

In Re: Velliah Kone

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Court : Chennai

Decided On : Apr-27-1922

Reported in : (1922)43MLJ222

Appellant : In Re: Velliah Kone

Judgement :

Ayling, J.

1. Accused in this case has been convicted of the murder of an old woman named Pichi and sentenced to death.
2. The prosecution case is as follows; Deceased was a relation of accused and on her husband's death came to live in his house, bringing with her a sum of Rs. 200, which she lent him to pay off a mortgage. Subsequently disputes arose, and she wanted her money back, and moved into a small hut close to accused which she hired by herself. So far there is no dispute.
3. According to the defence accused managed to pay off the debt to deceased by selling his wife's jewels, According to the prosecution, he did not and the wrangling continued culminating in a serious quarrel on the night of December 29th, Even after bed time deceased continued to abuse accused from her hut, and at last the man infuriated beyond endurance, went out and throttled her. He then tied her body in a sack with some heavy stones, and at about day break carried it to a well about 150 yards away and threw it in. There the body was found four days later,

and accused was arrested.

4. The above facts are practically all contained in two state-merits recorded by the Sub Magistrate from accused's wife Subbammal P.W. 2: the first, Ex. D, under Section 164 Criminal Procedure Code on 4th January 1922, and the second, Ex. C. in the course of the committal enquiry a week later. These statements if accepted leave no possible room for doubt as to the commission of the murder by accused. Subbammal did not actually see the murder but she deposes to her husband going to deceased hut, to hearing the latter's cries and the sound of blows, to her husband's returning and fetching a gunny bag, and rope, and threatening her to make her keep quiet. She subsequently fled to her mother's house, and stayed there. In the sessions Court, she resiled from the most important part of the above story, and swore that her husband did not leave the house, and that her earlier statements were enforced by Police ill-treatment. Her deposition before the committing Magistrate Ex. C, was therefore treated as evidence under Section 288, Criminal Procedure Code and the case turns very largely on whether it can safely be accepted as true.

5. A preliminary point of some importance has been raised as to whether the first statement, Ex. D, is relevant under Section 157, Indian Evidence Act, to corroborate the deposition, Ex. C. It is not disputed that Ex, D is a statement which would be admissible, under the terms of the section to corroborate a statement to the same effect, if made on the witness box in the Sessions Court; but it is argued for appellant that the deposition before the committing Magistrate is not testimony within the meaning of Section 157 and that the latter section will not apply to the present case.

6. The authority for this view is the judgment in Emperor v. Akbar Badoo I.L.R. 34 Bom. 599, in which the learned Judges certainly ruled that 'previous statements may be used to corroborate or contradict statements made at the trial not to corroborate statements made prior to the trial'. In the latter category they included statement made, as in the present case, in the course of the committal enquiry. No reasons are given and no other case has been quoted to us in which the same view has been taken.

7. With all respect it seems to me to be wrong. I know of no, reason why the word 'testimony' in Section 157, Indian Evidence Act, should be given this artificial limitation; and the object and effect of Section 288, Criminal Procedure Code, seems to me to be to place the deposition in the connected enquiry on exactly the same footing as the deposition in the Sessions Court of course such a statement would be accepted with great caution like every statement of a person who has changed his story at different stages. But it is evidence in the case; and it is equally in the discretion of the Sessions Judge to believe it and act on it in preference to the deposition in his own Court, as it would be to believe and act on the latter, in preference to a contradictory statement before the committing Magistrate. Vide judgment of Aikman, J. in Emperor v. Dwarka Kurmi I.L.R. 28 All. 683 and also Queen Empress v. Doraiswami Ayyar I.L.R. (1901) Mad. 414 If this is so, then the credibility of the statement in the committing Magistrate's court must be considered and tested in exactly the same way as one made in the Sessions Court and it is of the utmost importance to know how it compares with statements made soon after the event or before a competent authority. No one will deny that apart from any ride of land comparison with a statement recorded in the circumstances in which Ex. D was taken affords a very valuable test of the truth of any latter statement.

