

In Re: Ramachandran

In Re: Ramachandran

SooperKanoon Citation : sooperkanoon.com/805026

Court : Chennai

Decided On : Sep-05-1959

Reported in : 1960CriLJ616

Judge : Ramaswami and; Anantanarayanan, JJ.

Appellant : In Re: Ramachandran

Judgement :

Anantanarayanan, J.

1. The appellant, Ramachandran, has been convicted of the murder of a woman named Pappal, ands also of causing disappearance of the evidence of offence (Ss. 302 IPC and 201 I. P. C), and-sentenced to death for the offence of murder. The learned Sessions Judge of Tanjore, who tried the ease, has not imposed a separate sentence Under Section 201 IPC as he considered that, that was: not required or desirable, following the Bench decision of this Court in Ramagounden, In re. : AIR1942 Mad275 .

2. The appellant and Pappal, deceased, were related, being cousins and the appellant is a young-man of about 22, while the woman definitely older. The two were in illicit intimacy, which was also-a prohibited relationship, amounting to incest. Pappal was married and had two _ children, but she had left her husband, and was living with her mother, P, W. 1, in a house, the rear portion of which was occupied by the accused. We have very considerable evidence regarding the illicit

intimacy, consisting of the testimonies of P.Ws. 1, 2, 3, 4, 5, 6 and 8. There is also evidence that the deceased was of loose conduct with others as well, and this. is spoken to by P.Ws. 2 and 4. The suggestion for prosecution is that sexual jealousy probably motivated the appellant to commit this crime.

3. On Wednesday, 11-3-1959, the appellant and the deceased were seen by Sambandaitn, P.W. 8 proceeding towards the eastern portion of the-village, the appellant then having an aruval. After that, the victim was not seen alive by anyone.

4. Though Pappal thus disappeared, neither her' mother P.W. 1, nor any one else, seems to-have suspected anything gravely amiss. But at about 4-25 p. m, on 13th March, the appellant appeared before Mr. Raghavachari, P.W. 7, the Judicial. Sub Magistrate of Papanasam, while the officer was in his court hall. The appellant then surrendered himself, after making a statement that he had murdered Pappal on the 11th March. It is important to note that both the mother of the victim, P.W. 1, and the police came to know of this offence only through learning about the statement of the accused to the magistrate. The subsequent', report of P.W. 1 to the village headman, (Ex. P 1),, and the yadhasts (Exs. P. 5 and P. 5-a) were rightly excluded from consideration by the learned Session Tudge, as within the ambit of Section 162 Cr IPC This apart, the Sub Magistrate recorded what the accused told him (Ex. P. 2) and sent a copy of the record to the police (Ex. P. 2-a), upon which alone investigation followed. After the accused was remanded to the sub-jail by the magistrate, he was-interviewed by the Circle Inspector. P.W. 16, to-whom the accused gave some information. _ The; evidence shows that this information was furnished previous to the order of the Sub Magistrate (Ex. P. 3-a), formally delivering the appellant into police-custody. The importance of this will be obvious; later.

5. In pursuance of his own statement, the appellant took the circle inspector, the executive magistrate, P.W. 15, the Medical Officer, P.W. 9 and others to the Coleroon river bund on the .afternoon of the 14th March, and took out the corpse - of the deceased from the spot of burial. The body had been placed in two gunny bags, (M. Os, 6 and 7) and chemical analysis showed that one of them was

stained with human blood. There is no doubt about the identification of the corpse, and this rests upon the evidence of the mother P.W. 1, and also upon the identity of jewels and other properties taken from the body (M. Os. 1 to 4). The appellant then took the officers to another spot, wherefrom blood-stained earth was recovered after the indicated the spot. The appellant after this took the party of officers to his house, and produced from where he had kept them, the aruval (M. O. 5) and the spade (M. O. 9) and some clothes. Chemical analysis did not reveal that these were stained with human blood, but, as the learned sessions Judge surmises, it is very probable that the rival and spade were washed in the river after the crime.

6. The autopsy in this case very clearly showed that the woman had been murdered. According to the doctor, P.W. 9, the cause of death was an ante mortem incised injury, 5 1/2' x 3' x 3' on the left side of the neck, cutting muscles, blood vessels, the trachea and oesophagus. This was a necessarily fatal injury, which must have caused instantaneous death. There was a suggestion in defence in the lower court, that the appellant admitted to the Circle Inspector P.W. 16 that he had given 3 cuts to the victim, while the autopsy revealed only a simple incised wound. But, as the learned sessions Judge, points out, this was not followed up, as it ought to have been done, by cross-examining the medical officer P.W. 9. On the point whether more than one cut with an aruval could have caused the injury set forth in the post mortem certificate, Ex. P. 4.

