

In Re: Ravipati Sitaramayya

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Court : Chennai

Decided On : Dec-05-1951

Reported in : AIR1953Mad61; (1952)1MLJ652

Judge : Mack and ;Somasundaram, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 162, 164, 378 and 429

Appeal No. : Criminal Appeal No. 104 of 1951

Appellant : In Re: Ravipati Sitaramayya

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : V. Rajagopalachari, ;J. Krishnamurthy and ;A. Sambasiva Rao, Advs.

Disposition : Appeal allowed

Judgement :

1. This is a case, which has given us anxious consideration. Appellant, a man aged 43, has been found guilty under Section 302 I. P. C. of the murder of his 17 year old wife, Balakotamma, by strangling her to death during the night of 29-5-1950 in his house in Vetapalam village in which there were admittedly no other inmates. The next morning appellant asked a washerman (P. W. 7) to take a message to his wife's uncles, P. Ws. 1 and 5 and her maternal uncle and foster

father P .W. 6 who all lived at Vadlamudi, a village -'three miles away to the effect that she was found lying speechless and unconscious in his house. On receipt of this message at 7 A. M. P. Ws. 1, 5 and 6 hastened to Vetapalem and found Balakotamma lying dead on a cot.

According to P. W .1, appellant when questioned first made no reply and then denied knowledge of anything. There were no visible injuries on the body. Suspecting that appellant and his concubine one Subbamma had poisoned her, they made a complaint to this effect Ex. P, 1 at the Vadlamudi Police station at midday. The only evidence that, the village munsif of Vetapalam (P. W. 9) gives is that he was a Panchayatdar at the inquest held by the Circle Inspector (P. W. 11) who reached Vetapalam at 4 p.m. Near the corpse was lying a rice pounder M. O. 3. On the body was a blouse M. O. 1 put on. as is described, inside out and a sari M. O. 2. P. W. 1 says when he saw it was slightly wet. Postmortem held by Miss Annapoornama, Assistant Surgeon of Tenali the following morning at 8 a.m. showed that death was due to asphyxia as a result of strangulation. An echymosed patch was found on the neck extending upwards to the lower jaw and downwards to the upper part of both collar bones. The trachea and larynx were congested, oesophagus ecchymosed and the hyoid bone broken. There can be no doubt about the cause of death, which was strangulation by great pressure on the throat.

2. The Circle Inspector returned the post mortem certificate to Vetapalam and arrested the accused on the 2nd June. He produced him before the Sub-Magistrate of Tenali (P. W. 4) on the evening of the 3rd of June with a requisition Ex. P. 3 to record his confession. As it was after lock up time, the Magistrate asked him to be produced the following morning and he was then kept in the sub-jail after being given the necessary warnings. He was produced again before the Magistrate on 5-6-1951 and after giving clear warnings to the appellant in full conformity not only with Section 164 Cr. P. C. but also with Rule 85 of the Criminal Rules of Practice, the Magistrate recorded a long detailed confession from the appellant in which he confessed that he squeezed his wife's throat, while she was asleep with his own hands. Appellant's statement was to the effect that he returned home at mid-night and found his wife asleep, that in view of domestic

troubles she was giving him he strangled her, that he slept in the house till the morning, that he fetched his mother, that neighbours gathered and that he sent word to his brothers-in-law. He said that one of them, when he came to the house, kicked him on the head, which struck against the wall and poked him with a stick near the abdomen. The domestic troubles he detailed there related to complaints his wife made to her brothers who continually interfered in his domestic life and when he protested his wife scolded him and said she would get him killed by her brothers. The gist of his confession is that he killed her thinking that after doing so, he would also die at the hands of the Government, rather than be killed by her brothers. This confession was retracted in the committing court where the appellant pleaded that he was coerced by the Circle Inspector and the Deputy Superintendent of Police into making the confession, that the wording was not his and that he repeated what he was asked to say like a parrot. He adopted the same attitude at his trial. There is no other evidence against the appellant.