8. My view is not unsupported by authority vide a case reported in 11 Weir 821 in which Collins C.J., and Benson, J. held that a statement of a witness made at the inquest could be used to corroborate her statement in the committal enquiry, although she entirely resiled from the latter in the Sessions Court.

9. I therefore hold that Ex. D, is admissible under Section 157 Indian Evidence Act, to corroborate Ex. C.

10. For this purpose it is not without importance, The two statements substantially agree and a perusal of either leaves in my mind a strong impression of naturalness and truth. I should be prepared to accept Ex. C without Ex, D, but I am confirmed in this view by the fact that the young woman told the same story at the earliest opportunity. Ex. D, was of course taken on the day after the inquest; but she herself admits, and it is not disputed, that she gave the same story at the

inquest itself.

11. She now seeks to explain that these statements were enforced and tutored. At one passage she says that the Police took her to the choultry, took off her cloths and ill-treated her. At another she says that they threatened to take off her cloth and disgrace her. I do not wish to emphasize this discrepancy; but there is nothing to support the idea that anything of the kind occurred, and it is impossible to believe that the very detailed and natural story which the witness told was obtained in this way. I may also refer to the evidence of one of the Panchayatdars, P.W. 6, a respectable and disinterested man worth half a lakh of rupees.

12. I do not believe the story of ill-treatment; and on the other hand the action of the witness in resiling to save her husband is quite natural.

13. There is also the evidence of another woman, a neighbour, P.W. 3. Her earlier statements, Exs, E and F, recorded at the same time as Exs. C and D, fully corroborate the latter, but in the Sessions Court she also has resiled, though not quite to the same extent as P.W. 2. She speaks to the quarrel and says that on the night she heard cries, in what she took to be Pechi's (deceased's) voice; but she withdraws her earlier statements that she got up and saw accused entering or leaving deceased's hut, and says they were made through fear of the Police. Here also I can find no foundation for the allegation against the Police; and although the motive of affection is absent in the case of this woman, I think it quite probable that sympathy with her neighbours would induce her to keep in line with P.W. 2.

14. Lastly there is the evidence of neighbour, P.W. 4, who besides deposing to the quarrel on Thursday evening says that early next morning he saw accused going from his house in the direction of the well with a gunny bag, which the witness thought to contain palmyra nuts. It is suggested that this contained the corpse. The witness says he felt no suspicion till the discovery of the corpse in the well, when he gave information of what he had seen. He was examined at the inquest.

15. This witness appears to be quite disinterested; and I see no reason why he should not be believed. It is urged that it is most improbable that the accused would have postponed the disposal of the body till, as would appear from P.W. 4's

evidence it was getting light. The reason possibly lies in the fact that accused admittedly suffers from some kind of night-blindness, and cannot see as well as most people at night. It may be suggested that this renders the perpetration of the murder by him improbable, but even a blind man might without much difficulty grope his way across the few yards to deceased's hut, and seize and murder her in that confined space. To carry a body 150 yards to a well is a very different matter.

16. The above evidence taken together appears to me to fully warrant the conviction. It is not suggested that any one else had a personal motive to murder deceased and in the circumstances the theory of robbery as a motive may be discarded. It would only be possible, if accused's tale of the repayment of the money were believed and no attempt has been made to prove this though if true, it should be easy to adduce some evidence of it.

17. In his appeal petition accused has indulged in wild allegations that his wife is on intimate terms with P.W. 4 and with P.W. 6 actually committed the murder, and cooked up a case against him, allegations unsupported by anything, and which I can only reject as worthless and baseless.

18. I think the conviction must be confirmed but I am inclined to reduce the sentence. If the wife's statements in Exs. C and D are accepted (and I believe them to be quit true), the murder was not committed with the deliberate object of making away with an inconvenient creditor but in a fit of sudden fury provoked by the old woman's persistent stream of abuse.

19. I think in such circumstances, a sentence of transportation for life is sufficient, and I would commute the sentence accordingly,

Odgers, J.

