

In Re: Desingh Nadar

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Court : Chennai

Decided On : Apr-12-1960

Reported in : 1960CriLJ1622

Judge : Ramaswami and; Anantanarayanan, JJ.

Appellant : In Re: Desingh Nadar

Judgement :

Anantanarayanan, J.

1. The appellant Desingh Nadar, a young man of about 23, has been convicted by the learned Sessions Judge of Ramanathapuram division at Madurai of the murder of one Sivaswami Nadar at the house of the deceased on the night of 10-11-1959 (S. 302, I. P. C), and sentenced to death. The appeal of the condemned prisoner is also before us.

2. The facts in this case are really simple, and the facts and probabilities, as we shall indicate presently, are overwhelming and decisive. The sole difficulty arises from the fact that no intelligible motive for the murderous assault appears in the evidence. It is not the case for prosecution that this was a pre-planned murder, though, at one stage, the police authorities seem to have thought that the appellant deliberately purchased an aruval and came to the house of Sivaswami Nadar (deceased) with some evil intent.

Actually, the accused who was related to Sivaswami Nadar, was a comparatively well-to-do person, and was even occasionally helping the deceased by loans etc. He came to the house of Sivaswami Nadar on the night of occurrence at about 7-30 p.m., carrying a rolled bundle of gunny bags, and a cloth bag. Concerning what happened later that night, we have the testimonies of Gnanaguruvammal (P. W, 1), the eldest daughter of the deceased aged about 15, and Soundarapardian (P.W. 2), her younger brother aged about 10. There was also another daughter of the deceased in the house a girl called Tamilarasi, but apparently she was considered too young to be examined as a witness at the trial.

3. Gnanaguruvammal (P. W: 1) has given very clear and specific evidence. Her evidence is further corroborated by her younger brother (P.W. 2) and the testimonies of Nityakalyani Ammal (P.W. 3) and Valavandammal (P.W. 8), her mother-in-law, who were the neighbours awakened by P.W. 1 immediately after the murderous assault. A glance at the plan Ex. P-12 will show that the house of the deceased faces south, and that the room marked No. 1 is the front hall, while the room marked No. 2 is the central hall immediately to the north of it.

The evidence of P.W. 1 is to the effect that the accused attempted to take his bed that night in the room marked No. 2, along with P.Ws, 1, 2 and the other girl. The deceased then told the accused that he should not sleep in that place where young girls were sleeping, and made the accused take his bed near the deceased in the front hall. The two halls are separated by a door, partly made of wood and partly of iron bars. That door was not bolted on that particular night,

4. P.W. 1 swears that, at about midnight, she felt some one touching her on the leg, and woke up and found that the accused was doing so. The accused then solicited her, or made certain improper overtures to her. P.W. 1 kicked the accused with her leg, and immediately began to stand up and cry. Being repulsed by the girl in tills fashion, the accused went away to the hall where he was sleeping with the deceased, P.W. 1 bolted the door after this from her side of the house. A little later, P.W. 1 heard the accused waking up her father, and asking him to get the bag which the accused had kept in the hall marked No. 2.

The deceased called out to P.W. 1, and P.W. 1 took this bag and placed it near the bed of the accused, and again bolted the door horn her side. A few minutes later P.W. 1 heard the cries of her father that he was being cut by the accused. P.Ws. 1 and 2 and the other child then raised shouts, and rushed up to the door. Through the partition (iron bars) they saw the accused cutting the deceased with an aruval. There was then a wall-lamp burning on the pial, M.C. I, and they were able to see the murderous assault with the aid of this illumination. P.W. 1 then opened the back-door and went to the house of Chidambara Nadar and tried to obtain help. P.Ws. 3 and 8 came to the help of P.W. 1, and both these witnesses swear that P.W. 1 told them that, at that time, their father was being cut by Desingh (the accused),

P.Ws. 3 and 8 then saw a man running away towards the pipe or pump to the west, though they did not identify him. One Muthuswouany assailant for some distance. But; this witness also does not purport to identify the person whom he saw running away, and whom he tried to apprehend. . ,

5. After this, an alarm was raised and many persons gathered at the spot, There was a blood-stained aruval on the pial, M. O. 2. Sivaswami Nadar (deceased) was lying in the front room No. 1 with bleeding injuries all over his person. He died in a few minutes. The Sub-Inspector and the village Munsif then came to the spot, and the police recorded the statement of Gnana-guivammal (Ex. P-I). This contains a clear account of the events which led up the occurrence, and of the occurrence itself. But it has not been admitted as the First Information Report, as the police had some even earlier intimation of such an offence. Investigation followed subsequently.

6. As we have stated earlier, P.Ws, 3 and 8, the two women living two houses behind the house of the deceased, corroborate P.W. 1 to the extent that P.W. 1 did solicit their help that night, and tell them that her father was being cut by Desingh (accused). They came to the spot following P.W. 1, and saw the assailant running away whom they were unable to identify.

