

In Re: Baggam Appalanarasayya

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Court : Chennai

Decided On : Jul-30-1940

Reported in : AIR1941Mad101

Appellant : In Re: Baggam Appalanarasayya

Judgement :

Mockett, J.

1. The appellant who is the karnam of the village of Gangachollapenta was charged before the learned Sessions Judge of Vizagapatam together with three other persons for murdering one Thalada Ramaswami on the night of 2nd August last. The murder must have taken place on the main road between Gajapatinagaram and Mentada very near to Mentada There is ample evidence on the record to show that the appellant and the deceased were on terms of friendship. That has been proved by the village Munsif and there are circumstances in this case which strongly bear that out. But the learned Sessions Judge has relied on certain evidence in this case as proving motive on the part of the appellant to murder the deceased. That motive is derived from statements made by the deceased to his wife and to his wife's sister to the effect that in relation to a law suit in which the deceased's wife's sister, one Pydithalli was concerned the appellant had accepted a bribe from the plaintiff one Narayanamma in the suit against Pydithalli. The motive is thus entirely derived from statements made by the deceased. These statements are wholly inadmissible. There is

nothing in Section 32, Evidence Act, which makes them admissible. They are not statements made by the deceased as to the cause of his death or to circumstances of the transaction which resulted in his death. The Judicial Committee in *Pakala Narayanasami v. Emperor* has considered the provisions of Section 32(1), Evidence Act, in relation to statements of deceased persons who have been murdered. Lord Atkin (at p. 763) points out that

the circumstances must be circumstances of the transaction, general expressions indicating fear or suspicion whether of, a particular individual or otherwise and not directly related to the occasion of death will not be admissible.

2. In this appeal the deceased's statements provide nothing more than grounds for supposing that the deceased suspected the accused of having betrayed his wife's sister in a civil case. They in no way are to be associated with the actual murder. Evidence of these statements should have been excluded. There was thus no admissible evidence of motive on the record. On the other hand, as we have indicated, there was evidence showing the contrary and friendship between two persons is not consistent with a desire on the part of one to murder the other in the absence of evidence to the contrary. On the day in question, it is in our view beyond dispute that the deceased and the appellant set out together to go to Mentada village. We think they were going out together on a drinking bout. This is probabalized by the evidence of the deceased's wife and in fact there is the evidence of P.Ws. 5 and 6 that at about dusk on the evening in question the appellant and the deceased were drinking together in Mentada. P.W. 4 also proves that the deceased and the appellant went together because he lent a stick to the deceased and pieces of that stick were found at the place of the murder. It is convenient to pause here and say that at about 3 P.M. on 3rd August that is the next day after these two went to Mentada together, P.W. 21 found in his field which is marked on the plan the body of a man. He at once sent a report (Ex. H) to the village Munsif. The body was identified as that of Thalada Ramaswami and it is beyond doubt that he had been murdered. The medical officer P.W. 1 in his certificate (Ex. A) describes the injuries. The skull was fractured in no less than four places. In all there were ten injuries, cuts and bruises; and all the injuries, says the doctor, could have been caused by blows with a stick and in fact portions

of a broken stick were found upon the scene.

3. So the position is that the appellant and the deceased were together in Mentada on that evening at about dusk. The next evidence of their movements is given by P.Ws. 14, 15 and 16 and their evidence can be summarised very shortly. They were proceeding in a jutka from Gajapatinagaram railway station to Mentada. There were three people by the side of the road near the place where the body was found. A little beyond, that is to say, on the Mentada side P.W. 14 saw the appellant and the deceased. P.Ws. 15 and 16 saw the deceased and another man the difference being that P.W. 14 identifies the appellant, the other two are unable to do so. P.W. 15 says that they were reeling along the road as if they were drunk which is entirely consistent with the information which P.Ws. 5 and 6 have given about what they were doing in Mentada. So P.Ws. 14 to 16 prove that at the spot they passed three unknown men whom they later identified as accused 2, 3 and 4 waiting by the side of the road and beyond them were coming towards the village the deceased and the appellant and we have no doubt that they were both under the influence of drink. The only other evidence of what happened on the road is given by P.W. 18. With regard to P.W. 18, evidence has been led by the defence and his cross-examination casts some doubt on whether he was there at all. However the probabilities are that he was there. But his evidence amounts to no more than this. He says that on the road between Chittivalasa and Mentada he saw the accused 1, 2 and 3, he does not mention accused 4 and Ramasami fighting and abusing each other. He goes on 'I did not see who beat whom. They were all fighting together. I ran away as I was afraid.' Ten days later only he says did he hear of Ramasami's death and four days later he was examined by the Sub-Inspector. He was able to identify accused 2 and 3. And that is the evidence led by the Crown.

