

In Re: Chinnasami and anr.

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Court : Chennai

Decided On : Dec-23-1959

Reported in : 1960CriLJ1344

Judge : Ramaswami and; Anantanarayanan, JJ.

Appellant : In Re: Chinnasami and anr.

Judgement :

ORDER

Anantanarayanan, J.

1. This is a reference by the learned Additional Sessions Judge of Salem in Sessions Case No. 81 of 1959 upon his file. The two appellants, Chinna samy (Accused 1) and Chinnan (Accused 2) have both been convicted at the trial of abduction in order to murder (Section 364 I. P. C), murder in . furtherance of a common intention (Section 302 IPC read with Section 34 IPC) and causing disappearance of the evidence of crime (Section 201 I. P. C). They have both been sentenced to death upon the main charge of murder, no separate sentences being awarded upon the other charges. The appeals of the condemned prisoners are also before us.

2. This case related to the deliberate and planned murder of a man named Minor alias Chin na Goundan residing at Aniyar Kolandapalayam village. There can be no doubt that this Minor Goundan was making life a vertiable inferno for his wife

Ramayee, and his sons accused 1 and A' Marappan (P.W. 3). The deceased was a spendthrift and a drunkard, and not merely alienated properties worth seven or eight thousand rupees, but had also contracted debts to the extent of four or five thousand rupees.

When the deceased married Ramayee, the mother of accused 1, nearly twenty years back, he had conveyed some properties to her, apparently in accordance with caste custom. The deceased was pressing Ramayee to execute a reconveyance of those properties in his favour, and, when the woman refused, he was using violence against her and illtreating her in a very cruel manner. In addition to this, the deceased went to the extent of charging his wife (Ramayee) with illicit intimacy with her own son in law Kandaswami, and this made her suffer so much that she was compelled to live apart from her husband.

The evidence shows that this Minor Goundan was threatening to do away not only with Ramayee, but also with accused 1 because accused 1 had manifested sympathies for his mother. Ex. P 25, an entry in the General Diary at Velagoundanpatti police station shows that on 11 3 1959 accused 1 actually reported that his father Minor Goundan had beaten Ramayee, and the Head Constable (P, W. 10) had then advised accused 1 and his parents not to have dissensions amongst themselves.

3. The case for prosecution is that, disgusted with the conduct of Minor Goundan, accused 1 entertained a plan to decoy and murder him. Accused 1 first approached accused 2, and both the accused met Subramaniam (P.W. 1) who is the approver in this case. The three concocted a plan to murder the deceased, though, as far as we can judge from the facts of evidence, P.W. 1 and accused 2 participated in the plot mainly for gain; accused 1 promised to bear all the expenses, and to pay each of them Rs. 500/.

At the suggestion of accused 2, on Wednesday (15-4-1959) P.W. 1 went and told Minor Goundan that Ramayee would be decoyed by them, and others to a lonely spot, and that, by inflicting the necessary violence, she would be compelled to execute a reconveyance of the properties in favour of Minor Goundan. It appears that accused 1 had already divulged this supposed scheme to his father. Minor

Goundan eagerly fell in with the proposal, prompted by greed.

At 4 P.M. or so that day, accused 1 and Minor Goundan riding on one bicycle, and P.W. 1 and accused 2 on the other, the party proceeded towards Aniyar Kolandapalayam. There is evidence that accused 1 borrowed one cycle from Palaniammal (P.W. 16) who is running a cycle hire shop at Koodacheri. The entire journey from the field shed of the deceased to the spot of offence, is best followed in evidence with the help of the plan Ex. P 30, which gives the necessary particulars.

4. This party met several persons on the way, and these furnish circumstantial testimony in proof of the earlier movements of the two accused, P.W. 1 and the deceased towards the scene of offence. At Chekkupatti Ettikdu, these people were met by Ramayannan (P.W. 12), and he learnt from the deceased that the party was proceeding to Velur to attend a Cinema. Kuppanna Goundar (P.W. 13) met and talked with them at Naravalur Pudur. At Paramathi, all the four persons took tea in the tea stall conducted by Palaniammal (P.W. 14), and accused 1 paid four annas for refreshments.

