

(1957) 04 AP CK 0019
In the Andhra Pradesh High Court
In Re: Mannem Edukondalu

Date of Decision : 18-04-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 163, 164, 32
Evidence Act, 1872 — Section 25, 26, 29, 35
Penal Code, 1860 (IPC) — Section 145, 302, 304, 309

Citation : AIR 1957 AP 729 : (1957) CriLJ 1086

Hon'ble Judges : Jaganmohan Reddy, J

Bench : Single Bench

Judgement

Jaganmohan Reddy, J.—This is an appeal by the accused against conviction u/s 304 para (1) of the Indian Penal Code and the sentence of 3 years R. I. passed by the Sessions Judge of Guntur. The accused was charged originally u/s 302, I. P. C., for the murder of his wife Mannem Lakshamma by stabbing her with a knife and u/s 309 for attempting to commit suicide by stabbing himself with the same knife in his left abdomen.

2. The prosecution alleged that the accused married the deceased after the death of his first wife eight years before the incident, but did not get on well with her. As a result the deceased came to live with her parents. The parents having come to know that the deceased was misbehaving with one Dhobi Narayana, P. W. 11. sent her away to Gudipudi, her husband's village.

The accused and the deceased visited her parent's house to attend the marriage of the deceased's brother and sister at Ponakallu and were staying in a portion of the house occupied previously by Ankamma, the deceased's uncle and his wife, who is the sister of the accused,

On the day of the occurrence except Gunji Thirupathamma, P. W. 3 one of the daughters of P. W. 1, all had gone to attend the marriage in Seetharamareddi's house and when P. W. 1 who is the grand-mother of the deceased returned at 1 P. M. she saw her daughter at the gate of Ankamma's house shouting that the accused was killing Lakshamma after bolting the door. P. W. 1 and others who had come there shouted that the accused should open the door whereupon the

accused opened the door with the left hand and with the knife in his right hand had stabbed himself in the left abdomen and fell down.

The knife also fell by his side. It is further stated that Lakshamamma was lying in a pool of blood struggling, and died a few minutes afterwards. P.W. 1 got a report written by Ramalingareddi whom she met on the way and gave the report Ex. P-1 to the Police. The Police came and sent the accused to the Government Hospital. The doctor found at least eleven injuries on the body of the deceased some of which were serious having pierced the diaphragm on the right side cutting several muscles as well as the right lung etc.

There is no doubt from the doctor's evidence that all these injuries were fatal and death could have occurred 24 hours prior to the post-mortem examination.

3. According to the prosecution P. W. 1 and P. Ws. 3 to 6 are the eye-witnesses of the occurrence. As I have already stated P. W. 1 is the grand-mother of the deceased. P. W 3 is the daughter of P. W. 1, P. Ws. 4, 5 and 6 are witnesses who were attracted by the shouts of P. Ws. 1 and 3 and went to the scene of occurrence when they saw it. P. W, 9 is the father of the deceased who says that at the time of the occurrence, himself, his brothers and sons went to a hill at a distance of one mile from Ankamma's house.

On his daughter aged 8 coming and informing that her sister was killed by the accused and that her husband also fell down unconscious, he and his brother came to the scene of offence and saw that his daughter was lying dead with injuries on her person. The accused was also lying with injuries. P. W. 11 is the Dhobi with whom Lakshamamma is said to have had illicit connection. P. W. 8 is the Resident Medical Officer, Guntur and he produced the accident Register from the Government Hospital, Guntur, 8-6-55 to 3-7-55.

The entry at page 8 of Ex. P. contains the injuries found on Mannem Edukondalu written by Dr. S. Rukmani. P.W. 16 is the Civil Surgeon. Ex. P-6 is the requisition for examination as to the injuries on the person of the accused. She admitted him as an inpatient. She found two injuries on him, one an incised wound transverse 1/2" in length just lateral and left to the umbilicus, depth about 1/8th" rigidly in the left iliac portion near the wound present. The other was a small incised oblique wound running outwards and downwards 1" above wound No. 1

It is 1 1/4" in length and skin deep and is 1" above wound injury No. 1. According to her these injuries might be caused by a knife like M. O. I.