3. A curious feature about the confession is that it mentions nothing about the concubine Subbamma, who the appellant continued to keep after he married Balakotamma as his second wife three years ago, after his first wife died. (After discussing the evidence, the Judgment proceeded).

The main contention of Mr. Rajagopalachari for the appellant is that no conviction is possible in the absence of any evidence to corroborate the confession which, he has asked us to reject as not being a true and voluntary one in view of its mentioning several facts, opposed to the evidence in the case. I am myself unable to see any reason for rejecting the finding of the learned Sessions Judge that this confession by the appellant despite its suppression of the existence of Subbamma, and the possibility of other inaccuracies of fact set out there, was voluntarily made by the appellant on being confronted with the results of the post mortem examination.

Mr. Rajagopalachari has suggested in his able argument the possibility of the concubine Subbamma, having entered the house in the absence of the appellant, and having strangled Balakotamma without the assistance or even the knowledge of the appellant who when he returned home and found her dead, in consternation

at his discovery, with a moral conviction as to the guilty person, adopted the course he did of sending a message to his mother and his wife's relations only the next morning, and then making this confession, when the post-mortem showed the cause of death, in the manner he did, to shield the real culprit, who was his concubine Subbamma. The material does indeed show that Subbamma did have a strong grievance against Balakottamma whose resentment and protests at her continued association with the appellant had provoked mediation and led to solemn undertakings by her to have nothing to do with the appellant. I do not find any suggestion in the learned sessions judge's judgment of any such theory, which has been made for the first time in this court on the basis of the retracted confession and the statements made by the appellant in the committing court and at his trial.

A defect, in my view, in the material placed before the court arises from the unfortunate state of our law, under which the first statement made by the appellant to the police regarding the discovery of his wife's corpse, the time at which he found it and what he did immediately afterwards is completely shut out in evidence under Section 162 Cr. P. C. The shutting out of what an accused person tells a police officer particularly in a case of this kind, when first questioned, opens the way for all kinds of statements being made in the committing magistrate's court and also at the trial in conformity with advised lines of defence, which are, of course, impossible to verily and places the prosecution at a great disadvantage. The view that I have no hesitation in taking is that in cases of this kind, the police would do well to take an accused person before a Magistrate, whether he makes a confession or not, and have a statement recorded under Section 164 Cr. P.C. so that the accused person can be fixed to one explanation when placed in a position which becomes incriminating unless he can offer a satisfactory explanation for his behaviour. This is a case in which a man and his wife are the sole occupants of a house, in which the wife is found suddenly dead and post mortem has proved conclusively that it is the result of violent strangulation. A prima facie strong suspicion points to the husband. It is in this background that the confession made before the magistrate, without any appreciable delay in the circumstances has to be appreciated. Although this line of defence has not been raised in the trial court, I have carefully considered the possibility of the concubine Subbamma being the

sole culprit. There are cases in which an innocent person may take upon himself full responsibility for a crime, even murder, to save someone whom he dearly loves from punishment. My own view is that this is not such a case and that the appellant's confession that he and no one else strangled his wife can be safely acted upon.

4. Some decisions have been placed before us in which it has been held that a conviction on the uncorroborated confession of an accused is unsafe. There is no authority to the effect that conviction on an uncorroborated but retracted confession before a Magistrate is illegal and each case has to be dealt with on its own facts. I am unable to find any decision in which where a man, whose wife has been strangled to death at night in a house occupied solely by them, who has voluntarily confessed before a Magistrate to his guilt, being, acquitted.

5. The learned Sessions Judge and all the four assessors who have heard the evidence were of the opinion that the appellant strangled his wife. My own view, which is in agreement with them is that the case is free from reasonable doubt and that the appellant can safely be convicted of murder.

