**In Re: Abdul Kader**

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**SooperKanoon Citation** : sooperkanoon.com/813029

**Court** : Chennai

**Decided On :** Nov-28-1967

**Reported in** : 1969CriLJ1082; (1968)2MLJ515

**Appellant** : In Re: Abdul Kader

**Judgement** :

**R. Sadasivam, J.**

1. Appellant, Abdul Kader, has been convicted under Section 302, Indian Penal Code for having caused the death of his wife, Kathija Bibi, by stabbing her several times with a bichuva at about 7-30 a.m. on 24th January, 1967 in his house at Varpet Village, and sentenced to imprisonment for life. There can be no doubt in this case that the appellant and his wife Kathija Bibi were not on good terms. The learned Sessions Judge has however observed in paragraph 13 of his judgment that the motive for the murder is not clear. P.W. 2, Fathima Bibi, the mother of the appellant, who was permitted to be cross-examined by the Public Prosecutor, has stated in her evidence that there used to be quarrels between the appellant and the deceased because of the appellant suspecting the fidelity of his wife. In fact, the appellant has married again. The appellant does not also dispute the fact that he has married again. It is also an undisputed fact that the appellant wrote the letter Exhibit P-8 and sent it in the envelope Exhibit P-9 from Madurai on the day prior to the occurrence to his father-in-law, P.W. 10, Kadir Batcha, living in Samboothi Village, which is at a distance of 15 miles from Varpet village of the

appellant. In that letter the appellant has stated that he had divorced his wife and that P.W. 10 could come and take his daughter home. The evidence of P.W. 10 shows that he received this letter shortly after he received information about the occurrence in this case.

2. The appellant is a vendor of ready-made clothes at Madurai. About eight days prior to the occurrence in this case, he brought his mother (P.W. 2), his wife, Kathija Bibi, and his two children, a boy and girl, the former being 3 1/2 years old to live in his house in the village of Varpet. The appellant came to the village on the morning of 24th January, 1967 and the occurrence in this case took place within a short time thereafter. P.W. 2 was in the house with the deceased and the two children. P.W. 1, Kadir Bibi, is the sister of P.W. 2. Though she lives with her son in a house at a distance of 1 1/2 furlongs from that of the appellant, she looks after her grocery shop, which is just opposite to the house of the appellant. She used to open this shop between 7 and 8 a. m. It is clear from the evidence of both P.Ws. 1 and 2 that when the appellant came to his house on the morning of the date of occurrence, there was none else in his house except P.W. 2, the deceased and the two children. The evidence of P.W. 2 in the Sessions Court is that when the appellant came home, he started abusing her, pushed her down and she became unconscious and she did not know anything about the occurrence in this case. She was permitted to be cross-examined and she was cross-examined with reference to her statement recorded under Section 164, Criminal Procedure Code, which supports the prosecution case. In that statement she has explained how she sustained injuries while she dragged her son when he was attacking Kathija Bibi. The evidence given by her in the committal Court has not been marked under Section 288, Criminal Procedure Code. The statement given by P.W. 2 under Section 164, Criminal Procedure Code can be used only to contradict her evidence and it cannot be treated as substantive evidence.

3. P.W. 1 Kadir Bibi, deposed that she saw the appellant entering his house and a little later heard cries of alarm from inside the house, went there and found the appellant standing near the deceased, who was lying in her back flat on the ground, and her sister P.W. 2 standing nearby. Her evidence in the Sessions Court is that after witnessing the same, she came out in order to go and report to

her son that the deceased was lying on the ground, perhaps, unconscious. The Public Prosecutor was allowed to cross-examine this witness with reference to her prior statement Exhibit P-l recorded under Section 164, Criminal Procedure Code and the evidence given by her in the committal Court. The evidence given by this witness in the committal Court has been admitted under Section 288, Criminal Procedure Code and marked as Exhibit P-2. In Exhibits P-l and P-2, P.W. 1 has stated that on hearing the cries from inside the house of the appellant, she ran there and saw the appellant with a knife in his hand. In Exhibit P-l she has stated that she saw the appellant trampling the neck of Kathija Bibi by his right leg and that she ran away in fear. In her evidence in the committal Court she has stated that she saw the appellant having his right leg on the neck of the deceased and having a knife in his hand, that she got frightened and left the place to call her son. One important question for determination in this case is, whether the version given by P.W. 1 in Exhibit P-2 is true.

