

In Re: Thothan

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Court : Chennai

Decided On : Oct-10-1955

Reported in : 1956CriLJ1004; (1956)IMLJ206

Judge : Somasundaram and ;Ramaswami Gounder, JJ.

Appellant : In Re: Thothan

Judgement :

Somasundaram, J.

1. The appellant in this case has been convicted by the learned Sessions Judge of Ramanathapuram division for the murder of his wife, Manmkki at about 7 a.m. on 7-3-1955 in the cart track north of Selliamman Koil oorani in Kallangudi village and sentenced to death.

2. The occurrence is stated to have taken place on the cart track while the said Mannikki was coming, taking water from Selliamman Koiloorani. The appellant married this Mannlkki in or about June 1954. There was great disparity in age between the appellant and his wife, the deceased. The appellant was aged about 40 years while the deceased was only about 16.

The mother of the deceased was unwilling to give her daughter in marriage to this appellant but P.W. 8 the paternal uncle of the deceased and two other persons, P, Ws. 9 and 10 who were stated to be the friends of the family were responsible for

the marriage of the deceased with the appellant. The mother did not even attend the marriage showing thereby her strong disapproval of it. The appellant had by his first wife two sons one of whom is P.W. 12 in the case. The deceased and the appellant got on well for two or three months.

Later the appellant started complaining that the deceased was not sharing bed with him and there is evidence in the case to show that this woman was frequently going to the house of one Manickam who is stated to be a cousin of the appellant. The appellant tried his best to prevent his wife from going to the house of Manickam but he did not succeed. A few days before the occurrence, one night the deceased was sleeping at threshold of the house while the appellant was sleeping in the pial.

The appellant heard a noise caused by the beating of the cocoanut leaves with which the deceased was covering herself. The appellant asked her as to what the noise was and she replied that she was driving away mosquitoes. After sometime the appellant asked as to why the dog was barking and to this the deceased did not reply. Next morning the appellant took the deceased to the fields and questioned her about the previous night's incident. No satisfactory reply was forthcoming.

After their return from the fields the appellant was sharpening a knife in the presence of the deceased and his son, P.W. 12. When P. W. 12 asked him as to why he was sharpening the knife the appellant replied that he was going to cut a goat. The quarrels between the appellant and his wife were the subject of a panchayat in the village and in spite of the best efforts of the panchayatdars they could not make the appellant and the deceased live together.

The deceased became disgusted with her husband and finally she came away to the house of P. W. 8, her paternal uncle, a few days before the occurrence. She told her uncle that it was not possible for her to live with her husband as he was threatening her every now and then and that he was even sharpening a knife in her presence.

3. On the morning of the occurrence the deceased along with P. Ws. 6 and 7 went to the village oorani to fetch water. After taking water they were returning along the cart track. As they were returning they saw P. Ws. 1 and 3 to 5 going towards the oorani for bringing water. P. W. 6 was coming first and behind her was coming P, W. 7 and after her the deceased was coming. When the deceased was coming near a place called Pongal-oven, P. Ws. 6 and 7 saw the appellant coming in front of them.

In about a few minutes time they heard the sound of a mud pot falling down and when they turned towards the oorani side they saw the appellant stabbing the deceased with a knife. The other persons, namely, P. Ws. 1 and 3 to 5 who had also gone to the oorani were returning and when they neared the said place, they heard the cries of the deceased and saw the appellant stabbing the deceased and running away into the fields.

The deceased had fallen down on the ground and died soon after. P.W. 1 went to P.W. 8 and reported the matter. P. W. 8 went to the scene of occurrence and saw the deceased lying dead with her intestines come out. Then P.W. 8 gave a report Ex. P-6 before the village munsif. The village munsif sent his usual reports to the police and the Magistrate. The Sub Inspector, P. W. 17 on receiving the report reached the place of occurrence, held the inquest, and sent the body for post mortem examination.

Meanwhile on 8-3-1955 at about 5 P.M. the appellant appeared before the Sub Magistrate with the knife M.O. No. 3 and gave a statement Ex. P-1 & surrendered the knife. P. W. 2 the Sub Magistrate remanded the appellant to custody. A week later, P. W. 2 recorded the appellant's confessional statement under Section 134 Cr. P.C. after observing all the formalities. After further investigation the appellant was charge-sheeted for the offence of murdering his wife.

There can be no doubt that on both the occasions the appellant made voluntary statements before the Sub Magistrate. The statement of the appellant under Section 164, Cr, P.C. is Ex. F-4 in the case. In this statement the appellant merely stated that what he had stated before the Sub Magistrate on an earlier occasion was true. He stated that he was adopting what he had stated on an earlier

occasion and that he was not going to say anything new or modify it. He stated that his wife was misbehaving and that in spite of ten panchayats the deceased was not conducting herself properly and that her behaviour led to his stabbing her.

