
(1960) 06 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 1686 of 1959

Wasu Pillai

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-06-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 271, 271(1), 297, 423
Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 302

Citation : AIR 1961 Bom 114 : (1960) 62 BOMLR 857 : (1961) CriLJ 466 :
(1961) ILR (Bom) 183

Hon'ble Judges : Kotwal, J;Gokhale, J

Bench : Division Bench

Advocate : P.K. Nair, for the Appellant; M.A. Rane, Asst. Govt. Pleader, for the Respondent

Judgement

Gokhale, J.—This is an appeal by the accused Wasu Pillai against his conviction u/s 302 of the Indian Penal Code and the sentence of imprisonment for life imposed upon him by the Court of Session for Greater Bombay in Case No. 50, IV Sessions 1959, on 15th September 1959. The charge against the accused was that on the night between the 14th and 15th April 1959 he committed the murder of one Krishna Pillai by intentionally causing his death and thereby committed an offence punishable u/s 302 of the Indian Penal Code.

2. The prosecution case against the accused is that, he was a boarder in Shanmukh Vilas Hotel situated in Family Building on Dr. Batliwala Road, Patel, Bombay. It is a boarding and lodging hotel and owned by one Shankaran Nair. The accused was its boarder for the last 16 years and is the proprietor's sister's daughter's son. The deceased Krishna Pillai who hailed from the native place of Shankaran Nair was also a boarder in the same hotel. One Bhaskaran, the brother's daughter's son of the proprietor, resided with him and was being provided with free lodging and boarding. The accused was an electrician in the Khatau Mills at Byculla, while the deceased Krishna was a weaver in the Sadhana

Textile Mills at Worli. It is the prosecution case that the deceased and the accused were at one time on good terms, but latterly their relations were strained and that appears to be due to some quarrel over a room in the Government Housing Colony at Sion Koliwada, which had been allotted to the deceased Krishna from 1st February 1959. In respect of that room, bearing No. 869, which was allotted to him, the deceased had paid Rs. 141 to the Rent Collector, one Prabhakar Ghaisas. But it seems that instead of the deceased occupying the room, it was in the occupation of one Narayan Nair, a relative of the accused Wasu Pillai. It appears that the marriage of the deceased had been settled and that is why he wanted the room for his own use and he asked the accused to get the room vacated by Narayan Nair; the accused, however, first told him that the room could not be vacated and later on it is alleged that he told the deceased that it would be vacated if an amount of Rs. 155 was paid to Narayan Nair. This dispute about the room took place, it appears, a few days before the incident and, according to the prosecution, on 10th April 1959, Shankaran Nair, the proprietor of the hotel, paid Rs. 155 to one Janardhan Pillai at the instance of the deceased in the presence of the accused, for being paid to the said Narayan Nair. On 12th April, the deceased gave a party in the hotel in celebration of his forthcoming marriage, but the accused and Narayan Nair, though invited, did not choose to attend. As Shankaran found that the relations between the deceased and the accused were strained, he called the accused on 14th April for the purpose of reconciliation and the accused was told by him that, as they all hailed from the same place, the quarrel should be settled and a hearty send off should be given to the deceased when he left for his marriage on the 17th. At this the accused got enraged and is alleged to have told Shankaran Nair that after the deceased returned from his marriage he would finish him off and thereafter finish himself off also, and further said that if he did not act accordingly he was not the son of the Vazsvelil family. Shankaran Nair was further told by the accused to mind his own business. This happened on the 14th April at about 9 a.m. and the accused left for his work in the afternoon. It is the prosecution case that as an electrician in the Khatau. Mills, the accused used to go to the Mills at 2-30 p.m. and usually return at about 12-30 after midnight. The deceased also who was working in the Sadhana Textile Mills at Worli used to go to the mills at about 6-30 a.m. and return at about 4-30 p.m. It is the prosecution case that the deceased used to sleep in the hotel on a bench, while the accused used to sleep just outside the hotel near the windows to the east. At about 3-30 a.m. in the night between the 14th and 15th April, it is the prosecution case that the accused fatally stabbed the deceased with a clasp knife while the deceased was sleeping at his usual place in the hotel. After stabbing the deceased, the accused rushed into a bathroom of the adjacent Subhas Boarding House and, according to the prosecution, the accused approached the bath-room through the four feet wide passage inside the building separating the two boarding houses and he was observed while he was entering that passage by Bhaskaran who, as already stated, was also a boarder in the Shanmukh Vilas Hotel and was related to the proprietor Shankaran Nair. It is further alleged that

