criminal Appeal No. 99 and Referred Trial No. 7 arise from the judgment of the learned Sessions Judge of Mavelikara in Sessions Case No. 5 of 1953. In that case one Kesavan Gopalan (hereinafter referred to as the accused) stood charged with the commission of offences punishable under Sections 302 and 401 of the Indian Penal Code. The case was that on 8-10-1951 at about 10-30 p.m. the accused caused the death of one Sankaran Padmanabhan by cutting him on his neck with a tapper's knife and that he afterwards helped himself with a gold chain and a gold ring which Padmanabhan was wearing at that time and some money and an electric torch which were in Padmanabhan's possession.

The trial was held with the aid of three assessors. Agreeing with their unanimous opinion the lower Court found the accused guilty of the offences he was charged with and sentenced him to death for committing murder and to undergo rigorous

imprisonment for a period of one year in respect of the charge of misappropriation. The accused has preferred Cri. Appeal No 99 against the conviction and the sentence and Referred Trial No. 7 is the reference under Section 374, Cri. P. C., for confirmation of the death sentence.

2. The prosecution case is set out correctly as follows in paragraph 2 of the lower Court's judgment :

Sankaran Sankaran examined as P. W. 3 in the case was the contractor of the toddy shop No. 36 at Lakasserri Muri in Chengannoor. But the toddy shop was managed by his deceased son Padmanabhan ever since he took it on contract. The accused is the son of Sankaran Kesavan, a brother of P. W. 3. The deceased Padmanabhan daily used to go to the shop in the morning and return home by 9-30 p.m. or 10 p.m. His house is at Puthur about one and a half miles from the toddy shop. On 22nd Kanni 1127 corresponding to 8-10-1951 at about 10-30 p.m. while Sankaran Padmanabhan, as usual, was returning home from his shop, the accused waylaid him in the Perisseri-Futhentheruvu road on the southern side of the Charekathil stone bridge, fell upon him and hacked him to death by cutting and sawing his neck with a deadly weapon, a 'theru' a broad-bladed sharp weapon used generally by tappers. The accused then appropriated Bs. 115 worth of currency notes found with Padmanabhan, a gold chain worn by the deceased round his neck, a ring of gold from his finger, a torch light altogether worth about Rs. 256 and made good his escape from the spot.

Early next morning at about 5-30 O'clock Sankaran Divakaran (P. W. 1) the younger brother of deceased Padmanabhan was deputed by his father to fetch some toddy from his shop for the purpose of giving the same to some workmen. While he was proceeding along the said village road, he saw his brother Padmanabhan lying dead by the side of the road with injuries on his body. He took fright, ran home and informed the inmates of the house who hurried to the spot and saw Padmanabhan lying dead with injuries. The information regarding the death of Padmanabhan was given by P. W. 1 to the Sub-Inspector of Police, Chengannur, who thereupon registered a case and started investigation along with the Circle Inspector of Police.

As a result of their investigation the accused was arrested in the morning of 12-10-1951. The motive alleged for the occurrence was the grudge which the accused bore against the deceased Padmanabhan. The accused was a tapper in the employment of Padmanabhan for about 24 years ending with 3-1-1126. On that day the accused was dismissed from service, as he unnecessarily attacked a fellow tapper in the shop and created trouble thereat. Subsequently, the accused was for some time working in the toddy shop of Vasu Panicker, examined as P. W. 7, but was sent away from there also. Thereafter he got employment as a tapper in the toddy shop No. 18 at Irivallipra at Thiruvella belonging to Kochukunju Velayudhan, an uncle of the deceased. Through the intervention of the deceased Padmanabhan, the accused was turned away from his shop as well. Thus there was sufficient reason for the accused to be inimical towards the deceased. To boot, the accused being then unemployed, again approached Padmanabhan and asked for re-employment in his shop as a tapper, but his request was turned down.

Thus the accused who already bore a grudge against the deceased became enraged at his refusal and decided to put an end to his life. Further, there was some ill-feeling between the accused on the one side and Sankaran and Padmanabhan on the other side relating to the re-transfer of a property belonging to the accused. The accused bore ill-will against the deceased on that account as well. After completing the investigation the police charge-sheeted the accused before the Stationary 2nd Class Magistrate at Chengannoor who after completing the enquiry committed the accused to Sessions as stated above. A charge was accordingly framed, read and explained to the accused. But he denied having committed the offence....