4. The question in this appeal is whether there is sufficient evidence to convict the accused of the offence with which he has been charged. It may be noted that the prosecution alleged that because the accused saw the deceased in the company of Dhobi Narayana from Peerla Panja, he went inside, bolted the door and killed the deceased, while the case of the accused is that on the day of the occurrence he saw the deceased actually in the act of sexual intercourse with Narayana in the house and he went and informed the brothers of the deceased

and Gopalam, one of the brothers of the deceased came & stabbed the deceased and when the accused intervened he received injuries. The first information report given by P. W. 1 (Ex. P-1) is as follows:

The marriage of my grand daughter Mannem Lakshamma was performed about eight years ago with Mannem Ilamaswamy's son Edukondalu of Nandigama Gudipudi in Sattenpalli Taluk. About 15 days back, the couple came to our house for the marriage of my second granddaughter Channamma. Since about a week, the husband Edakondalu was asking my grand-daughter Lakshamma to come to his village. My grand-daughter was saying that she has been ill and that they could go after taking medicine and getting cured here for the present. From then the husband and wife have been disputing.

Even today they have been disputing from morning. By the time I returned home at 1 p.m. today after attending the marriage in Syamla Seetlramareddy's house and saw the grand-daughter was groaning in the house producing "kee"" sound. Edukondalu was lying down by the side of my grand-daughter, towards her west. There are knife stabs on the bodies of both. All the clothes were wet with blood. The life of my grand-daughter Mannem Lakshamma expired. Mannem Edukondalu is in a sinking state. He did this because she said Mannem Lakshamma refused when he asked her several times to go to his native village of Nandigam Gudipudi. I got written the truth.

From this it can be seen that when the incident took place P. W. 1 was not present, but she only came subsequently and found her grand-daughter dead and the accused lying at her side with injuries. NO doubt she says that the accused killed the deceased, because she refused to go to his place when he asked her several times. The statement shows that it is only an inference which she drew from the condition in which she found her granddaughter and the accused. In her evidence, however, she gives a go-by to this story and becomes an eyewitness.

She says that she came back to the house at 12 noon and found that her eldest daughter Thirupathamma came to the portion of the house where the accused was living and was shouting. She says she heard the sounds of stabbing from inside and cry of "Oh, sister (elder) I am dying." Thirupathamma is addressed by the accused's wife as elder sister - Appa. Thirupathamma said that the accused was stabbing Lakshamma. Then Thirupathamma began to shout. Lakshmi P. W, 4, Appa Rao P. W. 5 and Syamla Thirupathi Reddy P. W. 6 came and all of them said "Will you open the door or not ? Where can you go ? You have taken her life."

The accused opened the door with the left hand and with the knife M. O. 1 which he was holding in his right hand he stabbed himself on his left abdomen and fell down and the knife also fell down by his side. The witness was asked to go and give a report to the police and when she was going Ramalingareddy met her on the way and asked her what the matter was. She told him about this which he

wrote on a paper and asked her to give to the Police. She gave Ex. P-1 to the Police. She says she was examined by the police at the inquest.

She did not know why the accused killed the deceased. She did not know whether the accused suspected her character. In cross-examination she says that the deceased did not refuse to go to her husband's house but insisted that her husband should live with them. She did not tell the police so. She denies that the brother-in-law of the accused prevailed upon the accused to stay saying that they would look after her character, that it is not they who kept the deceased and her husband in Ankamma's house and that they did not chastise the deceased and did not tell the accused to report to them if she misbehaved.

In the Committal Court (Ex. D-1) she said that after coming for the marriage when the deceased said she would not come to the accused agreed to stay here as his father-in-law, mother-in-law and brother-in-law promised to keep her under control. They chastised the deceased and asked the accused to tell them if she committed any untoward thing. This evidence given in the committal Court is denied by her in the Sessions Court. She further states that opposite to her house Muslims and Telagas are living and all of them saw the accused stabbing himself and falling down and except for one daughter of hers, the rest of the people in her house went to the marriage feast.

