

**In Re: Karuppan Alias Mond**

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**Court :** Chennai

**Decided On :** Jul-11-1969

**Reported in :** (1970)1MLJ631

**Appellant :** In Re: Karuppan Alias Mond

**Judgement :**

**K.S. Venkataraman, J.**

1. The appellant has been convicted under Section 302, Indian Penal Code, for committing the murder of his wife Kuppayee alias Kannammal by stabbing her with a knife on 16th February, 1968 (a Friday) about 10-30 a.m. and has been sentenced to the extreme penalty of the law, by the learned Additional Sessions Judge of Coimbatore.

2. The deceased was the second daughter of witness Subban (P. W. 8). He is a native of Chikkanoothu. He gives an account of the marital life of the accused and the deceased. They were married about ten years before the occurrence. They had three children. They lived together in Cheripalayam (more than ten miles from Chikkanoothu), the village of the accused for about seven years. The accused had, however, no separate house of his own and was living with one of his brothers and his mother. The deceased, however, was reluctant to continue to live with him unless he put up a separate house. She came away to live with her father in Chikkanoothu. In Karthigai preceding the occurrence (November, 1967), the

accused also joined her because he had. some stomach-ache. Some treatment was given to him therefor and he got cured. He then wanted his wife to go back with him to Cheripalayam, but she refused saying that she could not live in the pials of the houses of others.

3. P.W. 2 is the maternal uncle of the deceased. His village is Emmaigoundanpalayam, which is about half a mile south west of Cheripalayam. On Thursday, 15th February, 1968 P.W. 2 had come to Chikanoothu to see his son Govindan (P.W. 9) who was ill. After seeing him, P.W. 2 went to the house of his sister's husband (P.W. 8) to get back a loan of Rs. 15. P.W. 2 slept in P.W. 8's house that night. P.W. 2 says that on the night of the Thursday the accused came to P.W. 8's house and called his wife to go with him to Cheripalayam. She refused to accompany him till he built a house. P.W. 2, his sister Sankaral (mother of the deceased) and P.W. 8 advised the deceased to go with the accused to Cheripalayam so that they might bring back chickens and the dhal which they had left behind at Cheripalayam. She agreed to go with the accused. Accordingly, on the morning of Friday, 16th February, 1968 at 5 a.m., the accused and the deceased set out from Chikkanoothu to Cheripalayam. P.W. 2 accompanied them. P.W. 8 went with them for a short distance upto the bus stand at Moongitholuvu and then went away on his usual work of collecting village kist. P.W. 2, the accused and the deceased got into the bus, travelled in it and got down at Negamam, about 7 or 7-30 a.m. P.W. 2 says that he, the accused and the deceased then walked up to Kappalangarai, where in the tea shop of P.W. 10's father they took idlies and coffee. P.W. 10 also speaks to it. P.W. 2 says that they then proceeded by foot northwards on the Negamam-Coimbatore Road for a distance of two to three furlongs. That has been marked in the sketch (Exhibit P-22). At a particular place, P.W. 2 branched off westwards on the cart-track to his village Emmaigoundanpalayam. It was about 9 a.m. then. The accused and the deceased went northwards on the Negamam-Coimbatore Road.

4. Witness Palaniammal (P.W. 4) claims to have seen the accused and the deceased at 10 a.m. on the Negamam-Coimbatore Road, when they were standing under a, tamarind tree to the south-east of Ranga Thevar's land. P.W. 4 being a resident of Cheripalayam knew them for eight or nine years. She asked

them why they were standing there. The accused replied that they were standing there in order to proceed to their village Cheripalayam. P.W. 4 then proceeded southwards to Kappalangarai to board a bus there to Nadupalli. When she was waiting there for the bus, she saw the accused coming along the road towards Kappalangarai with his dhoti folded up and tied above his knee. He was coming hurriedly. P.W. 4 asked him why he alone was coming south without his wife. The accused replied that his wife had proceeded towards the north to go to Cheripalayam and that he had to go south for some business. He went away towards the south. P W 4 then boarded a bus and went to Sulaikal. She returned to her village on Sunday 18th February, 1968 and she was examined by the Sub-Inspector on that day.