My learned brother, for whose opinion I have the greatest respect, has shared my anxiety in this case and has considered it unsafe to convict the appellant on the basis of this retracted confession. I have however agreed to enter a judgment of acquittal in this case and not to refer the matter to a third Judge in view of the approach made by a learned third Judge sometime ago on a difference of opinion between us in 'Karuppa Thevan' in 'R. T. No. 31 of 1951'. Rajagopalan J. to whom our difference of opinion was referred under Section 378 Cr. p. c. before going into the merits and delivering an opinion in favour of acquittal expressed the following view as the method of approach to such a reference:

"Where the main question at issue is identity of the assailants..... the very fact, that one of the two learned Judges, who had to decide that question was of the view, that the identity of the accused with those assailants had not been established beyond all reasonable doubt, should suffice to establish the basis for such a reasonable doubt, the benefit of which, of course, the accused have to get. In my opinion, a third Judge to whom the question is referred under Section 373 Cr. P.

C. should normally accept that finding, unless the compelling necessity of conclusive evidence on record drives him to deny the existence of any basis for a reasonable doubt."

It would be a sheer waste of time if I were to ask for a reference of our difference of opinion to a third Judge in this case on the basis of this line of approach by a third Judge to a reference made to him. My learned brother and I are in complete agreement that this is not correct and legal method of approach by a third Judge and we say this with the greatest respect to Rajagopalan J. Section 429 Cr. P. C. which would apply in this case of an appeal from a sentence of transportation for life, is identical in terms with Section 378, which provides for a resolution of differences of opinion in what are known as Referred trials on the submission of sentences for confirmation. Section 429 reads as follows: "When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinion thereon, shall be laid before another Judge of the same court, and such Judge after such hearing (if any) as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion." The opinion, which Rajagopalan J. expressed, viz., that the normal disposal by a third Judge should be one of agreement with the opinion of acquittal is one which we are quite unable to share. It would be tantamount to a judgment of acquittal in practice prevailing over a judgment for conviction. Had the statute intended to lay this down it would have done so.

6. There is a dearth of case law defining the scope of the third Judge's method of approach to such a reference. Both Sections 429 and 378 make it mandatory for a judgment or order of the court to follow the opinion of the third judge. The only authority, which supports the view of Rajagopalan J. is the view taken by Mr. Justice Mahmood in --'Empress v. Debi Singh', 1886 All W. N. 275, a decision of the year 1886. In that case, Mahmood J. expressed the view that when one Judge differs from his brother Judge on a pure question of the weight of evidence as to the propriety of a conviction, the opinion of the Judge for acquittal should, as a general rule, prevail. This view was considered by Edge C.J. in -- 'Empress v. Bundu' 1837 All W. N. 125 and rather emphatically dissented from. We must express ourselves in complete agreement with the following view expressed by

Edge C.J.

"When Judges unfortunately differ in opinion, I conceive it to be the duty of each Judge to express and act upon the opinion which he himself has definitely arrived at. Before so expressing himself he should of course carefully weigh the reasons adduced by his brother Judge for forming a different opinion; but if those reasons do not commend themselves to his mind, he must not, in the exercise of his duty, allow the fact that his brother Judge has arrived at a different conclusion, to influence his conduct whether his view to take a criminal case -- be in favour of a conviction or of an acquittal. "There would be no meaning in Sections 378 and 429 if it was intended that the opinion of one Judge in favour of an acquittal should prevail."

We need scarcely say that a difference of opinion to Referred trials, and murder cases involving life and death, arises in exceptional cases and after much anxious deliberation. References are never lightly made and when we, as a criminal Bench, make them, we do expect the legal disposal of a reference in accordance with the sections of the statute under which we make the reference. Otherwise, if a Judge is to exercise his own independent view in accordance with his own conscience, the view taken by Mahmood J. with great respect, would mean that he has to subordinate his own independent conviction in favour of an acquittal and sign a judgment to which he is not really a party.