4. On hearing the alarm, several persons gathered at the house of the appellant. P.W. 3, Jalaluddin, P.W. 4, Mohammad Sherif, and P.W. 5, Mohammad Kassim, who are all residing nearby, learnt at the house of the appellant that he had left the place with a bundle in his hand and went to search and catch him. In fact, they proceeded on cycles and they were able to spot the appellant at a distance of four furlongs away from Ponnamaravathi near Alagunachiamman temple, walking along the road carrying a bundle. They stopped him and questioned him about the murder. The appellant told them ' I murdered my wife. Who are you to ask? I am myself going to the Police." P.Ws. 3 to 5 were not willing to trust the appellant and therefore accompanied him to the Police Station. The Sub-Inspector of Police (P.W. 12), Ramidoss, recorded Exhibit P-4 to the dictation of P.W. 3 and got the attestation of P.Ws. 4 and 5. He arrested the appellant and examined the contents of the cloth bundle brought by him and it contained the weapon M.O. 1 and the clothing of the appellant. Subsequently, chemical analysis showed that the clothing were stained with human blood; the blood-stains on the weapon had disintegrated.

5. P.W. 9, Dr. Gnanavaram, Medical Officer, attached to Government Pappayee Hospital at Valayaptti, conducted the post-mortem on the body of Kathija Bibi at 9-

30 a.m. on 25th January, 1967 and found as many as thirteen injuries, several of them being stab injuries on the chest. The Doctor gave his opinion that most of the vitial organs of the deceased were found to be injured and death must have been instantaneous. It is necessary to refer to only one of the injuries, namely, the fifth injury, which had pierced the right auricle of the heart to half an inch. There can be no doubt that it was a fatal injury. In fact, the Doctor's evidence is that the injuries caused to the vital organs were necessarily fatal.

6. The Doctor examined P.W. 2 and noted two simple injuries sustained by her and alleged to have been caused in the course of the same transaction by the same weapon at about the same time. The prosecution case appears to be that these injuries were sustained by P.W. 2 when she intervened to prevent her son attacking the deceased. We have already pointed out that the evidence of P.W. 2 is that the appellant first attacked her and she became unconscious.

7. During his examination under Section 342, Criminal Procedure Code, the appellant stated as follows in the committal Court:

On that day I came to village. At that time Peer Mohammad, a boy, jumped and ran away from my house. I went in. My wife was murdered. I have reported to Police and handed over the knife. They have arrested me in a wrong conclusion. Peer Mohammad is the real culprit.

He gave a more detailed version on the same lines in the Sessions Court:

When I entered the house, Peer Mohammad ran out. I saw my wife lying flat on the ground. I lifted her to see as to what the matter was. She was bleeding injuries. It is thus that my clothes became blood-stained. Since I was perplexed and wanted to report the matter to the police and laid the body of my wife down, I noticed a knife lying nearby. There was also a sheath. I changed my dress because it became blood-stained, took the same along with the knife and the sheath bundling up in my towel and straight went to Ponnamaravathi Police Station. P.Ws. 3 to 5 came armed with sticks--3 or 4 persons came--I told them 'why have you come with sticks? I am going to the police station.' They accompanied me to the police station. I made a report at the police station. I do

not know what they recorded but I put my signature. Next day I was sent to Tirumayam for being remanded.

The appellant has given the above version to explain the blood-stains on his clothes and his having appeared at the Police Station with the weapon M.O. 1.

8. The learned Advocate for the appellant brought to our notice that a judicial confession had been recorded from the appellant and commented on the fact that it has not been marked in this case. But, on his showing the document, we find that the appellant has not really made a confession of the offence of murder. He has merely stated therein that when he went home, he found his wife lying dead with injuries. In the said confession he has not even put forward the plea that Peer Mohammad came out of the house. The prosecution evidently has not filed the said judicial confession, as the appellant has not really made any admission of his having committed the offence in this case. Hence, no comment can be made against the prosecution by reason of its not having examined the Sub-Magistrate and proved the said judicial confession. It would no doubt have been better for the prosecution to have adduced evidence about the said judicial confession, to avoid such comment. Further, it would have been valuable for the prosecution itself to show that the appellant has not come forward with the present version. But, as the judicial confession has not been marked in this case, we have to ignore it and we cannot base our judgment on anything contained or not contained in it.

