In Re: Muthian Nadar

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SooperKanoon Citation : sooperkanoon.com/800090

Court : Chennai

Decided On : Sep-23-1970

Reported in : 1971CriLJ730; (1971)IIMLJ114

Judge : Sadasivam and; K.N. Mudaliyar, JJ.

Appellant : In Re: Muthian Nadar

Judgement :

K.N. Mudaliyar, J.

1. Muthian Nadar, the appellant herein, seeks to appeal against his conviction for an offence Under Section 302, IPC. for committing the murder of his wife Leela Pushpam by trampling on her chest and neck and the sentence of imprisonment for life.

2. Leela Pushpam (deceased) was the wife of the accused. She bore two children to the accused. She was living in the house of the accused which was adjoining P.W. l's house at Thiruthangal. According to the evidence of P.W. .1 the accused-appellant was not living with his wife, but he was living elsewhere.

3. The accused and his wife Leela Pushpam had fallen out. She was accusing her husband of keeping some concubines. She was also in the habit of asking women not to come for cooly work under the accused. She also accused them of being the concubines of her husband. The prosecution case is that Leela Pushpam was also in illicit intimacy with P.W. 5. However, with regard to that alleged intimacy between P.W. 5 and Leela Pushpam, there is no foundation for the proof of such relationship. But the learned Judge finds that there was strained relationship between the accused and the deceased Leela Pushpam. But we are unable to see any evidence in regard to the proof of any illicit intimacy between P.W. 5 and Leela Pushpam.

4. With regard to the murder of Leela Pushpan (deceased) on the 13th day of March 1969 at or about 12 noon, the prosecution examined P.Ws. 1 to 3 as witnesses. But the said three witnesses have been treated as hostile by the prosecution. P.W. 1 stated that he did not know anything about this case because he used to go for work at 5 a. m. and return at 8 p. m. P.Ws. 2 and 3 merely testified that they heard somebody shouting 'Ayyoh' and saw one person running from that lane towards the west and then they went into the lane and looked through the window of the accused's house and saw the wife of the accused lying there bleeding from the nose and the mouth; thereafter they went away. All these three witnesses (P.Ws. 1 to 3) were confronted with what they had stated during the investigation. P.Ws. 1 and 2 were also confronted with what they had stated before the Sub Magistrate, Srivilliputtur in their statements Under Section 164, Criminal P.C. The depositions given by these three witnesses, P.Ws. 1 to 3, before the committing court, Exs. P. 1 to P. 3 were transposed as evidence in this trial Under Section 288, Criminal P.C.

Therefore, we have only the versions given by P.Ws. 1 to 3 before the committing court regarding the actual murder and the said depositions are transposed as evidence in the court of Session Under Section 288, CrIPC. The evidence of P.W. 8 (the Sub-Inspector) Thiruthangal is that on 13-3-1969 at about 12-30 p.m. the accused

appeared before him at the police station and gave a statement. After he recorded the statement, P.W. 1 and two others came to the police station and gave a statement which also he reduced to writing and then registered a case. P.W. 8 visited the scene of occurrence at 2-30 p. m. and found the dead body of Leela Pushpam lying in the house of the accused. He held inquest over the dead body between 3 p. m. and 6 p. m. and he examined P.W. 1 and two others during the inquest.

5. P.W. 6, the Civil Assistant Surgeon conducted the autopsy over the dead body at 11 a.m. on 14-3-1969 and found a fracture of the right clavicle and the hyoid bone was also found fractured. The doctor opines that the deceased died of asphyxia due to strangulation about 24 hours prior to the autopsy.

6. The plea of the accused is one of denial. The plea has been more elaborately set out in paragraph 10 of the judgment of the Sessions Court.

