

In Re: Natesan

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Court : Chennai

Decided On : Mar-31-1960

Reported in : 1960CriLJ1340

Judge : Ramaswami and; Anantanarayanan, JJ.

Appellant : In Re: Natesan

Judgement :

ORDER

Anantanarayanan, J.

1. The accused in this case (Natesan alias Natarajan) has been convicted of the murder of a young; woman named Papathi (S. 302 IPC) and also of attempting to commit suicide (S. 309 I, P. C.) by the learned Additional Sessions Judge of Coimbatore in S. C. 202 of 1959 on his file. The appellant has been sentenced to death upon the charge of murder, and to simple imprisonment to a period of one year upon the charge of attempt at suicide.

2. The facts are extremely simple, and the appellant does not really dispute that he did stab the victim of the occurrence with a knife. His case is that she at first attempted to inflict some injuries on him with the weapon, and that he wrested the weapon from her and inflicted the grievous injuries on her in self defence. The simple matter for consideration, upon the merits, is whether there is any semblance of truth in this counter version advanced by the appellant at the trial.

3. The unfortunate victim of this incident was a young girl of about 19, and married to one Nachi muthu (P.W. 6) about six months previous to this crime. Sometime before this crime, the accused seems to have attempted to take liberties with her on one occasion, and there was a complaint to the husband (P.W. 6) which, at that time, he did not regard seriously. But, again, shortly before the occurrence, when the deceased was drawing water from a well, the evidence is to the effect that the appellant came there and patted her on the cheek, and attempted to engage her in conversation in an improper manner. This was again reported to the husband (P.W. 6) and P.W. 6 and his brothers reprimanded the appellant for his misconduct towards the girl. Even the parents of the accused were informed, and the result was that the two families ceased to be on talking terms.

4. We do not know what precisely happened on the date of the occurrence itself, between the deceased and the accused. But the facts make it clear beyond doubt that, at that time, the deceased was alone in her portion of the house, and that the accused intruded upon her privacy. The girl raised cries that she was being stabbed, and immediately certain of the witnesses ran up to the spot hearing her alarm. They were P.W. 1, P.W. 2 and P.W. 3 in the first instance, and later, P.Ws. 4 and 5. The accused had apparently locked the door from inside, and the witnesses were unable to open the door at first.. Then P.W. 4 went and brought a crowbar (M.O. 1), and the door was forced open.

The victim of the occurrence lay dead in a pool of blood, having sustained mortal injuries. The accused was also unconscious on the floor, with two injuries on his person. The village munsif was sought to be traced for the purpose of making a complaint, and ultimately the first report, Ex, P I, was made to him after his arrival. The village munsif recorded this report, and sent his reports Exs. P 2 and P 3 on which investigation by the police followed.

5. It is not' in dispute that the appellant took the police to the western side of the house of the deceased and that, in consequence of his information, the knife (M.O. 2) was recovered. It is also not in dispute that when the dead body of the girl was inspected by the police, her jacket was found open with the buttons undone. The medical evidence shows that the victim had six stab injuries on her person, on

various parts of the body, of which injury No. 1 involved a fracture of the third left rib, and a perforating wound on the left lung.

Similarly, with respect to injury No. 3, which was in the lower abdomen just above the pubic region, the small intestine was found severed and the peritoneal cavity was found to contain bloodstained fluid. It is very clear that injuries Nos. 1 and 2 were necessarily fatal, and that death must have been practically instantaneous.

6. The accused was found to have two injuries, the first of which was a stab wound $3/4 \times 1/2$ " on the upper part of the abdomen to the left of the middle line, just below the costal arch, with a piece of omentum protruding through it. The stomach also had a small tear. The second was a superficial incised wound on the left side of the chest.

7. It is not in dispute against that the Sub Magistrate (P.W. 10) was sent for when the appellant was lying in a grave condition at the hospital, and that the Sub Magistrate (P.W. 10) went and recorded the dying declaration of the accused which is Ex. P 7. This dying declaration was later excluded from the scope of the evidence by the learned Sessions Judge, as the accused survived and the statement was clearly inadmissible, in consequence, under, Section 82 of the Evidence Act. The learned Judge observed that it was not a statement recorded under Section 164 Cr, P. C, for the formalities under that Section were not complied with. We shall later have occasion to note the importance of the exclusion of this piece of evidence from the record in the case, in the light of certain authorities.

8. We may immediately pass on to the defence of the accused, for the accused does admit the occurrence. His case is that the deceased was living in a portion of his house, and that she and her husband refused to vacate the house, though he called upon them to do so. Therefore, on the occasion of the offence, the accused went into the house of the deceased, and attempted to remove her things outside. The deceased then questioned him why he came there, and stabbed him on his stomach with the knife (M.O. 2).

Fearing that the deceased might stab him again and that he might be killed, the appellant snatched the knife from her and stabbed her. After that, he became unconscious and fell down. This is the counter version of the incident which the appellant has chosen to put forward. But, even in putting this forward, the appellant makes the admission that he stated to the Sub Magistrate in the first instance that he stabbed himself. That was because the police tutored him to make a statement of that kind.