7. There have been several instances in our own High Court where differences of opinion have been resolved by a third Judge in favour of a death sentence on a murder charge, though one Judge was in favour of acquittal. -- 'Ramaswami Gounden v. Emperor', 27 Mad. 271 was one of the cases which went to the other extreme, in which the Sessions Judge sentenced an accused person on a charge of murder to death. Subramania Aiyar Off. C. J. was of the opinion that the accused was guilty but that the sentence should be one of transportation for life. Boddam J. disagreed and was in favour of acquittal. Bhashyam Aiyangar J. to whom the difference of opinion was referred not merely confirmed the conviction for murder but also the sentence of death passed by the Sessions Judge. When the opinion of Rajagopalan J. in the previous reference was placed before us, the

matter came up for some discussion and Mr. Ethiraj who appeared for the five appellants in that referred trial expressed to us his anxiety as regards the possibility of the third Judge following the precedent of Bhashyam Aiyangar J. and restoring the sentences of death on two of the appellants passed by the Sessions Judge. The judgment of conviction, which I favoured found both young men guilty only under Section 326 I. P. C. and would have sentenced them to a Borstal School for three years.

8. As a criminal Bench, we are, of course, vitally interested in the method of approach by a third Judge to these references. We would like to take the opportunity here as a Bench of expressing our views as to how we would like these references approached by a third Judge. The system of Referred trials from the moffussil tried by a Sessions Judge and assessors, with whose individual opinions the trial Judge is free to disagree, places an extremely heavy burden on criminal benches, who do not themselves hear the witnesses. It is inevitable that differences of opinion should arise in the discharge of this extremely heavy responsibility in which two Judges finding themselves unable to agree on a difficult case, require and welcome the opinion of a third Judge to alleviate their responsibilities. It is in this spirit that we hope future differences of opinion in criminal cases will be resolved and it is also the method of approach the statute requires. In --Md. Illias Mistri v. The King', I. L. R. (1949) I Cal 43 Biswas J. to whom a difference of opinion was referred, made the following approach to Section 429, to which we are unable to take the slightest exception.

"There can be no doubt upon the wording of the section that the whole case is now before me, which means not only that I am at liberty, but that it is also my duty to examine the whole of the evidence for myself and come to a final judgment. It is not a case of merely weighing the opinion of one learned Judge against that of the other deciding which of these opinions I should accept".

I however think though on this point my learned brother does not agree that the learned third Judge cannot with great respect to the decision in --Ramaswami Goundan y. Emperor', (27 Mad 271) pass a death sentence in a case, where the Judge favouring conviction. thinks a sentence of transportation is appropriate with

the other Judge favouring acquittal, on the simple ground that it is only a Bench of two Judges, who should confirm a death sentence in agreement with each other. Although the law may not be specific on this point, this extreme can always be guarded against by the Bench referring the case expressing their opinion that in the event of the conviction being confirmed, the sentence of transportation is the appropriate one, in which case, the third Judge would be bound by such an opinion as regards which there would be no difference for him to resolve. I have thought it necessary to give expression to these views in this judgment, in which I for my part, agree for the reasons I have given supra to my learned brother's judgment of acquittal.

9. SOMASUNDARAM J: The Sessions Judge of Guntur has found the appellant guilty of murder and sentenced him to transportation for life, for causing the death of Balakotamma, the wife of the appellant.

10. The occurrence is said to have taken place on the night of the 29th May 1950 and before dawn of the 30th of May in the house of the accused in a village called Vetapalem. The accused married the deceased about three years before the occurrence, he having lost his first wife about 5 or 6 years before the occurrence. The accused appears to have been keeping a concubine by name Subbamma for about 20 years prior to the occurrence. The accused is aged 43 and the concubine is alleged to be aged about 32 at the time of the occurrence. The accused and his wife (the deceased) appear to have got on well for about a year after the marriage. But soon presumably on account of the influence of Subbamma, trouble started between the accused and the deceased; and it is alleged that the accused started ill-treating the deceased.

