

In Re: Ganesan

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Court : Chennai

Decided On : Feb-05-1973

Reported in : 1974CriLJ381

Judge : Venkataraman and ;Maharajan, JJ.

Appellant : In Re: Ganesan

Judgement :

Venkataraman, J.

1. This is an appeal against the judgment of the learned Sessions Judge of North Arcot convicting the appellant. Ganesan. of the murder of his wife and sentencing him to imprisonment for life. It is alleged that he cut her with a bill-hook (M. O. 1) in his house at Thiruvannamalai. about 8.30 a. m. on 8-1-1972.

2. They had been married just a few months before. But their marital relationship had not been happy. The appellant had a suspicion, which seems to us to be well founded, that she had been in sexual intimacy with her elder sister's husband. P. W. 6. and. further, she had been refusing conjugal felicity to her husband, the appellant P. W. 1, the eight-year old daughter of an other elder sister of the deceased Kamala. was staying temporarily with the appellant and the de-ceased. On the day in question the appellant asked P. W. 1. to go and Bet onions. The deceased pointed out that she might be involved in some accident and declined to send her. This alone, according to the prosecution, was the motive for the

appellant taking the bill-hook nearby and inflicting several cuts on his wife. The murder was witnessed not merely by P. W. 1, but also by P. W. 2. who resides in the house just north. She came out on hearing the screams of Kamala and she saw the appellant inflicting some of the cuts. P. W. 4, a neighbour of the appellant, also saw the appellant coming running with blood on his hands. The appellant had a rope. The appellant ran out crying. 'I have committed murder'. The rope fell from his hand.

3. The evidence shows that the appellant went straight to the police station at 9-15 a. m. and made a statement. In fact, that is the first information report in the case. It contains the confession that the appellant inflicted cuts on his wife. The learned Sessions Judge has excluded this portion and marked the rest of the statement, as Ex. P-6. This, however, is not correct. In *Aghnoo Nagesia v. State of Bihar* : 1966 CriLJ100 it has been observed:

Now a confession may consist of several parts and may reveal not only the actual commission of the crime, but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i. e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the Crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement, partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.... Little substance and content would be left in Sections 24, 25 and 26. if proof of admissions of incriminating facts in a confessional statement is permitted....

Some of the decided cases took the view that if a part of the report is properly severable from the strict confessional part, then the severable part could be tendered in evidence. We think that the separability test is misleading, and the

entire confessional statement is hit by Section 25, and save and except as provided by Section 27, and save and except the formal part identifying the accused as the maker of the report No. part of it could be tendered in evidence.

The above decision has been followed in *Khatri Hemraj Amulkah v. State of Gujarat* : 1972 CriLJ626 . According to these decisions, the only portion of the statement which could be admitted is the initial portion that he was making the statement, which would not be of any use to the prosecution. But there is no bar to the appellant using the statement in his favour. See also *Mottai Thevar in re* : AIR1952 Mad586 . We are referring to this at this stage itself, because Ex. P-6 contains statements favourable to the appellant. It is a long statement, but, for our purpose, it is enough to give a brief summary. Ever since the marriage the wife had been refusing to have conjugal relation-ship with him. On the other hand he had good reason to believe that she had been carrying on with P. W. 6. her elder sister's husband. On one night, Kamala and P. W. 6 had gone out for the ostensible purpose of answering calls of nature, but evidently for having sexual relationship. On the night previous to the day of occurrence also she refused him conjugal felicity.

On the morning of the day of occurrence according to Ex. P-6, the appellant gave ten paise to P. W. 1 and asked her to get onions. But his wife, Kamala, said that she should not go out. He pointed out that P. W. 1 was rendering service for all and sundry in the village, but why not for them. In reply to that Kamala abused him. (Tamil Text omitted-Ed., (you silly fellow, you run away) and hurled a vegetable-cutter on him. He warded it off with his left hand. It fell down. But she threw it on him again with force. He warded it off with his right hand. This time it caused an injury on the palmar aspect of his right little finger. It was about 8-30 a. m. He could not control his anger. He therefore took out the koduval and inflicted cuts on her. He came out with a rope with the idea of hanging himself that day. But on nearing Manonmani's house, he thought that it was not proper to do so and threw it aside. There used to be frequent quarrels between him and his wife, and Andalammal (P. W. 2) and Devaraja Pillai (P. W. 7) knew about it. So runs Ex. P-6.

Kamala was taken to the hospital where the doctor (P. W. 3) examined her. He found on her 15 injuries. She was unconscious and in a dying state. Hence no statement could be recorded from her. Some treatment was given, but she died at 11-40 a. m. Intimation was given to the police. The section of the first information report was altered to 302. Inquest was held. Therefore autopsy was held. It was found that injury No. 2 was fatal. Death was due to multiple injuries and in particular injury No. 2. It was an incised wound 2 inches x 4 inch x i inch on the left cheek, just above the body of the mandible and it injured the vital structures underneath. On opening the skull, blood clots were seen underneath the brain.

4. The appellant was examined by the same doctor at 12-30 p. m. and was found to have an incised wound 1/2 inch x 1/4 inch x 1/4 inch on the base of the palmer aspect of his right little finger.