9. The learned Advocate for the appellant urged that the retracted extra-judicial confession of the appellant, which requires corroboration, cannot be said to be corroborated by the evidence of P.W. 1. in the committal Court admitted under Section 288, Criminal Procedure Code. In Queen Empress v. Bharmappa I.L.R. (1889) Mad 123, a Bench of this Court has held that when a prisoner was convicted of murder on a confession, retracted at the trial, corroborated by depositions read under Section 288, Criminal Pro-Procedure Code and also retracted at the trial, the prisoner should not have been convicted on such evidence. The judgment is a very brief one and it does not contain reasons why the learned Judges thought that the depositions read under Section 288, Criminal Procedure Code, retracted at the trial, cannot be used to corroborate a retracted

confession. Evidently, the judgment is based on the fact that both pieces of evidence, in the opinion of the learned Judges required corroboration. But in a series of decisions of this Court and the Supreme Court, it has been held that evidence admitted under Section 288, Criminal Procedure Code is substantive evidence, which does not really require corroboration. In fact Section 288, Criminal Procedure Code does not contain any such qualification that the evidence admitted under it should not be used without corroboration. It is true, the evidence given in the committal Court, which is not adhered to by the witness in the Sessions Court, should not be lightly admitted by virtue of Section 288, Criminal Procedure Code and it can be acted upon as substantive evidence only if the Court is completely satisfied that it is true. In the Bench decision of the Travancore-Cochin High Court in Narayana Pillai v. State , the entire case-law has been discussed and it has been held that evidence brought on the records of the case under Section 288, Criminal Procedure Code can be made use of to corroborate a retracted confession. The principle that a retracted confession cannot be acted upon, in the absence of corroboration in material particulars, is referred to in that decision. The decision in Queen Empress v. Bharmappa I.L.R. (1889) Mad. 123, has been referred to in that decision and it is pointed out that how the view expressed in that decision and in the decision in Empress v. Jadub Das I.L.R. (1900) Cal. 295, to the same effect, cannot be accepted, in view of the later decisions of the Madras High Court and other High Courts as to the effect of evidence admitted under Section 288, Criminal Procedure Code. It has been held by the Travancore-Cochin High Court, on the basis of the decisions in Velliah Kone v. King Emperor : (1922)43MLJ222 , and B. Peda Somadu v. Nethipudi Appigadu I.L.R. (1924) Mad. 232 : 45 M.L.J. 602 : A.I.R. 1924 Mad. 379, that evidence brought on the records of the case under Section 288, Criminal Procedure Code can be made use of to corroborate a retracted confession. In both the above Madras decisions it is pointed out that the evidence admitted under Section 288, Criminal Procedure Code is substantive evidence. In Velliah Kone v. King Emperor : (1922)43MLJ222 , Odgers, J., has clearly stated that under Section 288, Criminal Procedure Code and the authorities referred to by him, once the evidence before the committing Court is admitted, it stands exactly on the same level as any other evidence in the case. It was held in that decision that the

evidence given before the committing Magistrate could be corroborated by a previous statement taken before a competent investigating authority and that the use of such material for corroboration cannot be confined to evidence taken at the trial. In B. Peda Somadu v. Nethipudi Appigadu I.L.R. (1924) Mad. 232 : 45 M.L.J. 602 : A.I.R. 1924 Mad. 379 , Wallace, J., has pointed out that the broad principle to be observed clearly is that where witnesses are so careless of the truth as to abandon readily on oath what they have previously sworn on oath, their statement on any point should not be accepted without great caution and sound judicial reasons for accepting as true anything they have said. The learned Judge has also observed that some times this principle has been interpreted in particular cases to mean that sound judicial reasons are absent unless there is independent corroboration on material particulars. It is true that when the Court considers that the evidence of a particular witness given in the committal Court and retracted at the Sessions Court requires corroboration, it is possible to argue that such evidence requiring corroboration cannot be used to corroborate any retracted confession, which also requires corroboration, it is possible to argue that such evidence requiring corroboration cannot be used to corroborate any retracted confession, which also requires corroboration. But this would depend on facts and circumstances of a particular case. In the decision of the Travancore-Cochin High Court referred to above, there is reference to the observation of Lord Goddard in Mohammad Sugal Esa v. The King (1915) 2 M.L.J. 493 : A.I.R. 1946 P.C. 3, though made in a different context, to the following effect:

Once there is admissible evidence a Court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence.