7. The learned Judge held that the deceased Leela Pushpam died as a result of asphyxia due to strangulation. He also found that the person who caused the injuries on the neck and the fracture of the hyoid bone had the intention to cause the death of the deceased. The learned Judge after noticing the principles of law enunciated in ILR (1942) Kar 299 : A.I.R. 1942 Sind 139 and in Sharanappa v. State of Maharashtra : [1964]4SCR589 arrived at the finding that Exs. P. 1 to P. 3 given by P.Ws. 1 to 3 before the committing court are true and can easily be relied upon. The learned Judge further found corroboration of Exs. P. 1 and P. 2 by the statements given Under Section 164, Criminal P.C. by P.Ws. 1 and 2. The learned Judge further found that the medical evidence in the case would clearly fortify the testimony of P. Ws 1 to 3 given before the committing court, Ultimately the learned Judge gives the finding that the accused strangled his wife by stamping on her neck with his leg with the intention of causing her death.

8. The learned Counsel for the appellant raised four arguments before this Court for assailing the conviction of the appellant.

9. The first argument is that P.W. 8, the Sub-Inspector of Police, Thiruthangal threatened P.Ws. 1 to 3 and forced them to give statement before the Magistrate. It emerges from the evidence of P.W. 8 that on 13-3-1969 at about 12-30 p.m. the accused-appellant appeared before him at the police station and gave the statement which was reduced to writing by P.W. 8 (the admissible portion must have been marked by the prosecution as the F. I. R. in this case. Soon after he recorded that statement from the accused, P .Ws. 1 and 2 and others came to the station and gave a statement which was also reduced to writing. It may be remembered that the versions given by P.Ws. 2 and 3 in the court of the committing Magistrate, accord with the version given by P.W. 1 at the earliest opportunity before the Sub-Inspector of Thiruthangal, P.W. 8. It is not possible to comprehend easily as to how P.W. 1 could have been threatened by the Sub-Inspector, P.W. 8 to give the statement which P.W. 1 did at the earliest opportunity. The depositions of P.Ws. 2 and 3 given in the court of the Committing Magistrate are in consonance with the earliest statement of P.W. 1 recorded by P.W. 8 about the main features of the occurrence, implicating the accused in the crime of murder of his wife. The argument lacks substance.

10. It may be observed here that the first information report given by the accused ought to have been marked to the extent of the formal part identifying the accused as the maker of the report. In the event of the said report containing anything amounting to a confessional statement proof of the confession Is prohibited by Section 25 of the Evidence Act. The confession includes not only the admission of the offence but also all other incriminating facts relating to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.

11. The second argument of the learned Counsel is that the procedure followed by the learned Sessions Judge is not in compliance with the requirements of law laid down by the Supreme Court in Tara Singh v. State : [1951]2SCR729 . It was held in the above case by the Supreme Court that it is not enough for the Sessions Judge to read over the questions and answers put in the committing magistrate's court and ask the accused

whether he has anything to say about them. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. The accused must be questioned separately about each material circumstance which is intended to be used against him. The questioning must be fair and must be couched in a form which even an ignorant or illiterate person will be able to appreciate and understand. It was further held that evidence in the committing court cannot be used in the sessions court Under Section 288, Criminal P.C. unless the witness is confronted with his previous statement as required by Section 145, Evidence Act. We set down below Section 288, Criminal P.C.

The evidence of a witness duly recorded in the presence of the accused under chapter XVIII may, in the discretion of the Presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.

We set down below Section 145 of the Evidence Act:

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 11 which are to be used for the purpose of contradicting him.

It is true in one sense P.Ws. 1 to 3 gave up their entire case based on their earlier depositions. But in the court of Sessions the Public Prosecutor read ou1 and translated to the witnesses their depositions before the committing court and the three witnesses P.Ws. 1 to 3 admitted having deposed like that. On the basis of their admission we are unable to see how these witnesses could be contradicted by the writing recorded earlier in their depositions of the court of the committing Magistrate. We are of the view that the procedure followed by the learned Sessions Judge in transposing the three depositions of P.Ws. 1 to 3 given in the committing Court as evidence in the trial before the court of Session is in substantial compliance with the requirements of Section 145 of the Evidence Act. In Bhagwan Singh v. State of Punjab : 1952CriLJ1131 , their Lordships of the Supreme Court observed as follows:-

