

In Re: Guruva Vannan

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Court : Chennai

Decided On : Dec-14-1943

Reported in : AIR1944Mad385

Appellant : In Re: Guruva Vannan

Judgement :

Horwill, J.

1. The appellant has been convicted by the learned Sessions Judge of Trichinopoly of the murder of his daughter-in-law, Sellayi, at about 1 p.m. on 29th June 1943, and sentenced to death. P. Ws. 3 and 4, the brother and sister respectively of the deceased, claim to be eye-witnesses. They say that the appellant had been frequently coming to their house and asking the deceased, their sister, to come and live with him. She had consistently refused to do so. On the day of the offence, at about noon, he twice asked their sister to come to his house; but she again refused. Thereupon, the accused came with a spear and stabbed her on her cheek with such force as to cause the stick to break off. Seizing the spear head with his hand, he stabbed the deceased in the abdomen and other places. She rushed into the street and dropped down dead. P.W. 3 at once went off to fetch P.W. 8, a respectable neighbour, who, upon seeing what had happened, went to the house of the accused, seized him, and tied him up. There were many persons living in the neighbourhood; and some of them have deposed that upon hearing the cry of the deceased they came running to the spot

and saw the deceased woman lying near her house stabbed to death. P.W. 7 asked P.W. 4 what had happened; and she replied that her uncle (appellant) had stabbed the deceased. The evidence of P.W. 8 is important. He came at once upon being called by P.W. 3 and after he had seen the body, went with others to the house of the appellant and asked him why he had stabbed the deceased. The appellant replied that she had not been behaving properly in the family and so he had stabbed her. They tied up the appellant in the chavadi and went and informed the village Magistrate, who lives a mile and a half away. The village Magistrate P.W. 9 came and then reported the matter to the police.

2. The evidence of some of these witnesses is sought to be discredited because certain statements made by them during the course of their examination in the Sessions Court do not appear in the case diary of the police. P.W. 13, the police officer who conducted the investigation, is one of those foolish investigating officers who think the law requires of them that they should record verbatim what every person says to them; and so when they are asked in cross-examination by the counsel for the accused whether such and such a witness made such and such a statement, they refer to their case diary and if it does not find a place there, they at once say that the witness did not make that statement. It is most unlikely that P.W. 13 remembered whether P.W. 6 and P.W. 8, about whose statements he was questioned, made the statements referred to; and so we presume that merely because these unimportant particulars do not find a place in the summary of the statements of those witnesses recorded in the case diary, the witness said that they did not make those statements. We think it desirable that the Judge should ask such police witnesses when they give answers of this kind, whether they are speaking from memory, or whether they have given the answers they have merely because the statements do not find a place in the case diary. All that investigating officers are expected to do is to make a short record of what the witnesses examined by them have said. They are not expected to record the unimportant details given by witnesses; and so the absence of such details in the case diary is no proof at all that the statements were not made by the witnesses. I agree with my learned brother that a Court should permit a statement recorded under Section 162, Criminal P. C., to be used for the purpose of proving an omission only when it is sure that the omission could not have occurred if the statement had

really been made. The passage from Queen-Empress v. Naziruddin (1994) 16 All. 207 extracted by my learned brother in his judgment needs very careful consideration in this connexion.

3. There is no reason to doubt the evidence of P.W. 8 - supported as it is by the evidence of P.W. 5-that when the appellant was asked by P.W. 8 why he had committed this murder, he replied that he had done so because the deceased had not been behaving herself properly. The other evidence against the appellant is that a blood-stained cloth was recovered from his person -for which he has given no explanation-and also that the spear in two parts was recovered from the roof of his house. The stains on the cloth, as well as the stains on the spearhead, were found to be of human blood. The statement of the accused in the Magistrate's Court was to the effect that he was seized because he happened to have been present when neighbours came on the scene and suspicion fell on him on that account. In his statement in the Sessions Court, however, he says that this case was foisted on him on account of the enmity borne towards him by P.W. 8, who was intimate with the deceased and who bore him a grudge because a cloth belonging to his wife had been lost in the wash. I consider that the case against the appellant has been fully proved and that there is no doubt at all that he committed the murder of the deceased Sellayi. Of the many injuries found on the person of the deceased, two are each in itself fatal. In the absence of extenuating circumstances, the sentence imposed by the learned Sessions Judge was the proper one. I am of opinion that the conviction and sentence should be confirmed and the appeal dismissed.

Mockett, J.

4. The facts are quite clear and it is unnecessary to say more than that. I agree with the result at which my learned brother has arrived. I desire to add some remarks about the use of Section 162, Criminal P.C. I respectfully agree with the judgment of Burn J. in Ponnuswami v. Emperor : AIR1933 Mad372 in which the learned Judge held that a statement under Section 162, Criminal P. C, cannot be filed in order to show that a witness is making statements in the witness-box which he did not make to the police and that a bare omission cannot be a contradiction.