7. A great deal of the rest of the evidence in this case is not really material, some of which relates to the movements of the accused prior to the occurrence, and to

his journey to the village of Aruppukottai on the evening of the date of occurrence. That was adduced as called for, because the accused chose to take up the extraordinary position that he never came to Aruppukottai that night and never stayed in the house of Sivaswami Nadar (deceased), and that there was no such incident as deposed to by P.W. 1, earlier that night, when he attempted to make improper overtures to her.

learned Counsel for the accused (Mr. Mohan Kumaramangalam) has frankly conceded that this defence was unfortunate in that it attempted to totally deny the facts, some of which at least were undeniably established in the evidence. The letters written by the accused (Exs. P-6 and P-7) t, also definitely probabilise his visit to the house of the deceased, though they are not admissions of any offence. We shall later refer to a possible defence or counter-version sketched by Sri Mohan Kumaramangalam upon the facts of the record, which, according to him, is not improbable. But for the time being, we may note that it is indisputable that the accused did come to the house of the deceased that night, and did take his bed there: there has been no serious attempt to deny this part of the evidence, Actually, the material objects recovered in the case include the gunny bags, M. O. 3 series, containing the name or the initials of the accused, in addition to the cloth bag (M. O. 4).

8. The autopsy held in this case by Dr. Hashim Sait, P.W. 13, showed that the victim sustained multiple incised wounds, as many as 23, all over his person. Of those, incised wound No. 23 on the left side of the neck was 4' deep, cutting the neck muscles down to the vertebra as well as the intraapinal ligaments between the 7th. cervical and the 1st tarsier vertebra. This injury v necessarily fatal, and must have caused death within a- few minutes. The injuries should have been caused by a, heavy sharp weapon, like the aruval M. O. 2. There can be .no doubt that whoever inflicted this homicidal violence was guilty of murder, and of no lesser offence.

9. With regard to the aruval, M. O. 2, the evidence adduced in order to show that it was purchased by this accused from a particular shop, has not been believed by the learned Sessions Judge himself. Obviously, such evidence, based on mere

recollection, particularly when the number of purchasers buying such ordinary household implements might be very large, is entitled to little credence. It is true that the chemical analysis shows that this aruval was stained with human blood, and it is very probably the weapon of offence. learned Counsel does not dispute this, but he claims that the evidence is insufficient to show that it was the accused who left this aruval at the house of the deceased that night, after perpetrating the offence.

10. There is very little else to be noted in this particular case, since this does not appear to have been a pre-planned crime at all. Throughout, the accused has not merely affirmed his innocence, but claimed that he never came to Aruppukottai that night, and that he never stayed at the house of the deceased on the night of occurrence. He even went so far as to state that he did not know Sivaswami Nadar (deceased) as all. That, briefly, is the case for prosecution.

11. It will immediately be seen that the crux of the case is the weight to be attached to the evidence of Gnanaguruvammal (P.W. 1) corroborated as it is by the evidence of her little brother (P.W. 2), and by the circumstantial testimonies of the neighbours (P.Ws. 3 and 8) as well as of Muthuswami Nadar (P.W. 4) to some extent. The particular line of defence urged before us by the learned Counsel for the appellant is this. learned Counsel would concede that the bags later found in the house (material objects) were those of the accused, that the evidence of P.W. 1 cannot be totally false, and that the accused must have taken his bed in the house of the deceased that night as deposed to by P, Ws. 1 and 2.

He would further concede that there must have been some improper overture of the kind spoken to by P.W. 1, since it is very unlikely that the girl P.W. 1 would have invented this episode, it is had not really occurred. We may here point out that it admittedly finds a place in the statement, Ex. P-1, But the suggestion of Sri. Mohan Kumaramangalam is that the accused must have run away immediately after this discreditable episode, and that some other person or persons, who might have been inimically disposed towards the deceased, must later have entered the house and perpetrated the murder.

This suggestion is sought to be reinforced by the argument that the accused had no motive whatever to commit this brutal murder. Further, it is not very likely that P.Ws. 1 and 2 would really have witnessed this murderous assault with the aid of the bed-room lamp (M. O. 1) as they Claimed. The argument hence is that they did not witness the assault at all, that the accused must have run away after the earlier episode, and that P; Ws. 1 and 2 are implicating him upon a powerful suspicion and nothing more.

12. We have carefully considered this defence, and we are unable to give it any credence or weight. We find it very difficult to appreciate why P.Ws. 1 and 2, as well as P.Ws. 3 and 8 should depose in this fashion, if the accused was not actually seen by P.Ws. 1 and 2 committing the murderous assault. It is far too much of a coincidence, and almost a fantastic hypothesis, to argue that the accused might have made the indecent overture to the girl P.W. 1 and then run away, and that some other enemy or enemies or the deceased might have entered the house at that psychological moment, in order to commit the murder.

