Subramania Goundan

Vs

The State of Madras

Criminal Appeal No. 127 of 1957

(B. P. Sinha, P. Govinda Menon, J. L. Kapur JJ)

17.09.1957

JUDGMENT

GOVINDA MENON J. -

Before the Additional Judge of the court of Sessions of Coimbatore Division there were four accused, of whom the first accused Subramania Goundan has now appealed to this court against the confirmation by the High Court of Madras of the conviction and sentence by the trial court, by which, on charges Nos. 1 & 2, he was sentenced to death, and also sentenced to rigorous imprisonment for two years on charge No. 3. Special leave to appeal was granted by order of this court, dated the 6th of May, 1957. Along with the appellant were tried three others, of whom the second accused (Marappa Goundan) was his father. The third accused (Karuppa) was the grandson of the second accused's paternal uncle, while the fourth accused (Iyyavu) was an agnate in the fourth degree of the second accused. It is thus seen that all the accused were related to each other.

The learned Sessions Judge framed four charges of which the first was against the appellant, that he on June 6, 1956, at night in the village of Vengakalpalayam, committed the murder of Marappa Goundan by cutting him with an aruval; while the second charge was that at about the same time and place and in the course of the same transaction, he committed the murder of Muthu Goundan by stabbing him with a spear. The third count of the charge was against the first and the second accused that they conjointly committed the offence of attempt to murder by stabbing one Munia Goundan with a spear and knife, and the last count of the charge was against accused Nos. 3 & 4 that they abetted the commission of the offence of attempt to murder of Munia Goundan by being present on the scene. The learned Sessions Judge acquitted accused Nos. 2, 3 & 4, but convicted and sentenced the appellant before us in the manner stated above.

The village, where the offences were committed, was faction-ridden in which the appellant, his father and others took one side, whereas the two deceased individuals, along with Munia Goundan and others, formed the leaders of the rival faction. It was also stated that the appellant's father was the leading man of the village, having been assigned that dignity by the consent of the villagers.

The prosecution case is that the dignity of the appellant's family had been offended by certain actions of the rival party and it was apprehended by the appellant's father that his prestige and influence, as the chief-man of the village, were being gradually undermined and usurped by the rival group. About three days prior to the occurrence, which took place on the night between the 6th and the 7th of June, 1956, Munia Goundan is said to have stated to the hearing of the appellant that he (Munia Goundan) would wipe out the appellant's father and his partisans, and if that were not possible, in a spirit of humiliation, Munia Goundan would shave off his moustache. It is further

alleged that the two deceased individuals also proclaimed words to that effect.

Angered at this threat of extermination of his family and inflamed by the enmity due to the faction that had already existed, the appellant, according to the prosecution, having armed himself with an aruval (a sickle) a spear and a knife left his house on the night of the 6th and 7th June, 1956, proceeded to a place known as Chettithottam where the deceased Marappa Goundan was sleeping in his field-shed, and cut him on the neck with the aruval, and inflicted other injuries on him before leaving the place. Thereafter while on his way to the house of Munia Goundan to do away with him, the appellant met the deceased Muthu Goundan who was coming in the opposite direction and thinking that Muthu Goundan would catch him, inflicted a stab wound on Muthu Goundan. After this the appellant went to the house of Munia Goundan (P.W. 5) and stabbed him also. Not being content with committing these crimes, he set fire to the shed of Sennimalai Goundan (P.W. 4 - who was also a partisan of the rival faction) which lay at a distance about four furlongs from the village. Thereafter the appellant returned to his own garden and lay down.