7. Apart from all this testimony, there was some other evidence about another extra-judicial confession made by the appellant on the night of the 11th March itself at about 10 p. m, to one Mani, P.W. 6. P.Ws. 5 and P.W. 6 speak to this confession, but the learned Sessions Judge did not take this evidence into consideration, because these witnesses were not examined till the 14th March and they did not earlier report the admission of the crime by the accused, either to the police, or even to the mother, P.W. 1. We are not aware that this confession should be necessarily disbelieved on this account, and it is noteworthy that a definite hostility is suggested against these witnesses. But, in view of the ample evidence in this case connecting the accused with the crime, this is not of great importance.

8. At the trial, the accused denied the illicit intimacy with Pappal altogether. He admitted the facts of his appearance before the Magistrate on the 18th March, and the extra-judicial confession-then made by him. He also admitted that he took a party of police and other officers to the Celeron river bund, and pointed out the spot of burial, but :his defence was that he indicated the spot shown to him earlier by the police, that he did not actually unearth the body, that he made no statement to the circle inspector P.W. 16, and that the police themselves seized material objects from his house. With regard to the extra-judicial confession to the magistrate, his case was that the police met him In Papanasam Bazar St. and asked him to proceed 'to the Magistrate and make a statement like that and that he did so.

In our view these defences do not appear to the even remotely probable, for the prosecution evidence makes it clear beyond all doubt that neither the police nor even the mother of the victim, P. Vf. 1, had any suspicion that the woman had been murdered, prior to the statement made by the accused himself to the magistrate. Nor is there anything to indicate that the police knew the spot of burial, and the spot from which the blood stained earth was seized, at any earlier time, before the appellant indicated those spots to the party of police and officers. Since it is indisputable that the woman died as a result of homicidal violence, viz., a mortal injury inflicted with a sharp, heavy weapon like an aruval, the question is whether these facts suffice to bring home guilt to the appellant beyond any shadow of doubt.

9. But, before we proceed into an analysis of this aspect, there are two questions of legal interest and significance, which arise in this case and to which we must turn. They have to be first examined, and they may be set forth as follows: Firstly, We have the question, what is the importance and weight to be attached to an extra-judicial confession, like the one made in this case, by the appellant to the magistrate, retracted as it stands? Secondly, we have the question of even greater legal significance, whether the statement made by the appellant to the Circle Inspector (Ex. P. 12), admittedly made at a time when the appellant was in a magisterial custody, but not in formal: police custody, should be excluded from evidence Under Section 27 of the Indian Evidence Act? If that statement is to be

excluded, we must further consider whether the prosecution can rely upon the conduct of the accused in unearthing the body etc. to corroborate the material facts of the retracted confession.

10. The scheme of Sections 21 to 27 of the Evidence Act, when examined, shows that this group of Sections relates_ to admissions, of which a confession by an accused is a species, and to certain circumstances which may prohibit the proof of such confessions or admissions. A confession is a kind of admission, and there is no clear-cut line of demarcation between the two. Again, admissions may be relevant in civil as well as in criminal cases and, as observed by Horwill J. in *Titus, in re*, 54 MLW 81: A.I.R. 1941 Mad 720, admissions that might be proved in civil cases, are not inadmissible in criminal cases as such. An extra-judicial confession is merely a confession made outside the scope of a judicial confession recorded during the investigation of a crime by a magistrate, after complying with the formalities of Section 164 Cr. P. C. The weight to be accorded to such a confession would depend entirely upon the context of circumstances, the person to whom it was made, and the actual conditions under which it was made, which may probably be the voluntary nature and truth of the confession, or otherwise.

A judicially recorded confession is given weight, purely because the law prescribes various precautions which have to be observed by the recording magistrate, who is bound to satisfy himself that, as far as he can ascertain, the confession is being voluntarily made. An extra judicial confession may be retracted, precisely like a judicial confession. In either contingency, the courts would look to material corroboration of the confessional statement, before fully accepting and acting upon it. The decision of the Privy Council in *Nazir Ahmad v. King Emperor*¹ seems to have caused some misconception upon this aspect, which should be made clear. That was a case in which a confession was made to a magistrate during the course of an investigation, and the magistrate empowered to record it did not comply with the provisions of Section 164 Cr. P. C, and merely made certain memoranda, even which were later destroyed. The important observation of their Lordships, summing up the true nature of the decision and its precise applicability was as follows:

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.