In the committal Court also he admitted having stabbed his wife and he stuck to that statement in the Sessions Court but he elaborated it a little further by stating that on the night preceding the occurrence he saw his wife and Manickam lying together in the house of P. W. 8 and unable to bear that sight, next morning he stabbed her near the oorani. A suggestion was made to P.W. 8 whether Manickam was sleeping in his house on the night prior to the occurrence but he denied it.

We are, therefore, left only with the sole statement of the appellant in the Sessions Court that] he saw Manickam and his wife, the deceased, sleeping together in the house of P.W. 8. But this statement was not made in any of the earlier statements before the Sub Magistrate, either in Ex. P-1 or P-4 or before the committal Court and it was made for the first time before the Sessions Court. We, therefore, think that the statement of the appellant that he saw his wife and Manickam sleeping together in the house of P. W. 8 on the night previous to the occurrence is an afterthought and not true.

But the fact remains that this unfortunate young girl who was married to an old man of forty, did not like him and transferred her affections to another though he is stated to be older than her husband. The evidence shows that the appellant was complaining that his wife was on terms of illicit intimacy with his cousin Manickam. He had, therefore, on that account a strong motive to do away with her.

On the evidence furnished by P. Ws. 1 and 3 to 7 and the confessions made by the appellant both in the committing Magistrate's court and in the Sessions Court there can be no doubt that it was the appellant who stabbed the deceased as a result of which she died. The medical evidence shows that there were four incised wounds some of which punctured the lungs and the small intestines.

It is, therefore, a clear case of murder. On the evidence it is proved beyond doubt that it was the appellant who committed the murder of his wife.

4. As regards the sentence it is strenuously pleaded on behalf of the appellant that the conduct of the deceased provoked him to commit the act. The girl was unfaithful to him and that in spite of repeated requests and threats from the appellant the girl persisted in going to Manickam's house with whom, as the evidence disclosed, she was on terms of illicit intimacy and that in a fit of passion the appellant had stabbed her.

We have ourselves pointed out that this would only be a motive for committing the offence but cannot be a ground for awarding the lesser of the penalties prescribed by law. In this case it is clear from the evidence that the appellant has been sharpening his knife even in the presence of the deceased a few days before the date of the occurrence and it is obvious that he intended to use the weapon against the deceased.

There are no circumstances at the time of the commission of the offence which could be taken into consideration for the purpose of awarding the lesser penalty. The learned Sessions Judge was, therefore, perfectly justified in imposing the extreme penalty of the law on the appellant. The conviction and sentence are confirmed and the appeal is dismissed.

5. As regards the recommendation of the learned Sessions Judge with regard to the desirability of commuting the sentence of death to one of transportation for life it is for the Government to consider whether it is a fit case for commuting the sentence to one of transportation for life.

6. Before parting with the case we would like to make clear the law regarding the admissibility of confessions made to a Magistrate such as that contained in Ex. P-1 and also to bring to the notice of the learned Sessions Judge the unsatisfactory nature of the examination of the accused under Section 342, Cr.P.C. The learned Sessions Judge has held that Ex. P-1 is admissible in evidence relying on a decision of this Court.

7. Ex. P-1 is the first statement made by the appellant before the Sub-Magistrate, before investigation started wherein he has confessed that he had stabbed his wife to death. The decision on which the learned Sessions Judge relies is in 'C. A.

No. 608 of 1954' against the judgment of the learned Sessions Judge, Ramanathapuram in S. C. No. 49 of 1954 (not S. C. No. 47 of 1954 as the learned Sessions Judge by mistake says), wherein Panchapakesa Ayyar and Basheer Ahmed Sayeed JJ. while dealing with a confession similar to Ex. P-1 in the present case have observed as follows:

But the confession, the learned Sessions Judge himself has not chosen to act upon; and in fact he has excluded it from consideration so far as the proved offence against the appellant is concerned. We do not think that we should attach any great importance to the confession made before the Sub Magistrate which has not been recorded in accordance with the requirements of the law- The omission on the part of the Sub Magistrate to observe the rules in the matter of recording a confession also ensures to the benefit of the appellant.

This judgment, therefore, does not support the Sessions Judge in the view he has taken that Ex. P-1 is admissible in evidence. On this question we have the decision of the Privy Council in 'Nazir Ahmad v. King Emperor' (A), wherein their Lordships have pointed out in unmistakable terms that a confession recorded by a Magistrate without conforming to the provisions of Section 164 or Section 364 of the Code of Criminal Procedure is inadmissible in evidence. In dealing with this question their Lordships observe as follows:

It is also to be observed that, if the construction contended for by the Crown be correct, all the precautions and safeguards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle.