3. That Sankaran Padmanabhan, the accused's cousin, died as a result of the injuries he sustained at the hands of an assassin during the night between 8-10-1951 and 9-10-1951 is clearly borne out by the evidence on record. On 8-10-1951, as usual, he left his toddy shop for his home at about 9-30 p.m., but he never arrived there. Early morning of the next day his dead body was seen by P. W. 1, his brother, along side the road through which he had to pass to reach his home from the shop. There were two severe wounds on the neck of the deceased and

the medical evidence is definite that he died as a result of those injuries.

The post mortem certificate (Ex. M) and the evidence of P. W. 20, who conducted the autopsy, show that the death was on account of syncope due to severing of the spinal cord, and shock and haemorrhage caused by the injuries. There were in all three injuries of which one was an abrasion on the head and the other two were on the neck. Both these were incised wounds, the first one (9' x 2' x 1') was in front of the neck and the other (8'x2 1/2') on the back of the neck. The latter cut through the body of the vertebra, spinal cord, blood vessels, nerves, food tubes etc. When Sankaran Padmanabhan left the shop he had on his person two gold rings and a gold chain. He had also with him Rs. 115 representing the collections of the shop for two days and an electric torch among other things.

When his dead body was seen the next morning one gold ring, the gold chain, the money and the torch were missing while an ovaltine tin, a brass spoon, a bunch of keys, his slippers etc., were seen near the body. These latter articles, his employee in the shop has sworn to, were among the articles that were with him when he left the shop that night. From what has been said above it is only a reasonable inference to make that whoever murdered Padmanabhan also removed some of the valuable ornaments on his person and the money and the torch he was carrying with him.

4. There is however no direct evidence to prove the crime. The investigation made by the police aroused the suspicion that the accused might have had a hand in the matter. For over an year the accused's relations with his cousin Padmanabhan were not cordial. The police also came to know that during the night Padmanabhan met with his death the accused was seen in the vicinity of the place where the dead body was afterwards found. On the morning of 9-10-1951 when the police went to the place where the dead body lay the accused is said to have been present near that place but thereafter he disappeared and was not seen by anybody till he was arrested on 12-10-1951 at 5-30 a.m.

According to the prosecution, when he was arrested he expressed a desire to confess his guilt and he was soon taken before the First Class Magistrate of the place (P. W. 26) before whom he made a confession. The confession was

retracted at the sessions trial, but the lower Court found various pieces of circumstantial evidence to connect the accused with the crime. Besides it is also found that the confession though retracted was entitled to be acted upon and that it confirmed the inference arising from the circumstantial evidence in the case that the accused committed the crime.

5. The chief among the circumstances the lower Court relies upon is the discovery of incriminating materials through information supplied by the accused to the police. The evidence of the investigating officers, P. Ws. 27 and 28, as also the evidence of P. Ws. 1, 2 and 3 and the evidence of P. Ws. 15, 16 and 18 clearly show that the accused produced before the investigating officers the articles which are proved to have been on Padmanabhan's person or with him when he was last seen alive but were found missing when his dead body was discovered. (After discussion of evidence his Lordship proceeded :)

6. Recently in - K.N. Vijayan v. State AIR 1953 Trav-C 402 (A), this Court had occasion to point out that in cases in which murder & robbery have been shown to form parts of one transaction, recent and unexplained possession of stolen property in the absence of circumstances tending to show that the accused was only the receiver of the property would not only be presumptive, evidence against the prisoner on the charge of robbery but also on the charge of murder. It was stated there that the question whether in a given case a presumption in that sense can be drawn must depend upon the facts of the particular case. In this case it is clear that the murderer had helped himself with some of the valuable ornaments the deceased was wearing at the time of his death and also of the money and the torch he was in possession of. Evidently the process of cutting the neck cut the chain into two.

7. To the above unexplained circumstance have to be added the evidence the prosecution let in to show that at about the time Padmanabhan was expected to return home after his work in the shop the accused was seen on the road near the scene of the offence which same road also led to Padmanabhan's house and the evidence as to the strained relationship between Padmanabhan and the accused for over a year prior to the incident.