About four months or so before the occurrence when P. Ws. 1 and 5, the brothers of the deceased went to Tirupathi, they wanted to take the accused and his wife also; but the accused refused to go and his wife alone was taken. When they returned from Thirupathi, P. W. 5 took his sister to leave her in her husband's house. It appears that the door was bolted against her and the accused remaining inside refused entrance to her. P. W. 5 therefore wanted to take her away but the wife preferred to stay on in spite of all the difficulties. Subsequently, after

sometime on receipt of information that the accused had turned out his wife, P. Ws. 1 and 5 the brothers and P. W. 6, their maternal uncle who is said to have brought up this girl came to the village and finding that all was not well with the accused and the deceased, they wanted to take her away with them. They found that the articles that were presented to her at the time of the wedding were missing in the house; and when she was being questioned about it, it is stated that the concubine Subbammal threw them out in the street from her house which is said to adjoin the accused's house.

Thereupon P. Ws. 1 and 5 put the samans in a cart and wanted the deceased also to come with them. There is some discrepancy as to whether the deceased actually got into the cart or whether she still preferred to remain in the house; but the fact remains that ultimately on account of the deceased preferring to live with her husband, they left all the samans with the accused.

At this time, a neighbour by name Ravipati Venkatasubbayya is said to have interfered and brought about a settlement. The understanding arrived at was that the accused should stop his Illicit Intimacy with subbamma and that neither of them should visit the other or even talk to each other, subbamma also appears to have been a party to this arrangement and by way of securing the performance of the promise, two promissory notes were executed, one by Subbamma and another by the accused, each for Rs. 500 in favour of Ravipati Venkatasubbayya, the arrangement being that if either of the party commits a breach of the understanding then the party shall pay a penalty of Rs. 500 the sum for which the promissory note was taken. This appears to have produced a lull in the otherwise a bit of stormy life led by the accused and the deceased. The accused did not like the brothers of the deceased to visit her.

Suddenly on the morning of the 30th May P. W. 7 a washerman by profession carried a message from the accused to P. Ws. 1 and 5 that the deceased was found lying speechless and unconscious in the house. They immediately went to the village with P. W. 6 and found the deceased lying dead. They saw the accused sitting in the house and it is stated that when questioned he did not make any reply; but finally he stated that he knew nothing. They thereupon suspected that

the deceased was killed by poisoning either by the accused or his concubine as they did not find injuries on the body and as they learnt from the neighbours that she was alive the previous night till about 9 p. m. P. W. 1 immediately went to the police station and gave the report, Ex. P.

1. This was at about 12 noon.

On express report being sent to the Circle Inspector which was received by him at 2-30 p. m. he came to the village at about 4 p. m. He held the Inquest between 4 and 7 p. m. at which he examined P. Ws. 1, 5, 6 and 7 others who were not called as witnesses. The body was then sent for post mortem and the autopsy was held the next morning at 8 a. m. on 31st May. The post mortem certificate Ex. P. 2 was received by the Sub-Inspector on the 1st June. Till then no one knew the cause of death. every one was under the impression that the deceased was poisoned to death.

11. The postmortem revealed that the woman must have died of asphyxia as a result of strangulation. There was an echymosed patch round the neck extending upwards to lower jaw and downwards to upper part of both collar bones. The tissues underneath were red and congested. The trachea and larynx were red and congested. The oesophagus was cynosed and the hyoid bone was broken. There were thus clear indications of death being the result of strangulation. The doctor, P. W. 2, gave it as his opinion that the strangulation was by pressure on the throat and death must have been instantaneous; and that the echymosed patch round the neck must have been due to pressing with some force.

