

In Re: Subbiah Tevar

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Court : Chennai

Decided On : Apr-19-1939

Reported in : AIR1939Mad856; (1939)2MLJ455

Appellant : In Re: Subbiah Tevar

Judgement :

Stodart, J.

1. The accused Subbiah Tevar has been convicted and sentenced to death for the murder of Sundarammal. He has filed two petitions by way of appeal. In his statement made under Section 342 to the Sessions Judge he declared that the Sub-Inspector of Police P.W. 9 concocted the case against him because he refused to give him fodder for his bulls. In one of his appeal petitions he states that the case has been concocted against him by enemies because he was the principal witness in a murder case five years ago. In the referred trial the question for our decision is whether the sentence of death should not be confirmed.

2. There is no doubt that Sundarammal a woman of 60 was murdered in her field on the morning of Saturday, the 30th July. She was seen in the early morning when she set out for her field, by her daughter P.W. 5 who lives in the opposite house and by P.W. 6 her next door neighbour, and she was seen again by P.W. 7 in her field about 8 A.M. At midday her son P.W. 4 when he went to the field to take her midday meal found her lying dead near the well. Her face and the front of

her head had been battered in. There was blood on the ground there. It was clear that she had been murdered there. A blood-stained stone lay near the body.

3. The motive for the murder was clear. The right ear-lobe was torn and lacerated. The left ear-lobe was completely cut off. Gold mudichus - a kind of ear ornament - which her daughter P.W. 5 had lent to the deceased the previous day to wear when she went to a neighbouring village on a visit of condolence were missing. P.W. 5 and P.W. 6 say they saw these mudichus in the ears of the deceased on the morning of the crime.

4. P.W. 9 the Sub-Inspector reached the village at 7 P.M. He held the inquest early next morning. The blood-stained stones and earth from the place where the body was lying and the blood-stained stone with which the murder might have been committed were sent by him with other things to be examined by the Chemical Examiner and Imperial Serologist and were found to be stained with human blood.

5. There was no clue to the murderer. The scene of crime is 11/2 miles from the village: the cholam crop in the field was high: the unfortunate woman had evidently been taken unawares and killed without the knowledge of anyone who might have been in the surrounding fields.

6. The accused is a member of a registered Criminal Tribe who was bound to report to the authorities when he intended to leave the village. He was absent and he had not made any report. For this reason and because he suspected that the accused might have had something to do with the murder, the Sub-Inspector left instructions in the village that the whereabouts of the accused should be reported to him. On the morning of the 26th August, P. W. IOarelacionof the deceased found the accused sleeping in his field and went off to the police station four miles away to tell the Sub-Inspector. The latter happened to be at Kurukkalpatti on the main road not far away and received this information at 12-30 P. M. He went to the village at once and to the place where the accused was, and arrested him. The accused then made a statement which is the principal evidence against him. He made it in the presence of the Village Munsif P.W. 11, P.W. 12 and P.W. 10. He said according to P.W. 11 and P.W. 12:

I tore the earlobes of Sundarammal and took her mudichus. She raised an alarm.... I have kept the mudichus in my house. I shall produce them.

P.W. 10's recollection of this statement however is simply that the accused said:

I have kept the concerned property in my house in a hole made for a rafter in one corner, and I shall produce it.

P.W. 11 and P.W. 12 also say that the accused stated that he had killed Sundarammal with a black stone so that she might not disclose the robbery. But that part of the statement is not admissible in evidence since it did not, within the meaning of Section 27 of the Indian Evidence Act, lead to the discovery of any fact. P.W. 11 the Village Munsif deposes that when the accused was making this statement he took it down in writing and the record of it is Ex. J. In Ex. J, the admissible portions are:

On a Saturday, 26 days ago, in the morning my concubine Muthammal went out towards the south to gather cowdung. I followed her. Sundarammal was sitting at a place to the west of the well and to the north of the Kamalai pit. I suddenly cut the two mudichus from both her ears. (Then comes the inadmissible portion.) I left her at the same place, came to my village tied the two mudichus in a dirty white cloth with a green border and kept it in a hole in the southern wall in the southeastern corner of the house in which I live. I shall take it and deliver it up. I should be protected.

Though the persons who heard the accused making this statement do not remember the whole of it, there is no reason to disbelieve the Village Munsif when he says that Ex. J is a correct record of what the accused said.

7. Following on this the Sub-Inspector and the accused and the Village Munsif and P.W. 12 and P.W. 10 and P.W. 13 a neighbour of the accused went at once to the accused's house. In their presence the accused took the jewels from their hiding place and handed them over to the Sub-Inspector.