Near the Ganesa Talkies at Velur, the party met constable Kuppuswami (P.W. 15) who knew these persons previously. Minor Goundan told this witness that they were going to meet a relative at Anichampalayam, and P.W. 15 advised these persons to attend thy cinema performance and then leave. As the plan shows, the Ganesa Talkies (Marked E) would be about two miles from the spot of offence in the Cauvery River bed at Ani champalayam.

5. Concerning what followed, we have only the evidence of the approver (P.W. 1), corroborated by the judicial confession of accused 1, Ex. P 19, Accused 2 went into the village to buy arrack, and accused 1, P.W. 1 and Minor Goundan (deceased) left the cycle in the plaintain tope and went and sat in the river bed half a mile to the south of the village. It was then about 11 P. M. After two or three nalgais accused 2 Returned with liquor, mutton and murukku (Savoury), and also brought two or three cart pegs. P.W. 1, accused 2 and Minor Goundan drank the arrack, the deceased so heavily that he was intoxicated.

Accused 2 then took a cart peg and beat the deceased on the back of his head, as a result of which the skull was fractured, and the victim fell down exclaiming that he was dead. P.W. 1 beat the deceased with a cart peg on the right arm, which fractured that arm. Accused 1 beat the deceased with a cart peg on the right wrist. The victim bled from the nose and mouth and died practically instantaneously. The three persons (accused 1, accused 2 and P.W. 1) then dragged the body along the river bed, dug a pit 3 feet deep near flowing water, and buried the body with head to north and legs to the south. They took their bath in the river and returned.

6. The evidence shows that Minor Goundan (deceased) was checking the accounts of the Mari ammal festival in the village usually, but that he was not to be seen in the village from some days prior to the festival. His mother Sellayee (P.W. 2) was anxious and suspected something wrong, and she gave a complaint (Ex. P 3) to the village Munsif Kandaswami (P.W. 5). In Ex. P 3, P.W. 2 gives expression to her fear that Minor Goundan might have been done away with, and names his wife Raniayee, his son in law and his eldest son Chinna samy (accused 1) as possible suspects.

This complaint, along with the report of the village Officer (Ex. P 6) reached the Sub Inspector (P.W. 21) at Velagoundanpatti on 25 4 1959 at 6 30 p.m., and the Officer registered the information as Crime No, 11/59 under the heading 'Man Missing'. Investigation followed upon this, and accused 1 was arrested by the Circle Inspector (P.W. 22) on 29 4 1959 at 7 p.m. Accused 1 gave a statement to the police, of which the portion admissible with reference to the scope of Section 27 of the Evidence Act has been marked in evidence as Ex. P S. On the morning of 30 4 1959, accused 1 took the entire police party, Dr. Earn Chet fiar (P.W. 6), the Taluk Magistrate (P.W. 8) and others to the spot of burial in the river bed, and showed that spot.

The body was then dug out from a depth of 3 feet and was identified as that of the deceased by the mother (P.W. 2), the second son of the victim Marappan (P.W. 3) and a relative (P.W. 4), and also by accused 1 himself. Accused 1 later offered to make a confessional statement, and his judicial confession was recorded by the Sub Magistrate, Sankari (P.W. 7), after complying with all the formalities and

taking pains to satisfy himself that accused 1 was making a voluntary statement, on 6-5-1959, in the language of the accused (Ex. P 19). Accused 2 was arrested on 9-5-1959, and the approver (P.W. 1) was arrested on the mid ; of 10-5-1959.

7. The post mortem examination of the body by Dr. Earn Chettiar (P. W: 6) revealed the following external injuries. (1) A fissured fracture of the left side of a occipital bone 2 1/2 inches in length (2) A transverse fracture of the right radius at the junction of the middle and lower thirds. (3) A transverse fracture of the metacarpal bone of the index finger of the right hand (4) Transverse fracture of the metacarpal bone of the middle finger of the right hand.