one Bengali, Amar-jyoti Bose, a boarder in the Subhas Boarding House, situated in the same building at that very time was entering the same bath-room which the accused was entering from the opposite door, but the accused pushed away Bose into the room where Bose used to sleep and bolted both the doors of the bath-room. Bose went out of his room by another door and saw that the bath-room was bolted from inside from the other side also and that is why he peeped into the bath-room through a hole in the partition between the bath-room and a water-closet and saw the accused lying with several injuries and a knife by his side. According to the prosecution, the accused literally carried out his threat by attempting to commit suicide himself. Bhaskaran, who, as already indicated, had observed the accused hastening towards the common passage and seen the deceased, in a pool of blood, immediately informed the proprietor Shankaran Nair who has his residence nearby. Shankaran Nair hastened to the hotel and the deceased was immediately removed to the K. E. M. Hospital where unfortunately he died soon after admission. Information was given to the Bhoiwada Police Station. The police, on their arrival, got the bath-room door opened with a bamboo and the accused was found lying with knife injuries on his body. The bloodstained clasp knife which was lying there was taken charge of and the accused was removed also to the K. E. M. Hospital. An operation was performed on the accused and he was discharged from the hospital on 4th May 1959. The accused had already been put under arrest in the morning of 15th April. After the preliminary inquiry by the learned Presidency Magistrate, the accused was made to stand his trial in the Court of Session for Greater Bombay.

3. The defence of the accused was that the prosecution story about the alleged quarrel between him and the deceased regarding the room was untrue and he had nothing to say about it. As regards the invitation given by the deceased Krishna, when he gave a party to celebrate his forthcoming marriage, on the 12th, he stated that on that day he had gone to work and therefore did not attend the party. He denied that any threat had been given by him, as was the prosecution case on the evidence of Shankaran Nair," in the morning of 14th April. As regards the-actual incident, the case of the accused was one of alibi. He stated that he had gone to work as usual in the mills and thereafter had gone to see his sister Devakiamma who was not well. From his sister's home he returned to his place of residence at about 4a.m. and when he was enter in the bath-room to wash his face one Gopalan from Bhoiwada asked him for moneys saying "Where is Rs. 50/-?" and Gooalan then stabbed him, He then snatched the knife from Gopalan and then went inside the bath-room and bolted the door of the bath-room from inside. According to the accused, he received several injuries and fell down and had become unconscious and he did not know what happened thereafter.

4. The accused was tried with the aid of a jury who returned a unanimous verdict of guilty on the charge of murder u/s 302, Indian Penal Code. Accepting that verdict, the learned Sessions Judge convicted the accused u/s 302 of the Code and sentenced him to imprisonment for life. It is against this conviction and

sentence that the present appeal has been filed.

5. Now, this being a jury trial, this Court has to be satisfied that there is a misdirection or non-direction amounting to a misdirection in the learned Judge's charge to the jury, before it can go into the evidence in the case. Mr. Nair, learned advocate appearing on behalf of the appellant, contended in the first instance that the learned Sessions Judge committed an error in recording the plea of the accused twice and thereby contravened Section 271 of the Criminal Procedure Code. We do not think that there is any substance in this contention. It appears from the proceedings that on 2nd September 1959 the accused was charged with having committed murder u/s 302 of the Indian Penal Code. On 10th September 1959 the charge was amended and the accused was charged u/s 302 and also with the offence of having attempted to commit suicide and, therefore, having committed an offence punishable u/s 309 of the Indian Penal Code. The accused then claimed to be tried on both the charges and a fresh special jury was empanelled. But before the trial began, the charge appears to have been amended by dropping the charge u/s 309 with the result that only the charge as initially framed u/s 302 was retained. A fresh plea of the accused was taken on the amended charge and the accused claimed to be tried under the said charge. u/s 271(1) of the Criminal Procedure Code, when the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried. On the 10th September, the original charge was amended and the plea of the accused was taken, but thereafter a special jury was empanelled and immediately it appears that the amended charge was itself altered by dropping the charge u/s 309 of the Indian Penal Code and a fresh plea of the accused was recorded. The further alteration of the charge was made after the special jury was empanelled. We do not think that Mr. Nair is right in his contention that this procedure has in any way prejudiced the accused.

