

In Re: Ramaswamy Konar

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Court : Chennai

Decided On : Mar-24-1954

Reported in : AIR1954Mad1006

Judge : Govinda Menon and ;Mack, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24; [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 401

Appeal No. : Criminal Appeal No. 690 of 1953

Appellant : In Re: Ramaswamy Konar

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : P. Ramakrishna, Amicus curiae

Disposition : Appeal dismissed

Judgement :

Govinda Menon J.

1. The appellant has been sentenced to transportation for life by the learned Sessions Judge, Tiruchirapalli Division, for causing the death of his brother's son, Lakshmana Konar, by hitting him on the head with a heavy yoke, which fractured and splintered the skull into 15 pieces, causing immediate and instantaneous death.

It is unnecessary to restate the reasons which impelled the appellant to commit this crime, for the entire story is recited with enough particularity of detail in the confession, Ex. P. 2, which the appellant made before the Tahsildar Magistrate of Perambalur. If that document is accepted, there is no doubt about the guilt of the appellant.

But this confession was retracted by the appellant not only before the committal court but in the Sessions Court also, in both of which Courts the appellant denied having anything to do with the murder of his nephew, LakshmanaKonar. In such circumstances, it behoves on us to find out whether the confession has been corroborated at least in some essential particulars, for as has been recently laid down by the Supreme Court in -- 'Puran v. State of Punjab', : AIR 1953 SC459 (A), though a conviction based on a retracted confession is not strictly illegal, still it is a rule of prudence to base a conviction only if the same has been corroborated by other independent evidence. It is not necessary that the entire details of the confession should be corroborated. If the confession is proved to be true by a reference and recourse to other facts and circumstances, then the confession can be accepted.

2. In this case what the appellant stated was that he and his brother's son were both entitled to the water in a well jointly belonging to them. On the particular day in question the deceased had baled out the water the whole of day time and practically the rock bottom of the well had been reached and there was no water, as the well had dried up.

Then on the night, the deceased, after taking food and a short nap, took out his cattle for baling water from the well. The appellant went behind him driving his cattle and yoked the bulls. When the appellant let down the baling pikota into the well, it struck the rock at the bottom, as there was no water. He then addressed the deceased saying

'you give me chance. I would earn for my food if I get four marakkals of paddy. You have already walked away with 18 kalams of paddy.' Then the deceased used some vulgar and filthy language.

The deceased then caught hold of the appellant's tuft and gave two blows on his back. The appellant received the blows without doing anything, unyoked the baling instrument, went up to a tree and lay under it. Then the deceased himself was baling as much of the water as he could. After baling all the water, the deceased unyoked the baling instrument and sat under a drumstick tree and was leaning on it. At that time it was thought that the deceased was sleeping, and the appellant took the yoke which he used for yoking the bulls, and because he could not find even a small quantity of water in the well and because of his anger, dealt one forcible blow on the head of the deceased. Thereafter he gave two more blows and then stopped. He threw the yoke away and ran away from the scene.

The further movements of the appellant need not be recited here, because what happened was that later on, on 20-3-1953, he was seen loitering near the sub-jail adjacent to the Taluk Office. He was arrested there and it was on 24-3-1953 that the appellant gave the confession, the details of which we have already extracted above. As we have already stated, if this confession is corroborated, then the appellant is guilty of murder.

3. One has to remember in this connection that the appellant is aged more than 60, whereas the deceased was a young man of 30, and if the appellant had been beaten by the deceased, who evidently must be a stronger man, there was enough provocation for the appellant to do something in retaliation. If immediately after receiving the blows the appellant had taken the yoke and dealt the blows on the head of the deceased, we would certainly have brought the case within exception 1 to Section 300, I. P. C. grave and sudden provocation. But, unfortunately for the appellant, even according to him, he allowed his anger to cool, by which time the deceased had gone and leaned himself, against a tree and was sleeping. In these circumstances, the question that would arise is whether the confession has been corroborated in essential details.

4. The investigating officer, P. W. 12, said that when he went to the scene of occurrence, he found the dead body of Lakshmana Konar and also found two bulls tied up to the baling yoke. He found blood marks on the yoke and rope. There were blood marks also on the bulls. Near the dead body, P. W. 12 found a certain

yoke stained with blood. That was also seized.

The story of the appellant that a yoke was used in fracturing the skull is corroborated by the yoke found near the dead body stained with blood. It is the appellant's case that after dealing the blows, he left the yoke there. The yoke stained with blood found near the dead body must be that yoke. This is certainly an important piece of corroboration.

5. The second piece of corroboration is that the bulls belonging to the deceased were found tied up to a baling yoke. What exactly a baling yoke is nobody has been able to explain. But it is clear that the Circle Inspector did not find the bulls yoked to the baling apparatus and to the rope of the pikota. The bulls were separately tied to the yoke. According to the appellant, the deceased had unyoked the bulls. He does not say that he later tied them to the yoke so that they might not stray away. If it were a case of the bulls being unyoked and left there, they would have certainly strayed into somebody's fields and caused mischief.

The deceased after unyoking the bulls tied them to the yoke and left them there practically stationary and it was in that condition that the bulls were seen by P. W. 12. This is another piece of corroboration.

6. The third piece of corroboration is the nature of the skull of the deceased. According to the appellant's version, the skull should have been smashed to smithereens, and the doctor's evidence is that there were 15 pieces of the skull sticking to the skin and brain matter had come out. The nature of the blow and the force of it are thus both corroborated by the medical evidence in the case.

7. The assessors were unanimously of the opinion that the appellant was guilty. Moreover, we have the fact that the appellant wandered for two days and came to the vicinity of the taluk office probably with the idea of surrendering himself. That also is a circumstance to be taken into consideration. We are fully satisfied that the confession is true and voluntary and is corroborated in material respects.

8. The conviction is right and the sentence is the minimum allowed under the law. The appeal is dismissed.

9. The age of the appellant and the fact that he was assaulted by his brother's son are things which ought to attract sympathy. But the Court cannot do anything in the matter. That is a matter for the State Government if it desires to consider any commutation under S. 401, Criminal P. C.

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