Later on she admits that she did not. say in Ex. P-1 or in statement u/s 164 or in the Committal Court that she heard the deceased crying "Oh, sister (elder) I am dying." With respect to her statement in Ex. P-1 she denies any knowledge of the contents and gives a general stereo-typed explanation that it was not read out to her and she did not know what was written; but then again she says that she told Ramalingareddi what was contained in Ex. P-1 and that she told him what all she deposed in this Court, but Reddi might not have written.

Yet she stated in the committal Court (Ex. D-1 (a)) that herself and her daughter did not get it written in the report that Apparao, P, W. 5, knocked at the door. She further admits that the Circle Inspector examined her in the evening at the inquest and it was read over to her and she put her Nisant, S. Lingareddi wrote down what she stated and it was read over to her in Telegu, She further states that Thirupathamma was examined at the inquest and one of the alleged eye-witnesses were examined at the inquest. She again states that at the time of the inquest the brothers were not there, but they were in their houses which was a furlong from her house.

She also denied that when the deceased was lying with Narayana at 12 noon the accused came from the field and saw them together and that -when he complained to his brother-in-law all of them came and that Gopalam among them stabbed the deceased and that when the accused tried to interfere he also received injuries.

5. The testimony of P. W. 1 in the Sessions Court is materially different from what she gave in the first information report and in the Committal Court. Her

version that she was one of the witnesses who heard the accused stabbing her grand-daughter or that she was an eye-witness of the accused stabbing himself, cannot be believed. She is anxious to protect her grand-daughter from any imputation of unchastity, even though she admits it in the committal Court in Ex. D-1 that the accused had complained and that his father-in-law, brothers-in-law and mother-in-law and other promised to see that the deceased did not misbehave and that they can keep her in Amkamma's portion of the house with the object of keeping her under control and had chastised the deceased to be careful.

They had further asked the accused to inform them if she committed any untoward thing. This statement is consistent with the version of the accused that he had reported the fact of catching the wife in the act of adultery to his brother-in-law. This version is also given the go-by by P. W. 3 in the Sessions Court. In these circumstances her evidence cannot be believed for holding that the accused stabbed the deceased and then stabbed himself,

8. In so far as the other witnesses are concerned, the first point taken by the learned advocate for the accused is that P. Ws. 3, 4, 5 and 6 were all examined by the police at the time of the inquest and in spite of the fact that an application was made on behalf of the accused on 4-2-1956 for furnishing copies of the same, they were not furnished because the Circle Inspector denied that he took any such statements. It has already been seen that P. W. 1 admitted that she was examined by the Circle Inspector at the inquest and that she put her Nisani and that she and other panchayatdars attested.

Similarly P. W. 3 states that the police examined her at the inquest. Her mother, Lakshmayya, P. W. 4, Appa Rao P. W. 5 and Thirupathi Reddy P. W. 6 and Seetharamayya were examined. They told the Circle Inspector what they had seen. She says that Ramakottayya wrote what they stated and their signatures or thumb impressions were taken. They were recorded in vernacular and they were read out in vernacular. Similarly, P. W. 4 says that the S. I. examined him at the inquest. He noted what he stated and it was read out to him and he put his signature. He further states that the statement was read over to him in Telegu.

Similarly P. W. 5 says that the police came in the evening and examined him. P. W. 6 also says that he was examined by the police at the inquest. He was examined u/s 164, Criminal P. C. As against this the police Circle Inspector P. W. 19, says that he went straight to Ponakallu and he took a typewriter from the office. He examined 16 witnesses till midnight, but P. Ws. 4, 5 and 6 were not available though he tried to get at them and so he could not examine them. He, further states that the statements of P. Ws. 2 and 3 were not written in Telegu. When P. Ws. 1, 3, 4, 5, 6, 9 and 13 stated in the Committal Court that their statements were taken down in Telegu in manuscript and the Panchayatdars attested them, that is not true.