It will thus be seen that the injuries corroborate, in a remarkable manner, the version of the murderous assault spoken to by the approver (P.W. I .and the specific overt acts of the three assailants described by him. This is also in broad conformity with the judicial confession of accused I. The skull and certain other bones were sent by the doctor for examination by the chemical. exa In re Ghinnasami (Anantamrayman J.) miner, and the chemical examiner made scrutiny in consultation with Dr. Asirvadham, Professor of Forensic Medicine, Medical College, Madras (Ex. P 10), The experts were unable to say whether the main injury, the skull fracture, was ante mortem or post mortem.

8. The case of the two appellants has been a total denial of the pieces of testimony set forth by us above. According to accused 1, there was no plot to murder at all, and the entire evidence of the approver (P.W. 1) is false. He (accused 1) was retained by the police in custody for five days. He made no statement to the police such as Ex. p 8, and did not point out the spot of burial. The dead body shown to him on the bed of the river in Anichampalayam was not that of his father (Minor Goundan), nor did he identify it as such.

He retracts his confessional statement as untrue, and given under police coercion and violence. The circumstantial evidence consisting of the testimonies of P.Ws. XI, 12, 13, 14, 15 and 16 is false. Accused 2 similarly denied all complicity in the plot, or his alleged movements on the occasion of offence. It has to be here stated that, in addition to the other pieces of evidence referred to above, we have specific evidence against accused 2 consisting of the testimony of Muthu alias Karu

ppannan (P.W. 17).

This man states that accused 2 came and told him about the murder of Chimia Goundan, and admitted his part in the murder and the burial of the body, along with accused 1 and Subramaniam (P.W. 1) the approver. Accused 2 said that he learnt that the police were searching for him, and that he was afraid of violence by the police, and wanted the help of this witness, P.W. 17 took accused 2 to the Circle Inspector at Trjchengode (P.W. 22), and P.W. 22 corroborates that accused 2 was produced by P.W. 17 before him on 9 5 1959, when the Officer arrested that accused. Accused 2 denies that he made any such extra judicial confession to P.W. 17.

9. There are two preliminary matters which we have first to dispose of, before considering the case of each of the appellants. The first relates to the identity of the body found buried in the Cau very river bed near Anichampalayam on the morning of 30 9 1959, by the party consisting of the Taluk Magistrate (P.W. S) and the police. The second question is whether, assuming the identity to be established, we are justified in the conclusion that Minor Goundan (deceased) met with his death by homicidal violence. It is obvious that, if this is not established, the case of the appellants will not arise for consideration at all.

10. Upon the first matter, it is noteworthy that the identity was accepted and confidently ' affirmed by such near relatives as the mother (P.W. 2), P.W. 3 and P.W. 4 upon the following marks of identification. Minor Goundan had lost one tooth on the left side in the upper row, and similarly one tooth on the right side in the lower row. Again_ his left toe was bent inwards, and all these three marks of identification were present.

Where such marks are present together, and are regarded in their cumulative effect, the identity must certainly be held established in an impressive way, for coincidence can only apply, to one feature or another. learned Counsel for the accused draws our attention to the report of the chemical examiner (Ex. P 10), where that Officer states that the base of the skull sent to him had 14 teeth. The argument is that if Minor Goundan ' had two teeth missing, and as spoken to by Dr. Chettiar (P.W. 6), he must have 30 teeth, and consequently 15 in each row.

But Dr. Chettiar (P.W. 6) merely states that the body had 30 teeth, not that there were 15 teeth, excluding the missing tooth, in the lower row. Apart from this, we have the identification by P.W. 2, P.W. 3 and P.W. 4 and by accused 1 himself. It has been suggested to us that this statement of accused 1 identifying the body as that of his father, amounts to some kind of a confession, made while in police custody, and that it is therefore excluded Under Section 26 of the Indian Evidence Act.

