

ANDHRA PRADESH HIGH COURT

Yendra Narasimha Murthy

Vs.

State (Andhra Pradesh)

Criminal Appeal No. 317 of 1963, in S. Case No. 14 of 1963

(Anantanarayana Ayyar and Mohamed Mirza, JJ.)

23.02.1965

JUDGMENT

Anantanarayana Ayyar, J.

1. The accused, Yendra Narasimha Murthy, who was a travelling photographer after killing the deceased (Khammammettu Manikyam) went to a Judicial Second Class Magistrate (P.W. 13) of his own accord and expressed his desire to make a statement. P.W. 13 recorded the statement (Ex. P. 6) of the accused, read it over to him (accused) and the latter admitted it to be correct and signed the same. Subsequently the Magistrate informed the police and the accused was arrested. After investigation the accused was put on trial under charges under Section 302 Indian Penal Code. Ex. P. 6 was sought to be admitted against the accused.)

1 to 21. *****

Anantanarayana Ayyar, J.

23. Item (1) : Ex. P. 6 is a most important piece of evidence and it runs as follows :

"Myself and a jewel merchant Tatayya killed Kammammettu Manikyam of Kotapadu village by twisting her neck near the tank which is by the side of Annapurna Talkies after one reel of first show was over. I kept that girl for some time. I went away after 5 years when it was felt difficult in their house. Till then I stayed in their house. I went to Kamavarapukota. When my photos were there, that girl used to revolt against her husband and son because they used to tear my photos. She sent for me when her son-in-law, husband, and daughter attempted together to kill her. I went from Chintalapudi to Karnam's house at Kotapadu and sent word. Four years back, she told me that they tried to kill her and that she wanted to come away with me and she started. I told her that it was not possible and threatened her I came away. Afterwards she herself came to me to Eluru. I took her to Kamavarapukota and kept her there. I consoled her and when I asked her to

go home she did not go. I wrote letters to Recherla Karnam and to the husband of that girl without furnishing my name and address. After 3 months they came and took her. While they were writing letters now and then, I used to go there. Afterwards as he was unable to bear her body she kept this jewel merchant Tatayya. Later on I came to know after some days. I asked her for that she said that it was true and she kept him. I told her to suffer as she liked. From that date, he used to go. If necessary she used to send for me through him. He used to take me since then. He used to gather information about my welfare, and difficulties now and then, and used to tell her. I escaped from her informing her that I was moving with elders from one year. Afterwards, I went away to Aswaraopet. Whenever, the Karnam of that village was asking me to come, on seeing me at Eluru for Photographing, I was not going. When Kotapadu karnam and Gantipati Subbarao pressed me to come I sent word that I would come on a particular day and month and ten days were over. It might be 21st of last month. Afterwards, I went to Kotapadu at 6 O'clock in the evening. While I was going to Karnam's house, through washerman bazar, the son of that girl aged 25 years (P.W. 2) and another four persons beat me together in the bazar. Afterwards, they took me to the house of the President. President reprimanded them and sent them away. I agreed that it was my mistake and fault. I sent a report to Vissannapeta police station and wrote a letter to Kotapadu Munsif from Chintalapudi. I was not going since then. It seems Khammammettu Manikyam came to Chintalapudi today noon. While I was going to Eluru from Venkatayapuram for enlargement of photos I came to Chintalapudi at 6 O'clock in the evening. While I was going to bus stand the jewel merchant appeared and stopped me. I stayed away, as he stopped me saying that it was essential. It seems that girl told him that she herself made me to be beaten and he asked her whether she would do the same thing to him also tomorrow. She said that as I had gone abroad, she made it like that, and she said that she was not willing to do like that to him. Again she told him that her son was ready to beat him also. At last it seems he demanded her the money she owed him. Afterwards when he told me that she abused me, I informed him that I could not believe. Afterwards, I met that girl by the side of the Annapurna talkies after the cinema was begun and asked her and knew. She told me that it was a fact to abuse me. I told her that in case I was insulted and beaten in the bazar I would feel it painful. When I told her that I used not to appear to her, she abused me. Afterwards I pushed her while standing. Afterwards, when she came for settlement, she threw me with her leg. She told me that in case I rejected her, she wanted me to think over what would happen to me. Tatayya was also present there. He asked her how many persons are to be insulted ? He (accused) may tolerate. But I (Tatayya) cannot tolerate". So saying he beat her. Afterwards she grew angry and abused both of us. Myself and Tatayya being unable to tolerate the abuses, squeezed her neck and Tatayya tied her neck with my towel and we killed. We left the dead body near that tank and came away being afraid of it. Tatayya went on his own way. I came to bazaar. After I sat for two hours, my conscience did not agree. Thinking that there would be no peace of mind even if I have a lease of life I woke you up and told you at your house, Tatayya would be sleeping either