The learned Judge points out that whilst a bare omission can never be a contradiction a so-called omission in a statement may sometimes amount to a contradiction, for example, when to the police three persons are stated to have been the criminals and later at the trial four are mentioned. Section 162 provides that no statement made by any person to a police officer in the course of the investigation shall (1) if reduced into writing be signed by the person making it, (2) be used for any purpose 'save as hereinafter provided' at any subsequent inquiry or trial. The proviso is to the effect that it can be shown that a witness has made statements to the police which are contradictory to his evidence in the witness-box. The position is that a witness cannot be cross-examined with regard to statements that he made to the police unless the statements are contradictory. With regard to a statement made in the witness-box but not alleged to have been made to the investigating officer I also respectfully agree with the judgment of Horwill J. in *Emperor v. Nadimpalli* : AIR1942 Mad58 where he deals with this topic and with which judgment Burn J. agreed. The learned Judge observed as follows:

Where it is alleged that the statement made by the witness in Court was not made before the police officer, it is useless to refer to the record in the case diary at all, for what is recorded in the case diary is not intended to be a complete record of what a witness tells the police officer. It is only a resume of the statement, made by the police to facilitate their investigation. The only way to prove that the statement made in Court was not made to the police officer is to ask the police officer himself when he is in the witness-box.' In other words, the police officer can be asked whether it is a fact that a certain statement was not made to him. It seems also that it is the practice in the criminal Courts in this Presidency to allow a witness to be asked whether he did not make certain statement, which he has made in the box, to the investigating officer. In assessing the value of this evidence the following must be borne in mind. Supposing a witness is asked 'you did not say so and so to the police?' or a police officer is asked 'the witness did not say so and so to you?' If the answer by either the witness or the police officer is 'I (or he) did make the statement,' the answer is inadmissible under Section 162. So a question is on the record to which only one answer is admissible and another answer is inadmissible. It follows too that if the police officer states that a certain

statement was not made by the witness, the witness is not allowed to say that he did make it. Such statement is not signed by the witness and he has to say as to which of his answers to the officer's questions are or are not recorded. In this connection it must also be remembered that a witness is speaking of a conversation which took place usually months before. The police officer is also speaking of a conversation recorded by him months before and in his case he must usually be having regard to what is contained in his case diary. It has over and over again been pointed out by this High Court, that it is not the duty of the investigating officer to do more than record a gist of the statements made to him. The Madras Police Standing Order No. 555 whilst instructing the investigating officer to record 'a statement of the circumstances ascertained' expressly states that 'the police are under no obligation to record verbatim the statements of persons examined.' I respectfully agree with the observations of Knox and Burkitt JJ. in *Queen-Empress v. Naziruddin* (1994) 16 All. 207. Speaking of the statements recorded in the course of investigation the learned Judges observed 'Such statements are recorded by police officers in the most haphazard manner. Officers conducting an investigation not unnaturally record what seems in their opinion material to the case at that stage and omit many matters equally material, and, it may be, of supreme importance as the case develops. Besides that, in most cases they are not experts of what is and what is not evidence. The statements are recorded often hurriedly in the midst of a crowd and confusion, subject to frequent interruption and suggestions from bystanders. Over and above all, they cannot be in any sense termed depositions, for they are not prepared in the way of a deposition, they are not read over to, nor are they signed by, the deponents. There is no guarantee that they do not contain much more or much less than what the witness has said.' It is not the duty of the police when investigating a crime to record a long and detailed deposition. Their business is to make a note of such facts and circumstances as then seem to them important and useful for the purpose of the case. But it is the practice of some Sessions Judges to treat statements made to the police in the course of an investigation as being in the nature of depositions and if it should appear that they are not as complete as their subsequent statements before the Court, to treat their evidence as a whole with great suspicion. One of the commonest examples is where a witness is asked

in the witness box, (probably for the first time), 'Did you inform X, Y or Z of what you had seen?' The case diary reveals that there is no record that he said that he had so informed X, Y or 2. The explanation of the police officer that he had not recorded more than what the witness stated that he had seen is seldom considered, I agree with my learned brother that the Court should make sure whether when a police officer says 'the witness did not says this or that' that he means that statement literally and not that he is saying 'I do not find it in the case diary.' There is a very great distinction between the two positions. My general conclusion on the subject is that an omission from the record in a case diary of a statement is only of value if it is of such importance that the witness would almost certainly have made it and the police officer would almost certainly have recorded it, had it been made. So much of the cross-examination in the Sessions Courts seem now to be directed to irrelevant omission in the case diary that I think the above observations are necessary. An immense amount of unnecessary writing is imposed upon the Sessions Judge who still under the present procedure has to record the evidence in long hand. An example may be taken from the case before us. P.W. 6 stated at the Sessions 'on a Tuesday about 3 months ago at midday meals time I was taking meals in my house. Then I heard a noise 'ayyo, ayyo' from the house of P.W. 2.' He was cross-examined to show that he did not tell P.W. 13, the Head Constable that he was taking meals in his house when he heard the noise, nor did he state that the cry was heard from the house of P.W. 2. Under our powers we had recourse to the case diary and found that the witness had stated that he was in his house and heard an alarm. The recording of this cross-examination, a complete waste of time, must have occupied the learned Sessions Judge several minutes. It is right to say that he attached no importance to it. I have already indicated that I entirely agree with the result at which my learned brother has arrived.