

Muniammal Vs. the Inspector of Police, Dindigul Taluka Police Station

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Court : Chennai

Decided On : Jul-28-1995

Reported in : 1996CriLJ163

Judge : A.R. Lakshmanan and ;J. Kanakaraj, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 164, 173(2) and 313

Appeal No. : Criminal Appeal No. 136 of 1989

Appellant : Muniammal

Respondent : The Inspector of Police, Dindigul Taluka Police Station

Advocate for Def. : Mr. R. Reghupathy, Addl. Public Prosecutor

Advocate for Pet/Ap. : Mr. P. Vellaechamy, Adv.

Judgement :

Kanakaraj, J.

1. This criminal appeal is preferred by the first accused in S.C. No. 48 of 1985 against the conviction and sentence imposed by the Sessions Judge of Madurai North at Dindigul, holding the first accused guilty of an offence punishable under S. 302, I.P.C. and sentenced thereunder for imprisonment for life. The appeal has

been preferred by the first accused from jail and we had appointed Mr. P. Vellaichamy, an experienced counsel for defending the appellant.

2. The short facts leading to the case are as follows :-

The first accused Muniammal was married to one Sangili (PW 1) about ten years prior to the occurrence, which event took place on 21-10-1984. They were living in Gandhi Nagar in Chettinaickenpatti village. They had three children; one male child (PW 4) and the other two female children. The last of the children by name Eswari, who was four years old, at the time of occurrence, is the deceased in this case. The first accused was aged about 40 years at the time of the occurrence, whereas her husband PW 1 was aged about 29 years. About four years prior to the occurrence, PW 1 suspected the fidelity of the first accused and his suspicion was that his own father Palaniandi was having illicit intimacy with the first accused. The further suspicion was that the deceased third child was born out of such illicit relationship between the first accused and PW 1's father. About an year prior to the occurrence, PW 1 asked the Nattanmai of the village, viz., PW 2 to intervene and sought for a customary divorce. Accordingly PW 2 along with certain others, enquired into the matter and permitted a customary divorce in accordance with which the first accused returned a sum of Rs. 102/- to PW 1 being the amount given at the time of marriage by way of 'Mozhi'. The Panchayatdars also entrusted the boy PW 4 to the custody of the father PW 1 and entrusted the other two girl children to the custody of the first accused. It is not disputed that though the girl children Seetha and Eswari were living with the first accused, they used to visit the house of PW 1 and take meals whenever they wanted.

3. The date of occurrence as per the charge, viz., 21-10-1984 happens to be a Sunday. On the day prior to the occurrence, Seetha and Eswari (deceased) took meals in the night and retired for the night to sleep with their grandmother PW 3. According to PW 1 on Sunday morning he and one Kalimuthu went to Thatharpatti to arrange a second marriage for PW 1. They returned to Chottinaickenpatti at about 4.30 p.m. At about 6.30 p.m., PW 1's sister Kali Ammal came and reported that the deceased Eswari was missing. PW 1 casually said that she would be playing somewhere and they could go and search for her. At about 9.00 p.m., PW