P. W. 9 saw the accused about four furlongs away from the scene of the occurrence at 9-30 p.m. Later at 10 p.m. P. W. 8 saw him at a distance of three-fourth of a furlong from the scene of the offence. He was going from the north to south, that is, event past his house. It is suspicious why he should have been out on the road at that part of the night and why he should have proceeded southwards along the road past his house and that of Padmanabhan, These two witnesses have been believed by the lower Court and we see no reason to take a different view about their credibility. There is also evidence that at about 8 O'clock he went to the toddy, shop of P. W. 7 and had a good drink.

8. The prosecution alleges more than one reason for the accused to have been inimically disposed towards Padmanabhan. They were no doubt near relations, but over a year prior to the incident Padmanabhan dispensed with the accused's services from his toddy shop where he was employed as a tapper. Afterwards he got a similar employment under P. W. 7, but that also he lost. Then Padmanabhan's uncle entertained him as a tapper in his shop at Thiruvella, but he was sent away from there as Padmanabhan informed his uncle that the accused was an undesirable person. He was then left without a Job and his entreaties of Padmanabhan and his father to re-employ him proved unsuccessful.

It would also appear that there were some disputes between the two families about the exchange of some immoveable properties that had taken place some years ago. Whatever that cause of enmity be, the evidence shows that being out of employment the accused was in a rather desparate mood and that he believed Padmanabhan to be the cause for his remaining unemployed. As an exemployee under Padmanabhan he knew when the later would be returning home and that for that he had to pass along the road by the side of which his body was seen on the morning of 9-10-1951.

Padmanabhan's house is to the north of the place where his body lay and the accused's house is further north. The evidence of P. W. 8 would indicate that the accused was laying in wait for Padmanabhan. The tapper's knife which he produced from the cow-dung pit has been identified as the one P. W. 11 had entrusted to him while he was his employee. The accused had not returned it to

his master. It is only natural to ask why that was kept in the cow-dung pit and when that was done.

9. The combination of these circumstances in our opinion leads to the irresistible conclusion that the accused it was who caused Padmanabhan's death and that after killing him he also removed his chain, ring, torch and the money that was with him. This is the view which the lower Court took of the circumstantial evidence in the case and we see no reason whatever to differ from it.

10. This conclusion that the accused murdered Padmanabhan and also deprived him of certain valuable things belonging to him gain confirmation from the judicial confession (Ex. S) the appellant made before P. W. 26. The defence raised a number of objections to its admissibility but we are not inclined to attach any importance to those objections. It was pointed out (i) that the record of the confession does not show that the Magistrate disclosed his status to the accused, (ii) that the preliminary questions and answers thereto by which the Magistrate satisfied himself that it was a voluntary confession have not been recorded, (iii) that the accused gave it under the hope that he would be saved if he were to confess and (iv) that the lower Court went wrong in acting upon the confession while discarding some portion of it.

11. The last objection can easily be disposed of. The portion that is alleged to have been discarded is the statement of the accused in Ex. S that he and Padmanabhan left the shop together. That no doubt is opposed to the prosecution evidence, but not to place reliance upon it is not to act upon the incriminating part of the confession while eschewing the expiatory portion. That statement is really incriminating but the lower Court did not want to depend upon it when it was uncorroborated.

12. Equally untenable is the contention that the confession should be discarded from the evidence since the accused confessed under the impression that it was the only way for his safety-There is a statement in Ex. S that the reason for the confession was a feeling of remorse and the expectation that it was the only way to save himself. Unless that expectation is shown to have been the result of any inducement, threat or promise as specified in Section 24, Evidence Act, a

confession otherwise voluntary does not cease to be so simply because the accused person on his own believes that to confess his guilt would be the only way of saving him. See - Sirkar v. Raman 24 Trav LJ 33 (B).

