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In Re: Padmaraja Shetty and ors.

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Court : Chennai

Decided On : Feb-21-1949

Reported in : (1949)2MLJ428

Appellant : In Re: Padmaraja Shetty and ors.

Judgement :

Subba Rao, J.

1. Accused 1 to 9 are the appellants. Accused 1 to 3 were convicted by the Sessions Judge of South Kanara under Section 302, Indian Penal Code and under Section 302 read with Section 34 of the Code. The first accused was sentenced to death, and the other two accused to transportation for life. Accused 1, 2, 4 and 5 were convicted under Section 201 of the Code and' sentenced to rigorous imprisonment for a term of three years each. Accused 3 and 6 to 9 were convicted of the same offence but sentenced to rigorous imprisonment for a term of two years each.

For a correct appreciation of the facts and the contentions of the parties the following genealogy may usefully be referred to:

Seshappa

|

_____

| | |

Padmavathi Marudevi Nemiraja Shetty.

| |

| Chandravathi=Ramanna Semitha

_____ (deceased).

| |

Amirthavathi Padmaraja.

2. The second accused is a brother of Ramanna Semitha. The third accused is the brother-in-law of the first accused. Accused 4 to 9 are connected with the first accused either as tenants of his or of some others under his control and influence.

3. The first accused belongs to a well-known Aliyasanthana Jain family in Garadadi called Padthire family. The family house is surrounded by forest tracts with a few other houses belonging mostly to the, tenants. Naturally the family wielded great influence in that locality. Nemiraja Shetty was the manager of the Aliyasanthana family till about 1941. In 1940 he set apart certain property for the maintenance of Chandravathi and her children. In 1941, for one reason or other Nemiraja Shetty relinquished his management in favour of Padmaraja Shetty, the first accused. After he became the manager Padmaraja Shetty refused to abide by the arrangement entered into by Nemiraja Shetty with Chandravathi, with the result that Chandravathi and her husband had to come to the family house of Padthire for their maintenance. Padmaraja Shetty, the first accused, shifted to another house in theneighborhood. As the first accused was not maintaining Chandravathi and his family properly, Ramanna Semitha in his turn was putting obstacles in the way of the first accused's management of the properties. Ramanna Semitha had also shifted his wife and child to a nearer village in Belthangadi for convenience of medical treatment and also for the education of his boy. As the first accused was not providing Chandravathi with necessary funds,

Ramanna Semitha removed a quantity of rice stocked in the family house and sold the same on 5th February, 1948. This enraged the first accused. The first accused along with accused a to 8 came to the Padthire house at about 8 p.m. on a Saturday. After the first accused ascertained from his mother the fact that the rice was removed by Ramanna Semitha he directed his companions to take out to the verandah the remaining stock of the rice. In the meantime the deceased came to the front entrance of the inner courtyard of the house but as it was bolted from inside he called out for opening it. After some heated discussion and exchange of abuses, the prosecution case is, the accused came out of the house from the back door. Accused 1 and 3 shot at the deceased. Accused 1 and 2 beat the deceased with sticks, even after he had fallen down with gunshot injuries and later on accused 1 to 9 together cremated the body in a hurry. Exhibit P-30, the sketch of the scene of offence filed in the case, clearly gives the situation of the house and the topography. It also indicates the places where the accused and the deceased abused each other and also the place where the deceased was shot at.

