

In Re: Palaniappan

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Court : Chennai

Decided On : Jan-23-1961

Reported in : AIR1961Mad417; 1961CriLJ497

Judge : Anantanarayanan and ;Veeraswami, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 340 and 342; Madras Criminal Practice Rules - Rule 166

Appeal No. : Criminal Appeal No. 246 of 1960

Appellant : In Re: Palaniappan

Advocate for Pet/Ap. : G. Gopaldaswami, Amicus Curiae;Public Prosecutor

Judgement :

1. The appellant in this case (Palaniappa alias Kutti Mudali) was tried by the learned Sessions Judge, Coimbatore, for the offence of murder of his father-in-law, one Marutha Mudali convicted upon the charge, and sentenced, for certain reasons furnished by the learned Judge, to undergo the lesser penalty of imprisonment for life. In view of certain special features of the procedure adopted at the trial, we have actually heard the appellant, who was brought before us, and also heard Sri G. Gopaldaswami (amicus curiae) for him. We might immediately state that, in the light of the order that we propose to make we are not proceeding into the merits of the case against the accused.

2. What actually transpired at the trial is fully set forth in paragraphs 7 to 9 of the judgment of the learned Sessions Judge. As the learned Sessions Judge has pointed out, at the committal enquiry, the accused fully cross-examined the witnesses for prosecution. Not merely this, when he was examined by the committing magistrate under the law, he furnished clear and intelligible replies to the questions. Put to him upon the several aspects of the testimony against him. At the sessions trial, in conformity with the mandatory provisions of Rule 166 of the Criminal Rules of Practice, a learned counsel was appointed to take instructions from the appellant, and to defend him.

The learned Sessions Judge states that this was a senior criminal lawyer. But, when P. W. 1 was in the box, and immediately after the examination-in-chief of this witness, the accused wanted to cross-examine the witness himself, and, in effect, repudiated the right of the learned counsel appointed by the State to conduct the cross-examination on behalf of the accused. The accused was then told by Court that the lawyer had been engaged at State cost, and that he (the accused) could instruct the counsel on points necessary for the defence. We are thoroughly satisfied, both from the record and from our personal examination of the accused, that, though the accused permitted the trial to go on, he was not actually satisfied, and his grievance continued.

Again, when P. W. 2 had given his evidence, in chief, the accused protested that his counsel ought not to cross-examine him, and that he (the accused) should be permitted to cross-examine the witness. He was not granted his request, and the trial proceeded accordingly. At subsequent stages of the trial, we find from the record that learned counsel alone cross-examined the witnesses, and that the accused did not further intervene.

3. Finally, when the accused was questioned by the learned Judge under Section 342 Cr. P. C. in response to all the questions of Court, he had only this uniform reply to make or to reiterate, namely, that he wanted to cross-examine the several witnesses whose evidence was put to the accused by the learned Judge. Finally, the accused replied, in response to a general question by the learned Judge: "I want to cross-examine all witnesses. I have nothing to say." When he was asked

whether he was aware that a counsel had been appointed at State cost to defend him, he answered that he did not know this, and that, actually, his counsel never consulted him, nor did he take any instructions from him. The learned Sessions Judge has appended a note to this record to the effect that the learned counsel informed the Court that he did take instructions from the accused on points material to the case.

4. Upon these facts and circumstances, the learned Sessions Judge has argued that the mandatory provisions of Rule 166 of the Criminal-Rules of Practice prevented him from adopting any course other than that which he actually adopted, and, further, that no prejudice has been occasioned, in his view, to the accused, by the mode of trial. We are afraid that these arguments overlook the vital consideration in this case that, when the accused repudiated his learned counsel at the very commencement of trial, and wanted to cross-examine P. W. 1 himself, the authority of the learned counsel to further represent the accused effectively came to an end.