20. I have had the advantage of perusing the judgment just now delivered in which the facts are fully set out. There is no doubt to my mind that the conviction of the accused is right if the statements of Subbammal (the wife of the accused and Chinnammal in the Magistrate's Court can be accepted in preference to their

statements before the Sessions Judge. This is the only point with which I propose to deal. Subbammal in Exs. C and C (1) before the Sub-Magistrate clearly speaks to the abuse of her husband by Pichai and to the fact that he went inside her house, dealt her two blows and she cried out 'He has caught hold of the throat and is killing'; and she also speaks to the fact of the gunny bag in which the corpse was tied up as belonging to her house. Subbammal said exactly the same thing in Ex. D before the Investigating Officer. She adds that her husband actually went towards the west carrying a gunny bag on his head which is corroborated by a witness, P.W. 4, against whom nothing has been suggested. The statements of Chinnammal are not quite so consistent. In her statement before the Investigating Officer she says that the deceased went inside the house of Pichai whom she heard crying out at midnight: 'He is pressing my throat and killing me.' Before the committing magistrate she repeats that statement, but there seems to be some doubt as to whether she was in or outside the house when she heard the cry, The question' is: Can the statements before the committing magistrate be accepted in preference to those before the Sessions Judge from the fact that the former are corroborated by statements made before the Investigating officer? Section 288 of the Criminal Procedure Code clearly says that the evidence taken before the committing magistrate may, in the discretion of the judge, be treated as evidence in the case if such witness is examined, and there is abundant authority, it seems to me, for holding that this evidence once admitted at the discretion of the Judge stands on exactly the same footing as any other evidence in the case. See Reg v. Arjun Megha and Maria Jessa (1874) 11 Bom. H.C.R. 281, Emperor v. Dwarka Kurmi I.L.R. (1906) All. 683 and Queen Empress v. Doraisami Ayyar I.L.R.(1901) Mad. 414 . It was not argued before us that the Sessions Judge had exercised his discretion wrongly, or that he should not have admitted in evidence the statements made before the committing magistrate. Further, the police were examined to disprove any allegation of pressure by them.

21. Section 157 of the Evidence Act says that 'in order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time, when the fact took place, or before any authority legally competent to investigate the fact, may be proved.' There is an authority in Emperor v. Akbar Badoo I.L.R(1910) . 34. Bom. 599 to the effect that only the

statements of witnesses made to the trying court can be corroborated in the manner as contemplated by Section 157; previous statements might be used to corroborate or contradict the statements made at the trial, not to corroborate statements made prior to the trial. With all respect, it seems to me that under Section 288, Criminal Procedure Code, and the authorities quoted above to the effect that once admitted evidence before the Committing Magistrate stands exactly on the same level as any other evidence in the case, it cannot be said that any previous statement taken before the competent investigating authority cannot be used to corroborate the statements made before the committing magistrate which is made by Section 288 part of the evidence at the trial. No authority is quoted for the proposition laid down by the Bombay High Court; and in view of the fact that the object of enacting Section 157 of the Evidence Act proceeded upon the principle that consistency is a ground for belief in the witness's veracity, contrary to the English rule, this state of the law cannot be supported. The view, I venture to take, finds support in a case reported in 2 Weir's Criminal Rulings 821 of our own court, where Collins, C.J, and Benson J held that a statement made at the inquest could only be used to corroborate or to contradict a subsequent statement of the witness admissible as evidence. They go on: 'The only use the prosecution could make of her statement at the inquest would be to partially corroborate her statement to the Magistrate, but when that statement is itself unworthy of credit, it cannot be materially strengthened by showing that the witness had previously made a statement partly in agreement and partly in direct and material disagreement with it.' The learned judges would therefore appear to be clearly of opinion that the statement made at the inquest might be used to corroborate the subsequent statement of the witness admissible as evidence i.e. such as a deposition before the committing magistrate which is admissible as evidence under the circumstance detailed in Section 288, Criminal Procedure Code. I therefore think that the statements, Exs. C and C(1) and F, corroborated as they are by their previous statements before the Investigating Officer are to be preferred to the evidence given by these witnesses before the Sessions Court, especially when we reflect that one of the witnesses is the accused's own wife. As to the other considerations arising on the acts of this case I have had the advantage of considering the Judgment just pronounced and I agree with the

conclusions arrived at and with the reduction of the sentence.

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