CASE NO.:
Appeal (crl.) 453 of 1991

PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
KUTTY @ LAKSHMI NARASIMHAN

DATE OF JUDGMENT: 10/08/2001

BENCH:
K.T.Thomas, S.N.Variva

JUDGMENT:

THOMAS, J.

Rani Padmini, a dainty film actress of the South and her mother Indira Kumari were butchered on an ill-fated morning fifteen years ago, in their own flat at Anna Nagar in Madras (now Chennai). Their driver, watchman and cook were later caught and charge-sheeted by the police for the said double murder. The trial court convicted all the three persons and sentenced them to death. But a Division Bench of the High Court of Madras acquitted two of them (the watchman and the cook) while altering the sentence of the driver to imprisonment for life after confirming the conviction. That person (A-1 Jebaraj) moved this Court for special leave to appeal but that special leave petition was dismissed.

The State of Tamil Nadu filed appeals against the acquittal of the two persons (the watchman A-2 Lakshmi Narasimhan and the cook A-3 Ganeshan) but the latter was not traced out in spite of repeated searches made for effecting the service of notice on him. Finally this Court dismissed the appeal filed against A-3 Ganeshan on 5.4.1999. Thus the appeal by special leave filed by the State as against the watchman (A-2 Lakshmi Narasimhan @ Kutty) is now surviving.

The dreadful end of the gamboling cine artist and her mother happened in the following manner, as per the prosecution version: The mother and the daughter, while living in their apartment at Anna Nagar, Chennai, wanted to employ a driver, a watchman and a cook. They advertised it in the newspaper. A-2 Lakshmi Narasimhan responded to the advertisement and he was eventually appointed as the watchman of the residential apartment of the two ladies. Within a few days A-1 Jebaraj was appointed as driver and later A-3 Ganeshan was employed as a cook. The deceased were apparently wealthy and they had cash and jewellery in good quantity. They negotiated for purchase of a house for about fifteen lakhs of rupees. When A-1 Jebaraj overheard the said dialogue he presumed that the ladies could be having the cash with them to buy the house. Then a wicked idea burgeoned in his mind that he should grab the said cash in whatever manner possible. He thought of killing the

two ladies as an easier measure for collecting the cash and jewellery. A-1 Jebaraj disclosed this idea to A-2 Lakshmi Narasimhan @ Kutty and A-3 Ganeshan and sought their help to achieve the target. All the three conspired together and orchestrated a plan to carry out the operation of murdering the unarmed ladies and to share the booty among themselves after accomplishing the murder. A-1 Jebaraj purchased three knives and kept one with him and gave the other two to his co-conspirators.

On the morning of 15.10.1986 the three accused jointly executed the designed scheme of killing both the ladies. First they killed the mother and when the daughter ran to see what was happening to her mother she saw the very persons they employed for their security and help turned out to be their slayers. They pounced on the damsel and killed her too by stabbing her with knives. The killers removed quite a number of movables from the house though they failed to trace out the huge cash stashed away by the wealthy victims.

A-1 Jebaraj was arrested on 24.10.1986, A-2 Lakshmi Narasimhan was arrested on 3.11.1986. As A-3 Ganeshan disappeared to unreachable places the police had to cast the net far wide and tenaciously persisted to catch him. Though delayed the police ultimately succeeded in 1988 to nab that absconding culprit. Many articles, including valuables, were recovered at the behest of the arrested persons. The confession of A-2 was recorded by a judicial magistrate on 24.11.1986. A-3 also confessed to the magistrate which also was recorded purportedly in terms of Section 164 of the Code of Criminal Procedure. However, both of them retracted from the confessions during the trial of the case. Nevertheless, the Sessions Judge relied on those confessions, among other evidence, and reached the conclusion that the prosecution has proved the guilt of the three accused beyond all reasonable doubt.

Learned Judges of the Division Bench of the High Court while acquitting A-2 (Lakshmi Narasimhan) found that the judicial confession was fraught with flaws and hence they did not rely on the confession. According to the Division Bench, the materials brought on record by the prosecution for corroborating the confessions were not acceptable and the extra judicial confessions attributed to A-1 and spoken to by PW-30 was frowned at by the High Court.

Shri S. Balakrishnan, Senior Advocate who argued for the State contended that the High Court approached prosecution evidence in a very pedantic manner and laboured to find out the drawbacks in investigation and wrongly sidestepped the confessions made by the accused persons. The reasonings advanced by the Division Bench, according to the learned senior counsel, are totally unsustainable if not flippant. According to the learned counsel, the extra judicial confession spoken to by PW-30 should have been acted on. He contended that acquittal of the appellant resulted in a grave miscarriage of justice.

