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Ramasamy Vs. State

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Court : Chennai

Decided On : Feb-04-2000

Reported in : 2000(3)CTC123

Judge : N. Dhinakar and; K. Natarajan, JJ.

Acts : Tamil Nadu Borstals Schools Act, Sections 8 and 10A; Indian Penal Code (IPC), 1860 -- Sections 302; Code of Criminal Procedure (CrPC) , 1973 -- Sections 313

Appeal No. : C.A. No. 612 of 1990

Appellant : Ramasamy

Respondent : State

Advocate for Def. : Mr. M. Babu Muthu Meeran Government Adv.

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

Judgement :
ORDER

Judgement Pronounced by N. Dhinakar, J.

1. The appellant, who hereinafter will be referred to as the accused, was tried is Sessions Case No. 39 of 1990 on the file of the Principal Sessions Judge, Erode,

and stands convicted for an offence of murder on an allegation that at 2.30 p.m. on 15.5.1989, he cut Ponnusamy, his father, with a knife, M.O.1. The learned Sessions Judge, on convicting the accused, sentenced him to imprisonment for life though the accused was below 21 years of age at the time of occurrence and at the time of trial and conviction.

2. The case of the prosecution is this: The accused is the son of the deceased. They were residents of Kedarai which is within the jurisdiction of Gopichettipalayam Police Station. The accused is the younger brother of one Venkatachalam, who is deaf and dumb. The mother of Venkatachalam and the accused, died about four months prior, to the date of incident. After the death of his wife, the deceased wanted to many for the second time. The accused raised an objection by saying that within four months of the death of his mother, the deceased should not re-marry. On account of this, the deceased used to beat the accused and his elder brother Venkatachalam.

3. At about 9.00 am on 15.5.1989, the deceased beat Venkatachalam saying that he did not take the cattle for grazing. The deceased took the cattle for grazing and returned by about noon. The accused, who was in the house, on seeing his father, signalled his elder brother Venkatachalam to run away and he also ran away apprehending that they will be beaten. The accused was sitting on the western side of the house on a pial. The deceased, on seeing the accused, told him that since he and Venkatachalam are alive, nobody is prepared to give a girl in marriage for the deceased. He also took a knife and started sharpening it. The accused ran away from the place apprehending danger at the hands of his father.The accused returned on hour thereafter and found his father sleeping on the western side of the house. He went near his father, took the knife. M.O.1 which was lying nearby, and gave a cut on the neck. Then he ran away from the scene and returned after 15 minutes. He found his father lying dead near a fence. At that time, his elder brother Venkatachalam also reached the place and the accused informed him by signalling that he cut their father. The accused and his elder brother Venkatachalam took the dead body of their father and placed it on a pial. The body was covered with a cloth and both the accused and Venkatachalam ran away from the scene.

4. As the accused was proceeding, he saw P.W.2, the cousin brother of the deceased, who was proceeding in a cycle towards Nambiyur. The accused asked for a lift in the cycle and P.W.2 took him and dropped him at the Nambiyur bus-stop. The accused asked for money from P.W.2 saying that he has to go to Sevoor to visit his brother. P.W.2 did not pay any money since he had none. The accused stayed at the bus-stop for the night and it was raining. Next day morning, he left the bus-stop and reached the office of P.W.1, the Village Administrative Officer of Nambiyur village. P.W. 1 was not in the village as he had left earlier for Gobichettipalayam. He waited for the arrival of P.W.1 and when he returned at 3.00 p.m. on 16.5.1989, the accused told him as to what happened in the house. The statement of the accused was reduced into writing by P.W.1 and the said statement stands marked as Ex.P.1 in the case. Thereafter, the accused was sent to the police station at Varapalayam through the menials of P.W.1.

5. On receipt of Ex.P.1, P.W.8, the Sub-Inspector of Police, registered a case in Crime No. 186 of 1989 under Section 302, IPC against the accused and prepared Ex.P.15, a copy of the printed First Information Report. Express reports were sent to the higher officials.