4. We shall first consider the evidence against the first accused. P.W. 8 is the approver.

[After discussing the evidence their Lordships proceeded]:

5. We are satisfied that the evidence of the approver is corroborated in material particulars implicating the accused.

6. At this stage it will be convenient to consider the argument advanced by the learned Counsel in regard to the law of corroboration. The law on this point in India is practically the same as that in England. It is so well settled that it with be unnecessary to consider the various decisions cited before us. It is enough to extract the important principles laid down in the leading case, Rex v. Baskerville (1916) 2 K.B. 658-

(1) the uncorroborated evidence of an accomplice is admissible in law;

(2) it has long been the practice at common law for a Judge to warn the jury of the danger of convicting a person on the uncorroborated testimony of an accomplice

or accomplices, but the Judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence;

(3) the rule of practice has become virtually equivalent to a rule of law;

(4) the confirmation does not mean that there should be independent evidence of that which the accomplice relates, or his testimony would be unnecessary; for, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case;

(5) corroboration must be by some evidence other than that of an accomplice, and, therefore, one accomplice's evidence is not corroboration of the testimony of another accomplice;

(6) corroboration must be independent testimony which implicates him, that is which confirms in some material particular not only the evidence of the crime having been committed but also of the prisoner committing it;

(7) corroboration can be of real circumstantial evidence of his connection with the crime.

7. In India the same principles have been embodied in the statutory form. Section 133 of the Indian Evidence Act reads as follows:

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Illustration (b) of Section 114 of the Evidence Act reads as follows:

An accomplice is unworthy of credit, unless he is corroborated in material particulars.

Section 30 of the Evidence Act also may be noticed. It states:

When more persons than one are being tried jointly for the same offence, and a confession made by one such person affecting himself and some other of such

persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

In Muthukumaraswami Pillai v. King-Emperor I.L.R. (1912) Mad. 397, a Bench of five Judges of this Court had to construe the sections and the learned Judges held by a majority that the evidence of an accomplice need not be corroborated in material particulars before it can be acted upon and that it is open to the Court to convict upon the uncorroborated testimony of an accomplice if the Court is satisfied that the evidence is true. Benson, J., expressed his opinion in the following terms:

In my opinion there is nothing in the illustration (b) to Section 114 which overrides, or renders nugatory, the plain and explicit declaration contained in Section 133, or which requires us to hold that the evidence of an accomplice must always, and in all circumstances, be regarded as unworthy of credit unless it is corroborated in material particulars, or which requires us to hold that it is not open to the Court to act on such evidence, even when the Court believes it to be perfectly true.

In dealing with Section 114, Wallis, J., observed that the said section laid down only presumptions and the Court is not compelled to raise them but is to consider whether in all the circumstances of the particular case they should be raised. The dissenting view was expressed by Abdur Rahim, J. The learned Judge thought that it was well established law that, except in circumstances of any special nature, it was the duty of the Court to raise the presumption that accomplices' evidence is unworthy of credit as against the accused persons unless it was corroborated in material particulars. This judgment expressed the well-known principle of the English law that an accomplice's evidence is legal evidence, but it does not lay emphasis on the rule of practice which the later decisions noted. In Venkataramana v. Emperor (1933) M.W.N. 1129, Sundaram Chetty and Pakenham Walsh, JJ., held that the evidence of an accomplice must as a rule be considered untrustworthy and should be corroborated in material particulars by independent and untainted evidence. They relied upon the following passage from the judgment in Rex v. Mohesh Biswas (1873) 19 Suth W.R. (Cri.) 16:

The corroboration which is needed in order to make Soorat Ali's testimony against the prisoners trustworthy should be corroboration derived from evidence which is independent of accomplices which is not vitiated by the accomplice character of the witness ... and further should be such as to support that portion of the accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed and participated in the acts of commission.

8. The Madras High Court again considered the law on the subject in the wellknown Thyagaraja Bhagavalhar's case : AIR1946 Mad271 . Though this judgment was reversed by the Judicial Committee on the scope of Section 411-A, Criminal Procedure Code, the observations of the learned Judges in regard to the scope of corroborative evidence are left untouched. At page 396, the learned Judges state the law as follows:

