

In Re: Mathali Goundar

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Court : Chennai

Decided On : Nov-14-1951

Reported in : AIR1952Mad812; (1952)IMLJ276

Judge : Mack and ;Somasundaram, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342(1)

Appeal No. : Ref. Trial No. 48 of 1951 and Criminal Appeal No. 386 of 1951

Appellant : In Re: Mathali Goundar

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : K.S. Sundaram, Adv.

Judgement :

Somasundaram, J.

1. The Additional Sessions Judge of Salem has found the accused guilty of murder of one Sellappa Goundan, uncle of the accused and sentenced him to death.

2. The occurrence is said to have taken place adjoining the road which leads to Sankari railway station near a batel 'mundy'. On the night of 19th October 1950 at about 10 p. m. P. Ws. 7 and 12 who were living near the 'mundy' heard cries 'Aiyo, water water'.

They came out each with a lantern and found the deceased Sellappa Goundan sitting on a cot in front of the 'mundy' under a 'pandal' with a spear in his hand which is M. O. 1 in the case. His 'dhoti' was bloodstained. They gave him water and as the deceased wanted that word should be sent to his wife, P. W. 7 sent P. W. 8, one of the bays working in the mundy, to go and fetch his wife. He went and told the wife of the deceased (P. W. 1) that her husband was lying on a cot in front of the mundy with a wound on his abdomen and that he was sent by P. W. 7 to inform her.

P. W. 1 then, with the assistance of her brother (P. W. 3) who is also her son-in-law engaged a cart and came to the scene with her daughter, P. W. 2, aged about 9 years and her son. P. W. 5, aged about 6 years. They saw Sellappa Goundan lying on a cot with a bleeding injury in the abdomen. They also saw a spear underneath the cot. They found P. Ws. 7 and 12 present there and also a woman called Pavayee (the wife of the accused). P.W. 1 questioned her husband as to how he came by the injuries and the deceased stated that the accused had stabbed him with the spear, M. O. L, which was lying nearby. P. W. 12 suggested that the deceased may be taken to the hospital. The cot was, therefore, carried up to the road and kept there waiting for a jutka or other transport to be brought.

3. In the meantime, P. W. 1's brother, (P. W. 3 who, as already stated, is also her son-in-law), was sent to fetch P. W. 1's mother's sister, The wife of the accused, Pavayee who was staying there till then left the place. After P. W. 3 left the scene, P. W. 1, her daughter P. W. 2, and her son P. W. 5, and one Pachayee who has not been called as a witness stayed there by the side of the cot. While they were so staying by the side of the deceased, the accused is said to have come again with a covering on his head and given four or five stabs in quick succession on the chest and other places with a weapon like M. O. 2. The deressed immediately collapsed on the spot. The accused then ran away in the southern direction. While the accused was stabbing, P. W. 1 who recognised him, shouted for help. No one came, but as the accused was going away from the scene he was met by P. W. 3 coming in the opposite direction and the accused is said to have chased P. W. 3 also and then left and run away.

P. W. 3 came back to the scene to see his father-in-law dead. Later, after 11 p. m., P. W. 9 also, on receiving information about the death of Sellappa Goundan, came to the scene. Though a number of these persons were present near the dead body none of them appears to have gone to the village munsif till next morning at about 7 a. m. The village munsif recorded a statement from P. W. 9 who went to give the information. The village munsif came to the scene of occurrence and was present till the Sub Inspector came and held the inquest. The accused was arrested on the 20th of October 1950. at about 2 p. m. at the Sankari shandy on the Edaoadi road. The weapon. M.O. 2, was found in the hollow of a tamarind tree on which the thatched shed of the father of the accused was built. On examination by the Chemical Examiner no blood was found on this weapon, though the spear was stained with human blood.

4-9. (His Lordship after discussing the evidence, held that the accused was guilty of murder). The learned advocate raised a point that the Sessions Judge in this case has not complied with the provisions of Section 342, Criminal Procedure Code and therefore the trial is vitiated. In the Sessions Court the statement made by the accused before the committal court was read out to him and, after marking it as Ex. P. 5 and recording his answer that it is correct the Sessions Judge simply asked the accused whether he wished to say anything more. The accused said he had nothing to add; and then the learned Judge proceeded to ask if the accused had any defence witnesses, to which the accused said that he had none. In the committal court all the circumstances that appeared against the accused in the evidence given before the committing Magistrate were put to the accused and his answers were obtained from him. There is not a single circumstance on which that court could rely on against the accused that was not put to the accused. In the Sessions Court no circumstance different from what appeared in the evidence in the committing court is found in the evidence given before the learned Sessions Judge. There has been no variation and the little variation, if any, was only in favour of the accused; so that all the circumstances that appeared in the evidence in the Sessions Court had been put to the accused by the committing Magistrate as the same appeared in the evidence in the other court and the answers of the accused obtained thereon,