Any Magistrate OP ANY RANK could depose to a confession made by an accused so long as it was not induced by a threat or promise without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of magisterial confessions would be so enlarged by this process that the provisions of Section 164 would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case.

In their Lordships' view it would be particularly unfortunate if Magistrates were asked at all generally to act rather as police officers than as judicial persons; to be by reason of their position freed from the disability that attaches to police officers under Section 162 of the Code, and to be at the same time freed, notwithstanding their position as Magistrates from any obligation to make records under Section 164. In the result they would indeed be relegated to the position of ordinary citizens as witnesses and then would be required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure or conduct whatever. Their Lordships are, however, clearly of opinion that this unfortunate position cannot in future arise because in their opinion the effect of the statute is clearly to prescribe the mode in which confessions are to be dealt with by Magistrates when made during an investigation and to render inadmissible any attempt to deal with them in the method proposed in the present case.

The observations of their Lordships of the Privy Council quoted above leave no room for doubt whatever that a statement of the accused recorded by the Magistrate such as Ex. P-1 in the present case is inadmissible in evidence. There is a decision of this Court by Mack and Chandra Reddi, JJ. in 'Ramaswami Reddiar v. State', Air 1953 Mad 138 (B), where it has been held that a confession before a Magistrate holding an inquest but not empowered to record confessions under Section 164, Criminal P.C. is admissible.

8. In dealing with the argument that such a confession is admissible the learned Judges observe:

The extreme position taken is sought to be founded on what appears to us to be a clear misinterpretation of the Privy Council decision in (A). In that case the facts restricted the Magistrate clearly to the confines of Section 164, Cr. P.C. The investigating police took with them a First Class Magistrate and one, therefore, empowered under Section 164, Cr. P.C. to investigate a case of dacoity....This was very obviously a case to which Section 164, Cr. P.C. had clear application, the provisions of which were rather blatantly disregarded by the Magistrate.

It is true that in the Privy Council case the confession was made to a Magistrate who was empowered to record the confession under Section 164, Cr. P.C. But the

observations of their Lordships make it clear that no confession which does not conform to the provisions of Section 134, Cr, P.C. can be admitted in evidence.

The observations of their Lordships 'that any Magistrate OF ANY RANK could depose to a confession made by an accused so long as it was not induced by a threat or promise without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said or asking for the confession to be vouched by any signature. The range of Magisterial confessions would be so enlarged by this process that the provisions of Section 164, Cr.P.C, would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case',--make it quite clear that they do not approve of any confession recorded by a Magistrate which does not conform to the provisions of Section 164, Cr. P.C.

Notwithstanding the view expressed in Air 1953 Mad 138 (B)', we think the correct interpretation of the Privy Council decision in (A)' is that no confession recorded by a Magistrate of any rank is admissible unless it conforms to the provisions prescribed in Section 164, Cr. P.C. In this case it cannot be said that Ex. P-1 was recorded after conforming to the provisions of Section 164, Cr. P.C.

9. In R.T. No. 7 of 1955 Panchapakesa Ayyar and Basheer Ahmed Sayeed, JJ. have held that such extra judicial confession made to a Magistrate can be acted upon; but they do not anywhere refer to the decision of the Privy Council in (A) as it was not perhaps cited before them and, therefore, we cannot take it that the learned Judges have considered the Privy Council decision and interpreted it. We hold that Ex. P-1 is inadmissible in evidence.

10. We must also point out to the learned Sessions Judge that the manner in which the accused has been questioned under Section 342, Cr. P.C. is not satisfactory. The learned Sessions Judge has framed one long question covering over a page With several sub-clauses and putting practically all the points in this one question. It is difficult for any accused to remember what is contained in this question and answer it.

The object of the examination is to give an opportunity to the accused to explain the circumstances against him. The learned Judge must frame simple separate questions for each one of the circumstances relied on by the Judge and they must be put separately to the accused so that he could be to a position to understand them and explain. Otherwise the accused will be baffled and will not be able to answer the question.

In this case the committal Court has put such separate questions and so the accused cannot be said to have been prejudiced. In future the learned Sessions Judge will do well to frame simple questions separately for each circumstance on which he relies and put the same to the accused and take his explanation.

11. With the above observations we confirm the conviction and sentence and dismiss the appeal,

12. As already stated, it is for the Government to consider whether this is a fit case for commutation of the sentence to one of transportation for life.

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