4. The appellant followed a course which might well be followed more often. It must be remembered that in view of the provisions of Section 162, Criminal P.C., it is not possible for an arrested person to make a statement to the police which can be used in evidence at the trial. Evidence of what an accused person said when arrested often so valuable to innocent accused according to English experience is denied to the defence under the Indian procedure. But an accused person can, if

he knows it, make a statement of his version of the case before a Magistrate and this is what the appellant at once did. He made a statement under Section 164, Criminal P.C., giving his version of what happened and his story is consistent with the case for the prosecution. He says that on the day in question he proceeded to Mentada with the deceased and that on their way home he saw Muppadi Krishnamurthi who is P.W. 14 thereby bearing out what that witness said and P.W. 14 was in his jutka as he had stated.

5. According to the appellant the deceased said that he did not wish to be seen in the state in which they were, that is under the influence of drink and they stepped aside from the path. A little further the three other accused Bugatha Sanyasi, Kalla Ramasami and Divakalla Bamudu were waiting and according to him they set upon Ramasami, put a rope round his neck and beat him with sticks and a pen-knife with a folding blade. He says that the pala stick to which reference has been made and which had been lent by P.W. 4 was broken. According to the appellant these three men threatened him not to say 'anywhere' which presumably means anything to anyone. Taking this evidence at its highest, we only have a statement by P.W. 18 that a melee took place on that road that night. There is nothing to show that the appellant was doing anything hostile to the deceased. Indeed the probabilities are from the fact that they had been out for the evening together under circumstances that made for friendship that he would have been on the deceased's side rather than against him. It is not impossible that having seen this man attacked in this manner and living as he did in the village with the three persons concerned he might have been afraid that he might meet a similar fate and quite wrongly kept silence. We are not however dealing with what, was the procedure for a village officer under the circumstances but with the question whether he has been proved to be guilty of murder. The learned Sessions Judge has arrived at the conclusion that he is guilty for the following reasons. Holding rightly that Ex. c was admissible (vide the observations of Lord Atkin at P. 767 of the report to which we have referred) the learned Sessions Judge referring to Ex. c, says:

It does prove beyond doubt that not only was accused 1 with the deceased when the deceased was last seen near the place where he was murdered, but that he

continued to be with him until he had been beaten to death. Accused 1 is a karnam and a man in position of authority. It cannot be believed that he was taken by surprise, stood by horrified and then kept quiet because he was afraid of the threats of his assailants. With regard to this it must be remembered there was evidence that he was very much under the influence of drink. The only conclusion that can be drawn is that he either took part in the beating himself or was a party to it. I am of opinion, therefore, that the prosecution has proved its case against accused 1.

6. At the sessions, it is right to observe, the appellant resiled from Ex. c, which contained at least a possible story and substituted for it a wholly incredible alibi. Whether he did this on his own initiative or on legal advice we do not know. He may have been influenced by the fact that Ex. c was treated throughout as being a strong circumstance against him. What should have been a shield was turned into a hostile spear. Ex. c was labelled at once by the Magistrate as a 'confession statement', in spite of the fact that it was self-exculpatory, a circumstance which must have seemed ominous to the appellant. In our opinion, EX. c and the evidence of P.W. 18 proved no more than that there was an attack probably by accused 2 to 3 of which P.W. 18 could see very little as he was quite unable to say who was striking whom. We have already indicated that the evidence of V. W. 18 taken with the relationship between these two - the deceased and the appellant - is quite as consistent with the view that the appellant might have been taking the side of the deceased, as with the supposition that he was hostile to him. Accused 2, 3 and 4 were acquitted and it must therefore be presumed, that the trial Judge did not believe that accused 2 made a confessional statement as stated by P.W. 3. But it appears to us that although he arrived at the conclusion that they were innocent or at least not proved to be guilty, the learned Judge has convicted the appellant not on the ground that he wholly committed the murder himself but that he took part in it or was a party to it. In our view there was no evidence at all on which a conviction could be based. It is reasonable to suppose that this evidence with regard to motive rested as it was on statements by the deceased was not objected to by the defence but we consider it right to observe that the trial Judge should have excluded these statements and that in any case the Public Prosecutor of the District should himself have seen that such wholly inadmissible evidence

was not placed before the Court. The learned Judge is entitled to the assistance of the Bar with regard to these matters. It does not appear in this case the learned Sessions Judge received the assistance to which he was entitled. As a result of these conclusions the conviction and sentence of the appellant must be set aside, his appeal allowed and he will be set at liberty.

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