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In Re: Krishnan Naidu

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Court : Chennai

Decided On : Nov-08-1951

Reported in : AIR1953Mad400; (1952)1MLJ623

Judge : Mack and ;Ramaswami Gounder, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 239; Indian Penal Code (IPC), 1860 - Sections 201, 302 and 511; Evidence Act, 1872 - Sections 60

Appeal No. : Ref. Trial No. 50 and Criminal Appeal No. 387 of 1951

Appellant : In Re: Krishnan Naidu

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : V.L. Ethiraj, Adv.

Disposition : Appeal allowed

Judgement :

Mack, J.

1. Appellant aged 19, the son of Rangappa Naicker, has been found guilty under Section 302, I.F.C., of the murder of a young woman Chittliammal aged about 16 and sentenced to death.

2. The facts of this case are remarkablc. The police originally laid a charge-sheet against the father Bangappa Naicker as A. 1 and the son, the present appellant, as A. 2, it would appear, under Section 302 read with Section 34, I.P.C. The committing Magistrate on some unusual evidence in the case framed a charge of murder only against the son, and a charge under Section 201, I.P.C., read with Section 511, I.P.C., i. e., for attempting to dispose of the murdered corpse against the father. In the Sessions Court, the case was split up into two and the learned Sessions Judge has tried the appellant separately on the charge of murder, it would appear, in view of the Full Bench decision of this Court, -- 'In re Narayana Ehatta', I.L.B. (1949) Mad. 220. The trial Court judgment makes no reference at all to the fact that the father had also been charge-sheeted and that the case was split up in this manner. A perusal of it leaves one in doubt and speculation as to the position of the father, whose absence either from the witness-box or the dock, on the evidence admitted in the case, is otherwise quite inexplicable. Mr. Netto of the Salem Bar, who appeared in the trial Court and was present here to assist Mr. Ethiraj for the appellant, has clarified an obscure position. The learned Sessions Judge should, when he splits up cases in this manner, make reference to it in his Judgment

3. The facts of this strange case according to the prosecution are these. The corpse of Chittliammal was found in the field of Rangappa Naicker, according to the official plan about 300 yards from Kondireddipatti village, where he lived. She had been stabbed through the heart, the only fatal injury on her. She also had six abrasions or contusions, 4 in the chest and abdominal region, one on the forehead and one on the right knee. They are all simple injuries pointing to some struggle, which preceded the fatal stab injury 21/2' deep in the chest, which pierced the heart.

4. Bangappa Naicker himself had arranged for the marriage of this girl to his nephew P. W. 3 a few years before the offence and constructed a house for them to live in near his own. P. W. 3 left the village some time before this murder and Rangappa Naicker is said to have Kept Chittiliammal as his concubine with whom his son also got infatuated & was having illicit intimacy. The only witness, who deposes to the existence of this alleged amorous rivalry between the father and

the son is rather strangely the Village Magistrate of Kondireddipatti Munuswami Naidu (P.W. 4), who lived in another village Antheripatti about a mile from the scene of offence. The burden of the defence, which may be anticipated here Is that false evidence has been given and concocted by this Village Magistrate, who was a family enemy.

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5-8. (Then His Lordship narrated the evidence given by the Village Magistrate and the other witnesses including P.W. 1 who said that he was told by Rangappa, Naicker that the appellant stabbed the deceased).

9. Now the evidence that this witness was permitted to give at me sessions that and also the evidence of the Village Magistrate Rangappa Naicker told him that his sons and stabbed Chittliammal is legally admissible in a that against the son himself without the lamer appearing as witness. It is hearsay evidence of a dangerous charter and wholly and legally inadmissible. The learned Sessions Judge merely made a note of the objection taken but allowed the evidence to go in. Had the father been on joint trial along with his son, the official complaint Ex. P.1 made by P.W. 1 to the village magistrate and also the extraordinary request made by the father for his assistance in cremating the body, would have been legally admissible. The result of the splitting up of this case has been that all that the father is alleged to have said fastening responsibility on the son is totally inadmissible without his being examined as a witness himself. The learned Sessions Judge has based the conviction of the appellant mainly on P.W. 2's lower Court deposition Ex. P. 2. This is no doubt under Section 288, Cr. P. C. substantive evidence in case.