Shri K. Vishwanathan, learned counsel for A-2 Lakshmi Narasimhan addressed elaborate arguments garnering as much force as possible. He pleaded for maintaining the order of acquittal. He cautioned us by citing judicial precedents that the approach of a court while dealing with an appeal against acquittal was always different from an appeal

against conviction. Learned counsel took pains to convince us that apart from the inherent weakness of extra judicial confessions by the very nature of that evidence, the testimony of PW-30 itself would show that the confession spoken to by him as attributed to A-1 is a very fragile piece of evidence. He also argued that recovery of the articles did not connect the second accused, particularly in the light of the evidence of the independent witnesses examined by the prosecution.

There seems to be no dispute regarding the fact that Indira Kumari and her daughter Rani Padmini were murdered in their apartment and quite possibly on the morning of 15.10.1986. We are skipping that aspect because prosecution has successfully proved the involvement of A-1 Jebaraj with the murders of the two ladies as he was convicted and sentenced for it by two courts after concurrently holding that the prosecution has proved the case against him beyond all doubt and that verdict became final. Hence the only question now, in this appeal, is whether A-2 Lakshmi Narasimhan had also joined A-1 Jebaraj in murdering the two ladies.

If the confession recorded by the judicial magistrate as from A-2 cannot, for any reason whatsoever, be used by us, it would be an exercise in futility for the State to endeavour for reversal of the order of acquittal with the help of the remaining evidence. So we would first consider and decide whether we can rely on that confession.

The judicial magistrate who recorded the confession of the second accused in Ext.P-66 had written down the statement running into several pages containing very many vivid details. The narration included how A-2 started working as a watchman in the house of the deceased, how A-1 Jebaraj injected the idea of taking away the huge amount of cash kept with the deceased, how the three accused jointly prepared the plan to kill the two ladies to pave the way for burglary and how they executed their designed scheme, etc.

Learned Judges of the High Court declined to act on the said confession mainly for two reasons. First is that the confession was retracted by the maker thereof and second is that the recovery of articles was made prior to the confession. We may state at the outset itself that both reasons are too insufficient for over-ruling the confession.

It is not the law that once a confession was retracted the court should presume that the confession is tainted. As a matter of practical knowledge we can say that non-retracted confession is a rarity in criminal cases. To retract from confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The court has a duty to evaluate the evidence concerning the confession by looking at all aspects. The twin test of a confession is to ascertain whether it was voluntary and true. Once those tests are found to be positive the next endeavour is to see whether there is any other reason which stands in the way of acting on it. Even for that, retraction of the confession is not the ground to throw the

confession overboard.

We are unable to understand how a judicial confession would become bad by reason of the fact that articles belonging to the victims were recovered prior to the making of the confession. That aspect, instead of vitiating the confession, could be a factor in favour of the voluntariness of the confession. When the culprit finds that the articles concealed by him are all disintered it is possible that he might feel that there is no use in concealing the facts any more. Then he may desire to make a clean breast of everything to any person or authorities.

In the present case, Shri K. Vishwanathan pointed out that A-2 Lakshmi Narasimhan was in police custody for a long time i.e. from 3.11.1986 to 17.11.1986. Learned counsel contended on its premise that A-2 would have been pressurised, if not tortured, by the police to make the confession before the magistrate. This contention is made by overlooking certain broad facts. During the time A-2 was in police custody he was produced before the magistrate on three different occasions (5th, 11th and 17th of November 1986). On none of those occasions did A-2 tell the magistrate that he wanted to make a confession. If there was any pressure on him to make a confession it would have been during the time when he was in police custody. Why the police did not do on any of those three occasions when he was produced before the magistrate from police custody would tell heavily against the said contention of Mr. Vishwanathan.

From 17.11.1986 onwards A-2 was not in police custody as the magistrate remanded him to judicial custody. It must be remembered that the confession was made by him only on 24th November 1986. Before recording the confession the magistrate asked him repeatedly whether he wished to make the confession on his own or whether he was pressurised by the police, etc. In this context it must be pointed out that the defence counsel have not pointed any finger on the magisterial procedure adopted as precautionary measures before the confession was recorded. Of course a very frail point has been raised that the magistrate did not inform A-2 at the initial stage that he was a magistrate. Ext.P.66 shows that A-2 was well aware that he was in the court of a magistrate. We perused the preliminary questions and answers recorded by the magistrate. There is no scope for any contention that A-2 was unaware that the person who recorded the confession was a magistrate.

