

In Re: Lakshman

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Court : Chennai

Decided On : Nov-04-1970

Reported in : (1971)1MLJ242

Appellant : In Re: Lakshman

Judgement :

R. Sadasivam, J.

1. Appellant, Lakshmanan has been convicted under Section 302, Indian Penal Code, for having murdered his father Muthuswamy by the field pumpshed in Panchalam Village between 5 and 6 P.M. on 2nd May, 1970, and sentenced to death subject to confirmation by this Court, The appeal preferred by the appellant and the referred trial as regards the sentence of death are both before us.

2. The appellant Lakshmanan is the fourth and the last of the four sons of the deceased Muthuswamy. P.W. 1 Subramaniam is the eldest son of the deceased Muthuswamy. The deceased Muthuswamy and his sons were living together as a joint family. The elder brothers of the appellant have all been married. The family incurred expenses for the marriages and for installing an electric pumpset in the land owned by it. The appellant appears to have undergone operation to sterilise himself without informing the members of his family. Evidently on account of this fact no one was willing to give a girl in marriage to him. The appellant was not in the habit of working regularly in the field and he used to take Rs. 10 or Rs. 15 from

home and go away from the family for a short time and return after spending the amount. The appellant used to ask his father to arrange for his marriage and as this was put off on the ground of the existing debts and the incapacity of the appellant to earn his livelihood, there used to be frequent quarrels between the appellant and the deceased Muthuswamy. These facts are clearly mentioned by P.W. 1 Subramaniam, the elder brother of the appellant. In fact, during his examination under Section 342, Criminal Procedure Code, in the committal Court and in the Sessions Court, the appellant admitted the fact that there used to be frequent quarrels between him and his father.

3. On the morning of 2nd May, 1970, the date of occurrence, the appellant went with his father and elder brother P.W. 1 Subramaniam to work in the field. It appears from the evidence of P.W. 1 that transplantation of paddy seedlings was being done at that time. The work was over by about 2 P.M. The appellant and the deceased Muthuswamy began to wash the bulls. The deceased, Muthuswamy found fault with the appellant for wasting the water in so washing the bulls and allowing the water to go out of the channel and he appears to have grumbled at the expenses he had to incur for current charges. The appellant was annoyed at his father for finding fault with him and he scolded him saying that he had not arranged for his marriage. The deceased Muthuswamy retorted that no one would give a girl in marriage to the appellant, who had undergone operation to prevent child birth. There was a quarrel between them at that time and the appellant is alleged to have remarked that he would do marriage for his father implying thereby that he would do away with him and do the funeral ceremony. P.W. 1 Subramaniam separated both the appellant and his father and prevented further quarrel. This is the motive for the occurrences in the case.

[After discussing the evidence in Paras. 4 to 10 His Lordship proceeded :]

11. It is true there is no eye witness to the occurrence in this case, though for all practical purposes P.W. 2 Vellachi is as good as an eye witness. It is true she is a child witness aged 10 years. But in the preliminary examination made by the Sessions Judge, she had shown herself to be a competent witness. When she was questioned as to whether she understood the truth, she clearly stated that

truth is to state what actually took place and that falsehood is to state that which had not taken place. There is nothing in the cross-examination of P.W. 2 Vellachi to throw any doubt on her evidence that she saw the appellant following his father inside the pumpshed, closing the door, heard the cries of the deceased Muthuswamy and found him dead with incised injuries after the appellant left the place soon after the occurrence. She told her sister P.W. 3 Irusammal about the occurrence, who in turn conveyed it to P.W. 1 Subramaniam. It is only thereafter P.W. 1 Subramaniam went to the field pumpshed and found the dead body of his father with several incised injuries. The appellant Lakshmanan, who alone stayed with his father in the field did not return home, but made himself scarce till he appeared before the village Munsif on the night on 7th May, 1970. The appellant met P.W. 4 Elumalai when he was running away from the place and when questioned, he confessed to his having attacked his father but he did not even stop to answer further questions. Evidence of P.W. 4 is natural, and it has also been accepted by the learned Sessions Judge. The appellant, in fact, has admitted during his examination under Section 342, Criminal Procedure Code, that he attacked his father, though he would not admit the fact that he murdered him. He has inflicted as many as half a dozen incised injuries on the head and face of his father with the weapon M.O. 1 and one of the injuries proved fatal.

12. There is nothing to support the plea of the appellant that if he had not beaten his father, his father would have killed him. This is belied by the evidence given by P.W. 2 Vellachi and the surrounding circumstances of the case. It appears from the evidence of P.W. 2 that as soon as the deceased Muthuswamy went inside the pumpshed after his bath, evidently to dry himself and change his clothes, the appellant followed him and closed the door. Immediately P.W. 2 heard the cries of the deceased. Thereafter the appellant ran away from the spot. He confessed the crime to P.W. 4 Elumalai, whom he met on the way. For the foregoing reasons, we have no hesitation in finding the appellant guilty of the murder of his father.

13. We have avoided referring to the extra-judicial confession Exhibit P-13 made by appellant to the village Munsif P.W. 8 Shanmugham at 9 P.M. on 7th May, 1970. The reason is that it is not of much evidentiary value. Under Rule 72 of the Criminal Rules of Practice, the 'Village Magistrates are absolutely prohibited from

reducing to writing any confession or statement whatever made by an accused person after the police investigation has begun'. This is no doubt a wholesome rule which was found in Rule 83 of the earlier Criminal Rules of Practice. It was intended to prevent false extra judicial confessions being secured through the help of the Village Munsif after the commencement of the investigation of the case by the police. The extra judicial confession itself is a Weak evidence and its value becomes less when it is obtained by a person in the position of the village Munsif after investigation of the case by the police had started. But on a careful examination of the relevant provisions, relating to the matter, it is not possible to state that it is illegal or inadmissible in evidence, though the weight to be attached to the same may be a relevant question for consideration on the facts and circumstances of each case.