Karuppa Goundan (P.W. 1) hearing cries and noise from the direction of the house of Munia Goundan, ran towards that place, followed by Sennimalai Goundan (P.W. 4) who similarly heard the same cries. They found Munia Goundan (P.W. 5) with injuries on him and also saw the shed of Sennimalai Goundan (P.W. 4) aflame. At this P.W. 4 and P.W. 5 proceeded to the burning shed and on the way saw Natarajan (P.W. 10), the son of the deceased Marappa Goundan, weeping and lamenting in his field. Reaching the place wherefrom P.W. 10 was wailing, P.W. 4 and P.W. 5 saw Marappa Goundan lying dead on a cot in the shed with injuries. It is in evidence that the witnesses then saw the shed of P.W. 4 completely burnt down and after that Karuppa Goundan and Sennimalai Goundan went to the house of the village Munsif who was living about four miles away from the village and gave a report about the occurrence at about 5 a.m. on 7-6-1956 and which is on record as Exhibit P. 1. Information reached the Sub-Inspector of Police of Avanashi (P.W. 17) at 8-30 a.m. who reached the place of occurrence at 11 a.m. Investigation was then started, the details of which it is unnecessary to mention. At about 12 noon near a temple in the village finding the appellant there, the Sub-Inspector of Police arrested him after which the appellant made a statement, the admissible portions of which are marked as Exhibit P. 13. From the appellant material objects No. 10 and 11, a blood-stained drawer and a baniyan respectively worn by him were seized and the appellant thereafter took the Police Officer to his garden and tool out M.O. 12, a blood-stained bed-sheet from a rafter in the garden shed which, according to the prosecution, was used by the appellant for wrapping himself up after he lay down in his shed subsequent to the commission of the crime. Statements were taken by the Sub-Inspector from a number of persons, including Natarajan (P.W. 10), son of Marappa Goundan, Nachimuthu Goundan (P.W. 11) son of Muthu Goundan, Munia Goundan (P.W. 5) and others. We do not think it necessary to describe the details of the investigation and the examination of witnesses regarding the accusations against the acquitted persons.

On June 9, 1956, at about 3-50 p.m. the appellant was produced before Sri P.I. Veeraswami, Sub-Magistrate (P.W. 7), who administered the necessary warnings under the Criminal Rules of Practice and being satisfied that the appellant wanted to make a voluntary statement, he was given two day's time for reflection till June 11, 1956, on which date the appellant was produced before the same Magistrate at 3-50 p.m. The same warnings were again administered to him and the Magistrate was satisfied that the statement about to be made was a voluntary one. Thereafter it was recorded in the appellant's own words, read over to him and acknowledged by him to be correct. This statement in which the appellant confessed to having committed the murder of Marappa Goundan and Muthu Goundan and also inflicted injuries on Munia Goundan on the night in question, is exhibited as P.

3/A.

In order to prove the case against the appellant the main reliance on the side of the prosecution was on Natarajan (P.W. 10), the eye-witness to the attack on his father Marappa Goundan, and with regard to the murder of Muthu Goundan, the case rested on the testimony of Nachimuthu Goundan (P.W. 11), son of Muthu Goundan, who is said to have told the witness (P.W. 12) that the appellant had stabbed Muthu with a spear. Subbanna Goundan (P.W. 12), a neighbour of Muthu Goundan, also spoke to the fact that he heard Muthu Goundan saying that the appellant had stabbed him with a spear. The assault on Munia Goundan (P.W. 5) is spoken to by himself. In addition to this evidence, the prosecution rested its case on the confession of the appellant. Before the learned Sessions Judge the appellant denied the offence and retracted the confession made by him on the ground that the Sub-Inspector and the Circle Inspector of Police threatened to implicate the appellant's father and five others in the crime if he did not confess and that was the reason why he made a false confession.

The learned Sessions Judge accepted the testimony of Natarajan (P.W. 10), Nachimuthu Goundan (P.W. 11) and Subbanna Goundan (P.W. 12) with regard to the murders and also that of Munia Goundan (P.W. 5) and Komaraswami Goundan (P.W. 6) with regard to the attack on Munia Goundan. He also held that the confession, Exhibit P. 3/A, was voluntary and true and on the footing of the oral evidence, corroborated amply by the confession, the appellant was convicted and sentenced. In the High Court Somasundaram J. who delivered the judgment of the court, was not inclined to place reliance on the oral testimony of P.W. 5, P.W. 10 and P.W. 11. The learned Judge was of the opinion that it was not safe to act on the evidence of Natarajan (P.W. 10) and convict the appellant of the offence of murder of Marappa Goundan. The High Court did not accept the evidence of Nachimuthu Goundan (P.W. 11) and Subbanna Goundan (P.W. 12). In the same strain the judgment of the High Court states that it is not safe to act on the evidence of Munia Goundan (P.W. 5) and (P.W. 6) Komaraswami Goundan. The conclusion was that the oral evidence did not reach that standard of proof necessary for reliance to sustain a conviction, but the learned Judge upheld the conviction on the ground that as the confession was voluntary and true, it can be believed though the same was retracted. Opinion was also expressed that the confession was corroborated by the recovery of M.O. 12, as a result of the statement made by the appellant which contained human-blood for which there was no explanation whatsoever. Corroboration was also afforded by the existence of human-blood on M.Os. 10 & 11. The question, therefore, before us is whether the High Court erred in law in agreeing with the trial court regarding the guilt of the appellant.

