SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Palani Moopan

In Re: Palani Moopan

SooperKanoon Citation : sooperkanoon.com/792184

Court : Chennai

Decided On : Jan-01-1955

Reported in : AIR1955Mad495; 1955CriLJ1197; (1953)2MLJ199

Judge : Panchapakesa Ayyar and ;Basheer Ahmed Sayeed, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164, 288, 364 and 533; Madras High Court Criminal Practice Rules - Rule 85; Constitution of India - Article 20 and 20(3); Evidence Act - Sections 145

Appeal No. : Referred Trial No. 129 of 1954 and Criminal Appeal No. 718 of 1954

Appellant : In Re: Palani Moopan

Advocate for Pet/Ap. : P.S. Kailasam, Adv.;R. Santhanam, Adv. for ;Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Basheer Ahmed Sayeed, J.

1. Palani Moopan, aged about 24, has been found guilty of murder of his wife, Karuppayee, aged about 20, on 26-1-19.54 at Kuppandampalayam, by inflicting injuries with a tapper's knife and has been sentenced to death subject to confirmation by this court by the learned Additional Sessions Judge of Coimbatore

Division.

2. The prosecution case is this. In January 1953, the appellant and the deceased were married. They lived together happily for three months. Thereafter misunderstandings arose between them by reason of misconduct of the appellant exhibited in beating and abusing his wife. Constantly the appellant quarrelled with his wife. Consequent upon such beating and ill-treatment, his wife, the deceased, used to go to her parent's house. Sometime thereafter, a panchayat was held and the deceased returned to the appellant's house. Even after such return, there were frequent quarrels between them. After some days subsequent to the return of the deceased to the appellant's house, the appellant shifted to his sisters house leaving his wife in his house. On 26-1-1954, the deceased went to a shandy in Kcwant village situated just three miles away from Kuppandampalayam. While she went to the shandy, she is said to have worn gold kappus and kammals in her ears, a gold thali on her neck, and silver bangles. At about sun set time she left the shandy and was returning to the village with a basket containing provisions on her head. When she came near the temple on the outskirts of the village, a few furlongs away, she was being followed by P. Ws. 2, 3 and 4.

The deceased and these witnesses crossed the temple and were passing through the itteri. The point at which the itleri and the temple crossed each other was apparently a dangerous place where offences like robbery and murder had been committed. When the deceased reached that place, the prosecution evidence is that the appellant approached her & cut her. This was seen by P. Ws. 2, 3 & 4 who were coming a little behind. P. W. 2 reported the matter to P. W. 1 and P. W. 1, the brother of the deceased gave a statement to the village munsif about what he had learned from P. W. 2. In the meanwhile, P. W. 8, a potter, who is an undesirable character, having been guilty of theft on prior occasions, and P. W. 9, a Koravan, said to be a registered K. D. happened to pass by the spot where the deceased lay dead. They saw the body of the deceased, an aruval, M. O. 1, and a basket M. O. 2, in which the deceased was bringing certain provisions from the shandy. They removed these two articles to their custody, and it transpires that P. W. 9 used for himself some of the quantity of rice found in the basket. The village munsif P. W. 12, who recorded Ex. P. 1 from P. W. 1 made the usual report to the police

authorities.

The Sub-Inspector of Police, P. W. 13, arrived at the village in the early hours of the 27th mom-ing. He saw the body of the deceased and held the inquest and after completing the preliminaries, he sent the body for post-mortem examination. The lady doctor, P. W. 5 who conducted the autopsy and issued Ex. P. 4 the post-mortom certificate, found on the body of the deceased 6 injuries. The first injury was an incised circular wound 2 inches in diameter and slicing off a flap of skin which was attached by 1/2 inch anteriorly and situated over the left shoulder joint. The second injury was a' incised vertical wound 1 inch by 1/2 inch by 1/4 inch situated in part of right axilla. The third injury was an incised gaping wound 3 inches in length and cutting into the hotly of the second vertibra and into the muscles of the neck and situated on the back of neck. The fourth and fifth injuries were also incised gaping wounds of various dimensions. The sixth injury was an abrasion 2,1/2 inches by 3/4 inch situated on the posterior surface of the upper half of right thigh. The doctor was of opinion that the deceased would appear to have died of shock and haemorrhage as a result of the injuries.