8. That is all the evidence against the accused. It is plain, consistent and straightforward and has been believed by the learned Sessions Judge and learned

Counsel who appears for the appellant has not attempted to show that there are any grounds on which it should be rejected. His appeal rests on a point of law. He contends that statements made to the police by an accused person after his arrest, though they may come within the meaning of Section 27 of the Evidence Act, are inadmissible under Section 162 of the Criminal Procedure Code. Section 162 is:

No statement made by any person to a police officer in the course of an investigation shall...be used for any purpose at any enquiry or trial in respect of any offence under investigation at the time when such statement was made.

This section is clearly wide enough to include statements made to a police officer which would be admissible under Section 27 as constituting information in consequence of which some fact has been discovered. But it has been held by this High Court and by other High Courts in a long series of decisions that Section 162 does not shut out statements which are admissible under Section 27 of the Evidence Act. That must, now be regarded as settled law. Learned Counsel contends however that this settled rule has been abrogated by a recent decision of the Judicial Committee of the Privy Council, *Pakala Narayanaswami v. The King-Emperor* (1939) 1 M.L.J. 756 : L.R. 66 IndAp 66 : I.L.R. 18 Pat. 234 . We have examined that decision very carefully and we do not think that it disturbs the course of decisions of this and other Courts. In that case one of the questions at issue was the admissibility of statements made before arrest to a police officer by a person ultimately accused. The Privy Council held that such statements were shut out under Section 162 of the Criminal Procedure Code. Incidentally the Privy Council when considering the scope of Section 162 discussed a view which had been taken by some of the High Courts in India that Section 162 referred to statements made in the course of a police investigation by witnesses only and not by accused persons. And the Privy Council differing from that view - which I might observe has not been the view of this High Court - proceeded to make some observations relating to the reasons on which that view had been based. The principal reason was that if Section 162 of the Criminal Procedure Code applied to statements by accused persons it would amount to a repeal of Section 27 of the Indian Evidence Act. On this point the Judicial Committee observed:

The words of Section 162 are plainly wide enough to exclude any confession made to a police officer in the course of investigation whether discovery is made or not. They may therefore pro tanto repeal the provisions of the section which would otherwise apply. If they do not, presumably, it would be on the ground that Section 27 of the Evidence Act is a special law within the meaning of Section 1(2) of the Code of Criminal Procedure, and that Section 162 is not a specific provision to the contrary. Their Lordships express no opinion on this topic.

9. The question therefore whether Section 162 of the Criminal Procedure Code has repealed Section 27 of the Indian Evidence Act so far as statements made to a police officer are concerned has not been here decided by the Privy Council and we are not therefore debarred by this decision from following the rule laid down in previous decisions of this Court. We may observe that it has been recently held specifically by learned Judges of this Court that though Section 162 of the Criminal Procedure Code applies to statements made by accused persons, nevertheless Section 27 of the Indian Evidence Act is a 'special law' which is not derogated from by the general rule enacted in Section 162. See the dictum of Ramesam, J., as he then was in *Thimmappa v. Thimmappa* : AIR1928 Mad1028 and of Reilly and Sundaram Chetty, JJ., in *Syamo Maha Patro, In re* : (1932)62MLJ742 . The rule laid down in Section 1(2) of the Criminal Procedure Code 'Nothing herein contained shall affect any special law now in force' is an application of the maxim 'generalia specialibus non derogant'.

10. The statements made by the accused in this case on the 26th August being admissible in evidence we agree with the learned Sessions Judge that the charge against him is proved. He was absent from the village immediately after the crime. He was under a special obligation to intimate his absence to the police and did not do so. He stated that, at the place where the murder was committed, and at a time which is shortly after the deceased was last seen alive, he came upon her suddenly and cut her ear-lobes and took her mudichus and hid them in his house. That statement is corroborated by the condition of the ears as seen on the body of the deceased and by the accused's production of the mudichus from the place in his house where they were hidden. The man who cut the ears of the deceased that Saturday morning when the deceased was sitting near the well in her field -

and the accused has admitted that he was that man - was in all human probability the man who murdered her. No motive has been proved against anyone other than the accused to murder this old woman. The only reason for her death was the need to silence her. That reason existed only for the accused. We reject his appeal and confirm his conviction for murder.

As for the sentence the extreme penalty is the only punishment appropriate for such a brutal crime. We confirm the sentence of death passed by the learned Sessions Judge.

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