Had the High Court come to the conclusion that the evidence of P.Ws. 5, 10 & 11 can be accepted in order to sustain the conviction of the appellant, the question would have been simpler of solution, and alternatively were this court inclined to appraise the credibility or otherwise of their testimony, whether a different conclusion would have been arrived at, is unnecessary to speculate. On a perusal of the evidence of these witnesses, it cannot be said that their testimony is such as should be relegated to the realm of disbelief. Even so, we have decided to proceed on the footing that the testimony of the important prosecution witnesses would not be sufficient for a conclusion that the appellant is guilty beyond reasonable doubt.

The ultimate approach, therefore, to the question should be whether the confession, Ex. P. 3/A, is entitled to credence and be acted upon. The learned counsel for the appellant, Sri. Umrigar, was at pains to show, firstly that the confession was not voluntary; secondly it is not true and lastly that even if these two tests are answered in the affirmative so far as the prosecution is concerned, it would be very unsafe to act on this retracted confession which, according to him, was resiled from

as early as an opportunity occurred. Dealing with the first question, he pointed out that the appellant was produced at 3-45 p.m., on June 9, 1956, before the Sub-Magistrate in the court hall which was cleared of all police officials, and the Jail Warder alone was placed in-charge; thereafter the Sub-Magistrate gave the necessary warnings and enough time was given for reflection. The criticism levelled by the appellant's counsel is that despite these beneficient actions, still the influence of the police on the appellant still remained and that even at the time when the confession was given, it cannot be said that the appellant was free from police pressure. Our attention was invited to passages in cross-examination of P.W. 7 where he had stated that on both the occasions when the appellant was produced for recording of the confession, the Police Constable in guard at the Sub-Jail was in charge and further that there is a gate way between the Police Station and the court, and that gate way is the approach to the Sub-Jail. From these circumstances inference is sought to be drawn that though during the relevant periods the incarceration of the appellant was in a Sub-Jail, still he was under police custody and influence and, therefore, there was no clearance of the supervening police control on him, in order to make his mind free from such such influence. We have carefully gone through the questions put by the Magistrate, not only on June 9, 1956, when the appellant was given time for reflection, but also on those on June 11, 1956, when he gave the confessional statement, and we are satisfied that nothing could be said against the procedure followed. The learned Magistrate has clearly conformed to the procedure prescribed by ss. 164 and 364 of the Criminal Procedure Code, as well as to the directions laid down in the Madras Criminal Rules of Practice as a preliminary to the recording of the confession. The meagre cross-examination of the Sub-Magistrate has not brought out any material circumstances which would, in any way, detract from the satisfactory way in which he has performed his official duty. In the endorsement at the foot of the confessional statement the Sub-Magistrate (P.W. 7) says that he had explained to the appellant that he (the appellant) was not bound to make a confession and if he does so, it may be used as evidence against him; and the endorsement further goes on to add that the Sub-Magistrate believed that the confession was voluntarily made. The next remark is that it was taken in his presence and hearing and read over to the confessor who admitted it to be correct. But it is urged against the voluntary nature of the confession, that an inducement was given by the Magistrate by the manner in which the questions were put. One of the questions was 'Why do you want to give a statement ?' and the answer given was 'It is suspected that those who have committed murder are others. To prove that it is I who have stabbed. I am giving the statement.' The above was the question put and the answer given on June 9, 1956. On June 11, 1956, the question and the answer were as follows :

> "Q. For what purpose are you going to make a statement ?
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> A. Others will be implicated in the case for murder, I alone have committed murder. I am going to give the statement to that effect."