6. On receipt of the information about the registration of a crime, P.W.10, the Circle Inspector of Police. Nambiyur Circle, took up investigation in the case, and reached the police station at 5.30 p.m. where he obtained a copy of the printed F.I.R. He found the accused at the police station and when the accused was questioned, he came out with a statement and the admissible portion of the same is Ex.P.2. P.W.10 took P.W.1, P.W.8 and the accused to the scene of occurrence and the accused produced M.O.1, a knife, which was lying near a fence. M.O.1 was seized under a mahazar Ex.P.21 attested by P.Ws.4 and 5. He prepared an observation mahazar. Ex.P.22, in the presence of witnesses and also drew a rough sketch, Ex.P.23. He conducted inquest over the dead body of Ponnusamy between 7.00 p.m. and 10.30 p.m. in the presence of panchayatdars during which, he questioned and recorded the statements of P.Ws. 1 to 3. A requisition was issued by P.W.10 for conducting autopsy on the body of Ponnusamy.

7. On receipt of the requisition. P.W.6, the Civil Assistant Surgeon attached to Government Hospital. Gobichettipalayam. conducted autopsy at 9.30 a.m. on 17.5.1989 and found on it a cut injury on the upper part of the neck extending from the right side middle of the neck to a distance of 5 cm onthe left to the midline measuring 17 cm. He issued Ex.P.14, the post-mortem certificate, with his opinion that the deceased would appear to have died on account of the cut injury to the carotid artery, jugular vein and thyroid cartilage.

8. P.W. 10 continued his investigation and seized M.O.4, the blood-stained earth, M.O.5, the sample earth, under a mahazar Ex.P.-25. He also seized M.O.6, the blood-stained stone, M.O.7, the blood-strained earth, and M.O.8, the sample earth, under a mahazar Ex.P-26 attested by witnesses. M.O.9, a blood-stained dhoti, was also seized under a mahazar Ex.P.27. He questioned and recorded further statements of P.Ws. 2, 4 and 5. The accused was brought to the police station and later, sent to the court for remand. The material objects were sent to the court with a request to forward them for analysis and the court, by sending them, obtained Exs. P.19 and P.20, the reports of the chemical analyst and the serologist respectively, showing that M.O.1 the knife, contained human blood and that the blood group of the deceased in 'AB'. On completing the investigation, a final report was filed against the accused under Section 302 IPC on 26.7.1989.

9. When questioned under Section 313, CrP.C., the accused denied his complicity and stated that after the death of his mother, he has left for Sevoor with his brother Devarajan and that his father and his elder brother Venkatachalam were alone in the village. According to him, he was informed by someone that his father was lying dead and that he returned to Nambiyur with his brother. He has further stated that when he alighted from the bus at Nambiyur bus-stop, he was caught by the police officers and was compelled to put his thumb impression on a blank paper to which he refused. He was thereafter taken to the police station and beaten and his thumb impression was obtained.

10. The prosecution case that Ponnusamy died on account of the injury sustained by him is spoken to by P.W.6, the post-mortem doctor. He issued Ex.P.14, the post-mortem certificate. He has deposed that on conducting autopsy, he found an

injury on the neck and that the said injury is necessarily fatal since it had cut the jugular vein and thyroid cartilage. Therefore, there can be no doubt the Ponnusamy died on account of homicidal violence.

11. Though the occurrence was not witnessed by anyone, the prosecution, before the trial court, relied on the extra-judicial confession made by the accused to P.W.1, the Village Administrative Officer of Nambiyur village. It is the evidence of P.W.1 that at about 3.00 p.m. on 16.5.1989, he returned from Gobichettipalayam and found the accused in his office and when questioned, the accused came out with a statement saying that he had cut his father. We have perused the said statement which stands marked as Ex.P.1. A perusal of Ex.P.1 shows that the accused had narrated the entire facts in sequence and it appears truthful.

12. The evidentiary value of the extra-judicial confession and its acceptability to be assessed by the court having due regard to the credibility of the witnesses and to the attending circumstances. If, on considering the credibility of the witnesses and the attending circumstances, the court believes the witness before whom the confession is made and is satisfied that the confession is in fact voluntary and without there being any doubt in regard thereto, an order of conviction can be founded on such evidence. The extra-judicial confession is admissible in evidence and the court appropriate cases can rely thereon to the extent of even basing conviction of the accused. But the above principles stand qualified to the extent that the court should insist on some assuring materials and circumstances to treat the same as pieces of substantive evidence - vide State of Punjab v. Gurdeep Singh, 1999 (4) Cri 142.

