

In Re: Krishna Iyer and anr.

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Court : Chennai

Decided On : Nov-16-1934

Reported in : AIR1935Mad479; 157Ind.Cas.297

Appellant : In Re: Krishna Iyer and anr.

Judgement :

Curgenven, J.

1. The two appellants have been convicted by the Sessions Judge of East Tanjore of the murder of one Nagendra Iyer on the night of 1st-2nd April last at Mayavaram and have been sentenced to death. The case for the prosecution was in brief that the deceased man was a merchant trading in Madura. A few days before the occurrence he went to Mayavaram to collect his dues and, as he was accustomed to do, stayed in the house occupied by accused 1, his father and some of his brothers. These are Sourashtras, like the deceased himself. Nagendra Iyer collected a number of outstandings so that by 1st April he had with him a sum of over Rs. 900. He received a further sum of Rs. 105 from another Madura merchant, P.W. 3, to make some payments in Madura on his behalf. On the night of 1st April he went to rest at the house, sleeping on an outside pial with accused 1 and P.W. 3, while the father, P.W. 1, slept on another pial of the house. At about 2 a. m. the deceased got up intending to go to the railway station to catch the train to Madura and he left the house accompanied by accused 1, who carried his bundle consisting of some clothes wrapped in a carpet. Nagendra Iyer was not

afterwards seen alive. On Wednesday the 4th, a body was discovered floating in a tank known as Arrankuttai in Mayavaram. When it was taken out it was clear that it had been the subject of murder, the throat having been cut back to the vertebral column and there being several other injuries. The identity of the body was not at first ascertained.

2. On the 5th the Circle Inspector received an anonymous letter stating that the body was that of a Madura merchant and that the murder was committed by the family of Ramu Iyer (P.W. 1) and one Gurumurthi (accused 2). This led to the discovery of evidence as to the movements and subsequent disappearance of Nagendra Iyer and to the incrimination of the accused two. It is unnecessary for us to discuss the evidence relating to the identification of the body, which has not been seriously attacked. We think there can be no doubt that, whether or not the body itself was recognisable, the discovery of the carpet, M.O. 3, and other things showed clearly that the corpse was that of the deceased. (After dealing with the evidence against accused 2, his Lordship proceeded). The first question is how much of this evidence is admissible. As regards the confession said to have been made to the Sub-Magistrate, it is true that Section 26 Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate shall be proved as against him. But that is not to say that every confession made by a person in custody in the immediate presence of the Magistrate is admissible in evidence. The fundamental condition governing the admission of confessions is laid down in 8. 24, according to which a confession is irrelevant if it appears to have been caused by any inducement, threat or promise, etc. How this provision should be given effect to in practice has been the subject of a good many decisions such as *Emperor v. Panchhauri Dutt* 1925 Cal 587. *Ragha v. Emperor* 1925 All 627. For the purposes of the present case, it is enough to say that the circumstances in which the confession was made should not be such as to afford a well grounded suspicion that it was not voluntary.

3. What happened here was that the Sub-Magistrate was sent for and found accused 2 in the hands of a number of police officers. The Deputy Superintendent, who it is needless to say is an officer superior in rank to a Sub-Magistrate, asked

him to hear accused 2's confession. The Sub-Magistrate thereupon took accused 2 about 10 yards away from where the Deputy Superintendent was sitting, but not otherwise apart, and without any inquiry whatever into the circumstances in which; the confession was to be made, asked him at once for the story. The Sub Magistrate was evidently not in the least awake to the responsibility : which lay on him to ensure that no compulsion had been used, or inducement offered, to extract this confession. From the fact that question was put to him on this point on his chief examination, it seems to have been thought by the prosecution that the mere presence of the Magistrate, would ipso facto render the confession; admissible and indeed an argument of this kind has been attempted before us.; It is suggested that if the confession is not recorded under Section 164, Criminal P. C, it was unnecessary to ensure as provided in that section that it would be voluntarily made. If this were so, We should get the highly anomalous result that whereas every precaution is taken in recording a confession to ensure that it was voluntarily made, no precaution at all is needed in the inception of an oral confession. The correct position, is of course, that whenever a Magistrate receives a confession from an accused in custody,, he must be satisfied of its voluntary character. The Criminal Procedure Code makes special provision for this in the ordinary case of a recorded confession. For a Magistrate receiving an oral confession it ought to be enough to know that the Court will not admit it in evidence unless it is satisfied upon this score. In making these observations we do not overlook the fact that the learned Sessions Judge has come to the conclusion that the confession in this instance was voluntarily made.

