

In Re: Mottai thevar

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Court : Chennai

Decided On : Sep-06-1951

Reported in : AIR1952Mad586; (1951)2MLJ605

Judge : Mack and ;Somasundaram, JJ.

Acts : [Evidence Act, 1872](#) - Sections 25; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 162, 172 and 172(2); Madras Borstal Schools Act - Sections 10

Appeal No. : Referred Trial No. 32 and Criminal Appeal No. 241 of 1951

Appellant : In Re: Mottai thevar

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : S. Obul Reddi, Adv.

Judgement :

Mack, J.

1. Appellant, a young man aged 20, has been found guilty under Section 302, I. P. C. and sentenced to death by the learned Sessions Judge of Coimbatore for the murder of one Muthuswami Goundan, who was incidentally sentenced to transportation for life in 1926. After serving his sentence, he returned to his village Andhiyur and lived with his younger brother P.W. 9. The deceased had the right, it

would appear, to collect tolls at the Andhiyur shandy from hawkers.

2. The prosecution case is that on 20-11-1950 on shandy day in this village, the appellant came to the Police station at about 2-30 p.m. with a blood-stained spear. The statement recorded from him by the Sub-Inspector (P.W. 15) was ruled out as inadmissible in evidence quite rightly but most unfortunately in this case as, under Section 25 of the Evidence Act, a confession made to a police officer cannot be proved against an accused. The Sub-Inspector immediately after recording the accused's statement and taking him into custody went to the Andhiyur shandy and found a blood-stained patch near the rice baskets of hawkers. The evidence shows that P.Ws. 4 and 5 two coolies in the employ of the deceased, who assisted in the collection of tolls from paddy stalls, carried the deceased to his house but that he died on the way. The Sub-Inspector found the corpse on the pial of the deceased's brother, P.W. 9, who in the meantime had made a separate complaint Ex. P. 8 timed at 3 p.m. to the village magistrate (P.W. 13) to the effect that the appellant and his father-in-law came together to the shandy where the appellant spared the deceased. The 2nd accused was later quite rightly struck out of the case as an accused.

3. At the inquest held from 3-30 p.m. the Sub-Inspector examined three rice hawkers P. Ws. 1 to 3, who deposed that they heard a shout of stabbing and all they saw when they turned round in the direction of the shout was the appellant pulling a spear out of the deceased's back while he was standing and again stabbing him after he fell down. A petition writer (P. W. 14), who had his office room opposite to the police station, said he saw the accused entering the police station with M.O. 1 on which he saw blood at 2-30 p.m. that day.

4. The motive actually disclosed in the evidence was the fact that a civil suit had been filed by the deceased against the appellant in the Gobichettipalayam District Munsif's Court on 27-9-1951 for a declaration and injunction in respect of a house. The appellant contested the suit in which he had filed a written statement and counter. The injunction application was posted to 22-11-1950 for hearing. The learned Sessions Judge observed that the main defect in the prosecution case was the absence of any proximate motive as this litigation by itself could not have

furnished a motive for the appellant to spear the deceased. In the committing Court, the appellant was undefended and merely took refuge in a whole-sale denial of knowledge of anything, even as regards the civil suit filed against him. In the Sessions Court, where he was defended by a learned advocate, an astonishing line of defence was taken, involving an unwarranted attack on the integrity of the Police. The appellant, while pleading not guilty, went to the length of saying that there was no enmity between him and the deceased over the house, that three eye-witnesses had been bribed to give evidence against him and finally that some police men asked him to pick up M.O. 1, which was lying near the deceased, took him to the police station and beat him. There can be no doubt whatever that it was the appellant, who speared the deceased and that he is guilty of murder as found by the learned Subordinate Judge in agreeing with the four assessors. On the legally admissible evidence, the learned Sessions Judge can perhaps be scarcely blamed for sentencing the appellant despite his youth, to death.