1 went to Gandhi Nagar and saw the first accused standing in front of her house. When all others were engaged in the search of the girl Eswari, the first accused was said to be unperturbed. On the next day morning PW 1 went up to Kallipatti, a distance of about one mile from Chettinaickenpatti and searched for the girl Eswari. When he returned back to his village, a number of people were running towards the well of Angamuthu. PW 1 also proceeded to the said place and found the older girl Seetha crying. It was Seetha, who told PW 1 that the deceased girl Eswari was lying face downwards, with her head severed and kept between the legs. PW 1 did not see the first accused anywhere. PW 1 thereafter proceeded to the Dindigul Taluk Police Station and gave a statement Ex. P. 1. The same was registered as Crime No. 407 of 1984 by PW 12, the Sub-Inspector of Police, under S. 302, I.P.C. He sent express F.I.Rs. to the higher authorities. Ex. P. 10 is the F.I.R. sent to the Magistrate. PW 14 was the Inspector-in-Charge of the Dindigul Taluk Police Station. He received the printed F.I.R., at about 11.00 a.m., on 22-10-1984. He proceeded to the spot at 11.00 a.m., and prepared the observation mahazar Ex. P. 2. He drew a rough sketch Ex. P. 19. He conducted an inquest on the body between 11.30 a.m. and 2.00 p.m., Ex. P. 20 is the inquest report. He examined PW 1, 2 and 3 at the inquest. He entrusted the body to a constable. P.C. 600 (PW 11) with a requisition Ex. P. 11 for the conduct of an autopsy. Before that he had the hair of the deceased cut under mahazar Ex. P. 3. PW 6 has attested these documents. From the scene of occurrence, he recovered sample earth M.O. 4 and bloodstained Lungi M.O. 1 under Ex. P. 4 mahazar. He also recovered M.Os. 5 to 8 under Ex. P. 5. PW 6 has attested the document Ex. P. 5. He examined PWs 4 to 6 and searched for the first accused and could not trace her. PW 8 is the doctor in the Government Hospital, Dindigul. He received the intimation from PW 14 and conducted an autopsy at 4.35 p.m., on the body of the deceased. He was of the opinion that death would have occurred about 30 to 36 hours prior to autopsy. Ex. P. 6 is the post mortem certificate. According to him, the injuries could have been caused and the head of the deceased could have been severed by an Aruval like M.O. 9 knife.

4. On 26-10-1983 PW 14 arrested the first accused in the Dindigul Trichy Bypass road. She gave a confessional statement, the admissible portion of which is Ex. P. 9. In pursuance of her confession, she took out from her house the Aruval M.O. 9

knife and a bloodstained saree, M.O. 10. PW 10 has attested Ex. P. 9. He then sent a requisition to the Chief Judicial Magistrate, Madurai, for recording a judicial confession from the first accused. PW 9, Judicial Second Class Magistrate, Vedachandur was instructed to record the confessional statement. After putting the necessary questions and cautioning the first accused and giving sufficient time for pondering over the matter, he recorded the confessional statement on 9-11-1984. The proceedings relating to the recording of the confession and the actual confession statement are contained in Ex. P. 7 and Ex. P. 8. PW 13 was the Head Clerk in the Judicial Second Class Magistrate's Court, Dindigul. On the requisition from the Inspector of Police Ex. P. 11, he sent the material objects for chemical analysis under Ex. P. 12. Ex. P. 13 is the report of the Chemical Analyst and Ex. P. 14 is the report of the Serologist. He had separately sent M.Os. 2 and 5 under requisition Ex. P. 15 and he accordingly sent the same under Ex. P. 16. The report of the Chemical Analyst in respect of these material object is Ex. P. 17 and the Serologist's report is Ex. P. 18. PW 15 was the Inspector of Police, who completed the investigation and filed the final report under S. 173(2), Cr.P.C., on 19-3-1985.

5. On committal by the Judicial Magistrate No. II, Dindigul, the learned Sessions Judge framed two charges; one against the first accused for an offence punishable under S. 302, I.P.C., and the other against the second accused for an offence punishable under S. 302 read with Sec. 109, I.P.C. On the accused pleading not guilty, the prosecution examined 15 witnesses and filed 20 documents. There were as many as ten M.Os. marked.

6. When the accused were confronted with the evidence under S. 313, Cr.P.C. they denied the complicity. So far as the confessional statement recorded by PW 9, the first accused replied that she never gave a confessional statement and she was beaten before taking the thumb impression. The accused did not examine any witness or file any document on their behalf. It is on the above evidence that the learned Sessions Judge acquitted the second accused and convicted the first accused for an offence, punishable under S. 302 of the Indian Penal Code.

7. We have been taken through the evidence, and in particular the confessional statement Ex. P. 9 said to have been voluntarily given by the first accused, in

detail. Since the entire prosecution case depends upon the confessional statement and the alleged recovery of the Aruval and bloodstained saree of the first accused, we would do well to refresh ourselves with the law regarding the weight to be attached to a confessional statement and the precaution one must take before acting upon the same.