The question for consideration is whether a Sessions Judge should again put all the questions to the accused and record the answers from him. The learned advocate relied on two decisions in support of his contention, one of which is the decision of a Bench of this Court in -- 'Sagili Solomon, in re', : AIR1952 Mad177 and the other a decision of the Supreme Court in -- Tara Singli v. The State', 1951 S C J 518. In view of the decision of the Supreme Court, it is unnecessary to refer to the decision of this court reported in -- 'Sagili Solomon, in re', : AIR1952 Mad177 . In the case before the Supreme Court the scope of Section 342, Criminal Procedure Code was considered; and the learned Judges pointed out how the circumstances which the Sessions Judge relied on did not appear in the evidence before the committal court, but appeared only in the evidence before the Sessions Judge. This is what their Lordships say at page 523 of the journal; (only the relevant portion is extracted here).

'Now, this was evidence which was recorded exclusively in the Sessions Court. The eyewitnesses before the Sessions Judge had resiled from the previous statements which they made in the committal proceedings. Accordingly, a questioning by the committing Magistrate would not and could not cover the point made here, and naturally, the Magistrate has not questioned the appellant about that circumstance. He next relied on the evidence of these witnesses as recorded in the court of the committing Magistrate. One point he used against them was the evidence of motive which these witnesses supplied in the committal proceedings. The appellant was not told what that evidence was nor was he asked to explain it. He was questioned about this motive in the committal proceedings by the committing Magistrate, but even there he was not told who had given the evidence and the material on which the committing Magistrate relied to establish the presence of motive was not disclosed.

The Sessions Judge also relied on the fact that the appellant had confessed to the three eye-witnesses that he had killed his uncle and injured his father. There is not a single question regarding that either in the committing Magistrate's Court or in the Sessions Court.

Another ground on which the Sessions Judge proceeded was the extra-judicial confessions made by the appellant to Ujagar Singh, Fauja Singh and Garbaksh Singh. The appellant was questioned about an extra-judicial confession by the committing Magistrate but not about one made to these three persons.

*** Next, the Sessions Judge considered that as the most important piece of evidence damaging to the accused was the dying declaration of Hakam Singh recorded by the Magistrate, P. W. 5. Neither the Sessions Judge nor the committing Magistrate questioned the appellant about that. The Sessions Judge also relied on the two statements of Jakam Singh made before the Police, one of which the police recorded as his dying declaration. Again not one word was put to the appellant about this.'

10. The circumstances therefore on which the learned Sessions Judge in that case relied were not put to the accused either by the committing Magistrate or by the Sessions Judge. Their Lordships therefore held that under Section 342, Criminal Procedure Code, for the learned Sessions Judge to rely on the circumstances he should have questioned the accused. Here such a complaint cannot be made. All the circumstances have been put in the committing Magistrate's Court and no circumstances on which the learned Sessions Judge relied appeared in the evidence in the Sessions Court, which had not already appeared in the committing court & which had not been put to the accused. We think, therefore, that there is no substance in the contention of the learned advocate that Section 342, Cri. P. C. has not been complied with. We must say however that the Sessions Judge should himself put separate simple questions to the accused so that the trial court itself may observe the demeanour of the accused explaining the incriminating circumstances alleged against him. However desirable it may be and however much we may say that the Sessions Judge should follow such a procedure, we do not think that in this case the failure to do FO either vitiates the trial or has resulted in any prejudice to the accused.

11. On the evidence, as already stated, we accept the finding of the Sessions Judge that it was the accused who dealt the stabs which resulted in the death of the deceased and that he is therefore guilty of murder.

12. But the question of sentence has given us some anxiety. We find in this case, as already stated, that the accused must have seen the deceased sleeping with his wife on the cot and he must have, therefore, acted under grave and sudden provocation when he first speared him. If he had given the other injuries as well at the same time his act would certainly fall under Exception (1) to Section 300, I. P. C. and the offence would only be one under Section 304, I. P. C. But we think that when he came a second time and stabbed the deceased with a knife he did so under sustained provocation which was still grave but not sudden. The gravity of the provocation, we think, is a circumstance which can be taken into consideration on the question of sentence. We therefore reduce the sentence to transportation for life. With this modification of sentence we dismiss the appeal.

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