5. P.W. 4 was the person to see the accused and the deceased together last. As to what happened thereafter there is no direct evidence, but there are two confessional statements of the accused, Exhibits P-1 and P-7. We shall presently refer to the circumstances under which those statements were recorded. According to those statements when they were going in the field south of Cheripalayam, about 10-30 a.m. the accused stabbed his wife with the knife which he was having (M.O.1). The later autopsy shows that the accused had inflicted a number of stabs on the deceased and that death must have been at the same spot and practically instantaneous. The place of murder has been marked in the sketch as two furlongs north-west of the tamarind tree where P.W. 4 had last seen them.

6. Easwaran (P.W. 3) is a resident of Cheripalayam. He swears that on Friday, 16th February, 1968, about 11 a.m. he saw the accused running towards the itteri leading to Emmaigoundanpalayam from the field in the north. P.W. 3 saw him from a distance of 25 feet on the south. P.W. 3 asked him where he was going. The accused replied that he was going on an urgent errand southwards. So saying he ran to the east and then towards the south along the main road. For the sake of the narrative it may be explained here that after the murder P.W. 3 was the first person who saw the accused and, as we have noted, P.W. 4, saw him later at the bus. stand at Kappalangarai.

7. The next stage in the evidence is that about 11-20 a.m., on 16th February, 1968, when P.W. 5, the former Village Headman of Chettikkapalayam, was going to the Taluk Office, Pollachi, and had entered the Sub-Collector's Office compound, the accused who was known to him called him, 'Sami' (Sir), P.W. 5 turned round and asked him where he had come. The accused told him that he had stabbed his wife and had come away and that he wanted to go to the Court and desired the witness to take him to the Court. The witness asked the accused whether his wife was alive or dead. The accused replied that he did not know. The accused was having the knife (M.O. 1) in his waist and he showed it to him. P.W. 5 pointed out that there were no blood-stains on his dhoti or on the knife. The accused replied that he had washed them. By then they had reached the gate of the Sub-Magistrate's Court. P.W. 5 told him that that was the Court and asked him to go there and tell the Magistrate whatever he wanted to say. P.W. 5 then went to the Taluk Office-in connection with his work.

8. P.W. 1 was the Sub-Magistrate, Pollachi. He says that on 16th February, 1968 at 11-45 a.m., when he was in the open Court conducting a trial, the accused appeared before him and wanted to make a statement. He recorded the statement in the words of the accused and read it over to him. The accused admitted it to be correct and affixed his thumb-impression. Exhibit P-1 is the statement. A question has been raised as to the admissibility of Exhibit P-1.

[After discussing the evidence his lordship proceeded to discuss the admissibility of Exhibit-P-1].

9. At this stage we may dispose of the objection about the admissibility of Exhibit P-1. The objection is that the statement was not recorded after observing the formalities prescribed under Section 164 of the Criminal Procedure Code and is, therefore, inadmissible; that is to say, that P.W. 1 did not warn the accused that he was not bound to make a confession, that if he did so it might be used as evidence against him and that further the Magistrate did not record any memorandum that after questioning the accused he had reason to believe that he was making the statement Voluntarily. Further as required by the Criminal Rules of Practice he did not give him time for reflection. Moreover questions if any put by the Magistrate

were not recorded. In support of this objection the decision of their Lordships-of the Privy Council in *Nazir Ahmed v. The King Emperor* I.L.R.(1936) Lah. 629 : L.R. 63 IndAp 372 : 71 M.L.J. 476, is relied on. The objection is however not tenable because Section 164, Criminal Procedure Code, applies only to a confession made to a Magistrate in the course of an investigation under Chapter XIV. Thus Section 164 (1) states:

Any Presidency Magistrate any Magistrate of the first-class and any Magistrate of the second class especially empowered in this behalf by the State Government may if he is not a police officer record any statement or confession made to him in the course of an investigation under this Chapter or under any other law for the time being in force or at any time afterwards before the commencement, of the inquiry or trial.