12. The accused was suspected and he was arrested on the 2nd of June. At the time of the occurrence the only persons who were living in the house were the accused and the deceased, the evidence being that Subbamma was living at a distance of about 50 yards away. The Circle Inspector produced the accused on the 3rd June at 6 p. m. before the Sub-Magistrate P. W. 4, but the magistrate asked him to produce the accused the next morning. He was, therefore, produced the next morning and was remanded to the sub-jail, after giving the necessary warnings to the accused. He was again brought on the 5th. The Magistrate after putting the necessary questions and after satisfying himself that the accused

making a confession voluntarily recorded Ex. P. 5 the confessional statement of the accused.

In Ex. P. 5. the accused set out the circumstances under which he committed the murder. According to the confession, his brothers-in-law wanted him to come and live with them but he would not go; and when they once took his wife to Thirupathi and came back he was away on work. She got into the house and closed the door against him when he returned from the fields. He was sleeping outside and next morning he gave her a blow in anger. She sent word to her brothers and maternal uncle who were living in a village called Vadlamudi which is about 3 miles from his village. They came and beat him and took away his samans and also his wife in a cart. He accompanied them till they reached the outskirts of the village asking for His cloth box to be given to him but, ultimately, for some reason not known to himself they brought back his wife and the samans to his house. Then he asked his wife not to allow her people to come. In spite of it, she allowed them stealthily; and this he came to know from her subsequent conduct towards him.

It appears she would not serve food for him on the day when they came and met her. Whenever he scolded her, she used to tell him that she would get him killed by her elder brothers. On the 29th when he returned home at 8 p. m. she was abusing him and served food with chilli powder. When questioned as to why she gave that she asked him to get away if he did not like it. He says he took his meal with butter milk and went to the field and returned at 12 midnight. He found his wife sleeping in a room keeping the door open. He thought that on account of the troubles she was giving and threatening him, it would be better to be killed by Government rather than be killed by her brothers and so he squeezed the throat of his wife who was sleeping and that she died without raising any cry. He says he did this because he became vexed in life and then he slept thereafter for sometime in the house and about dawn he fetched his mother who after coming and seeing the girl, pronounced that she was dead. Neighbours gathered and he sent word to his brothers-in-law and he says they came and kicked him on the head and hit him against a wall. According to his statement, the pain continued till the day before he gave the statement to the Magistrate. This in short is his confession and the case for the prosecution against the accused.

13. In the committing Magistrate's court he entirely went back on this statement and said that the Circle Inspector and Deputy Superintendent of Police took him from his village to Tenali and from Tenali to Ponnur and coerced and threatened him and said that evil would happen to him if he did not give a statement in the manner wanted by them. He says that the wording of the statement is not his and he repeated their words like a parrot. In this statement before the committing magistrate he says that himself and his wife lived amicably and that on that day when he had gone out for work and returned he found his wife did not respond to his call. He tried to wake her up; she did not move. Thereafter he sent word to her mother and called near relations. In short, his statement in the magistrate's court is a direct contradiction of what he stated in the confession, and a protestation of innocence and he throws the entire blame for making the confessional statement on the Circle Inspector and the Deputy Superintendent of Police.

In the trial court he simply denied the offence and did not add anything to what he stated in the committing magistrate's court. He reiterated that the Deputy Superintendent of Police and the Circle Inspector compelled him to make the confessional statement which he made before the Magistrate.

14. The learned Sessions judge believed the confession and found the accused guilty and sentenced him as aforesaid.

15. In appeal it is contended that the confession was not a voluntary one and is also not true; and, as this is a case depending entirely upon the confessional statement only which has been retracted and as there is no corroboration, the accused cannot be convicted on this evidence. So far as the voluntary nature of the confession is concerned, it is difficult to believe the allegation that the Deputy Superintendent of Police and the Circle Inspector tutored him to say what was stated. It is true that after the arrest of the accused on the 2nd till about 6 p.m. on the 3rd he was not produced before the Magistrate. But, this does not, in my opinion, by itself, lead to the inference that the accused either was threatened or persuaded to make a confession by the Deputy Superintendent of Police or the Circle Inspector. The Circle Inspector says he was investigating into this case. He was camping in the village and he was expecting to examine P. W. 8 who speaks

about the promissory note affair and he was examined on the 5th June. Now if the confession was going to be tutored by them, it is unlikely that the police would have dropped Subbamma as there was a strong suspicion that she might have poisoned her and as all the troubles between the husband and wife were due to her. I am not prepared to accept the contention that this accused did not make the statement voluntarily.