It is true that Rule 166 of the Criminal Rules of Practice is mandatory in its terms, and, undoubtedly it should be complied with in all cases, to which that rule refers. But that does not imply that the rule invests the Court with any authority to permit a counsel to continue to present the accused, after an express repudiation of that representation by the accused. Actually, the point set forth by the learned Sessions Judge has nothing to do with the real question why this trial has not been in conformity with the law, and with the requirements of justice. We must repeat that the rule referred to must be complied with; in fact, it was complied with in this case, and there, the matter ceased.

But the further right of learned counsel to put, questions on behalf of the accused depends entirely upon the continuance of that representation, which, in its turn, depends upon the express or implied consent of the accused- Where the consent has been expressly repudiated, the interests of justice certainly require that the accused should be permitted to put the questions himself, supplemented, if necessary, by exertions of learned counsel, and that the appearance and reality of justice must be adhered to in this manner. We can see no insuperable difficulty in

the adoption of such a course.

5. These considerations are further strengthened in the present case by two very important elements Or factors. The first is that we find from the record that, in the lower court, the accused expressly stated, in response to a question, "My wife was immoral. It was planned that I should be done away with, and someone murdered Marutha 'Mudali; and the case was foisted on me". We are compelled to conclude that the accused did not instruct his counsel on this vital aspect at all, as we find no questions upon this aspect put in cross-examination.

Secondly, it cannot be said that, as the record stands, the mandatory requirements of Section 342 Crl. P. C. have been fully complied with. That would not matter, if the accused was given every chance to answer the questions and he was not suffering under any genuine grievance or disability. But he was actually suffering from a genuine grievance, and, hence, the examination of the accused is not at all complete.

6. We might briefly note that, in Emperor v. Sukh Dev, AIR 1929 Lah 705 a very similar question came up before a Bench of that Court, consisting of Shadi Lal C. J. and Broadway J. and the learned Judges cited and referred to Reg v. Yacuado, (1854) 6 Cox C.C-386, where the question of the right of the Court to appoint counsel to an accused, who refused to defend himself and. remained mute of malice, came up for consideration. Erle J. made certain observations in this context, which need not be re-produced in full here But it is sufficient for us to slate that Erle J. was very clearly of the view that the Court had no authority to assign counsel to a prisoner without his consent, and that the Court could not authorise a defence which the prisoner himself would never have made "and yet for which he must be responsible."

7. In this state of record, and, in view of the infirmities in the procedure adopted by the Court below, which we have discussed, we set aside the conviction and sentence and direct that the case be re-tried according to law, in the light of the observations.

Veeraswami, J.

8. I entirely agree with my learned brother. But I would like to add a word. The limited question in this case, in view of what happened at the trial, is whether, where a counsel had been engaged by the Sessions Judge, acting under Rule 166 of the Criminal Rules of Practice, the accused has the right, while not repudiating the counsel, to cross-examine prosecution witnesses either himself exclusively or in part. The learned Sessions Judge, evidently, was of the view that, Rule 166 being mandatory, it was not permissible for the accused to cross-examine when a counsel had been engaged for him under Rule 166.

It is fundamental to bear in mind that it is the right of the accused which is safeguarded by Rule 166. Where the requisites of that rule are satisfied clearly, it is the duty of the Court to appoint a counsel. But that rule in no way affects the right of the accused to defend himself. The counsel engaged by the Court is only for assisting him. There is no rule of law that in any way stands in the way of the accused cross-examining the witnesses in the best way he may think fit, whether or not he is satisfied with the examination done by the counsel engaged at State cost.

Where it is a case of the accused repudiating his counsel, the case is quite clear, because the representation by counsel is on the basis of agency. It is hardly necessary to mention that one who is represented by another has always got the right to terminate the authority. But where the authority is not terminated by the accused, the fact that he is represented by a counsel does not in any way, in my opinion, stand in the way of the accused cross-examining the witnesses. The learned Sessions Judge could well have allowed the accused in this case, in addition to his counsel, to cross-examine the witnesses.

9. The accused is directed to be re-transferred to the Central Jail, Coimbatore, where he will remain in custody, pending retrial by the Sessions Judge Coimbatore.