near Dosapativari bungalow or Venkamma's meals hotel".

The learned counsel for the accused contends that Ex. P. 6 is inadmissible in evidence and relies on *Nazir Ahmed v. King Emperor*¹, In that case, the relevant facts were as follows.

The First Class Magistrate, under the orders of the District Magistrate, proceeded by car

¹ AIR 1936 PC 253 (2)

to the scene of dacoity and to places material to the events connected with it. The accused, who was already under arrest, made a statement before the learned Magistrate. The latter did not observe any formalities but took rough notes of what he was told. After dictating to a typist a memorandum from the rough notes, he destroyed the rough notes. Such memorandum called a note, containing the substance but not all of the matter to which the accused spoke, was put in evidence. Their Lordships of the Privy Council observed as follows :

"But it was not suggested that the Magistrate, though he was manifestly acting under para 5 of the Code, either purported to follow or in fact followed the procedure of Sections 164 and 364. The Magistrate offered no explanation of why he acted as he did instead of following procedure required by Section 164."

Contention was raised before their Lordships that it was admissible by virtue of Sections 17, 21, 24 and 26 of the Evidence Act just as much as it would be if deposed by a person other than a Magistrate. Their Lordships repelled this contention and held that oral evidence also was inadmissible. The facts of that case are substantially different from the facts of the present case. In this case, Yendra Narasimhamurthy was not an accused when he went to the Magistrate of his own accord and he was not under arrest by the police and no investigation was going on in any crime registered against him at the time when the Magistrate recorded his statement (Exhibit P. 6).

24. On various occasions, the Madras High Court had to deal with cases like the present one where a person appeared before the Magistrate and gave a statement at a time when there was no case already registered against him and no investigation was pending against him. In *Arunachala Reddi v. Emperor*², it was observed as follows :

"The main evidence against him is his own confession (Ex. A), corroborated by the evidence of P.W. 4 and by the fact that the clothes he had been wearing were stained with human blood. The first information of the occurrence was given by the appellant himself. After killing his uncle, he went straight to the nearest Magistrate (P.W. 1) and told him what he had done. The Magistrate told him to pull himself together and gave him an hour for reflection. At the end of that time, the appellant was still in the same mood and made a complete confession, which the Magistrate recorded in the manner prescribed by Section 164 Criminal Procedure Code, which he need not have done as the confession was not taken under that Section The Sessions Judge rejected the contention, holding that the Magistrate was entitled under Section 190(1)(c), Criminal Procedure Code to record and act on the information furnished by the appellant himself Assuming that the Magistrate was duly empowered to act under Section 190(1)(c) his view was correct.

Apart from that, confessions like other Admissions, are relevant evidence under the Evidence Act, unless they are rendered inadmissible by some circumstances or circumstances which the Act declares to be of an invalidating nature".

