

In Re: Natesan

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Court : Chennai

Decided On : Nov-15-1967

Reported in : 1969CriLJ83; (1968)1MLJ304

Appellant : In Re: Natesan

Judgement :

ORDER

N. Krishnaswamy Reddy, J.

1. The petitioner was convicted under Sections 304-A and 337, Indian Penal Code, and sentenced to rigorous imprisonment for one year under the former section, by the Sub-Divisional Magistrate of Ulundurpet. No separate sentence was awarded under Section 337, Indian Penal Code.. On appeal the Sessions Judge, South Arcot, confirmed the conviction and sentence.

2. The prosecution case is briefly this : On the night of 17th September, 1965 at about 3 A.M., P.WS. 1, 2 and 3 were travelling in two carts laden with manure leaves from Sathanur towards Ulundurpet through the G.S.T. Road proceeding from south to north. P.W. 1 was driving the first cart and the deceased Samikannu and another person were sitting on the top of the leaves in that cart which was followed by the cart driven by P.W. 2 in which P.W. 3 and another person were seated on the top of the leaves. The lorry MDS. 6721 driven by the petitioner was coming behind the two carts and suddenly dashed against the cart driven by P.W.

2 and then against the other cart. The occupants of both the carts were thrown out. Samikannu and three bulls died. The other occupants were injured. The lorry stopped after proceeding some distance northwards and after hitting against a tree on the left side of the road. The petitioner appeared at the Ulundurpet Police Station; at 5 A.M. and reported the occurrence to P.W. 6, the Head Constable who recorded Exhibit P-6 statement from him.

3. The learned Counsel appearing for the petitioner Sri Mohan Kumaramangalam does not dispute the finding of the lower appellate Court that due to the negligent driving of the driver of the lorry, Samikannu and the three bulls were killed and P.Ws. 1 to 3 were injured. But his contention is that there is no acceptable evidence that the petitioner drove the lorry at the time of the accident. The prosecution witnesses were unable to say as to who drove the lorry at the time of the accident as it was dark. The prosecution relied upon Exhibit P-6, the statement given by the petitioner in which he stated as follows:

I am a resident of Namakkal. On the night of 16th September, 1965, at about 9 P.M. I was driving the lorry M.D.S. 6721 on hire from Namakkal, loaded with paper rolls and was transporting it to Hindu Company. On the way to Madras in G.S.T. Road, at about 4 A.M. while I was coming at a distance of about 3 miles, south of Ulundurpet, two double bullock carts were going in front of me. I sounded horn. They turned the aforesaid carts towards the right side. When I also turned right side, to overtake them, the aforesaid lorry dashed against the aforesaid cart that was going behind and the said cart got crushed and one of the bullocks, tied to it, died. The person who was in the front cart, also died. Others also received injury. I got frightened and went straight away to the Police Station.

3. He has admitted in this statement that he was taking the lorry and at about 4 A.M. he saw two carts going ahead, that he blew the horn and that the certain turned their carts towards right and the lorry dashed against the carts going behind, with the result that the man in the cart and one bull died.

4. It is clear from this statement that the petitioner was driving the lorry at the time of the accident. The learned Counsel for the petitioner contended that this statement would amount to a confession and that as such, any admission

contained in such a confessional statement is inadmissible. In other words, he submitted that if the statement given before a Police Officer amounts to a confession, no admission of a fact will be admissible though such admission of a fact taken by itself may be innocuous; since every fact contained therein will have a bearing on the confession itself. Reliance has been placed by the learned Counsel on the following passage in *A. Nagesia v. Bihar State* : 1966 CriLJ100 (at p. 124):

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.

5. The position appears to be this : If the first information given to a Police Officer amounts to a confession, any incriminating fact mentioned therein, if it has got a bearing either directly or indirectly with the confession, such fact, even though it may be an admission, will be inadmissible. If the first information does not amount to a confession, any admission made therein can be proved against the maker under Section 21 of the Evidence Act, The Supreme Court in *Faddi v. State of Madhya Pradesh* : 1964 CriLJ744 , in dealing with the admissibility of first information report given by an accused before a Police Officer observed as follows:

Admissions are admissible in evidence under Section 21 of the Indian Evidence Act. Section 17 defines an admission to be a statement, oral or documentary,

which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to Section 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.

6. It, therefore, becomes necessary to consider whether Exhibit P-6 the first information given by the petitioner to P.W. 6 the Police Officer amounts to a confession. Both the Courts below found, that Exhibit P-6 does not amount to confession. I have gone through the statement which is in Tamil carefully, the translation of which is extracted above, and I am of the view that it does not amount to confession. On the other hand, he has given an explanation as to how the accident had occurred. He stated that he sounded horn and the bullock carts turned, towards the right side and that, therefore, the lorry dashed against the carts. There is nothing to show in that statement to indicate that he confessed to an offence. He has not stated that he drove the vehicle rashly or negligently or that he was responsible for the accident. I, therefore, find that the report Exhibit P-6 made to P.W. 6 by the petitioner is not a confession. Therefore, the admission by the petitioner in Exhibit P-6 that he sounded horn and that the bullock carts turned towards the right side and he also turned right side and the lorry dashed against the carts, indicating thereby that he was driving the vehicle is admissible. The finding by the lower Courts that the petitioner was driving the vehicle negligently, as a result of which one person was killed, three bulls died and the witnesses were injured, was not seriously challenged. The conviction of the petitioner under Sections 304-A and 337, Indian Penal Code, is, therefore, confirmed.

7. So far as the sentence is concerned, I am inclined to take a lenient, view. The occurrence took place at about 3 A.M. on 17th September, 1965, which was more than two years from now. It appears, the petitioner has a good record of service. It is of course unfortunate that one person was killed. He has been in jail for about a week. Taking all the circumstances into consideration, I reduce his sentence of

imprisonment to the period already undergone; but instead, I sentence him to pay a fine of Rs. 300 in default to undergo rigorous imprisonment for one month under Section 304-A, Indian Penal Code. Time for payment one month from this date.

8. The revision case is dismissed with the modification in sentence.

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