10-13. (His Lordship then discussed the evidence of P.Ws. 2, 3, 7 and 8 all of whom deposed in favour of the prosecution before the Sub Magistrate and resiled in the Sessions Court.)

14. The wholesale resiling of these witnesses in the Sessions Court is an extraordinary feature of this case. It is capable of more than one explanation, it may be due to their being tutored to give false testimony, in a false twist given to

this case by the Village Magistrate or to their having been gained over by Rangappa Naicker. There is a third reason which, we think, is more likely and that is that these witnesses after this case was split up and a case of murder was concentrated only on the present appellant, decided to give it no support at all. We are not prepared to say that they have deposed in the circumstances in all respects truly in the committing Court and falsely in the Sessions Court.

15. It is very unfortunate that the case as originally laid by the police was split up in this manner into two separate trials. Mr. Ethira and the learned Public Prosecutor both agree that if the father and the son had been both tried together on charges under Section 302, I.P.C., there would have been no misjoinder at all. In the Full Bench decision in -- 'In re Narayana Bhatta', I. L. R. (1949) Mad. 220, there was a separate charge framed against three persons for causing the disappearance of a murdered corpse who had nothing to do with the murder itself. That Pull Bench decision was on a reference made by Horwill J. and myself and was occasioned by a difference of opinion between us. The view I then took and with the greatest respect to which I still incline is that in cases, in which the disposal of the body is done by one of the persons directly charged with murder, the persons who help him to dispose of the body, knowing he was the murderer, can be tried together with him, regarding murder and the disposal of the body as offences in the course of the same transaction under Section 239 (d). Crl.P.C., though where disposal of a murdered corpse is done by persons, none of whom had any connection with the murder, then they should be tried separately. In our opinion, and in this both Mr. Ethiraj and the learned Public Prosecutor agree, the Full Bench were dealing with the facts of a peculiar case as is clear from the following observation they made:

'Obviously no general rule can be laid down as to when different offences can be said to have been committed in the course of the same transaction. The question when it arises must be determined on the facts of the particular case'.

If the learned Sessions Judge split up this caseon the strength of this decision, all we can savis that he misapplied it. It was open to him afternotice to the father to have altered the chargeagainst the father also under Section 302, I.P.C., orbetter still to have framed what we consider tohave been proper charges on the facts

alleged bythe prosecution, viz, alternative charges under Ss.302 and 201, I.P.C., against both the accused,keeping the original accusation made by the investigating police intact for a single judicial determination. On the peculiar facts in this caseas alleged by the prosecution, it was clearly doubtful which offences they will constitute and theprocedure of alternative charges was fully justified under Section 238, Crl.P.C. Mr. Ethiraj and thelearned Public Prosecutor agree that if this hadbeen done, there would have been no misjoinderat all. A superficial reading of the Full Benchdecision appears to have engendered an erroneousview that an offence under Section 201, I.P.C. can inno circumstances be tried along with Section 302, I.P. C.It is perfectly open to a Court to convict an accused charged of murder under Section 302, I.P.C.,of an offence only under Section 201, I.P.C., withouteven framing any separate charge under the lattersection. This has been recognised in the FullBench decision itself following the Privy Council decision --'Begu v. Emperor, 6 Lah 226 We have carefully considered whether inthis case there should be a retrial of the appellant along with his father. This cannot now bedone without notice to the father. The only legal evidence against the son is the retracted evidence of the only eye-witness P.W. 2 and hislower Court deposition admissible under Section 283,Crl.P.C. The evidence of P.W. 1 that he wasstanding with a knife in his hand with his fatherby the corpse is 'prima facie' incredible. Thelegally admissible evidence against the appellantin the present case is quite insufficient to warrant a conviction. We have also decided that itis insufficient to Justify even a retrial along withhis father. We do not desire to express any opinion here about the truth or falsity of the evidence of the village magistrate, P.W. 4, in viewof the case pending against the father RangappaNaicker on the charge under Section 201, I.P.C. readwith Section 511. I.P.C., in respect of which he hasbeen committed, which must take its course.Without the father appearing before us- in thecapacity of either witness or accused, we do notfeel justified also in expressing any opinion. Thisis the unfortunate result of the bisection of thecase and the Police accusation with the evidenceagainst' the son forced into the narrow groove ofthe first complaint and report made by the village magistrate in this case. With these observations, we allow the appeal, acquit the appellantand direct him to be set at liberty.

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