The argument is patently unsustainable, and we are unable to accept it. First of all, it is very difficult to follow why a statement of a person to the effect that a particular dead body was that of his father, should amount to a confession, of a crime, even in the most remote and indirect sense. Next, and equally significantly, Section 26 is expressly not applicable, when the statement is made in the immediate presence of a Magistrate, even though the person making it might be in police custody.

As the decisions show, the presence of a Magistrate is regarded as equivalent to the removal, of any possible police influence which might be corrupt or baneful, and the present identification was made by accused 1 in the immediate presence of the Taluk Magistrate, P.W. 8. We must certainly hold that the identity of the body as that of Minor Goundan was established beyond doubt.

11. With regard to the question of homicidal violence, it is not as if the medical evidence excludes the possibility that the fractures found on the body were ante mortem, or that they were the immediate cause of death. On the contrary, all that the experts have said is that they could not be definite about this, which is natural considering the interval between the murder and the discovery of the body of the victim.

Taking into account the probabilities springing from the entire evidence, including the judicial confession of accused 1 and the manner of burial and spot of discovery, we have no doubt whatever that these fractures were ante mortem and caused by blows with heavy, blunt instruments, and were the immediate cause of death. Since the injuries involved a very grave fracture of the skull, there it can be no doubt that whoever inflicted them was guilty of murder.

12. As regards accused 1, a further argument is advanced based on certain admissions by the village Munsif (P.W. 5). These admissions show that accused 1 was with the police party on the 27th April itself, and that he accompanied the police to several places. Even if it is true that accused 1 was with the police sometime before the Circle Inspector (P.W. 22) arrested him at 7 p.m. on 29-4-1950 at Panagadu near Aniyar Kolanda palayam, we are unable to see how this makes any difference.

After all, the admissible portion of the statement made by accused 1 to the police (Ex. P 8) is rendered admissible by the law, purely because of the discovery of a relevant fact to which it led, and not because it inherently amounts to any confession of a crime. Consequently, the question whether it was voluntarily made after arrest, or whether accused 1 was earlier under police influence for sometime, is really not material. Another argument is that it is most unlikely that Minor Goundan (deceased) would have been misled by the version of accused 1 that, accused 1, accused 2 and P.W. 1, would bring Ramayee to a lonely spot, and 'break her limbs' and coerce her into executing the desired reconveyance.

It is urged that, considering the strained feelings between the deceased and his son (accused 1), this is most unlikely. But, from a strictly psychological point of view, it is equally possible that the deceased was misled by his own greed into thinking that his son (accused 1) had changed sides, and that it might be just possible to use violence against the wife (Ramayee) and compel her to execute the reconveyance.

As regards the circumstantial evidence of P.Ws. 11, 12, 13, 14, 15 and 16, it is difficult to see why these independent witnesses should not be believed. As regards P.W. 15, the learned Judge thought that his evidence was subject to the criticism that he did not remember the date of meeting, and did not volunteer the information to the Circle Inspector (P.W. 22) on 29-4-1959 itself. However this might be, there is certainly circumstantial evidence in this case concerning the hire of cycles, and the movements of the deceased, P.W. 1 and the two accused together that night.

13. Thus, as regards accused 1, we are quite unable to see any room for doubt. It is true that the evidence of an approver must not merely be natural and credible, but that it must also be corroborated in material particulars connecting the accused with the crime, before it can be accepted by a Court of law. We are referring to one or two leading authorities upon this aspect, when separately discussing the case of accused 2, The broad proposition itself is indisputable.

But, in this case, the prosecution could certainly claim that, as far as accused 1 is concerned ample corroboration in material particulars is forthcoming. We have the circumstantial evidence already referred to, apart from the evidence of facts relating to motive¹. We have the conduct of accused 1 in leading the police to the spot of burial in the river bed and indicating it. We have the facts of discovery of the body, and the medical evidence corroborating the version of murderous assault.

We have, further, the judicial confession of accused 1, which undoubtedly appears to be true and voluntarily given. We have no hesitation, therefore, in concluding that the guilt of this accused (accused 1) has been established beyond reasonable doubt upon all the three charges. His convictions Under Sections 364, I, P. C, 302 IPC and 201 I. P, C, must, therefore, be confirmed.