It is pointed out in the Travancore-Cochin decision that Section 288, Criminal Procedure Code has come up for consideration before the Privy Council as also before the Supreme Court of India and that though the question as to corroboration did not specifically arise for consideration before those tribunals, there are sufficient indications in their pronouncements that the section does not admit of any limitation. We are, therefore, unable to lay down as proposition of law that a retracted, judicial confession cannot, under any circumstances, be corroborated by evidence admitted under Section 288, Criminal Procedure Code.

It would depend upon the facts of each case, whether it would be safe to do so and it is, in this view that we would like to distinguish the decision in Queen Empress v. Bharmappa I.L.R. (1889) Mad. 123, already referred to.

10. In the present case there are several circumstances, which clearly prove the guilt of the appellant beyond reasonable doubt. It should be noted that the appellant, his mother and the deceased were the only inmates of the house, apart from the two children. In fact, the evidence of P.Ws. 1 and 2 on this aspect has not been cross-examined. There is no suggestion that there was any one else in the house. There is the conduct of the appellant in appearing in the Police Station with the blood-stained clothes in a bundle and the weapon, which was also bloodstained, though its origin could not be traced on account of disintegration. The explanation of the appellant is that he found one Peer Mohammad coming out of his house, but there is no support for this fact even in the evidence of P.Ws. 1 and?, who could have seen Peer Mohammad or any stranger leaving the house, in the morning hours at 7 or 7-30 a.m. There is also no conceivable reason why Peer Mohammed a boy as stated by the appellant, should have brutally stabbed the appellant's wife. The version put forward by the appellant that one Peer Mohammad came out of the house is only a myth. There is really no reason to disbelieve the evidence of P.Ws. 3 to 5 about the extra-judicial confession made by the appellant In fact, it rings true. They belong to the community of the appellant and they are residents of the same locality. Nothing has been suggested to any of these witnesses to show why they should come forward and depose falsely against the appellant. The reason for P.Ws. 1 and 2 not giving evidence about the incriminating circumstances against the appellant found in their earlier statements is obvious, as P.W. 2 is his mother and P.W. 1 is the sister of P.W. 2. We have no doubt that the version of P.W. 1 in Exhibit P-2 really represents the truth, as it is consistent with her earlier version in Exhibit P-l. In fact, there is nothing to show that she gave any different version during the investigation in this case. We are fully satisfied about the truth of the version in Exhibit P-2 and this by itself is sufficient, along with other circumstantial pieces of evidence, to find the appellant guilty. It could not be said that this evidence and other pieces of circumstantial evidence referred to by us cannot corroborate the retracted extra-judicial confession of the appellant. It is true the learned Advocate for the appellant

has made a comment that P.W. 1 merely stated, even in her prior statements, that the appellant trampled or put his foot on the neck of the deceased Kathija Bibi. There is no indication in the medical evidence to support the statement. The death of the deceased was not caused by strangulation but by stabbing. Evidently P.W. 1 went there only at the last stage of the occurrence, when the appellant was still having his leg on the neck of the deceased and having the weapon in his hand. This P.W. 1 was not a witness of the entire occurrence in this case. She has gone back from what little she had stated in the committal Court, when she came to depose in the Sessions Court. Though the learned Sessions Judge has observed in paragraph 13 of his judgment that the motive for the murder is not clear, it is quite apparent, as already stated from the suspicion entertained by the appellant about the fidelity of his wife as spoken to by his own mother P.W. 2 and the letter of divorce sent by him to his father-in-law, P.W. 10, that the appellant was seriously ill-disposed towards his wife Kathija Bibi. The conviction of the appellant under Section 302, Indian Penal Code is fully justified on the evidence in this case. The appellant has been given the lesser penalty of imprisonment for life for the reasons mentioned by the learned Sessions Judge in the penultimate paragraph of his judgment. Conviction and sentence are confirmed and the appeal is dismissed.