Section 133 of the Indian Evidence Act states that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Under the English common law the same rule applies, but both in England and in India, it has become a rule of practice, and, to use the language of the Privy Council in Mahadeo v. The King (1936) 44 L.W. 253 (P.C.), it is now virtually a rule of law, that corroboration is required. It is also an accepted rule that one accomplice cannot corroborate another; but Section 30 of the Indian Evidence Act says that when more persons than one are being tried jointly for the same offence, and a confession made by one affecting himself and some of the others is proved, the Court may ' take into consideration ' the confession as against the others as well as against the person who makes the confession. There is no corresponding provision in English law. In the recent case of Rajagopal, In re : (1943)2MLJ634 , a Full Bench of this Court had to consider the effect of this section and it accepted as correct the interpretation to be found in Woodruff and Amir Ali's Law of Evidence, 9th edition, at page 312.

It is clear from this passage that the law in India is the same as in England except to the extent that it is modified by Section 30 of the Indian Evidence Act. The Full Bench case reported in Rajagopal, In re : (1943)2MLJ634 , does not lay down any

novel proposition but only endorses the principles of law that have been accepted and followed in this Court. The learned Judges state that though legally the approver's evidence is admissible under the Evidence Act and if accepted is sufficient to support a conviction, it should not be accepted unless the case is a very exceptional one. On the other point the learned Judges held that the confession of a co-accused can be accepted as corroboration of the approver's evidence. This conclusion was arrived at on a consideration of Section 30 of the Indian Evidence Act and the passage summarised in Woodroffe and Ameer Ali's Law of Evidence, 9th edition, page 312. We do not think that the learned Judges meant to lay down that the confessional statement has a higher sanctity than the evidence of an accomplice. They should be understood to have only meant that in view of the statutory provision a Court can legally use the confession to corroborate the approver's evidence; and in that particular case they have used and relied upon that confession to corroborate the approver's evidence On material particulars. It does not follow from that judgment that as appoint of law, a confession of a co-accused must be accepted as corroborative evidence of the approver's evidence. It does not affect the rule of practice that the Courts should be loath to accept tainted evidence as a corroboration of an approver's evidence. The confession of a co-accused cannot in our view afford better or more reliable evidence than that of an accomplice. If an accomplice's evidence is tainted evidence, the confession of a co-accused also is tainted evidence. Section 30 of the Indian Evidence Act does not compel a Court to accept the confession of a co-accused as corroboration of the approver's evidence. It only empowers the Court to take into consideration such confession as against the person jointly tried with him or against the person who makes such a confession. Though an accomplice's evidence is legal evidence and is not excluded by any of the provisions of the Evidence Act it has been held that as a rule of practice such evidence should not be accepted as corroborative evidence. The same principle should apply even in the case of a confessional statement. The value of a co-accused's confession as corroborative evidence has been considered by the Lahore High Court in the decision reported in Sharif v. Emperor I.L.R. (1944.) Lah. 463: A.I.R. 1944 Lah. 472. The learned Judges observed:

In the first place it has been held time after time that the evidence of one approver cannot be corroborated by that of another approver. There must be independent corroboration, and in the second place the confession of a co-accused, while it must be taken into consideration, is invariably considered to carry little weight and itself to require corroboration. It has. occasionally been said of such evidence that it is weaker than the evidence of an approver. That being so, the evidence of an approver, corroborated by a confession of a co-accused, must be considered to be inferior to that of the evidence of one approver corroborated by the evidence of another.

We respectfully agree with these observations. If this principle is accepted, Section 30 of the Evidence Act does not become nugatory. There will be very many circumstances when the co-accused's confession could be and should be taken into consideration by a Court in finding out the guilt of the accused. In Emperor v. Laxman Jairam : AIR1937 Bom31 , some of such circumstances have been narrated. The relevant passage may usefully be extracted:

But in my view the confession is not strictly evidence against a co-accused, and I am clearly of opinion that a conviction based solely on the confession of a co-accused would be bad in law. There are many occasions on which the Court is undoubtedly assisted by taking into consideration the confession of a co-accused. There may be the direct evidence of a single witness which the Court would be more ready to accept if supported by the confession of a co-accused. Or, in a case depending on circumstantial evidence, where the question to be decided is what is the proper inference to be drawn from all the circumstances proved, the confession of the co-accused is one of the circumstances which may help the Court in drawing a correct inference.