But as regards the truth of the averments contained therein, there is considerable force in the contention of Mr. Rajagopalachari. (After discussing the evidence the Judgment proceeded:)

16. It is clear from the above circumstances that there is a great variation between the evidence given and the averments in the confessional statement. For the above reasons, I am not prepared to rely on the confessional statement. The question whether a retracted confession can be acted upon without material corroboration will arise only when the confession is true and can safely be acted upon. That question does not arise in this case, as in my opinion though the confession is a voluntary one, it contains allegations which contradict the main aspect of the prosecution case and so it is unsafe to act upon it without further corroboration. (After discussing the evidence the judgment proceeded:)

17. In the circumstances, in my opinion, the prosecution has not proved its case beyond all doubt against the accused. The conviction and sentence are set aside and the accused is acquitted.

18. I have since perused the judgment of my learned brother. The case has given us great anxiety. My learned brother is however of the opinion that the appellant can be safely convicted on the evidence in the case. I fully appreciate his observations and the reasons he has given for not making a reference, to a third Judge under Section 429 Cri. P. C. I entirely agree with him that it is the duty of the Judge who is asked to resolve the difference of opinion to examine the whole evidence himself and come to a final judgment after giving due consideration and weight to the reasons given by the two Judges on whose difference of opinion the case comes before him for his opinion. I do not think either, Section 373 or 429 Crl. P. C. contemplates the dice being loaded heavily in favour of either view. I am

in agreement with the view expressed by Edge C. J. in --'Empress v. Bundu', (1887) All W. N. 125. and Md. Ill as -- 'Mistri v. The King', ILR (1949) 1 Cal

43. To that extent I agree with the view of my learned brother.

19. As regards the other view expressed by my learned brother that the third Judge cannot pass a death sentence in a case where the Judge favouring conviction thinks a sentence of transportation for life is appropriate with the other judge favouring acquittal, with great respect to my learned. brother I am unable to agree with him. It looks odd and strange that when one Judge favours acquittal and the other judge even if he convicts would sentence him only to transportation for life, a third Judge can hang. But that in my opinion, is the correct interpretation of Section 378 Crl. P. C. When on a difference of opinion a case is referred to a third Judge no fetter can be placed on the third Judge. He is at liberty to express and act. upon the opinion which he himself arrives at. If he chooses he can pass a sentence of death, even though one judge favours an acquittal and the other gives a sentence of transportation for life when convicting the accused.

(NOTE: The following passage from the judgment of Somasundaram J. in R. T. No. 84 of 1951 has been ordered by The Chief Justice as President of the Law Reporting Council, to be appended to the judgment of Somasundaram J. in the above case via. Cri. App. No. 104 of 1951:)

As this case has to be laid before another Judge on account of difference of opinion, I would like to make it clear what I meant and intended when. I expressed my opinion in the case of Sitaramayya. Crl. Ap. No. 104 of 1951. It will be clear from that. case that the opinions which I expressed about the powers of a Third Judge were purely obiter, I happened to express that opinion because my learned brother expressed his opinion. I did not intend to lay down any guiding principle for the third Judge nor did I intend to indicate the lines, on which the third Judge should approach, as I have no jurisdiction to do so. In my opinion even a Bench cannot give any such directions to the third Judge. I only intended to say what I would do if I were the third Judge and not what others: should do. It is to make this position clear that I am adding this note to this judgment.