He says he examined P. W. 3 at the inquest. P. W. 13 a Panchayatdar also

contradicts P. W. 19's statement when he admits that he deposed in the committal court that the Circle Inspector wrote with pen & did not type, although in the Sessions Court he says that the Circle Inspector typed what the witnesses stated. He again stated that separate statements were taken from the witnesses, but he did not attest the statements though he stated in the committal court that the panchayatdars attested each of the statements.

From the evidence of the prosecution itself it is clear that the statements of the witnesses were recorded at the inquest in vernacular though this fact is being denied by P. W. 19. Failure to furnish copies of these statements in spite of an application by the accused certainly creates prejudice to the case of the accused, particularly when I have already shown that the case of the prosecution as now presented is totally different to the one by the first informant, P. W. 1, as appears from Ex. P. 1.

Even the inquest report Ex. P. 9 shows that it was gathered from the evidence of Pallapu Seethayya, P. W. 9, Ademma P. W. 9's mother P. W. 1 and Pallapu Thirapatireddi, that the accused stabbed the deceased because she refused to go with him and he stabbed himself and both were discovered lying down. The inquest report is in the vernacular and it is not too much to presume upon the evidence and from the above facts that the statements of the witnesses must have been recorded as categorically stated by the witnesses at the time of the inquest in vernacular.

The non-supply of these statements leads to the irresistible inference that prejudice to the accused was likely to be caused inasmuch as the accused was deprived of his right to confront the prosecution witnesses with contradictions in their statements made then and those made at the Sessions u/s 145. Evidence Act. Their Lordships of the Privy Council in *Pulguri Kotavva v. Emperor* 1947 Mad WN 217 : AIR 1947 PC 67, observed as follows:

The right given to an accused person by Section 162, Criminal P. C., is a very valuable one and often provides important material for cross-examination of the prosecution witnesses. However slender the material for cross-examination may (sic) to be, it is difficult to gauge its possible effect. Minor inconsistencies in his several statements may not embarrass a truthful witness, but may cause an untruthful witness to prevaricate, and may lead to the ultimate breakdown of the whole of his evidence. Where the statements are never made available to the accused, an inference, which is almost irresistible, arises of prejudice to the accused.

In the view taken by me which is supported by authority, there is no other opinion but to set aside the conviction and sentence because if the statements were available, which in this case are not said to be available, I would have considered the question whether retrial could be ordered on this ground.

7. There is yet another ground upon which this appeal can be disposed of. The learned advocate contends that the case of the prosecution is one way as stated

in Ex. P. 1 and the inquest report, the evidence for the prosecution as spoken to by the witnesses gives a version in a different way, while the conclusions of the Judge are said to be in yet another direction.

No doubt the Judge holds that the prosecution has established that the accused stabbed the deceased though in his view the circumstances under which the accused stabbed the deceased are not clearly placed by the prosecution. The learned Sessions Judge came to this conclusion relying Upon Ex. P. 2 which is a dying declaration made to P. W. 7, Sub-Magistrate of Guntur. At the time when his evidence was recorded an objection was raised as to its admissibility relying upon the case of Nazir Ahmad v. King-Emperor 63 Ind App 372 : AIR 1936 PC 253 C2 .

But the learned Sessions Judge relying upon Rampuri v. Emperor 1937 Mad WN Cri 269, where the case of 63 Ind App 372; (AIR 1936 PC 253 (2)) (B), was considered as well as Vellamoonji Govindan, In re 1932 Mad WN Cr 68 , held that it is not correct to say that the amendment to Section 164, Criminal P. C., overrides Section 29 of the Evidence Act and that as a rule when there is a question of admissibility of particular evidence, it is the Evidence Act that one has to look to.

The decisions cited by the advocate for the accused, according to him, seem to have overlooked also Section 163(2) of the Criminal Procedure Code in making such confessions admissible In this view he admitted Ex. P. 2 and also recorded the evidence of the Magistrate relating to the confessions being made voluntarily. Before examining the legal position, I may set out what Ex. P. 2 says:

As my first wife died, I married a second wife Lakshmi, the daughter of Pallapu Seetharamaiah of Ponnekally, It is ten years by now. She is not living normally with me. She lives with me for sometime and some time with parents. I came to know that her character was not good. They brought me and my wife, one month and fifteen days back, as there was a marriage in my mother-in-law's house. My wife was living in adultery.