5. We have no doubt at all that the appellant, after spearing deceased at the shandy, went straight to the police station with the blood-stained spear and there made a clean breast of the offence and that this was the first information received in the case. Even assuming that he was caught by a constable going off with the blood-stained spear and taken to the police station, the statement he made there should certainly be considered in his favour. It is obvious that the learned Sessions Judge did not peruse the case diary as he was entitled to do under Section 172 (2), Cri. P. C. The result of our perusal of the confession recorded from him at the police station is that not only do we find mitigating circumstances to justify the imposition of the lesser punishment but we also feel justified in making a recommendation to the Government for commutation of the sentence.

6. There was in 'fact' some further motive evidence in the suit of an eloquent nature apart from the mere filing of the suit by the deceased against the appellant. It was in evidence that the house belonged to the appellant's father Perunial Thevan, who also kept a concubine by whom he had a daughter Nanjammal examined as P. W. 12. Her evidence was to the effect that after Perumal Thevan died, the appellant's mother and her mother lived, each occupied a half of this

house till they died two or three years ago. About three months before the offence, appellant asked her to vacate claiming the whole house as belonging to him as he wanted to occupy it as he had got recently married. Then P.W. 12 conveyed the whole house by a registered sale deed Ex. P. 9 on 7-9-1950 to the deceased for Rs. 250. That sale deed recites that the house belonged to her mother and that it had devolved on her as she had no male heir and it was on the basis of Ex. P. 9 that the deceased filed his suit against the appellant alleging that he was in possession of the whole house.

7. The confession appellant made at the police station contains a recital of grave and sustained provocation by the deceased, of threats by him to murder him and his wife and of threats also against his father-in-law to compel him to vacate the house, which drove him to desperation to the commission of this crime. Under Section 25 of the Evidence Act, no confession made to a police officer shall be proved as against a person accused of any offence. There is nothing in the most unsatisfactory state of the law as regards confessions to police officers to stop the use of such a confession in favour of an accused person. The resultant impasse created by Sections 25, 26 and 27 of the Evidence Act and Section 162, Cr. P. C. is to shut out as legally inadmissible not merely any confession made to a police officer but anything said to a police officer by an accused person in the course of an investigation. In this case, we are satisfied that the confession of the appellant was in fact the first information the police received of this offence and had it been admissible in evidence or had it been recorded by a Magistrate, the full recital of motive would have been entitled to credence and to be taken into the fullest consideration in the assessment of sentence.

8. This is a concrete illustration of the anomalous and practical difficulties and grave injustice, which may be done to an accused person himself by the operation of Sections 25, 26 and 27 of the Evidence Act enacted though they were in 1872 on distrust of the then existing police, and an apprehension that they may misuse extensive powers if confessions made to them by accused persons are admissible in evidence. There is a world of difference between a voluntary confession of this kind made to a Police officer, which constitutes the first information he receives of an offence and a confession made by an accused person while in police custody

but even the law as it stands completely rules out a confession in the former category. Section 26 makes wholly inadmissible any confession made by a person while he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate. There is the important proviso to this contained in Section 27, which makes admissible information by an accused person, leading to discovery, whether it amounts to a confession or not, which relates distinctly to the fact thereby discovered which has undoubtedly given Courts and investigating police very great difficulty. In 'ATHAPPA GOUNDAN, IN RE', ILR (1937) Mad 695, a Full Bench of this Court attempted to broaden the scope of this proviso by holding that a statement connecting the object discovered with the offence was admissible and that for instance if an accused said 'this is the spear with which I stabbed the deceased and then shows the spear in a place of concealment, the confession portion of that statement is admissible. But in 'Kotayya v. Emperor', I.L.R. (1948) Mad 1 this decision has been overruled by the Privy Council. It discontinued a practice which had become a tradition with investigating police officers of working into confessions such incriminating adjectival clauses relating to all sorts of discoveries. Applying Sections 25, 26 and 27 to the present case in the light of the Privy Council decision, all that is legally admissible in the confession made by the appellant at the police station was that he brought with him a blood-stained spear. Having tried sessions cases continuously from 1037 to 1548, bound as I was by the decision in 'ATHAPPA GOUNDAN, IN RE', ILR (1937) Mad 695 according to which chopped up confessions, leading to discovery with those incriminating adjectival clauses had to be admitted in evidence, there were many cases in which I felt that this unqualified admission of guilt worked into such a clause without relation to the rest of the confession which the accused is said to have made or the circumstances which led up to that confession while in police custody, worked injustice and hardship to the accused unless the case diary was carefully scrutinized in a manner we have had to do in the present case. The mere production of a knife or weapon in a murder case implies that the accused has made a confession. It is necessary and desirable that a Court should know in ray view the full facts and the circumstances relating to the production of the article and all that the accused said when he produced it. A perusal of case diaries often shows a confession alleged to have been made by an accused. The confession is