3. A day after the occurrence, namely, on 27th January, the appellant went to Bhavani, 15 miles away from his village and appeared before the Sub-Mgistrate P. W. 10, and surrendered before him, at about 4 p. m. while he was holding court in the court hall. The appellant stated that he was wanted by the police in connection with his wife's murder and so he surrendered. The magistrate, on finding his dhoti and upper cloth bloodstained directed his clerk and peon to seize them. In his presence they were seized, and Ex. P. 6 was drawn. Thereafter, the magistrate remanded the appellant to the sub jail. The dhoti, M. O. 3, and the upper cloth M. O. 4 were sent for chemical examination, and the imperial serologist has certified that they had been stained with human blood. P. W. 13, the Sub-Inspector, was informed of the surrender of the appellant before the Sub-Magistrate, and after he intervened the appellant at about 10-15 a. m. on 28th for half an hour or thereabouts, he came to know that the appellant was willing to make a confession.

Thereupon P. W. 13 made a requisition to the Sub-Magistrate to record his confession. The appellant was produced on the 28th January at about 3-30 p. m.

before the Sub-Magistrate who recorded Ex. P. 8 which is in the following terms:

'The accused Palani Moopan is produced before me by the warder at 3-30 p. m. He is warned against making any statement concerning the crime. No police is present in the vicinity of the court.'

Thereafter the Sub-Magistrate gave time to the appellant for reflection, and the appellant appeared before the Sub-Magistrate again on 29-1-1954. After administering me necessary questions found in Ex. P. 9 (a), the Sub-Magistrate proceeded to record his confession as contained in Ex. P. 9.

4. In his confessional statement the appellant said that his wife had been in illicit intimacy with one Latchumanan, his co-brother-in-law that there were misunderstanding between him and his wife, and so he left her in her mother's house at Kuppandampalayam, that Latchumanan abused him and beat him, and subsequently tendered an apology to the appellant, that on account of his wife's abandoning him, the appellant was compelled to. cook for himself; that his wife without going over to him went to Latchumanan in Mavani and remained there; that there was a panchayat held by Ramaili and Chinnapayya Asari; that after ten days, in the month of Karthigai, they took the deceased and left her with him, that on a Wednesday he went out to harvest the paddy; that his wife gave him a bundle of food, that he drank in the field (to half of his belly); that he vomitted and fell down; that the food was mixed with 'Aralikottai powder' (Oleander seed powder); that one Pappayi Aminal also saw it; that in the night, at 10 o'clock, she and others took him to the house; that he informed his elder brother, that be was taking his food separately, keeping his wife alone, that his sister-in-law told him the next day when he went for shandy, Latchumanan came and enjoyed a jolly life with wife; and that he went and enquired where his brother-in-law was. He confessed that on Tuesday, that is, on the day of occurrence, he went to Keevani shandy. His wife also went to the shandy before him and was selling chillies. Latchumanan was sitting hy her side and talking. The accused was purchasing ragi,

At that time she said to Latchumanan, 'My husband in not keeping me properly; I will came to Mevani tomorrow'. The appellant kept the ragi in the garden. He could not endure the disgrace on account of her and he was angry. He went out taking a

knife from the house of Muthu Moopan. His wife was returning from the shandy. He dragged her saying 'We shall go to Mevani now itself'. In reply to that his wife said 'Whoare you (fellow) to drag me? I will go anywhere.' Enraged at this reply, the appellant stabbed his wife with the knife. Afterwards he threw the knife there and went to Bhavani direct.

5. Before the learned Sessions Judge, in all about 13 witnesses were examined for the prosecution. P. Ws. 2 and 3 went back upon what they had said in the committal court. The evidence of P. W. 2 and P. W. 3 in the committal court is marked as Ess, P. 2 and 3 respectively. The appellant when questioned by the learned Sessions Judge said that the evidence given by the P. Ws. against him was false, and he denied that the confession made before the Sub-Magistrate was true and voluntary. He stated that the confession was made under the inducement of the police that they would help him if lie were to confess in the manner he did. The learned Sessions Judge, however, believing the evidence as recorded in the committal court and finding that it corroborated the accused's confession in material particulars came to the conclusion that the offence against the appellant has been proved and convicted and sentenced him under Section 302, I. P. C., as stated above.