This decision, therefore, does not at all affect the admissibility of extra-judicial confessions, or the probative value to be attached to them. Two decisions of this Court make this very clear. *Arunachala Reddi v. Emperor* 35 MLW 607 : A.I.R. 1932 Mad 500, was a case like the present, where the accused, after committing the offence of murder, went straight to the nearest magistrate and made a statement confessing the offence. Only in that case, the confession was recorded in the manner prescribed by Section 164 CrI. P. C. Waller and Krishnan Pandalai, JJ. pointed out that confessions, like other admissions, are relevant under the Evidence Act, unless rendered inadmissible by some circumstance of an invalidating character declared by law. Section 164 CrI. P. C. did not exclude confession otherwise admissible. Again in *Nainarnuthu v. Emperor* 50 MLW 784 : A.I.R. 1940 Mad 138, Burn and Stoddard JJ. held that where the accused proceeded to a magistrate after the murder and confessed the occurrence, and the confession was not recorded Under Section 164 CrI. P. C. for the very good reason that the magistrate was not then concerned with the investigation of the crime, the statement was admissible, both as a report of first information and otherwise under the law relating to admission. The true scope and applicability of is also indicated here.'

11. Hence, upon this aspect, we must conclude that the present extra-judicial confession is admissible, both upon the law relating to admissions, and as a report of first information. As the magistrate was not then concerned with the investigation of this murder, the procedure Under Section 164 CrI. P. C. was not adopted, and no infirmity attaches to the statement because of this fact. The Weight to be given to such an extra-judicial confession depends entirely upon the circumstances under which it was made. Where, as in this case, it was spontaneously made by an accused, to a magistrate, who was not even aware of the identity of the person appearing before him, or of the fact that any murder had occurred, the confession is certainly entitled to very great weight, unless there are

any reasons for accepting the suggestion in defence or even considering it probable, that the police had tutored the appellant to go and make such a confession.

Where the confession is retracted, corroboration of material particulars is certainly necessary, but this would apply equally to confession? judicially recorded. In a certain sense, an extra-judicial confession of this character is even more likely to have been voluntarily made, than a judicial confession, for the simple reason that, whatever the formalities complied with in a judicial confession is almost invariably recorded only after the accused comes under the possible influence of the police,, subsequent to his arrest. Any general impression that prevails that extra-judicial confessions, upon the whole, are necessarily inferior in weight and probative value, would, therefore, not be correct. Everything would depend upon the surrounding facts and circumstances of the case.

12. We may now proceed to a discussion of the more difficult problem, whether the information furnished to the Circle Inspector ought to be excluded in evidence, as not within the scope of Section 27 of the Indian Evidence Act.

13. We may immediately state that an examination of the authorities upon this matter, shows few broad aspects or tendencies. In a certain line of cases, it has been, tacitly assumed, upon a reading of Section 27 of the Indian Evidence Act, without much further discussion or scrutiny, that the words 'in the custody of a police officer' occurring in the Section necessarily relate to a formally authorised police custody, taking place after arrest. There is no comment upon the absurdity of the result of such strict interpretation, which, of course, is the consequence of the language itself prima facie set forth tersely and with force if we may say so. With great respect, by Rankin J. in *Durlav Naraya-sudra v. Emperor* : AIR1932 Cal297 , as follows:

There might be reason in saying that if a man is in custody, what he may have said cannot be admitted, but there can be none at all in saying that it is inadmissible in evidence against him, because he is not in custody. Yet this is the consequence of saying that Section 27 is more than a proviso to Section 26. It is, however, well held by that authority that, that is so and, until the legislature takes

the matter in hand, the paradox expressed in the present case will continue to be law.

The cases of this Court that bear upon this particular question of the nature of the custody, generally assume that unless the accused be in police custody formally authorised, or in such custody after arrest, Section 27 would not apply. Thus, in *Peria Gumsami Counter v. Emperor* 1941 MWN CrI 94 : A.I.R. 1941 Mad 765, *Wadsworth and Somayya JJ.* held that Section 27 did not apply to a statement made by an accused to a police officer, before the deponent came into the formal custody of that officer. Similar dicta are to be found in *Kambala Kalikamurthi*, 1936 MWN Cr. 159. In *In re, Kamakshi Naidu* I.L.R. 1943 Mad 456 : A.I.R. 1943 Mad 89, *Horwill J.* held that a confession made by an accused in police custody was admissible Under Section 27, though the custody itself was not in connection with the offence relating to which the confession was made, but in connection with another offence.