14. The case of accused 2 has to be considered separately, upon its merits. His learned Counsel (Mr, Mohan Kumaramangalam) points out that the evidence of the approver, though corroborated in material particulars in a general sense, is not so corroborated with regard to the participation of this accused. As laid down by the Supreme Court in *Sarwan Singh v. State of Punjab*, (S) : 1957 CriLJ1014 , the evidence of an approver must be scrutinised in two stages; or more precisely, it has to fulfil two tests for its acceptance.

Firstly, it must be natural and credible. Where this is prima facie lacking, there is really no question of further corroboration, and the prosecution can only rely upon other pieces of evidence. Secondly, even if a Court is inclined to accept the evidence as natural or convincing, it must be corroborated in material particulars with regard to the participation of the accused concerned.

The leading case in which the principles are fully enunciated and set forth is *Rex v. Baskerville*, 1916 2 KB 658, and these rules have been reiterated by the Supreme Court with the declaration that the law is precisely the same in India, *Ramesh war v. State* : 1952 CriLJ547 . As the learned Judges stated in 1916 2 KB 658:

After examining these and other authorities to the present date, we have come to the conclusion that the better opinion of the law upon this point is that stated in *Reg. v. Stubbs*, by Parke B (Dears 555) namely, that the evidence of an accomplice must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner..... It is sufficient if there is confirmation as to a material circumstance of the crime, and of the identity of the accused in relation to the crime.

Our scrutiny of the Indian authorities leaves us in no doubt that the law is the same here, and that the corroboration should extend to the identity of the accused person.

15. The learned Public Prosecutor urges that, even with regard to accused 2, this corroboration is available in the present case. It consists of the following pieces of evidence namely (1) the circumstantial evidence that accused 2 was in the party that night, accompanying the others, (2) the extra judicial confession of accused 2 to P.W. 17 and (3) the extent to which accused 1 implicates accused 2 in his judicial confession.

We have carefully examined these three features, and they seem to us to fall short of the degree of corroboration which would be essential, in considering the case of this appellant separately, before we can accept the evidence of the approver. The corroboration of a co accused in a judicial confession is, naturally, of the weakest character, and can only be considered in order to be 'thrown into the scale' as certain authorities have phrased it, when other evidence is also fairly adequately available.

The corroboration furnished by the evidence of P.W. 17 seems to us to be of a very weak and unsafe kind altogether. As we have had occasion to stress, an extra judicial confession is not per se an inferior kind of confession or admission,

and it would all depend upon the facts of the case. But, it is usually subject to the infirmity that the actual words are not preserved, except in a very fallible sense, by recollection. This is not a confession where a person was unburdening himself to another, out of a sense of guilt, soon after the crime.

Actually, the police were on the look out for accused 2, and accused 2 sought the assistance of P.W. 17, mainly to protect himself from police violence, which he feared. Hence, we do not think that we would be justified in giving weight to this confession, The circumstantial testimony does not really takes us far, particularly when bearing in mind the topographical features (Plan Ex, P. 30). if, Every ,according to the approver and the judicial confession of accused 1, accused 2 parted company with the others, nearly a mile or so away from the spot of crime. It may very well be that the circumstantial evidence is true, and, nevertheless, accused 2 may not have been an actual participant in the murder at all. His nerve might have failed him, and he may not have returned to the scene of occurrence, as spoken to by P.W. 1.

16. Taking these factors into consideration, we consider that, at the least, there is an element of doubt with regard to the participation and the guilt of accused 2. We accordingly set aside his conviction upon all three charges, and direct that he be acquitted.

17. With regard to the sentence of death imposed upon accused 1, we are unable to see any extenuating features, apart from the fact of his youth (22 years), which is not a ground in law for extenuation of sentence, but may be justly taken note of by Government in exercise of their prerogative powers of mercy. This was a deliberate crime, planned and executed with great brutality. We therefore confirm the sentence also upon accused 1, and dismiss his appeal.