13. It is not a statutory requirement that the preliminary questions and the answers thereto by which a Magistrate recording a confession satisfies himself that the confession is voluntary should be recorded. See - Tukaram Khandu v. Emperor AIR 1933 Bom 145 (FB) (C) and - Mathai Mathew v. State AIR 1952 Trav-C 305 (D). It is however desirable that a Magistrate should record the preliminary questions and answers as the record of those questions and answers would be the best means of enabling the Court of Session and the High Court to arrive at the same conclusion, as that to which he, the recording Magistrate, came as regards the voluntary nature of the confession. See Mahomed Ali v. Emperor AIR 1934 All 81 (FB) (E) and - Rex v. Moti : AIR1953 All792 . At the same time both these decisions point out that the omission to record the preliminary questions and answers will not render a confession inadmissible and that the irregularity, if any, is one curable under Section 533, Cr. P. C. In this case however there is not much basis for the criticism.

14. Exhibit S opens with a memorandum as follows :

I examined the person of the accused. He has no marks of any injury on his body. I have ascertained from him that the confession he is going to make is voluntary. There are not any police officers present anywhere near.

The body of the confession begins after this and when asked on what he wanted to confess the accused stated that it was about the murder of Padmanabhan. The Magistrate then asked him whether he knows that the confession he makes would be used against him and whether he knows he has the freedom to confess or not. Both these questions were answered in the affirmative.

No doubt it is only the answers that appear in the written record. At the foot of the confession the memorandum required of by Section 164(3), Cr. P. C. is also appended in the Magistrate's own handwriting. Further, the Magistrate has given evidence that it was only after satisfying himself that the confession was voluntary

and after giving the due warnings that the confession was recorded. Such evidence is admissible under Section 533. We cannot therefore think that there is any substance in the second objection either.

15. As for the first objection the record is silent that the Magistrate disclosed to the accused his status. As pointed out in the latest Allahabad case referred to above, though the section does not in so many words require it, unless the accused person is told that he is before a Magistrate and under his protection it is not likely that he would have the courage to give correct answers to the questions that the Magistrate puts to him under Section 164(3). The Magistrate's evidence clearly shows that he made known his status to the accused. There is no reason to doubt the truth of that statement. The Orissa case cited at the bar, - *Sanatan v. State* : AIR1953 Ori149 does not show that there was such evidence in that case nor does the decision refer to the curative provision in Section 533.

16. The objections to the admissibility of the confession are all therefore untenable. On reading the confession and considering the evidence of the Magistrate and the attendant circumstances regarding its recording, we agree with the lower Court's view that the confession is both true and voluntary. Though retracted the material portions of it are, as pointed out by the lower Court substantially corroborated by the other evidence in the case. The retraction was made for the first time in the Sessions Court. In the Court though he pleaded innocence no word was said by way of resiling from, Ex. S or that the alleged recovery through him of the incriminating articles in the case was false.

17. That the place of the occurrence was that mentioned in Ex. S is borne out by the fact that the dead body was recovered from the place mentioned. The process of killing gains corroboration in the nature of the injuries seen on the neck of the deceased. The removal of the ring, the chain, the money and the torch obtains corroboration from their production by the accused himself. That the chain got severed into two while cutting the neck is specifically mentioned in the confession and the appearance of the broken pieces confirms it.

The reasons set out in Ex. S as those which impelled the accused to kill Padmanabhan are the same as those suggested by the prosecution by the evidence of witnesses competent to speak about them. It indeed discloses a further fact that the deceased was responsible for implicating the accused's father in an Abkari case and getting him convicted. That is a fact which no witness has spoken to and that furnishes a piece of internal evidence that the confession is true and voluntary.

18. The circumstantial evidence relied upon by the lower Court, with whose opinion we agree, gains great support from the confession and on the strength of all these evidence the accused's conviction for the offence of murder and misappropriation has to be confirmed and we confirm it. There is no extenuating circumstance whatever for the mitigation of the sentence of death. On the other hand it was a deliberately planned murder and the injuries show that the accused acted in a very cruel manner. Not only did he inflict cuts on Padmanabhan's neck with a tapper's knife, but he also sawed the neck with that weapon and practically severed the head from the trunk.

19. We confirm the sentence of death passed by the lower Court. The reference is answered accordingly and the accused's appeal is dismissed. The sentence of death will be carried out first and with it the question of undergoing the sentence of imprisonment will, of course, cease to arise.