

THULIA KALI

v.

THE STATE OF TAMIL NADU

February 25, 1972

[H. R. KHANNA AND G. K. MITTER, JJ.]

Criminal Trial—First Information Report—Unexplained delay in the lodging of First Information Report—Inference.

Constitution of India, 1950—Article 136—Interference—if evidence afflicted with ex-facie infirmity.

This Court does not normally reappraise evidence in an appeal under article 136 of the Constitution; but that fact would not prevent interference with an order of conviction, if, on consideration of the vital prosecution evidence in the case the Court finds it to be afflicted with *ex-facie* infirmity.

The appellant was sentenced to death under s. 302 Indian Penal Code. The trial Court and the High Court based the conviction of the appellant primarily upon the testimony of two witnesses one of whom according to the prosecution case was present when the accused made murderous assault on the deceased and the other arrived soon after. Neither of them nor anyone else who was told about the occurrence by the two witnesses made any report at the police station for more than 20 hours after the occurrence even though the police station was only two miles from the place of occurrence.

Setting aside the conviction,

HELD : That the delay in lodging the report would raise considerable doubt regarding the veracity of the evidence of two witnesses and point to an infirmity in that evidence and would render it unsafe to base the conviction of the appellant.

The first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after thought. It is therefore essential that the delay in lodging the report should be satisfactorily explained. [626 H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 165 of 1971.

Appeal by special leave from the judgment and order dated November 24, 1970 of the Madras High Court in Criminal Appeal No. 761 of 1970 and Referred Trial No. 50 of 1970.

S. Lakshminarasu, for the appellant.

A. V. Rangam, for the respondent.

A The Judgment of the Court was delivered by

B **Khanna, J.** Thulia Kali (26) was convicted by Sessions Judge Salem under section 302 Indian Penal Code for causing the death of Madhandi Pidariammal (40) and under section 379 Indian Penal Code for committing theft of the ornaments of Madhandi deceased. The accused was sentenced to death on the former count. No separate sentence was awarded for the offence under section 379 Indian Penal Code. The High Court of Madras affirmed the conviction and sentence of the accused. The accused has now come up in appeal to this Court by special leave.

C The prosecution case was that Madhandi deceased purchased land measuring 1 acre 62 cents from Thooliya Thiruman (PW 5), elder brother of the accused for rupees one thousand. The land of the accused adjoined the land sold to Madhandi deceased. The accused wanted Madhandi deceased to sell that land to him but the deceased declined to do so. Madhandi constructed a fence around the land purchased by her, as a result of which the passage to the land of the accused was obstructed. About a week before the present occurrence, the accused removed some jack fruits from the land purchased by the deceased. Complaint about that was made by the deceased to the Panchayatdars. The Panchayatdars considered the matter, but the accused declined to abide by the decision of the Panchayatdars.

E On March 12, 1970 at about 12 noon, it is stated, Madhandi deceased left her house situated in village Sakkarapatti along with her daughter-in-law Kopia Chinthamani (PW 2), aged 10, for Valaparathi at a distance of about two miles from the village for grazing cattle. Shortly thereafter, Valanjaraju (PW 1), stepson of Madhandi deceased, also went to Valaparathi and started cutting plants at a distance of about 250 feet from the place where the deceased was grazing the cattle. At about 2 p.m. the accused came to the place where Madhandi deceased was present and asked her whether she would give him the right of passage or not. The deceased replied in the negative. The accused then took out knife Ex. 1 and gave a number of knife blows to the deceased in spite of her entreaties to the accused not to stab her and that she would give him what he wanted. Kopia PW raised alarm and ran from the place of occurrence. She met Valanjaraju PW and told him that the accused was giving knife blows to Madhandi. Accompanied by Kopia, Valanjaraju then went towards the accused but he threatened them with knife. Valanjaraju and Kopia thereupon went to the village and informed the husband of the deceased as well as a number of other villagers including Aneeba (PW 3) and Selvaraj (PW 4). Valanjaraju and a large

number of other villagers then went to the place of occurrence and found the dead body of Madhandi deceased lying there with injuries on her throat, face and other parts of the body. Both her ears were found to have been chopped off. Her jewels had been removed. A

According further to the prosecution, Valanjiaraju went to the house of village munsif Muthuswami (PW 8) to inform him about the occurrence. Muthuswami, however, was away from the house to another village in connection with some collection work. Muthuswami returned at about 10.30 p.m. and was told by Valanjiaraju about the occurrence. Muthuswami did not record the statement of Valanjiaraju at that time and told him that he would not go to the spot where the dead body was lying on that night as wild animals would be roaming there and that he would go there on the following morning. Muthuswami went to the spot where the dead body of the deceased was lying at about 8.30 a.m. on the following day, that is, March 13, 1970 and had a look at the dead body of the deceased. Statement P. 1 of Valanjiaraju was recorded by Muthuswami at 9. a.m. at the spot. The statement was then sent by Muthuswami to police station Valavanthi at a distance of about two miles from the place of occurrence. Formal first information report P. 15 on the basis of statement P. 1 was prepared at the police station at 11.45 a.m. B C D

Head Constable Rajamanickam, after recording first information report, went to the place of occurrence and reached there at 2.30 p.m. Inspector Rajagopal (PW 13), on hearing about the occurrence at the bus stand, also went to the place of occurrence. Inquest report relating to the dead body of the deceased was then prepared. Dr. Sajid Pasha (PW 7) was thereafter sent for from Sendamangalam. Dr. Pasha arrived at the place of occurrence at 12.30 p.m. on March 14, 1970 and performed post mortem examination on the dead body of Madhandi deceased. E F