I told my mother-in-law. I chastised my wife. There was no effect.. At about 3 p.m. yesterday, I saw while my wife was in the house with a dhobi called Narayana. I told my mother-in-law and my brother-in-law Gopayya. I told my another brother-in-law Mastan also. They came saying "we shall see, come on". The person called Narayana jumped over the wall and escaped.

Then, as there was a knife there, I stabbed with it in my stomach. Feeling that it is not proper to live, I did it. When I attempted to stab myself a second time, my brother-in-law snatched away the knife. I fell down on account of reeling. My brothers-in-law, Gopaiah and Mastan and my wife's paternal aunts, Kotamma and Thirupathamma, thought "this fellow is likely to die and if he dies, we will be accused" Kotamma said, "stab both." I heard that. I do not know what happened later. I regained consciousness after the police brought so near me.

If the whole of the statement is taken into consideration, as indeed it must be, this statement if it is to be taken as a confession is at the most a confession of attempted suicide. Parts of the statements made here and there cannot be divested from their context for purposes of propping up the prosecution case. As a dying declaration it is admissible in evidence u/s 32 if the declarant dies.

Since the declarant survived it is not admissible in evidence, in so far as the Indian Evidence Act is concerned. In England, however, the position is different. There it would be admissible if it is made with the apprehension of impending death even though the declarant may survive subsequently.

8. The question in this case is whether the salutary provisions laid down in Section 164 particularly in Sub-section (S) should have been followed as soon as the Magistrate became aware that the statement of the accused was being Inculpatory and was in the nature of a confession. Section 164, as is well known, applies to the recording of the statements or confessions made by a person to a Magistrate in the course of an investigation or under any law for the time being in force or at any time subsequently. Sub-section (3) which was amended by Section 35 of Act 18 of 1923 lays down that

a Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession, and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:

I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and heard, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

Section 164 enjoins that

(1) whenever the accused is examined by any Magistrate or by any Court other than a High Court for a Part A State or a Part B state, the whole of such examination, including every question put, to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable in the language of the Court or in English : and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

2. When the whole is made conformable to What he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the

examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

Those provisions came in for consideration by their Lordships of the Privy Council in AIR 1936 253 (Privy Council) (B), where the question was whether oral evidence of a confession said to have been made by the accused to a Magistrate of the class entitled to proceed under the provisions of Section 164 of the Code of Criminal Procedure relating to the recording of confessions; it was held that the Magistrate's evidence of the alleged confession was inadmissible, as it did not conform to the above provisions. Lord Roche observed:

...The rule which applies is a different and not less well recognised rule-namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts - Taylor v. Taylor (1875) 1 Ch D 426 15)-and although the Magistrate acting under this group of section is not acting as a Court yet he is a judicial Officer, and both as matter of construction and of good sense there are strong reasons for applying the rule in question to Section 164.

Proceeding further his Lordship again observed:

...Their Lordships are satisfied that the scope and extent of the section is far other than this, and that it is a section conferring powers on Magistrates and delimiting them. It is also to be observed that, if the construction contended for by the Crown be correct, all the precautions and safeguards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle.

Any Magistrate of any rank could depose to a confession made by an accused so long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or reading to the accused any version of what he was supposed to have said, or asking for the confession to be vouched by any signature. The range of Magisterial confessions would be so enlarged by this Process that the provisions of Section 164 would almost inevitably be widely disregarded in the same manner as they were disregarded in the present case.

In a Single Bench case of 1937 Mad WN 1325 , which appears to have been relied upon by the Sessions Judge, no doubt the observations of their Lordships of the Privy Council appear to have been limited to the cases if oral evidence given by the Magistrate relating to the confession, but even there a careful reading would show that the reason given by the Privy Council would equally apply to a case where it became clear to (ho Magistrate from the accused's answers to the Magistrate's question that he was incriminating himself.