6. Then Mr. Nair contends that even though the charge u/s 309 of the Indian Penal Code was dropped, in his charge to the jury the learned Sessions Judge referred to the prosecution evidence regarding the attempt by the accused to inflict serious injuries on himself, and it is contended that this vitiated the charge since evidence regarding another crime could not be admitted. We are of the view that this contention is not sound. According to the prosecution case, in the morning of the day of the incident a threat had been given by the accused in the presence of Shankaran Nair that after the return of the deceased Krishna from his native place after celebrating his marriage he would finish off the deceased and also finish himself off. The subsequent conduct of the accused was, therefore, a part of the same transaction, u/s 6 of the Indian Evidence Act, facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. In *Makin v. Attorney-General for New South Wales*, (1894) AC 57, it was observed by the Lord Chancellor Lord

Herschell:

"The mere fact that evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears on the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would be otherwise open to the accused." According to Archbalds Criminal Pleading, Evidence and Practice, 33rd Edition, page 369, in this the leading case on the subject of evidence tending to prove other offences, most of the prior cases were referred to. This question was again carefully considered in *Rex v. Bond*, (1906) 2 K. B. 389, which the learned Sessions Judge has cited in paragraph 13 of his charge. The facts of that case were that the prisoner, a medical man, was indicted for feloniously using certain instruments on a woman with intent to procure her miscarriage. At the trial, evidence was tendered on behalf of the prosecution, to show that some nine months previously the prisoner had used similar instruments upon another woman with the avowed intention of bringing about her miscarriage, and that he had then used expressions tending to show, that he was in the habit of performing similar operations for the same illegal purpose. It was held by the majority of the Court in that case that the evidence was rightly admitted and that the conviction must be upheld. It has to be noted that Lord Alverstone, C. J., who took the contrary view that the evidence was inadmissible, stated the general rule of law applicable in such cases as follows, at page 394:

".....apart from express statutory enactments, evidence tending to show that the accused had been guilty of criminal acts other than those covered by the indictment cannot be given unless the acts sought to be proved are so connected with the offence charged as to form part of the evidence upon which it is proved : see *Reg v. Rearden*, (1864) 4 F F 76 or are material to the question whether the acts alleged to constitute the crime were designed or accidental: see *Reg v. Gray*, (1866) 4 F.F.1102; or to rebut a defence which would otherwise be open to the accused: see, (1894) AC 57."

After stating the rule thus, the learned Chief Justice expressed grave doubt whether the circumstances of the case before him were sufficient to render the evidence admissible upon the principle recognized in those cases, because prima facie there was no necessary connection between the act charged in the indictment and the act alleged in the evidence admitted. It is apparent, however, from, the observations of Lord Alverstone, C. J., that he was of the view that evidence of this type was admissible if the acts sought to be proved were so connected with the offence charged as to form part of the evidence upon which it is proved. Mr. Justice Darling, who supported the majority view, explained in his judgment the observations of Lord Herschel in (1894) AC 57 as follows:

"I do not suppose that Lord Herschell meant that such evidence might be called to rebut any defence possibly open, but of an intention to rely on which there was no probability whatever. Here; however, the evidence objected to was called

to overthrow a defence already set up, and admitted to be the defendant's answer to the charge." (1906) 2 KB 389.

7. Mr. Justice Kennedy, who also agreed the majority view in (1906) 2 KB 389 referred to the old case of *Rex v. Wylie*, (1804) 1 B.P.92, where Lord Ellenborough, after mentioning a case where a man committed three burglaries in one night and stole a shirt at one place and left it at another, and they were all so connected that the Court heard the history of all the three burglaries, remarked that

"if several and distinct offences do so intermix and blend themselves with each other, the detail of the party's whole conduct must be pursued". From report of the case sub-nom *Rex v. Wylie*, (1804) 2 Lea 983. The difficulty in applying the rule in *Makin's case*, 1894 AC 57 has been discussed at some length by Viscount Simon in a recent case of the House of Lords, *Harris v. Director of Public Prosecutions*, (1952) AC 694, where it has been held that evidence as to other offences may be advanced by the prosecution without waiting to ascertain what is the line of defence adopted. These cases are undoubtedly distinguishable, being cases where evidence as to similar criminal acts was sought to be adduced. But the principle would apply to evidence as to other offences if there is a nexus between the offence charged with the other offence or the two acts form part of the same transaction as to fall within Section 6 of the Evidence Act.

8. In the present case, the defence of the accused, as already stated, was that he sustained serious injuries on that day as a result of an attack on him by one Gopalan and that the injuries sustained by him were not self-inflicted, as was the case of the prosecution. It was the case of the prosecution, however, that the accused had given a threat in the morning that, after the deceased returns from his native place he would finish him off and then finish himself off also. The evidence as to the manner in which, according to the prosecution, the injuries came to be sustained by the accused must be held, therefore, to be so closely connected with the offence charged against him as to form part of the evidence upon which it was sought to be proved. In our view, therefore, the learned Sessions Judge was right when he referred to this evidence to the jury on the ground that it was a part of the same transaction.

