

In Re: B. Titus and ors.

In Re: B. Titus and ors.

SooperKanoon Citation : sooperkanoon.com/810720

Court : Chennai

Decided On : Jan-31-1941

Reported in : AIR1941Mad720

Appellant : In Re: B. Titus and ors.

Judgement :

Horwill, J.

1. The three appellants, who are police officers at Rayachoti, were charged in the Sessions Court of Cuddapah under Sections 348 and 330, Penal Code, with wrongful confinement for the purpose of extorting a confession and voluntarily causing hurt for the same purpose. The appellant in Criminal Appeal No. 474 of 1940 was accused 1 in the lower Court. He has been found guilty under both counts and sentenced to three years rigorous imprisonment and fine for each offence. The appellant in criminal Appeal No. 617 of 1940 was accused 2 in the lower Court. He has been found guilty only under Sections 323 and 342, Penal Code, because, although the learned Sessions Judge thought that he had committed some of the acts of which complaint was made, he was not satisfied that they were done for the purpose of extorting a confession. The appellant in Criminal Appeal No. 672 of 1940 was found guilty under Section 342, Penal Code, for the same reason. He was accused 3 in the lower Court. The learned Sessions Judge was not even sure that this appellant caused any injury to any of the complainants. Both accused 2 and 3 were directed to be released on their

executing bonds for good behaviour. The Crown has preferred a criminal revision case, contending that these orders were not an adequate punishment for the offences.

2. The prosecution story is that P.W. 18, the wife of the hotel keeper, P.W. 19, lost a bill on the evening of 7th September 1939, which she had removed from her hair only a short time before its loss was discovered. She suspected P.W. 1, a maid-servant in her house, aged about 14, her younger sister P.W. 3, aged about eight, and P.W. 2, a dhobi woman aged about 50 years, who was in the hotel when this bill was lost. P.W. 19 seems to have been on very friendly terms with the local police and the station writer promised to send two constables. One of them was accused

3. This accused came and said to P.W. 19; 'I am not a man if I do not get your bill back.' Then he adopted the cowdung procedure, in order to give the accused persons an opportunity of returning the bill without implicating themselves. Each of them was told to bring a ball of cowdung and put it in a pot, the reason for this being that if they had the bill they could put it in the middle of the dung and so conceal the return of the jewel. That procedure was however unsuccessful and the search was abandoned for the night. On the following morning, P.W. 19 told the Circle Inspector, P.W. 37, at about 8 A.M. about his loss. Accused 1, who was the station house officer, was absent on that day from the station; and so the Circle Inspector told accused 2, who was the Prohibition Sub-Inspector of the same place, to look into the matter. Accused 2 at once sent P.W. 41 to fetch the three suspected persons to the station, where they were subjected to third degree methods, being beaten in various petty ways, rapped on the knuckles, knees, elbows, etc, by this accused. At about 12-30 P.M., a search was made of P.W. 2's house and P.W. 2 was taken from the station to her house for that purpose. She was there put to certain indignities and struck by accused

2. Accused 3 kicked her husband. Nothing being found there, P.W. 2 was taken by accused 3, under accused 2's instructions, to the house of accused 1, where, at about 2 P.M., she was locked up by accused

3. At about 4 P.M. accused 2 returned to accused 1's house and beat W. W.'

2. He then left instructions for p.w. 2 to be brought back to the station. Throughout this time P. Ws. 1 and 3 were detained at the station. At about 6 P. M. she was brought to the station by P.W.' 40.