The learned Judge, King, J., observed at page 1327 that though the learned Sessions Judge was technically right in holding that he was not bound in the circumstances of the case with which he was dealing to follow the judgment of

the Privy Council as the facts wore to some extent distinguishable,

at the same time it is very difficult to meet the argument that the reasons given by their Lordships of the Privy Council would apply to a case of this kind where a Magistrate knowing that a confession was bound to be recorded deliberately omitted to give any kind of warning to the person making the confession.

In the above case it was said that the Privy Council in Nazim Ahmed's case (B), did not anywhere refer to the provisions of Section 29. In my view it was not necessary to refer to Section 29, because Sub-section (3) of Section 164, Cr. P. C., having been added in 1923 and being a special provision for Magistrate's recording confessions would not apply to confessions elicited by persons in circumstances mentioned in Section 29 and which are otherwise relevant. The provisions of Section 164, Cr. P. C., therefore would apply to the particular circumstances contemplated by it. For instance where a confession is made to a police officer u/s 25 or a confession made whilst in custody of a police officer u/s 25 cannot be proved against him, such confession being inadmissible, the provisions of Section 29 do not apply.

They only apply to cases where confessions which are otherwise relevant such as those made without inducement, threat or promise or where it is made after such impression is fully removed. In my view where a confession cannot be proved u/s 26, the provisos of Section 29 will not apply unless it is recorded by a Magistrate and the manner of recording is provided for u/s 164 Nothing, said in *Re : Vellamoonji Giundan* ILR 55 Mad 711 : AIR 1932 Mad 431 (F), militates against this view.

All that was held in that case was that a confession otherwise admissible in evidence is by virtue of Section 29 of the Indian Evidence Act admissible even though the caution prescribed by Section 164 Cr. P. C., has not been administered and also that Section 164, Cr. P. C., does not override Section 29 of the Evidence Act. It is no one's case that Section 164 overrides Section 29 of the Evidence Act,

In this case the first information report showed that the accused had committed the offence and on receipt of that information the Sub-Inspector of Ponnekallu came there and had him admitted to the hospital through Ex. p. 8 in which it is stated that the accused stabbed himself in the stomach on 9-6-1955 and is in a serious condition.

The requisition sent to the Magistrate, by P. W. 7, Exs. P. 4 and 11 issued on 0-6-1955 clearly show that the accused stabbed himself with a knife and according to P.W. 17 he arrested the accused on 10-6-1955 at 10 a.m. The statement of the accused was also recorded on 10-6-1965 though the time of recording is not clear, namely whether it is after alleged arrest or before.

This cannot, in my view, make much difference because the accused was already taken into the custody and sent to the hospital with the specific allegation that

he had stabbed himself which act was an offence. In any case on the evidence Of P.W. 17 itself, it appears that the police had arrested the accused on that very day and unless it can be shown that the dying declaration was made before this alleged arrest, the further question does not arise as to whether he was really in the custody of the police.

It is possible without even a formal arrest being made, for a person to be in the custody if a restraint has been placed upon his movement by the, police. In Babbu Vs. State, , a Bench of the Allahabad High Court in similar circumstances as those in this case held that:

Where a statement made by an accused is recorded by the Magistrate as a dying declaration wherein the accused incriminated himself by stating that he attacked his wife and then inflicted the wounds on himself, such a statement, if becomes admissible in evidence under 8, 32, Evidence Act, 1372 by reason of the accused surviving the wounds, cannot be admitted in evidence as a confession if it is found that the Magistrate failed to comply with the provisions of Section 164, Criminal P. C., and that he was available for being examined as a witness under the provisions of Section 533. To such a statement the rule laid down in Nazir Ahmed v. King Emperor (B) applies.

In the view I have taken there can be no question of the statement Ex. P. 2 being admissible in evidence as a, confession against the accused. If this is rejected, the evidence in this case is such as would without doubt point to the direction that none of the prosecution witnesses had witnessed the actual incident, In any view of the matter the conviction and sentence is liable to be set aside.

9. I allow the appeal and set aside the conviction and sentence and direct the accused to be released cancelling the bail bonds if any.