there and it cannot but prejudice the mind of an inexperienced Judge or 'Magistrate who is entitled to read the whole of the case diary, whereas if confessions which are alleged to have been made and do appear in case diaries have to be proved in full by the police officer in the witness box on his sworn testimony and substantiated under the fire of cross-examination, the view I have no hesitation in taking is that far fewer confessions will appear in case diaries. With the law relating to confessions being what it is, it has become extremely difficult for investigating police officers to give their evidence in a coherent manner in strict accord with truth, with the result that all the facts are not placed before a Court to enable it to arrive at a correct conclusion. I should like to give expression for what it is worth to the view, which I have had for sometime, that the distrust and apprehensions of the police founded on conditions of lack of education, character and integrity amongst the subordinate police in 1872 do not exist today, at any rate in the same degree, and that the time has come for a modification of these three sections and Section 162, Cri. P. C. and the bringing of the law relating to confessions more into line with that of the United Kingdom which permits a police officer to say in evidence what an accused person told him at the time of his arrest but rigorously shuts out any confession which the Court has no reason to think was not made voluntarily. It is my view that, the removal of these shackles from police testimony is necessary if they are to be evolved into a responsible force, deserving of the confidence of the public, the Bar and the Courts, which can be relied upon to deal severely with any police officer found guilty of concocting a confession or giving false evidence in this direction. My learned brother does not think that the time is quite ripe for such a reform and still shares the apprehensions of the legislature, which enacted the Evidence Act of 1872. With the highest regard for his opinion, I would like to take this opportunity of expressing a different view in this case although we are in complete agreement with the guilt of one appellant and the sentence to be passed on him. We confirm his conviction for murder under Section 302, I. P. C. and, for reasons given supra, sentence him to transportation for life with a recommendation to the Government, to whom will be forwarded a copy of his confession recorded at the police station, that showing as it did grave and sustained provocation given to him by the deceased and also in consideration of his youth, the, sentence be commuted to seven years rigorous imprisonment.

The learned Sessions Judge has found accepting the Radiological Expert's evidence that the appellant was 20. We think under Section 10 (a) of the Borstal Act the State Government may favourably consider detaining him in a Borstal school.

Somasundaram, J.

9. I agree with the conclusions arrived at by my learned brother regarding the guilt and the punishment to be meted out to the accused. But with great respect to my learned brother, for whom I have great regard, I regret my inability to share his view regarding Sections 25 to 27 of the Indian Evidence Act. My learned brother has himself referred to my opinion in the judgment and I would like to add a few words to it.

10. Section 25, Indian Evidence Act says that 'no confession made to a police officer shall be proved as 'against' a person accused, of any offence'. I underline there in single quotation) the word 'against'. The confession does not therefore prohibit the use of it in favour of the accused. In the majority of cases the confessions are sought to be used only against the accused. The cases in which such confessions would or can be used in favour of the accused will be very few and they will be the exceptions to the general rule. The section therefore ought not to be repealed or modified for the sake of the few or the exceptions.

11. In the present case, though we have used the confessions in favour of the accused, it cannot be said that that is the only view to be taken of the confession. It is possible to take a different view of the confession and that too in a telling manner against the accused. It depends therefore on the use, the Court is going to make of the confession. If it is to be used against the accused, then Section 25 is a bar and it cannot be admitted but if it is to be used in favour of the accused, I do not think that Section 25 is a bar and the confession can well be admitted.