4. But we are unable to accept that conclusion. We think that the influence exerted by the Sub-Magistrate's presence was not sufficient to justify us in acting on the principle embodied in Section 26. We have already described in what circumstances, the confession was made, and these circumstances, so far from raising a presumption that the confession was voluntary, run counter to such an inference. Accused 2 had been in custody for some two or three hours and during the whole of that time it is probable that he was under examination by the police. It is, we think, apparent that if the Magistrate had written down the confession, no Court would look at it, apart altogether from any question of compliance with the formalities. The learned Sessions' Judge relies on an omission of accused 2 to tell

the Magistrate, when he was examined on the 14th with a view to his making a formal confession that he was induced to ,eon fees to the Magistrate on the Saturday evening. He was put no special question on this point, and his statement in general is to the effect that he had been ill-used and tutored, so that we do not think much weight can be attached to this. On the other hand, whenan. attempt was made to record a confession, he re--fused to give one, and made allegations against the police. We have therefore decided to exclude from consideration the confession made to the Sub-Magistrate.

5. We may deal here also with the mahazar Ex. NN. We think that its contents in so far as they were statements made by accused 2 are inadmissible whether under Section 26 or under Section 27, Evidence Act. They are inadmissible Under Section 26 for the same reason as his earlier confession is inadmissible. As a record of statements leading to the discovery of facts, the objection is taken that the record was made after that discovery, apparently by getting accused 2 to repeat the information which at an earlier stage he had given and which had been acted upon. It is the evidence of the statements made earlier which, if at all, is relevant under Section 27.

6. It remains therefore to consider such statements, and the conduct of accused 2. The Circle Inspector has deposed to a statement as having been made by him before the articles were discovered. We do not find it necessary to decide how much of that statement should be admitted as we. prefer to rely upon the evidence of conduct. There is in the first place the recovery of the bag, M.O. 1. This has been identified by the deceased's brother, P.W. 50, as a portion of a long narrow linen bag which both he and his bro there were in the habit of carrying at their waist whenever they needed a receptacle for currency notes. Except for some stains the article is not said to have any special marks. But we think that the brother was in a position to say that the bag closely resembled M.O. 1 if it was not identical with it. There is a discrepancy as to the time when the police showed the bag to this witness but we do not think that it signifies that the recovery of M.O. 1 was not genuine. Accused 2 has attempted to account for his possession of the sum of Rs. 270, but the evidence shows that he had been out of work for two years and it is most unlikely that he was in possession of so much money. The

place in which it was hidden makes it improbable that it was honestly come by. There is also evidence that one of the five rupee notes, marked with a circular inkstain, was among these paid to the deceased. There is no doubt that P.W. 41, who gives evidence on this point, was one of these from whom Nagendra Iyer collected an outstanding, and we see no reason to disbelieve his evidence.