The learned Counsel for the accused contended that there was no corroborative evidence in this case implicating the first accused in the commission of the crime. He laid emphasis upon the fact that no independent witness deposed to the fact that the first accused shot at the deceased. He relied upon the possibility of some other accused taking the gun from the hand of the first accused and shooting at the deceased. If the argument of the learned advocate is to be accepted it would

make the evidence of an approver unnecessary. The approver's evidence can be corroborated not only by direct evidence but also by circumstantial evidence. In this case if the evidence of P.W. 10 and P.W. 11 is believed we can reasonably infer that the first accused shot at the deceased. Further, there is the evidence of P.W. 5 who deposed that the first accused admitted before him that he shot the deceased and he later died. Even Baskerville's case (1916) 2 K.B. 658, relied on by the learned Counsel does not support him. In that case the evidence relied upon for corroboration is only circumstantial evidence, and, even if accepted, it was not such as to exclude all the possibilities of the accused being innocent of the offence with which he was charged. If the evidence in this case is believed, it proves that the accused shot at the deceased and beat him with sticks, along with the second accused. The deceased was seen with wounds on the head and the stomach by P.W. II P.W. 11 says his head was broken and there was blood over all over his person. His intestines had come out.

9. As a result of the wounds he died and he was urgently cremated. On these facts, we have no hesitation in holding that the first accused is guilty of murder.

10. So far as the third accused is concerned, in our view he cannot be convicted for murder unless there was a common intention between the first and third accused to commit murder. The Judicial Committee gave an authoritative decision on the interpretation of Section 34, I.P.G., in the decision reported in Mahbub Shah v. Emperor . It is not necessary to consider that decision at length except to extract the, principle which is found. at page 120:

It is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

Later on, after pointing out the distinction between common intention and same intention, the Judicial Committee gave the important caution that the inference of

common intention within the meaning of the term in Section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case. No doubt, this judgment was interpreted by Chandrasekhara Ayyar and Kippur swami Ayyar, JJ., in the decision reported in In re Nachimuthu Goundan : AIR1947 Mad259 , as not to rule out the possibility of a common intention developing in the course of the events, though it might not have been present to start with. In this case the evidence points out that there was no intention to commit murder at all, till the first accused was enraged after the exchange of abusive words between him and the deceased. The evidence only discloses that the intention was to remove the grain still remaining in Pithier house. Indeed, the witnesses speak to the fact, that the first accused asked accused 2 to 5 to take out to the verandah the remaining stock of rice, presumably for removing it to the Punjila house. It is no doubt true that the accused secured two guns, and it is obvious on the evidence that they were secured more as a precaution against any possible emergencies than to use them against any particular person. After the exchange of hot words between the accused and the deceased, the first accused took the gun from the third accused, went out and shot at the deceased. According to the evidence, the third accused took the gun from the hand of the fourth accused and followed him and shot at the deceased. Can it be said on the facts that they had a common intention to do so? For aught we know, the first accused did not even know that the third accused was following him with a gun in his hand. It is not suggested that the third accused handed over the gun to the first accused and persuaded him to shoot the deceased. The first accused of his own accord took away the gun from the hands of the third accused. As there was no pre-arranged plan and the circumstances disclose that the first accused rushed to the hay rick to shoot at the deceased taking the gun from the hands of accused 3 on the spur of the moment and he had not even the knowledge of the third accused having a gun, it is impossible to hold that there was any common intention between the two accused, to commit murder. On the evidence, it is not possible to convict the third accused for murder as it is not proved that the bullet from his gun hit the deceased. He did not take part in the subsequent beating of the deceased. On the aforesaid facts, we are of opinion that the accused :is guilty only of an attempt to commit murder.