We are by no means satisfied that that is the case because at least one of the passages is reproduced in inverted commas and so must have been read out from the statement. But that apart, immediately after the witness had been questioned about each separate fact point by point, the whole statement was read out to him and he admitted that he had made it in the committing court. Now this procedure may be open to objection when the previous statement is a long one and only one or two small passages in it are used for contradiction -that may, in a given case, confuse a witness and not be a fair method of affording him an opportunity to explain- but in the present case the previous statement is a short one and the witness was questioned about every material passage in it point by point. Accordingly, the procedure adopted here was in substantial compliance with what Section 145 requires. There can be no hard and fast rule. All that is required is that the witness must be treated fairly and be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner. We are satisfied that that was done here. The matter is one of substance and not of mere form.

Here was notice that the whole statement was read out to P, Ws. 1 to 3 and they admitted that they had made it in the committing court. It would have been far better if the court of Session had questioned the witnesses P.Ws. 1 to 3 about every material passage in It point by point particularly because the previous statement is a short one. But we are satisfied that there is substantial compliance with what Section 145 requires. A Division Bench of this Court (Ramakrishnan and Kunhamed Kutti, JJ.) held in Kumaraswami Naicker v. State 1963 Mad WN 69 : 1963 Cri LJ 98 that Section 288, Criminal P.C. is mandatory and unless it is complied with, it will not be open to the Sessions Court to reject the evidence given before it and rely on the evidence in the committal court.

Before the Sessions Judge could treat the evidence of witnesses in the committal Court as substantive evidence at the sessions trial it is essential that the formalities in Section 288, Criminal P.C. should be

complied with strictly. These formalities require the whole of the evidence of the witness given in the committal court to be filed so that the court could come to a conclusion whether it could exercise its discretion and treat the earlier evidence given in the committal court as evidence for all purposes at the sessions trial. Then it will be necessary to draw the attention of the witness to those portions of the deposition in the sessions court which are in conflict with the earlier statement and in regard to which the earlier statements are proposed to be relied on by the prosecution. Referring to the practice of courts in Madras State their Lordships of the Supreme Court in Periyasami v. State of Madras : 1967CriLJ975 held that it is highly desirable that the court should before the transfer of the earlier statement to the record of the Sessions case Under Section 288 of the Code of Criminal Procedure, indicate in a brief order why the earlier deposition was being transferred to the record of the trial. This will make it quite clear to the accused that the earlier statement is likely to be used as substantive evidence against him.

In the present case, the learned Sessions Judge states that he is satis-fled that the witness had intentionally resiled from what he had stated before the committing court and since what he had stated before the committing court is in conformity with what he had stated Under Section 164, Criminal P.C. before the Sub Magistrate, Srivilliputtur, what he had stated before the committing court appears to be the truth and not what he had stated before this Court now. Hence, Under Section 288, Criminal P.C. Ex. P. 1 is transposed as evidence in this trial. In the same way, the learned Judge observes in transposing Ex. P. 2 as evidence in the sessions trial. Regarding P.W. 3, the learned Judge states that he is satisfied that P.W. 3 has intentionally resiled from the statement which he had made before the committing court and since what he had stated before the committing court is in conformity with what he had stated during the investigation what he had stated before the committing court might be the truth and not what he has stated before this Court. Hence Ex. P. 3 is transposed as evidence in this trial Under Section 288, Criminal P.C. We find that the requirements of law Under Section 145 of the Evidence Act and Section 288, Criminal P.C. are satisfied by the procedure followed by the learned Sessions Judge.

12. The learned Counsel argued that the evidence given by P.Ws. 1, 2 and 3 represents the truth whereas the depositions of the P.Ws. 1 to 3 recorded in the court of the committing Magistrate are untrue. We are unable to accept this argument. P.W. 1 states in Ex. P. 1 that he saw the accused pushing and catching the hair of Leela Pushpam with his left hand and stampeded on the neck of Leela Pushpam with his right leg.