We are therefore very definite that the evidence of P.Ws. 1 and 2 is supported by all the facts and probabilities, and that it deserves weight. We have no hesitation in concluding that the witnesses did see the accused committing the murderous assault, and that the accused ran away from the house, leaving the bags and the blood-stained weapon M. O. 2.

13. The question of motive is no doubt a difficult one, and it is something of a problem to suggest a rational explanation for the conduct of the accused. In paragraph 73 of the judgment of the lower Court, the learned Sessions Judge actually refers to a contention by the learned Counsel for the accused at the trial that the accused must have been temporarily insane, following his improper overture, which met with a determined repulse at the hands of Gnanaguruvammal (P.W. 1), It is difficult to say what were the psychological factors which might have operated in the mind of the accused at that time, and it is perfectly probable that the old man (deceased) remonstrated with the accused for his conduct, and that there was some mild altercation between the two.

It is even probable that the accused suffered from a 'crisis of the nerves', which temporarily left him destitute of all balance, reason or judgment. Undoubtedly, the accused must have been in a very pathological state when he committed this murderous assault. But such pathological states are not unknown, and so long as the accused was aware of what he was doing and that it was opposed to law, the accused must be held guilty only of murder, and not of any lesser offence. Further, there are no facts to establish that the accused received any provocation whatever, at the hands of the deceased.

14. Under these circumstances, therefore, we confirm the conviction of the accused for the offence of murder. We have carefully and even anxiously considered the question of sentence. It is true that no extenuating circumstances have been established in the evidence. But it is equally clear that this was not a premeditated or planned crime. We think it very likely that this young man, following the repulse of his overture to the girl P.W. 1, lost his balance entirely, and behaved like a person who was temporarily insane. The accused is only about 23 years of age, and taking all the circumstances together into account, we do not think that it is expedient or essential in the interests of justice to award him the extreme penalty of the law for this crime. We therefore sentence the accused to undergo the lesser punishment of transportation (imprisonment?) for life. RAMASWAMI, J.

15. I entirely agree with the judgment just now delivered by my learned brother. I wish to add the following :

16. Regarding the argument about the absence of motive greatly stressed by the learned Counsel Mr. Mohan Kumaramangalam in criminal cases, the presence or absence of motive is canvassed to explain what sometimes looks apparently unaccountable. The existence of a strong motive is often an enlightening factor in a process of presumptive reasoning in cases mainly depending on circumstantial evidence. In estimating the probabilities of a case, motives cannot be left out of account.

17. But where there is direct evidence of a reliable character no question of motive can arise. This is, of course, subject to the consideration that the absence of

motive may throw doubt on the truth of the direct evidence; but, if making all allowances for it, the direct evidence can be trusted, the question of motive presents little difficulty.

18. Thus while a total absence of motive as a matter of fact is always a factor in favour of the accused, that it is not apparent or adequate is never by itself a circumstance against the prosecution, for the real motive may be invisible to all except the person influenced by it, and experience shows that some of the gravest and most atrocious crimes have been committed from some of the flimsiest and most frivolous considerations. Human nature being what it is, a man's passion may be aroused at times by some very trifling circumstances, particularly where his mind suffers from some sort of temporary abnormality, of course, not amounting to insanity.

Cases frequently occur where in a momentary fit of passion, a person whose mind is so constituted as to be enraged by something which would make little impression on the mind of another, commits a serious offence. The motives of men are often so deep-seated as to be unfathomable. As the mediaeval Jurist put it 'The devil himself knoweth not the thoughts of man,' If law required proof of motive in every case, and adequate motive too, the task of bringing offenders to justice would be so great as to defeat the very object for which penal laws are enacted.

19. (See the decisions of this Court: Public Prosecutor v. Rajulapati Basavayya, 1937 Mad WN Cri. 209; Ramachandrayya v. Emperor, 1938 Mad WN Cr. III; In re Sankappa Shetty : AIR1941 Mad326 Vaithianatha PULai v. Emperor, 1913 Mad WN S06 (PC); and also Walli Mohammad v. The King, 1949 Mad WN Cri 88 ; A.I.R. 1949 PC 103.

20. See also the following standard works on Criminal law: Glan Ville-Williams Criminal Law General Part Ch. 2 p. 28 and foil; Maccarty Psychology for the Lawyer (New York, Prentice Hall vie) Ch. VI p. 138 and foil. Y. H. Rao Circumstantial and Presumptive Evidence Ch. HI p. 14 and foil.; Woodroff and Ameer All Law of Evidence 10th Edn. p. 173 and foil.; Justice V. B. Raju, I G. S., The Evidence Act, p. 37 and foil.).

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