3. On the way to the station they were met by accused 1 who had just returned to Rayachoti, and from that time onwards accused 2 left the matter almost entirely in accused 1's hands. He actually left the station at 8 p. M. but he continued to play a minor part in this drama. Accused 1 now began to turn his attention to P.W. 1, who had so far escaped lightly. He struck her over the knees and knuckles and threatened her in various ways. In the meanwhile, P.W. 3 had run home and P.W. 16 had to be sent to fetch her back. She came back with her parents. During this time, P.W. 1 was interrogated not only about the bills but even more about a chembu that was said to have been stolen from P.W. 19. She admitted having sold a chembu to one Narayana (P.W. 15) and she was taken there and the chembu recovered. When this Chembu was shown to P.W. 19 he said that it did not belong to him. This questioning took place at the house of accused 2 at about 10 P.M., where it was intended to draw up a panchayatnama, respectable persons having been brought there for that purpose. In view, however, of P.W. 19's statement, no document was written. P.W. 2 was then taken on to the house of accused 1, where she remained for the rest of that night. P.W. 3 was detained all night at the station; but P.W. 2 was brought to accused 1's house just before midnight. P. Ws. 1 and 2 remained in accused 1's house all that night. P.W. 1 complains that during that night she was raped; but that was the subject of a charge in another sessions case which is under appeal and will be discussed else-where. At cockcrow P.W. 1 was taken to the house of accused 2, where she remained for some hours until her parents came and took her away. P.W. 2 was brought to accused 2's house at about 8 A.M. As she was found to have blood on her saree which, P.W. 2 says, was the result of a kick in the abdomen by accused 1 at the station, accused 2 told her to change her saree and she was given a fresh one. Accused 2 told somebody there to put the saree. behind the door and from there it was recovered two days later.

4. Although the appellants denied in the Sessions Court that the investigation proceeded on the lines spoken to by the very many prosecution witnesses, there

can be no doubt from the abundance of evidence in this case that the story is substantially true. In fact, the three appellants made statements to the Sub-Divisional Magistrate of Cuddapah who was deputed to enquire into their conduct; and while the three appellants denied that any beating or improper confinement had taken place, their account of the lines on which the enquiry proceeded is substantially that of the prosecution witnesses. Mr. Jayarama Ayyar has argued that these statements to the Sub-Divisional Magistrate are not admissible; but I do not see why not. They do not purport to be statements recorded under Section 164, Criminal P.C; for the Magistrate was then merely holding an enquiry into the conduct of these police officers and the appellants were not even under arrest. Sections 21 to 27, Evidence Act, do not suggest that statements that would be admissible in civil cases as admissions are not admissible in criminal cases. A person who subsequently becomes an accused may have made many admissions which do not implicate himself in any criminal charges; and these would be admissible under Section 21, Evidence Act. Mr. Jayarama Ayyar quotes a decision of the Privy Council in *Narayanaswami v. Emperor* and argues that the Committee held that statements that are described as admissions in civil actions are confessions in criminal cases. I do not however find anything to that effect in their judgment. On the other hand, they have given an illustration of a case of an admission which would not amount to a confession. They however ruled out the statement-in question, which was that the accused had slept on the night of the offence in the house of the person who was killed not because it was either a confession or admission but because it had to be excluded under Section 162, Criminal P.C., as being a statement made to the police during the course of investigation. Very many of the prosecution witnesses are constables attached to the Rayachoti Station, either under accused 1 or under accused 2, and their evidence is criticised on the ground that they were accomplices. With this contention I quite agree. They depose as approvers. I find nothing in the evidence which suggests that the constables who assisted the appellants in the acts complained of did so unwillingly. It cannot be doubted that they thoroughly approved of everything that was being done, and supported their chiefs with relish. They were merely carrying on an ancient practice which, although rather frowned upon by the higher police officials today, has still not lost its popularity. These

police witnesses saw nothing wrong in what was being done; and they have undoubtedly given evidence because they were told to do so. They knew that if they did not do so, they would be punished for the parts which they had played. That does not however mean that they have been concocting evidence against their former superior officers. That was not expected of them; and I do not think that any of them would wish to do so. In giving evidence they were governed by several considerations; they had to say something, they would wish to minimize the part that they themselves had played and, unless they had some personal grievance against the appellants, they would want to help them. (After referring to certain groups of witnesses and their evidence, his Lordship proceeded.) The evidence against accused 1 is very strong. His beating of P.W. 1 at the station and his kicking of P.W. 2 has been well corroborated by P.Ws. 16, 33 and 39; and the object of such' beating was undoubtedly to extort confessions from the suspected persons. Even the words used by accused 1 were quoted by the witnesses; and the words as well as the deeds show the purpose for which these persons were beaten. It has been argued on behalf of all the appellants that the evidence does not disclose an offence of unlawful confinement. As the learned Counsel for the appellants rightly pointed out, police officers during the investigation of a case have necessarily to call persons and keep them from going to some other place where they would prefer to be; but P. Ws. 1 to 3 were detained at one place or the other for 24 hours, which was far beyond anything that was required for investigation. In fact, as far as P. Ws. 1 to 3 were concerned, there was no investigation at all. From the first they denied all knowledge of the whereabouts of the bills; and the only purpose for which they were detained was that they might subsequently furnish information which would lead to the recovery of the jewel. Accused 1 was therefore clearly guilty of the offences with which he was charged.