7. Turning now to the case against accused 1 there is some evidence (P. Ws. 15, 18, 19 and 20) to show that he and accused 2 had been seen in association at an hotel and. a betel shop. It has been shown that he had been fairly consistently incriminated in the statements made by accused 2 and it remains to be seen how far there is corroboration in other circumstances. There is no doubt that he was an inmate of his father's house when the deceased was staying there and there is the evidence of the other merchant, P.W. 3, that accused 1 was present when he paid Bs. 105 and must have seen the other money in the deceased's possession. Whether that evidence be accepted or not there is little doubt that he must have known that the deceased had collected a large sum of money. Evidence that he accompanied the deceased when he left the house at 2 a. m., was in the committing Court given by the father (P.W. 1), a brother (P.W. 4) and a wife of another brother (P.W. 2). These persons resiled from that position in the Sessions Court and their earlier statements have been accepted as evidence under Section 288, Criminal P. C. We think that this course was justified in view of their close relationship to accused 1. Similar evidence has been given by P.W. 3, and this witness, from what the others say, seems certainly to have been sleeping in the house that night. In view however of certain criticisms to which his evidence is exposed, we do not propose to rely on it. The body, as we have said, was found on Wednesday and on Thursday accused¹¹ disappeared from the village and was next heard of, through the letter Ex. FF at Rangoon.

8. In this letter, which he incautiously, wrote to a person to whom he owed Rs. 3, he gave an address, but instructed' his correspondent not to tell the neighbours where be was. The letter put the' police upon his track and on the 14th. May a telegram was sent to Rangoon-giving his description. Accused 1, perhaps because he got wind of this at Rangoon, sailed back to Madras on the 18th, and was arrested on board the-ship in the Madras harbour with a sum. of Rs. 445 upon

his person. The evidence of the Inspector of Police, harbour division (P.W. 46), that on that occasion he gave a false name and said that he did not know where Mayavaram was has been admitted, but we are clear that it should have been excluded under Section 162, Criminal P. C. We think that the arrest was certainly made in the course of the investigation into the offence and we cannot agree that the statements are admissible under Section 8, Evidence Act, as explanatory of conduct. In *Queen-Empress v. Sami* (1890) 13 Mad 426, the circumstances were different because the accused there was absconding in disguise. The observations made by Pandalai, J., in *Syamo Maha Patro v. Emperor* 1932 Mad 391, relate to statements explaining conduct. Accused 1 has explained that the money was derived from the sale proceeds of the moveables which he got at the partition with his father and brothers. The father says that moveables had been divided but without specifying their nature or value. The family has no property other than the house in which they live, which is mortgaged, and there is evidence of an application on the day following the murder to a bank for a loan of Rs. 500. Accused 1 has not therefore satisfactorily explained possession of so much money. Moreover he had already paid for his trip to Rangoon and his stay there of a month.

9. The last item of evidence is with-regard to the aruvals M.Os. 5 and 8, found in the tank. We agree with the Sessions Judge that M.O. 6 has not been shown to be the property of accused 2. P.Ws. 1, 2 and 4 admitted before the committing Court that the aruval M.O. 5 belonged to their household and that it was missing after the Sunday. Though they have withdrawn these statements too, we think they are almost certainly true. The aruval has its handle wound with rope and tied with cloth, and its identity could not have been mistaken by any person familiar with it. Briefly to summarise the evidence against accused 1 it shows that he was aware of the large sum of money in notes which the deceased had on his person and that he accompanied him when at about 2 a. m. he set out for the railway station. The deceased was not afterwards seen alive, and it is beyond doubt that he was murdered that night somewhere near Arrankuttai. The presence of the body in the tank was discovered on the following Wednesday and on Thursday accused 1 disappeared from the village. Until he incautiously wrote the letter Ex. EE from Rangoon his whereabouts were unknown. When he was arrested on board the

ship at the Madras harbour by P.W., 46 he had in his possession a large sum of money not accounted for. Lastly an aruval belonging to the accused's household was found in the tank. We think that these circumstances afford sufficient corroboration of the truth of the admissible statements of accused 2 incriminating accused 1 to justify his conviction for murder. Against accused 2 we have these confessional statements which are rendered more cogent by the fact that they were made as a means to an end-to obtain help to conceal the body. It is also proved that money was extorted from him on the strength of these revelations. We have then the recovery of M.O. 5 through his instrumentality and of the money. We think that he too upon this evidence has been rightly convicted. We accordingly confirm the convictions and sentences and dismiss the appeal.

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