When he resiled from the confession in the Sessions Court, the appellant stated that the Sub-Inspector and the Circle Inspector went to him in Sub-Jail and threatened to implicate his father, accused No. 2 in the lower court, and five others, unless the confessed. Therefore, it was on this account that the statement Ex.P. 3/A was made before the Magistrate which the accused alleged was neither true, for voluntary. The argument of the learned counsel is that in order to save his father and some others, the appellant implicated himself and confessed falsely to an act which he did not commit. Criticism has been levelled against the mode and manner in which the question was put as directly inducing the appellant to immolate himself and thereby save his kith and kin. We are asked to say that the appellant, being an emotional young man no noble sentiments and spirit, did not desire to have his father implicated in a crime of this sort and what may be ascribed as a filial obligation was performed in trying to get release of his father from the enmeshes of the police. Such

an argument, we are afraid, cannot carry any conviction. The form of the question is prescribed by the Criminal Rules of Practice and if the officer before whom the confession is made, fails to put it, then his failure will be criticised as blameworthy. We do not feel that any nefarious object existed in putting a perfectly innocuous and obligatory question to the appellant asking him "Why he wants to make a statement ?" Further, P.W. 17, the Investigating Sub-Inspector, has clearly denied the alleged inducement by the police that if he did not confess, others, including his father, would be implicated in the case. It is, therefore, difficult to conclude that there was any kind of inducement or threat as a result of which an involuntary confession was made.

A complaint is made by the learned counsel that before the Committing Magistrate no question under s. 342 Cr.P.C. was put to the appellant with regard to the confession and, therefore, he had no opportunity to put forward his complaint about the confession until the case came before the Sessions court. No doubt a scrutiny of the statement of the accused before the Sub-Magistrate does not reveal any specific questions as having been put to him about the confession, but the fact remains that the confession was exhibited before the Committing court and the contents were known to the appellant then and there. Under s. 207-A, sub-cl. (3) of the Criminal Procedure Code, even at the commencement of the enquiry into a case triable by a Sessions Court the Committing Magistrate is enjoined, when the accused is brought before him, to satisfy himself that the documents mentioned in s. 173 have been furnished to the accused and if it is found that they have no so far been furnished, it is the duty of the Magistrate to cause the same to be furnished. Section 173, sub-cl. (4) makes it obligatory upon the Police to furnish the accused free of cost with a copy of the police report, the F.I.R. under s. 154 and all other documents on which the prosecution propose to rely, including statements and confessions if any recorded under s. 164. The result, therefore, is that even before the commencement of the committal proceedings the appellant had been provided with the copy of the confessional statement sought to be relied upon for justifying a prima facie case against him. We do not think, granting that the confession was not placed in the fore-front as a piece of evidence against the accused in the Committing Court, such a default if it is one, would in any way show that the confession was involuntary.

The second aspect of the learned counsel's contention is that the confession is not true. In Sarwan Singh and Harbans Singh v. The State of Punjab [Criminal Appeals Nos. 22 and 23 of 1957, decided April 10, 1957.] this court expressed the opinion that for the purpose of finding out whether a confession is true, it would be necessary to examine the same and compare it with the rest of the prosecution evidence and the probabilities of the case, and Mr. Umrigar relying on these observations urges that on a comparison of the confession with the other parts of the prosecution evidence, the irresistible conclusion should follow that on the face of it the confessional statement is untrue. The material portions of the confessional document concerning the actual crime are to the following effect :

> "So, on Wednesday night at about 11 O'clock, I took aruval, spear and knife sharp on both sides and went to Chetty Thottam, near our garden. Marappa Goundan, then was laying on the cot in his shed and sleeping. I cut him with aruval on the neck. While coming from there, to the house of Muniappa Goundan in our village, Muthu Goundan came opposite to me in our village street. Thinking that he came to catch me. I stabbed him. The aruval fell there itself.
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> Then, I went to Muniappa Goundan's house, and stabbed Muniappa Goundan.
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> Afterwards, I set fire to the shed of Sennimalai Goundan at a distance of four

furlongs to our village. Then I came to our garden and lay."