6. Mr. Kailasam, appearing on behalf of the appellant, in the first instance, urged that the confession ought not to have been acted upon or accepted by the learned Sessions Judge for the reason that the learned Sub-Magistrate, who recorded the confession, did not conform to the requirements of Section 164, Criminal P. C., or Section 364 thereof. His point is that from Exs. P. 9 and P. 9 (a) and the evidence of the Sub-Magistrate, it appeared that the magistrate did not put a question to the appellant if he knew that he was not bound to make any confession, and why he was making the confession. On that ground, the learned counsel has argued that the confession is in violation of Sections 164 and 304, I. P. C. We are unable to accept this contention. In Ex. P. 8, the learned Sub-Magistrate has clearly stated that he has warned the appellant against making any statement concerning the crime. At the end of Exs. P. 9 and P. 9 (a) the learned magistrate P. W. 10, has also appended a memorandum as required by Section 164 (3), Criminal P. C., that be bad explained to the appellant that he was not bound to make any confession

and that if he did so, any confession be might make might be used as evidence against him. The magistrate has also stated that he believed that the confession was voluntarily made and that the confession was taken down by him and was read to the appellant and admitted by him to be correct and that it contained full and true account of what the appellant had stated to the magistrate.

P. W. 10 was not shaken regarding these. Sections 164 and 364, Criminal P. C., as well as Ft. 85, Criminal Rules of Practice do not require that the warning that the accused is not bound to make any confession, should be in the form of a question and answer and should be recorded like that by the magistrate. What Section 164 (3), Criminal P. C., requires is that a magistrate before recording a confession from an accused shall explain to the accused making it that he is not bound to make a confession and that if he does so it may be used as evidence against him, and that no magistrate shall record any such confession unless upon questioning the person making it, he has reason to believe that it was made voluntarily, and that when he records any confession, he shall make a memorandum at the foot of such record to the effect.

We find in this case as evidenced by Ex. P. 8 and the certificate appended to Exs. P. 9 and P. 9 (a), that the magistrate has substantially complied with the requirements of Section 164, Criminal P. C., and that there is no infirmity in the recording of the confession. Indeed Section 164 (3), Criminal P. C., itself simply says 'explain' and it is obvious that an explanation is possible without a question or answer. We find that Section 364, Criminal P. C., has also been complied with by the magistrate in recording the confession. Rule 85 of the Criminal Rules of Practice does not require that the magistrate should record the confession in the form of questions and answers. What that rule requires is that no Magistrate shall record any statement or confession made by an accused person under Section 164, Criminal P. C. (1) until the magistrate has first recorded in writing his reasons for believing that the accused is prepared to make the statement voluntarily, and (2) until he has explained to the accused that he is under no obligation to answer any question at all and has warned the accused that it is not intended to make him an approver and that anything he says may be used against him. Therefore, we do not find any substance in the contention of the learned counsel that the confession

in this case should not be acted on and accepted. Even otherwise, the provisions of Section 533, Criminal P. C., are sufficient to cure any of the procedural defects that might have arisen in the matter of recording the confession, in the present case.

7. The next point urged by the learned counsel is that no weight should be attached to the discovery of M. Os. 3 and 4, the dhoti and the upper cloth worn by the appellant when be appeared before the magistrate. The learned counsel has argued that, under Article 20(3), Constitution of India a person accused of an offence cannot be compelled to be a witness against himself. His point is that these M. Os. which were seized from the appellant at the instance of the magistrate by his. clerk and peon, evidencing blood stain on them amounted to compulsory production of the M. Os. by the appellant. We do not think that this argument can be sustained. What the learned magistrate says is that when the appellant appeared Before him he saw the M. Os. worn by him stained with blood and so, be directed his clerk and peon to seize them from the appellant. This procedure does not compel the appellant to be a witness against himself. The securing of the blood stained clothes on a person like the appellant who wanted to report and surrender before the magistrate would be veiy material and relevant, and the magistrate, situated as he was, was bound to take possession of them (as of a bloodstained weapon) from the appellant. Such being the case, it cannot be said that there has been any compulsion exercised upon the appellant to produce the M. Os. and be a witnr.ss against himself in this murder case. The learned counsel relied upon the Supreme Conrt ruling in -- 'M. P. Sharma v. Satishchandra', : 1978(2)ELT287(SC) (A), and he read to us relevant passages from it. We have carefully examined the passages, and we do not think that they have any relevancy or bearing to the facts of the present case.