9. Before proceeding to consider the possible truth of this counter version, upon the facts and probabilities of evidence, I desire to make a few observations upon the exclusion of the alleged dying declaration, Ex. P 7. In the present case, it will be noticed that this statement was recorded from the accused at the hospital by the Sub Magistrate (P.W. 10) after the investigation had commenced, and the appellant was definitely arraigned as the accused charged with the murder of this deceased.

We must, therefore, presume that the Sub Magistrate (P.W. 10) was also perfectly aware of this when he recorded the dying declaration, and that he was conscious that what he was recording, in effect, was a confessional statement made by an accused in a case under police investigation. Under those circumstances, we would agree that the statement would have to be excluded from evidence, upon the authority of the Privy Council decision in *Nazir Ahmed v. King Emperor*. As their Lordships of the Judicial Committee observed, it is a well recognised rule of construction that where a power is given to do a certain thing in a certain way, the thing must be done in that way, for that act to have legal consequences. Other methods of performance are, by necessary implication, excluded.

In the present case, we would certainly agree that, if the statement made by the accused to the Magistrate were to be admitted and considered at the trial, since it was recorded by a Magistrate from an accused during the course of an investigation into the very crime, the provisions of Section 164 Cr.PC should have been substantially complied with. When those provisions were not kept in view at all, such a statement cannot be considered in evidence against the accused, and the exclusion from the record would, therefore, be justified,

10. But, equally, we desire to make it clear that ought not be construed, in our view, as amounting to some authority that under no circumstances whatever could a statement made by a person amounting to a confession of a crime to a magistrate be admitted in evidence, unless the provisions of Section 164, Cr.PC are complied with. Needless to say, the decision itself does not seem to be authority for any such view, nor does it override the clear provisions of Section 9A of the Evidence Act, which render such admissions liable to be admitted in evidence, unless they fall within the mischief of the succeeding Sections, such as Sections 24, 25 and 28.

Consequently, where the statement is made by an accused person to a judicial officer before any investigation at all commenced, or is totally outside the scope of any such investigation we are not clear that such a statement is liable to be excluded, unless the provisions of Section 164, Cr.PC had also been complied with. We would further observe that the position that statements recorded Under Section 164, Cr.PC themselves are inadmissible, unless the formalities of that Section are strictly adhered to, would not appear to be the latest and the current view of the law.

For, their Lordships of the Supreme Court have pointed out in *W. Slaney v. State of Madhya Pradesh*, (S) : 1956 CriLJ291 that the true test in all such cases is whether the non compliance was so vital as to cut at the root of the jurisdiction, or so ; abhorrent to natural justice that a serious prejudice has been occasioned. Where that is not the case, even a departure from the strict terms of Section 164 Cr.PC. may not necessarily render a judicially v recorded confession inadmissible. We do not propose to comment any further upon this aspect for, as we have observed earlier, there will be no question of including Ex. P 7 in evidence, in the circumstances of this particular case,

But the true scope and applicability of may have to be considered in a proper case, particularly in the light of the subsequent development of the case law, including the judgment of the Supreme Court in *IJ*) : 1956 CriLJ291 .

11. It only remains for us to deal with the counter version furnished by the appellant. The learned judge has given very convincing reasons why it is. totally

unworthy of credence. The appel has intruded of the privacy of the woman while she was alone in her house, and has even locked the door from inside, so that .she could not obtain any help or succour. We have no doubt whatever that the appellant did not so intrude in order to ask the deceased to vacate the house, but that he must have been attempting some kind of overture, which the girl resisted.

This is consistent with the previous evidence A. relating to the prior incidents, and also the significant fact that, after her death, it was found that the jacket of the victim was open, and the buttons undone. We have no doubt at all that the girl must have attempted to raise an alarm, or to object, when the appellant tried to molest her, and that this 'led to the incident. The appellant must certainly have inflicted the injuries on her first with a knife, and then stabbed himself in an attempt to commit suicide.

As the learned Judge points out, if injury No. 1 on the appellant was really caused by the girl in the first instance, it is most unlikely that the appellant would have been able to wrest the weapon from her, and to cause her the six injuries actually, found on the person of the victim. We have, therefore, no hesitation whatever in rejecting the counter version, and the plea of self defence.

12. The appellant was properly convicted of murder upon the facts of evidence, and the conviction is irreproachable and must be confirmed. This was a very brutal and cruel murder of an innocent young woman, whose only crime was that she resisted the improper overtures of the accused, and attempted to be faithful to her marriage tie and to her husband. We are unable to see that the fact that the appellant immediately stabbed himself after the murderous assault can in any manner serve as an extenuating circumstance.

learned Counsel for this appellant (Srimathi Ananthanayaki) urges that he is a young man of about only 22, who must have acted maddened by the passions of the moment. But youth is not a circumstance that we can take into account in awarding the penalty; that must be considered by the authorities of the State, in exercising their prerogative of mercy. We, therefore, confirm the convictions Under Sections 302 and 309 IPC and the sentence of death, and dismiss the appeal.

