Muthuswami vs State Of Madras on 22 October, 1951

Equivalent citations: AIR1954SC4, AIR 1954 SUPREME COURT 4

JUDGMENT

Bose, J.

1. The facts of this case can be placed in short compass. The appellant Muthuswami has been convicted of the murder of Nachimuthu Goundan and sentenced to death. The evidence consists of three eye-witnesses and a retracted confession. The learned Additional Sessions Judge disbelieved two of the eye-witnesses, namely Hanifa (P. W. 2) and Ghouse (P. W. 5), and rejected the confession on the ground that it was not voluntary. But he believed the third eye-witness Jamal (P. W. 1) who he thought was corroborated by certain other evidence and based his conviction on that. He also convicted another accused Pongiannan, with whom we are not concerned, on the same evidence and sentenced them both to death.

2. The High Court considered that P. W. 1, was as unreliable as the other two eye-witnesses and so refused to believe him. But they thought the confession had been wrongly rejected and, believing it to be voluntary, they upheld the conviction relying on the confession alone. They acquitted the other accused Pongiannan because once the eye-witnesses were discarded the only evidence implicating him was this uncorroborated confession of a co-accused. The question is raised whether a conviction can be based on a retract ed and uncorroborated confession.

3. We do not intend to answer this in a general way because on the facts of this case it is enough to say that it would be unsafe to act on this particular confession. The deceased was murdered about mid-day on 14-8-1949. The eye-witnesses P. Ws. 1, 2 and 5 and two more eye-witnesses who have not been called were examined by the police on the same day at the inquest. Despite that neither the appellant nor his co-accused were arrested. This may have been because they could not be found or it may be that the descriptions given were not enough for identification. That is conjecture. But what we do know is that none of the three eye-witnesses who have been called knew the accused before. They saw them for the first time in the actual act of committing the murder.

4. Next, we are told by Muthusami, P. W. 7, and Palanisami, P. W. 8, that the accused were detained for at least a fortnight in police custody two months after the murder, that is to say, they were detained in police custody for some days before their arrests on the 23rd & 25th of October 1949. The police witnesses deny this but the learned Additional Sessions Judge believed that they were in police custody for at least six days before their arrests. The High Court preferred to believe the police witnesses but the learned Judges have brushed aside the testimony of these two witnesses somewhat summarily.

The learned Additional Sessions Judge who saw them and who saw the police witness Ratnasami, P. W. 24, believed the former. The High Court give no reasons for preferring the latter despite the fact that they did not have the advantage of observing their demeanour. All they say is that they see no reason to disbelieve him. But that, in our opinion, is not sufficient to displace the conclusion of the Judge who actually saw the witnesses in the box. We would require more convincing reasons in a case of this kind and would want to be shown how and where the learned Additional Sessions Judge went wrong; also, in any case, the fact remains that the appellant and his co-accused were not arrested till nearly two and a half months after the murder and the High Court considers that the investigation was perfunctory.

5. Next come the identification parades held on the 1st and the 4th of November. The appellant was identified by each of the three eye-witnesses who have been called. We consider it would be unsafe to accept this identification two and a half months after the event. It is true the murder was committed in the middle of the day but it is equally true that the three witnesses saw the assailants for a very brief interval of time even if the story about them walking by in single file ten minutes after the occurrence is true. It would be a remarkable feat for even one witness to do this but we find it impossible to believe that no less than three were able to do so. The fact that they did pick out the appellant and his co-accused at the parade is of course beyond dispute but it seems evident to us that the suspect must have been pointed out to them before and that of course destroys the value of the investigation; and once we get that far suspicion is at once cast on the genuineness of the confession.

6. Now we wish to avoid laying down any hard and fast rules regarding the necessity of corroboration in the case of retracted confessions. But apart from any general rule of prudence, the circumstances indicated above are sufficient to require corroboration in this particular case.

7. There are other circumstances also which throw doubt on the case. P. Ws. 1 and 5 say that they told their employer Arunachala Chettiar about the murder within a few minutes of its occurrence but were told by him to mind their own business. That is somewhat unnatural conduct but this witness would have been an important witness to corroborate the truth of their story at any rate to that extent. He has not been called. So also the man who first saw the occurrence, namely Ghani, has not been called.

8. The only reason the High Court give for accepting the confession is because the learned Judges considered there was intrinsic material to indicate its genuineness. But the only feature the learned Judges specify is that it contains a wealth of detail which could not have been invented. But the point overlooked is that none of this detail has been tested. The confession is a long and rambling one which could have been invented by an agile mind or pieced together after tutoring. What would have been difficult is to have set out a true set of facts in that manner. But unless the main features of the story are shown to be true, it is, in our opinion, unsafe to regard mere wealth of uncorroborated detail as a safeguard of truth.

9. For the reasons given above, we allow the appeal, set aside the conviction and acquit the appellant.