8. In *Shankaria v. State of Rajasthan* AIR 1978 SC 1248, the Supreme Court has pointed out that in a capital case where the prosecution demands a conviction of the accused primarily on the basis of his confession recorded under S. 164, Cr.P.C., the Court must apply a double test :

(1) Whether the confession was perfectly voluntary

(2) If so, whether it is true and truth worthy

Only if the first test is satisfied, then the question of evaluating the confession has to be undertaken. The Supreme Court points out that the Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. It is only if the confession fits in with the rest of the evidence and the surrounding circumstances, then it can be acted upon.

9. More recently, in *Shivappa v. State of Karnataka* : AIR 1995 SC980 the Supreme Court has gone deeper into the matter and has warned the Court to be satisfied about the actual recording of the confession and the question put to the accused before recording the confession. It is pointed out that the failure of the Magistrate to put such questions as are prescribed, from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused, that it would not be safe to act upon the same. In the case before the Supreme Court the failure to put two questions by the Magistrate was found to vitiate the confessional statement. The first question was whether the Magistrate was satisfied whether the police or police officials were present in the vicinity of the Court. The second question was whether the Magistrate was satisfied by questioning the accused as to why he wanted to make the confession or as to what had prompted him to make the confession. Being not

satisfied with the questions put by the Magistrate, the Supreme Court ruled out of consideration the entire confessional statement.

10. With this background, we will now proceed to analyse the evidence as projected by the learned counsel for the appellant and as contended by the learned Additional Public Prosecutor. Since the entire case depends upon the judicial confession recorded by PW 9, we will proceed to examine the contents of Exs. P. 7 and P. 8 which are the proceedings of the Magistrate PW 9 regarding the questions put to the first accused on 7-11-1984 and 9-11-1984 along with the actual confession recorded by PW 9. We find from Ex. P. 7 that on 7-11-1984 PW 9 had questioned the first accused on all relevant matters as contained in S. 164 and R. 74 of the Criminal Rules of Practice. To be more exact he has questioned the first accused about his own designation, the absence of police personnel within and without the court premises, the purpose for which she had been brought to the Magistrate, the place where she was arrested, the fact that nobody compelled her to give confessional statement and nobody gave any false promise or hopes for giving the confession and that she was not bound to give such a confession statement and the same might be used against her in the course of trial. She was given time for reflection till 9-11-1984 and on that day she was again asked whether she was willing to give a confession statement again and she was again warned that she may be punished on the basis of the confession statement. The first accused had repeatedly said that she was giving the statement voluntarily. Therefore, we find that all the precautions referred to by the Apex Court in *Shivappa v. State of Karnataka* : AIR 1995 SC980 had been taken by the Magistrate, PW 9 except on one aspect of the case which is emphasised by the Apex Court. While discrediting the confession statement, the Apex Court faulted the Magistrate because he did not question the accused as to why he wanted to make the confession or as to what prompted him to make the confession statement. We have searched in vain for any question which has a bearing on the about aspect in Exs. P. 7 and P. 8. In our opinion, the Apex Court had good reason for emphasising on this aspect of the case. A person who repents and becomes penitent might decide to make a confession of the whole crime. It is such a confession alone which can be deemed to be voluntary. It has become a practice to mechanically ask questions to ascertain whether the confession is