5. In the committal court the appellant denied the entire offence. But in the Court of Session, while denying the evidence, he stated at the end as follows:

I went in search of work but could not set work. I returned home. Kasi (P. W. 6) was having some dispute with my wife. I enquired what the dispute was. Kamala (my wife) told me that Kasi is harassing me constantly. Kasi (P. W. 6) came to stab me with a knife, Kamala intervened. The knife fell on her cheek. I fell down giddy.

The appellant did not adduce any defence witness.

6. The learned Sessions Judge accepted the prosecution evidence and rejected the defence of the appellant that Kasi was there trying to molest Kamala at the time of the occurrence. He also disbelieved the version of the appellant in Ex. P-6 that his wife threw the vegetable cutter and held that in any case it would not constitute grave and sudden provocation within the meaning of Exception I or enable him to invoke the plea of self-defence under Exception II. and therefore convicted him of the offence under Section 302 I. P. C.

7. We have no difficulty in holding that it was the appellant who inflicted several cuts on his wife with the koduval M. O. 1. There is the evidence of P. W. 1 about it and there is also the evidence of P. W. 2. The evidence of P. W. 4 also shows that

the accused came out of the house with blood on his hands and stated that he had committed the murder. Under the circumstances it could only mean that he had murdered his wife. He went to the police station and it was he who made the statement. The chemical examination revealed human blood on the koduval M. O. 1 which was recovered on the statement of the accused to the Inspector P. W. 12 from the loft of his (appellant's) house. It is clear from the evidence that it was the appellant who caused the in-juries to his wife with the koduval M. O. 1 and normally he would be guilty of murder under Section 300 (1) or (3). The question, however, is whether he can invoke Exception I or Exception II. In the first place we are not inclined to believe his defence that P. W. 6 was there and was trying to molest Kamala.

P. W. 1 who was present stoutly denies that P. W. 6 was there and P. W. 6 himself denies that. If P. W. 6 was there P. W. 2 would not have failed to notice P, W. 6 there P. W. 2 says that P. W. 6 did not come there at all. There is no doubt about the statement Ex. D-1 of P. W. 1 in the committal Court that that morning P. W. 6 had come there. P. W. 1 disowns having made such a statement The learned Sessions Judge thinks that it must have been a statement made by mistake due to fright in Court. Even assuming Ex. D-1 to be true that would only mean that earlier that morning P. W. 6 had come and gone away. But it would not be sufficient to hold that he was there at the time of the occurrence. As a matter of probability it is not at all probable that he was trying to molest or flirt with the woman Kamala at 8.30 a.m., when P. W. 6 must have expected the appellant to turn up at any moment. P. W. 6 was not seen at the time of the occurrence either by P. W. 1 or by P. W. 2 or by P. W. 4. The appellant himself did not put forth this version in the committal Court,

8. We have however to consider the other aspect of the defence, namely, that Kamala threw the vegetable cutter on him. That version was put forth by the appellant within an hour of the occurrence to the Inspector P. W. 11 and is contained in Ex. P-6. It is difficult to believe that within such a short time the appellant invented such a version. That version also receives support from the fact that the appellant had an injury on the palmer aspect of the base of the right little finger. We have seen the koduval M. O. 1 and we do not think that the injury would

have been caused accidentally when the appellant inflicted the cuts with M. O. 1 on his wife because he must have held the wooden handle which is long and smooth and even if any portion of his fingers came into contact with the blade of the koduval it must have been only the right index finger and not the right little finger. Further we doubt whether the mere refusal of the wife to send P. W. 1 to buy onions would have provoked the appellant to such violence. The vegetable cutter itself was found to contain human blood on chemical examination. Taking all these circumstances together, we hold that Kamala threw the vegetable cutter on the appellant and caused injury on the right little finger. In our opinion, this cannot afford a ground for self defence under Exception II, because after throwing it at her husband Kamala did not try to attack him with it and it was not justifiable for the appellant to inflict cuts on Kamala. But at the same time it seems to us that her act in throwing the vegetable cutter at him constituted grave and sudden provocation which deprived him of the power of self-control within the meaning of Exception I. In *Nanavati v. State of Maharashtra* : AIR 1962 SC605 , Their Lordships of the Supreme Court laid down the following law:

The Indian law, relevant to the pre-sent enquiry, may be stated thus : (1) The test of grave and sudden provocation is whether a reasonable man, belonging to the same class of society as the accused placed in the situation in which the accused was placed would be so provoked as to lose his self-control, (2) In India, words : and gestures may also, under certain, circumstances cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300 of the I. P. C. (3). The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled, down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

In our opinion all these criteria have been satisfied in this case, and it is significant to note that immediately after inflicting the injury on his wife the appellant came out with a rope with the intention of hanging himself. It shows that he had committed the act of violence in a fit of uncontrollable anger and immediately felt remorse for

it after his temper had cooled down. The deceased has been refusing him conjugal relationship and seems to have been carrying on with P. W. 6. On the day in question she had declined to allow the appellant to send P. W. 1 on an errand and on the top of H she had thrown the vegetable cutter on him twice and it even caused him injury. Viewed in that background culminating in her act of throwing the vegetable cutter, the appellant had grave and sudden provocation from his wife and Exception I to Section 300 would apply to this case, Accordingly we alter the conviction into one Under Section 304 First Part. Indian Penal Code, and under the circumstance of the case sentence him to rigorous imprisonment for five years.

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