Inspector Rajagopal arrested the accused, according to the prosecution, at 5 a.m. on March 15, 1970 in a reserve forest about one mile from Seppangulam. The accused then stated that he had kept ornaments and knife in the house of Chakravarthi (PW 9) and would get the same recovered. The Inspector then went with accused to the house of Chakravarthi PW and from there recovered knife Ex. 1 and ornaments Exs. 2 to 8. The said ornaments belonged to Madhandi deceased. The knife was taken into possession and put into a sealed parcel. The clothes which the accused was wearing were got removed and put into a sealed parcel. The parcels were sent to Chemical Examiner, whose report showed that neither the knife nor the clothes of the accused were stained with blood. G H

A At the trial the plea of the accused was denial *simpliciter*. According to the accused, the villagers came to know on the evening of March 12, 1970 that the deceased had been murdered. The accused along with the villagers went to the spot where the dead body of the deceased was lying and stayed with them there during the night. On the following day, the accused was suspected by the villagers. They gave him beating and tied him to a tree. Later on that day, that is, March 13, 1970, the accused was taken to the police station and kept there for two days. The accused denied having committed the murder of the deceased or having got recovered the ornaments and the knife. No evidence was produced in defence.

C The learned Sessions Judge in convicting the accused relied upon the evidence of Kopia (PW 2), who had given eye witness account of the occurrence, as well as the statement of Valanjiaraju (PW 1), who had been threatened by the accused with knife near the place of occurrence. Reliance was also placed upon the recovery of knife and ornaments in pursuance of the statement of the accused. The High Court agreed with the Sessions Judge and affirmed the conviction of the accused.

E There can be no doubt that Madhandi deceased was the victim of a brutal attack. Dr. Sajid Pasha, who performed post mortem examination on the dead body of Madhandi, found as many as 29 injuries on the body. Out of them, 24 were incised wounds and five were multiple abrasions. There were a number of incised wounds on the face, neck, chest and abdomen. The pinnas of the right and left ears had been completely severed. Injuries were also found in the eyes and laryngeal region. Death was the result of different injuries, some of which were individually sufficient to cause death. The case of the prosecution was that it was the accused-appellant who had caused the injuries to Madhandi deceased. The accused has, however, denied this allegation and has claimed that he has been falsely involved in this case on suspicion.

G The trial court and the High Court have based the conviction of the accused-appellant, as stated earlier, primarily upon the testimony of Kopia (PW 2) and Valanjiaraju (PW 1). This Court does not normally reappraise evidence in an appeal under article 136 of the Constitution, but that fact would not prevent interference with an order of conviction if on consideration of the vital prosecution evidence in the case, this Court finds it to be afflicted with *ex facie* infirmity. There are in the present case certain broad features of the prosecution story which create considerable doubt regarding the veracity of the aforesaid evidence and, in our opinion, it would not be safe to maintain the conviction.

on the basis of that evidence. According to Kopia (PW 2), the accused stabbed the deceased at about 2 p.m. Kopia raised alarm and immediately informed Valanjiaraju, who was cutting plants at a distance of about 250 feet from the place of occurrence. Valanjiaraju and Kopia then came towards the place where the accused had assaulted the deceased, but the accused threatened them with knife. Valanjiaraju and Kopia thereupon went to the village *abadi* and informed the other villagers. Valanjiaraju accompanied by other villagers then went to the place of occurrence and found the dead body of Madhandi lying there with a number of injuries.

According to document P. 1 Valanjiaraju made statement about the occurrence to village munsif Muthuswami (PW 8) at about 9 a.m. on March 13, 1970. Formal first information report on the basis of the above statement was prepared at the police station at 11.45 a.m. The delay in lodging the report, according to the prosecution, was due to the fact that Muthuswami PW was away to another village in connection with some collection work and he returned to his house at 10.30 p.m. Muthuswami told Valanjiaraju when the latter met him at night that he would record the statement only after having a look at the dead body on the following morning.

It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970 by Valanjiaraju, it is not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day would tend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the

- A standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjaraju, stepson of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it.

- As regards the alleged recovery of knife and ornaments at the instance of the accused, we find that the evidence consists of statements of Inspector Rajagopal (PW 13), Kali Goundar (PW 6) and Chakravarthi (PW 9). According to Chakravarthi (PW 9), the accused handed over the ornaments in question to the witness when the accused came to the house of the witness on the evening of March 12, 1970 and passed the night at the house. The witness also found knife in the bed of the accused after he had left on the following day. According, however, to Kali Goundar (PW 6), the accused, on interrogation by the Inspector of Police, stated that he had entrusted the ornaments to Thangam, wife of Chakravarthi (PW 9). Apart from the discrepancy on the point as to whom was the person with whom the accused had kept the ornaments, we find that Thangam, with whom the accused, according to Kali Goundar PW had kept the ornaments, has not been examined as a witness. In view of the above statement of Kali Goundar, it was, in our opinion, essential for the prosecution to examine Thangam as a witness and its failure to do so would make the Court draw an inference against the prosecution.

It is also not clear as to why the accused should leave knife Ex. 1 in his bed in the house of Chakravarthi (PW 9) when he had ample opportunity to throw away the knife in some lonely place before arriving at the house of Chakravarthi. The knife in question was found by Chemical Examiner to be not stained with blood and according to the prosecution case, the accused had washed it before leaving it in the bed in the house of Chakravarthi. If the accused realised the importance of doing away with the blood stains on the knife, it does not seem likely that he would bring that knife to the house of Chakravarthi and leave it in the bed. A
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Looking to all the circumstances, we are of the view that it is not possible to sustain the conviction of the accused on the evidence adduced. We accordingly accept the appeal, set aside the conviction of the accused-appellant and acquit him. C

K.B.N.

Appeal allowed.