From this, according to the defence counsel, it is seen that only one cut was inflicted with an aruval on the neck of Marappa Goundan and a single stab was given to Muthu Goundan. Similarly Munia Goundan was only stabbed once, but in Ex.P. 4 the post-mortem certificated on the body of Marappa Goundan there are as many as thirteen injuries of which the neck injuries were 4, 5 and 6, the others being on other parts of the body. It is, therefore, urged that the unquestionable fact of the existence of a number of injuries on Marappa belies the truth of the confession, in that only one cut was given on the neck. Similarly the confession does not make any mention of the presence of any one else when Munia Goundan was stabbed, though both P.W. 5 and P.W. 6 have deposed that there were three persons who were coming northward from the shed of Marappa Goundan at the time P.W. 5 was stabbed. The statement made by P.W. 5 (Ex. D. 2) before the Medical Officer on June 8, 1956, was also to the effect that more persons than one were involved in the attach on him. The confession also does not make any reference to the recovery of the incriminating articles such as M.O. 12 as a result of a statement made by the appellant to the police officer. From these circumstances we are asked to say that the confession cannot be true. Mr. Umrigar urges that the learned Judges of the High Court have not paid sufficient attention to this method of examining how far a confession is true by comparing it with the other evidence in the case in accordance with the test laid down by this court. Even in the absence of such comparison in the judgment of the High Court we do not think that on that ground it can be predicated that the appellant made an untrue statement voluntarily. After all the absence of elaborate details in a confession cannot brand it as false. There is no statement in the confession which is contrary to the oral evidence though the details put forward when then witnesses were examined in court do not appear in extenso in the confession and for that reason we are not prepared to say that the confession in untrue.

The next question is whether there is corroboration of the confession since it has been retracted. A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may from the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. It was laid down in certain cases one such being Kesava Pillai alias Koralan and another and Kesava Pillai alias Thillai Kannu Pillai [I.L.R. 53 Mad. 160.] that if the reasons given by an accused person for retracting a confession are on the face of them false, the confession may be acted upon as it stands and without any corroboration. But the view taken by this court on more occasions than one is that as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated one of the latest cases being 'Balbir Singh Versus State of Punjab' [A.I.R. 1957 S.C. 216.], but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated, nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession. In this connection it would be profitable to contrast a retracted confession with the evidence of an approver or an accomplice. Though under s. 133 of the Evidence Act a conviction is not illegal merely because it proceeds on the uncorroborated testimony of witnesses, illustration (b) to s. 114 lays down that a court may presume that an accomplice is unworthy of credit unless he is corroborated in material

particulars. In the case of such a person on his own showing he is a depraved and debased individual who having taken part in the crime tries to exculpate himself and wants to fasten the liability on another. In such circumstances it is absolutely necessary that what he has deposed must be corroborated in material particulars. In contrasting this with the statement of a person making a confession who stands on a better footing, one need only find out when there is a retraction whether the earlier statement, which was the result of remorse, repetence and contrition, was voluntary and true or not and it is with that object that corroboration is sought for. Not infrequently one is apt to fall in error in equating a retracted confession with the evidence of an accomplice and, therefore, it is advisable to clearly understand the distinction between the two. The standards of corroboration in the two are quite different. In the case of the person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition the court must feel that the reasons given for the retraction in the case of a confession are untrue.

Applying this test to the present case, we are of the opinion that when the appellant has given no satisfactory explanation for the presence of human-blood on material objects Nos. 10, 11 & 12, it follows that the blood of the murdered was on these material objects. The reasons for retraction are also false. A criticism is levelled that the Chemical Examiner's report does not now show the extent of blood on M.O. No. 12, the bed-sheet, in which the appellant wrapped himself after the offence. All that the document states is that among other items it is also stained with human-blood, but Mr. Umrigar argues that this description only shows that there would have been only a speak or a spot of blood on the bed sheet, for according to him, as a matter of fact, there should have been a large quantity of blood on the hands of the appellant if he had, without washing, used a bed-sheet, thereafter large patches of blood are likely to be present on the bed-sheet. If that is so, the mere fact that the presence of blood is described as stains would show that the prosecution case cannot be true. We do not feel inclined to put such a restricted meaning on the word 'stain'. 'Stained with human blood' is an expression commonly found in Chemical Examiner's reports and it does not necessarily refer to speaks of blood alone. We do not think that any inference can be drawn from the use of the word 'stain' in the Chemical Examiner's report, that there was not sufficient blood on the bet-sheet. The appellant has given no explanation as to how blood came to be present on material objects Nos. 10 to 12. Agreeing with the High Court that this is corroboration of the confession made by the appellant, we are of the opinion that the confession can be acted upon. If that is so, the appellant's guilt has been proved beyond reasonable doubt.

The appeal is dismissed.

Appeal dismissed.

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