9. It was then contended by Mr. Nair that the learned Judge's charge to the jury was also not proper when he dealt with the law on the subject of circumstantial evidence. In this connection, our attention was invited to a portion of the charge in paragraph 7, in which the learned Judge asked the jury to consider the explanation of the accused in juxtaposition with the other evidence and come to their conclusion whether the prosecution evidence was to be accepted or not. Then the learned Judge observed :

"If the circumstances, which you think are established, point to the accused with reasonable definiteness as the probable assailant of the deceased in proximity of time and situation and if in these circumstances the explanation which he gives

appears to be false to you, then the falsity of that, explanation itself you are entitled to take it as completing the chain of the evidence against the accused."

Mr. Nair pointed out that these observations were again repeated by the learned Sessions Judge in paragraph 18 at the fag-end of his charge, and in support of his statement the learned Sessions Judge at both the places referred to the Supreme Court case in Deonandan Mishra Vs. The State of Bihar, . The observations of the learned Judges of the Supreme Court which were quoted by the learned Sessions Judge in his charge are undoubtedly to be found in the last paragraph of the head-note of that case as also at page 582 (of SCR): (at p. 806 of AM). But in our view, Mr. Nair's grievance that the bald statement made by the learned Sessions Judge, relying on the Supreme Court case, was likely to confuse the minds of the jury is, to some extent, justified. The learned Sessions Judge undoubtedly referred to the standard of proof required in the case of circumstantial evidence in the course of his charge; but, in our view that should have been emphasised at the end of the charge also if he wanted to repeat the observations of the Supreme Court as regards the effect of the falsity of the explanation given by the accused. Their Lordships of the Supreme Court emphasised in the case of Deonandan Mishra Vs. The State of Bihar, that the standard of proof required to convict a person on circumstantial evidence is well-established by a series of decisions of the Supreme Court. According to that standard the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. Then having considered the evidence in the case, the Supreme Court summed up the various facts, which formed the links in the chain of circumstantial evidence in that case, and then it observed at page 581 (of SCR): (at p, 806 of AIR):

"These circumstances taken together, advance the case against the appellant very much beyond suspicion and reasonably and definitely point to the appellant as the person who committed the murder."

In our view, the later observations of their Lordships made at page 582 (of SCR): (at p. 808 of AIR) must necessarily be read in the light of the earlier observations made by them at page 581 (of SCR): (at p. 806 of AIR). We, therefore, accept the contention of Mr. Nair that it was possible that the jury might have been somewhat misled by the manner in which only a part of the head-note -of the Supreme Court case was referred to by the learned Sessions Judge at the end of his charge.

10. We may also mention one other grievance of Mr. Nair regarding the learned Judge's charge to the jury. It seems that one Panclurang Vasant Sawant, a police constable, was on duty at the K. E. M. Hospital when the deceased was brought to the hospital by Shankaran Nair and others, and he stated that Shankaran Nair told him that the injured person was stabbed by one Wasu Pillai in his boarding house. As the condition of the injured man was serious, this constable reported

the matter to the casualty Medical Officer. The injured person was admitted in the ward and after his admission he died. Then the constable gave information to the Bhoiwada Police Station and Sub-Inspector Sawant (Prosecution Witness 9) immediately arrived on the spot and recorded constable Sawant's statement at the hospital. This statement of constable Sawant was treated by the prosecution as the first information report. It appears, however, that constable Sawant had himself recorded, what Shankaran Nair had told him in his diary in Marathi, and while the statement of the constable which was recorded by Sub-Inspector Sawant did not mention the assailant's name, the record in constable Sawant's diary showed that the injured person was stabbed by the accused Wasu Pillai in Shankaran Nair's boarding house. It seems that the prosecution relied on this entry in the constable's diary made at about 3-55 a.m. and that portion of the entry was read by the learned Sessions Judge to the jury. Mr. Nair contended that the Court is not entitled to refer to police diaries of a case under inquiry or trial except for the purpose of aiding it in such inquiry or trial, and in support of his contention he relied on the case of *Habeeb Mohammad Vs. The State of Hyderabad*, . In the present case, what was read to the jury was not even a police diary but a private record kept by the police constable in his own diary as to what Shankaran Nair told him when the deceased was brought in an injured condition at the K. E. M. Hospital. In our view, the learned Sessions Judge erred in reading out this entry in constable Sawant's diary to the jury.

11. In view of these two erroneous directions, in our view, it is necessary to go into the evidence in this case to satisfy ourselves as to whether the verdict of the jury is correct or not. (His Lordship, after discussing the evidence in Paras 12-18, proceeded :)

In our view, the circumstances established in this case lead only to one conclusion, viz., that the accused was responsible for killing Krishnan as alleged by the prosecution.

19. The result is that we must hold that the unanimous verdict of the jury was correct, and that is also our view after a careful examination of the evidence on the record. The appeal, therefore, fails and is dismissed.

20. Appeal dismissed.