(Their Lordships discussed the facts and proceeded)

We hold that Ex. P. 3 contains the truth about the occurrence. The learned Ses sions Judge after examining the intrinsic value of Exs. P. 1 to P. 3 chose to rely on them for convicting the accused. The learned Judges of the Supreme Court in : [1964]4SCR589 held that the evidence of a witness tendered Under Section 288 of the Cede of Criminal Procedure before the Sessions Court is substantive evidence. In law such evidence is not required to be corroborated. But where a person has made two contradictory statements on oath it is ordinarily unsafe to rely implicitly on the evidence and the Judge, before he accepts one or the other of the statements as true, must be satisfied that this is so. For such satisfaction it will ordinarily be necessary for the evidence to be supported by extrinsic evidence not only as to the occurrence in general but also about the participation of the accused in particular. But in a case where even without any extrinsic evidence the Judge is satisfied about the truth of one of the statements, his duty will be to rely on such evidence and act accordingly. We are satisfied, not only as to the truth of the occurrence in general, but also about the participation of the accused in particular in killing his wife by reason of the evidence of P.Ws. 1 to 3 as embodied in Exs P. 1 to P. 3.

13. The learned Counsel also argued that the existence of two nail marks on the loin is consistent with the presence of a paramour who might have killed Leela Pushpam. The learned Counsel based this argument on the material in cross-examination of P.W. 6 who says that the two nail marks on the loin would have been caused by an amorous attack on her. We are unable to find any material not even a particle in support of 'amorous attack' on her. There is no reason why P.Ws. 1 to 3 should have omitted to indicate the presence of

a paramour or 'some person' in the event of Leela Pushpam (deceased) resisting and screaming and consequentially being strangled by the person who assaulted her. The occurrence was at about 12 noon and the windows of the house of the accused were open. It is difficult to comprehend that sexual assault was even attempted under those conditions. This argument cast an unmerited reflection on the chastity of a deceased woman and we are of the view that this argument has been advanced with the lack of sense of responsibility.

14. We are unable to find any merits in this appeal. The conviction and sentence of the appellant are confirmed.

15. The criminal appeal is dismissed.

16. In C. M. P. No. 611 of 1970 the appellant prays that the order of the court of Session, Ramanathapuram Division in Crl. M. P. 236 of 1969 in S. C. 42 of 1969 may be received as additional evidence in Crl. Ap. No. 777 of 1969.

17. The learned Sessions Judge of Ramanathapuram (C. J. R. Paul) found that P.Ws. 1 to 3 have intentionally erven false evidence, and that their version before the committing magistrate's court is irreconcilable with the version which they have given before the court, of Session and both cannot be true. He recorded a finding to the effect that they have intentionally given false evidence and that for the eradication of the evils of perjury and in the interests of justice it is expedient that they should be prosecuted for the offence which appears to have been committed by them. This finding is recorded Under Section 479-A, Criminal P.C. Subsequently a notice was issued to these witnesses P.Ws. 1 to 3 to show cause why a complaint should not be made against them in this regard. They explained that they were forced by the Police under threats to depose as though they were eye-witnesses to the occurrence. Under threat of police, they had deposed as required by the police to the Magistrate. They were informed that they should depose In this Court also in the same manner. But they did not choose to speak in favour of the prosecution. On the contrary, they spoke the truth in the court of Session; so they maintained.

18. The learned Sessions Judge (C. Balasubramaniam) ultimately found that it is therefore impossible to rule out the possibility that the witnesses were forced by the police to give evidence as they did in the committal court. The learned Judge dropped further proceedings against the three prosecution witnesses, P.Ws. 1 to 3.

19. Had the learned Judge framed charge against P.Ws. 1 to 3 in the light of Section 236, Criminal P.C., illustration (b), there could be no valid defence for the charge of perjury and their statements that they were given under police pressure would only be a mitigating factor on the question of sentence only. It is unnecessary for us to give more reasons regarding the impropriety of the order of the learned Sessions Judge in dropping further proceedings against P.Ws. 1 to 3.

20. In the view the finding of the learned Sessions Judge resulting in the dropping of further proceedings against P.Ws. 1 to 3 is totally irrelevant to the appreciation of the evidence on record in this appeal. In view of this order the Crl. M. P. N. 611 of 1970 is dismissed.