8. Mr. Kailasam then urged that the learned Sessions Judge went wrong in accepting the evidence of P. Ws. 2 and 3 in chief-examination in the committal court and in finding that their evidence corroborated materially the confession made by the appellant. The point raised by the learned counsel was that Section 145, Evidence Act had not been complied with in the matter of making the evidence of P. Ws. 2 and 3 recorded in the committal court. It is true that the

depositions of P. Ws. 2 and 3 in committal court had not been marked in full as required by Section 288, Criminal P. C. But we do not find that there is really any violation of Section 145, Evidence Act. It is no doubt true that only a portion of the evidence of P. Ws. 2 and 3 that the appellant has cut the deceased with an amara kathi on her neck and she fell down has been marked as Exs. P. 2 and P. 3 and that the rest of their depositions has not been marked. This procedural defect in our opinion does not militate against Exs. P. 2 and P. 3 which have been accepted and acted upon by the learned Sessions Judge.

What Section 145 of the Evidence Act says is that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. This section in substance has been complied with so far as the parts of the deposition of P. Ws. 2 and 3 are concerned. If this section is read with Section 288, Criminal P. C., all that can be said in favour of the argument of the learned counsel for the appellant is that there has been a procedural defect. But this defect, in our opinion, does not affect the course adopted by the learned Sessions Judge in accepting and acting upon the evidence of these witnesses. Mr. Santhanam, appearing for the learned Public Prosecutor has invited our attention to -- 'Fakira v. Emperor , for the contention that 'a deposition before a committing magistrate admitted under Section 288, Criminal P. C., is to be treated as evidence in the case for all purposes, and that this procedural defect does not make the evidence actually marked as absolutely useless for the purpose of acting upon it. As a matter of fact, the entire depositions of P. Ws. 2 and 3 in the committal court are before us, and we are able to look into it. It does transpire that P. Ws. 2 and 3 went back upon what they had stated in the committal court.

In this connection Mr. San than am has invited our attention to -- 'Bhagwan Singh v. State of Punjab', : 1952 CriLJ1131 (C), where it has been hold that where two conflicting versions are given by a prosecution witness in chief and in cross-examination, the prosecution has a choice. It is entitled to use the former

statement (in the committing court) either to contradict what was said in cross-examination or to corroborate what was said in chief. In either event Section 288, Criminal P. C., could be used to make the former statement substantive evidence. In our opinion, the learned Sessions Judge has acted in accordance with the rulings given in this decision. And no prejudice also has been caused to the accused.

9. Coming to the merits of this case, we have to state that the confession, which rings true and voluntary, sets out the particulars of the offence admitted to have been committed by the appellant, that the appellant approached the deceased when she was returning from the shandy, and that it was the appellant who inflicted the injuries as spoken by P. Ws. 2 and 3 in their evidence in the committal court marked here under Section 288, Criminal P. C. There is no reason why the prosecution should not rely upon the corroboration found in the evidence of P. Ws. 2 and 3 so far as the material particulars of the confession are concerned, We are therefore not prepared to reject the confession on any ground urged by the learned Counsel for the appellant, and we think that the confession has been voluntarily made, and it is true, since it finds material corroboration in the evidence of P. Ws. 2 and 3. We are of opinion that the learned Sessions Judge has come to a right conclusion that the offence against the appellant has beea proved beyond any doubt.

10. A suggestion was made by the learned counsel for the appellant before us that P. Ws. 8 and 9, from whom M. Os. 1 and 2 were recovered, might have been responsible for the murder of the deceased. We do not think that there is any basis for this suggestion though it has been put to the witnesses in the cross-examination. We do find that P. Ws. 8 and 9 are not desirable persons by reason of their antecedents. Still we do not think that they have been responsible for the murder of the deceased.

11. On a consideration of the entire evidence, and the circumstances of the case we are of opinion that the offence has been committed only by the appellant, and that his conviction under Section 302, I. P. C., is right. But in awarding sentence to the appellant, the fact that he was provoked by the insolent answer given by the

deceased when he questioned her about her misconduct with his co-brother-in-law ought to be taken into consideration. We think that the ends of justice will be amply met if we confirm the conviction under Section 302, I. P. C., and reduce the death sentence to one of transportation for life, which we accordingly do. The appeal is otherwise dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com