13. As we stated earlier, a perusal of Ex.P.1 and the evidence of P.W.1 shows that both of them appear to be truthful. In the said statement, the accused has stated that after he cut his father, he saw his uncle, P.W.2, who was proceeding in a bi-cycle to Nambiyur and that he requested him to give a lift. In the said statement, it is found mentioned that P.W.2 took the accused in his cycle and dropped him at the bus-stop. This piece of evidence found in Ex.P.1 is fully supported by P.W.2, who has, in his evidence, stated that at about 6.00 p.m. on 15.5.1989, when he was proceeding in his cycle towards Nambiyur, he saw the accused, who had

asked him to give him a lift in the cycle and that, he gave him a lift and dropped him at the bus-stop. The fact that P.W.2 dropped the accused at the bus-stop is also mentioned in the statement, Ex.P.1. The accused further stated in Ex.P.1 that he stayed overnight at the bus-stand and thereafter, he proceeded to the office of the Village Administrative Officer, P.W.1, in the morning Since P.W.1 was not in the office, he waited for him and then gave the statement at 3.00 p.m. on 16.5.1989. This piece of evidence is supported by P.W.1, who has, in his evidence, stated that he left for Gobichettipalayam in the morning of 16.5.1989 and only returned in the evening and found the accused in his office.

14. Apart from the extra-judicial confession, we also have the evidence of the investigating officer, P.W.10, who has, in his evidence, stated that the accused took the police party to his house and produced M.O.1, the knife, which was lying near a fence, and the same was seized under a mahazar. The said knife, M.O.1, was later sent for analysis and the serologist had given a report. Ex.P.20, to the effect that the knife contained human blood. This attending circumstances and the fact that P.W.1 had no reason to come out with a false version, can be taken into consideration, to accept Ex.P.1, the extra judicial confession, as one which was voluntarily given by the accused. We accordingly hold so. Once we accept the extra-judicial confession, there can be no doubt for us to arrive at a finding that the accused cut his father to death.

15. Learned counsel appearing for the appellant/accused contends that the learned Sessions Judge was not justified in sentencing the accused to imprisonment for life since admittedly, the accused was an adolescent offender at the time of incident and also on the date of conviction since he was below 21years of age. According to him, under Section 10-A of the Tamil Nadu Borstal Schools Act, if an adolescent offender is convicted for capital punishment, he can be detained in a borstal school and he cannot be sentenced to imprisonment for life. We find every force in the contention.

16. The Supreme Court in State of Andhra Pradesh v. Vallabhapuram Ravi, : 1984 CriLJ1511 , held that the object of the legislation is to reform the - offenders who have committed acts visiting them with the penalty of undergoing prison life when

they were between 16 and 21 years of age and that is sought to be achieved by taking them away from the company of adolescent prisoners whose continued association in a prison would have serious adverse influence on their character. If every person who is transferred under Section 10-A of the Act to a Borstal School is to remain there until he serves out the entire period of imprisonment for life, the Borstal School would soon become a prison consisting of 'lifers' and its other inmates who are detained under Section 8 of the Act would be keeping company with the adolescent offenders, thus defeating the very object of establishing a Borstal School. The second reason is that the words, 'as if, appearing in the second sentence in Section 10-A of the Act make it a deeming provision and such deeming provision should in law be carried to its logical conclusion. It is further held that if a person detained in a Borstal School under Section 10-A of the Act is to be retransferred to the prison after he serves out the full term of detention in the School, it will defeat the very object and purpose of the Act.

17. The above view was later quoted with approval by the Supreme Court in Elumalai v. State of Tamil Nadu, : 1985 CriLJ510 , holding that the Government of Tamil Nadu cannot keep any adolescent offender, who was convicted of a capital offence but sentenced to imprisonment for life in respect of whom an order is made under Section 10-A of the Tamil Nadu Borstal Schools Act in a Borstal School or in any other kind of detention after he has attained 23 years of age.

18. In Bhoop Ram v. State of Uttar Pradesh, 1989 SCC (Crl.) 486, the Supreme Court held that if the accused has crossed the maximum age of detention in a approved school, the only course to be followed is to sustain his conviction but quash the sentence and release him forthwith.

19. A Division Beach of this Court, while dealing with the provisions of Juvenile Justice Act in Karupayee, Etc. v. State, Etc., 1997 (1) L.W. (Crl.) 15, also took the view that a person convicted on an offence, cannot be sent to prison after he serves a period of detention in an approved school.

20. In view of the above, we are of the view that though the conviction of the appellant is sustained, his sentence is quashed as was ordered by the Supreme Court. In the result, the appeal is disposed of in the above terms.

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