5. For want of corroboration, the learned Sessions Judge has rejected certain parts of the evidence against accused 2; but, on the points on which there is corroboration, the evidence is undoubtedly worthy of acceptance. It was this accused who kept P.Ws. 1 to 3 at the station on the morning of the 8th and told the parents of P. Ws. 1 and 3 that they must bring the meals of their daughters as they would not be allowed to leave. It was he, too, who instructed accused 3 to keep P.W. 2 in the house of accused 1. Accused 8 locked her in; but the

subsequent conduct of accused 2 shows that he approved of her being locked in; for he later went and beat her there. P.W. 2's evidence is corroborated by P.W. 17, who saw appellant 2 beat P.W. 2 twice on the back. P.W. 20 also heard accused 2 questioning P.W. 2 about the bills and saw him strike her. He is corroborated by P.W. 21. The learned Sessions Judge, while believing that appellant 2 confined and beat P.W. 1 or P.W. 2, rather curiously came to the conclusion that the evidence did not indicate that this appellant did so for the purpose of extorting a confession. I can think of no other purpose for which appellant 2 beat and confined P.W. 2. It had not been proved that she committed any offence. She did nothing to irritate or annoy this appellant; and his conduct is inexplicable except on the ground that he was trying to extort from her a confession. He kept p. Ws. 1 to 8 under his control the whole of the 8th September until appellant 1 returned to the village. However, the Crown has not appealed against the acquittal of accused 2 and 3 under Sections 318 and 830, Penal Code, and so the convictions for the lesser offences, although wrong, must stand.

6. The evidence with regard to accused 8 is less than against the other appellants; but his conduct throughout the enquiry shows that he was readily filling the part that was assigned to him by his superiors, accused 1 and 2. It was he who boasted on the night of the 7th that he was not a man if he could not recover the bills. During the search of P.W. 2's house, although he did not beat P.W. 2, he kicked her husband for protesting against the ill-treatment of his wife by accused 2; and it was he who locked up P.W. 2 in the house of appellant 1. However, he too has been convicted only of a lesser offence. From what has been said above, it will be evident that there is very little to choose between accused 1 and 2; yet accused 1 has been sentenced to three years; rigorous imprisonment on two counts and ordered to pay a substantial fine, while appellant 2 has been released under Section 562, Criminal P.C., as if he had been some ignorant and misguided man who had been led away from the path of rectitude by some superior whom he dared not disobey. The only real difference between the two is that accused 1 was unfortunate enough not to secure the support of his subordinates to the same extent as accused 2 did. While no excuse can be made for the conduct of appellant 1, it is important, in considering the fitting sentence to be awarded, not to lose one's sense of proportion. His whole life has been blasted as a result of the

departmental enquiry and of the proceedings in the criminal Courts which have led to his conviction on two serious charges. It must be remembered that he caused no serious injury: small swellings and abrasions which disappeared after a day or two. Yet the learned Sessions Judge has on one count awarded him the maximum punishment. In view of the fact that he has been reduced to a state of penury, a sentence of four months rigorous imprisonment and a fine of Rs. 25 on each count will be sufficient to meet the ends of justice. It is difficult to see how this appellant is going to pay a big fine after he has lost his job. The order of compensation to P. Ws; 1 and 2 will stand; but not that to P.W. 3.

7. Section 562 is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of more mature years, who for the first time may have committed crimes 'through ignorance or inadvertence or the had influence of others and who, but for such lapses, might be expected to make good citizens. In such cases a term of imprisonment may have the very opposite effect to that of which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal Court would involve. It was not intended that this section should be applied to experienced men of the world who deliberately flout the law and commit offences, which they knew are strongly condemned by their superior officers, but which they (have persisted in doing in order that it might not be said of them that they have not been able to detect a petty crime. The criminal revision case is therefore allowed, and the order under Section 562 set aside. Accused 2 is sentenced to two months rigorous imprisonment and a fine of Rupees 20 on each count: and accused 3 to one month's rigorous imprisonment and a fine of Rs. 10. The sentences on accused 1 and 2 will run concurrently.