Shri Vishwanathan then contended that A-2 in his confession did not own that he also stabbed at least one of the two deceased. That does not matter much, because a reading of the confession as a whole leaves no doubt that A-2 has admitted the full length role played by him in association with the other two assailants for murdering the two ladies. Hence the very fact that he did not say in so many words that he also inflicted one stab injury on the deceased is of no consequence. In a way this aspect is a further assurance to us that his confession was not what the police wanted him to say to the magistrate.

There is no reason to think that A-2 had been prevailed upon by any extraneous influence to make the confession. The judicial magistrate who heard the confession certified that in his opinion the accused made

the confession voluntarily. That satisfaction could be disrupted only if there are sturdy reasons. Even regarding the truthfulness of the version given by the accused in the confession it is open to the court to ascertain whether there are other materials to lend assurance to the court about the truth of it.

One of the items of evidence put forward by the prosecution for lending such assurance is the judicial confession made by the third accused before the magistrate on 8.6.1988. Though the trial court acted on it as voluntary the High Court had declined to do so. Learned counsel for second accused contended that the High Court rejected the confession made by the third accused and acquitted the third accused which remains undisturbed, though for other reasons. Hence he argued that it is not proper for the Supreme Court to act on the confession made by the third accused for the purpose of corroborating the confession of the second accused. We feel that the said contention has some force. Hence we refrain from using any part of the confession made by the third accused for the purpose of corroboration of the confession made by the second accused.

The extra judicial confession made by first accused to PW-30 is another material which has been advanced by the learned senior counsel for the State for using it as a corroborative piece. But that extra judicial confession is studded with many infirmities, the most important among them is that PW-30 admitted that while making the extra judicial confession A-1 was in a highly inebriated condition. As we have no other material to gauge the level of his inebriation at a time he made his confession to PW-30 we choose the safer course of not using that confession as a piece of corroboration for the confession made by the second accused.

But there are quite a number of other circumstances which would lend assurance to the court about the facts contained in the judicial confession made by the second accused. The very fact that he was working as a watchman employed by the ladies remains undisputed. If so, his disappearance from the scene on 16.10.1986 onwards and his absconding till 3.11.1986 are circumstances effectively corroborating the confession. A large number of articles belonging to the deceased were recovered at his instance. His finger impression was found on the door of the kitchen of the house. If the finger impression of the cook was found on the door of the kitchen we would have declined to use it as a piece of corroboration in the present case, because of the role which a cook has to perform in the culinary wing of the house. But the place of a watchman of the house is normally outside the house, if not outside the gate of the compound itself. How could the finger impression of the watchman get affixed inside the kitchen. In the absence of any explanation as to how the finger impression of A-2 had appeared on the door of the kitchen of the house we can safely treat that also as an incriminating circumstance against that accused.

Shri Vishwanathan, learned counsel contended that PW-30, who is cited to support the evidence of recovery of articles from A-2, had in fact pointed out A-1 in the court as a person from whom the articles were recovered. It seems that High Court was also persuaded to give weight to the said contention. In our perception the said contention has no force at all. PW-33 who attested the Memo prepared by

the investigating officer at the time of recovery cannot be given any special credence while he disowned the very document he attested. Perhaps PW-33 would have committed a mistake in the court when he stretched his index finger at the accused, if it was not a mistake committed by the court itself while writing down the deposition. It had escaped the notice of the Public Prosecutor. Otherwise we have no reason to think that the Public Prosecutor would have omitted to correct it, if not to declare the witness as hostile. As a matter of fact A-1 could not have been present at all when MO.41 was recovered by the investigating officer. At any rate, we are not inclined to give much importance to an accidental error committed either by PW-33 or by the court regarding mentioning A-1 instead of A-2 as the person connected with MO.41. We cannot overlook the sturdy evidence of the investigating officer who effected the recovery and that evidence is supported by the document contemporaneously prepared by him and proved in the case.

The upshot of the above discussion is that the High Court has gone seriously wrong in interfering with the conviction passed by the trial court regarding A-2. We are of the definite opinion that the High Court should not have sidelined Ext.P-66 judicial confession.

In the result, we allow this appeal and set aside the order of acquittal passed by the High Court and restore the order of conviction passed by the trial court. However, we think that the lesser sentence of imprisonment for life is sufficient to be imposed on A-2 for the offence under Section 302 read with Section 34 of the IPC. Hence we sentence him so. We direct the trial court to take prompt steps to get second accused (Lakshmi Narasimhan @ Kutty) and put him back in jail for undergoing the sentence imposed on him now.