In *In re Nainamuthu Kannappan*³, it was observed as follows:

² AIR 1932 Mad 500

³ AIR 1940 Mad 138

"It is urged upon us by the learned counsel for the appellant that the statement made by the appellant to the joint Magistrate, P.W. 9, was, improperly admitted in evidence. Learned counsel argues that this was a statement made under Section 164, Criminal Procedure Code, and since it was not recorded after observing the formalities prescribed by that section, it should not have been put in evidence. We think that that objection would be just if the Magistrate had been investigating the case but he was not investigating the case or any of the facts connected with the case. On the contrary, this information given by the accused was itself the first information of the crime. The ruling cited to us in ILR 17 Lab 629 : AIR 1936 PC 238 (2) does not apply to the facts here."

In *In re Natesan*⁴, the relevant facts were as follows : A Magistrate recorded a statement as dying declaration from a person who was in grave condition at the Hospital. That person survived. He became accused at the trial. In that trial, that statement was excluded from the evidence by the learned Sessions Judge as inadmissible as it was not a statement recorded under Section 164 Criminal Procedure Code with compliance of formalities required under that section. The accused was convicted under Section 302 Indian Penal Code and sentenced to death. He was also convicted under Section 309 Indian Penal Code. The matter came up before the Bench of the Madras Court. Anantanarayanan, J., observed as follows : (at p. 445) :

"But, equally, we desire to make it clear that, AIR 1936 PC 253 (2), ought not to be construed, in our view, as amounting to some authority that under no circumstances whatever could a statement made by a person amounting to a confession of a crime to a Magistrate be admitted in evidence unless the provisions, of Section 164, Criminal Procedure Code are complied with. Needless to say the decision itself does not seem to be authority for any such view, nor does it override the clear provisions of Section 21 of the Evidence Act, which render such admissions liable to be admitted in evidence, unless they fall within the mischief of the succeeding sections, such as Sections 24, 25 and 26.

Consequently, where the statement is made by an accused person to a judicial officer before any investigation has at all commenced, or is totally outside the scope of any such investigation we are not clear that such a statement is liable to be excluded, unless the provisions of Section 164 Criminal Procedure Code had also been complied with. We would further observe that the position that statements recorded under Section 164 Criminal Procedure Code themselves are inadmissible unless the formalities of that section are strictly adhered to, would not appear to be the latest and the current view of the law.

For, their Lordships of the Supreme Court have pointed out in *W. Slaney v. State of Madhya Pradesh*⁵ that the true test in all such cases is whether the non-compliance was so

vital as to cut at the root of the jurisdiction, or so abhorrent to natural justice that a serious prejudice has been occasioned".

25. Shri Rama Sauna, the learned advocate for the accused, has relied on the decision in *Bala Majhi v. State of Orissa*⁶, In that case, three questions were referred to Full Bench of that, question No. 3 was as follows:

⁴ AIR 1960 Mad 443

⁶ AIR 1951 Ori 168 (FB)

⁵ AIR 1956 SC 116

"(3) Does non-compliance with the provisions of Section 164(3) Criminal Procedure Code, by the Magistrate when recording a confessional statement render the same as nullity or inadmissible if there is satisfactory evidence, 'aliunde', before the Court that the confessional statement was voluntarily made ?"

The Learned Judges of the Full Bench, after referring to the decision of the Privy Council in AIR 1936 PC 253 (2), held as follows : at p. 176.

"Such a confession vitiated by substantial non-compliance, as indicated above, with the provisions of Sub-Section (3) of Section 164 is not a valid record of the confession and cannot, therefore, be made use of under Section 26, Evidence Act. There is thus no scope for invoking the aid either of Section 29, Evidence Act or section 533 Criminal Procedure Code to cure such defect". It does not appear that, in that case, the learned Judges were dealing with a confession similar to Ex. P. 6 which was recorded at a time when there was no case registered against the accused and when there was no investigation pending against him.

26. In view of the various decisions of the Madras High Court, we find that Ex. P. 6 was rightly held by the learned Sessions Judge to be admissible in evidence.

27. Item No. 3 : Ex. P. 18 is self exculpatory. But various features, which are mentioned there, which are in the nature of admissions, can certainly be relied upon against the accused.

28 to 34. ****

35. [Rest of the judgment is not necessary for the purposes of this report.]

Appeal dismissed.