14. The learned Advocate for the appellant urged that the confession made to the Village Munsif is not voluntary. But it is clear from the evidence of P.W. 8 Shanmugham (Village Munsif) that the appellant came to him at 9 P.M. on 7th May, 1970, and confessed having attacked his father with koduval M.O. 1 on Saturday (2nd May, 1970) and killed him as he did not arrange for his marriage and that he should protect him. The mere fact that the appellant asked for protection cannot lead to an inference that the Village Munsif P.W. 8 Shanmugham offered to protect him and asked him to make the confession. In fact it was elicited in the cross-examination of the Village Munsif that the appellant voluntarily gave the confessional statement. It is true that the appellant denied having made the statement and thus retracted from it. But there is the evidence of the Thalayari P.W. 10 Munuswami, who corroborated the evidence of the Village Munsif about the truth of the confession. The Thalayari stated that neighbours came to the place when the report Exhibit P-14 was being, written. Thus, there is nothing to throw doubt on the evidence of the Village Munsif that at the time when he recorded the confession Exhibit P-13, no one was there. Hence, no adverse comment can be made against the Village Munsif for not having taken any attesting witness in Exhibit P-13. We are satisfied that the confessional statement Exhibit P-13 is voluntary and having regard to the prior statement given by the appellant to P.W. 4 on the date of occurrence, there can be no doubt about the truth of the said confession.

15. It is true the Village Munsif is a person in authority. In fact it is his duty under Section 45, Criminal Procedure Code, to report serious offences like murder etc. to the nearest magistrate or officer-in-charge of the nearest police station. In *Thandavaraya Mudali v. Emperor* I.L.R.(1903) Mad. 38, a Bench of this Court held that the confession made to the Monigar by the first accused in that case was irrelevant under Section 24 of the Evidence Act inasmuch as it was caused by an inducement or promise having reference to the charge against him and proceeding from a person in authority and sufficient to give the said accused grounds which would appear to him reasonable for supposing that by making it he would gain an advantage in reference to the proceedings against him, namely, by being taken as a witness instead of as an accused person. Even if the confession is voluntary, it would not be admissible if the Village Munsif is held to be a Magistrate, who should record the confessional statement in the manner prescribed by Sections 164 and 364, Criminal Procedure Code. As pointed out by the Supreme Court in *State of Uttar Pradesh v. Singhara* : [1964]4SCR485 , the effect of Sections 164 and 364, Criminal Procedure Code, 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 by allowing oral evidence. In *The Empress v. Ramanjiyya* I.L.R.(1878) Mad. 5, it was held by a Bench of this Court that where a Magistrate in taking the confession of an accused person under Section 122 of the Criminal Procedure Code of 1872 omits to take it in writing, with the formalities prescribed by Section 346 of that Code, such confession is not absolutely inadmissible in evidence and the evidence may be taken to show that the prisoner duly made the statement recorded. This decision is no longer good law. But it is clear from the decision that a Village Munsif was held to be a Magistrate within the meaning of the Code of Criminal Procedure. In view of this decision, Section 26 of the Evidence Act was amended by adding an explanation in that section that 'Magistrate' does not includes the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a magistrate exercising the powers of a Magistrate under the Criminal Procedure Code, 1882. But Section 1(2)(b), Criminal Procedure Code, specifically excludes applicability of the Code to the heads of villages in the State of Madras in the absence of any specific provision to

the contrary. Such a provision is found in Section 528(6) which runs as follows:

The head of a village under the Madras Village Police Regulation 1816 or the Madras Village Police Regulation 1821, is a Magistrate for the purposes of this section.

The above mentioned Regulations 1816 and 1821 are practically defunct regulations. It is true under these regulations the village headman had limited civil and criminal jurisdiction. But even under the Madras Village Courts Act, 1889, giving civil and Criminal jurisdictions to those Courts, it is specifically provided by Section 7 of that Act that only in Villages where there are no Panchayat Courts, the Village Munsifs will be appointed by the Collector subject to qualifications as to the residence etc. But after the Madras Village Panchayats Act, 1950, came into force, Section 132(1) therein provides that every panchayat constituted or deemed to be constituted under the Act shall be deemed to be Panchayat Court for that area notwithstanding anything contained in the Madras Village Courts Act. It is true that only Presidency Magistrates or the Magistrates of the First Class and such of those Magistrates, specifically empowered can record confessional statement and the Village Munsif, even if he is deemed to be a magistrate, is not competent to record confession. Thus, having regard to these provisions and the actual practice, it could not be said that the Village Headman is a Magistrate contemplated under the Criminal Procedure Code who could, if empowered, record confessions under the provisions of the said Code. Therefore, there is no real legal bar to the extra judicial confessional statement made by the appellant to the village Munsif during the investigation being admitted in evidence. But having regard to the practice which is embodied in Rule 72 of the Criminal Rules of Practice and the likelihood of the misuse of such extra judicial confessions in actual practice, if admitted, it is not safe to rely on such extra judicial confessions. It is on these grounds we are not relying on Exhibit P-13 though it is not illegal to do so and the learned Sessions Judge has thought it fit to rely on it.

9. The conviction of the appellant under Section 302, Indian Penal Code, is fully justified on the other evidence in this case. There are no extenuating circumstances in favour of the appellant. There was no justification for the

appellant to brutally attack and kill his father, when he was standing in the pumpshed and had no reason to anticipate such an attack. The learned Sessions Judge was, therefore, justified in imposing the extreme penalty of sentence of death on the appellant. The conviction and sentence are confirmed and the criminal appeal is dismissed.

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