10. Here, however the investigation had not yet started, according to Sections 155 and 157, Criminal Procedure Code. The information of the crime had not reached the police and Exhibit P-1 was, in fact, the first information of the case and that was given to the Magistrate himself. Apart from the wording of the section, the principle of the section is that once investigation has started there is the danger of the accused-being induced by the police by promise or coercion to make a confessional statement and that is why elaborate precautions have been prescribed in Section 164, Criminal Procedure Code before a Magistrate could record a confession so as to ensure that the confession was voluntary and free from any such influence. Such inducement by the police cannot, however, arise in a case like this where the accused goes straightaway to the Magistrate before the police receive information of the offence. The Privy Council case was one where the investigation had started, but the Magistrate in flagrant violation of Section 164, Criminal Procedure Code, recorded memoranda of the places pointed out by the accused and his confessional statement. That was why the oral evidence of the Magistrate was prohibited. The following sentence; in the judgment of their Lordships of the Privy Council shows that the observations apply only to the confession made to a Magistrate during an investigation.

Their Lordships are, however, clearly of opinion that this unfortunate position cannot in future arise because, in their opinion, the effect of the statute is clearly to prescribe the mode in which confessions are to be dealt with by Magistrates when made during an investigation, and to render inadmissible any attempt to deal with them in the method proposed in the present case.

11. That is how the Privy Council decision has been distinguished by a Bench of to 'Court in Nainamuthu, In re : (1940)2MLJ89 ., where also the information given by the accused to the Magistrate was itself the first information of this crime. Under similar circumstances the Bench decision was followed by a Bench of the Andhra Pradesh High 'Court in Yendra Narasimhamurthy, In re (1965) M.L.J. 800 : (1965) Cri.L.J. 509:(1965) 2 A.W.R. 344.

12. There is, however, a Bench decision of this Court Somasundaram and Ramaswami Goundar, JJ.) in Thothan alias Ekan, In re (1956) 1 M.L.J. 206., which sounds a contrary note. The facts stated at page 207 are these. P.W. 8 gave a report, Exhibit P-6 before the Village Munsif. The Village Munsif sent his usual reports to the police and the Magistrate. The Sub-Inspector (P.W. 17) on receiving the report, reached the place of occurrence, held the inquest and sent the body for post-mortem examination. Meanwhile, on 8th March, 1955, about 5 p.m., the appellant appeared before the Sub-Magistrate with the knife (M.O.3) and gave a statement (Exhibit P-1) and surrendered the knife. At page 208 we find this:

Exhibit P-1 is the first statement made by the appellant before the Sub-Magistrate, before investigation started wherein he has confessed that he had stabbed his wife to death.

Following the Privy Council decision, the statement was held to be inadmissible. The Bench decision in Nainamuthu, In re : (1940)2MLJ89 ., was not referred to, probably because the confessional statement, Exhibit P-1, was not first information report of the crime. It is not clear from the report of the facts whether the confessional statement was given after the report Exhibit P-6 had reached the police. If it was given after the report had reached police, then investigation must be deemed to have started under Section 157, Criminal Procedure Code, and

Section 164, Criminal Procedure Code, would come into play and render the confessional statement inadmissible, since it was not recorded in accordance with Section 164, Criminal Procedure Code. It is the only way in which the case could be distinguished. If the facts were otherwise, it may require reconsideration.

13. There is a decision of a Bench of the Patna High Court in *Rishi v. State of Bihar* : AIR1955 Pat425 , where a Sub-Divisional Magistrate (Sri A. Haseeb) was returning in a jeep and found two carts loaded with rice. When questioned by the Sub-Divisional Magistrate, the cart-men admitted that the bags containing rice was loaded by one Rishi Dutta. The transport of rice was prohibited. It was held that the statements made by the cart-men were inadmissible, in view of the observations of the Privy Council in *Nazir Ahmad's case* I.L.R.(1936) Lah. 629 : 71 M.L.J. 476, With great respect, it seems to us that Section 164, Criminal Procedure Code, did not apply to that case, because investigation had not yet started under Chapter XIV.