Ramaswami, J.

13. I entirely agree with the judgment delivered just now by my learned brother and would like to add the following,

14. In my opinion, a sharp distinction should be drawn as urged by the learned Public Prosecutor, and which he also did in Cr. Appeal No. 359 of 57 Krishna Navidhan between admissions and confessions made to magistrates not investigating the case or any of the facts connected with it and before the investigation Under Section 164 Cr.PC, and statements recorded by them during the course of investigation Under Section 164 Cr.PC In tile former case, the admissions and confessions are provable Under Section 21 of the Evidence Act and the compulsive formalities prescribed Under Section 164 Cr.PC, are not attracted thereto.

15. There are three decisions of this Court in support of this position. In In re Nainamuthu v. Kannappan, 1939 Mad WN 1132 : A.I.R. 1940 Mad 138, soon after the murder, the accused proceeded directly to a magistrate and made a statement to him which was recorded without the formalities prescribed by Section 164 Cr, P. C, and objection was taken that the statement was not recorded under S, 164 Cr.PC The magistrate had not been investigating the case; or of any of the facts connected with it; the statement itself was in the nature of the first information of the crime and not recorded during investigation Under Section 164 Cr.PC this Court held that it was admissible in evidence.

In Arunachala Reddi v. Emperor, 1932 Mad WN 644 : AIR 1932 Mad 500, alter committing a murder A went straight to the nearest magistrate and told him what he had done. The magistrate asked him to pull himself together and gave him an hour for reflection. At the end of the time, A was still in the same mood and made a complete confession which the magistrate recorded in the manner prescribed by Section 164 Cr.PC, which he need not have done, as the confession was not taken under that Section. It was contended that the confession was inadmissible in evidence because the magistrate recorded it in the manner prescribed by S, 164 even before the investigation had begun.

The Sessions Judge rejected the contention holding that the magistrate was entitled Under Section 190 (1) (c) of Cr.PC, to record and act on the information furnished by the accused himself. His view was that an investigation by the police was, not an indispensable condition precedent x if the initiation of proceedings against the accused. It is was held by this Court that assuming that the magistrate was duly empowered to act Under Section 190 (1) (e), the Sessions Judge's view was correct. Apart from that, confessions, like other admissions, are relevant evidence under the Evidence Act unless they are rendered inadmissible by some circumstance or circumstances which the Act declares to be of an invalidating nature.

Examples of such circumstances are to be found in Sections 24, 25 and 26 of the Act. They did not exist in the instant case. It was therefore held that Section 164 Cr, P. C, does not exclude confessions otherwise admissible, and it only provides for the manner in which confessions made during a police investigation shall be recorded. The confession was,, therefore, admissible.

In In re, Ramaswami Reddiar : AIR1953 Mad138 , a Bench of this Court held that a confession recorded by a magistrate holding an inquest Under Section 176 Cr.PC, and not empowered to record confessions Under Section 164 Cr.PC, is not inadmissible for non compliance with that Section. (See also the decision to the same effect of other High Courts assembled in the A.I.R. Manual Second Edition (i960) Vol. IV at page 4556 Section 164 n. 9a Ram Saran v. Crown A.I.R. 1945 Nag 72 : 46 Cri LJ 731; Rishi v. State of Bihar : AIR1955 Pat425 ; Barindra Kumar v. Emperor, 11 Cri LJ 453 : ILR 37 Ca 467; Sulaiman v. The King A.I.R. 1941 Rang 301 : 43 Cri LJ 123; Ram Singh v. State A.I.R. 1959 AH 518 : 1959 Cri LJ 940: State v. Madan Mohan A.I.R. 1953 Pepsu 182 : 1953 Cri LJ 1700; Chhukkannoo Singh v. Rex. A.I.R. 1949 Oudh 84 : 51 Cri LJ 219; Emperor v. Jehangir Ardeshir Cama : AIR1927 Bom501 ; Chatru v. The State ; Sat Narain Tewari v. Emperor, 3 Cri LJ 138 : ILR 32 Cal 1085; State of V, P. v. Shiv Bahadur Singh A.I.R. 1951 Vindh Pra 17 : 52 Cri LJ 561; State v. Panrm, ILR 36 Pat 141; Siva rajan v. State, 1959 Ker LT 167 : 1959 Ker LJ 221 : ILR 1959 Ker 319).

16. It would be quite different if the admissions and confessions are recorded during the course of the investigation Under Section 164 and in such cases the ratio in , is applicable. This decision has been followed in In re, Thothan, 1955 Mad WN 1042 : A.I.R. 1956 Mad 425. But, as my learned brother has pointed out, apart from the fact that different considerations must prevail when confessions and admissions are recorded during the course of investigation Under Section 164 Cr.PC, the P. C. decision itself may require re consideration in view of the Supreme Court decision in (S) : 1956 CriLJ291 , and other cases of the Supreme Court following the 'principles laid down therein (But see however Shiv Bahadur Singh v. State of V. P. : 1954 CriLJ910 .

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