voluntary or at the instance of the police or other persons. If one places himself in the position of a rustic cooly like the first accused being day in and day out forced to listen to the advise of the police and her relations, one can understand that the only desire of the first accused would have been to come out of jail somehow or other or get away with a mild sentence. This has become the practice of the police in this State to offer a hope to the accused that if they listen to the advice of the police, they can come out with a lesser sentence or the sentence already undergone. It is in this connection that the Apex Court has emphasised the need for finding out from the accused as to why he or she wanted to make a confession or as to what prompted him to make the confession. As we have already stated, it is only when a person repents and decides to turn a new leaf that he makes a voluntary confession and if he makes such a confession he will never go back on the confession. In our opinion, this is one of the circumstances which has to be kept in mind while appreciating the truth and validity of a confession under S. 164, Cr.P.C. In this case we have already pointed out that when questioned under S. 313, Cr.P.C. the first accused had categorically stated that the confession recorded by PW 9 was not true and her thumb impression was taken after considerable beating. It has been brought to our notice that the appellant has sent a petition from the jail and the same was treated as a regular appeal. It is pointed out that even in this petition she has not denied the crime, but says that she does not know whether she killed the child having regard to the state of mind in which she was placed. This is only one aspect of the confession statement.

11. The other aspect of the confession statement is about the actual date and time of occurrence. The confession of the first accused starts by saying that on a Saturday night at 3'O clock she was in the house and the child deceased Eswari was lying with her. She lifted the child and went to the well and committed the crime and threw the body inside the well. On the morning of the very next day, everybody searched for the child including herself. At about 7.00 a.m. PW 1 is said to have discovered the child in the well. Even assuming that the statement 'Saturday night 3'O clock' means the early morning of Sunday. The subsequent statement that on the morning of the very next day they searched for the child and found it in the well, does not tally with the prosecution case that the child was found out only on Monday morning. We do not accept the explanation of the Public

Prosecutor that the first accused being a rustic woman could not have remembered the date and time properly. Even if the first accused did not remember the date, day and time properly, she could not have forgotten the fact that after the child was killed for the whole of one day the body was not found and it was only in the next day morning, that is, on the morning of Monday, they discovered the body. This throws considerable doubt on the confession statement and the state of mind in which the first accused had given the statement.

12. Learned Public Prosecutor also sought to argue that even the question posed by the Apex Court regarding the purpose for which the first accused gave the confession statement, is satisfied in this case by bringing to her notice the statement in the confession to the effect that on account of the instigation and ill-treatment given by her father-in-law (PW 1's father) she had committed the crime. We are at a loss to see how this statement will satisfy the requirement of the judgment in *Shivappa v. State of Karnataka* : AIR 1995 SC980 . What the Supreme Court says is, that before proceeding to record a confession statement the Magistrate must be satisfied about the purpose and reasons for which the accused had agreed to give a confession.

13. While on the confession statement we may also refer to one other aspect of the case. After referring to the customary divorce granted to her and PW 1, the first accused says that she was living in her mother's house. She was having a sum of Rs. 300/-. That amount was taken by her father-in-law by force and threats. Not only that the thatched hut belonging to the first accused was also taken by her father-in-law by deceitful means, but what is more, her father-in-law is said to have told the first accused, (vernacular matter is omitted). That sentence means, that the 'last of the children, viz., deceased Eswari was born to me. Kill the child and come with me, we will run away'. We do not understand the logic of this request made by PW 1's father. One can understand the father-in-law saying that the last child was born to him and therefore, they could take the child and run-away. Where was the necessity to kill the child The whole of the confession statement seems to place the blame on PW 1's father, and yet the prosecution did not render him as a witness in the case. In our opinion this is a big loophole in the entire prosecution case.