11. So far as the second accused is concerned, if there was no common intention to commit murder, the only remaining evidence against him is that he beat the deceased with a cane stick. He is a brother of the deceased. P.W. 8 says that he gave along with the other accused, three or four blows with a stick. P.W.11 said that the second accused beat the deceased with a cane stick. On the evi dence it is impossible to say that this accused had the intention to kill his brother. It cannot even be said that he had knowledge that the deceased had received a gun shot wound at the time when he used the gun. P.W. 11 said that the deceased's head was broken. In the circumstances, in our view, this accused can be convicted only under Section 325 of the Indian Penal Code for having caused grievous hurt to the deceased.

12. There remains the charge under Section 201, I.P.C against all the accused For causing the evidence of the commission of the offence to disappear. P.W. 8, the approver, describes the part taken by accused 1 to 8. The fourth accused in his confessional statement implicates all these accused as having taken part in disposing of the dead body. P.Ws. 12, 13, 14 and 16 corroborate the evidence of the approver. P.Ws. 12 and 13 took part in preparing the firewood to burn the body. P.W. 14 prepared the pyre to cremate the deceased. P.W. 16 carried the body to the pyre. All these witnesses are admittedly accomplices who, if their evidence is true, are also, liable to be convicted under Section 201 along with the other accused. The question, therefore, is whether this tainted evidence can be accepted to corroborate the evidence of the approver. The principle that the tainted evidence of an accomplice should not be accepted as corroborative evidence of the approver has been accepted and followed in innumerable cases. One of such decisions is that of the Judicial Committee reported in Mahadeo v. King (1936) 44 L.W. 253 : 1936 M.W.N. 889 (P.C.). Their Lordships observe:

It is well settled that the evidence of an accessory, which Sukraj plainly was on his own showing, must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it, and further that evidence of one accomplice is not available-as corroboration of another : The King v. Baskerville (1916)2 K.B.658. This rule as to corroboration, as was pointed out in the case just cited, long a rule of practice, is now virtually a rule of law.

13. Following this principle we are not prepared to accept the evidence of the accomplices as corroboration of the approver's evidence. In the circumstances of the case, we are also not prepared to accept the confessional statement of the fourth accused as corroborating the approver's evidence. There is no other evidence against accused 2, 3 and 5 to g. We therefore hold that the charge under Section 201, I.P.C., is not made out against accused 2, 3 and 5 to 9. We set aside the conviction of the said accused under Section 201, I.P.C. The. same cannot be said of accused 1 and 4. There is enough circumstantial evidence in the case-to bring home the guilt to accused 1. In regard to accused 4, his confessional statement Exhibit P-13 can certainly be relied upon to corroborate' the approver's; evidence. We therefore convict accused 1 and 4 under Section 201, I.P.C.

14. As regards the sentences; the facts already narrated disclose that there was no premeditation to commit murder. The deceased was shot by the first accused on the spur of the moment in view of the acrimonious exchange of words that passed between them. All the accused gathered for the purpose of removing away the grain and, unfortunately and unexpectedly, this incident, took place. We, there lore, consider that the ends of justice would be met if the first accused is awarded the lesser penalty of law. The death sentence imposed on him is set aside and instead he is sentenced to transportation or life. We also sentence him under Section 201, I.P.C., to three years rigorous imprisonment, but the two sentences-shall run concurrently.

15. The second accused was sentenced by the Sessions Judge to transportation for life. We set aside the conviction for murder and convict him under Section 325,. I.P.C., and sentence him to five years rigorous imprisonment.

16. We convict the third accused under Section 307, I.P.C., and sentence him to seven years rigorous imprisonment. We sentence accused 4 to two years rigorous imprisonment. The conviction and sentences on the accused 2, 3 and 5 to 9 under Section 201, I.P.C., are set aside. Accused 5 to 9 are acquitted.

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