14. But we find a different line of cases, particularly of the Calcutta, Allahabad and Niigpu High Courts, where a definite attempt has been made to apply a less rigid interpretation to the expression custody occurring in Section 27. If that interpretation were to be adopted, it would certainly render admissible the information (Ex. P. 12) in the present case, which was given by the accused to the Circle Inspector while he was formally in magisterial custody, and before the magistrate had made an order authorising his detention in police custody. The interpretation has proceeded so far as to suggest that police 'custody' in the terms of Section 27 might well include surveillance, interrogation before arrest etc, In *Santokhi Beldar v. Emperor* : AIR1933 Pat149 , a Full Bench of the Patna High Court held that when a person who went to a police officer and voluntarily stated the circumstances of a crime, accusing himself of committing it, he submitted himself to the custody of that officer within the meaning of Section 46 (1) Cr.PC, and that Section 27 of the Evidence Act applied to the statement.

This followed an earlier decision of the Calcutta High Court in *Legal Remembrancer v. Lalit Mohan Singh Roy* : AIR1922 Cal342 . In *Chotey Lai v. State of U. P.* : AIR1954 All687 , it was held that with reference to Section 27

'custody' did not mean formal custody, but included any kind of surveillance ,or restriction or restraint by the police. In *Mt. Jamubia Partap v. Emperor* A.I.R. 1936 Nag 200, Grille and Gruer JJ., observed that even if the accused in the case had not been formally arrested at the time when she gave the information, she was for all practical purposes in police custody, and that Section 27 therefore applied. In *Rambabu Jadav v. Emperor* : AIR1938 Pat60 , the accused was in hospital, in judicial custody, and the police officer examined him with the permission of court. The Patna High Court observed that Section 27 could well be applied to a case of that kind, because actual police custody was then prevailing,

15. We do not think it is necessary to examine other cases of other High Courts bearing upon the matter, for the trend of the wider interpretation that we have referred to, becomes clear from, an examination of the authorities already cited. As far as the authorities in Madras are concerned, the question does not appear to have been discussed in the form in which it now presents itself to us, arising strictly from the facts of this case; It may be impossible to resolve the 'paradox' referred to by Rankin J., without legislative amendment, but it is certainly desirable to apply a wider interpretation if it could be properly done, so that the anomaly is considerably minimised. Apart from this, we see no reason at why the expression relating to police custody occurring in Section 27 of the Indian Evidence Act should be rigidly interpreted.

After all, what the spirit of the language employed appears to imply is that, where a person submits himself to the custody of a police officer, with the consciousness that temporarily at least he is in such custody, or such control, whether formally authorised in some manner or otherwise, the information Riven by him to such officer, leading to the discovery of a relevant fact, may be proved within the scope of the Section. To limit the meaning of the expression further, by imposing conditions as to the time of arrest, the existence or absence of a formal magisterial order authorising police custody or interrogation, etc., does not seem to be justified either by the context, or by any-Inherent feature of the scheme_ of Sections 25 and 26, to which Section 27 clearly constitutes a proviso or exception. Please see the decision of the Supreme Court in *Ramkishan v. Bombay State*, (S) : 1955 CriLJ196 .

16. Therefore, we would conclude that the statement made by the accused to the Circle Inspector, in the present case, was perfectly admissible Under Section 27 of the Indian Evidence Act. Though, formally, the accused was in judicial custody under an order of remand made by the magistrate, he was temporarily in the 'custody of the police officer', when he was interrogated, and must be held to have- been in such custody for the purposes of the applicability of Section 27. But, even If we exclude the statement, there is ample corro-boration material in the present case to bring home Roil to the accused. The conduct of the accused In unearthing the body, the discovery of blood stains upon one if the gunny bags in which the body was placed, the seizure of blood-stained earth from another spot pointed out by the accused, the medical evidence itself, all amply and materially corroborate his retracted confession. His guilt was established overwhelmingly, and beyond any reasonable doubt.

17. We would therefore confirm the convictions, both upon the charge of murder and the charge of causing disappearance of evidence of the crime. The sentence of death imposed with reference to the charge of murder is the only one that could be fitly imposed, in the circumstances of the case. The accused seems to have planned the offence, and there is absolutely nothing to suggest that he acted suddenly, in the heat of passion or anger, or even that some kind of altercation preceded the murder, The accused had no rights over the woman, and there is, again, nothing to Indicate that any particular conduct on her part was an immediate provocation. We therefore confirm the sentence also, and dismiss the appeal.