14. We think we may usefully refer to the decision of the Allahabad High Court in *Emperor v. Ram Naresh* I.L.R. (1939) All. 377, where two persons, who along with some others were accused of a crime, went into a Magistrate's Court, confessed their guilt and asked that they should be arrested and sent to jail so that they should not fall into the hand of the police. The Magistrate sent for a petition writer who went into the Courtroom and took down the petition containing the confession to the dictation of the two persons and the petition was then signed by them. The confession was not recorded and verified by the Magistrate in accordance with Sections 164 and 364, Criminal Procedure Code. It was held that the confession was admissible under Section 21 of the Evidence Act, that the Evidence Act was a special law and that it was not affected by the procedural law of the Criminal Procedure Code. The Privy Council case was distinguished with the observation:..but that decision is quite irrelevant to the question which was before the Court. Their Lordships held that a Magistrate could not give oral evidence of a confession made to him if he deliberately ignored the provisions of Sections 164 and 364 of the Code of Criminal Procedure and did not even purport to act under those sections. There was no question in the case before me of the admissibility of oral evidence given by a Magistrate.

15. We have referred to this case, because it has received the approval of their Lordships of the Supreme Court in *State of Uttar Pradesh v. Singhara Singh* : [1964]4SCR485 . It was a case where a Magistrate not empowered to record confessional statements under Section 164, Criminal Procedure Code, purported to record the statement under Section 164, Criminal Procedure Code, in the course of police investigation, and, because he was not empowered to record the statement, the statement itself was not sought to be used, but oral evidence was adduced that he recorded the confession. *Nazir Ahmed's case* (1936) 17 Lah. 629 : 71 M.L.J. 476, was sought to be distinguished on the ground that it did not apply to a case of a Magistrate not empowered to record a confessional statement under Section 164, Criminal Procedure Code. This evidence was excluded by the High Court in appeal. On the further appeal to the Supreme Court, the question raised was whether the evidence was rightly excluded. Their Lordships held that the evidence was rightly excluded, on the ground that, when a statute confers a power on certain judicial officers, that power can obviously be exercised only by those officers and not by Magistrates of lower classes. That is the main decision in the case, but, in the course of the discussion, their Lordships distinguished *Emperor V. Ram Naresh* I.L.R. (1939) A11.377, referred to by us, with the following observation:

It was held, and we think rightly, that *Nazir Ahmed's case* (1936) 17 Lah. 629 : 71 M.L.J. 476, did not prevent the petition being admitted in evidence because it only forbade certain oral evidence being given.

Though the reason given is that oral evidence was not sought to be adduced and only oral evidence was forbidden by the Privy Council decision, it seems to us that the above observations of the Supreme Court lend support to our view that a statement like Exhibit P-1 in this case, which is itself the First-Information Report of the crime to the Magistrate, does not fall within the provisions of Section 164, Criminal Procedure Code.

16. There is another Bench decision of this Court (*Mack and Chandra Reddy, JJ.*) in *Ramaswami Reddiar, In re* : AIR1953 Mad138 , where the Magistrate not empowered to record a confessional statement under Section 164, Criminal