14. Much reliance was placed by learned Public Prosecutor on the recovery of Aruval, M.O. 9 and Sari, M.O. 10 which was said to have worn by the first accused at the time of the crime. Ex. P. 13 shows that there was no blood-stains at all in the Aruval, M.O. 9. However, the Sari, M.O. 10 was stained with human blood of 'A' group. It is no doubt, significant that the Lungi which was used to stifle the cries of the deceased child, was also stained with human blood of 'A' group. The stone, M.O. 8 recovered from the place was also stained with human blood of 'A' group. The argument of learned Public Prosecutor is that the connection of the first accused with the killing of the deceased child is clearly proved by the presence of human blood of 'A' group in her Sari. There are two aspects about the arrest and recovery of the Aruval and Sari. Ex. P. 9 which is the admissible portion of the confession given to the Investigation Officer, PW 14 says that the first accused was arrested in bye-pass road of Madurai-Tiruchy branching of to Chettinaickenpatti. In her statement before PW 9 as recorded in Ex. P. 7, the first accused has stated that she was arrested in Gandhi Nagar, at Chettinaickenpatty. In the body of her confession statement she has stated that on the morning of Sunday when the body of the child was recovered she was arrested by the police. PW 3 has also spoken to the fact that when the body was found on the morning of Monday the first accused also went there and embraced the deceased child and cried. There is also evidence as adduced by the prosecution to PW 5 that the first accused was in fact present even on Sunday night when all of them were searching for the deceased child. According to PW 5 a teacher in the local school, the first accused came at about 9.00 p.m. on Sunday evening and she was told that the child was missing. PW 5 feigns ignorance of the answer given by the first accused. Under such circumstances, it is rather difficult to believe the theory of arrest at the bye-pass road and the confession given by the first accused regarding recovery of Aruval and Sari. That apart, there is a plausible explanation by the defence regarding the blood-stain on the Sari. PW 3 categorically admits that the first accused embraced the dead child and cried bitterly. It was also suggested to PW 1 that the first accused was present and embraced the dead child and cried. No doubt, learned Public Prosecutor says that on Monday morning the blood on the body of the deceased child would not have been wet and that there was no chance of the Sari of the first accused getting stained at that time. It

may be true. But all the same no questions were asked from the doctor, PW 8. PW 8 did find blood clots in the inter muscular space in vicinity of the wound. We are unable to rule out the possibility of the blood clots sticking to the Sari of the first accused when who is said to have embraced the dead child. In fine we are unable to place any reliance on the alleged recovery of Aruval and Sari, and the consequent probability of the first accused being involved in the crime.

15. Learned counsel for the appellant also referred to the evidence of PW 8 to the effect that if a child is thrown from the height of 30 feet, there should have been other injuries on the body and that PW 8 did not find any other injuries on the dead body. This evidence improbabilises the prosecution story and causes considerable doubt on the prosecution case that the body was thrown into the well. There is no dispute that the well was 30 feet deep as seen from the observation Mahazar Ex. P. 2. As rightly pointed out by learned counsel for the appellant there is no evidence as to who actually first saw the dead body in the well and as to who removed the body from the well. In this connection it has to be remembered that Ex. P. 2 Mahazar shows that there were no steps to get into the well.

16. We are also perplexed by the introduction of the second accused in the crime, and the failure to let in any evidence as to his involvement. The case of the prosecution is that he is a paramour of the first accused. In our opinion, the introduction of the second accused has really caused more confusion in the entire case. We have already grave doubts as to the motive for the crime. There are ever so many persons who could have had an intention to do away with the child, starting from PW 1, his father and the second accused.

17. In this connection, we must also notice the fact that both the second female child Sita and the last female child, the deceased Eswari were living with the first accused. There is also some doubt regarding the place where the deceased child was sleeping, on the night of Saturday. While according to the first accused in the confession Ex. P. 8, she was sleeping with her, according to PW 3, the mother of the first accused, both Sita and Eswari were sleeping by the side of PW 3.

18. Learned Sessions Judge has merely relied on the divorce between the first accused and PW 1 and the subsequent conduct of the first accused. He has also

thought it fit to rely on the recovery of Aruval and Sari and the fact that the Sari was blood-stained with 'A' group human blood. We have already explained as to how the recovery and the presence of blood-stains on the Sari are not conclusive evidence pointing out to the guilt of the accused.

19. For all the above reasons we set aside the conviction and sentence as imposed by learned Sessions Judge of Madurai North at Dindigul, in S.C. No. 48 of 1985 and acquit the appellant/first accused of the charge framed against her. In the result the appeal is allowed and the first accused/appellant is directed to be set at liberty forthwith unless she is wanted in some other crime.

20. Appeal allowed.

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