Procedure Code, but had the power to hold an inquest, held an inquest under Section 175, Criminal Procedure Code. Accused 1 and 2 were also examined then. On his becoming aware that they were making confessions, the Magistrate refrained from administering the oath to them, in correct conformity with Section 342(4), Criminal Procedure Code. After the statements were recorded, they were read out to the accused and were signed by them. They were recorded on police case diary paper. The formalities under Sections 164 and 364, Criminal Procedure Code, were not complied with. The Bench held that Nazir Ahmed's case (1936) 17 Lah. 629 : 71 M.L.J. 476, did not apply to the case, because, firstly, the Magistrate was not empowered to record confessions under Section 164, Criminal Procedure Code, and secondly, the Magistrate was empowered to hold the inquest and he was only acting within the powers conferred on him. It is stated at page 929 of the Report that the inquest was held by him as 'an inquiry into the cause of death' in addition to the investigation held by the police officers, who were while the inquest was in progress, making their own investigation. This shows that the police had already taken up the investigation and it must be so since usually inquests are held only after the police commence investigation. Here therefore was a case where though investigation, by the police had started under Chapter XIV, the confessional statement was recorded by the Magistrate not empowered under Section 164, Criminal Procedure Code. It seems to us that the above decision cannot be considered good law, in view of the later decision of the Supreme Court in *State of Uttar Pradesh v. Singhara Singh and Ors.* : [1964]4SCR485, referred to above. It is true that the Magistrate was empowered to hold an inquest under Section 176, Criminal Procedure Code. But the Court must adopt a harmonious construction of Sections 176 and 164, Criminal Procedure Code, on the principle pointed out in another decision of the Supreme Court, viz., *Deep Chnad v. The State of Rajasthan* : [1962]1SCR662. There, in a verification proceeding held by the Magistrate, he prepared a memorandum recording his own observations as also the statement made to him by a prosecution witness but not in the manner prescribed by Section 164, Criminal Procedure Code. It was contended that the memorandum of observations would be admissible under Section 9 of the Evidence Act which makes relevant the facts establishing the identity of a thing. Their Lordships pointed out that Section 9 of the Evidence Act and Section 164,

Criminal Procedure Code, must be read together and harmoniously construed so as to give full effect to both of them and observed:

If a Magistrate speaks to facts which establish the identity of any thing, the said facts would be relevant within the meaning of Section 9 of the Evidence Act but if the Magistrate seeks to prove statements of a person not recorded in compliance with the mandatory provisions of Section 164 of the Code of Criminal Procedure, such part of the evidence, though it may be relevant within the meaning of Section 9 of the Evidence Act, will have to be excluded. By such a construction of the provisions a satisfactory solution could be evolved.

Applying the above principle to the facts in Ramaswami, In re : AIR1953 Mad138 , the correct position would be that the statements of the persons other than accused 1 and 2 would be admissible under Section 176, Criminal Procedure Code, but not the statements of the accused 1 and 2.

17. It will be seen that in the case on hand before us, no such difficulty arises, as investigation under Chapter XIV, had not started and Exhibit P-1 was itself the first information in the case.

18. Some other cases have been referred to, but we do not think it necessary to refer to them, because in those cases investigation under Chapter XIV, had started and it was held, for instance, that the provisions of Section 164, Criminal Procedure Code, could not be circumvented by producing the accused to a Magistrate not empowered to record a confessional statement under Section 164, Criminal Procedure Code.

19. Finally, we may add that, even if we exclude Exhibit P-1, the remaining evidence in this case is ample to sustain the conviction of the appellant. The knife (M.O. 1) which the accused produced and his dhoti (M.O.6) were found to contain human blood. The sandals (M.O. 3) which were recovered from near the corpse have been identified by P.Ws. 2 and 8 as belonging to the accused. P.W. 2 did not mention that circumstance of ownership to the police and in the committal Court, but even if P.W. 2's evidence is left out of account, the evidence of P.W. 8 cannot be left out of account. It will be noted that the accused himself has admitted that

M.O. 3 series belonged to him and were presented to him by P.W. 8, but he would say that he had left them behind in P.W. 8's house, because he was taken in a cart. That is an incredible story. The sandals (M.O. 3) were found Very near the corpse and contained human blood. That again shows that accused's connection with the murder.

20. There can be no doubt whatever that the accused is guilty under Section 302, Indian Penal Code, for the murder of his wife.

21. The only question which his learned Counsel Kumari Radha could press on his behalf seriously was that of sentence. Though the murder was deliberate, according to Exhibit P-7, the evidence including the confessional statement shows that the wife had been refusing to live with him in Cheripalayam, because the accused did not have a separate house. Further he also suspected her fidelity. Again, according to Exhibit P-7, she refused to accompany him to Cheripalayam but started going back to Chikkanoothu. In view of these circumstances, we reduce the sentence to one of imprisonment for life.

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